

ORIGINAL

**LEGAL SERVICES CORPORATION
BOARD OF DIRECTOR MEETING**

December 15, 1989
Commences at 9:51 a.m.

Old Towne Holiday Inn
Brent Room I & II, Fifth Floor
480 King Street
Alexandria, VA 20314

BOARD MEMBERS PRESENT:

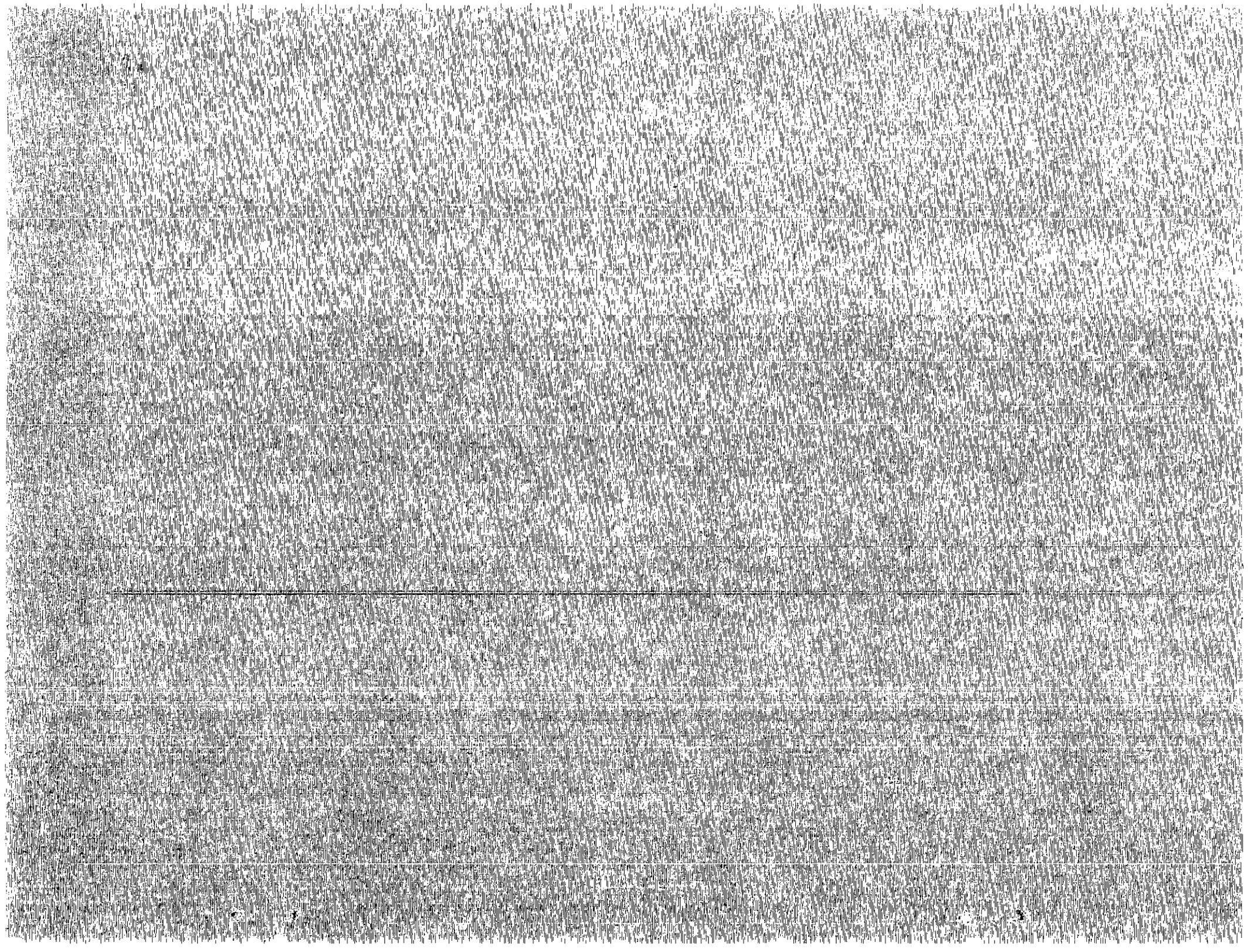
Michael B. Wallace, Chmn.
Hortencia Benavidez
W. Clark Durant, III
Paul Eaglin
John N. Erlenborn
J. Blakeley Hall
Lorain Miller
Thomas F. Smegal
Claude G. Swafford
Basile J. Uddo
Robert Valois

STAFF PRESENT:

Terrance J. Wear, President
Maureen Bozell, Secretary
Timothy Shea, General Counsel
David Richardson, Controller
David Wilkinson, Inspector
General

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CHAIRMAN WALLACE: I'm going to call to order the meