

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
MEETING

December 1, 1989

The Holiday Inn Capital
550 C Street, S.W.
Washington, D.C. 20024

Board Members Present:

Michael B. Wallace, Chairman
Hortencia Benavidez
W. Clark Durant, III
Paul Eaglin
J. Blakeley Hall
Lorraine Miller
Thomas Smegal
Claude Swafford
Basile Uddo
Robert Valois

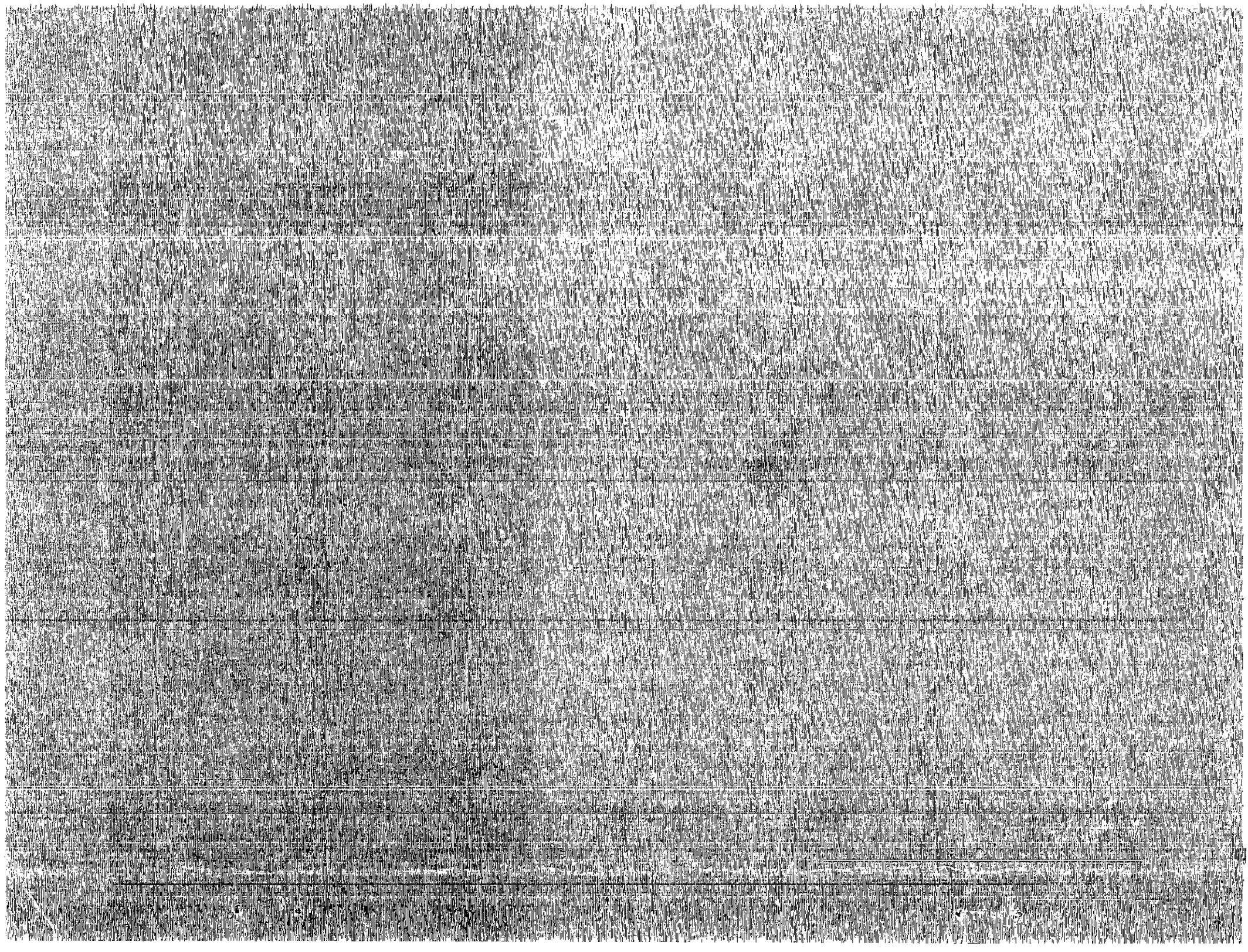
Staff Present:

Terrance J. Wear, President
Timothy Shea, General Counsel
Suzanne Glasow, Assistant General Counsel
Maureen Bozell, Secretary
David Richardson, Comptroller

Diversified Reporting Services, Inc.

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WASHINGTON, D.C. 20005

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10:31 a.m.

1
2 CHAIRMAN WALLACE: I think all the members of the
3 Board are assembled. I therefore call this meeting of the
4 Board of Directors of Legal Services Corporation -- pursuant to
5 notice given in the Federal Register, I call it to order.

6 We will begin as we usually do with the Invocation,
7 which today will be offered by Father Linus Walker of
8 St. Dominic's Catholic Church. Father Walker, if you'll come
9 forward? Probably, the microphone there would be the easiest
10 one to get to.

11 (Invocation.)

12 CHAIRMAN WALLACE: Father Walker, thank you. We
13 appreciate your being with us this morning.

14 FATHER WALKER: You're welcome.

15 CHAIRMAN WALLACE: The first item of business today is
16 the approval of the agenda which is found in the Board book
17 that has been distributed to all the Board members.

18 M O T I O N

19 MR. VALOIS: I move the approval of the agenda.

20 MS. SWAFFORD: I second it.

21 CHAIRMAN WALLACE: Mr. Valois has moved and
22 Ms. Swafford has seconded that the agenda be approved as

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1 printed in the Board book. Is there any discussion?

2 MR. SMEGAL: Discussion.

3 CHAIRMAN WALLACE: Go ahead.

4 M O T I O N

5 MR. SMEGAL: I'd like to take these separately if I
6 may. I'd like to amend the agenda to include the election of
7 the Board Chair and Vice Chair for 1990.

8 MR. EAGLIN: I second that, Mr. Chairman.

9 CHAIRMAN WALLACE: Do you have a series of things you
10 wish to propose?

11 MR. SMEGAL: I'd like to have them voted on
12 separately, but I do have a series of things; that's correct,
13 Mr. Wallace. Do you want the rest of them now? I'll be happy
14 to --

15 CHAIRMAN WALLACE: Why don't you go ahead. I think
16 that would probably be most useful that way.

17 M O T I O N

18 MR. SMEGAL: All right, I'd like to add to the agenda
19 a performance appraisal of President Wear. I believe it's
20 already incumbent and included in several of the items we have
21 there, but I'd like it specifically set forth in the agenda.

22 MR. EAGLIN: My second continues.

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M O T I O N

1
2 MR. SMEGAL: As a third item I would like to have
3 placed on the agenda discussion of the Office of Inspector
4 General and the related clients of this organization with
5 the Inspector General Amendment Acts of 1988 and Public Law
6 95-452.

7 CHAIRMAN WALLACE: Each of those appears to be a
8 substantive change to the agenda as to which the individuals
9 concerned have not had notice, have not been printed in the
10 Federal Register, and I rule each such proposed amendment
11 out of order. You may appeal the decision of the Chair if you
12 like.

13 MR. SMEGAL: Is there an opportunity to discuss that,
14 Mr. Chairman?

15 CHAIRMAN WALLACE: Oh, yes. Absolutely, absolutely.

16 MR. SMEGAL: Well, let me suggest to you that with
17 respect to the third one, I believe we have a regulation that
18 governs our activities, 1601.9, that requires that we annually
19 elect -- and I'll read the section if you'd like.

20 "The Board shall elect a Chairman and Vice Chairman,
21 each of whom shall serve at the pleasure of the Board or until
22 a successor has been duly elected." That is to occur

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1 annually, and as I recall, Mr. Wallace, you were elected on
2 December 9 in a year different than the one that we're in.

3 CHAIRMAN WALLACE: Correct. I don't know about the
4 date, but that's correct.

5 MR. SMEGAL: Well, I have the date. It was December
6 9, 1988. Therefore, we are now in a position where we're going
7 to have to have an election. Now, we don't have to have it
8 today. We can meet again.

9 I will acknowledge and am willing to accept if the
10 Chair will allow a vote to be taken and will assure me there
11 will be another meeting in December of 1989 that we can satisfy
12 our own regulations by meeting again and doing other business,
13 in addition to electing a Chair and Vice Chair in this year to
14 satisfy the requirement that we elect a Chair and Vice Chair
15 annually.

16 CHAIRMAN WALLACE: I don't whether we're going to have
17 another meeting in December or not. I don't know who the
18 Board is going to be the next time we have a meeting. If you
19 want to require a meeting, as you well know there are
20 procedures which permit you to do so. You've not raised this
21 or any of these issues before today. They have not been
22 noticed, and the ruling of the Chair stands.

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1 I think we have at least one new member who is absent,
2 who ought to have an opportunity to vote on the new things that
3 you are proposing to put on the agenda. If we need to have
4 another meeting later in the month, then you know how to
5 require us to do so, but it's not on the agenda.

6 Every member of this Board has had every opportunity
7 to ask for things to be put on this agenda before we got here
8 today, and if we have to come back, we will. My ruling stands
9 that each of these proposed amendments is substantive, has not
10 be duly noticed, and I continue to rule them out of order. As
11 I say, you may appeal the decision of the Chair.

12 MR. SMEGAL: Mr. Wallace, you keep referring to them
13 collectively after I specifically asked you to deal with these
14 one at a time. We are presently on the matter of complying
15 with our own regulations which require an election annually,
16 and I'd like to focus on that, if I may, until we take a vote
17 at which point we will then go on to the next matter that I've
18 raised.

19 CHAIRMAN WALLACE: All right. If you would like --

20 M O T I O N

21 MR. SMEGAL: I would like a roll call vote on the
22 matter of amending the agenda to include an election of a Board

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1 Chair and Vice Chair for 1990.

2 CHAIRMAN WALLACE: The vote is on --

3 MR. SMEGAL: I'm sorry. I understand my motion is a
4 vote on overruling the Chair. If we're operating under
5 Robert's Rules of Order, I understand that's the
6 process.

7 CHAIRMAN WALLACE: All right. The motion is to appeal
8 the ruling of the Chair that the proposed amendment to the
9 agenda providing for the election of the Chairman and Vice
10 Chairman today is out of order. My ruling is out of order.
11 The motion is to overrule that ruling, thereby permitting a
12 vote on Mr. Smegal's proposed amendment.

13 If you wish to overrule the Chair and to have a vote
14 on whether to amend the agenda as Mr. Smegal has suggested we
15 vote for a Chairman and Vice Chairman, your vote will be "aye".
16 If you wish to sustain the Chair and not have a vote today on
17 Board Chairman and Vice Chairman or not have a vote on whether
18 or not to amend the agenda for that purpose, your vote will be
19 "no".

20 I frankly don't remember whether this is debatable or
21 whether it isn't, but I think Mr. Smegal has stated his view.
22 Does anybody else have anything to say?

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1 (No response.)

2 All right. We will have a roll call vote.

3 Mr. Eaglin, how do you vote?

4 MR. EAGLIN: I vote in favor of overruling the Chair
5 -- aye.

6 Mr. Smegal?

7 MR. SMEGAL: Aye.

8 Ms. Benavidez?

9 MS. BENAVIDEZ: Aye.

10 Mr. Durant?

11 MR. DURANT: No.

12 The Chair votes "no". Mr. Valois?

13 MR. VALOIS: No.

14 Ms. Swafford?

15 MS. SWAFFORD: No.

16 Mr. Hall?

17 MR. HALL: No.

18 Ms. Miller?

19 MS. MILLER: Yes.

20 Mr. Uddo?

21 MR. UDDO: Aye.

22 The motion to overrule the Chair fails on a

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1 five-five vote.

2 Your next amendment which you propose to offer,
3 Mr. Smegal, concerns the performance appraisal of President
4 Wear. I don't know whether you formally made that, but let me
5 recognize you now with the opportunity of proposing your
6 to the agenda.

7 M O T I O N

8 MR. SMEGAL: I propose that the agenda be amended to
9 include as an action item performance appraisal of President
10 Wear.

11 CHAIRMAN WALLACE: Is there a second?

12 MR. EAGLIN: Second.

13 CHAIRMAN WALLACE: I think Mr. Eaglin has seconded all
14 of these, and once again the agenda concerns a report on
15 President Wear's trip to California, a report and accounting on
16 the use of outside law firms and a report and accounting on
17 pursuit of lobbying activities.

18 All of those will be on the agenda today. No action
19 has been requested on any of those, nor has a performance
20 appraisal of President Wear been requested.

21 I rule the proposed amendment out of order.

22 Mr. Smegal, do you wish to be recognized for a motion?

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M O T I O N

1
2 MR. SMEGAL: Yes, I do. I'd like to move to --

3 CHAIRMAN WALLACE: I'm sorry. Mr. Eaglin asked that
4 he be given the opportunity to --

5 MR. EAGLIN: Mr. Wallace, you said earlier that you
6 had not received a request from a Board member for a
7 performance appraisal of Mr. Wear, and I sent a letter to you
8 and to Mr. Wear in June that indicated that at the next Board
9 meeting I wanted to have that done.

10 CHAIRMAN WALLACE: Mr. Eaglin, I received a letter
11 from five members of the Board asking for a report and
12 accounting and a report of, an accounting on pursuit of
13 lobbying activities by the Corporation staff. I received that
14 several times this fall. That is precisely what is on the
15 agenda in as close as possible to the words that you used.

16 I have no recollection as I sit here and I doubt
17 whether any of the members -- I don't how many members remember
18 what you said in June, but it certainly wasn't in the Federal
19 Register. We put this in the Federal Register exactly as
20 you ask for it. That's my ruling.

21 MR. EAGLIN: I'm looking for that, but you made the
22 comment that no one earlier had requested of the Chair to have

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1 that put on the agenda, no Board member, and I'm saying that
2 I'm one Board member who had requested that.

3 CHAIRMAN WALLACE: You may have done so and I do not
4 remember what request I received from you six months ago. I do
5 remember quite well your letters asking for a meeting and
6 asking for these agenda items. If I was mistaken in my memory
7 in what you asked for six months ago, I apologize.

8 It does not alter my ruling. What was formally
9 requested and what is on this agenda and what notice has been
10 given of in the Federal Register are the two items here and
11 notice to President Wear, for that matter, who has not been put
12 on notice that his performance will be appraised today.

13 I certainly think fairness to him would require that
14 that item be on the agenda before we walk into the room; so, if
15 I have misstated the last six months' worth of history, I
16 apologize, but it does not change my ruling. The ruling is
17 that the amendment is out of order.

18 Now, Mr. Smegal, do you wish to be recognized to
19 appeal that ruling?

20 M O T I O N

21 MR. SMEGAL: Yes, I do and I do so appeal that ruling
22 and ask for a vote. Let me suggest to you that there are two

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1 reasons why your ruling is incorrect. First, I might add with
2 respect to what Mr. Eaglin has now said, we have on this
3 agenda, as you pointed it out, a report on President Wear's
4 trip to address California Legal Services Trust Fund
5 Commission.

6 I wrote a letter on April 10, 1989, and asked that
7 that item be put on and it's been put on. I'm sure you don't
8 remember getting that letter either, Mr. Wallace, as you don't
9 remember getting Mr. Eaglin's letter -- the point being that
10 Mr. Wear got the letter as he got my letter and the matter of
11 Mr. Eaglin's request for this meeting to have as an agenda item
12 is not Mr. Eaglin's ongoing responsibility to remind you daily
13 as it was not my ongoing responsibility since April the 10 --
14 seven and a half months ago, six and a half months ago -- to
15 continually remind Mr. Wear that I wanted this matter on the
16 agenda.

17 I wrote a letter. I asked that it be on. It's on.
18 The fact that Mr. Eaglin wrote a letter and it's not on I think
19 is controlling of the situation. We are not responsible as
20 Board members to continually remind our staff as to what their
21 duties and responsibilities are. If Mr. Eaglin has written
22 that letter, it's incumbent upon Mr. Wear and you to have put

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1 it on here.

2 Furthermore, and more relevant than the purpose of my
3 motion to begin with, you have -- and you made my argument for
4 me, Mr. Wallace -- you have three items on here, all of which
5 relate to the performance appraisal of President Wear. I've
6 just mentioned the one, report on President Wear's trip to
7 address to California Legal Services Trust Fund Commission,
8 report and accounting of the pursuit of lobbying activities by
9 the Corporation staff and the third one which you also
10 mentioned and I've -- my piece of paper has slipped away here.
11 Excuse me just a moment while I get to the right piece of
12 paper.

13 With respect to the report and accounting of the use
14 of outside law firms by Corporation staff, now at least two of
15 those items include the word "accounting". If any action item
16 is more significant, accounting to me means "accounting".
17 Performance appraisal is an accounting.

18 We have two items on here that already involve a
19 responsibility here to account. He's to account under Item 5
20 for the use of outside law firms by Corporation staff and he's
21 to account under Item 6 for the pursuit of lobbying activities
22 by Corporation staff.

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1 Those are two action items upon which I expect to have
2 an opportunity to vote. The purpose of the performance
3 appraisal of President Wear as a further item is to summarize
4 these three activities into one succinct action item, all of
5 which are already there, Mr. Wallace.

6 There's nothing inconsistent with adding performance
7 appraisal of President Wear to what was published in the
8 Federal Register and has been in public notice properly for
9 the last seven days, and I believe at this point it might be
10 appropriate, Mr. Wallace, for us to get a ruling from our
11 counsel as to whether the notice in the Federal Register
12 supports amending the agenda to reflect succinctly what it is
13 these three items are going to accomplish here today.

14 CHAIRMAN WALLACE: Mr. Smegal, let me respond
15 seriatum to several items in your explanation. I remember
16 your letter quite well. I remember at the June Board meeting
17 you claimed to have written a letter.

18 I remember Mr. Wear writing you to tell you that no
19 such letter had been located and to ask you to produce a copy
20 of it, but to assure you, nevertheless, that your requested
21 subject would be on the agenda today. It is on the agenda
22 today and by request. I remember it quite well. It is on the

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1 agenda.

2 I do not remember the text of Mr. Eaglin's letter some
3 months ago. I do remember the letter that I got from all
4 members of this Board saying what it was they wanted to
5 discuss. It is on the agenda as closely as possible in the
6 terms they had used. It's been in the public domain in this
7 forum for a month now because there was some concern that we
8 would have a meeting in November -- I forget what day.

9 Until I walked in this room this morning, none of you
10 has taken issue with the form of notice or thought that it was
11 insufficient to bring before the Board any item that you
12 intended to bring before the Board.

13 As for the word "accounting", the letter which I
14 received from five members of the Board specifically refers to
15 accounting in the context of its effect on Corporation funds.
16 I understand what you wish to inquire into to be an accounting
17 in the sense of what money has been spent for outside law firms
18 and for the pursuit of lobbying activities by the Corporation
19 staff. That's what the letter said.

20 A general performance appraisal or accounting of
21 Mr. Wear's performance is not incumbent within the notice that
22 I received from five members of the Board and the agenda that

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1 first went to the Federal Register over a month ago.

2 Mr. Wear, it seems to me, is entitled to know whether
3 his performance will be formally appraised before he walks into
4 this room. We have appraised presidents' performances before
5 and they've known about it before they walked into the room. I
6 don't think it's fair to him, and I decline to alter my ruling
7 on that subject. I think these are new matters, and my ruling
8 stands.

9 MR. SMEGAL: Mr. Wallace, you've chosen to
10 mischaracterize the agenda dramatically. May I suggest to you
11 that maybe we could read through it slowly so that we can
12 understand even in the different language which you speak. If
13 you look at Item 5, it says "Report and Accounting of the Use
14 of Outside Law Firms by Corporation Staff".

15 Mr. Wallace, contrary to what you just said, it does
16 not say "Report and Accounting of Monies Used in the Hiring of
17 Outside Counsel". It says "Account of the Use of Outside Law
18 Firms". There's no mention whatsoever of money or an
19 accounting of money. It's an accounting by Mr. Wear of his
20 activities with respect to the use of outside law firms by
21 Corporation staff.

22 Now I'm reading from your agenda, Mr. Wallace. I'm

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1 not reading from my agenda. Let's go on to Item 6. Similarly,
2 it says "Report and Accounting of the Pursuit of Lobbying
3 Activities by Corporation Staff". It does not say "Report and
4 Accounting of the Monies Used" as you suggest it does.

5 It says "Accounting of the Pursuit", not "Accounting
6 of the Monies" -- "Accounting of the Use of Outside of Law
7 Firms", Accounting of the Pursuit of Lobbying Activities",
8 "Performance Appraisal of President Wear", and I'd like a
9 ruling from Mr. Shea at this moment.

10 By the way, let's go back for just a moment, if I may.
11 Mr. Eaglin has now provided me with a copy of his June 20
12 letter which specifically is directed to you and to Mr. Wear
13 and asks -- and I'll quote from his letter: "It is my view
14 that at the next Board meeting there should be a Board review
15 of the conduct of President Wear under his contract and
16 appropriate action based on such review" -- unquote. That
17 letter is dated June 20.

18 I think we tried to have a meeting on November 10. I
19 think you refused to come to it and boycotted the meeting. We
20 were unable to get a quorum; so, this is the first meeting that
21 we've had since Board Member Eaglin asked that we have this
22 meeting.

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1 Now let me go back to my letter of April 10. I did
2 not call you every day after my letter of April 10. This
3 matter of my letter of April 10 is on this agenda as it
4 properly should be. It didn't require me to call you again and
5 again, Mr. Wallace, nor did it require me to call Mr. Wear.

6 Mr. Eaglin as a member of this Board requested an item
7 to be on here. The fact that you have neglected to put it on,
8 been derelict in your duty to put on this agenda a matter that
9 was asked to be put on in writing is unconscionable on your
10 part; and, furthermore, you have chosen as I've already
11 indicated to mischaracterize the items that are already on
12 here.

13 The word "accounting" is very clear with me. It's
14 accounting by Mr. Wear of the use of outside law firms,
15 accounting by Mr. Wear of the pursuit of lobbying activities by
16 Corporation staff. There's no doubt what those mean. We're
17 not talking about money. We're talking about an explanation of
18 what's been going on in the absence of this Board meeting since
19 June 13, and I want a ruling from Counsel Shea on that.

20 CHAIRMAN WALLACE: Mr. Smegal, let me read the letter
21 that five Board members signed on November 10, 1989. It does
22 not include the language which you have resurrected from June.

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1 It says: "There is a need for a report and accounting
2 to the Board of Directors concerning the use of outside law
3 firms by the Corporation staff, as well as the pursuit of
4 lobbying activities by the staff. A meeting of the Board of
5 Directors is needed for that purpose to examine in detail all
6 aspects of the the activities of the staff and to determine its
7 impact on the funds of the Corporation."

8 As I interpret the request which I received, the word
9 "accounting" is explained by the later sentence, "impact on the
10 funds of the Corporation". You certainly may examine in detail
11 all aspects of the activities of the staff including Mr. Wear's
12 activities. There's nothing in the call which I received about
13 an appraisal of those activities, and there is certainly
14 nothing in the letter I received which corresponds to
15 Mr. Eaglin's request back in June that action be taken as a
16 result of that appraisal.

17 Apparently, you do not think the language on the
18 agenda encompasses whatever it is you want to do today, and I
19 agree. It does not encompass whatever it is you want to do
20 today. That is why I am ruling it out of order. Neither
21 Mr. Wear nor I have had any notice of it.

22 You've had the language of this agenda for a month and

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1 after you saw it, you wrote the same letter on November 10 that
2 you have written before. If you wanted to change that agenda,
3 that was the time to do it, not when you walk into the room.

4 Now my ruling stands. The General Counsel is welcome
5 to answer your question if he wishes to.

6 MR. SMEGAL: I would like him to and I have asked that
7 he would, please.

8 MR. SHEA: Out of an excess of -- may I ask what is
9 the question that's pending?

10 CHAIRMAN WALLACE: The question pending is whether the
11 agenda may be amended to include a performance appraisal of
12 President Wear. I think those are the words that you chose,
13 Mr. Smegal; is that correct?

14 MR. SMEGAL: That's right, and I have directed
15 Mr. Wallace in particular to agenda Items 4, 5 and 6 and
16 suggested to him that in my view a performance appraisal of
17 President Wear is merely a summary of what is embodied in those
18 three separate inquiries that we're going to have today.

19 MR. SHEA: First of all, the Board -- needless to say,
20 the Board governs its own affairs. I can tell you that the
21 general rule is that there should be the general subject matter
22 to be discussed is required to be noticed in advance pursuant

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1 to both the Sunshine Act and to the By-laws of the Corporation.

2 There is the provision in the Sunshine Act regulations
3 for the Corporation to change the subject matter of a meeting
4 or to amend the subject matter of a meeting, but that can only
5 be done by a recorded vote of the majority of the Directors;
6 that the Corporation business so requires and that no earlier
7 announcement of the change -- if, indeed, it's a change; and I
8 understand there's argument about whether there's a change.

9 "That no earlier announcement of the change was
10 possible," and I'm reading from 45 CFR 1622.4(d)2, and that's
11 on page 82 of the colored book that you have available to you;
12 so that that is the standard, and I think that it's up to the
13 Board to decide how we'll apply the standard with respect to
14 the specific matters at issue.

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

16 MR. SMEGAL: No, wait a minute. We're not through,
17 Mr. Shea. First off, I don't think you've gotten to the
18 question I've asked Mr. Wallace which I will put to you
19 directly. The question is whether the agenda items -- and
20 there's two questions -- whether the agenda items presently
21 before us are in effect embodied or summarized by the agenda
22 characterization of performance appraisal of President Wear.

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1 That's the question you have to answer, and I refer
2 you specifically to 4, 5 and 6.

3 MR. SHEA: With all due respect, I think that's for
4 the Board to decide.

5 MR. DURANT: Thank you, Mr. Shea.

6 MR. SMEGAL: Hold on. I'm sorry.

7 MR. DURANT: I still thank you.

8 (Laughter.)

9 CHAIRMAN WALLACE: He's not chairing.

10 MR. SMEGAL: It's been so long -- now your voices
11 sound alike. I apologize, I didn't recognize it.

12 MR. DURANT: Now be nice, Tom.

13 MR. SMEGAL: I am being nice. I apologized.

14 MR. DURANT: Try harder.

15 MR. SMEGAL: A further question, though, let me ask
16 you, Counsel, is the Board not being frustrated in its effort
17 to amend the agenda by the Chairman ruling "out of order" an
18 attempt to amend the agenda before the Board gets a chance to
19 vote on the agenda item. He's introducing himself, intruding
20 himself upon the process that you've just outlined.

21 There is, as you pointed out Section 1622.4(d)2, which
22 says, "A subject matter of a meeting may be changed by a

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1 recorded vote of a majority of the Board of Directors." Now I
2 want the Board to vote on that agenda item. Mr. Wallace is
3 frustrating that process by ruling my motion to amend the
4 agenda "out of order".

5 My suggestion to you and to Mr. Wallace is that his
6 ruling is out of order. He has to allow the Board to vote on
7 my motion to amend the agenda as it's provided for in Section
8 1622.4(d)2.

9 MR. UDDO: Tom, I just want to say that in fairness to
10 Tim, I don't know that that's a legal question, Tom. I think
11 that that's a question of if a majority of the Board wants to
12 vote on the amendment to the agenda, they should vote to
13 overrule the Chair's ruling and then have the opportunity to
14 vote on the amendment to the agenda. I mean I think it's a
15 procedural question more than a legal question.

16 I'm just throwing that on the table to suggest that we
17 may be trying to turn a procedural question into a legal
18 question. If a majority overrules Mike's ruling, then a
19 majority will have a chance to amend the agenda. Tim, you can
20 disagree with me if you think I'm wrong. That's just my
21 perception of it.

22 CHAIRMAN WALLACE: All right. Mr. Shea?

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1 MR. SHEA: Thank you, Mr. Chairman. The Board is
2 majoritarian. If there's a ruling from the Chairman, the Board
3 will have an opportunity to perhaps overrule the ruling; and it
4 is in the fashion that the remainder of the Board members can
5 be heard.

6 CHAIRMAN WALLACE: Mr. Smegal?

7 MR. SMEGAL: Yes, thank you. I think Basile is
8 absolutely correct in what he said, and that's my point. We
9 have a procedure in Section 1622.4(d)2 to amend the agenda, and
10 I have moved to amend the agenda and Mr. Eaglin has seconded
11 it. That's a proper procedure under our regulations.

12 I'm suggesting to you that for Mr. Wallace to rule
13 "out of order" my motion to amend the agenda is incorrect and
14 an improper abuse of his authority as the Chair and that the
15 proper procedure is to vote on my motion to amend, not to vote
16 on his motion that it's out of order. He's got the wrong
17 procedure going here.

18 Now if it's going to take two votes, I can understand
19 that. First, we have to overrule Mr. Wallace and that's a
20 procedural matter -- that he's wrong -- and then we can vote on
21 the merits. I agree that he's caused this problem for us. The
22 proper procedure under Robert's Rules of Order is for

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1 my motion to be voted on, not for Mr. Wallace to rule it "out
2 of order".

3 CHAIRMAN WALLACE: Mr. Valois?

4 MR. VALOIS: Mr. Smegal, you have asked the General
5 Counsel -- you're putting the General Counsel in a position, in
6 reality, to overrule the Chair. That is not, certainly not a
7 proper procedure.

8 MR. SMEGAL: We have the President overruling this
9 Board all the time. I don't have any trouble with that. I'm
10 talking about the staff president.

11 MR. VALOIS: Mr. Chairman, is there any motion on the
12 floor?

13 CHAIRMAN WALLACE: I think the motion on the floor --
14 I think there has been a motion on the floor to overrule my
15 ruling and that's what we're addressing at this point.

16 M O T I O N

17 MR. VALOIS: What we're doing, it seems to me, is
18 wrangling and getting nowhere. It is my belief that there is
19 no motion on the floor, and in view of that, I move the second
20 agenda item which is approval of the minutes.

21 CHAIRMAN WALLACE: We haven't approved the first -- we
22 haven't approved the agenda yet. There is a motion on the

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1 floor, as I understand it, to overrule my ruling. That's what
2 we're speaking to at this point.

3 Mr. Durant, I think you have something to say?

4 MR. DURANT: Tom, I really -- you know the realities
5 of all this as well as I do. I mean we're obviously existing
6 in a situation where there is a divided opinion about a whole
7 range of different things.

8 You and others, quite correctly in terms of the
9 by-laws, sent a letter calling this particular meeting,
10 initially for the 11th or 12th of November. You had specific
11 things. If you had wanted to have these other things, I'm sure
12 you probably would have been able to have the necessary
13 signatures on a letter to do those things.

14 From the letter that I just saw that Mr. Wallace read
15 from, the identical things are here that the five or whatever
16 people signed the letter requested -- six people or whatever
17 requested. Just make it a simple vote on Mr. Wallace's rule,
18 and let's go.

19 MR. SMEGAL: Mr. Durant, you're missing the point,
20 whether you're doing it intentionally or from the fact that you
21 may not have read the regulations lately. I have followed the
22 regulations. I have moved to amend the agenda in accordance

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1 with our regulations. The matter has been seconded. I'm
2 suggesting to you that Mr. Wallace cannot rule that out of
3 order because it's providing for in our very regulations under
4 which we're supposed to be operating.

5 Now, whether you want to vote against my amendment,
6 against amending the agenda to include performance appraisal of
7 President Wear, that's one thing. It's another thing for
8 Mr. Wallace to frustrate the process under which we're supposed
9 to be operating by ruling a motion properly made under our
10 regulations "out of order".

11 MR. DURANT: Well, if it's properly made, then you
12 should be able to get a majority of the Board to support you.

13 MR. UDDO: I have another observation. I think what
14 we need is a parliamentarian because now, as I understand Tom's
15 concerns, it's a matter of parliamentary procedure as to
16 whether or not the Chair can rule a motion out of order. I
17 don't know the answer to that.

18 CHAIRMAN WALLACE: The last parliamentarian we had was
19 appointed by Chairman Durant and that was me. My ruling in
20 light of Mr. Shea's discussion remains the same. I call
21 special attention to the part of the regulation which says,
22 "Subject matter may be changed when no earlier announcement of

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1 the change was possible."

2 This agenda was first in the public domain in
3 November. You wrote a letter on November 10th after the agenda
4 came out and had an opportunity to say at that time that you
5 wanted to have Mr. Wear's presence, that you wanted to have his
6 performance appraised or anything else that you wanted to say.

7 There's been no showing that no earlier announcement
8 of the change was possible. On the contrary, the record
9 clearly reveals that an earlier announcement of the change
10 easily could have been made had one been desired.

11 Regardless of all the regulations and all of the
12 Robert's Rules of Order, I will rule this out of order
13 and out of simple decency. Mr. Wear is entitled to know
14 whether he's going to be called on the carpet. I think that's
15 simple fairness. I won't preside over a bushwhacking. My
16 ruling stands. There is a motion to overrule it.

17 MR. DURANT: Call the question.

18 MR. SMEGAL: Just a minute, Mr. Wallace. I can't let
19 go unresponded to what you just said. I have the section in
20 front of me, 1622.4 "Public Announcement of Meetings". There's
21 a whole procedure laid out here. The part that I was referring
22 to, (d)2, provides in the event that our agenda is amended,

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1 there's a procedure to be followed thereafter. "An amended
2 public announcement shall be made at the earliest practicable
3 time and in the manner specified."

4 In other words, our regulations provide for matters
5 being brought to this Board that have not included in the
6 public notice and the procedure is you then place them in the
7 public through an announcement after the Board meeting.

8 Mr. Wallace, you're frustrating the process. You
9 should withdraw your motion. Let us vote on the proposal to
10 amend the agenda. If that fails on a five-five vote, then
11 we'll go on to the next one; but for you to insert yourself and
12 abuse the privileges of the Chair by ruling "out of order" a
13 motion properly made under our regulations is offensive to me,
14 Mr. Wallace.

15 MR. UDDO: Mr. Chairman, can I get a clarification?

16 CHAIRMAN WALLACE: Mr. Uddo?

17 MR. UDDO: Because I think it relates to the whole
18 matter here. If you think it's out of order to amend the
19 agenda -- and you may not want to rule on this yet -- but if
20 there were a motion for another meeting in the month of
21 December at which that would be an agenda item, would you
22 similarly rule that out of order?

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1 CHAIRMAN WALLACE: I think there is a difference and
2 I'll tell you why. As a practical matter, you all can walk
3 over here to the table, sign a piece of paper and present it to
4 me under the regulations and we can have the meeting. A vote
5 now to do something ten days from now does not deprive Mr. Wear
6 of notice, does not deprive the public of notice, does not have
7 any substantive effect.

8 The primary reason I'm ruling this out of order is
9 that there have been no public notice or to Mr. Wear. I think
10 it's unfair to take care of it now, and I think that's what the
11 regulations and Robert's Rules would provide; but as a
12 practical matter, whether you want to have a motion here to
13 have a meeting in ten days or two weeks or what have you or
14 whether you want to walk over there and write it all on a piece
15 of paper, the effect is the same.

16 So, I would certainly think that it would be
17 appropriate as a practical matter to permit consideration at
18 this meeting of when we want to have our next meeting and what
19 we have on the agenda at the next meeting.

20 MR. UDDO: So, you would not rule such a motion out of
21 order?

22 CHAIRMAN WALLACE: I would not rule it out of order

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1 unless somebody convinced me that what I just said is wrong. I
2 have an open mind, Mr. Uddo, but I think we will be able to
3 take that up and come to an agreement.

4 I don't know whether we can come to an agreement on
5 anything, but I think we can consider whether we want to have
6 another Board meeting later in the month for the purpose of
7 considering any topic anybody wants to consider. That's been
8 my inclination.

9 MR. UDDO: Then I would call the question on the
10 motion on the floor.

11 CHAIRMAN WALLACE: The motion on the floor is to
12 overrule the Chair. The Chair has ruled that the amendment to
13 add performance appraisal of President Wear to this agenda is
14 out of order.

15 If you vote "yes", you will overrule the Chair and you
16 will permit a vote on whether to amend the agenda. If you vote
17 "no", you will thereby be sustaining the Chair and there will
18 be no amendment to the agenda.

19 On the question of overruling the Chair, how do you
20 vote?

21 MR. SMEGAL: Excuse me.

22 CHAIRMAN WALLACE: I'm sorry.

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1 MR. SMEGAL: Mr. Wallace -- if I understand correctly
2 -- if you're overruled, then there will be a second vote?

3 CHAIRMAN WALLACE: That's correct. You're amendment
4 will be in order at that point, and we will vote on it.

5 On the question of sustaining the Chair, how do you
6 vote, Mr. Eaglin?

7 MR. EAGLIN: I vote to overrule the Chair.

8 Excuse me, that's a "yes" vote for overruling the
9 Chair. After all the trouble I went to state the question, I
10 stated it improperly.

11 MR. EAGLIN: You botched it.

12 I botched it. All right. On the question of
13 overruling the Chair, Mr. Eaglin votes "yes". Mr. Smegal?

14 MR. SMEGAL: Yes.

15 Ms. Benavidez?

16 MS. BENAVIDEZ: Yes.

17 Mr. Durant?

18 MR. DURANT: No.

19 The Chair votes "no". Mr. Valois?

20 MR. VALOIS: No.

21 Ms. Swafford?

22 MS. SWAFFORD: No.

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1 Mr. Hall?

2 MR. HALL: No.

3 Ms. Miller?

4 MS. MILLER: Yes.

5 And Mr. Uddo?

6 MR. UDDO: Yes.

7 The motion to overrule the Chair fails on a
8 five-to-five vote.

9 You have another item that you wish to add to the
10 agenda, Mr. Smegal?

11 MR. SMEGAL: Mr. Wallace, we played a World Series out
12 in San Francisco a little earlier this year involving two of
13 our Bay Area baseball teams and in that game everybody got
14 three strikes, but I'm going to settle in this game with two
15 strikes.

16 CHAIRMAN WALLACE: Okay.

17 (Laughter.)

18 M O T I O N

19 MR. VALOIS: Mr. Wallace, I move to approve the
20 agenda.

21 MS. SWAFFORD: Second.

22 CHAIRMAN WALLACE: The motion to approve the agenda

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1 has been made and seconded. Are there any other -- is there
2 anything else anybody wants to say about the agenda?

3 (No response.)

4 All right. All in favor of the agenda, say "aye".

5 MR. SMEGAL: Mr. Wallace, I'd like a roll call on
6 that.

7 CHAIRMAN WALLACE: On the question of the approval of
8 the agenda, a roll call has been requested -- the agenda as
9 printed in the Board book. On approving the agenda,
10 Mr. Eaglin, how do you vote?

11 MR. EAGLIN: Yes.

12 Mr. Smegal?

13 MR. SMEGAL: No.

14 Ms. Benavidez?

15 MS. BENAVIDEZ: No.

16 Mr. Durant?

17 MR. DURANT: Yes.

18 The Chair votes "yes". Mr. Valois?

19 MR. VALOIS: Yes.

20 Ms. Swafford?

21 MS. SWAFFORD: Yes.

22 Mr. Hall?

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1 MR. HALL: Yes.

2 Ms. Miller?

3 MS. MILLER: No.

4 And Mr. Uddo?

5 MR. UDDO: Yes.

6 The agenda is approved by a vote of seven to three.

7 The first item on the agenda is the approval of the
8 minutes of the Board meeting of June 13th, 1989. Is there a
9 motion to approve the agenda as printed in the Board book?

10 M O T I O N

11 MR. VALOIS: So moved.

12 CHAIRMAN WALLACE: Mr. Valois moved the approval of the
13 minutes as printed in the Board book? Is there a second?

14 MS. SWAFFORD: Second.

15 CHAIRMAN WALLACE: Ms. Swafford seconds. Are there
16 any proposed amendments to the minutes as printed in the Board
17 book?

18 (No response.)

19 Hearing no amendments, we will vote on the minutes.
20 All in favor of the minutes as printed, say "aye".

21 (A chorus of ayes.)

22 All opposed?

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1 (No response.)

2 The minutes are approved as printed in the Board book.
3 The next item on the agenda is discussion and approval of
4 Fiscal Year 1991 budget proposal.

5 MR. VALOIS: Mr. Chairman?

6 CHAIRMAN WALLACE: Mr. Valois is recognized.

7 M O T I O N

8 MR. VALOIS: I would like to move a budget for Fiscal
9 Year 1991.

10 CHAIRMAN WALLACE: Mr. Valois is recognized for that
11 purpose.

12 MR. VALOIS: If there are extra copies of it, I would
13 appreciate your handing them out to the Board members.

14 Direct delivery of legal assistance, three hundred
15 twenty-one million, four hundred and fifty thousand dollars;
16 and I'll be happy to move this line by line.

17 CHAIRMAN WALLACE: Let's wait until everybody has a
18 copy of it. I think people may have gotten copies of this
19 before. It will probably be easier when everybody has it, and
20 then you can make it short and sweet.

21 MR. VALOIS: Okay.

22 CHAIRMAN WALLACE: I think everybody has. Proceed.

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M O T I O N

1
2 MR. VALOIS: The budget proposal that I'm moving --
3 and I will not read it line by line -- has now been handed to
4 all of the Board members and it bears the date of December 1,
5 1989. The total budget at the bottom line is three hundred and
6 thirty-four million dollars. There is a note there which is
7 part of my motion.

8 CHAIRMAN WALLACE: Is there a second to Mr. Valois'
9 motion.

10 MS. SWAFFORD: Second.

11 CHAIRMAN WALLACE: It's been moved and seconded by
12 Ms. Swafford -- it's been seconded by Ms. Swafford. The main
13 motion before the Board is Mr. Valois' motion. I gather that
14 there are other members of the Board who may have proposals
15 that they will want to make.

16 What I would suggest be done at this time is that any
17 Board members who have proposals that they would like to offer,
18 I will recognize them at this time for the purpose of telling
19 us what it is that they intend to offer; and I think then once
20 all of the options are out on the table, we can hear public
21 comment on the various options and then proceed to whatever
22 action the Board chooses to take or not to take today.

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1 the purpose of making that amendment when the time comes. What
2 I want to do now is see if there's anybody else who's going to
3 have a substitute that they would like to propose.

4 MR. EAGLIN: You just want them mentioned; is that it?

5 CHAIRMAN WALLACE: At this point, I just want to
6 mention --

7 MR. EAGLIN: Ms. Benavidez also has one.

8 CHAIRMAN WALLACE: All right. Ms. Benavidez?

9 M O T I O N

10 MS. BENAVIDEZ: Yes, I propose four million,
11 twenty-five thousand dollars.

12 CHAIRMAN WALLACE: Four hundred twenty-five million?
13 I see it. All right, I see Ms. Benavidez' -- I think we've
14 seen that before. All right, I think we've all received --
15 Ms. Benavidez will be proposing a four hundred and twenty-five
16 million dollar budget -- I think we've all been given copies of
17 that.

18 MR. EAGLIN: Mr. Chairman, I will second that.

19 CHAIRMAN WALLACE: At the proper time, that's fine.
20 Are any other budgets going to be proposed?

21 M O T I O N

22 MR. DURANT: I would like to propose three hundred and

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1 five million, Mr. Wallace.

2 CHAIRMAN WALLACE: All right, Mr. Durant will propose
3 three hundred and five million.

4 MR. UDDO: For old time's sake, Clark?

5 MR. DURANT: For old time's sake.

6 CHAIRMAN WALLACE: We don't have a second at this
7 point, but I'm sure somebody will be kind enough to oblige you.
8 I'll recognize you in a minute.

9 Are there any other Board members who want to tell us
10 what it is -- and I do not to foreclose particular amendments
11 as we go through this parliamentarily, but I think it will be
12 most efficient if we get as many cards on the table as we can.
13 Does any other Board member have any substitute that they
14 intend to propose?

15 MR. SMEGAL: Mr. Wallace, I don't intend to do this,
16 but as a courtesy to Lea Anne Bernstein, you might want to
17 consider having someone introduce her standing recommendation.
18 What was it? Two hundred and eighty million.

19 CHAIRMAN WALLACE: Does someone care to propose such a
20 budget?

21 (No response.)

22 I hear no takers. The various budgets which will be

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1 voting on -- and we'll just talk bottom line at this point --
2 will be: three hundred and thirty four million, three hundred
3 and five million, four hundred and twenty-five million, and
4 three hundred and fifty-six million.

5 I think before we take public comment, I'm going to
6 ask the proponents of these budgets whether they have anything
7 to say briefly in support of their proposals. After each
8 proponent has had a chance to speak, then I will open the floor
9 for public comment on the proposals before us.

10 MR. VALOIS: Mr. Wallace?

11 CHAIRMAN WALLACE: Before I recognize Mr. Valois,
12 Mr. Smegal has his hand up. Mr. Smegal?

13 MR. SMEGAL: Mr. Wallace, as I recall and in our
14 earlier discussions you indicated that this meeting of
15 December 1 had been noticed quite a while ago and as a result
16 of input from the Board, you put together the agenda. I don't
17 want to go back and kick that around anymore, but I have now
18 been handed a fifteen-page document that represents I guess the
19 staff's effort with respect to the budget.

20 And I'd like to know why I haven't had an opportunity
21 to look at this document ahead of time. Why am I being handed
22 this stuff that the staff should have had available to us

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1 several weeks ago? Why am I being forced to try to digest this
2 very long document that Mr. Wear has now presented to us at
3 this time?

4 CHAIRMAN WALLACE: I'll ask the President to respond
5 to that. Mr. Wear?

6 MR. DURANT: What's the date of your FAX?

7 MR. SMEGAL: December 1.

8 MR. DURANT: Of the FAX? Is it today's date?

9 MR. SMEGAL: Eleven-thirty.

10 MR. DURANT: The same as mine.

11 CHAIRMAN WALLACE: Mr. Wear?

12 MR. WEAR: Thank you, Mr. Chairman. As I think you
13 know, Mr. Chairman, the staff has been busy with a number of
14 requests from the Board and the budget materials were not
15 finished until yesterday. At that time they were FAXed to
16 those Board members who had that capability and they then were
17 handed out here this morning.

18 I think the budget is fairly easy to understand from
19 a policy point of view; and, certainly, if the Board members
20 want to take a minute to read the handout associated with it or
21 to listen to Mr. Valois' comments about it, they can certainly
22 do that.

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1 CHAIRMAN WALLACE: Mr. Wear, correct me I'm wrong, but
2 with the exception of the particular numbers plugged into the
3 budget, the line items and the additions that are expressed in
4 this motion are highly similar to the matters that were debated
5 at some length before the House of Representatives last month;
6 is that correct?

7 MR. WEAR: Yes, sir, they are; and this budget in
8 terms of its structure does not differ markedly from that which
9 was approved by the Corporation last year.

10 CHAIRMAN WALLACE: Mr. Valois, do you --

11 MR. VALOIS: Yes, very briefly, because, frankly, the
12 attachment to this proposed budget is fairly self-explanatory;
13 but, more importantly, to respond to Mr. Smegal's concerns, it
14 really doesn't contain any new news. I mean there's nothing
15 here. Mr. Smegal's been on the Board the same length of time
16 that I have. We've heard these arguments over and over again.

17 The concepts involved in the budget-making process of
18 this Board are well known. Even the amounts to be specifically
19 directed to child support and anti-drug matters are not new
20 news at this point. They've been considered by the Congress
21 and the numbers themselves are very easy concepts to
22 understand.

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1 is non-debatable, and that's the motion.

2 I will start from the coffee table around. All in
3 favor -- the question is whether to table the consideration of
4 the budget. Mr. Uddo, how do you vote?

5 MR. UDDO: Aye.

6 Mr. Durant?

7 MR. DURANT: Aye.

8 Mr. Eaglin?

9 MR. EAGLIN: Aye.

10 Mr. Smegal?

11 MR. SMEGAL: Aye.

12 Ms. Benavidez?

13 MS. BENAVIDEZ: Aye.

14 The Chair votes "no". Mr. Valois?

15 MR. VALOIS: No.

16 Ms. Swafford?

17 MS. SWAFFORD: No.

18 Mr. Hall?

19 MR. HALL: No.

20 Ms. Miller?

21 MS. MILLER: Yes.

22 The budget is tabled.

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1 We'll proceed to the next item on the agenda which is
2 a report on President Wear's trip to address the California
3 Legal Services Trust Fund Commission. President Wear is
4 recognized for the purpose of making his report.

5 MR. WEAR: Thank you, Mr. Chairman. I believe each of
6 the Board members has a handout on this. It includes a page
7 dated March 29, 1989, a letter addressed to Judy Garlow who is
8 the Supervisor of Legal Services Trust Fund Program for the
9 State Bar of California. Also, attached to that is a group of
10 comments and the statute and regulations and guidelines under
11 which the California IOLTA Commission operates.

12 The debate, Mr. Chairman, in connection with this
13 issue centers on whether or not public funds could be used to
14 support abortion litigation carried out by the National Center
15 for Youth Law. The Corporation has not questioned the
16 assertion of the National Center for Youth Law that the funds
17 used to support this abortion litigation were public
18 funds, but the debate centered around whether or not the funds
19 were used in accordance with rules of the California IOLTA
20 Commission. I think the analysis here is self-explanatory.

21 The central purpose of the California IOLTA statute
22 and the Trust Fund guidelines were to benefit any indigent

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1 persons. In this case, the National Center for Youth Law is
2 representing a group of physicians and the American Academy of
3 Pediatrics, the American College of Obstetricians and
4 Gynecologists, the California Medical Association and the
5 Planned Parenthood organization with regard to this litigation.

6 One of the issues is whether or not these entities are
7 indigent persons. I can find no basis to conclude that they
8 were. That was one of the points that was raised. The
9 California IOLTA Commission determined that these named
10 plaintiffs could in fact represent a group of juvenile females
11 desirous of abortions.

12 In my view, this was done directly in contravention of
13 the rules and regulations associated with this issue; and if I
14 may, Mr. Chairman, I'll direct the Board's attention to the
15 next to the last page of the handout where they try or attempt
16 to define the term "person".

17 It says: You may consider legal services provided to
18 an organization if the organization provides benefits primarily
19 to persons who are indigent.

20 MR. UDDO: Excuse me, Terry. Where are you reading?

21 MR. WEAR: It's the next to the last --

22 MR. UDDO: Page 5?

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1 MR. WEAR: In the middle of page 5.

2 MR. UDDO: In the bottom paragraph, is that where
3 you're reading?

4 MR. WEAR: Yes, sir, under Regulation 2.3.3.

5 MR. UDDO: All right.

6 MR. WEAR: In addition, for policy reasons and in this
7 particular case these named plaintiffs were also represented by
8 the American Civil Liberties Union and it seemed to me that
9 this was a poor use of the funds. Those were the principal
10 issues that were debated during the course of this meeting, and
11 I'd be pleased to try to answer any questions that anyone might
12 have.

13 CHAIRMAN WALLACE: Are there any questions for the
14 President?

15 MR. SMEGAL: Yes, Mr. Wallace, I have several.

16 CHAIRMAN WALLACE: Mr. Smegal, you're recognized.

17 MR. SMEGAL: Thank you very much. The agenda item is
18 report on President Wear's trip to address the California Legal
19 Services Trust Fund Commission. We've now heard Mr. Wear's
20 theory of why the Commission in California should not offer
21 funding to the National Center for Youth Law.

22 With respect to your trip, Mr. Wear, did you appear at

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1 a hearing with respect to this matter?

2 MR. WEAR: This was a meeting of the IOLTA Commission,
3 as I recall.

4 MR. SMEGAL: Does your packet of materials include
5 the response you got following that hearing from the
6 Commission?

7 MR. WEAR: I don't recall that it does.

8 MR. SMEGAL: Do you recall what the Commission did?

9 MR. WEAR: Yes, I thought I stated that. The
10 Commission ruled that the National Center for Youth Law
11 represent these clients, these named clients that I mentioned,
12 because, in their view, the named clients represented a class
13 of indigent female individuals who would benefit from this
14 action.

15 MR. SMEGAL: How many people were on this Commission
16 and voted?

17 MR. WEAR: There are a large number of individuals. I
18 don't recall the specific number. Perhaps you know.

19 MR. SMEGAL: Was the vote twenty-two to nothing
20 against you?

21 MR. WEAR: I don't recall specifically. I know that
22 there was certainly not support for my view on that. I don't

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1 recall the numbers.

2 MR. SMEGAL: Do you think the vote would have been
3 less favorable had you just relied on the two briefs you filed,
4 rather than traveling to California to make a presentation?

5 MR. WEAR: I don't know. I think that it's helpful,
6 Mr. Smegal, to make sure that the IOLTA Commission understands
7 the issue and is aware of it. I think that it's a very
8 important issue, it's a legal issue involving the
9 interpretation of the IOLTA statute and the regulations; and I
10 think it was certainly a trip that was worthwhile and should
11 have been made.

12 MR. SMEGAL: Were you on the business of the
13 Corporation or was it your personal views you were expressing,
14 Mr. Wear? You said "my view" several times in your opening
15 remarks. Is the "my" you or is the "my" in your Corporate
16 capacity?

17 MR. WEAR: Under the statute and also the writers
18 under which the Corporation operates, Mr. Smegal, we have a
19 duty to try to insure that the monies available for legal
20 services are used for proper purposes and that was the purpose
21 for making the trip.

22 MR. SMEGAL: Do you recall what the date of your trip

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1 was?

2 MR. WEAR: I don't specifically. I'm looking at the
3 letter which makes up page one of the exhibit and in that it
4 makes reference to a consideration of the matter on Friday,
5 March 31. I'm assuming that that was the date that I was
6 there.

7 MR. SMEGAL: You indicated that the purpose of your
8 trip was to inform or enlighten this Commission as to what your
9 views or the views you were expressing were. Is part of that
10 process of enlightenment a threat to bring suit against the
11 State Bar's Legal Services Trust Fund Commission?

12 MR. WEAR: Mr. Smegal, I think this is an issue that
13 needs to be clarified as to whether these funds are used
14 properly. I think that, candidly, that this was a hometown
15 ruling in support of a center that was right there in
16 San Francisco and I think that if the issue were illuminated a
17 little more, that perhaps it might have been different.

18 MR. SMEGAL: Was the purpose of going to San Francisco
19 to hold a press conference, Mr. Wear, while you were there?

20 MR. WEAR: No, sir, that's occurred incidental to the
21 trip.

22 MR. SMEGAL: In my April 10, 1989 letter to you, I

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1 enclosed a portion of the San Francisco Daily Journal
2 of Monday, April 3, and the second paragraph I'd like to read
3 into the record. "Terrance Wear, President of the federal
4 poverty law funding agency said Friday in San Francisco that
5 cutting out money the LSC has been granting to the center is
6 one option he'll ask the LSC Board to consider. Others, he
7 said, include bringing suit against the State Bar's Legal
8 Services Trust Fund Commission."

9 Were you making those statements with authorization
10 from this Board?

11 MR. WEAR: No, I think those are the possible options
12 that were available. That was the context of the question
13 that I was asked. The question was asked, "What, if anything,
14 could the Corporation do about this?" and I was trying to tick
15 off options that might be available to the Corporation.

16 MR. SMEGAL: This is now the second meeting at least
17 since you made these statements to the press in San Francisco.
18 What matter have you brought to the Board to consider with
19 respect to this, Mr. Wear, on your own?

20 MR. WEAR: I don't think that there's been anything
21 brought to the Board on it.

22 MR. SMEGAL: What standing do you believe this

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1 Corporation would have to bring suit against State Bar's Legal
2 Services Trust Fund Commission?

3 MR. WEAR: It's an issue that I don't know that we've
4 researched, Mr. Smegal.

5 MR. SMEGAL: I recall Ms. Bernstein sued this Board on
6 some basis and I believe that suit went away, and I'm just
7 wondering if you've got some different theory than Ms.
8 Bernstein had. Certainly, this Board doesn't have a theory
9 because, as you've indicated, the matter has not been to the
10 Board yet. So, you don't have a theory of standing how this
11 Board could sue the Commission in California?

12 MR. WEAR: I haven't focused on that portion of it --
13 no.

14 MR. SMEGAL: In spite of the fact you told the press
15 that that was one of the matters you were considering doing?

16 MR. WEAR: Mr. Smegal, the question was, "What
17 options, if any, does the Corporation have?" and I was trying
18 to tick off options.

19 MR. SMEGAL: You've now had eight months to think
20 about that option, Mr. Wear, and I'm asking you as a member of
21 this Board whose duties you were bringing into focus with
22 respect to this matter, I'm asking you what you have in mind?

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1 You've had eight months to think about what you said
2 -- that somehow this Board is going to sue, this Corporation is
3 going to sue the State Bar's Legal Services Trust Fund
4 Commission -- you've had eight months now to come up with a
5 standing, and I would like to know what it is, how you're going
6 to do it.

7 MR. VALOIS: Mr. Wallace, I'd like to know how many
8 times Mr. Wear has to answer Mr. Smegal's question before
9 you're going to rule that he's gone a bit afield from what was
10 on the agenda as a report?

11 CHAIRMAN WALLACE: I think questions on a report are
12 in order, Mr. Valois. This may be somewhat different from
13 previous questions that have been asked. I will permit
14 Mr. Wear to say anything he has to say in answer to this
15 question.

16 MR. SMEGAL: Mr. Wallace and Mr. Valois, that's my
17 last question and maybe I can just rephrase it so we can get on
18 with other matters. I want to know if you've got any basis at
19 the present time, Mr. Wear, after thinking about your statement
20 eight months ago, if you've got any basis for this Corporation
21 suing the, as you stated it, the State Bar's -- I guess that's
22 the California State Bar's -- Legal Services Trust Fund

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1 Commission? Do you have any legal theory for us doing that?

2 MR. WEAR: Mr. Smegal, I haven't focused on that
3 option since that statement.

4 MR. SMEGAL: Does that mean you have no present legal
5 theory? Is that what that means?

6 MR. WEAR: It means I haven't focused on it, as I
7 said, since that meeting in California.

8 MR. SMEGAL: Thank you, Mr. Wear.

9 CHAIRMAN WALLACE: I think I saw his hand first and
10 heard you first; so, go ahead.

✓ 11 MR. UDDO: I just want to say a few things on the
12 record because Tom and I know that we disagree on this
13 particular issue, and I've expressed to Mr. Wear my views on it
14 and did back when he took his trip because I think there's a
15 larger issue here that was being served by the Corporation
16 showing interest in how that IOLTA money was being used.

17 My position on abortion is no secret to anyone, and
18 I'd be lying to say that that doesn't influence how I feel
19 about what the underlying issue was, but I think it's because
20 there's a much more important, larger issue and that is
21 confidence in IOLTA funds.

22 I think some people don't perceive the threat to IOLTA

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1 funds if IOLTA funds are going to be used to support this kind
2 of litigation. I think people consistently underestimate the
3 effect that involvement in abortion litigation has on people's
4 attitudes toward where that money is coming from.

5 Not all states have mandatory IOLTA. My state does
6 not have mandatory IOLTA and I can assure you that if IOLTA
7 funds in my state were going to be used this way, there would
8 be very little support for making commitments to IOLTA.

9 I think IOLTA has been an important advancement in
10 providing funds for legal services and I think it is short-
11 sighted and a mistake for any IOLTA commission to believe that
12 IOLTA funds can be used in that fashion without threatening
13 support for IOLTA money and thereby, ultimately, for those
14 additional funds for legal services grantees.

15 So, I would just say that I think there was an
16 important overriding Corporate issue here because if we lose
17 support for IOLTA funds, we lose an important source of funding
18 for legal services and if that's lost, obviously, it puts
19 greater strain on our grantee and spreads our resources even
20 thinner.

21 I think, frankly, Tom, the IOLTA Commission was wrong
22 in California. I don't see how supporting those organizations

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1 who were no near indigent can be considered use of money to
2 support indigent clients; but, you know, it's their money, it's
3 their funds. I assume that they can make that decision, but I
4 think if it keeps up, I think attorneys in California -- some
5 will start to question whether IOLTA is a good idea.

6 That's what I think is a very legitimate concern for
7 the Corporation, and I think we should always try to question
8 when we think something like IOLTA is moving into an area where
9 it's going to lose its support. It may lose its mandatory
10 status if they use the money in areas that are going to create
11 a backlash against IOLTA funds.

12 So, I think there's an important overriding issue, and
13 I think it has to be taken into consideration when we as a
14 Corporation are trying to defend all the sources and resources
15 of funding for delivery of legal services.

16 I don't have any problem with Terry's attempt to do
17 that in this particular instance.

18 CHAIRMAN WALLACE: Mr. Durant I saw next. Mr. Durant?

19 MR. DURANT: Mr. Wallace, I too want to echo not only
20 what Mr. Uddo said because I feel the same way not about the
21 issue, but also I think Mr. Wear was quite correct in going out
22 and making a personal appearance. I also think it's a credit

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1 to our Corporation that even though it may have been a hometown
2 audience and would have been twenty-nine or fifty-nine to
3 nothing, I think Mr. Wear showed the appropriate kind of
4 courage and principle that is important in a president for this
5 Corporation, and I applaud him for going.

6 CHAIRMAN WALLACE: Ms. Swafford?

7 MS. SWAFFORD: I didn't know there were going to be
8 these speeches in behalf of Mr. Wear's conduct because I had
9 planned to do it in the first place. I think that he has the
10 responsibility and the duty of managing this Corporation, and
11 this is an issue that I feel very strongly about.

12 I was the first lawyer in my county to really make an
13 effort to make a deposit in the IOLTA funds at the local bank
14 with which our bank did not have a provision for it. I went to
15 the trouble and difficulty to get my money in an IOLTA account;
16 and let me say if there's money spent for abortion in any way,
17 I will personally make an effort to get Tennessee to abolish
18 it.

19 I think it would have been much easier for him to send
20 a memorandum out there, but I think he went over and beyond the
21 call of duty in terms of his efforts to go out there and speak.
22 Just because he wasn't going to have a friendly audience out,

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1 he knew that before he went. We don't act really from
2 popularity on this Board anyway.

3 CHAIRMAN WALLACE: Mr. Valois.

4 MR. VALOIS: My colleagues have already expressed my
5 views in large measure. I really do think that this is such an
6 insignificant matter in the great scheme of things and I regret
7 that we're wasting time on it.

8 I consider this to be well within the Corporate duties
9 that Mr. Wear had and it's my understanding that various
10 members of this Board have stronger or less strong interests in
11 the general issue of abortion, but we all share the view about
12 seeing that IOLTA continues to exist.

13 In rather a substantial way my state has grown, and I
14 found it the same thing that Claude's did early on. To permit
15 IOLTA to make itself a target for this sort of thing I think is
16 a mistake. I think it was in the Corporation's and the
17 long-run interest for Terry to go out there, and I appreciate
18 his making the trip and presenting the views that he did, which
19 happen to be mine.

20 CHAIRMAN WALLACE: Any other members? Mr. Smegal?

21 MR. SMEGAL: I'm amused by the characterization of
22 this being a hometown decision. There are a hundred and

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1 fifteen thousand lawyers in the State of California. I don't
2 know how that concurs with the total population of Mississippi,
3 but to suggest that a statewide commission somehow has made a
4 twenty-two-nothing hometown ruling is -- well, it's bizarre,
5 but it's certainly humorous.

6 We all have different views. I didn't bring this
7 matter up because of the merits. I brought it up because of
8 the expenditure of funds. Mr. Wear filed two briefs with that
9 commission and then he wasted our resources. I do have one
10 more question which is how much of our resources did he waste
11 going out there?

12 We do have a different view. I might say we have lots
13 of different views on this Board. I argued very ineffectively,
14 I might add, several months ago why the IRCA provisions did not
15 apply and prohibit aliens, registered aliens from receiving
16 legal services for a five-year period. I was defeated at this
17 Board.

18 Fortunately, a federal district court agrees with my
19 position rather than the majority of the Board. That happens
20 on this Board all the time. I'm not suggesting that we don't
21 have different views, Mr. Valois, but to suggest that Mr. Wear
22 got a hometown decision is just absurd.

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1 He got a vote twenty-two to nothing. He would have
2 gotten the same vote without spending our money, and I'd like
3 to know how much of it he spent.

4 CHAIRMAN WALLACE: Just a second. Who did the
5 Attorney General agree with on IRCA? Am I erroneous in
6 thinking that the Attorney General did approve the regulations
7 of this Board on IRCA?

8 MR. WEAR: Mr. Chairman, the Attorney General has made
9 his decision on this and he supports the decision that was
10 made earlier by the Board of Directors.

11 CHAIRMAN WALLACE: Okay, that's what I thought.

12 Now, Mr. Smegal's first question was how much of the
13 Corporation's money did you waste on this trip? The second was
14 how much did you spend? I assume those are two different
15 questions in your mind, Mr. Wear. They certainly are in mine.
16 Can you tell him the answer to either one of them?

17 MR. WEAR: Mr. Chairman, I don't think we wasted any
18 money. I think the cost of the air fare plus a cab fare. I
19 was out and came back the same day.

20 MR. UDDO: Mr. Chairman?

21 CHAIRMAN WALLACE: Mr. Uddo?

22 MR. UDDO: Just so that Tom understands my position --

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1 and I don't know hometown, non-hometown. I don't know who was
2 on the thing or not, but I believe of those a hundred and
3 fifteen thousand lawyers in California, they would not
4 unanimously support that use of IOLTA funds.

5 I think if you were going to poll those hundred and
6 fifteen thousand lawyers, you'd find a fairly even split, and
7 that's my point.

8 MR. DURANT: In the usual fashion, Mr. Wear went out
9 there very efficiently; so, I would say he maximized the
10 Corporation's resources rather than wasting them.

11 MR. VALOIS: Maybe Mr. Smegal would have employed
12 outside counsel.

13 CHAIRMAN WALLACE: Anyone else have any questions for
14 Mr. Wear? Mr. Smegal, you about to say something. I'll let
15 you say it.

16 MR. SMEGAL: I think we've got to get this back into a
17 proper perspective which is the question I asked to Mr. Wear
18 earlier on. I'm not suggesting that we rehash this on the
19 merits. I'm not suggesting where I am on the merits. All I'm
20 suggesting to you is that what the IOLTA Commission in
21 California does is there business. We have no proper way,
22 legal way to be involved.

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1 I've asked Mr. Wear what the lawsuit was going to
2 consist, what standing we have to sue. That's my point. We
3 don't have. There was no legal purpose for Mr. Wear to be
4 there. There's no process in which we are a part of with
5 respect to public funds generated by the State of California.

6 Mr. Wear could make his position known in his briefs.
7 For him to fly out there and try to interpose himself, not at
8 Board instruction -- we didn't take a vote on any of this --
9 interpose himself in a process that is not part of this Board's
10 responsibility to me is a waste of Corporate resources,
11 whatever the amount was or however you want to characterize it.

12 CHAIRMAN WALLACE: Further questions or comments?

13 (No response.)

14 The Chair has some questions.

15 Mr. Wear, you've heard Mr. Smegal's complaint that the
16 Board did not authorize and an earlier complaint that you had
17 not brought this to the attention of the Board since you made
18 the trip, is it customary in Corporation procedures for the
19 President of the Corporation to bring enforcement matters
20 before the Board?

21 MR. WEAR: No, it is not, Mr. Chairman.

22 CHAIRMAN WALLACE: He also said that how California

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1 spends its IOLTA money is none of our business which as stated
2 may be correct, but I want to make sure I understand the
3 General Counsel's opinion.

4 First of all, let me ask this. Are there any facts in
5 dispute? I mean it's my understanding we all know what the
6 lawsuits are; we all know who the clients are; and insofar as
7 we can understand anything we hear from an accountant, we
8 understand that the money being spent on this comes from
9 California IOLTA funds. Is that correct?

10 MR. WEAR: That is correct.

11 CHAIRMAN WALLACE: No facts in dispute anywhere that
12 we know of?

13 MR. WEAR: Not that I'm aware of.

14 CHAIRMAN WALLACE: As I understand the General
15 Counsel's opinion which I read at the time, he does not attack
16 the right of California to spend its money anyway it chooses.
17 He interprets the IOLTA funds from California to be public
18 monies within the definition of our act; is that correct?

19 MR. WEAR: Mr. Chairman, that representation was
20 accepted by the Corporation for purposes of this debate.

21 CHAIRMAN WALLACE: I appreciate the clarification.
22 And the General Counsel went on to say that on the assumption

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1 these are public funds, any one of our recipients must spend
2 those public funds only in accordance with the purposes for
3 which they're provided under public law; is that correct?

4 MR. WEAR: Yes, it is.

5 CHAIRMAN WALLACE: And he further offered the opinion
6 that the expenditure of these funds, of these California IOLTA
7 funds, in the facts of this case was not consistent with
8 California law, not consistent with the purposes for which the
9 funds were provided; is that correct?

10 MR. WEAR: That is correct.

11 CHAIRMAN WALLACE: And that is what the California
12 committee disagreed with; is that correct?

13 MR. WEAR: Yes, sir.

14 CHAIRMAN WALLACE: All right. If the General Counsel
15 is correct that California law is being violated, is it also
16 the case that our grantee by violating California law is
17 violating federal law?

18 MR. WEAR: I guess, sir, it is.

19 CHAIRMAN WALLACE: Do you accept the General Counsel's
20 interpretation of the law?

21 MR. WEAR: Yes.

22 CHAIRMAN WALLACE: With no facts in dispute and in

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1 light of the General Counsel's opinion, is it safe to assume
2 however California wants to spend its money, we will not be
3 spending any more of our money in the new year on the National
4 Youth Law Center?

5 MR. WEAR: That is a good question, Mr. Chairman.

6 CHAIRMAN WALLACE: You're doggone right it is.

7 MR. WEAR: It's one that we're going to have to
8 wrestle with.

9 CHAIRMAN WALLACE: We've got a contract coming out in
10 the next few weeks, and I trust the wrestling will be done in
11 short order?

12 MR. WEAR: Yes, sir.

13 CHAIRMAN WALLACE: Do you have to file a suit against
14 anybody not to sign a contract, Mr. President?

15 MR. WEAR: No, sir, you don't.

16 CHAIRMAN WALLACE: Any other questions for the
17 President?

18 (No response.)

19 CHAIRMAN WALLACE: The next agenda item is report and
20 accounting of the use of outside firms by Corporation staff.
21 We are halfway through the agenda and we're an hour and a half
22 into this meeting. Neither the court report nor anybody else

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1 has had a break. What I would like to do now at least is to
2 take a five-minute break before we come back here.

3 Mr. President, have plans been made for lunch for the
4 Board?

5 MR. WEAR: Yes, sir, lunch will be brought in at
6 twelve-thirty.

7 CHAIRMAN WALLACE: What I would propose is we take
8 five, ten minutes. Any deposition I've ever been in, a five-
9 minute break turns into ten; but let's take a break, get back
10 here, and then we'll work until twelve-thirty, at which time
11 lunch will be available to the Board.

12 MR. UDDO: Mr. Chairman, did you ever vote on approval
13 of the minutes, or did I miss that?

14 CHAIRMAN WALLACE: Yes, we did. We did approve the
15 minutes.

16 We stand recessed.

17 (A luncheon recess was taken.)
18
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20
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A F T E R N O O N S E S S I O N

1:09 p.m.

1
2
3 CHAIRMAN WALLACE: Before we proceed to the next item
4 on the agenda, Mr. Uddo inquired whether I would entertain a
5 motion that this board meet again to consider new items at an
6 early date. I said that I would, and since I see several people
7 in here with suitcases what I think we ought to do at this time
8 is to talk about what early dates might be available. Then I
9 will recognize Mr. Uddo to make a motion as to whatever date he
10 wants to make.

11 MR. UDDO: I would propose the 15th, which is two
12 weeks from today.

13 CHAIRMAN WALLACE: Okay.

14 MR. UDDO: If that's workable.

15 CHAIRMAN WALLACE: The 15th is workable for me. It
16 will get my wife mad at me but I can see --

17 MS. SWAFFORD: Well, I do have a conflict. I will try
18 to resolve it. I have a hearing in the federal court.

19 CHAIRMAN WALLACE: Then what's a preferable date?

20 MS. SWAFFORD: Well, I guess none in December. So,
21 I'd like to get my case put off anyway.

22 M O T I O N

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1 MR. UDDO: Then I move that we have another board
2 meeting on Friday, December 15th.

3 MR. SMEGAL: Second.

4 CHAIRMAN WALLACE: Is there anyone here who is
5 unavailable on Friday, December 15th?

6 MR. DURANT: I just have to check.

7 MS. SWAFFORD: I have a hearing set. I think I can
8 get it put off.

9 CHAIRMAN WALLACE: All right. I trust the
10 administrative law judge will make you use the telephone if need
11 be for you to do that.

12 MS. SWAFFORD: Not now.

13 CHAIRMAN WALLACE: No, I don't mean now.

14 MS. SWAFFORD: I couldn't get in touch with him right
15 now.

16 CHAIRMAN WALLACE: I know. But if you can't be here,
17 I think we can probably -- we will assume that the judge will
18 give you a recess.

19 I explained to Mr. Durant when he voted to table that
20 he would be here when it came up.

21 (Laughter.)

22 CHAIRMAN WALLACE: He seemed to understand the

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1 explanation.

2 MR. UDDO: That's my motion.

3 CHAIRMAN WALLACE: The motion has been and seconded
4 that we meet again on December 15th. All in favor, say aye.

5 (Chorus of ayes.)

6 CHAIRMAN WALLACE: All opposed?

7 (No response.)

8 CHAIRMAN WALLACE: The next meeting of the board will
9 be on December 15th.

10 Let me ask, before we get out of the room, so that we
11 can be quite clear, that there isn't any dispute about what's
12 going to be on the agenda. Mr. Smegal, would you like to
13 restate for the record the things that you would like to have on
14 the agenda at the next meeting?

15 MR. EAGLIN: Before he does that, Mr. Wallace, could
16 we make clear that the meeting will be here in D.C., because I
17 may have -- I'll get here.

18 CHAIRMAN WALLACE: Fine.

19 MR. EAGLIN: But if you put that out on the West Coast
20 I'm going to have difficulty.

21 CHAIRMAN WALLACE: No. Does anybody object to meeting
22 here in the District of Columbia?

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1 MS. SWAFFORD: Also, could we meet maybe at 1:00
2 rather than --

3 CHAIRMAN WALLACE: Yes, I'm sorry. The president is
4 correct. Let me just say in the Metropolitan Area -- I would
5 certainly not want to slight Virginia or Maryland. We can get
6 cheaper accommodations there.

7 MS. SWAFFORD: I could do it in one day and see if I
8 could do that.

9 CHAIRMAN WALLACE: If nobody objects, I would like to
10 authorize the -- I know that people coming from the West Coast
11 are going to have to come in here the night before regardless of
12 what happens, but if the president can work with the board
13 members in this half of the country to try to get us up and back
14 in one day, you know, we could start at 11:00 or noon, whatever
15 it takes for flight schedules.

16 MR. EAGLIN: The only thing I would say, Mike, is with
17 the budget being put off to that meeting that's predictably a
18 long meeting as far as I'm concerned.

19 MS. SWAFFORD: Right.

20 MR. EAGLIN: Other things are going to be added to the
21 agenda. I don't know that it's wise to try to start this
22 meeting that late.

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1 CHAIRMAN WALLACE: All right. Mrs. Swafford has --

2 MS. SWAFFORD: I recognize the reality of what --

3 CHAIRMAN WALLACE: All right. We'll start it then at
4 an early morning hour. Now, --

5 MR. UDDO: One other thing, Mr. Chairman. I don't
6 think it was reflected on the record. As I understood it, the
7 vote on the motion was unanimous.

8 CHAIRMAN WALLACE: I didn't hear any dissent.

9 MR. UDDO: Okay.

10 CHAIRMAN WALLACE: Mr. Durant abstained.

11 MR. UDDO: Okay. Because of the by law requirement of
12 a certain percentage of people to call the meeting, I want to
13 make sure that the record is clear on what the vote was.

14 CHAIRMAN WALLACE: Yes. I don't think there's any
15 dispute on that. All right.

16 Now, let's talk about what's going to be on the agenda
17 at the meeting. Earlier today Mr. Smegal will have some things
18 to propose. Let me ask him to state those now for the record as
19 he wishes them to appear on the agenda.

20 MR. SMEGAL: Thank you. The items I would propose to
21 be on the agenda are election of board chairman and vice chair
22 for 1990, performance appraisal of President Wear and action

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1 thereon. What I said earlier was office of an Inspector
2 General, compliance with Inspector General act amendments of the
3 1988 and Public Law 95-452.

4 CHAIRMAN WALLACE: We will have budget on the agenda.
5 I presume it will take the majority vote to get it off the table
6 at that point. I really haven't thought about the parliamentary
7 procedure of it. In any event, we may reasonably suppose we
8 will be voting on the budget at that meeting.

9 I don't want to foreclose people who have other items
10 they would like to put on the agenda, but to make sure we all
11 understand each other, I want to give you the opportunity to
12 make specific requests now.

13 MR. SMEGAL: Excuse me. I do have another one that I
14 didn't bring up earlier. It may be that it doesn't have to be
15 an agenda item. Maybe it could be included in the report of
16 President Wear if we go back to having an item on the agenda
17 entitled Report of the President.

18 But under the fiscal year '90 funding -- I don't have
19 the language right in front of me, but I do recall reading that
20 it requires that the corporation award full-year grants for
21 1990.

22 I would like that as a discussion item. It could come

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1 under the President's Report and it would then comply with law.
2 I don't want to get into what happened this year -- we didn't
3 comply with the law in my view. But that's water over the dam.
4 I just want that matter to be -- it's not going to be discussed
5 today and I can't be assured that it's going to happen.

6 If anything out of the ordinary is going to happen
7 other than the way we're supposed to conduct our business with
8 respect to funding the fiscal year 1990, I'd like it on the
9 agenda.

10 CHAIRMAN WALLACE: I think everything that's happened
11 is out of the ordinary. So I think we need to have the 1990
12 Appropriations Act and action thereon on the agenda because I
13 have read all the whys and the wherefore and I don't know what
14 more action may or may not be necessary.

15 So, the 1990 Appropriations Act and actions thereon--
16 that should certainly include that item and maybe others, Mr.
17 Smegal.

18 MR. SMEGAL: I hope so.

19 CHAIRMAN WALLACE: Does anybody else have anything at
20 this time that they know they want to add on to the next agenda?

21 MR. EAGLIN: Shouldn't we realistically plan on the
22 possibility of going into Saturday morning as well?

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1 CHAIRMAN WALLACE: I think it would be realistic to
2 plan to stay overnight if need be. It is unfortunate, but I'd
3 like to get started reasonably early in the morning and if we
4 can't finish, we'll carry over.

5 MR. EAGLIN: So, the motion that was unanimous that
6 was passed earlier was with respect to the 15th. I do have a
7 conflict on the 16th.

8 CHAIRMAN WALLACE: Okay.

9 MR. EAGLIN: I would appreciate it if we could start
10 as early as possible on the 15th.

11 CHAIRMAN WALLACE: All right. We will certainly do
12 that because I've got a church party at my house on the 16th so
13 I would very much like to be back for that. We will do
14 everything we can to get everybody out of here on the 15th.

15 MR. EAGLIN: Mr. Wallace, I indicated that I may have
16 some -- I will be here by hook or by crook but I -- as you know,
17 I give an exam on the afternoon of the 14th from 2:00 to 5:00 to
18 my class. All right?

19 CHAIRMAN WALLACE: Okay.

20 MR. EAGLIN: So I won't be able to take my usual
21 flight. I'm not sure of the connections, but I'm going to get
22 here.

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1 CHAIRMAN WALLACE: Okay. I know Mr. Durant will also
2 be coming from North Carolina. I hope -- if you all can't make
3 it up the night before, I hope there are some early morning
4 flights that will get you here by 9:00 or 9:30 or so and we can
5 start then.

6 MR. UDDO: There are plenty of evening flights as
7 well. I'm sure Mr. Eaglin could travel here in the --

8 MR. EAGLIN: Out of Raleigh?

9 MR. UDDO: No. I won't even be in Raleigh. I'll be
10 in Hickory.

11 CHAIRMAN WALLACE: But he has to find a schedule. Are
12 there flights out of Raleigh in the evenings? Yes, ma'am?

13 MS. BENAVIDEZ: How about getting somebody to -- the
14 new chairman of the committee?

15 CHAIRMAN WALLACE: The new chairman of the board,
16 whoever that turns out to be, appoints the committee chairmen.
17 So I think that at this point we don't even know who is going to
18 be on the board much less between now and the 15th. I would
19 hope it would be settled by then and the appointments of the new
20 chairman for the Appropriations Committee would be a matter for
21 the new chairman to handle.

22 That's the way it was provided in the bylaws, the

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1 chairman makes the election. So, I will withhold making the new
2 appointment until I find out whether I have to do this job or
3 not again next year. Then we will make the chairman -- whoever
4 is the chairman -- will handle and make an appointment.

5 All right. Any other agenda items for the 15th? I do
6 not want anybody to think they are foreclosed. If you have
7 anything else that needs to be on the agenda, please call
8 President Wear and we'll get it on. But I want to make sure we
9 all know, if possible, today.

10 Having dispensed with that item of business, we return
11 to the agenda. Item Number 5, report and accounting of the use
12 of outside law firms by Corporation's staff. Mr. Wear is
13 recognized to make his report.

14 MR. WEAR: Thank you, Mr. Chairman. If I may, Mr.
15 Chairman, before I begin with that I'd like to introduce to the
16 board the Corporation's Inspector General, Mr. David Wilkinson.

17 Mr. Wilkinson, if you could stand for just a moment so
18 that people know who you are.

19 General Wilkinson comes to the Corporation from Utah.
20 He was formerly the Attorney General for the State of Utah. He
21 has a very distinguished background in the law and I think that
22 he is a real plus for the Corporation and I'm just delighted

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1 that he's on board.

2 I did want to take this opportunity to introduce him
3 to you formally. I know that he has met some of you here during
4 the course of the day.

5 MR. WILKINSON: I've met all but three of you and I
6 guess that confirms Mr. Smegal's reference to the first strike.

7 (Laughter.)

8 CHAIRMAN WALLACE: Well, we all look forward to having
9 a chance to visit with you. I understand in the agenda for the
10 next meeting you will have a more formal welcome two weeks
11 hence. Thank you for being with us.

12 Let me say one thing before I turn the floor back over
13 to Mr. Wear. As all board members are aware, but I'm not sure
14 others are, there has been some correspondence over the last few
15 weeks as to the scope of this topic.

16 Mr. Cooper of the McGuire, Woods, Battle & Boothe law
17 firm has offered to be here at no charge to the Corporation to
18 explain and answer any questions a member of the board may have
19 and to answer any inquiries into his conduct and the conduct of
20 his firm in this matter.

21 No member of the board has asked for Mr. Cooper's
22 presence. A couple of members of the board have specifically

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1 asked that he not be present. So it is my understanding that
2 our report today is essentially what it says it is, focus on the
3 activity of the Corporation's staff.

4 With that, I ask Mr. Wear to make his report.

5 MR. EAGLIN: Mr. Chairman.

6 CHAIRMAN WALLACE: Yes, sir.

7 MR. EAGLIN: With respect to what you just said, what
8 had happened -- or, what did happen earlier this week was that
9 until Monday I was not aware that he would be available at no
10 expense. So my indications before Monday was that I was not
11 interested in spending additional Corporation funds to pay for
12 his time to be here.

13 When I was told that he could be available at no
14 expense to the Corporation, my response was that I have been a
15 month asking for a number of items to be able to review to
16 prepare for the meeting and I had not yet received those. So I
17 indicated that at this time I have no questions of Mr. Cooper
18 but I didn't foreclose the opportunity in the future.

19 CHAIRMAN WALLACE: That's right. In the future. I
20 remember your letter precisely. As a result of today's
21 discussion, if you have any concerns about Mr. Cooper, then we
22 will have an opportunity to bring him before the board in the

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1 future. Perhaps, if need be, that's something that can be done
2 at the meeting of December 15th.

3 Thank you for clarifying the record.

4 MR. SMEGAL: Mr. Wallace, if I may just add a footnote
5 to that. With respect to your call for agenda items for the
6 December 15th meeting, I have just been handed a document that's
7 got -- well, not just now, it came in this morning -- it's got
8 115 pages in it -- no, I'm sorry, it's got 112. I assume that
9 some of the pages I've seen before. It's Entitled "Materials
10 Reflecting the Activity of the Law Firm of McGuire, Woods,
11 Battle & Boothe."

12 Anyway, whatever number of volumes there are, I'm not
13 going to read this now and you should understand that I could
14 not possibly speed-read this document. If after I do read this
15 between now and December 15th, other matters should come up with
16 respect to this issue, I would expect that our discussion today
17 will not be foreclosed from continuing on December 15th.

18 CHAIRMAN WALLACE: I don't see any reason why it
19 should be. It's already announced. If other board members want
20 anything else put on the agenda, go ahead and contact the
21 president and he'll see to it that that's done.

22 MR. SMEGAL: Thank you, Mr. Wallace.

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1 CHAIRMAN WALLACE: All right. Mr. Wear.

2 MR. WEAR: Thank you, Mr. Chairman. I think most of
3 the interest in this issue revolves around the employment of the
4 McGuire, Woods, Battle & Boothe.

5 Very simply, Mr. Chairman, the president of the
6 Corporation hires outside counsel under the same standards as
7 any other corporation. In hiring this firm, I looked at four or
8 five firms here in town -- that is, here in Washington --that do
9 this sort of constitutional analysis and frankly settled on Mr.
10 Cooper and his firm because of his educational background and
11 his prior employment both with the Supreme Court and the
12 Department of Justice.

13 As some of you may know, Mr. Cooper was formerly
14 Assistant Attorney General for the Office of Legal Counsel in
15 the Justice Department. In that position he was responsible for
16 writing the federal government's opinions on constitutional
17 issues and other issues as they apply to the various departments
18 and agencies within the federal government.

19 The material that Mr. Smegal refers to is made up
20 principally of the material that has been given to the board
21 before. It contains Mr. Cooper's opinion on constitutionality
22 and an opinion dealing with the standing of the Corporation in

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1 connection with certain issues, his opinion on limitation for a
2 lobby, and the statements that Mr. Cooper has rendered to the
3 Corporation.

4 In addition, Mr. Chairman, in an effort to be
5 complete, I asked the General Counsel to prepare a memorandum of
6 outside counsel. There are various issues and things that the
7 Corporation used outside counsel in the past. That memorandum
8 has been distributed to all of the board members. It shows the
9 various resources and kinds of things for which the Corporation
10 has employed outside counsel.

11 With that, Mr. Chairman, I'd like to open the floor
12 for whatever questions there may be.

13 CHAIRMAN WALLACE: All right. The board is aware, Mr.
14 Wear -- are there any questions?

15 MR. EAGLIN: I'd like to renew the questions that I
16 asked on November 10th, starting with the amount of the
17 expenditure of funds to that law firm. The latest statement
18 that we have carried through May. Would you speak to that.

19 CHAIRMAN WALLACE: Mr. Wear.

20 Mr. Wear: Mr. Chairman, the statements -- billing
21 statements -- contained in the document with the red cover here
22 reflect all of the statements that have been received by the

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1 Corporation with regard to the law firm's work for the
2 corporation.

3 MR. EAGLIN: Well, you told me on November 10th that
4 you were going to do some additional checking because since that
5 carried activity through May we know that he had activity in
6 June because we saw him in Illinois.

7 Mr. Wear: That's correct. I did raise that with Mr.
8 Cooper and haven't gotten any sort of a bill from him in
9 connection with that.

10 MR. EAGLIN: Is he going to bill?

11 Mr. Wear: I'm not aware of that.

12 MR. EAGLIN: What kind of discussion did you have with
13 him then about the prospect of billings.

14 Mr. Wear: Well, I asked whether or not there was
15 going to be a bill for that work and he said that he would look
16 into it. I haven't gotten anything further on that.

17 MR. EAGLIN: When did you start the contact with Mr.
18 Cooper's and how did it happen?

19 Mr. Wear: Well, I think we'd better go back and look
20 at the billing statements. I think they reflect whenever those
21 were billed -- meetings were. I don't have a present
22 recollection of when that was.

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1 Mr Chairman, I'm looking at page 59 of the exhibit in
2 question. One of the bills from Mr. Cooper indicates that the
3 firm started to prepare for a client conference on October the
4 14th of 1988. I suspect that I began talking with him about
5 that time.

6 MR. EAGLIN: How did you arrive at the topic that was
7 going to be approached at this first meeting and who originated
8 that?

9 Mr. Wear: The issue initially, Mr. Eaglin, was what
10 flexibility, if any, the Corporation had with regard to the
11 disbursement of grant funds. That question was raised by a
12 number of the board members. My recollection is that it was
13 raised by Mr. Durant, Mrs. Swafford, Mr. Valois and Mr.
14 Bernstein.

15 MR. EAGLIN: When was that raised?

16 Mr. Wear: Prior to this October 14th date you see on
17 page 59 of the billing.

18 MR. EAGLIN: Do you know how far in advance it was
19 raised with you?

20 Mr. Wear: I don't specifically recall. I think that
21 it was something that we raised probably four to six weeks prior
22 to starting to work on it.

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1 MR. EAGLIN: Did you give consideration to bringing
2 this matter before the whole board?

3 Mr. Wear: I did not think that was necessary.

4 MR. EAGLIN: Did you give consideration to the extent
5 of the cost that might be incurred in retaining this law firm?

6 Mr. Wear: Well, at that point, Mr. Eaglin, I don't
7 know that it was clear what the cost was going to be eventually.
8 At that time we weren't sure exactly what the questions were
9 going to be.

10 It started off with the issue of the flexibility of
11 the Corporation with regard to the making of grants and
12 contracts. We looked at that issue and then moved on to others.

13 MR. EAGLIN: How long was that issue looked at?

14 Mr. Wear: Well, again, I think we'll need to look at
15 the billing statements on that. My recollection is that that
16 was pursued. Perhaps Mr. Cooper could give you a better idea on
17 that. My recollection is that it was pursued into mid-December
18 but perhaps as late as Christmas.

19 MR. EAGLIN: How did it change?

20 Mr. Wear: My recollection is that Mr. Cooper
21 concluded the Corporation did not have the sort of flexibility
22 that was raised as an issue.

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1 MR. EAGLIN: With whom was Mr. Cooper in contact at
2 the Corporation? With you?

3 Mr. Wear: Mr. Cooper talked with me, with the
4 counsel's president, Jim Wooten. Also with the General Counsel,
5 Tim Shea.

6 MR. EAGLIN: Isn't it true that most of the time or
7 most of his contacts were with Mr. Wooten and you?

8 Mr. Wear: I think that most of his contacts were --

9 MR. EAGLIN: Few, if any, of the contacts were with Mr. Shea.
10 Isn't that correct? I've looked through these volumes and I see
11 -- even taking into account the other volume -- and I see so
12 much correspondence signed by you, addressed to you, signed by
13 Mr. Wooten, addressed to Mr. Wooten. I haven't found one
14 addressed or signed by Mr. Shea. So, he really was not involved
15 in this, was he?

16 Mr. Wear: I don't think that's accurate. Mr. Shea
17 was involved with this from the outset. He told you in his
18 letter that he wrote to you on the subject last summer that he
19 was involved in it, we got the project started, and when the
20 project was started he was not intimately involved. But he was
21 aware of what was going on.

22 MR. EAGLIN: Well, I agree that he certainly was aware

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1 of it, but I think you also indicated an agreement that he was
2 not intimately involved. That's what I was asking about
3 earlier.

4 The contact was basically with you and Mr. Wooten?

5 Mr. Wear: As I said, the contact in the beginning was
6 with all three. Later on it wasn't necessary for the General
7 Counsel to be involved. He was working on a number of other
8 projects at that time.

9 MR. EAGLIN: Why was then Mr. Wooten the contact?

10 Mr. Wear: I beg your pardon?

11 MR. EAGLIN: Why was Mr. Wooten the contact?

12 Mr. Wear: He wasn't tied up with other things at that
13 time.

14 MR. EAGLIN: What does he do?

15 Mr. Wear: Mr. Wooten --

16 MR. EAGLIN: What's a counselor do?

17 Mr. Wear: Well, he advises me on policy issues,
18 questions. In general.

19 MR. EAGLIN: That's it?

20 Mr. Wear: Yes. I think that's general --

21 MR. EAGLIN: During the course of the initial task of
22 the examination of grant funds matter at some point then Mr.

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1 Cooper, having made contact with you and Mr. Wooten, had a
2 change of thought. What became the focus?

3 Mr. Wear: Well, during that period also, Mr. Eaglin,
4 Mr. Cooper and I met with the various board members and also
5 talked to various board members about this.

6 At some point -- and I think it was in late December--
7 -- the focus of the research shifted. Mr. Cooper concluded that
8 the Corporation did not have the flexibility -- and it was
9 raised earlier -- because the Corporation for constitutional
10 purposes was a federal entity.

11 We then moved into the analysis, as later reflected in
12 the opinion of Mr. Cooper prepared with regard to the
13 constitutionality of the Legal Services Corporation Act.

14 MR. EAGLIN: You said there was continual contact with
15 Mr. Cooper and you and some board members. Earlier you told me
16 that you didn't think it was necessary to inform the board. I
17 don't understand that.

18 Mr. Wear: No, there were certain board members that
19 were interested --

20 MR. EAGLIN: -- but just the few that were involved?
21 What are you saying?

22 Mr. Wear: I didn't understand your question.

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1 MR. EAGLIN: You told me earlier that you didn't think
2 it was necessary to bring this matter to the attention of the
3 board, but yet that after this project was underway from time to
4 time Mr. Cooper had contact with some board members. So you did
5 see the necessity to have contact with the board?

6 Mr. Wear: Now, the board members that I mentioned
7 previously, Mr. Eaglin, were interested in this project and
8 sometimes they called Mr. Cooper directly.

9 MR. EAGLIN: But how would you determine that perhaps
10 other board members might have been interested or disinterested
11 and willing to take action to foreclose this project or shut it
12 down?

13 You were acting pursuant to the wishes of some board
14 members, but it seems to me that if their views are important to
15 you, then perhaps you should have sought the views of others who
16 might not have wanted this project pursued.

17 Mr. Wear: I didn't think what was necessary, Mr.
18 Eaglin. Your views, for example, are well-known as to what
19 policies you prefer. I did not -- and I knew where you were on
20 this question.

21 MR. EAGLIN: I didn't know about the question.

22 Mr. Wear: If you have -- I beg your pardon?

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1 MR. EAGLIN: I didn't know about the question.

2 Mr. Wear: No, but I am able to judge from your
3 statements and votes in the past where you come out on things.
4 One of the things I've learned on the Hill is how to read the
5 various --

6 MR. EAGLIN: So, it's not necessary for me to attend
7 board meetings or express any views. You can just count me in a
8 certain column then on any given issue then, right? You
9 understand that already?

10 Mr. Wear: I think in your situation that's accurate.

11 MR. EAGLIN: How many conversations have you and I,
12 Mr. Cooper -- Mr. Wear, had since you've been president?

13 Mr. Wear: I beg your pardon?

14 MR. EAGLIN: How many conversations have you and I
15 had?

16 Mr. Wear: I don't know.

17 MR. EAGLIN: Very few, isn't it? Isn't that true?
18 Either on the phone or in person.

19 Mr. Wear: Again, you're welcome to call me whenever
20 you want to.

21 MR. EAGLIN: I know. I'm asking you how many
22 conversations we've had, Mr. Wear.

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1 Mr. Wear: I don't know.

2 MR. EAGLIN: You're saying you take me for granted
3 basically.

4 MR. VALOIS: Mr. Chairman, I think we're getting a bit
5 afar here. The topic --

6 MR. EAGLIN: We're talking about the focus then. The
7 focus changed about mid-December, Mr. Wear.

8 MR. VALOIS: The topic we're discussing -- or, is in
9 the agenda, is report and accounting of the use of outside law
10 firms by corporate staff. I'm not quite sure how, Mr. Eaglin,
11 the number of telephone calls Mr. Eaglin and Mr. Wear have had
12 has got to do with it.

13 MR. EAGLIN: Well, it is relevant because he's saying
14 that he took into account the views of some board members in
15 involving them in the project. He didn't think it was necessary
16 to involve me and presumably the majority of the board because
17 he knew how we were going to come out on this, I guess.

18 (Simultaneous conversation.)

19 MR. VALOIS: Mr. Eaglin is on cross. Objection
20 overruled.

21 (Laughter.)

22 MR. EAGLIN: The focus changed, Mr. Wear, in about

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1 December. Would you pick up there, please.

2 Mr. Wear: Well, let me go back and try to answer your
3 question, Mr. Eaglin. I think it's accurate to say that these
4 board members were interested in this project and had they
5 chosen to do so, they could have been involved.

6 With regard to the change in the focus, at some point
7 in late December my recollection is that the focus of the
8 research changed into the constitutional question.

9 MR. EAGLIN: The same board members were interested?
10 Is that right?

11 Mr. Wear: Yes, sir.

12 MR. EAGLIN: Didn't you tell me on November 10th that
13 others became involved at that time?

14 Mr. Wear: I beg your pardon?

15 MR. EAGLIN: On November 10th did you not tell me that
16 about December of '88 or January of '89 that other board members
17 were apprised of this project?

18 Mr. Wear: I don't remember specifically when the
19 board members were apprised. I know that early in the analysis
20 Mr. Durant, Mr. Valois and Mrs. Swafford met with myself and Mr.
21 Cooper on this question. They were very interested in it.

22 My recollection is that Mrs. Bernstein was also

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1 interested. I'm not sure whether she attended the meeting or
2 not. Maybe the record will tell us that.

3 MR. EAGLIN: In December or January Mr. Wallace and
4 Mendez were advised of this. Isn't that correct? Isn't that
5 what you told me on November 10th?

6 Mr. Wear: Those two board members were not aware of
7 the project when it began. They became aware of it as we moved
8 down the road. I'm not exactly sure what the timeframe was,
9 whether it was in December or January. Certainly by
10 February they knew about it. But I don't have a specific
11 recollection of when that occurred, as to what month.

12 MR. EAGLIN: As the project continued then, there was
13 research on the issue of the constitutionality and continuing
14 until the submission of the memo in the spring?

15 Mr. Wear: Yes.

16 MR. EAGLIN: Any other considerations given to the
17 issue of constitutionality after the submission of the memo or
18 discussions with Mr. Cooper about that?

19 Mr. Wear: Well, there was a -- as I think you know--
20 a follow-up memorandum dealing with the question of standing.
21 Also in relation to liability.

22 MR. EAGLIN: So that was dealt with, researched and

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1 answered?

2 Mr. Wear: Subsequent to the preparation of the
3 memorandum dealing with the question of constitutionality.

4 MR. EAGLIN: At some point the focus changed to
5 lobbying, correct?

6 Mr. Wear: I'm not sure I'd say the focus changed to
7 lobbying. The question of the limitations on lobbying came up.

8 MR. EAGLIN: How did it come up?

9 Mr. Wear: It came up in connection with a newspaper
10 article that raised questions about the activities of staff in
11 working with members of Congress and others on the selection of
12 the potential nominees to the Board of Directors of the
13 Corporation.

14 MR. EAGLIN: Who brought it up?

15 Mr. Wear: I don't remember the reporter's name.

16 MR. EAGLIN: A news reporter brought it to your
17 attention?

18 Mr. Wear: No. It appeared in the newspaper, as I
19 recall. Now, I should say that my recollection is that the
20 reporter interviewed me and I told him about it.

21 MR. EAGLIN: So then how did you take action then to
22 contact Mr. Cooper to look into the issue?

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1 Mr. Wear: I think after the article appeared the
2 question was raised about whether or not it was proper to do
3 that. I had looked at the issue the preceding fall when it was
4 raised with me by certain board members. I spent about four
5 days looking at it and determined that there was no legal
6 impediment to the action that the board member was suggesting.

7 We then went forward. Later on, when this news
8 article appeared, it occurred to me that perhaps I ought to get
9 a second opinion. So I approached Mr. Cooper and asked him for
10 an outside counsel opinion and he subsequently rendered that.

11 MR. UDDO: Can I just interrupt for a second?

12 CHAIRMAN WALLACE: Yes, Mr. Uddo.

13 MR. UDDO: What was the date of that article?

14 Mr. Wear: I don't know, Mr. Uddo.

15 MR. UDDO: Well, just looking at the bills, it looks
16 like the Cooper firm was researching the standing issue prior to
17 the appearance of the article.

18 Mr. Wear: That may be. There may be --

19 MR. EAGLIN: Standing and lobbying are two different
20 things, I think.

21 MR. UDDO: I thought you were referring to the
22 standing issue.

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1 MR. EAGLIN: I thought we were talking about the
2 lobbying issue.

3 MR. UDDO: Okay. I'm sorry. Go ahead.

4 CHAIRMAN WALLACE: That was my understanding, that you
5 were talking about the lobbying.

6 MR. EAGLIN: Yes. Which of the members of the board
7 during this project, from start to its revelation to us, the
8 whole board, on June 13th -- which board members knew about it?
9 Any others than the ones that you mentioned? Durant, Swafford
10 and Wallace and Mendez?

11 Mr. Wear: I think I sent you a letter on that
12 subject, Mr. Eaglin. Do you remember what the letter said?

13 MR. EAGLIN: You mentioned which board members had
14 attended certain meetings. I'm asking which members knew about
15 this project from its inception until the revelation to the
16 entire board on June 13th.

17 Some members may have known about this but may not
18 have attended the meetings.

19 Mr. Wear: Okay. Now, my recollection is that the
20 people who had been at the meetings, which are Mr. Durant, Mr.
21 Bernstein and Mrs. Swafford and Mr. Mendez were aware of that.

22 MR. EAGLIN: Mr. Wallace learned of it as well?

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1 Mr. Wear: Yes, he did.

2 MR. EAGLIN: So, before June 13th this was known only
3 to a minority of the board?

4 Mr. Wear: No, it was known to six board members.

5 MR. EAGLIN: Who was the sixth before June 13th?
6 Bernstein was off the board and replaced by Hall.

7 Mr. Wear: But she knew about it when she started out.

8 MR. EAGLIN: When she started out.

9 Mr. Wear: Yeah.

10 MR. EAGLIN: Then she was no longer a board member.
11 So the maximum number of board members who knew about this did
12 not exceed five active board members. Isn't that correct?

13 Mr. Wear: I suppose it depends upon when you start
14 your counting. I counted Mrs. Bernstein as part of the --

15 MR. EAGLIN: She knew at the beginning and she went
16 off the board, replaced by Mr. Hall who told us that he did not
17 know about it, did not learn about it until June 13th.

18 Mr. Wear: I think Mr. Hall's representation is
19 accurate.

20 MR. EAGLIN: So, before June 13th this was not known
21 to more than five board members. Isn't that correct?

22 Mr. Wear: No, it was six. They weren't all --

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1 MR. EAGLIN: Was Mrs. Bernstein a board member on June
2 12th? Mr. Wear, are you counting her? Is that it

3 Mr. Wear: She was one of the six that knew about it,
4 if that's the question. If you're talking about who knew about
5 it on this day of June that you mentioned, I think the answer is
6 five.

7 MR. EAGLIN: Active board members from the start of
8 the business until June the 13th -- the number of active board
9 members who knew about this did not at any time exceed five.
10 Isn't that correct?

11 Mr. Wear: To my knowledge neither Mr. Hall nor you
12 nor Mr. Smegal or Mrs. Benavidez or Mrs. Miller had knowledge of
13 this.

14 MR. UDDO: Nor Mr. Uddo.

15 Mr. Wear: I'm sorry. Nor -- beg your pardon.

16 MR. EAGLIN: So the answer would have been yes. You
17 agree?

18 Mr. Wear: Well, I think I've answered your question.

19 MR. EAGLIN: Thank you.

20 CHAIRMAN WALLACE: Further questions?

21 MR. EAGLIN: Well, I'm still having --

22 CHAIRMAN WALLACE: We're on the use of outside law

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1 firms. Any other questions for Mr. Wear on the use of outside
2 law firms.

3 MR. SMEGAL: As I've indicated earlier, I can't
4 possibly get through all this material that was given me. If
5 there are some questions that I can come up with between now and
6 December 15th, I'll be sure to make it known.

7 Let's summarize this thing, Mr. Wear. If I counted
8 correctly, as we sounded out here as minute ago, there are six
9 board members sitting on this board who were board members on
10 June 12th, who were board members on June 13th, who were board
11 members on November 26th of last year, who did not know about
12 this activity that commenced last year. Is that correct?

13 Mr. Wear: Mr. Smegal, I think I told you who knew and
14 who didn't know.

15 MR. SMEGAL: Well, I just want to confirm. I'm just
16 trying to summarize everything you said because you kind of
17 vacillated a little bit. There are six board members at this
18 table sitting here today who were board members on June 12th,
19 who were board members on January 1, who were board members on
20 December 1 of last year who did not know about this activity
21 until June 13, 1989. Is that correct?

22 Mr. Wear: I think that's it.

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1 MS. SWAFFORD: No, I don't believe that's correct.
2 The first meeting in December did we not have that in San Diego?
3 I know that was Lee Ann's last meeting -- Mrs. Bernstein -- her
4 last meeting was in San Diego. Now, when was that meeting?

5 MR. HALL: My first meeting was in Washington on
6 December 10th and so the prior one was in San Diego. I think
7 I've read the transcripts from that prior to prepare for it.

8 MS. SWAFFORD: When was that meeting in San Diego?

9 MS. BOZELL: November 19th.

10 CHAIRMAN WALLACE: November 19th. All right, well,
11 whatever date.

12 MS. SWAFFORD: All right.

13 CHAIRMAN WALLACE: It's some date in there between the
14 two meetings that Mr. Hall replaced Mrs. Bernstein. Now, Mr.
15 Hall --

16 Mr. Wear: -- was not aware of the constitutional
17 activity to my knowledge.

18 MR. SMEGAL: So everything I said is correct. In
19 spite of what Ms. Swafford said, everything I said is right.

20 Mr. Wear: To my knowledge no others were aware.
21 Whether some other board member told somebody, I don't know. I
22 can't speak for that. I didn't tell them.

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1 MR. SMEGAL: All we're trying to seek, Mr. Wear, is
2 your knowledge. Now, I think somewhere along the way I
3 understood the amount of payment -- now, I haven't totaled it up
4 again, but I thought it got to some number like \$100,000. Let's
5 assume -- is it over a hundred?

6 MR. EAGLIN: I think it's \$110,000 or something like
7 that.

8 MR. SMEGAL: Well, of our budget for legal activities
9 as part of our administration and management, Mr. Wear, how much
10 does that represent on an annual basis?

11 Mr. Wear: It's my understanding, Mr. Smegal, that the
12 budget for fiscal year 1989 for outside counsel was \$336,000.

13 MR. SMEGAL: So that's like 30 percent of our budget?

14 Mr. Wear: I think that's right.

15 MR. EAGLIN: Mr. Wear, you mentioned today and then
16 also on the 10th that reasons why from time to time you may want
17 to retain outside counsel. In this instance you indicated, I
18 believe, that there was a concern about a possible suspicion of
19 an in-house counsel opinion on this matter. Is that correct?

20 Mr. Wear: I beg your pardon?

21 MR. EAGLIN: You indicated that one of the reasons
22 from time to time that you may retain outside counsel on a

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1 matter for an opinion is that that opinion might be regarded as ✓
2 more detached than an opinion from in-house counsel.

3 Mr. Wear: I think that's accurate.

4 MR. EAGLIN: All right. Now, I was trying to
5 understand then on the time sheets why there would have been so
6 much contact by the law firm with you and Mr. Wooten.

7 Mr. Wear: Generally, Mr. Eaglin, those contacts were
8 to get a handle on where the firm was with regard to the
9 preparation of the memorandum in question.

10 MR. EAGLIN: Would it be necessary to have an hour-
11 long conversation in order to determine that?

12 Mr. Wear: Do you have a specific example that you're
13 speaking to?

14 MR. EAGLIN: I can't possibly get through this fast
15 enough, but I did see one when I first got the time sheet. But
16 I can't possibly thumb to it right now. Yes, I saw a record of
17 an hour-long conversation, a contact with Mr. Wooten.

18 Mr. Wear: Well, it may have been and I don't know.
19 If I had a specific point, maybe I could look at it. It may
20 have been that Mr. Wooten discussed more than the status of
21 that.

22 I know that in our discussions on November the 10th

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1 you raised questions about entries that said conversation with
2 Mr. Wooten re status. With regard to that question, it looks to
3 me as though the conversation had to do with the status of the
4 preparation of the memorandum.

5 If you have another point, I'll try to look at it.

6 MR. EAGLIN: During the contacts that you had or Mr.
7 Wooten had with the law firm, were you indicating a preferred
8 direction or outcome?

9 Mr. Wear: No. No, not particularly. One of the
10 reasons I had for talking with them was to try to see where we
11 were going, to see how things were looking, and to see whether
12 or not it was worth continuing to pursue.

13 MR. EAGLIN: Is there any reason then why -- or any
14 explanation you might offer -- why Mr. Cooper would say in his
15 submission that you thought that you would be pleased with the
16 results in submitting one of the almost final versions of the
17 constitutionality memo?

18 Mr. Wear: No, I don't know. Do you have the specific
19 page?

20 MR. EAGLIN: My numbering is very faint but I think
21 this says -- it's either 44 or 42, or it could be 92. It's
22 difficult -- well, let's see, I see 45 fairly clearly. Let me

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1 back up from 45. Let me just check that. I think it's 42,
2 March 27th of '89. Cooper to Wooten submitting the almost final
3 reversion of the memo, "but I think you will be pleased with the
4 results."

5 That seems to suggest some awareness of what you're
6 looking for or what you want.

7 (Simultaneous conversation.)

8 CHAIRMAN WALLACE: Hold on. I will let Mr. Wear
9 answer the question as to what he thinks it means but I remind
10 the board that Mr. Wear is not the author of this letter. This
11 is something Mr. Cooper has written. As to what he meant by
12 that, I think it's quite clear that you will have to ask him.

13 I appreciate that your line of inquiry is directed to
14 whether Mr. Wear told Mr. Cooper where he wanted to come out,
15 and I will certainly let Mr. Wear answer that. But I don't want
16 anybody to interpret Mr. Wear's answer as expressing anything as
17 to Mr. Cooper because it's his letter and if you want him to
18 explain it, we'll get him here.

19 MR. EAGLIN: Mr. Chairman, I understand that entirely
20 and I would just remind you that this was given to me this
21 morning, sir.

22 CHAIRMAN WALLACE: I understand. I remind you of our

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1 previous discussion that you'll have your opportunity to
2 question Mr. Cooper in the future.

3 With that clarification, Mr. Wear may testify as to
4 what he did and what he understood.

5 Mr. Wear: Thank you, Mr. Chairman. In answer to the
6 first part of Mr. Eaglin's question, Mr. Eaglin, I didn't direct
7 Mr. Cooper to come out anywhere.

8 He, as I tried to indicate earlier, is an expert in
9 this area. I had not looked at it in great detail at all and I
10 wouldn't be able to direct him where to come out.

11 As to what Mr. Cooper may have meant, he may have
12 meant that I'd be pleased with the scholarly analysis that he
13 had done. I think that his analysis is very good. It's one of
14 the best pieces that I've seen. I was very pleased with the
15 results in that regard.

16 CHAIRMAN WALLACE: Further questions to Mr. Wear?

17 MR. SMEGAL: Yeah, I've got some. The first bill I
18 guess that I see in here is dated December 20th. It appears at
19 pages 13, 14, 15 and 15. The total amount is just under
20 \$18,000. I notice that there are a substantial number of
21 entries, telephone conferences and meetings regarding
22 strategies.

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1 I'm wondering how much of this initial effort, Mr.
2 Wear -- you've gone back and determined how much of this initial
3 effort was with respect to the strategy as opposed to with
4 respect to a lawyer developing a work product? In other words,
5 how much of this \$18,000 was spent defining the problem that you
6 wanted Mr. Cooper to research?

7 MR. WEAR: I think those entries, Mr. Smegal, reflect
8 conversations as we tried to refine our thinking as to what
9 limitations pertaining to the Corporation was subject to with
10 regard to its ability to let grants for contracts.

11 I think that those conversations and the entries on
12 the bill reflect that. I do not have any recollection of what
13 the conversation was. I'm relying on the entries here and my
14 general recollection of what we were doing at that time.

15 MR. SMEGAL: Is there something that happened at the
16 end of November? I notice the bills are very different. The
17 one I'm looking at for October and November of 1988 is primarily
18 strategy meetings, conferences, as I've indicated, telephone
19 calls. About 119 hours -- 120 hours of their time on those
20 kinds of activities.

21 Then, abruptly on December 1 we start getting entries
22 for legal research, computer research and then they continue on.

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1 for legal research, computer research and then they continue on.
2 They are principally the time entries at that point.

3 Can you tell me what happened as of December 1?

4 MR. WEAR: I don't have any recollection occurring
5 then. But I'm looking at page 14 of the exhibit, Mr. Smegal.
6 There are entries, for example, on November the 3rd about
7 preparing a memorandum re the immediate question re appropriated
8 funds.

9 So, I think that there was research work going on
10 during that period as well. I don't know whether that's
11 particularly helpful to you or not. I don't remember anything
12 of significance occurring around the December 1 date. I know
13 that at some point -- I think it was later in the month -- the
14 emphasis shifted away from the discretion of the Corporation and
15 on to the issue of the constitutional questions.

16 MR. SMEGAL: You think that occurred there under those
17 several time entries at the end of November of telephone calls
18 with you. Do you recall that you shifted the emphasis at that
19 point with Mr. Cooper?

20 MR. WEAR: I know that the emphasis shifted at some
21 point there. I don't have a specific recollection of when that
22 occurred. I think it was sometime in the month of December but

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1 figure that out.

2 I know that it shifted, but, as I think you know, I
3 was involved in a number of other questions at that time and I
4 don't have a specific recollection of when the shift occurred.

5 MR. SMEGAL: Well, the entries near the middle and the
6 end of November would have to do with research for a memorandum
7 and an inquiry -- again, a telephone call at the end of November
8 with respect to the status of that.

9 Is there a memorandum we don't have that was completed
10 in November of 1988?

11 MR. WEAR: No, sir. The firm did some work on that
12 issue and prepared some notes. They gave me a preliminary
13 report as to what their findings were. I did not ask them to
14 put that into the form of a formal memorandum.

15 MR. SMEGAL: As a result of paying \$18,000 through the
16 month of November 1988 what did you get?

17 MR. WEAR: I received an oral opinion from Mr. Cooper
18 that the Corporation did not have the sort of flexibility about
19 which we had asked him.

20 MR. SMEGAL: What else?

21 MR. WEAR: I think that's it. I don't recall anything
22 else specifically.

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1 MR. SMEGAL: And at that point the bill was \$18,000?

2 MR. WEAR: It is whatever it was. I haven't added it
3 up.

4 CHAIRMAN WALLACE: Let me make sure I understand. You
5 say that this opinion over the phone was rendered at the end of
6 November? It was rendered at some other time? Or do you know
7 when it was rendered?

8 MR. WEAR: I don't recall specifically, Mr. Wallace,
9 when it was rendered. I thought that it came sometime in mid or
10 late December, but I'm not sure.

11 MR. SMEGAL: Well, let me see if I understand what was
12 going on here. Then, you've hired what you considered to be the
13 experts in this area of the law. Mr. Cooper has impeccable
14 credentials from his prior experience in government and in the
15 Justice Department, and as of the end of November when their
16 billing is \$18,000 you've got an oral opinion on a very specific
17 subject. Is that right? Is that where we are?

18 CHAIRMAN WALLACE: I think I've just asked him to
19 clarify the date, Mr. Smegal, and he said he couldn't clarify
20 the date. At some point I think what you say is correct, if I
21 understand the testimony.

22 MR. SMEGAL: It's either as I stated or in fact at the

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1 end of November he had nothing for the \$18,000 -- \$18,000 got
2 him nothing at the end of November. That's the other
3 alternative I guess I'm hearing. Either he had something or he
4 didn't. The bill was \$18,000. We know that because I have it
5 here at pages 14 through 16 of this handout.

6 I admit I'm rounding out. It's only \$17,801.30.

7 MR. WEAR: Well, Mr. Smegal, the work project was
8 ongoing. I don't recall specifically when we got the oral
9 statement. My recollection was that it was sometime in
10 December, but I don't know specifically where if the work
11 earlier in November would have been related to that. The cost
12 of that work is whatever it cost, I didn't add it up.

13 MR. SMEGAL: Well, but I'm looking at the entries on
14 pages 13, 14 and 15, the total of which are \$18,000, and I see
15 legal memorandums or memorandums and discussion re discussion of
16 unappropriated funds.

17 If I understood correctly, there were several things
18 that Mr. Cooper was asked to do, some of which are enumerated in
19 these time entries in the first part of this bill that covers
20 \$18,000. I've asked you what you got as a result of having
21 spent \$18,000 of the Corporation's money. What I hear you
22 saying is maybe nothing at that point.

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1 If that's the answer, that's what I'd like to hear.

2 MR. WEAR: Let me --

3 MR. SMEGAL: Do we have any written memorandum from
4 Mr. Cooper as of November 30, 1988? Answer.

5 CHAIRMAN WALLACE: No. That's already been answered.
6 Do you have a question you don't have the answer to?

7 MR. SMEGAL: Yes. The question I don't have an answer
8 to yet is what did Mr. Wear have as of November 30, 1988 with
9 respect to the bill for \$18,000.

10 CHAIRMAN WALLACE: He has told you. He did not have a
11 written memorandum. At some point, whether it was November 30th
12 or some point later, he had an oral opinion, and he can't tell
13 you when that is. You've asked him that question two or three
14 times.

15 It may have cost \$18,000 to get to that point, it may
16 have cost more. He's told you he doesn't know the answer to
17 that question.

18 You've made your point. Ask another question you
19 don't know the answer to already.

20 MR. SMEGAL: Yes, I will. I'm turning to the next
21 bill starting on December 1 and the reason I ask the question is
22 because on December 1 I now see a specific purpose in the legal

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1 research going on, a different one than I've read in the first
2 bill.

3 It now says, "legal research re independence of
4 Corporation," and those entries continue for several pages of
5 the bill. Page 2, page 3, page 4 and so on.

6 I don't see that description before December 1. There
7 is a bill for \$18,000 through November 30, 1988. I've asked the
8 question and you tell me I've got an answer and I understand,
9 that's on the record.

10 Now I'm over to December 1 and I see we've shifted
11 gears and we're now concerned about the independence of the
12 Corporation. It's very clearly marked up here and I can see
13 where this next bill which I think totals about \$80,000, what
14 that's involved with, and I guess I have the answer to my
15 questions.

16 The first bill was for a different function, the
17 result of which was not anything in writing that Mr. Wear can
18 share with this board. The second billing is through April 30,
19 I guess -- no, I'm sorry, through March 31 but dated April 30
20 for almost \$60,000. It got us a memorandum that was passed out
21 in a closed session on June 13th, having been previously shared
22 with several board members, including a former board member, Lee

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1 Ann Bernstein. Is that right?

2 MR. WEAR: Yes, sir, that's correct.

3 MR. SMEGAL: And the American Farm Bureau?

4 MR. WEAR: Yes.

5 MR. SMEGAL: Anyone else?

6 MR. WEAR: Yes. It was also given to a number of
7 people within the Executive Branch and a number of people on the
8 Hill. The distribution, as I recall, went to the people on the
9 Hill and to the Executive Branch and then later on Mrs.
10 Bernstein received a copy and the American Farm Bureau received
11 a copy.

12 MR. SMEGAL: My recollection, Mr. Wear, of when I was
13 handed that document on June 13 in Chicago in closed session of
14 this board I was advised -- and, in fact, I think the document
15 was marked confidential.

16 How could a document that I'm receiving that's been
17 given to the American Farm Bureau and Lee Ann Bernstein be
18 confidential?

19 MR. WEAR: Well, I don't know. I --

20 MR. SMEGAL: Did you mark it confidential?

21 MR. WEAR: I don't remember doing that, no.

22 MR. SMEGAL: Did you advise me that it was

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1 confidential?

2 CHAIRMAN WALLACE: I advised you at the meeting that
3 it was confidential. I did not know that it had been shared
4 with Mrs. Bernstein or with the American Farm Bureau. I
5 believed at the time I advised you that it was confidential that
6 it was confidential.

7 MR. SMEGAL: I'm finding at pages 59, 60, 61 and 62
8 what appears to be another copy of that, the billing that I
9 looked at at 13, 14, 15 and 16. Am I right that it's just a
10 duplicate?

11 MR. WEAR: I'll take a look.

12 MR. SMEGAL: I guess the same thing again at pages 64,
13 65, 66, 67, 68, 69, 70, 71 and 72 are duplicates of something
14 I've already looked at?

15 MR. WEAR: That may be. I'd have to check.

16 MR. SMEGAL: Okay. We're on 73(a). Now we're to the
17 next bill starting in April, dated May 31 -- one, two, three,
18 four, five, six, seven pages, \$29,500 -- \$30,000. No, that's
19 right, on page 81 of this material I see we -- oh, that we're
20 overcharged. Mr. Cooper overcharged us \$1,808. So I've gotten
21 back to the \$29,000.

22 Now, is this bill for a different activity than the

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1 one of which we were advised -- the majority of the board were
2 advised on June 13, 1989 in Chicago, Mr. Wear?

3 MR. WEAR: Where actually are you --

4 MR. SMEGAL: I don't know. I'm asking you. This
5 document I'm looking at -- page 73. The billing we have that
6 totals \$29,500 dated May 31, is that for the activity about
7 which the majority of the board, six of us, were advised for the
8 first time on June 13th or is it some other activity?

9 MR. VALOIS: Well, let me take some exception to the
10 count there, Mr. Smegal. You don't know how many people were
11 advised on --

12 MR. SMEGAL: Oh, I think we had that admission a
13 little earlier, Mr. Valois. You've got to stay up with the
14 script.

15 MR. VALOIS: No, I think actually you're --

16 MR. SMEGAL: Six. We'll raise our hands, Mr. Valois.
17 Six.

18 CHAIRMAN WALLACE: All right. What is the dispute?
19 I'm not sure I understand what you all are arguing about.

20 MR. VALOIS: Well, I think what we're arguing about is
21 who know what when, and Mr. Smegal is trying to either paint it
22 with a very broad brush or be unspecific about who it is he's

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1 talking about.

2 CHAIRMAN WALLACE: Well, I think we went through the
3 roll call as best we could sometime earlier. The question, if
4 there is a question, is --

5 MR. VALOIS: There is a question, Mr. Wallace.

6 CHAIRMAN WALLACE: All right. I think the question
7 is, is there anything in the bill beginning on page 73(a) that
8 reflects a different line of work than the constitutional
9 question?

10 I think the answer to that, as Mr. Smegal can tell, is
11 that on page 3 of that bill there is a reference to the standing
12 issue which, of course, has to do with the constitutional
13 question. Later on in this bill there is question regarding
14 lobbying that you've also seen.

15 So, there are things in this bill, the lobbying issue,
16 which was not discussed with the board on June 13th. I think
17 that's clearly apparent from the review of the
18 document.

19 MR. VALOIS: Is that your answer, Mr. Wear? Can I
20 have you adopt Mr. Wallace's statement as your answer? Would
21 you be willing to do that?

22 MR. WEAR: Well, I guess so. I'm not in fact clear

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1 what your question was.

2 MR. VALOIS: Well, Mr. Wallace understood a question
3 and he gave an answer. I want to know whether you accept the
4 answer as your answer.

5 MR. SMEGAL: There are items in here throughout the
6 anti-lobbying provision, the anti-lobbying memorandum
7 specifically which was not discussed with the board at the June
8 13th meeting. I think that's clear.

9 MR. WEAR: I think that's accurate.

10 MR. SMEGAL: Okay.

11 MR. VALOIS: So you do accept what Mr. Wallace says as
12 representing your answer to my question to you, Mr. Wear?

13 MR. WEAR: I think his last statement is accurate.
14 Okay.

15 MR. SMEGAL: Thank you. Let's go back now. Now we're
16 up to June 13th again and I'm handed, along with six members of
17 this board -- including myself -- are handed this memorandum of
18 Mr. Cooper's. If I understood your prior statement correctly,
19 it had previously been given to Lee Ann Bernstein and the
20 American Farm Bureau. Is that right?

21 MR. WEAR: What I said earlier, Mr. Smegal, was that
22 the memorandum was first distributed to members of the White

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1 House staff, also to members on the Hill -- certain members.
2 Then a copy of it was later given to Mrs. Bernstein and to the
3 American Farm Bureau.

4 MR. SMEGAL: That all occurred before June 13th?

5 MR. WEAR: I believe it did. Yes, sir.

6 MR. SMEGAL: Can you identify for me who on the White
7 House staff received a copy of that memorandum before I did?

8 MR. WEAR: My recollection is that a copy of the
9 memorandum was given to Mr. Wayne Gray, counsel to the
10 President, and to Lee Lieberman who is one of his assistants.

11 MR. SMEGAL: How about up on the Hill? Who received
12 that memorandum before I did?

13 MR. WEAR: I don't recall specifically. Generally I
14 think it was distributed to some of the people who have
15 traditionally been supportive of reform in Legal Services on the
16 House side.

17 MR. SMEGAL: Was there a cover letter attached to it?

18 MR. WEAR: Not to my recollection.

19 MR. SMEGAL: Hand delivered?

20 MR. WEAR: I don't recall.

21 MR. SMEGAL: Did you make the distribution?

22 MR. WEAR: Not that I recall. I don't know --

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1 MR. SMEGAL: Do you recall who did? Do you recall who
2 did make the distribution?

3 MR. WEAR: No.

4 MR. SMEGAL: How do you know it was distributed then?

5 MR. WEAR: Well, I think someone asked me whether or
6 not we could get it to X, Y or Z and I think I said yes.

7 MR. SMEGAL: Who asked you that?

8 MR. WEAR: I think it may have been Mr. Wooten.

9 MR. SMEGAL: Did Mr. Wooten make the distribution?

10 MR. WEAR: I don't know. I don't recall.

11 MR. SMEGAL: Mr. Wooten, did you make the
12 distribution?

13 CHAIRMAN WALLACE: Well, have Mr. Wooten later if you
14 want him when we're finished with this witness.

15 MR. WOOTEN: Would you put that some other way, Mr.
16 Chairman?

17 (Laughter.)

18 MR. WEAR: Mr. Smegal, I'm sure that the question came
19 up and I told somebody to go and do it. The question is who is
20 responsible for it. It's me. I don't remember specifically who
21 may have done it.

22 MR. SMEGAL: Were you instructed by any member of this

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1 board to make that distribution?

2 MR. WEAR: Say that again.

3 MR. SMEGAL: Were you instructed by any member of this
4 board currently sitting at this table or Mrs. Bernstein to make
5 that distribution, or any distribution, of the copies of the
6 memorandum?

7 MR. WEAR: I don't recall specifically. Let me also
8 say, Mr. Smegal, that after we discussed the memorandum in June
9 --

10 MR. SMEGAL: Mr. Wear, you're getting ahead of where
11 I am.

12 MR. WEAR: Well, just a minute.

13 CHAIRMAN WALLACE: Let the witness explain his answer.

14 MR. SMEGAL: I don't think there's a question that
15 he's answering. Now maybe he thinks he's answering --

16 CHAIRMAN WALLACE: But if he wants to clarify
17 something, I'll let him talk.

18 MR. WEAR: I do recall we also mailed copies of the
19 memorandum about the constitutionality to certain members of
20 Congress and there are transmittal letters on that. I recall
21 that because I know that I wanted to resolve the wording of the
22 letter with Mr. Uddo and we did that. That was after the June

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1 meeting.

2 CHAIRMAN WALLACE: Now, your question focuses on
3 before the June meeting. Is that correct, Mr. Smegal?

4 MR. SMEGAL: Yes, Mr. Wallace. I'm trying to
5 determine who had the letter before I did, and so far we've got
6 some people at the White House who have been identified as Gray
7 and Lieberman and we don't know who it went to on the Hill.

8 My question -- the pending question, if you want to
9 talk about it in those terms -- of Mr. Wear is what distribution
10 was made at the request of any member of this board or Ms.
11 Bernstein.

12 MR. WEAR: I don't recall that any member of the board
13 had requested distribution. They may have -- as you, I think
14 know from looking at the bill -- at some point, in May I believe
15 it was, Mr. Wallace and myself and Mr. Cooper and perhaps others
16 met and discussed this.

17 MR. SMEGAL: Now, prior to June 13 when I received a
18 copy of the memorandum, who at the Farm Bureau had received a
19 copy?

20 MR. WEAR: I believe the young lady's name is Lydia
21 Whitley.

22 MR. SMEGAL: Who is Lydia Whitley?

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1 MR. WEAR: She's an employee at the Farm Bureau.

2 MR. SMEGAL: Why was she given a copy?

3 MR. WEAR: The Farm Bureau had been interested in this
4 question for some time and she was given a copy.

5 MR. SMEGAL: Had she expressed an interest in
6 receiving a copy?

7 MR. WEAR: That's my recollection.

8 MR. SMEGAL: How long had she known about the
9 memorandum before she requested it?

10 MR. WEAR: Probably -- well, I should say I'm not
11 sure. I think that it was about -- that the two coincided.

12 MR. SMEGAL: How did she find out about the
13 memorandum?

14 MR. WEAR: I don't recall.

15 MR. SMEGAL: Had she ever met with Mr. Cooper?

16 MR. WEAR: Not to my knowledge.

17 MR. SMEGAL: Had anyone from the Farm Bureau met with
18 Mr. Cooper prior to June 13th about this particular legal
19 memorandum?

20 MR. WEAR: Not that I recall. I should back up and
21 say, Mr. Smegal, that I've known Lydia Whitley for a long time.
22 She was on the Hill, on the Senate time, at the time I was in

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1 the Senate on the staff. I don't recall specifically when she
2 would have gotten the memorandum.

3 MR. SMEGAL: What did you expect her to do with the
4 memorandum when she got it?

5 MR. WEAR: Look at it and give me her thoughts, I
6 guess.

7 MR. SMEGAL: Was it a draft?

8 MR. WEAR: No.

9 MR. SMEGAL: Did you understand that she was going to
10 share it with others at the Farm Bureau?

11 MR. WEAR: I didn't ask that question.

12 MR. SMEGAL: So, somehow she came to you and asked for
13 a memo she didn't know existed so she could look at it?

14 MR. WEAR: I think the issue of the memo came up at
15 some point and she learned of it asked for and received a copy.

16 MR. SMEGAL: Did you bring it to her attention?

17 MR. WEAR: I don't recall who did.

18 MR. SMEGAL: Did anyone else have the memo other than
19 those that you've named or been able to recall at this point
20 prior to my receiving a copy of the memo on June 13th?

21 MR. WEAR: Not that I recall.

22 MR. SMEGAL: Thank you, Mr. Wallace.

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1 CHAIRMAN WALLACE: Any further questions for Mr. Wear?

2 MR. UDDO: Yes, I have some questions.

3 CHAIRMAN WALLACE: Mr. Uddo.

4 MR. UDDO: Several things. Terry, this word
5 "strategy" appears at several places in these bills and that
6 concerns me. I mean, I'm not sure exactly what's meant to be
7 expressed by these references to meetings dealing with strategy
8 when what you're requesting is an opinion. Just roughly, I see ✓
9 about 38 hours in the bills that relate to meetings that have
10 something to do with strategy.

11 You mentioned it, but I'm not at all clear of what
12 sort of strategy sessions were necessary with respect to these
13 opinions.

14 CHAIRMAN WALLACE: I repeat my earlier admonition
15 about attempting to interpret language of somebody who isn't
16 here. But if Mr. Wear was involved in any of those sessions and
17 he's prepared to tell you what went on.

18 MR. UDDO: Well, he was.

19 CHAIRMAN WALLACE: Yes, he was.

20 MR. UDDO: December 20th refers to "prepare for and
21 meeting with Legal Services Corporation board members," who are
22 unnamed here, "and Terry Wear re legal options and strategy."

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1 CHAIRMAN WALLACE: Okay.

2 MR. UDDO: Five hours.

3 CHAIRMAN WALLACE: I'm not sure what Mr. Cooper
4 intended strategy to mean, but I --

5 MR. UDDO: Well, I'm asking --

6 CHAIRMAN WALLACE: -- can ask the witness to tell us
7 what happened at the meeting if he remembers.

8 MR. UDDO: Well, I view him as the president giving us
9 information. I mean, if you really want him to be a witness, I
10 guess we ought to swear him in. But I'm just viewing him as the
11 president of the Corporation right now.

12 CHAIRMAN WALLACE: I've heard the agenda for the next
13 meeting. Could you tell --

14 MR. UDDO: Well, you know, that's fine. I think we're
15 just asking for the information.

16 CHAIRMAN WALLACE: Okay. I'm telling him to give it
17 to you.

18 MR. WEAR: If I may, Basile, could you tell me what
19 page you're on? I don't think I --

20 MR. UDDO: Well, the one I'm looking at right now is
21 15, but I quickly thumbed through this. There's about 38 hours
22 of meetings that use the word "strategy" in some way. Page 15

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1 is the one I'm looking at right now.

2 MR. WEAR: Okay. My recollection is that those were
3 discussions dealing with the refining of this question. We
4 started off with the question of what discretion, if any, does
5 the Corporation have on the disbursement of grants. We looked
6 at the Budget and the Comptroller Act and a number of other
7 questions. It took quite a while to work through that.

8 I think that that's what the entries referred to. I
9 don't recall anything else that occurred at that time. There
10 was no other -- anything else that would fit under strategy that
11 I could think of.

12 MR. UDDO: Well, but then some of these references
13 recur after the focus of the research shifted apparently. For
14 example, on page 54, April 30th, there's conferences with Mike
15 Wallace and Jim Wooten re draft constitutional memorandum and
16 strategy, review, revise, finalize, and send out memorandum,
17 telephone call to Tom Spon re possible declaratory judgment
18 action.

19 CHAIRMAN WALLACE: What page is that?

20 MR. UDDO: That's page 54. Now, as I read that,
21 that's after there's been a decision to move away from the
22 flexibility question to the constitutional question and here

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1 again the word strategy is coming up.

2 MR. WEAR: I think the zeal that you reference appears
3 on page 54 -- I think it's 3/31.

4 MR. UDDO: Yeah, 3/31.

5 MR. WEAR: I think that had to do with what use, if
6 any, would this memorandum be put.

7 MR. UDDO: All right. So that means there were some
8 discussions --

9 MR. WEAR: It usually was -- I think at that point
10 -- well, I don't know whether it was at that point specifically,
11 but I know that there was some discussion at some point of this
12 issue on standing. I think that that's what they starting to
13 get into at that point.

14 MR. UDDO: So, I mean, there was time spent and money
15 spent in effect strategizing what might be done with this
16 constitutional review. I mean, it wasn't just a review for
17 purposes of information apparently.

18 MR. WEAR: Well, the issue was, I think, what, if
19 anything, could be done with the memorandum. That led into the
20 standing question, the standing of the board to raise the issue.
21 I think that is what is referred to in that instance.

22 MR. UDDO: We got some material on prior use of

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1 outside counsel which Blakeley requested. I took a quick look
2 through that -- I just got that last night -- I took a quick
3 look through it. I don't see anything in there that parallels
4 this particular decision in terms of the amount of money spent
5 or in terms of the issue that's being raised.

6 Can you point me to anything in there where the use of
7 outside counsel wasn't related to either defending the
8 corporation or enforcement against grantees for some particular
9 problem? I don't see anything in there where there is a request
10 for a legal opinion such as this.

11 MR. WEAR: I believe that there are some, but I'm not
12 as familiar with this exhibit as I think Mr. Shea is. If we
13 may, we could ask him that question.

14 MR. UDDO: All right. But, at least to your
15 knowledge, you can't point me to anything that would suggest
16 that this is not unprecedented in terms of the nature of the
17 question or the scope of the work that was done? ✓

18 MR. WEAR: Well, I'm not sure about that. I got the
19 exhibit yesterday and I haven't had a chance to go through it
20 and mark those things. But I believe they're there. If you
21 want, we can ask the General Counsel.

22 MR. UDDO: Well, with the Chairman's permission, I

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1 wouldn't mind knowing that at this point.

2 CHAIRMAN WALLACE: Hold on just a second. Mr. Hall.

3 MR. HALL: When you do that, my question when I
4 requested that was I would like to explore the Legal Services
5 staff involvement and past board appointments. My question was
6 is that all that uncommon for us --

7 MR. UDDO: No, I thought you asked the question about
8 hiring outside counsel.

9 MR. HALL: Well, two-fold. I thought you were
10 referring to --

11 MR. UDDO: Well, I'm talking about these printouts
12 that show other instances of hiring outside counsel. Now,
13 there's a footnote that says -- an asterisk -- in certain cases
14 relates to matters that were -- "an asterisk alongside case
15 indicates entry is known not to have resulted in litigation.
16 Other entries may warrant asterisk but available information is
17 insufficient to ascertain whether the matter resulted in
18 litigation."

19 My question is whether it resulted in litigation or
20 not, are there any other examples where there was not some
21 review of some pending action against the Corporation or
22 threatened action against the Corporation, or some enforcement

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1 proceedings against the grantee. In other words, something more
2 like this where instead of using the General Counsel's office we
3 hired outside counsel to write an opinion.

4 If the Chairman would indulge me, I'd like to hear the
5 answer from whoever has the answer.

6 CHAIRMAN WALLACE: The question, as I understand it,
7 is if we previously engaged outside counsel in providing an
8 opinion. Does the General Counsel know the answer to that
9 question?

10 MR. SHEA: The answer is there have been occasions and
11 in this exhibit that you've been furnished this sets out the
12 best organized available information we have for frankly all of
13 the outside counsel engagements that the Corporation has had for
14 the period set out here.

15 Our information with respect to the General Counsel's
16 office is better and goes back further in time than for the
17 engagement of outside counsel by other offices. This is the
18 best available information we have.

19 Now, I can take you through a little bit -- as I say,
20 the --

21 MR. UDDO: Do you have anything that you just off the
22 top of your head can point me to? I mean, I looked through it

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1 and I looked through the computer notations and I don't see any
2 that I would consider analogous to the one that we're talking
3 about right now.

4 MR. SHEA: Well, in general I would just direct your
5 attention to the few matters that have asterisks.

6 MR. UDDO: Well, I looked at those.

7 MR. SHEA: There is no question that this is
8 overwhelmingly litigation matters. But if you look at page 203,
9 for instance --

10 MR. UDDO: Page what?

11 MR. SHEA: -- 203, I don't think there are any
12 asterisks, first of all, on page 1.

13 MR. UDDO: Uh-huh.

14 MR. SHEA: But on page 2 we have the matter entitled--
15 - I'll start from the bottom. It's project number 178, entitled
16 reversionary interests, for a grand total of \$823.

17 MR. UDDO: What did that involve? I don't recall the
18 notation on that.

19 MR. SHEA: Well, it was an issue -- frankly, my
20 familiarity with this is frankly a little remote. But I think
21 it had to do with the interests of the Corporation.

22 MR. UDDO: Well, let me tell you what the computer

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1 notes says. "Matters related to the preparation of uniform
2 covenants in the Alabama grant." I mean, that doesn't strike me
3 as a legal opinion about something as dramatic as what we're
4 talking about here. You've got another one maybe?

5 MR. SHEA: Well, I would just look at the asterisk
6 matter 174.

7 MR. UDDO: 174. National Client's Counsel. Retained
8 to consider whether LSC should institute civil action against
9 staff and directors of NCC.

10 MR. SHEA: Correct.

11 MR. UDDO: Total over three years of \$20,000. Am I
12 reading that correctly?

13 MR. SHEA: Yes.

14 MR. UDDO: Okay. That one might be closer, but again
15 it's relating to possible enforcement and litigation which you
16 bring to, I guess, an outside firm more experienced in
17 litigation to give you some opinion about what they think your
18 likelihood of success would be.

19 MR. SHEA: Well, surely in that case, if we were to do
20 that, I assume you would have gone with outside counsel as well.

21 MR. UDDO: If you had conducted the litigation. Any
22 others that --

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1 MR. SHEA: Well, again, I would just follow the--

2 MR. UDDO: Well, I would just invite the board's
3 attention to the computer printout, and I don't see any that
4 would --

5 MR. VALOIS: I see some.

6 MR. UDDO: Okay. Why don't you tell me about them.

7 MR. VALOIS: Okay. Unless you've got a different
8 document than I do. It's something called Exhibit B.

9 MR. UDDO: That's entirely possible.

10 (Laughter.)

11 MR. VALOIS: Why don't you give me what you've got and
12 I'll take a look at it.

13 MR. UDDO: I got the one that was handed to me this
14 morning.

15 MR. VALOIS: So do I. Exhibit B, number 40, do you
16 have that?

17 MR. UDDO: Exhibit B, number 40.

18 MR. EAGLIN: What page number is that?

19 MR. UDDO: No, this is the computer printout with the
20 explanations on the side.

21 MR. EAGLIN: Well, yeah, but that's part of this whole
22 package though, right?

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1 MR. UDDO: Yeah.

2 MR. EAGLIN: Well, I mean, what's the page number.

3 CHAIRMAN WALLACE: It is not part of this.

4 MR. EAGLIN: I know.

5 MR. VALOIS: Do you have it yet, Mr. Eaglin?

6 MR. EAGLIN: Yeah. Well, if you have it, then you can
7 see line.40 says, "LSC v Dana, challenge of power of present
8 to," I guess that means "seek" or "make", I don't know which.
9 Litigation over recess appointments to LSC's Board of Directors.
10 Do you see that?

11 MR. UDDO: Yeah, but as I read that, that's a
12 litigation.

13 MR. VALOIS: I don't know whether it is.

14 MR. UDDO: LSC versus Dana is litigation.

15 MR. VALOIS: Okay. Perhaps.

16 MR. SHEA: Yes.

17 MR. UDDO: I mean, I --

18 MR. SHEA: It's a case.

19 MR. UDDO: Yeah, it's litigation.

20 MR. SHEA: That was a real live case. We were -- I
21 believe the Corporation -- I know the Department of Justice was
22 principal.

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1 MR. VALOIS: How about item 59? Litigation? I guess
2 that's what that means. Lit. Must be litigation.

3 MR. UDDO: Litigation re personnel matters.

4 MR. VALOIS: Legal advise on labor related matters.

5 MR. UDDO: I assume again that means litigation. So
6 I'm looking for something that's not litigation that's analogous
7 to this because we all know that when we get into litigation we
8 use outside counsel.

9 MR. VALOIS: How about looking at number 74 then,
10 Basile?

11 MR. UDDO: I think we just talked about that.

12 MR. VALOIS: National Appliance counsel retained to
13 consider whether --

14 MR. UDDO: Yeah, I think that's the closest one and I
15 think that's apparently done with the intent of making a
16 judgement about whether or not to bring litigation.

17 MR. VALOIS: How about number 75?

18 MR. UDDO: That was on the question of professional
19 responsibility. I think that was one that referred to experts
20 on professional responsibility, which I do recall.

21 I guess my question is isn't this fairly unprecedented
22 in scope and in the nature of the question that was presented to

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1 outside counsel? I mean, even if you take all the ones with
2 asterisks and concede that they are the same kinds of things,
3 which I don't, I don't think they total a third of what was
4 expended on this one project.

5 CHAIRMAN WALLACE: Mr. Wear.

6 MR. WEAR: Thank you, Mr. Chairman. Mr. Uddo, there
7 is one other example that doesn't come up on your chart. It's
8 one that I happened to run across inadvertently really.

9 In 1976 the Corporation hired the law firm of Hogan
10 and Hartson to prepare a memorandum on the culpability of the
11 Antideficiency Act and the Congressional Budget and the Common
12 Control Act of 1974. At that time the Corporation was
13 contesting the President's ability to impound funds for the
14 Corporation. That project took 319 hours.

15 I've had a -- and I've just done the arithmetic--
16 looking at page 73 of the McGuire, Woods, Battle and Cooper
17 exhibit, Mr. Cooper says that he spent approximately 201 hours
18 preparing the memorandum on the constitutionality. I think the
19 two are similar.

20 MR. UDDO: He or his whole firm?

21 MR. WEAR: He and the other members of his firm, yes,
22 sir. By the same token, the hours spent by Hogan and Hartson

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1 aren't broken out by lawyers. They just show up as a total.

2 MR. UDDO: I would suspect -- at least, as a board
3 member, I'll say that I would probably have looked askance at
4 that expenditure in '74, spending that kind of money to question
5 whether or not the President can impound funds. I don't think
6 that that's one that this board would have approved of, frankly.

7 MR. WEAR: Well, again, I think you are asking for a
8 similar example.

9 MR. UDDO: Yeah. Well, I think that may be one. And
10 I think I may have the same view of that one.

11 MR. SMEGAL: Which President are we talking about?

12 MR. WEAR: That was President Ford.

13 MR. SMEGAL: In '74?

14 MR. WEAR: '76.

15 MR. UDDO: Let me ask a couple of other questions.
16 With respect to the decision to shift this research from the
17 original question about flexibility of the Corporation in
18 awarding grants, who made the decision to shift that to the
19 constitutional question?

20 I mean, that's a fairly significant question that you
21 shifted to, whether this whole thing that we're involved in is
22 constitutional or not. I mean, that's not a minor shift in

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1 focus, as I see it. Who made that decision?

2 MR. WEAR: As I mentioned when we started, Mr. Uddo,
3 the initial analysis concluded the Corporation did not have that
4 flexibility because the Corporation was for all intents and
5 purposes a federal entity.

6 Then the question of constitutionality came up because
7 of the inability of the President to remove the board. One of
8 the initial responses was how can it be that this is a federal
9 entity, because if they were, it would be unconstitutional.
10 That is when the emphasis shifted to the question of
11 constitutionality.

12 MR. UDDO: All right. I'm asking just a very specific
13 question, Terry. Who made the decision to shift at that point?
14 Why wasn't it all stopped at that point with the conclusion that
15 you didn't have the flexibility that you thought you might have
16 and this other cosmic question of constitutionality could be
17 left to another day or brought to the board to decide if the
18 board wants to consider it, or the question sent on to the
19 oversight committees to ask them if they are interested in
20 pursuing it?

21 I mean, who made the decision that that's something
22 that the Corporation should undertake at that point in time and

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1 pay the bill for?

2 MR. UDDO: I reviewed the issue at that time. I
3 talked with certain of the board members who had been involved
4 in the earlier project and decided to pursue it in light of
5 their advise and counsel.

6 MR. UDDO: I assume you did not have a majority of the
7 board members informed and concurring in that decision at that
8 point.

9 MR. WEAR: I think that's accurate.

10 MR. UDDO: Were you instructed by any of those board
11 members not to tell other board members about that decision or
12 request their view on that decision?

13 MR. WEAR: Not that I recall.

14 MR. UDDO: So it was your decision not to inform all
15 the board members?

16 MR. WEAR: Mr. Uddo, what I have done in situations
17 like that is this. If a group of board members have a project
18 and they want the Corporation staff to work on it, I look at it
19 and size it up and leave it to those board members to bring it
20 up with their compatriots if they choose to do so.

21 MR. UDDO: Even when it's going to involve this kind
22 of expenditure of funds?

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1 MR. WEAR: Well, I don't know that it was clear at
2 that point what the expenditures were going to be.

3 MR. UDDO: But you're not saying that if any one of us
4 decided that we wanted to pursue something like this that could
5 cost \$100,000 that all we'd have to do is ask?

6 MR. WEAR: I think that's accurate. Yeah. It would
7 take a little more than that. As a practical matter, I tend to
8 get more interested in projects like this when there are more
9 board members who are interested.

10 MR. UDDO: You can understand the concern of those of
11 us who weren't informed about this, I assume. That, to me, is
12 really what's at issue here. I mean, your perception of your
13 relationship to the board as a whole because this was a fairly
14 significant decision to make with the apparent intent on
15 somebody's part to make sure that not all the board members
16 found out about it.

17 So I guess my question to you is how do you perceive
18 your relationship to the whole board?

19 MR. WEAR: As I think I stated when I came on board in
20 July of 1988, it was my intent to carry out the reforms that
21 were then put forward by the majority members of the board. I
22 perceived this project as support of the majority on the board

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1 when we started it, and we continued it on.

2 MR. UDDO: But that's, again, despite not having
3 really put it to the board to see if there was a majority
4 support for it.

5 MR. WEAR: That's correct. There was discussion,
6 though, informally with the various members of the board and we
7 then went forward.

8 MR. UDDO: Do you view it as your role in any way to
9 hide certain things from some board members?

10 MR. WEAR: No. But it's also not my responsibility to
11 volunteer projects that certain board members have ongoing. I
12 leave it to them to volunteer.

13 MR. UDDO: Well, I guess I've got problems with that
14 and I'll tell you why. Because that really puts many of us at a
15 real disadvantage. I mean, if a couple of board members ask you
16 to undertake a project and that's your view, then that project
17 can get undertaken and if those board members choose not to tell
18 us anything, you who have a responsibility to the whole board,
19 have not kept us apprised of something that we ought to be
20 informed of and have some authority to react to and be concerned
21 about.

22 So I guess that's what I'm really fundamentally

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1 concerned about here. That you think it's the other board
2 member's responsibility to tell us -- which I agree with you, I
3 think they should. But, again, as the president that's hired by
4 the entire board, it seems to me that you owe some
5 responsibility to the board at large to keep them informed of
6 these kinds of things.

7 You don't agree with that?

8 MR. WEAR: Well, what I would say is this. If when
9 you have a situation where it's clear that a minority of the
10 board will attempt to thwart the role of the majority in the
11 case of the form of this program, that it would not be in the
12 best interest of trying to move the Corporation forward to make
13 those disclosures. I think that's true in any context.

14 I don't think that you'll dispute that while this is
15 ostensibly a corporation it's a very political animal. There
16 are very extreme views expressed by board members.

17 I had occasion back in rereading the transcript of the
18 July 1988 meeting to reinforce --

19 CHAIRMAN WALLACE: June or July?

20 MR. WEAR: July 1, 1988. Well, it was not the last
21 meeting.

22 CHAIRMAN WALLACE: Oh, okay.

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1 MR. WEAR: I had occasion to read that and I would
2 remind you how divergent and how personal those views become. I
3 think that it would obviate or destroy the overall charge to
4 move the reform backing forward if you disclosed these sorts of
5 things prematurely.

6 MR. UDDO: Well, I --

7 MR. WEAR: Certain board members can do and have the
8 opportunity to disclose them if they wish to do so.

9 MR. UDDO: I have a couple of problems with that. One
10 is how do you characterize something as a reform effort of the
11 majority if you don't have a majority who has been informed of
12 what it is that's going on? So, the frustration of the will of
13 the majority doesn't seem to be a good explanation since you
14 didn't have a majority in this case.

15 MR. WEAR: Yes, there was a majority when the project
16 was started.

17 MR. UDDO: No, I don't think you had a majority. I
18 think that you started off with three or four people and by the
19 time -- four people and by the time that you got to any more
20 than that Lee Ann was off and you got up to five. So, I don't
21 think you ever had more than five sitting members of the board.

22 I'm just pointing that out to say that even if I

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1 agreed that you could undertake certain activities because you
2 didn't want to frustrate the role of the majority, I don't think
3 this fits into that category because I don't think there ever
4 was a majority that had indicated support for this because I
5 don't think a majority at any given time knew about it.

6 The second part of my problem is that we were all
7 appointed by the President and we were all confirmed by the
8 Senate. I have a problem with what you told Mr. Eaglin, that in
9 certain instances you're just going to make a judgment about how
10 somebody would feel about a particular issue and not inform
11 them.

12 I think it's safe to say that you can't possibly know
13 -- could not have possibly known in advance -- how I would have
14 felt about this project. Maybe you think you do but, you know,
15 I think my votes have been eclectic enough that I'm not that
16 predictable. Yet I wasn't informed about it.

17 MR. DURANT: Well, I don't know. Since October 1 of--
18 -

19 MR. UDDO: What?

20 MR. DURANT: Whatever that year we had the Booker
21 report -- it's predictable.

22 MR. UDDO: Should I remind you of redistricting?

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1 MR. DURANT: On the contrary.

2 MR. UDDO: Should I remind you of the alien ring?

3 MR. DURANT: Well, I know that that's unpredictable.

4 MR. UDDO: Then he should have informed me on his
5 theory. You can't have it both ways. I mean, either I'm
6 perceived as someone who is going to frustrate the will of the
7 majority and therefore that's why I'm not told, or I'm seen as
8 someone who will support the will of the majority and therefore
9 I should be told.

10 But my answer is neither one of those are appropriate.
11 I mean, my view of this is, we were all appointed by the
12 President, we were all confirmed by the Senate, and we are all
13 entitled to know what's going on.

14 Certainly, I can't see how any member of this board
15 cannot take offense -- whether he knew about this project or not
16 --cannot take offense that matters were withheld -- this whole
17 thing was withheld from certain board members and the American
18 Farm Bureau knew about it and had a copy of it. Lee Ann
19 Bernstein who is no longer on the board had it, members of the
20 Executive Branch apparently had it.

21 How can anybody not take offense at a procedure that
22 disseminates this information to people other than board members

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1 at the same time trying to justify not making it available to
2 current duly appointed and confirmed board members. I find that
3 extremely difficult to justify.

4 Terry, the answer may be that you may have been under
5 orders to do that, and if you were, I think you ought to say it.
6 If not, then it was your decision. But to me that is a very,
7 very difficult position for someone, anyone on this board,
8 whether you were informed or not, to take.

9 I don't see any justification for any member of this
10 board not being told about a project this far-reaching,
11 involving this much money that called into question the very
12 validity of the corporation without every board member being
13 informed of it.

14 CHAIRMAN WALLACE: Mr. Wear, do you have something to
15 say?

16 MR. WEAR: Yes, if I may. Shortly after the
17 memorandum was completed, Mr. Uddo, a decision was made to try
18 to discuss the memorandum in a board meeting so that people
19 would have an opportunity to comment about it and it would not
20 be something that they would suddenly receive in the mail.

21 That was part of the reason that the discussion did
22 not occur until the June board meeting, because it was not ready

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1 for discussion. My recollection is we got the memorandum about
2 three days later, we had a board meeting scheduled and the
3 memorandum wasn't ready for discussion at that point because the
4 issue on standing had not been resolved.

5 So I think that is the short explanation for the
6 timeframe between the time that the people to whom I referred to
7 in the White House and others received a copy of the memorandum
8 before it was distributed to the board.

9 MR. UDDO: Well, I may take some comfort in that, but
10 not a whole lot. I mean, you know, the fact that those people
11 got it before I did, I find extremely difficult to justify and I
12 think it really denigrates the board members that didn't get it.
13 You know, to me it's just totally inexplicable.

14 Let me just ask you another question with something
15 that I think expresses this sort of similar view of your
16 relationship to the board. Terry, you know, these are always
17 difficult things to go through. I think you're a hell of a fine
18 guy and I like you a lot, but as a board member I've got to be
19 concerned about these things. There is no personal animosity in
20 this, I'm just telling you what I think about something that
21 affected us.

22 Your letter that went out to Members of Congress,

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1 October 26, 1989 supporting the McCollum-Stenholm amendment,
2 that amendment affected a rather dramatic change in the budget
3 and what money would be spent for in the LSC budget.

4 Now, we go through a rather extensive budget process.
5 We've got an Audit Appropriations Committee, we fight about what
6 to do with the money and how the money should be spent. We get
7 a bunch of different proposals of what the mark should be. Then
8 we finally vote on something and it gets out and that, as I
9 understand it, that is the majority role of the board.

10 Yet you, on behalf of the Corporation informed the
11 members of Congress that they should support that amendment.
12 Again, I might think it's a good amendment, but I can't see that
13 your unilateral endorsement of that amendment ought to be
14 disseminated as the Corporation's view.

15 CHAIRMAN WALLACE: Let me interject that this is a
16 topic that's not on the agenda. We've got a lot on the agenda.
17 If you want to discuss that at the next board meeting where
18 you'll have a chance to support the Stenholm amendment if you
19 want to, then let's get into it. But that looks like it's going
20 to carry --

21 MR. SMEGAL: Mr. Wallace, that is on the agenda.

22 MR. UDDO: It is on the agenda today.

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1 MR. SMEGAL: That's called lobbying.

2 MR. UDDO: It's concerning lobbying.

3 MR. SMEGAL: And we're going to get to that shortly.

4 MR. UDDO: Well, we could put it off.

5 MR. SMEGAL: You're appropriately getting to it.
6 We're not quite to it yet. But Mr. Wallace is suggesting it's
7 not on this agenda. It certainly is, Mr. Wallace. It's the
8 next item we're getting to.

9 CHAIRMAN WALLACE: When we get to that, we'll see
10 whether it's on the agenda. My understanding of what you wanted
11 to talk about is what's in this book which is material
12 reflecting Corporation activity in connection with the potential
13 amounts --

14 (Simultaneous conversation.)

15 MR. UDDO: Mike, I'm happy to put it off.

16 CHAIRMAN WALLACE: Okay. Fine.

17 MR. UDDO: The only reason I'm raising it is because
18 it goes to the heart of my concern about both of these issues
19 and the broader issue of the relationship between the board and
20 the president.

21 I've complained about it for some time. I complained
22 about it under our first two presidents when we were here. I

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1 think it is a matter of legitimate concern for this board
2 whether you are in the loop or out of the loop that the
3 procedure, the process, should function that way.

4 CHAIRMAN WALLACE: Let me say that it has been a
5 concern of mine. As you will remember, I proposed to the board
6 that the board be given independent staff that they could have
7 to work on projects. Mr. Bayly vehemently opposed that. I
8 think Mr. Wear does too. Every president we have ever had
9 thinks everybody in the building ought to be working for him and
10 nobody else.

11 While I share your concerns, this board has never come
12 up with a solution to that problem and I don't think we're going
13 to come up with one today.

14 We are here to ask Mr. Wear what he's done and we are
15 a little far afield from that subject. Now, let me ask. Does
16 anybody have any more questions of Mr. Wear on the question of
17 use of outside law firms.

18 MR. UDDO: I have one more question. I'm not
19 satisfied with your explanation as to why you didn't use General
20 Counsel's office. I mean, I'm sure the General Counsel's office
21 is busy but it seems to me that it's a capable office and they
22 have generally been able to respond to most of the questions

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1 that have been put to them.

2 At least in retrospect wouldn't it have been more
3 cost-effective to have hired another lawyer for the General
4 Counsel's office if they needed extra help generally, or maybe a
5 contract attorney for purposes of just dealing with this
6 particular issue? I mean, would that, in retrospect, have been
7 far more cost-effective than the \$105,000 or \$110,000 that were
8 spent with this law firm?

9 MR. WEAR: I'm not sure that's accurate. With regard
10 to the constitutional question -- and I think that in round
11 numbers cost about \$29,000 -- Mr. Cooper has impeccable
12 credentials for that. There is nobody in our General Counsel's
13 office that has that kind of standing.

14 Candidly, I'd have to tell you that an opinion from
15 the General Counsel whose prior experience was in the marine
16 transportation law, on the constitutional question is not going
17 to be given the sort of weight that an opinion from a former
18 Supreme Court clerk is going to be given as a person with Mr.
19 Cooper's background.

20 So, I think basically you get what you pay for. I
21 think that's true in any range, whether it's that issue or the
22 other issues. You can argue about whether it was worth the

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1 money or whether it was good policy, and I think that's
2 basically where the argument --

3 MR. UDDO: Yeah.

4 MR. WEAR: -- has been. But to say that Mr. Cooper's
5 law firm was not worth this and we could have gotten a cheaper
6 product out of the General Counsel's office, that's probably
7 true, but that product is worth what you pay for it in my view.
8 That's not to denigrate the General Counsel.

9 MR. UDDO: I think the General Counsel's office does a
10 good job, frankly, and I think they could have done this. I
11 think Mr. Cooper is a fine lawyer, but there is no magic in that
12 memorandum. I mean, I think any capable lawyer could do the
13 research and product that.

14 I don't believe that memorandum is going to achieve
15 anything. I mean, you're going to get very little for what you
16 paid for it, as far as I'm concerned. I don't think it's going
17 to change anything.

18 But the fact of the matter is that I think that it was
19 bad policy to hire them to do that. I think it was bad policy
20 to do it sub rosa without bringing the board into it, and I
21 still have serious fundamental concerns about the relationship
22 between the board and the president. It extends to the lobbying

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1 stuff, but we'll put that off.

2 CHAIRMAN WALLACE: Any other questions? I'm sorry,
3 Mr. Wear?

4 MR. WEAR: If I may just say one thing. We'll
5 certainly take up Mr. Uddo's questions about this letter to
6 which he referred. The purpose of the letter was to --

7 CHAIRMAN WALLACE: No, no, no. I cut him off, Mr.
8 Wear, and I'm going to cut you off on the letter. If it does
9 come under the rubric of lobbying, we'll get there when we get
10 there.

11 Mrs. Miller, this is on hiring outside law firms.

12 MS. MILLER: Well, I just want to know what will the
13 board benefit by Mr. Cooper? I mean, what will we benefit by
14 this?

15 CHAIRMAN WALLACE: Mr. Wear?

16 MS. MILLER: I mean, what will we benefit by this,
17 what he did? What benefit is it to us?

18 CHAIRMAN WALLACE: Mr. Wear, you want to --

19 MR. WEAR: Yes, sir. Mrs. Miller, I think that the
20 Legal Services Program is going to benefit from that memorandum
21 because I think it's going to prod people on the Hill to
22 reexamine this program and to improve it to the point where it

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1 serves poor people and not the interests of certain Legal
2 Services lawyers who believe that they ought to be free to raise
3 all sorts of esoteric clauses for their own benefit. I think
4 that that's where we're going with it.

5 MR. MILLER: Okay. Well, that's the part I really
6 don't understand spending over \$100,000. That could have went
7 to the poor people.

8 MR. WEAR: Mr. Wear, I think that this is going to
9 cause the Hill to reexamine this question and to make reforms in
10 this statute. If the Hill has to correct this constitutional
11 defect, they will also correct a number of other defects in this
12 statute. So, I think that that's where the benefit comes from.

13 You may recall -- that is, the board members generally
14 -- that I sent out to you a similar opinion issued by the
15 Assistant Attorney General now in charge of the Office of Legal
16 Counsel with regard to certain statutes dealing with the
17 National Park Service.

18 In that memorandum issued by Mr. Barr, he came out on
19 the same issue in the same way as Mr. Cooper did. The facts in
20 the case examined by Mr. Barr were very frankly less favorable
21 than those that are the basis of the Cooper opinion.

22 So I think that this opinion does have value. It is

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1 going to improve this program, and it's going to bring about the
2 kind of change that this program needs in order to survive.

3 CHAIRMAN WALLACE: As I think I pointed out to the
4 board at a previous board meeting -- and I may not have, I was
5 getting over pneumonia that day -- as a result of the Cooper
6 opinion the White House has requested the Office of Legal
7 Counsel to issue an opinion on the constitutionality of the
8 Corporation.

9 To the best of my knowledge, that opinion has not yet
10 been issued. When the opinion is issued, presumably it will
11 have some impact at the White House and perhaps on the Hill, as
12 Mr. Wear has discussed. I think I told you that six months ago,
13 but --

14 MR. EAGLIN: When did that happen? No, I don't think
15 you did.

16 CHAIRMAN WALLACE: Well, it happened after the meeting
17 with Mr. Gray that is recorded in the bills. I don't know where
18 it is, but it's in the bills -- the White House counsel.

19 Mr. Valois.

20 MR. VALOIS: I can do this through questioning Mr.
21 Wear, but I think it would be easier just to point out to you
22 and remind both Mr. Smegal and Mr. Uddo that at the board

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1 meeting that we had in Chicago, according to my calendar, took
2 place on June the 12th and the memorandum or the letter -- the
3 cover letter for the constitutionality memorandum is dated May
4 8th. I did not see it, nor did several other board members--
5 you all have brushed broadly twice -- did not see that then and
6 was unaware of it. Ms. Swafford is in the same situation.

7 That notwithstanding, I consider this important but it
8 doesn't trouble me quite as much as it troubles you for the
9 president of our Corporation to seek an opinion on this subject.
10 I consider it a little bit more in the ordinary course of events
11 than you do, obviously. We did hire him, after all, to run the
12 Corporation.

13 I just wanted to clear the record on that.

14 MR. SMEGAL: You didn't know this was going on at all
15 until we did at the meeting?

16 MR. VALOIS: I was unaware of this memorandum. Mr.
17 Wear says I knew of the subject matter. Frankly, I don't recall
18 that but I won't quibble about it with him if he says I knew
19 about it. But I didn't see the memorandum before the meeting.

20 If you'll look at the transcript, it will be
21 reflected.

22 MR. UDDO: I believe you.

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1 MR. VALOIS: Do you remember it now?

2 MR. UDDO: No, I don't remember you saying that.

3 MR. VALOIS: You'd better look at the transcript.

4 MR. UDDO: No, I take your word for it.

5 MR. VALOIS: But I won't quibble about whether I knew
6 about it or not. If I did, I did.

7 CHAIRMAN WALLACE: Any further questions on this
8 agenda item? Mr. Smegal?

9 MR. SMEGAL: Thank you very much, Mr. Wallace. First
10 of all, Mr. Wear, wasn't there another document? Didn't I send
11 you about a 200-page opinion on a GWR review on this very
12 subject that had already been prepared long before Mr. Cooper
13 embarked upon this venture for us? Didn't you distribute that
14 to the board?

15 MR. WEAR: As a matter of fact, I did. I think we
16 sent it to you, though, Mr. Smegal, rather than the other way
17 around.

18 MR. SMEGAL: No, I think I sent it to you. But it
19 doesn't make any difference. There was a several hundred page
20 Law Review article on this very subject, the separation of power
21 and the constitutional --

22 MR. WEAR: Yeah. My recollection, Mr. Smegal, is that

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1 that came to our attention after Mr. Cooper's opinion was
2 finished.

3 MR. SMEGAL: Did Mr. Cooper ever bring it to your
4 attention during his research over all these --

5 MR. WEAR: My recollection is --

6 MR. SMEGAL: -- hundreds of hours of research those
7 people did?

8 MR. WEAR: My recollection is that it was printed
9 after his opinion was finished. I seem to recall finding it in
10 June, I think, shortly before I sent it to you.

11 CHAIRMAN WALLACE: Further questions on this agenda
12 item?

13 MR. SMEGAL: Mr. Wallace, I've barely touched the
14 surface.

15 Mr. Wear, in your responses to Mr. Uddo you mentioned
16 that apparently since July of 1988 when you were elected
17 president of this Corporation you've had an opportunity to
18 reread the minutes, the transcript of the meeting on July 1988.
19 Was that the one where you were elected?

20 MR. WEAR: Yes, that's the --

21 MR. SMEGAL: Are you talking about the public meeting
22 part of the -- the closed session part of the meeting?

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1 MR. WEAR: I think that was the closed session part.

2 MR. SMEGAL: I believe you said that one of the
3 reasons you didn't tell the majority of this board about this
4 activity that involved \$100,000 of our money was that you
5 perceived from that closed session transcript that the minority
6 thwarted the will of the majority -- I think those were your
7 words.

8 Is that correct? Is that what you concluded from
9 reading our closed session transcript?

10 MR. WEAR: I don't know that I concluded it from that,
11 Mr. Smegal. But I think the evidence is ample that given the
12 opportunity the minority -- or specifically yourself -- would
13 attempt to do that.

14 MR. SMEGAL: Well, I will admit, Mr. Wear, at a date
15 before you joined as the staff president there were some votes
16 where I certainly was well in the minority. But I think my
17 point is more relevant than that.

18 The statement you made was that from reading that
19 transcript you have concluded, as you have again restated, that
20 the minority are thwarting the will of the majority. I wonder
21 if you could give me an example from those particular minutes of
22 that July 1988 transcript where the minority -- now, I assume

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1 the minority is five, or me, or whomever -- where we thwarted
2 the will of the majority in that particular closed session, the
3 minutes of which you referred to as having persuaded you that
4 six of us shouldn't be told what's going on.

5 MR. WEAR: I think those minutes show the degree of
6 personal animosity that some of the members of the board
7 displayed for each other. I think those minutes aren't the only
8 place where that appears, Mr. Smegal.

9 I've gotten letters that you've sent to -- I think to
10 me -- and perhaps other members of the board showing your
11 animosity. I think it's clear where you stand or sit on these
12 questions. I think that it's amply demonstrated both in that
13 transcript and elsewhere.

14 MR. SMEGAL: Well, I don't doubt that -- I'll accept
15 your characterization of my views on the delivery of legal
16 services to the poor through this Corporation, Mr. Wear, and
17 I'll even accept your characterization of them as being--
18 whatever term you used -- as being in an effort to thwart.

19 But, what from those minutes -- what from that
20 transcript -- what can you point to in that transcript where the
21 minority through a democratic vote in that closed session have
22 thwarted the will of this majority you keep referring to. Can

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1 you point to that transcript and tell me what occurred in that
2 room where the minority prevailed? Where the minority thwarted
3 the majority's desires by vote.

4 CHAIRMAN WALLACE: The answer, Mr. Smegal, is --

5 MR. SMEGAL: Mr. Wallace, I've asked Mr. Wear.

6 CHAIRMAN WALLACE: I am the Chair of this meeting.
7 Now, I realize I consider this to be an adversary proceeding.
8 You said you want to take action on the president's position at
9 the next meeting. That's quite clear. I recognize you're on
10 cross. I will give you a great deal of latitude.

11 You know that majorities win votes. That's pretty
12 clear. I understand the rhetorical point you're trying to make.
13 I will let Mr. Wear tell you what he meant, but I think we need
14 to get this agenda item finished and get on to the next one.

15 I will let Mr. Wear explain what he meant by his
16 earlier testimony, but cut down on the speech-making.

17 MR. SMEGAL: No, that isn't my question, Mr. Wallace.
18 My question is where in that transcript is there a minority
19 prevailing? He referred to --

20 CHAIRMAN WALLACE: If that is your question, I've just
21 answered it. Minorities never prevail on votes. That's what
22 makes them minorities.

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1 If you want to know what this witness meant by his
2 earlier testimony, I'll let him answer that question. If you
3 don't want to know that, ask another question.

4 MR. SMEGAL: Mr. Wear, do you adopt Mr. Wallace's
5 explanation of your answer? Is that your answer, Mr. Wallace's
6 answer?

7 MR. WEAR: Mr. Smegal, the transcript shows the degree
8 of personal animosity that some board members have for each
9 other. That's what the transcript shows, and that evidence is
10 amply available in other areas.

11 Given the opportunity, I'm sure that you would attempt
12 to thwart the reform of Legal Services. I think you've tried to
13 do that during my tenure here. I don't think you believe in
14 reform. I think you believe in leaving the programs as they
15 are, the status quo. That is what I meant by my statements.

16 MR. SMEGAL: So, a determination, Mr. Wear, as your
17 view as president of this Corporation as to whether I get the
18 vote as a member of this board depends on whether I want to
19 thwart what you believe this board should be doing. If my
20 objective is to thwart that particular objective you have, I
21 don't get to vote? Is that the way we operate here?

22 MR. WEAR: I don't think that's the case, Mr. Smegal.

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1 You get to vote whenever there is a vote and whenever you're
2 present.

3 (Laughter.)

4 MR. WEAR: I'm not able to prevent you from voting.
5 It is also true that you would do -- and I think you wear this
6 as a badge of honor -- that you would do whatever you could to
7 thwart the vote of the majority with regard to reform of these
8 programs. That is what I meant by my comments.

9 MR. SMEGAL: Well, we have so far determined today in
10 this discussion with you, Mr. Wear, that a majority of the board
11 didn't even know what you were doing. Six members at this table
12 did not know what you were doing.

13 Now, what majority is it you're reporting to? In
14 fact, it may be seven. Mr. Valois can't even remember being
15 part of it. But anyway it's certainly at least six. I mean,
16 what majority are we talking about?

17 Is the majority that is part of this board the Farmer
18 Bureau? I didn't realize they had a vote. Does the Farmer
19 Bureau have a vote on this board? Does Lee Ann Bernstein have a
20 vote on this board? Or do I have a vote on this board? Does
21 Mr. Uddo have a vote on this board? Does Mr. Eaglin have a vote
22 on this board? Does Ms. Miller have a vote on this board? Does

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1 Mrs. Benavidez have a vote on this board?

2 Who has a vote on this board, Mr. Wear? We, the Farm
3 Bureau, Mrs. Bernstein, or you?

4 CHAIRMAN WALLACE: I will answer the gentleman's
5 parliamentary inquiry.

6 (Laughter.)

7 CHAIRMAN WALLACE: The answer to the parliamentary
8 inquiry is that every member of this board has a vote on
9 everything that comes before this board at any meeting called
10 pursuant to law.

11 Now, this meeting has been called pursuant to law. I
12 think both of these parties have made their point. We are on
13 the question of what he has done with regard to the hiring of
14 outside law firm. Does anybody have any more questions on that?

15 Mr. Smegal?

16 MR. SMEGAL: Thank you. I've gotten to page 83 of
17 this document that I was handed today, the materials reflecting
18 the activity of the law firm of McGuire, Woods, Battle & Boothe.
19 I find at that page a facsimile cover sheet dated April 28, 1989
20 and it indicates to me that it covers ten additional pages.

21 I turn to page 84 and I have a document that starts
22 with a page that's numbered 4 at the bottom. The top of the

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1 page has the words in the left-hand column, "has rejected the
2 decision," footnoting 4.

3 Is there some reason why I've been given what appears
4 to be the first three pages of this document?

5 MR. WEAR: Mr. Smegal, I think that's a draft legal
6 opinion that was provided to me by the law firm of McGuire,
7 Woods, Battle & Boothe. It may be, Mr. Smegal, that we don't
8 have the first three pages. I don't know.

9 I do not ordinarily keep drafts and it may be that
10 those pages got thrown away. I think it is the draft of the
11 subject memorandum dealing with the issue of the
12 constitutionality of the Legal Services Corporation Act.

13 MR. SMEGAL: Well, the cover sheet of the fax
14 indicates there were 11, including the fax cover. I counted the
15 pages and I can't get beyond 8. Is it possible that I could
16 have the other three pages, or maybe even the rest of the board,
17 if they're interested?

18 MR. WEAR: If we have the other three pages, Mr.
19 Smegal, you're certainly welcomed to them and anyone else who
20 desires to look at them.

21 MR. SMEGAL: I'd like to -- Mr. Wear, would you turn
22 to page 90 of this set of documents -- it's page 10 of this fax

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1 that I'm referring to. There is a handwritten note under a
2 question mark. There is a question mark over the word
3 unconstitutional and written down below in penmanship are the
4 words, "would it not be enough that they have serious doubts
5 about LSCA constitutionality." Can you tell me whose
6 handwriting that is?

7 MR. WEAR: It is not my handwriting. I --

8 MR. SMEGAL: So you don't know? I'm sorry, he said he
9 didn't know? He said it wasn't his and I --

10 CHAIRMAN WALLACE: He said he didn't know. Do you
11 know whose handwriting it is, Mr. Wear?

12 MR. WEAR: No, I do not know.

13 CHAIRMAN WALLACE: Okay.

14 MR. SMEGAL: The document that follows in this
15 material that we received has a cover letter dated May 8 to you
16 from Charles J. Cooper saying here is a final version of the
17 memorandum. It is now 11 pages long. The other document I
18 referred to was 10 pages. It's a little over a page longer. It
19 appears in the form under the May 8 document.

20 Again, I don't have the first -- pardon me? Well,
21 there are substantial differences between what I can see from
22 the draft and what there is in this final opinion. It would be

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1 helpful to me before December 15th to have the rest of the
2 draft, including any handwritten notes.

3 Also, I'd like to know, to the extent that this draft
4 got changed, whose input changed it and how that came about.

5 MR. WEAR: I'll be glad to try to determine whether we
6 have additional copies or additional material associated with
7 the draft.

8 I assume, Mr. Smegal, that the draft that begins on
9 page 83 is one of the earlier drafts of the memorandum that
10 begins on page 92. As to what changes there have been, I'm
11 going to give you the first three pages. If you can find
12 changes, please let me know and I'll try to determine whose idea
13 it was to change it.

14 My suspicion is that the changes were made by Mr.
15 Cooper.

16 MR. SMEGAL: Well, I'd like confirmation of that, Mr.
17 Wear. I'm not going to go through here and proofread this.
18 I've asked you to tell me why the final document appears to be
19 at least one page longer than the draft that was provided under
20 the fax of May 28. I'd like any other handwritten notes that
21 appear on the first three pages of this facsimile that are
22 included and I'd like to know whose handwriting it is, who made

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1 the changes, and what modifications there were in the final
2 document from Mr. Cooper's office.

3 MR. WEAR: I'll be glad to give you the first three
4 pages if we have them. We'll try to determine whose handwriting
5 it is and whose changes. If you have specific changes in mind,
6 you can point them out. I don't intend to have the staff
7 proofread one against the other to see where the changes are.

8 MR. SMEGAL: I think what I asked for is pretty clear.

9 CHAIRMAN WALLACE: I think his answer was pretty
10 clear. So if you don't tell him what the specific changes you
11 have in mind are, it's pretty clear to me you're not going to
12 get it.

13 MR. SMEGAL: I don't have the pages of the document,
14 Mr. Wallace. I can't --

15 CHAIRMAN WALLACE: I understand that, Mr. Smegal. You
16 will, if they exist, before the 15th. So, I don't want there to
17 be any surprises at the next meeting if you find changes in the
18 drafts and he doesn't have an answer for you. He's just told
19 you he's not going to do that unless you point them out to him.

20 MR. SMEGAL: Mr. Wallace --

21 CHAIRMAN WALLACE: If you want him to do that, I
22 suggest you tell him.

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1 MR. SMEGAL: Mr. Wallace, I may suggest to you that
2 the meeting is going to go a lot faster on December 15th if what
3 I've asked for is provided to me. If we're going to have to go
4 through it, we're going to go through it right here in this room
5 or wherever our room is.

6 CHAIRMAN WALLACE: That's fine. Does anybody have any
7 more questions on this agenda item?

8 MR. EAGLIN: I do. I believe it may relate to this as
9 to the next item.

10 CHAIRMAN WALLACE: All right.

11 MR. EAGLIN: It really has to do with the organization
12 of this material so that I can understand what we're looking at.

13 MS. SWAFFORD: May I ask that we just move on to the
14 next item.

15 MR. EAGLIN: I think that's what I'm about to do.

16 CHAIRMAN WALLACE: Okay. I think he says it relates
17 to both.

18 MR. EAGLIN: -- relates to the next item as well as to
19 this. I'm asking about the organization of this material. I've
20 already pointed out that I just got this morning and I'm still
21 struggling to try to understand how it is organized.

22 In the volume that we've been dealing with thus far,

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1 the last item is the Cooper anti-lobbying memo. Right? Now,
2 earlier in that volume on -- let's see, I think this is page 44
3 -- is the April 27th memo that is referred to in opening of Mr.
4 Cooper's memo about anti-lobbying restrictions.

5 Then I believe is this other volume that seems to
6 relate primarily, maybe even exclusively, to the anti-lobbying
7 matter. So, what I'd like to know is please tell how are these
8 volumes organized. If I am correct in what I have guessed so
9 far -- and also what's the relationship generally of a following
10 page to a prior page. In this chronological or by subject?
11 That's difficult to determine.

12 CHAIRMAN WALLACE: Can you answer that question, Mr.
13 Wear?

14 MR. WEAR: Mr. Chairman, I think that the materials
15 were put together to try to show the bills and the memoranda. I
16 think the memorandum that Mr. Eaglin speaks of on page 44
17 relates to the legal memorandum that begins on page 103.

18 CHAIRMAN WALLACE: All right. What I think is going
19 on here is this. Everything from McGuire Woods is in one book
20 and that includes the memorandum on anti-lobbying restrictions.

21 MR. EAGLIN: That's the one that we've been dealing
22 with so far.

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1 CHAIRMAN WALLACE: That's the one that we've been
2 dealing with so far. Everything else in the next book consists
3 of items not involving McGuire Woods, but involving activities
4 connected with board appointments. Is that what we have?

5 MR. WEAR: Yes, sir.

6 CHAIRMAN WALLACE: All right. That's what we have.
7 Mr. Eaglin.

8 MR. EAGLIN: Well, with respect to each volume, then,
9 does a following page or following memo relate to what comes
10 before in both instances?

11 CHAIRMAN WALLACE: I think question is --

12 MR. EAGLIN: -- chronologically --

13 CHAIRMAN WALLACE: -- are they organized
14 chronologically? The staff is saying yes. I guess they are
15 chronologically.

16 MR. EAGLIN: All right. So then we look to this
17 volume to see the April 27th memo that was responded to at the
18 very end of this volume and then to look at other materials
19 concerning the effort then we go to the thick volume.

20 CHAIRMAN WALLACE: I think that is correct.

21 MR. EAGLIN: All right.

22 CHAIRMAN WALLACE: Is the second volume where you want

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1 to go to at this point?

2 MR. EAGLIN: That's why I just -- stop and see if
3 anybody wants to ask more on that.

4 CHAIRMAN WALLACE: All right.

5 MR. SMEGAL: Excuse me, Mr. Wallace. I thought first
6 we were going to hear from Mr. Wear. Now we're going to hear
7 from Mr. Wooten.

8 CHAIRMAN WALLACE: Before we get off of this topic do
9 you have a question that you wanted to ask of Mr. Wooten about
10 what Members of Congress received this memo before you did? I
11 said Mr. Wooten could answer that question when Mr. Wear was
12 finished if he knows.

13 Now, does anybody else have any questions for Mr. Wear
14 on this topic?

15 All right. Mr. Wooten, do you know to what Members of
16 Congress the constitutionality memo was circulated before it
17 went to the board at the June meeting?

18 MR. WOOTEN: Mr. Chairman, yes.

19 CHAIRMAN WALLACE: Okay. Who did it go to?

20 MR. WOOTEN: I think it went to Congressman Vin Weber
21 and Congressman Newt Gingrich.

22 CHAIRMAN WALLACE: Anybody else that you remember?

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1 MR. WOOTEN: I don't think so, Mr. Chairman.

2 CHAIRMAN WALLACE: Okay. Thank you.

3 MR. SMEGAL: There were some other open questions that
4 Mr. Wear was unable to enlighten us on and I'd like to ask Mr.
5 Wooten if he can help us.

6 CHAIRMAN WALLACE: I would like, and I think the board
7 would like -- I may be wrong -- to get on to the next - we have
8 two more topics on the agenda. What open questions do you have
9 in mind, Mr. Smegal?

10 MR. SMEGAL: It's a very narrow question. I just
11 wanted to get a full understanding of who had the legal
12 memorandum or a form of it in draft, or whatever, prior to my
13 seeing it and other members of this board seeing it on June
14 13th. We've identified people in the White House Executive
15 Building. You've now identified certain Congress people. We've
16 identified Lee Ann Bernstein. We've identified the Farm Bureau,
17 the person at the Farm Bureau.

18 Mr. Wooten, are there others to whom you either
19 personally directed or instructed others to direct or were
20 instructed to direct copies of any of the documents including
21 the final one?

22 MR. WOOTEN: The only other person that I think we had

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1 mentioned was Diane Weistein who is counsel to the Vice
2 President.

3 MR. SMEGAL: No other Congress people?

4 MR. WOOTEN: Not that I'm aware of. No, sir.

5 MR. SMEGAL: Mr. Wallace, thank you for indulging me
6 that question.

7 CHAIRMAN WALLACE: Thank you, Mr. Smegal. That's
8 fine, Mr. Wooten. We appreciate it.

9 The next item on the agenda is the report and
10 accounting on the pursuit of lobbying activities by the
11 Corporation's staff.

12 The court reporter needs a break. I know people are
13 trying to get to the airport so this will be a five-minute break
14 for honest to God real. We'll get back here as fast as we can.

15 (Brief recess.)

16 CHAIRMAN WALLACE: I do not have a quorum. We have no
17 sergeant at arms but I'll ask --

18 (Simultaneous conversation.)

19 CHAIRMAN WALLACE: I will begin, out of consideration
20 for various members of the board, and in light of the fact that
21 we agreed to be back here two weeks hence, we have two items
22 remaining on the agenda, the report on lobbying activities,

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1 requests for emergency funding.

2 I've already ruled -- maybe it wasn't clear to anybody
3 -- that I do not consider action on the report on lobbying
4 activities to be within the scope of call. That is something
5 that can be looked into in two weeks as we are evaluating Mr.
6 Wear's performance and action thereon. So, unless I get
7 overruled, I don't intend to permit any of those on item 6.

8 Item 7 has not come up. Nobody's request I suppose
9 implies the possibility of an answer which could encompass a
10 vote. Mr. Smegal, this item 7 is on the agenda at your request.
11 Do you anticipate asking the board for a vote on item 7?

12 MR. SMEGAL: Yes. Depending upon what the staff
13 report or Mr. Wear report says. I have a motion but I thought
14 it maybe unnecessary depending on what --

15 CHAIRMAN WALLACE: I would send then the request for
16 emergency funding to California and I gather that Senator
17 Hollings has asked us to consider South Carolina as well.

18 MR. WEAR: Mr. Chairman, we put under that section of
19 the agenda all of the requests for emergency funding that were
20 pending at the moment.

21 CHAIRMAN WALLACE: I don't want to jump the agenda but
22 I am trying to act out of consideration to the members of the

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1 board who have planes to catch if they possibly can. Can you
2 give us a sneak preview of what you intend to tell Mr. Smegal so
3 he can tell us whether or not he wants to have a vote on that
4 subject.

5 MR. WEAR: Mr. Chairman, we are studying and reviewing
6 that matter now. It is the appropriations policy that we help
7 to the extent that we are able to do so those persons who are in
8 dire need usually when they have suffered a casualty loss that
9 was uninsured. We are looking very carefully at all of those
10 areas now.

11 As a result of some hurricane damage earlier in the
12 Virgin Islands, we have expended some money down there to help
13 overcome some of the physical damage that they incurred.

14 We are looking at North and South Carolina in trying
15 to determine how much insurance coverage those programs had.
16 We're looking at the physical damage that has occurred in the
17 San Francisco area.

18 I am hopeful that the Corporation will be able to deal
19 with those and in some respects, as I think you know, all of the
20 money that is appropriated to the Corporation each year is
21 earmarked for specific purposes and there is no general fund
22 available for what I'll characterize as surges in demand.

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1 But we are doing the best we can on that and I believe
2 we will be able to help those programs that have suffered
3 casualty losses and that do not have the wherewithal within their
4 own resources to replace those casualty losses.

5 CHAIRMAN WALLACE: Do you require a board vote to
6 permit you to distribute emergency funds if the funds are
7 available?

8 MR. WEAR: No, sir.

9 CHAIRMAN WALLACE: Now, Mr. Smegal, do you think
10 you're going to want to vote on that? I mean, certainly we can
11 direct him to distribute funds if funds are available. But I
12 don't know that any of us know enough right now to give him a
13 direction. If you think you want to vote, I'll tell people they
14 ought to stay.

15 MR. SMEGAL: Well, this matter has been pending since
16 shortly after October 17. I think the Puerto Rican matter has
17 probably been pending for over a year. Certainly the hurricane
18 -- if I recall, my daughter telling me about a hurricane coming
19 that way -- that was quite a while ago too.

20 So, if it's a question of Mr. Wear needing a couple
21 more weeks to do what he's going to do, I'm prepared to have
22 this matter come up again in December. But what I would like,

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1 though, by then, if that's what's going to happen, is for him to
2 come in here with some specific numbers of funds that are
3 available and I'd like him to look very carefully at all the
4 Corporation resources that could be distributed to these various
5 geographic areas.

6 CHAIRMAN WALLACE: Mr. Wear, will you be able to make
7 a proposal or tell us whether or not anything is available? I
8 think what he's asking for is concrete numbers. He'd like you
9 to come in here and give us your best shot on the 15th. If
10 we've got it, he wants to know what you can do. If we haven't
11 got it, he wants you to be able to say that and then he can tell
12 you what to do anyway if the votes are there.

13 If think that's what he's talking about. He wants to
14 be able to take action -- to have the information available to
15 take action on December 15th. Can we do that by December 15th?

16 MR. WEAR: I believe we can.

17 MR. SMEGAL: Well, I think, Mr. Wallace, my comments
18 encompass one other thing. That would be that Mr. Wear has
19 expedited this process and taken action in accordance with what
20 would appear to be proper conduct before December 15th so that
21 we don't have to do anything.

22 CHAIRMAN WALLACE: If he can, I'm sure he will. I

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1 think this is now a front-burner item, Mr. Wear. I think he
2 understands that.

3 MR. WEAR: Well, Mr. Chairman, it's already been a
4 front-burner item. We have been dealing with it here over the
5 last four or five weeks in addition to gathering documents that
6 Mr. Eaglin requested and doing a number of other things.

7 But it is a front-burner item. The staff has been
8 working on it and we may have some decisions prior to the
9 December 15th meeting.

10 CHAIRMAN WALLACE: All right. With that, let me
11 declare, unless anybody objects, that we have now resolved item
12 7, requests for emergency funding, and a full report will be
13 available at the next meeting.

14 What we have now --

15 MR. SMEGAL: Excuse me, Mr. Wallace. That means it
16 will be on the agenda at the next meeting so that I can bring a
17 motion that --

18 CHAIRMAN WALLACE: The report and action thereon at
19 the next meeting.

20 MR. SMEGAL: Thank you.

21 CHAIRMAN WALLACE: That's absolutely clear. That
22 means the only item left on the agenda is report and accounting

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1 of the pursuit of lobbying activities by Corporation's staff.

2 I've already ruled that no action has been ordered on
3 this one. I know there are members that want to listen to
4 everything that has been said, I think all members want to
5 listen to everything that is being said. Several members have
6 to get airplanes.

7 What I would like to do is to get general agreement
8 that there will be no action thereon taken on this report. This
9 will be available for action at the meeting of the 15th. If
10 anybody wants to try to overrule my ruling, when anybody leaves
11 the room, I want to, you know, speak now or forever hold your
12 peace. But if there is anything I can do to stop it, we ain't
13 going to have any action today. We will have action on December
14 15th.

15 I will ask unanimous consent that we agree that no
16 substantive action, no vote be taken on item agenda 6 today.
17 Does anybody dissent from that?

18 MR. SMEGAL: Mr. Wallace, a point of clarification.

19 CHAIRMAN WALLACE: I don't want you to fire the man
20 today.

21 MR. SMEGAL: No.

22 CHAIRMAN WALLACE: If you fire the man, let me know.

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1 (Laughter.)

2 MR. SMEGAL: So that I can fully appreciate how long I
3 have to stick around here to make my motion, when are you
4 leaving?

5 CHAIRMAN WALLACE: I'm here all weekend. I'm here to
6 hold court. But there are other people. We have an agenda item
7 at the next board meeting, performance appraisal and action
8 thereon. Now, if somebody is going to try to slip something
9 through tonight, I'm going to tell people to stay here.

10 My request is for unanimous consent that there be no
11 action taken on item 6 or any other action. I mean, Congress
12 does this all the time. You announce there ain't going to be
13 any votes and the chamber empties out.

14 (Laughter.)

15 CHAIRMAN WALLACE: I want to know, just like our
16 friends in Congress, are we going to take any votes tonight
17 because I know of at least two people who have 4:40 flights and
18 they would like to get to them, and Mr. Durant has a daughter
19 making a speech tonight which I imagine he would like to hear.

20 Now, we'll all be back on the 15th and we will take
21 whatever action is necessary. I ask unanimous consent that
22 there be no further votes taken today and then we can get into

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1 the report.

2 MR. EAGLIN: Mr. Wallace.

3 CHAIRMAN WALLACE: Yes?

4 MR. EAGLIN: I have to confess that I do plan to vote
5 to adjourn.

6 (Laughter.)

7 CHAIRMAN WALLACE: Exception note. If everybody goes
8 to the airport, I'll continue in the absence of a quorum. But
9 other than the adjournment vote, does anybody has anything that
10 they're going to put before us today?

11 (No audible response.)

12 CHAIRMAN WALLACE: Hearing no dissent, so ordered. I
13 encourage all members to stay here if they possibly can. There
14 will be, I predict, action on this two weeks hence and all
15 members need to be as informed as they possibly can when that
16 takes place.

17 So, I hope you can be here. But if I had a daughter
18 making a speech tonight, I'd be on my way to the airport too.

19 All right. With that encouragement, the next item on
20 the agenda is Report and Accounting of the Pursuit of Lobbying
21 Activities by Corporation Staff, Item 6. Mr. Wear is recognized
22 for the purpose of making his report.

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1 MR. EAGLIN: First of all, Mr. Wallace, you'll
2 remember you committed to me on --

3 CHAIRMAN WALLACE: I certainly did.

4 MR. EAGLIN: -- the scope of this.

5 CHAIRMAN WALLACE: I certainly did.

6 MR. EAGLIN: I'd like to tell you what I see as the
7 scope of it, if you want me to start that way.

8 CHAIRMAN WALLACE: All right. Please go ahead.

9 MR. EAGLIN: I agree with Mr. Uddo that we should deal
10 with McCollum-Stenholm and Mr. Wear's representations in the
11 name of the Corporation under this number 6. I'm also
12 indicating to you, if you recall earlier this year, my strong
13 objection to the June 10th, 1989 news release from this
14 Corporation that he contact person was under -- the presidency
15 of Mr. Wear with his authority and then criticized Senator
16 Rudman specifically.

17 Also, it seems to me -- I would characterize it as
18 insulting and I still feel it is that because it seemed to
19 accuse him of pulling back -- we'll handle that when we get to
20 this. It say on behalf of this Corporation. Now, if he
21 considers that by the appropriate action a breach of the
22 agreements Senator Rudman made in 1988, and vows to resist the

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1 chains. So I think that also should come under this Item Number
2 6 in addition to, of course, the matter of the nominees.

3 CHAIRMAN WALLACE: I will confess to all members of
4 the board that I have read number 6 as being limited to lobbying
5 activities by the Corporation's staff directed to the Executive
6 Branch. That was the fuss that started the ball rolling. You
7 would have what I assumed to be an exhaustive report on the
8 subject in front of you.

9 It never entered my mind that we were going to be
10 discussing the question of legislative lobbying here today.

11 I also confess that the agenda item makes no
12 distinction between Executive and Legislative.

13 MR. EAGLIN: McCollum did not either.

14 CHAIRMAN WALLACE: No, I realize that. McCollum did
15 not either. If I misinterpreted the call, that is my fault
16 because there isn't any adjective on there. It is lobbying
17 activities.

18 MR. EAGLIN: Right.

19 CHAIRMAN WALLACE: I would rule, and I do rule, that
20 all of this is properly before the board. However, I also would
21 say I'm not sure of how productive the inquiry is going to be
22 because it's apparent the staff considered it the same way I

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1 did, which is why you've got both on Executive lobbying and not
2 on Legislative lobbying.

3 So I will ask the president to what extent he is able
4 to respond to the two items that have been listed to us, the
5 letter regarding the McCollum-Stenholm amendment and the press
6 release regarding Senator Rudman. There may be others, but
7 let's start with those two. Is the president able to respond to
8 those questions today?

9 MR. WEAR: Mr. Chairman, I've had an opportunity to
10 look at a full copy of the letter to which Mr. Uddo referred.
11 Actually, it's still in this packet. The letter --

12 CHAIRMAN WALLACE: I'm not asking you to respond right
13 now. Can you respond?

14 MR. WEAR: I think that I can as to that.

15 CHAIRMAN WALLACE: All right. Let me ask you about
16 the Rudman press release.

17 MR. WEAR: I'm not sure what Mr. Eaglin is talking
18 about, but if he can identify it, perhaps I can --

19 CHAIRMAN WALLACE: He's obviously got a copy over
20 there. Can I see? Can the president see the copy of the Rudman
21 press release? He's not sure if he can answer it or whether he
22 can't.

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1 MR. EAGLIN: Sure.

2 MR. VALOIS: I'd like to know why Mr. Eaglin has that
3 and I don't.

4 MR. DURANT: Because you didn't bring your copy.

5 CHAIRMAN WALLACE: I got a copy of it. I remembered
6 at the time.

7 MR. VALOIS: -- and I wrote to him and Mr. Wear.

8 CHAIRMAN WALLACE: I remember it quite well, but it
9 was six months ago and I didn't think --

10 MR. WEAR: What's the date on it?

11 MR. EAGLIN: June 10th. It says Rudman Amendment
12 wipes LSC's mandate to compete grants.

13 MR. VALOIS: Is that it?

14 CHAIRMAN WALLACE: Oh, yeah, he's got it. Okay.

15 MR. EAGLIN: It's attached to one of my letters to
16 you.

17 CHAIRMAN WALLACE: Okay.

18 MR. VALOIS: Did you send me a copy of it though?

19 MR. EAGLIN: Isn't it in the package? Is that what
20 you're referring to, the package that was handed out today?

21 CHAIRMAN WALLACE: There is a package that was handed
22 out today but this is not that. Okay? Do you think you can

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1 respond to questions on that press release today?

2 MR. WEAR: If Mr. Eaglin wants to go through it, we'll
3 try to do it.

4 CHAIRMAN WALLACE: All right. We'll do the best we
5 can. I would suggest we deal with it on an ad hoc basis. If he
6 can answer the questions, we'll go into them. If he can't,
7 we'll leave it and take it up next time.

8 Now, we have before us the Executive lobbying, the
9 Rudman press release, we'll call it, and the Stenholm Amendment
10 letter. Before we get into questions, let me now defer to Mr.
11 Wear to make whatever report he wanted to make and then I'll
12 open to question.

13 MR. SMEGAL: Mr. Wallace, you just defined one of the
14 subject a little more narrowly than I would hope that it would
15 be defined. Now, I want to review the McCollum-Stenholm
16 Amendments much more broadly than that letter.

17 CHAIRMAN WALLACE: I have said to you that I'll rule
18 on that -- I'm not sure I can even rule on it -- I mean, it's
19 within the scope of the call. If he can answer them, he'll have
20 to answer them. If he can't answer them, we're not going to be
21 able to get answers.

22 MR. SMEGAL: I fully expect this matter to continue to

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1 December 15 and I'm satisfied that I'll have an opportunity on
2 December 15 to proceed on this matter. I just wanted to make
3 sure you're not foreclosing me because I'm going to have to
4 leave shortly after our junior senator from Michigan leaves.

5 CHAIRMAN WALLACE: Should that blissful day ever --
6 (Laughter.)

7 CHAIRMAN WALLACE: I am not attempting to foreclose.
8 I have ruled it's within the scope of the agenda. I'm just
9 telling everybody I don't know how useful we'll be able to get
10 into it since the witness is not prepared on the subject.

11 MR. SMEGAL: No, I'm not --

12 CHAIRMAN WALLACE: I'm not trying to foreclose on
13 anybody.

14 MR. SMEGAL: -- disputing anything you said. I just
15 want you to understand that when you say McCollum-Stenholm I
16 think a little more broadly than the --

17 CHAIRMAN WALLACE: Oh, absolutely. As a matter of
18 fact, if we get off the table, you're going to get to vote on
19 the McCollum-Stenholm next week because that's within the scope
20 of Mr. Valois' motion which was laid on the table today by a six
21 to four vote.

22 So, with that let me ask Mr. Wear to make his report.

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1 MR. WEAR: Mr. Chairman, the board members have a
2 second red binder, the first page of which is labeled "Materials
3 Reflecting Corporation Activity in Connection with Potential
4 Nominations to the Corporation's Board of Directors."

5 In the first few pages of that material, Mr. Chairman,
6 you will find a copy of a memorandum dealing with Freedom of
7 Information Act issues as they relate to resumes. The gist of
8 that memorandum and the material attached to it explains that
9 resumes of potential nominees are not subject to Freedom of
10 Information Act in terms of disclosure. In fact, those nominees
11 have specific privacy interests in those resumes.

12 So, the material contained in this volume does not
13 contain any resumes. To the extent that a specific candidate
14 was mentioned in any of the correspondence, either
15 correspondence from that particular individual or correspondence
16 from third parties about him or her, those names and other
17 identifying data have been deleted.

18 With that in mind, Mr. Chairman, I believe the volume
19 shows those particular notes or memoranda or letters dealing
20 with this question generally. I would say that again in the
21 fall of 1988 various board members came to me --

22 MR. UDDO: Excuse me just a second. I saw Mr. Wooten

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1 leaving with his jacket. Is he not going to be here for this
2 part of the meeting?

3 MR. SMEGAL: He just left.

4 MR. UDDO: Oh, okay.

5 MR. SMEGAL: That was Wooten. Yeah, Wooten just left.

6 MR. UDDO: I know. I just wanted to know if he's
7 going to be here for this part of the meeting.

8 MR. WEAR: I think he'll be back. I take it you have
9 some questions you want to ask him.

10 MR. UDDO: Yes.

11 MR. WEAR: I see that.

12 (Laughter.)

13 CHAIRMAN WALLACE: If some member of the staff would
14 attempt to inform Mr. Wooten of that, I'd appreciate it.

15 All right. Go ahead.

16 MR. WEAR: Thank you, Mr. Chairman. As I was saying,
17 in the fall of 1988 certain members of the Board of
18 Directors came to me and asked whether or not the staff,
19 together with members of the board and people on the Hill, could
20 develop a list of potential nominees to the board.

21 The board was concerned that -- or, I should say those
22 members who came to me were concerned that their efforts with

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1 reform of the Legal Services Program would not be continued
2 unless a board member sympathetic to the reform of this program
3 were appointed.

4 I looked at the issue. I spent about four days
5 examining the legal questions associated with it and ultimately
6 determined that there was no legal impediment to conducting that
7 activity with those board members and members on the Hill.

8 The general instructions that I received were that I
9 should attempt to talk with those Members of Congress who have
10 been supportive of reform of this program to see whether or not
11 they had any suggestions for potential board members. I began
12 to do that, along with certain other members of the staff.
13 Those Members of Congress came up, some of them with names, some
14 of them suggested other people to talk to. Some of them
15 suggested people who were generally were such candidates.

16 With that in mind the search began and the candidates
17 were referred to two Members of Congress. Some of them were
18 referred to me in general. Those Members of Congress who had
19 candidates asked whether or not it was essentially the judgment
20 as to whether or not these people will be good candidates.
21 Usually those decisions are made by the Members of Congress.
22 They also asked that other third parties get involved in this

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1 search for talent and those third parties were subsequently
2 brought into this.

3 Ultimately Senator Coats sent a list of individuals to
4 the President that were recommended by he. My recollection is
5 also Senator Armstrong, Senator Gramm, and Senator Thurmond,
6 Senator Helms, Congressman Hyde and perhaps others also
7 recommended these candidates and the White House began to review
8 them.

9 The staff did talk with third parties about this, and
10 those third parties did speak with members of the White House
11 staff about candidates, bringing people to their attention. As
12 I said earlier, I determined at the outset that there was no
13 legal impediment to doing this and given the fact that certain
14 of the board members had devoted and expended substantial
15 amounts of time and energy to reforming this program, I felt
16 that their request was proper and that it should be carried out.

17 Mr. Chairman, if there are any questions, I am
18 prepared to try to respond.

19 CHAIRMAN WALLACE: Questions of President Wear? Mr.
20 Eaglin.

21 MR. EAGLIN: Mr. Wear, which of the board members are
22 involved at the beginning of this project? Which ones were

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1 involved?

2 MR. WEAR: Mr. Eaglin, my recollection is that the
3 board members generally were the same group that was involved
4 with the other question. My recollection is that it was
5 discussed with Mr. Durant, Mr. Valois, Mrs. Swafford, Mr.
6 Wallace, Mr. Mendez and Mrs. Bernstein.

7 MR. EAGLIN: Wasn't she off the board by that time?
8 When did this project begin then, the lobbying?

9 MR. WEAR: The identification of these candidates
10 began last fall prior to her departure.

11 MR. EAGLIN: So are you saying that at that time all
12 six whose names you just gave us knew about the project?

13 MR. WEAR: I think that all six became aware of it
14 during the first two months of the attempt to identify
15 candidates.

16 MR. EAGLIN: So then, if I understand what has been
17 said during all of today, I was not told about this project
18 because you knew my views and because you knew my views you knew
19 that I would not be interested in having my view perpetuated by
20 like-minded board members.

21 MR. WEAR: Again, Mr. Eaglin, these board members came
22 to me with a specific request. Those board members, if they

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1 choose to do so, are perfectly capable of explaining to you or
2 telling you about it.

3 My thought is the same as the thought I gave you
4 earlier, that had you known about it you would attempt to
5 sabotage it.

6 MR. EAGLIN: Well, how would I sabotage it if my
7 effort is to have persons like-minded to me to be nominated?
8 How am I sabotaging their effort?

9 MR. WEAR: What you would do, or what I would do if I
10 were in your shoes, would be to take the names to the press and
11 to try to denigrate those potential nominees in the press. I
12 think indeed that is what has happened, at least in some cases.

13 MR. EAGLIN: So then, as you began to work on this, as
14 you began this effort, then, you contacted, you said, third
15 parties. By that you mean persons in Congress and the Senate?

16 MR. WEAR: That is where the search began, yes, with
17 people in the House and Senate.

18 MR. EAGLIN: Where did the search continue from the
19 House and the Senate?

20 MR. WEAR: Those Members of Congress oftentimes
21 suggested others who might know of additional candidates, and
22 they suggested that I go to them to try to see whether or not

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1 their impression was correct.

2 MR. EAGLIN: You did that?

3 MR. WEAR: Yes, I did.

4 MR. EAGLIN: How many --

5 MR. WEAR: Again, at the request of those Members of
6 Congress who had asked that that be done.

7 MR. EAGLIN: Those Members of Congress and then also
8 initially, or at the outset, then, at the request of members of
9 the board?

10 MR. WEAR: Yes, that's correct.

11 MR. EAGLIN: How many persons did you contact based on
12 these recommendations? I can't tell from this volume, by the
13 way, because you all may not know this, but there are black
14 marks throughout this.

15 MR. WEAR: Oh, I know that, Mr. Eaglin. I'm the one
16 who directed that they be put in that volume.

17 MR. EAGLIN: I understand that. So I need to know and
18 I'd like to know how many persons were on this pool, if you want
19 to call it that, of prospects?

20 MR. WEAR: My recollection is that approximately 50 to
21 60 people were brought in to this effort for potential
22 candidates.

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1 MR. EAGLIN: Like-minded to those who are members of
2 this board?

3 MR. WEAR: Again, the purpose, Mr. Eaglin, was to
4 locate individuals who were interested in reforming the Legal
5 Services Program to try to get the program directed to helping
6 the poor rather than the specific causes of certain individuals
7 involved in --

8 CHAIRMAN WALLACE: I have tried to tell everybody to
9 say off the politics. Let's talk facts. The purpose was to
10 identify people who supported the majority position. Let's not
11 try to characterize each other's position or we'll never get out
12 of here.

13 MR. WEAR: Thank you, Mr. Chairman.

14 MR. EAGLIN: As you continued in this effort, did you
15 learn of efforts of other groups or persons to advocate
16 candidates?

17 MR. WEAR: Yes, I did.

18 MR. EAGLIN: Did your effort include any activities in
19 response to the efforts of the other groups?

20 MR. WEAR: Well, I'm not sure what you mean. I
21 thought what you were talking about was did I know that the
22 American Bar Association and others were also recruiting

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1 candidates. The answer to that question is yes.

2 MR. EAGLIN: Okay. As you learned of other
3 candidates, names or prospects being advocated by other groups
4 or individuals, did you determine that some would not be
5 acceptable to the view of the board members for whom you were
6 working?

7 MR. WEAR: No, not to my knowledge or not to my
8 recollection.

9 MR. EAGLIN: Did any of your effort with respect to
10 lobbying with respect to nominees for the board include efforts
11 to work against the nomination of any individual or individuals?

12 MR. WEAR: Yes, I believe it did.

13 MR. EAGLIN: How many persons did you work against?

14 MR. WEAR: I can recall one individual.

15 MR. EAGLIN: You worked against one individual?

16 MR. WEAR: Uh-huh.

17 MR. EAGLIN: Who was that person?

18 MR. WEAR: A candidate for the board.

19 MR. EAGLIN: What was the name of the person who was
20 the candidate for the board?

21 MR. WEAR: Again, Mr. Eaglin, that individual's name
22 is private.

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1 MR. EAGLIN: What did you do?

2 MR. WEAR: My recollection is we talked with Members
3 of Congress about the individual and they made a decision as to
4 whether or not the individual was a good candidate for the
5 board.

6 MR. EAGLIN: How many Members of Congress made the
7 decision that this one candidate was not a good prospect for the
8 board?

9 MR. WEAR: I don't recall. Usually those things are
10 done collectively, Mr. Eaglin. I suspect that a number of them
11 were involved.

12 MR. EAGLIN: At what point did you realize that you
13 had a collection of Members of Congress who were against this
14 one person?

15 MR. WEAR: Well, it's not that I had a collection of
16 Members of Congress who were against the individual, Mr. Eaglin.
17 A number of people who were interested in the reform of this
18 program talked to Members of Congress. Those Members of
19 Congress then decided that this person was not someone that they
20 felt should be on the board.

21 MR. EAGLIN: How did you learn that they were against
22 it?

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1 MR. WEAR: I think that they told me that.

2 MR. EAGLIN: Members of Congress told you that or
3 these third parties who contacted Members of Congress? Who told
4 you?

5 MR. WEAR: I think it came from both.

6 MR. EAGLIN: From both. Okay. Once you learned that,
7 what efforts did you take to work against that person's
8 nomination?

9 MR. WEAR: I think that really that was about it. I
10 just talked to Members of Congress about the individual. I
11 don't recall anything further.

12 MR. EAGLIN: Did you send any letters concerning this
13 nominee or this prospect, rather?

14 MR. WEAR: I don't believe so.

15 MR. EAGLIN: You made phone calls?

16 MR. WEAR: As I said, we talked to Members of Congress
17 about the individual. I don't recall anything beyond that.

18 MR. EAGLIN: How would you characterize the success or
19 failure of your efforts with respect to that prospect against
20 whose nomination you worked?

21 MR. WEAR: I don't know that I'd characterize it.

22 MR. EAGLIN: You don't know whether you succeeded or

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1 failed yet on that person's nomination?

2 MR. WEAR: I know that the Members of Congress decided
3 that one individual was not someone that they wanted to support.

4 MR. EAGLIN: Is that a majority of Congress, by the
5 way, a majority of the Senators who took that view?

6 MR. WEAR: I don't know how many took that view, Mr.
7 Eaglin.

8 MR. EAGLIN: How many Members of Congress did you work
9 with in this effort?

10 MR. WEAR: Oh, I would say probably 25 or 30.

11 MR. EAGLIN: Okay. So it was not a majority of the
12 Senate by any means.

13 MR. WEAR: No, no. No.

14 MR. EAGLIN: So, with that response from some Members
15 of Congress, then, you worked against this one member? You
16 worked against no other person than that one prospect? Is that
17 right?

18 MR. WEAR: Not that I recall.

19 MR. EAGLIN: Did anybody else, a member of our staff,
20 work against a prospect?

21 MR. WEAR: Not that I am aware of.

22 MR. EAGLIN: Have you asked any members of the staff

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1 about any efforts that they have made against any prospect for
2 the board?

3 MR. WEAR: Mr. Eaglin, for better or for worse I'm the
4 president of the Corporation and as best I know, I know what the
5 staff is doing. I have no reason to think that I don't know
6 what staff has done with regard to this effort.

7 MR. EAGLIN: So then the candidates for whom you
8 worked -- or, prospects, rather -- numbered 50 or 60?

9 MR. WEAR: I believe that 50 or 60 were brought into
10 this process.

11 MR. EAGLIN: How did the process unfold once you had
12 this -- let's just call it a pool of names or prospects?

13 MR. WEAR: Those names were sent to Members of
14 Congress and they decided which ones remained in the pool.

15 MR. EAGLIN: Oh, I must have misunderstood. I thought
16 these names came from Members of Congress. Isn't that right?

17 MR. WEAR: Well, some of them did, yes. But the
18 process is you collect the names and give them back to the
19 members and they decide which of those are staying in.

20 MR. EAGLIN: So you had basically then, it seems, a
21 group of Congressmen each individually giving names which then
22 created a pool. The pool was then resubmitted to all of the

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1 members of the -- the Congressmen, that it, then so to speak,
2 passed on to blackball candidates? Is that how it goes?

3 MR. WEAR: In general those Member of Congress that
4 reviewed these candidates and there was collective judgment made
5 as to who should be the principal candidates for appointment.

6 MR. EAGLIN: Are any of those principal candidates for
7 appointment members of this board now?

8 MR. WEAR: I think that's accurate, yes.

9 MR. EAGLIN: How many and what are their names?

10 MR. WEAR: Again, I'm not going to identify those
11 names.

12 MR. EAGLIN: Why is that private?

13 MR. WEAR: The memorandum --

14 MR. EAGLIN: I saw that. I saw that.

15 MR. WEAR: -- potential nominees and the disclosure of
16 --

17 MR. EAGLIN: They're already on this board, though.

18 MR. WEAR: -- the identities of -- yes, but their
19 identities haven't been disclosed as potential nominees.

20 MR. EAGLIN: So you can't tell us now which members of
21 this board you were working for?

22 MR. WEAR: My statement, Mr. Eaglin, was that I was

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1 not going to do that, based on the memorandum.

2 MR. EAGLIN: How many present members of this board
3 did you work for?

4 MR. WEAR: I believe three.

5 MR. EAGLIN: Okay. As you worked on this pool, how
6 small did the pool get? You were eliminating persons -- well,
7 were you eliminating some or did the elimination take place on
8 the hill or did it take place among some members of the third
9 party?

10 MR. WEAR: The eliminations generally were made by the
11 people on the hill with input from third parties.

12 MR. EAGLIN: Generally? Well, were there any
13 occasions on which you or the members of the staff of LSC
14 accomplished an elimination?

15 MR. WEAR: Not that I recall.

16 MR. EAGLIN: Except with respect to one board member--
17 - one prospect, rather?

18 MR. WEAR: Well, again, I'm not sure that's accurate
19 either, Mr. Eaglin. As I told you, we talked to individuals on
20 the Hill about that nominee and they decided that they did not
21 want to support that potential nominee.

22 MR. EAGLIN: How narrow did the pool become?

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1 MR. WEAR: My recollection is that there were 11
2 individuals in the pool and later it was expanded.

3 MR. EAGLIN: To what? To what number?

4 MR. WEAR: I don't recall.

5 MR. EAGLIN: Well, did it go back up to 50 or 60?

6 MR. WEAR: I don't think so.

7 MR. EAGLIN: Did it exceed 20?

8 MR. WEAR: I'm not sure.

9 MR. EAGLIN: Has the effort stopped?

10 MR. WEAR: I would say no. We continue to talk to
11 people on the Hill about these appointments.

12 MR. EAGLIN: Who does?

13 MR. WEAR: I do.

14 MR. EAGLIN: Who else?

15 MR. WEAR: Mr. Wooten.

16 MR. EAGLIN: Anybody else?

17 MR. WEAR: No, I don't think so.

18 MR. EAGLIN: How much of your time weekly is taken up
19 with this effort now?

20 MR. WEAR: Mr. Eaglin, I think I spend more time
21 trying to work between the various board members the time for
22 this meeting than I've spent on that whole project.

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1 MR. EAGLIN: Since I don't know how much time it took
2 you to do that, please tell me how much time it took you.

3 MR. WEAR: It's taken me a small amount of my time on
4 this particular project. That project had been spread over
5 approximately longer than a year now.

6 The time I spent on arranging this board meeting and
7 trying to work out differences between board members over the
8 last three months has been quite extensive.

9 MR. EAGLIN: Well, I see an extensive number of hand-
10 written notes by you, Mr. Wear. It seems that you've taken up a
11 tremendous amount of time writing notes in your efforts on
12 behalf of prospects.

13 MR. WEAR: The hand-written notes to which you refer
14 took the amount of time that it takes to write them. I doubt
15 the notes took more than an hour and a half.

16 MR. EAGLIN: So, you took no time for reflection
17 beforehand or conversations beforehand, or afterwards for that
18 matter, with respect to the nominees who -- or, rather the
19 prospects whose nominations you're advocating as reflected in
20 these notes?

21 MR. WEAR: Mr. Eaglin, can you refer me specifically
22 to the note that you --

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1 MR. EAGLIN: I'm not referring to one note. I'm
2 referring to a -- I can just flip the pages here and see your
3 handwriting. It's throughout the larger volume. There are a
4 number of handwritten notes by you.

5 MR. WEAR: All right. Mr. Eaglin, I'm looking at page
6 47 of the volume.

7 MR. EAGLIN: All right. That's fine.

8 MR. WEAR: The one that you referred to.

9 MR. EAGLIN: But there is one just after that, and
10 after that, and after that. Lots of notes.

11 MR. WEAR: Yes, yes. Well, those --

12 MR. EAGLIN: You were taking a lot of time in this
13 effort, weren't you?

14 MR. WEAR: No. In fact, I was not. What this was,
15 was that these notes went with the letter that shows up on page
16 44. These were informational copies to these various
17 individuals.

18 MR. VALOIS: Mr. Chairman, I have some questions of
19 Mr. Wear.

20 CHAIRMAN WALLACE: All right, I will get to you.
21 Let's take one question at a time, if we can.

22 Mr. Eaglin, finish.

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1 MR. EAGLIN: I'm willing to yield to him for now if he
2 wants to ask a question now.

3 CHAIRMAN WALLACE: All right. The gentleman from
4 North Carolina yields to the gentleman from North Carolina, Mr.
5 Valois.

6 MR. VALOIS: Thank you. I notice in this larger
7 volume there is something here from -- and I've lost the place
8 here -- from Mr. Raven of the American Bar Association. Do you
9 know whether or not Mr. Raven submitted a list of candidates?

10 MR. WEAR: Yes, I do. It's my --

11 MR. EAGLIN: Is it 138, Bob?

12 MR. WEAR: -- knowledge he did.

13 MR. VALOIS: Do you have any idea how many people were
14 on that list?

15 MR. WEAR: My recollection is there were about 50 or
16 60.

17 MR. VALOIS: Was any present member of this board on
18 that list?

19 MR. WEAR: Not to my recollection.

20 MR. VALOIS: Did Mr. Raven call you up and ask you
21 anything about the necessary qualifications for members of the
22 board or what it took to actually serve and what kind of

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1 knowledge they needed, and whether or not any of those people
2 had any commitment to representation of poor people?

3 MR. WEAR: No, he did not.

4 MR. VALOIS: Were there any other groups to your
5 knowledge that submitted lists of proposed nominees? Any groups
6 that we deal with, for instance?

7 MR. WEAR: It's my understanding that the list
8 submitted by Mr. Raven contained those nominees submitted by the
9 legal services grantees of this corporation.

10 MR. VALOIS: Were there other Congressmen or Senators,
11 to your knowledge, that submitted any names to the White House?

12 MR. WEAR: Oh, yes.

13 MR. VALOIS: Did all of those Senators or Congressmen,
14 or any of them, for that matter, call you up to see if those
15 folks were qualified to serve in your opinion?

16 MR. WEAR: I did receive letters from some of them,
17 Mr. Valois, on that subject.

18 MR. VALOIS: But not all of them?

19 MR. WEAR: No.

20 MR. VALOIS: Are you a member of the ABA?

21 MR. WEAR: I -- I --

22 MR. VALOIS: You don't have to answer that if you

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1 don't want to.

2 MR. WEAR: No, let me answer that. I'm going to tell
3 you what the situation is. I have discontinued my membership
4 with the ABA. I was a member for several years. But as of this
5 July I've discontinued it. The American Bar Association in my
6 view does not represent my views on a number of things,
7 including Legal Services.

8 MR. VALOIS: Well, I'm a member of the ABA, whether
9 that's smart or not smart, I'll leave to others to judge. But I
10 can tell you that Mr. Raven didn't call me up and Mr. Chovan,
11 who I think is the present president of the ABA, misrepresented
12 my views in public and didn't call me up to find out what they
13 were in advance. I've written Mr. Chovan
14 -- I think his name is Stanley -- and he hasn't responded yet.

15 CHAIRMAN WALLACE: Is the gentleman from North
16 Carolina finished?

17 MR. VALOIS: For the moment.

18 CHAIRMAN WALLACE: If the other gentleman from North
19 Carolina will yield to me for one question.

20 MR. EAGLIN: I don't want to take up all the time.

21 CHAIRMAN WALLACE: Okay.

22 MR. EAGLIN: I'll be a gentleman.

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1 CHAIRMAN WALLACE: Do programs use appropriated legal
2 services funds to pay dues to the ABA?

3 MR. WEAR: Yes, they do.

4 CHAIRMAN WALLACE: Do you know how much in the course
5 the year of the taxpayer's dollars go to the ABA that way?

6 MR. WEAR: My understanding is that the amount is
7 approximately \$400,000 a year.

8 CHAIRMAN WALLACE: Does the ABA segregate the funds it
9 receives in political and non-political accounts?

10 MR. WEAR: Not to my knowledge.

11 CHAIRMAN WALLACE: All right. Thank you for yielding.
12 I return the floor to Mr. Eaglin for his questions.

13 MR. EAGLIN: We were talking about how the field had
14 narrowed over time. It had reached a point of constriction and
15 then began to expand. Why did it expand?

16 MR. WEAR: I think that it was the feeling of members
17 on the Hill that additional candidates should be submitted.

18 MR. EAGLIN: Once it expended then, to what number did
19 it expand?

20 MR. WEAR: I don't recall.

21 MR. EAGLIN: Was there, to your knowledge, something
22 different about the characteristic of this group that brought

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1 about the expansion from the 11 that you had mentioned?

2 MR. WEAR: I beg your pardon?

3 MR. EAGLIN: Were the Members of Congress looking for
4 something different when they caused the deal to expand from 11
5 to whatever number it went to?

6 MR. WEAR: I'm not sure what their motivation was on
7 that.

8 MR. EAGLIN: Were you aware of the identities of the
9 persons whose prospective nominations caused the expansion?

10 MR. WEAR: Again, I don't know why it was expanded
11 other than the Members of Congress talked to me about that.

12 MR. EAGLIN: But are you aware of the identities of
13 those persons whose nomination prospects brought about that
14 expansion?

15 MR. WEAR: I don't recall at this moment.

16 MR. EAGLIN: Did they ask you your views on these
17 prospects?

18 MR. WEAR: From time to time.

19 MR. EAGLIN: So, you did engage in discussions about
20 the names and the backgrounds of these persons who brought about
21 the expansion of the pool from 11 back up to whatever number it
22 went to.

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1 MR. WEAR: Again, from time to time these Members of
2 Congress or their staffs would consult with me on it.

3 MR. EAGLIN: All right. Since the effort is still
4 continuing, what's the size of the pool now?

5 MR. EAGLIN: I don't know. Mr. Eaglin, one thing that
6 you need to understand -- and to my knowledge you haven't been
7 on the Hill -- is that Hill people have a mind of their own.
8 They do whatever they're going to do and it's not something that
9 I or anyone else can control. They don't always coordinate with
10 me or anyone else to my knowledge.

11 MR. EAGLIN: So even the ones who were submitting
12 nominations to you for whose efforts you were working did not
13 consult with you at times, did not check with you at times?
14 Just like the ones Mr. Valois was asking you about.

15 MR. WEAR: I think that's generally --

16 MR. EAGLIN: I mean, they acted similarly.

17 MR. WEAR: Well, I think that you know this but it may
18 not be clear on the record. Mr. Raven has never consulted with
19 anyone at the Corporation to my knowledge about the nominees
20 that he forwarded to the White House. I do know that one of the
21 Member of Congress wrote him a letter and asked him about it and
22 to my knowledge he has not responded.

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1 MR. VALOIS: He didn't consult with me, by the way,
2 and I'm a member.

3 MR. WEAR: No -- well, again, Mr. Valois, the point
4 about it, I guess, is that I don't think the ABA consulted their
5 membership on it. I think that a certain group of people within
6 the ABA put together a list and sent it to the White House. I
7 think it's as simple as that.

8 MR. EAGLIN: Should Mr. Raven have consulted you?

9 MR. WEAR: Well, that's up to him, I guess. I think
10 he could choose to if he wanted to, and he could choose not to.

11 MR. EAGLIN: So, in saying that he did not are you
12 trying to characterize that in some way as being improper or
13 wrongful that he did not contact you?

14 MR. WEAR: I point out the fact. That's all.

15 MR. EAGLIN: That's what I want to understand. You
16 are stating that as a fact, not that you're trying to say
17 that he should have or trying to characterize it.

18 MR. VALOIS: Now, I think he should have, if that's
19 worth anything to you. He should have and I think it's wrongful
20 that he didn't.

21 MR. EAGLIN: Why should he have?

22 MR. VALOIS: Because the president of the Legal

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1 Services Corporation has a great deal of knowledge about what it
2 takes to be a suitable board member.

3 MR. EAGLIN: Do I, Bob? I'm a member of the board.

4 MR. VALOIS: Do you? Yes, I think you do.

5 MR. EAGLIN: So, I should have --

6 MR. VALOIS: But did Mr. Raven consult you?

7 MR. EAGLIN: No. I'm much more interested in whether
8 the president of this Corporation or whether the other board
9 members who knew about this consulted with me.

10 MR. VALOIS: Have you made any recommendations, Paul?

11 MR. EAGLIN: I've stated my position, that I don't
12 think that this board should recommend anybody.

13 MR. VALOIS: Now, that's not --

14 MR. EAGLIN: And I have not.

15 MR. VALOIS: That's not what I asked you, though.

16 MR. EAGLIN: I just told you. I have not. I'm
17 expanding what I'm saying by saying that it is my view that we
18 should not advocate to the president nominees to succeed us.

19 MR. VALOIS: Well, you're entitled to your opinion.

20 MR. EAGLIN: All right. But I also want to point out
21 to that if you think Mr. Raven had some obligation to consult
22 with Mr. Wear, that I think that I certainly have a much

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1 stronger entitlement to be consulted and to be informed by Mr.
2 Wear, and by your or Mr. Hall, or any board member who knew
3 about these lobbying activities on behalf of certain prospects.

4 MR. WEAR: Mr. Eaglin, if I may interject just a
5 moment. What I and Mr. Wooten did on this was to provide
6 technical assistance to the people on the Hill who were trying
7 to come up with a group of people who would continue to perform
8 this Legal Services Program.

9 We talked with them, we helped them. We gave them, I
10 guess, advise as to what the technical requirements were. That
11 no more six members, for example, can be from the President's
12 party, at least six must be attorneys. That sort of thing in
13 addition to helping them with regard to locating candidates.

14 It's the same sort of thing that other entities do to
15 work with Members of Congress. The people who were driving this
16 were the Members of Congress and not the staff of the
17 Corporation.

18 MR. EAGLIN: Mr. Wear, there are a number of notes in
19 here from you that are more than technical in their content.
20 There are reflections on persons. There is a mention of liberal
21 views or conservative views and so forth. So, I don't think it
22 was entirely technical from reading -- I haven't had a chance to

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1 read all of this, as I pointed out, but these notes are not
2 technical in their nature.

3 MR. WEAR: Well, I think that they mainly are, Mr.
4 Eaglin.

5 MR. EAGLIN: You responded then, as you said, to a
6 request from members of this board and then from Members of
7 Congress. As I pointed out to you on November the 10th when you
8 first related the outlines of this in much less detail than what
9 you're talking today, I told you that it reminded me very much
10 of the case that we had been briefed about for some time when we
11 became members of this board because it resulted in litigation.

12 That was the matter of Mr. Gilbert out at Denver and
13 Mr. Newman at our Northeast Regional area. Particularly
14 focusing on Mr. Newman, part of the reason for his dismissal was
15 his permitting a subordinate to write a letter of recommendation
16 for a judicial prospect. The Corporation took the position at
17 that time, before Congress, that it was a violation of 1608 in
18 that it linked to that effort Corporation resources and
19 identified the Corporation with that effort.

20 How as your effort different with respect to the
21 lobbying for these prospects?

22 MR. WEAR: I would say this, Mr. Eaglin. The

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1 Corporation's position was reflected in the pleadings in that
2 action. In the pleadings in that action which were submitted
3 after the testimony on the Hill, the Corporation did not take a
4 position that writing a letter was violative of the Act. To the
5 extent that the Corporation relied on that letter, it was a very
6 small reliance.

7 Mr. Newman and Mr. Gilbert were fired because they
8 were not forthcoming as to their actions with regard to the
9 programs operating in their regions.

10 CHAIRMAN WALLACE: Time out. We've been sued over
11 this once. Let's talk about the law, if we possibly can, and
12 maybe we can't talk about it without characterizing some of the
13 facts in the case. But I want to be very careful.

14 Let's talk about legal distinctions between working
15 for candidates in state office and involvement and working for
16 candidates for this office, this Corporation. Let's try real
17 hard not to reopen a lawsuit that's already over, if we possibly
18 can help it.

19 MR. EAGLIN: But let's call it a prospect for a
20 judicial nomination. We refer to these as prospects for
21 nomination.

22 CHAIRMAN WALLACE: That's fine. That's fine. To me

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1 the distinction -- and I don't know whether it's a distinction
2 with a legal indifference or not -- I tried to stay out of this,
3 but I'm afraid when we start characterizing individuals that
4 aren't here, we get into exactly the problems -- all these black
5 marks -- that I'm foreclose.

6 The practical distinction is that what Mr. Wear has
7 done involves the Corporation itself, who is going to sit on the
8 board. What these gentlemen in New England apparently did
9 involved individuals who did not and would not have any
10 connection with the Corporation.

11 I don't know whether that's a feeble distinction or
12 not, but it's certainly a practical distinction between the two
13 cases. I'm not trying to cut you off but I'm trying not to
14 reopen the can of worms with Mr. Newman and Mr. Gilbert if we
15 can help it.

16 MR. EAGLIN: Well, of course, my view is different
17 than yours.

18 CHAIRMAN WALLACE: I understand that.

19 MR. EAGLIN: I realize I've been taking a lot of time
20 so why don't I just hold up right now. I'm sure others have
21 questions too.

22 CHAIRMAN WALLACE: All right.

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1 MR. WEAR: Mr. Chairman, if I may, let me attempt to
2 amplify my answer.

3 MR. EAGLIN: Maybe it's better not to. I think you
4 were trying to get him not to.

5 CHAIRMAN WALLACE: That's what I was trying to do.

6 MR. WEAR: No, I think that this will be -- the
7 responses that were filed in the action by the Corporation do
8 not characterize the letter in the manner that Mr. Eaglin leaves
9 it. The Corporation's pleading at that time characterized it in
10 a manner that I laid it out. I wasn't attempting to state,
11 other than what the pleadings said at that time.

12 I think your factual distinction is certainly a good
13 one. It's clear from the record -- and Mr. Shea has examined
14 that record and has portions of it that are available to any of
15 the board members that want to look at it -- that the purpose
16 for the determination is as I stated it.

17 To the extent that the Corporation relied on the
18 letter, the Corporation would have been in error because the
19 writing of a letter for this judicial appointment is not
20 prohibited under the so-called Little Hatch Act which is the
21 basis for the 1612 provision in our regulations.

22 CHAIRMAN WALLACE: All right. Mr. Eaglin has deferred

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1 to other members of the board. Are there other members of the
2 board with questions for Mr. Wear?

3 MR. UDDO: Yes, I have some questions, Mr. Chairman.

4 CHAIRMAN WALLACE: Mr. Uddo.

5 MR. UDDO: Terry, if I understand what you said about
6 the outset of how this project got started, I guess it would be
7 fair to characterize it as a project that was undertaken without
8 authority in the sense that there was never any board meeting
9 vote or mandate to do this.

10 MR. WEAR: Mr. Uddo, the project was undertaken as I
11 stated it. Several board members came to me informally and
12 indicated that they felt that they had spent a lot of time
13 trying to reform this program and that they would prefer not to
14 see that effort -- I believe as one characterized it -- go down
15 the drain.

16 That is how the effort got started. We then talked
17 with Members of Congress and provided them technical assistance
18 on this effort.

19 MR. UDDO: All right. But as I understand it -- I
20 mean, as a Corporation subject to D.C. corporation law, this
21 board can only function in a formal official capacity. I mean,
22 it has to have a duly noticed board meeting and take a vote

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1 before it can act and establish policy for the corporation.

2 So, the fact that you got an informal request to do
3 something doesn't substitute for formal action by the board,
4 does it?

5 CHAIRMAN WALLACE: The premise of your question being
6 that formal action by the board is a matter of District Columbia
7 law would be necessary for what it is that he's testified that
8 he's done?

9 MR. VALOIS: That's the premise of my question.

10 CHAIRMAN WALLACE: That's the premise of your
11 question. Okay. Recognizing the premise and not being a D.C.
12 lawyer, and not being in a position to rule on whether that's
13 correct or not, I'll let the witness testify.

14 MR. UDDO: Well, we can forget about D.C. law.
15 Corporation law generally -- I mean, if something is going to be
16 done in the name of a corporation, I would assume that it would
17 have to be based on some sort of decision of the board as the
18 body that sets the policy for the corporation.

19 MR. VALOIS: I don't think you can assume that.

20 MR. UDDO: I think it's a very safe assumption that
21 you can't speak in the name of the corporation unless there is
22 some authorization to speak in the name of the corporation. I

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1 mean, I don't think Terry can decide what the corporation --

2 MR. VALOIS: All right. That's different from what
3 you said.

4 MR. UDDO: Okay. But to that extent I am correct. I
5 mean, there was never any formal action taken by the board to
6 empower you to speak on behalf of the Corporation saying these
7 are the people that the Corporation would like to see appointed.

8 MR. WEAR: I believe that's accurate, Mr. Uddo. But
9 the statute under which the Corporation operates also gives the
10 president substantial discretion for responding to individual
11 board member's request and for dealing with those requests, and
12 I did not feel that this request was out of line.

13 MR. UDDO: You're saying the request of board members
14 or the requests of Members of Congress?

15 MR. WEAR: Well, either one, Mr. Uddo. In other
16 words, if board members bring things to my attention, as Mr.
17 Smegal has in the past, I can act on those things or not act on
18 them without a board resolution or a board action.

19 The statute gives the president substantial discretion
20 to deal with those issues and also to work with Members of
21 Congress.

22 MR. UDDO: Does the statute give you the authority to

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1 say that the Corporation endorses this particular group of
2 people for appointment to the board or this particular
3 legislative policy which has never come before the board?

4 MR. WEAR: To the extent I think, Mr. Uddo, that the
5 policy in question or the activity in question fits within what
6 the board has tried to do in the past, I believe I have that
7 ability, yes.

8 In other words, if the board, for example -- and in
9 this example I would say that if a majority of the board has
10 been interested in this reform effort and they have taken
11 specific actions to try to move that reform effort along and if
12 opportunities come up to further that effort, I think I have the
13 option to try to do that.

14 I think that was one of the reasons I was hired, was
15 to try to move that agenda along. I think that there was a
16 dissatisfaction with the former president over his ability or
17 willingness to do that.

18 CHAIRMAN WALLACE: Mr. Uddo, I don't want to jump into
19 your time but I want to clarify a fact before we get back to
20 these hypotheticals.

21 Your question was whether he had the authority to say
22 to someone that the Legal Services Corporation endorses the

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1 people who are candidates. I haven't heard him say he ever did
2 that.

3 Now, let me clarify. The fact is whether the
4 president has ever said that the Legal Services Corporation
5 endorses or opposes anybody. I'm asking Mr. Wear a question of
6 fact.

7 Have you ever said the Corporation -- whether you had
8 the authority to say the Corporation does or doesn't isn't my
9 question. That's what Mr. Uddo has been asking you. Do you
10 recall saying that the Corporation takes any position on
11 particular candidates for the board?

12 MR. WEAR: Not specifically.

13 CHAIRMAN WALLACE: It may be in --

14 MR. WEAR: I don't remember anything. If you have
15 something that you have a question about, I'll try to answer it.

16 MR. UDDO: Well, I know that virtually all the letters
17 in here are on Corporation stationery, and I know that in many
18 instances they refer to particular nominees whose names have
19 been crossed out. In many cases they obviously are going to
20 Congressmen and they are obviously endorsements of particular
21 candidates on corporate stationery signed by you as president
22 without any disclaimer saying it's my view or the view of a few

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1 board members.

2 I would say that a reasonable person would deduce from
3 that that you're speaking in the name of the Corporation.

4 MR. WEAR: For example, I just happened to open the
5 book to page 145, a letter to Congressman Bevill about a
6 candidate that he suggested. That letter suggests to him that
7 he readdress the letter to the president.

8 The reason for that was that frankly the
9 recommendation coming from a Member of Congress is going to have
10 more clout than a recommendation coming from me. Congressman
11 Bevill had sent this person's resume to me saying that he
12 thought the individual should be put on the board.

13 So, there is at least one that doesn't. If you've got
14 one that you think is different, I'll try to address it.

15 MR. UDDO: Well, I'm not sure who the letters are to
16 in many of the cases because the names have been marked out.
17 But there are a number of letters indicating support for
18 particular people, also whose names have been crossed out --as I
19 say, on Corporation stationery signed by you.

20 MR. WEAR: Again, can we pick some specific examples?
21 Maybe I can deal with that.

22 MR. UDDO: Well, let's see if I can give you some.

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1 CHAIRMAN WALLACE: While you all are looking, let me
2 just say one thing.

3 The correspondence in here is not directed to the man
4 in the street. The correspondence in here is directed to
5 reasonably well-informed people who come to this with some prior
6 knowledge of where people stand. The fact that there are
7 disagreements on this board is not a secret to anybody
8 -- and I have been through this page-by-page -- to anybody whose
9 name I see in here.

10 So, what a reasonable man would deduce, assuming this
11 was on the street, is one way. But what the actual addressees
12 would deduce knowing in fact that they're reasonably well-
13 informed about the whole bloody history of this thing, is
14 something else entirely. It may not change the legal question
15 that you've been addressing, but it the facts in context.

16 MRS. MILLER: Michael, it's really not fair to those
17 of us that knew nothing about it. Maybe we don't want this on
18 our stationery. We don't want it said the Legal Service board
19 recommended these people.

20 CHAIRMAN WALLACE: But that's what Mr. Wear is saying,
21 that I don't think any of this stationery says the board
22 recommends anybody.

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1 MRS. MILLER: He doesn't have to.

2 CHAIRMAN WALLACE: Mr. Uddo has suggested that anybody
3 reading that on our stationery would assume that the board does
4 support it. I'm just saying that people who get these letters
5 know how the board votes and would not have reached that
6 assumption.

7 That doesn't mean he should or shouldn't have done it.
8 That's the question of law that Mr. Uddo is trying to get into.
9 I'm just trying to get --

10 MR. UDDO: I understand your point, Mike, but I don't
11 think that that takes away the argument that when you send
12 something out on corporate stationery supporting particular
13 nominees or potential nominees that you're giving the impression
14 that you're doing it on corporate time with corporate resources
15 and under the name of the corporation, irrespective of what
16 people know about the voting records, it's not a bizarre
17 assumption to say that this is the Corporation's view.

18 Look at page 96, for example, one of your handwritten
19 notes on Legal Services stationery. It's to "Dear Ed." I don't
20 frankly know who it is but it says, "I'd be glad to sit down
21 with you and give you background on Legal Services and why these
22 appointments are important to House Republicans and explain what

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1 has been done thus far."

2 Now, if I got that, I'd say the president of the Legal
3 Services Corporation wants to come and tell me why we should
4 appoint this particular group of people. That, to me, sounds
5 like the Corporation is supporting a particular group of people.
6 That's been my complaint with this thing from the beginning.

7 My next question is, if there were board members who
8 were concerned about seeing that their efforts were carried out,
9 they're certainly capable of sending in any names they would
10 like to the White House. They're capable of working with any
11 Members of Congress they want. I don't see anything wrong with
12 any individual citizen who happens to be a member of this board
13 doing everything in his or her power to get somebody appointed
14 to the board of Legal Services Corporation.

15 MR. VALOIS: That's what Mr. Eaglin is complaining
16 about.

17 MR. UDDO: No, I don't think it is what Mr. Eaglin is
18 complaining about.

19 MR. VALOIS: Yes, it is.

20 MR. UDDO: I think he's complaining about the
21 corporate effort of promoting -- now, his personal view is that
22 individual board members shouldn't make recommendations. I

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1 don't think that that's something that can even be argued about
2 here because nobody here can stop me as individual or you as an
3 individual from making whatever recommendations you want.

4 I think the only thing we can complain about is the
5 appearance, bolstered by the resources of the Corporation, that
6 there is a corporate effort to promote certain people to be
7 appointed to the board.

8 I think, Terry, you probably should have told those
9 board members that it's really not appropriate for the
10 Corporation to do that but you're certainly free to do it on
11 your own.

12 CHAIRMAN WALLACE: Let me ask you this. If somebody
13 got a letter from the Speaker of the House on the Speaker of the
14 House's stationery saying, I'd like to sit down and talk with
15 you about somebody's particular appointment, I think that person
16 would not be justified in jumping to the conclusion that the
17 Speaker of the House was speaking for 435 Members of the House
18 of Representatives.

19 MR. UDDO: Yeah.

20 CHAIRMAN WALLACE: I think anybody who assumed Terry
21 was speaking for all 11 members of this board is too unfamiliar
22 with politics to have been the likely target of any of these

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1 letters.

2 MR. UDDO: Well, but the problem, Mike, is that I
3 think you're making the wrong analogy. I mean, we are a
4 corporation; we're not the House of Representatives.

5 I think if somebody got a letter from General Motors
6 on General Motors stationery signed by the president, they could
7 reasonably conclude that they're getting a letter from General
8 Motors. They may well know that that's not the unanimous view
9 of the board of General Motors, but nonetheless the corporate
10 voice of General Motors is speaking and it lends a certain
11 weight and credibility to that letter that might not otherwise
12 be there if it was qualified as these are my personal views or
13 these are the views of four or five members of the board.

14 I think that that's a major distinction, and I think
15 as a corporation the authority to speak for a corporation is
16 very important and should be jealously guarded and not something
17 that we're kind of loose about. Not to mention the resources
18 involved in this effort, and I've got some problems with that.

19 The other things is -- and it goes back to what I was
20 saying before -- I think everybody on this board ought to have
21 an opportunity to act with information. Now, if you thought
22 this was appropriate, personally I think you could have brought

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1 it to the board and the board could have made a decision.

2 But if you didn't want to do that, I think you could
3 tell board members, "certain board members think there are some
4 people we ought to develop and promote. We know everybody
5 doesn't agree. Here is your opportunity to dissent from that
6 view. We're not going to tell you all the names of the people
7 we're going to send if you think that would be a problem. But
8 at least we're telling you that we are going to be sending some
9 names so you can express your dissent."

10 Just like with the memorandum from Cooper. I mean, we
11 had to sit down and try to write a letter to make it clear that
12 Congress didn't think all the board members were aware that that
13 was going on and had been fully informed of that and that it was
14 all the board members who were sending that memorandum along.

15 So, I got the same complaint. I mean, why not give
16 the board members who don't feel like this is a good idea the
17 opportunity to say that's not the view of the board, it's the
18 view of some members of the board.

19 MR. VALOIS: What letter did you just refer to when
20 you say we sat down --

21 MR. UDDO: After the June board meeting Terry and I--
22 at the end of the meeting we agreed that the cover letter

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1 should not give the impression that all members of the board
2 were aware of that research project, had seen it in advance and
3 had endorsed its conclusions. So we put some language together
4 to try to make it clear that some members of the board had been
5 involved in that and not all.

6 It's a similar point here. Why didn't I have the
7 chance to say, they may be sending names out on corporate
8 stationery but they haven't checked them with me. So, if
9 anybody knows I'm on the board and they think that I'm
10 supporting this particular slate, note that I'm not. I think
11 that it's only fair to the other members of the board.

12 But there's a more important question and that is did
13 you approve grassroots lobbying for these people that are being
14 promoted or have been promoted?

15 MR. WEAR: As I stated earlier, Mr. Uddo, I looked at
16 this question for about four days. A number of issues in it,
17 starting with the limitations on lobbying that are in the Legal
18 Services Corporation Act, and determined that there was not any
19 legal impediment to talking with third parties and urging them
20 to talk with the White House since the limitations on lobbying
21 apply to the Congress and not to the Executive Branch.

22 MR. UDDO: So you're saying that it's okay for the

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1 Corporation and our grantees to expend LSC funds to lobby third
2 parties, groups, organizations, and encourage them to lobby the
3 President?

4 MR. WEAR: No. The grantees are covered by different
5 provisions. I believe they are in the Appropriations statute--
6 that covers their activities. So, the two are not comparable.

7 MR. UDDO: So, the Corporation can lobby the President
8 but grantees can't.

9 MR. WEAR: Again, I believe Mr. Cooper's memo dealt
10 with that point. It's about page 7 or so of that memorandum.

11 MR. UDDO: What groups did you approve the lobbying
12 of?

13 MR. WEAR: I beg your pardon?

14 MR. UDDO: What groups did you approve be lobbied for
15 purposes of having them contact the White House to support this
16 slate of candidates?

17 MR. WEAR: In general they were the same people that
18 the Members of Congress suggested to us and we talked to about
19 names.

20 MR. UDDO: Can you just give me some names of groups
21 that were contacted?

22 MR. WEAR: I don't remember. I recall talking with

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1 Gary Bower. I talked to Howard Philips, Paul Wireck. I talked
2 to one of my former law partners.

3 These are people I talked -- I don't know whether they
4 talked to the White House or not. I talked to Pat O'Donnell,
5 for example.

6 MR. UDDO: I'm not familiar with all those names. I
7 mean, are there some groups that you can tell me that were
8 contacted and encouraged to contact the White House on behalf of
9 this slate?

10 MR. WEAR: I don't remember specific groups. No, I
11 talked to specific individuals and these were some of the ones
12 that I remember.

13 MR. UDDO: Did anybody else on the staff contact
14 groups to your knowledge?

15 MR. WEAR: I think Mr. Wooten also talked to some of
16 the people.

17 MR. UDDO: Was that with your approval?

18 MR. WEAR: Yes.

19 MR. UDDO: Do you know the groups that he contacted?

20 MR. WEAR: I don't remember specifically but I know at
21 the time, as he was doing this, I knew about it and authorized
22 it.

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1 MR. UDDO: How do you distinguish this from the GAO
2 report that dealt with the so-called survival campaign back in
3 '81 where one of the things that was so severely criticized was
4 grassroots lobbying for similar kinds of decisions?

5 MR. WEAR: On that particular issue -- I think you are
6 referring to the opinion --

7 MR. UDDO: Of the Comptroller General?

8 MR. WEAR: -- that the General Accounting Office
9 issued to Congressman Stensonberner. That opinion was
10 construing the Legal Services Corporation Act and -- if I can
11 find the spot -- Mr. Cooper dealt with dealt with that at pages
12 105 and 106 of his memorandum.

13 That deal was where it was construing Section 2996(e)
14 subsection c(2). Mr. Cooper concluded and I concluded that the
15 section was not applicable on its face because it focused on the
16 activities directed to the legislature, not to the Executive
17 Branch.

18 MR. UDDO: So you're saying that criticism of the
19 survival campaign on that point was incorrect? The '81 --

20 MR. WEAR: No, no. The criticism was based on the
21 statutory provision that is directed at the legislature. The
22 statutory provision does not apply to the Executive Branch.

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1 MR. UDDO: As I recall, that report was more
2 encompassing than that. The criticism was directed toward the
3 whole campaign effort, including the appointment process. Not
4 just the Legislative Branch. I mean, am I wrong about that?

5 MR. WEAR: I think you are. The provision since the
6 Brenner opinion finds specifically that there was not a
7 violation of the prohibited political activities provision.
8 That's my recollection.

9 But let me mention to you, Mr. Eaglin, that there is a
10 complete packet which you've been given that shows the requests
11 from Congressman Stensonberner, the materials that went to the
12 Congressman, and his opinion. I would suggest that you take a
13 look at that.

14 The argument is not really technical in nature. The
15 statute that was construed by GAO applies to the Congress, not
16 to the Executive Branch.

17 MR. UDDO: So then I guess the position that the
18 Corporation is now taking that grassroots lobbying of the
19 Executive Branch is not prohibited --

20 MR. WEAR: As to the Corporation.

21 MR. UDDO: -- as to the Corporation.

22 MR. WEAR: I think that's accurate, and I believe

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1 that's reflected in Mr. Cooper's opinion.

2 MR. UDDO: What individual -- you mentioned that there
3 were some individuals that you had campaigned against or worked
4 against. Did you say whether or not some of those are currently
5 on the board?

6 MR. WEAR: No.

7 MR. UDDO: Are some of those currently on the board?

8 MR. WEAR: I haven't stated that.

9 MR. UDDO: I'm asking you.

10 MR. WEAR: No, they are not.

11 MR. UDDO: So you haven't worked against any current
12 members of the board?

13 MR. WEAR: No.

14 MR. UDDO: Or tried to dissuade the White House from
15 appointing any current members of the board.

16 You said Mr. Wooten knows the organizations that were
17 contacted by him with your authority and you don't know which
18 organizations those were?

19 MR. WEAR: Again, I don't recall. At the time these
20 contacts were made I was told about them. I don't remember
21 specific names. He may be able to remember them.

22 MR. UDDO: I don't have any other questions right now.

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1 CHAIRMAN WALLACE: Further questions for Mr. Wear?
2 Mr. Eaglin, do you have some?

3 MR. EAGLIN: No.

4 CHAIRMAN WALLACE: Ms. Benavidez?

5 MS. BENAVIDEZ: The list you submitted, were there any
6 names of --

7 MR. WEAR: I didn't submit any list of names. The
8 list of names came from the people on the Hill.

9 MS. BENAVIDEZ: Do you know any of the names?

10 MR. WEAR: Again, I do not want to identify those
11 individuals.

12 MS. BENAVIDEZ: No, you don't have to identify them.
13 But do you know them?

14 MR. WEAR: I did not know that they were known to the
15 Members of Congress. The Members of Congress were the ones that
16 recommended them.

17 CHAIRMAN WALLACE: Any further questions for Mr. Wear?

18 MS. MILLER: I have a question for you. Do you
19 remember if grassroots lobbying is in the regs or the Act?

20 CHAIRMAN WALLACE: The regs -- the regulations that we
21 worked so hard on, govern activities of our grantees. I think
22 the regulations put a fairly comprehensive restriction against

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1 grassroots lobbying by our grantees.

2 There is an exception in the regulations for lobbying
3 involving the Corporation itself, but I'm not sure if that's an
4 exception for grassroots lobbying. I just don't remember.

5 The regulations do not apply to the Corporation
6 itself. They apply to grantees.

7 MS. MILLER: What about the Act? That's what I'm
8 asking you. Is it in the Act?

9 CHAIRMAN WALLACE: Well, we have the counsel's
10 opinion. Counsel's opinion is as Mr. Wear has just described
11 it. I'm not at all prepared to analyze the counsel's opinion
12 today. That's why we asked everybody did they want to inquire
13 into anything Mr. Cooper had written, said or done.

14 MS. MILLER: Well, maybe I'm unprepared but you -- I
15 worked along with you on that for so many months. It went into
16 years.

17 CHAIRMAN WALLACE: You're right. The regulations we
18 worked on govern the grantees. Now, Mr. Cooper's memo does not
19 cover the grantees. It talks about what the Corporation's staff
20 can do.

21 I can't tell you whether it's right or wrong because
22 we asked people if they wanted to discuss Mr. Cooper's work

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1 product today and nobody did. So I'm not prepared to tell you
2 whether it's right or wrong. I'm just telling you it's there
3 and what he says is that the activity that Mr. Wear has
4 described to the board today is not prohibited by law.

5 MS. MILLER: It is.

6 CHAIRMAN WALLACE: Oh, no.

7 MS. MILLER: I think you're wrong.

8 CHAIRMAN WALLACE: You may be right. Further
9 questions?

10 MR. EAGLIN: Yeah. There is just --

11 CHAIRMAN WALLACE: I'm sorry. Mr. Eaglin.

12 MR. EAGLIN: I wasn't quite listening to the beginning
13 of what you said and a point was made to me just now. Would you
14 speak to 1608.5(a). Let me just remind you of it. "While
15 employed under the Act no Corporation employee and no staff
16 attorney shall at any time (a) use official authority or
17 influence for the purpose of interfering with or affecting the
18 result of an election or nomination for office, whether partisan
19 or non-partisan."

20 You were making some comment there, not all of which I
21 heard. But I understand that that provision is responsive to--

22

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1 CHAIRMAN WALLACE: Where are you?

2 MR. EAGLIN: Well, I don't have the same color book
3 you have. Mine --

4 CHAIRMAN WALLACE: What's the number?

5 MR. EAGLIN: It's 1608.5(a).

6 CHAIRMAN WALLACE: Yeah. What is it?

7 MR. EAGLIN: The headline is Prohibitions Affecting
8 the Corporation Employees and the Staff.

9 CHAIRMAN WALLACE: Well, Mr. Wear says he can answer
10 that. As I say, I didn't come prepared to discuss the law.
11 Nobody said they wanted me to. Go ahead.

12 MR. WEAR: Yes. Mr. Eaglin, the regulatory history
13 associated with that provision makes clear that the Corporation
14 was adopting what is popularly known as the Little Hatch Act in
15 connection with this provision.

16 The Little Hatch Act applies to elective office. It
17 does not apply to non-elective office.

18 MR. UDDO: Yes, but doesn't that contradict the
19 language of the regulation?

20 MR. WEAR: No, it doesn't.

21 MR. UDDO: It says elective and nominated.

22 CHAIRMAN WALLACE: Well, nomination may be a party

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1 primary. I mean, I guess the word is ambiguous if it applies to
2 elected officials. You know, we nominate people in parties.
3 You don't nominate people in party primaries. But we do.

4 I don't know the answer to the question. I mean,
5 that's another meaning of the word nomination.

6 MR. WEAR: I might as well tell you, Mr. Eaglin, that
7 I checked this out specifically with the Office of Special
8 Counsel at the Merit Systems Protection Board and they interpret
9 both the Little Hatch Act which this incorporates as applying to
10 elective office.

11 MR. EAGLIN: The provision just before, though, in
12 1608.4, certainly talks about identifying the Corporation--
13 prohibiting the identification of incorporation for -- well, in
14 this case the Corporation with, in this case, a non-partisan
15 political activity. Or we could regard it as partisan to the
16 extent that this board must be comprised of no more than a
17 certain number of one political party.

18 MR. WEAR: Again, Mr. Eaglin, the interpretation
19 -- this is based on the Little Hatch Act and this is interpreted
20 and the legislative history I think is fairly clear on this--
21 their staff says that this applies to partisan political
22 activities. It does not apply to appointed office.

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1 MR. EAGLIN: It says non-partisan political activity.
2 That's what the word is, the non-partisan. You can't get around
3 it.

4 MR. WEAR: Political activity, Mr. Eaglin, is defined
5 as elected activity. That's how the Little Hatch Act is
6 defined. That's what this provision is based on.

7 I'm aware that you have been confused about this. The
8 General Counsel has talked to me about it, and that was the
9 reason for clarifying it.

10 CHAIRMAN WALLACE: Any further questions of the
11 president? Does any board member have any further questions of
12 anybody on the subject matter of lobbying?

13 MR. UDDO: Well, there is still the McCollum-Stenholm
14 amendment. Did you --

15 CHAIRMAN WALLACE: Go ahead.

16 MR. UDDO: What?

17 CHAIRMAN WALLACE: Well, we've already --

18 MR. UDDO: We've said it's within the --

19 CHAIRMAN WALLACE: Yeah, I said it's within the scope.

20 MR. UDDO: Before we get to that, let me just end by
21 saying I still believe that the activity is unauthorized. I
22 don't care whether it's illegal or not; I think it's

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1 unauthorized. I don't think that the board ever authorized the
2 staff to lobby for any slate of nominees.

3 I think it's misleading to tell the White House, or
4 anyone else, that there is a slate of nominees that's the
5 corporate slate. I think that there is no action that has
6 authorized that. So I think that it is, if not illegal, it is
7 an imprudent use of corporate resources and I think it should
8 desist.

9 I don't think the Corporation should continue to use
10 it for something like that unless you want to bring it to a
11 board meeting unless you want to let the board decide whether or
12 not they think it's a good idea for the staff to engage in that
13 activity, and then you can get the authorization of the majority
14 of the board.

15 MR. WEAR: Mr. Chairman.

16 CHAIRMAN WALLACE: Mr. Wear.

17 MR. WEAR: Again, Mr. Uddo, I don't think there is a
18 corporate list. What the staff has done is, as I told you
19 earlier, to work with people on the Hill. We helped them
20 disseminate their list. It's not a corporate list.

21 MR. UDDO: Well, you know, Terry, you say that but in
22 so many of these letters -- on page 110 this handwritten note to

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1 Congressman Hyde it does say that you're sending on -- it says,
2 "Attached please find the edited talking points and the list of
3 nominees to the LSC Board of Directors. This the same list that
4 was sent to President Bush by Senators Coats, Helms, Thurmond,
5 Gramm, and Armstrong," et cetera.

6 Now, it's the same list so I assume that what you're
7 saying is that if I were to read it, I'd say, this list, which
8 is our list, is the same one that they sent --

9 MR. WEAR: Well, no --

10 MR. UDDO: Wait. The last paragraph -- your last
11 paragraph is, "The President should know that this is 'got-to-
12 have.' Thanks for your help."

13 That's not technical advise.

14 (Laughter.)

15 MR. UDDO: I mean, that is a statement by you as
16 president of the Corporation that you've got to have these
17 people. That's not technical advise.

18 MR. WEAR: Well, what it was meant to say was that we
19 were communicating the views of these senators. This list that
20 you're talking about was the Coats letter that appears in here.
21 It's the letter that Senator Coats sent the President on this
22 subject, and that's what that was.

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1 MR. UDDO: Well, you could explain it however you
2 want. If I see a letter that the president of Legal Services
3 Corporation says to tell the President this is a got-to-have
4 list, I'd say you're working pretty hard for that list. I don't
5 think you're giving technical advise.

6 MR. WEAR: Well, we are attempting to assist those
7 Members of Congress to move this along. I think that's
8 accurate.

9 MR. UDDO: Well, then I guess I misunderstood you. I
10 thought you said that all you were doing is giving technical
11 assistance to Members of Congress. I might have a different
12 view of that. I don't think that that's what these letters
13 indicate. Therefore, I don't think it's appropriate for the
14 Corporation to continue to do it unless you bring it to the
15 board and the board decides it's a good idea and authorizes you
16 to do it and to expend corporate resources to do it by a
17 majority vote.

18 I mean, that's my opinion at this point. It's not on
19 the agenda, I guess, and we've already had unanimous consent not
20 to take action so I wouldn't make a motion to stop you from
21 doing it. But I think that I may ask that that go on the agenda
22 for the meeting on the 15th because I think it's an appropriate

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1 question as to whether or not these kinds of things should be
2 going out giving the impression that the Corporation has a list
3 that they're endorsing. You know, I just have real problems
4 with that.

5 MR. EAGLIN: Mr. Uddo, just to pick up on a couple of
6 the points you've been making, if I could direct your attention
7 to 59, I'd like to ask you and then Mr. Wear whether you view
8 that as technical advise or otherwise.

9 MR. UDDO: Well, it's one I had folded over.

10 MR. EAGLIN: I thought you might. "Dear Lou,"
11 something about heritage and then some name apparently comes
12 before it. "I thought you might be interested in seeing a copy
13 of the attached letter and background information on the slate
14 of conservative candidates for the board of the Legal Services
15 Corporation. I am advised that the liberals already have their
16 slate down at the White House and that there may be an attempt
17 to 'split the baby' on this one. I'll be glad to go down with
18 you and tell them why this is important to conservatives." On
19 letterhead.

20 MR. UDDO: Yeah, that's why I can't buy that it's
21 technical advise. I mean, the December 14th letter on page 1
22 from you to Clark -- now, again, it's to Clark so it's certainly

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1 not lobbying to communicate that to Clark. But, I mean, the
2 intent of the thing is very clear.

3 You talked about different lists, who thinks who is
4 good, and you close by saying, I wanted to have these lists so
5 that we could all "sing from the same song sheet." I think it
6 would be good to have other names as well.

7 All I'm saying is I don't think it's technical advise.
8 I think the Corporation is purporting to be promoting a slate as
9 the corporate slate and I think that that's inappropriate.

10 I am now going to ask that it go on the December 15th
11 meeting agenda as to whether or not corporate resources should
12 continue to be expended in pursuit of that lobbying effort.

13 CHAIRMAN WALLACE: So noted. It will be on the
14 agenda.

15 Questions about the Stenholm Amendment question?

16 MR. EAGLIN: Just before that --

17 CHAIRMAN WALLACE: I'm sorry.

18 MR. EAGLIN: -- if you don't mind. I would like to
19 remind you of my October 20th letter. We've been provided this
20 just this morning, as I've said a couple of times, and I'd like
21 to know with respect to what has been provided to us the extent
22 to which my paragraph 3 of the October 20th has been satisfied.

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1 In other words, does there exist items on my list in
2 paragraph 3 that have not been provided to me and other board
3 members who are similarly interested in these items? I believe
4 Mr. Uddo told me that you reiterated your interest in having --

5 MR. UDDO: I think Monday I sent a letter out.

6 MR. EAGLIN: Do we have everything, in other words?

7 CHAIRMAN WALLACE: You'd better read paragraph 3.

8 MR. EAGLIN: Well, I'll read it. "Copies of all
9 correspondence between anyone at LSC and Cooper's firm; all logs
10 referring to calls between LSC and Cooper's firm; all drafts of
11 opinions by Cooper's firm; all meeting dates, places and times
12 of meetings between LSC employees and anyone from Cooper's firm;
13 bills from Cooper's firm and LSC cancelled checks to Cooper's
14 firm; all other documents or information regarding association
15 with Cooper's firm; a list of names of any LSC board member or
16 employee who has information about contacts or association with
17 Cooper's firm; a list of all persons and organizations contacted
18 by any LSC employee concerning board appointments; all
19 correspondence concerning board appointments between LSC or any
20 of its employees acting on behalf of the Corporation or on LSC
21 time that was received or sent; all logs of calls made or
22 received concerning board appointments; list of LSC employees

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1 who have contacted any person or group about board appointments
2 who are acting on behalf of the Corporation or on LSC time.

3 MR. WEAR: Mr. Eaglin, we don't have any phone logs.
4 There are no phone logs in here. There are no lists of persons
5 who have been talked to. I made a list, which I intended to
6 refer to at some point, and I'll be glad to do that at the next
7 meeting.

8 MR. EAGLIN: You have a list of what now?

9 MR. WEAR: I say I have a handwritten list here of the
10 people that I recall speaking to on the Hill and elsewhere and
11 I'll be glad to go through that with you the next time.

12 MR. EAGLIN: Why not go -- if you have it now, give it
13 to us now. We're here.

14 MR. WEAR: Well, I recall talking to Congressman
15 Combest, Congressman Douglas, Congressman Gingrich, Congressman
16 McCollum, Congressman Kyl, Congressman Weber, and probably other
17 members of a group called the Conservative Opportunity Society.
18 Staff people, Mr. Tom Anderson, a Jim Hynich, Peter Simmons,
19 Andy Hartzfield, Lori Rich. Also Congressman Hyde. Ken
20 Cunningham.

21 MR. EAGLIN: Congressman or staff member, that one you
22 just mentioned?

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1 MR. WEAR: Congressman Hyde.

2 MR. EAGLIN: No, after that. You said --

3 CHAIRMAN WALLACE: Ken Cunningham.

4 MR. EAGLIN: Is that a staffer or a --

5 MR. WEAR: That's a staff person. Augie Tantilio, Jay
6 West, Jane Whitmeyer, Ed Buckman.

7 MR. EAGLIN: Are these staffers or Congressman or it
8 all depends?

9 MR. WEAR: Those are staff people.

10 MR. EAGLIN: Does that comprise the members of the
11 group who were dealing with the names in the pool?

12 MR. WEAR: Those are the names of the people I recall
13 on the Hill that I talked with.

14 MR. EAGLIN: The remainder of the list then?

15 MR. WEAR: At the White House I recall talking to Ron
16 Kauffman, Bob Strada, Mark Talevin, Ros Sterick, Lee Lieberman,
17 Fred McClure, Jim Pinckerton, and Diane Weinstein.

18 MR. EAGLIN: The remainder of the list that I called
19 off then? Do we have all of that?

20 MR. WEAR: Well, there are no lists of the
21 individuals. I think we covered that. There are no phone logs.
22

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1 I think the correspondence is in the exhibit that is
2 labeled "Materials Reflecting Corporation Activity," et cetera.

3 MR. UDDO: How about meetings attended?

4 MR. WEAR: Well, in talking with these people -- I may
5 have met with them. I don't remember specific meetings. I know
6 that I met with the Conservative Opportunity Society two or
7 three times.

8 MR. UDDO: How about the groups? I asked about groups
9 -- that you or staff people having met with particular groups to
10 ask for their support in --

11 MR. WEAR: I don't recall meeting with specific
12 groups. I talked with individuals.

13 MR. UDDO: How about any of your staff.

14 MR. WEAR: I didn't meet with groups. I think that
15 Jim Wooten may have talked to some of the groups.

16 MR. UDDO: Can we get a list of the groups that he met
17 with?

18 MR. WEAR: I think that he'll be able to provide you
19 that orally.

20 MR. UDDO: Does he want to? I mean, I'll be happy to
21 take it orally right now if he wants to.

22 CHAIRMAN WALLACE: Mr. Wooten, I think you've been

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1 asked a question. Why don't you come up front and see if you
2 can answer it.

3 What's the question?

4 MR. UDDO: Mr. Wear indicates that Mr. Wooten met with
5 some groups and I was just asking which groups he met with.

6 MR. WEAR: Well, I think principally it was the Legal
7 Services Coalition. As you may know there is a group interested
8 in the reform of the Legal Services Programs, and I think that
9 that's the group principally.

10 MR. UDDO: Are there others, Mr. Wooten?

11 MR. WOOTEN: Yes, sir.

12 MR. UDDO: Can you give us a list of them?

13 MR. WOOTEN: I think the groups would be -- I think--
14 Library Court Kingston, the 721 Group.

15 CHAIRMAN WALLACE: The liberals are all shaking their
16 heads. They've never heard of any of those people.

17 (Laughter.)

18 CHAIRMAN WALLACE: Now you know how we feel when we're
19 on the other side.

20 MR. WOOTEN: The Legal Services Reform Coalition. Is
21 that the sort of group that you're --

22 MR. UDDO: Yes. Just groups.

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1 MR. WOOTEN: I think that's probably it in terms of
2 groups.

3 MR. UDDO: Mr. Wear said that none of these efforts
4 were directed against any current members of the board. Is that
5 your position too?

6 MR. WOOTEN: Well, there's two ways that it might be
7 considered that they were. One is that at certain times this
8 might not have included all the board members who might have had
9 an interest in the appointment. So I guess by omission it could
10 have been.

11 I think that there was some concern about a particular
12 member of the board and his group.

13 MR. UDDO: Where you may have expressed opposition?

14 MR. WOOTEN: Yes.

15 MR. UDDO: I don't have any other questions.

16 CHAIRMAN WALLACE: Okay. Thank you. You do want to
17 talk about Stenholm-McCollum?

18 MR. UDDO: Yeah. Well, I mean, to the extent that
19 I've already raised it -- I mean, my question is the same one
20 that I asked about the outside counsel memorandum, and that is,
21 you know, how again does that letter go out when it impacts
22 something so significant as the budget which goes through an

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1 elaborate process here and a majority ultimately adopts a
2 budget.

3 Then your letter goes out endorsing that particular
4 amendment without consultation with the board or opportunity for
5 the board to decide whether or not they want you to support that
6 amendment.

7 MR. WEAR: Mr. Chairman.

8 CHAIRMAN WALLACE: Go ahead.

9 MR. WEAR: The letter to which you refer, Mr. Uddo
10 -- and I appreciate your giving me your copy -- dealt with a
11 "Dear Colleague" letter that had been sent out by Congressman
12 Frank and others dealing with the appropriations bill. It was
13 an attempt to try to straighten out the facts as to what his
14 letter said.

15 MR. UDDO: But you do support the amendment. I mean,
16 your closing sentence, if I remember, is a support for McCollum-
17 Stenholm as a vote for the poor, or something like that.

18 MR. WEAR: No. What the last paragraph says is, "The
19 McCollum-Stenholm Amendment strengthens the Legal Services
20 Program. There is a consensus that the poor need help for the
21 day to day legal needs like living in a drug-free neighborhood
22 and receiving the child support that would help keep them out of

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1 poverty. A vote for the McCollum-Stenholm" -- it should be
2 amendment -- "is a vote for the poor."

3 MR. SMEGAL: Yes, that's roughly what I remember. I
4 mean, you were endorsing that amendment and again apparently
5 saying that the Corporation wanted Congressmen to vote for that
6 amendment.

7 My only question, again, is that it's not just an
8 amendment with some minor changes from what the board had voted
9 on in terms of budget. It was fairly significant, earmarking
10 quite a bit of money for certain laudable purposes. There's no
11 question about it. But, again, a significant change to say that
12 that was what the Corporation wanted to see done about that
13 amendment.

14 CHAIRMAN WALLACE: Mr. Uddo, think facts. I've tried
15 to keep this much as I can on a fact-finding level but I would
16 be remiss if I didn't point this out.

17 The function of the federal agency, which in my book
18 is what we are, is to every year send budget to Congress, is to
19 pass regulations, to defend those regulations, and when you're
20 dealing on the Hill, you have to have some flexibility. You
21 cannot call 11 people in together and ask them do they approve
22 every deal you're trying to cut in the middle of the night.

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1 This Stenholm Amendment includes the protection of
2 certain regulations that this board has passed, including some
3 that you voted for. It includes timekeeping, which is something
4 this board is on record over and over again. The Stenholm
5 Amendment is the best deal that could be put together. As a
6 matter of fact, the Stenholm Amendment passed. When the clock
7 ran out, we won.

8 One of the nice things about being in the majority is
9 that you control the clock. The bits went down in the well and
10 twisted a few arms and turned the amendment around.

11 But if you look at where we were when Mr. Wear was
12 hired, the previous president resigned, he said because he
13 didn't support many of the policy initiatives of this board.
14 Mr. Wear was hired to do it.

15 Last year we got 180 votes for reform with the White
16 House working for us. This year the White House didn't do a
17 thing and when time expired, we won. Now, the people in
18 Mississippi know about the clock in tiger stadium. We know how
19 important it is to control the clock. If the other side
20 controlled the clock, they turned it around and we lost.

21 But Mr. Wear did exactly what he was hired to do. He
22 promoted the programs of this board. If he hadn't have cut some

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1 around the edges in order to get things that were of interest to
2 other Members of Congress, that's something that the president
3 in dealing with Congress has to have the flexibility to do.

4 It is also why I'm on the record as saying that the
5 board ought to be abolished. We ought to hire one federal
6 officer to do this job because we cannot possibly make the
7 judgments that have to be made in the middle of the night on
8 Capitol Hill. But this is well within what the majority of this
9 board hired Mr. Wear to do and what many members of this board,
10 including you, on many items have voted for over the years.

11 The Stenholm Amendment included that. He did a
12 fabulous job. I think next year we're going to win.

13 MR. UDDO: Well, the only thing I would disagree with,
14 Mike, is that we're not an agency yet. As such, I still think
15 that there is a problem with purporting to be expressing the
16 view of the Corporation on matters that have been considered,
17 such as budget, but don't support that particular outcome.

18 On things that we've already voted on and there is a
19 majority position, I don't think there's anything wrong with the
20 president saying that these parts of this amendment have come
21 before the board and they've been endorsed by a majority of the
22 board.

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1 But that kind of rousing endorsement is something that
2 the board hasn't considered and I think it's misleading. It's
3 similar to the problem I think that we've got with that press
4 release. I mean, you know, that press release is pretty
5 strident for what -- if the press release had been run by the
6 board, it might have been a fairly close vote on whether or not
7 that should have gone out from the Corporation.

8o I think that as the Corporation we have to be more cautious about
9 what we say in the name of the Corporation.

10 CHAIRMAN WALLACE: Well, again, whatever may have been
11 done in the past -- and I have expressed my view that I think
12 Mr. Wear acted absolutely properly in supporting the budget and
13 regulatory initiatives of this board on the Hill.

14 In two weeks we will all have an opportunity to say
15 what we think of McCollum-Stenholm. The roll will be called and
16 if this board does not endorse McCollum-Stenholm, I presume that
17 Mr. Wear is not going to be pushing it. But it's going to be on
18 the table and we're going to find out.

19 Any further questions?

20 (No audible response.)

21 CHAIRMAN WALLACE: That brings us to the close of the
22 sixth agenda item. We've already disposed of the seventh agenda

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1 item. The eighth agenda item is to go home.

2 M O T I O N

3 MR. UDDO: So moved.

4 CHAIRMAN WALLACE: Is there a second?

5 MS. MILLER: Second.

6 CHAIRMAN WALLACE: Any debated?

7 (No audible response.)

8 CHAIRMAN WALLACE: All in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN WALLACE: Opposed?

11 (No audible response.)

12 CHAIRMAN WALLACE: Hearing no dissent, this meeting is
13 adjourned.

14 (Whereupon, at 5:15 p.m., the meeting was adjourned)

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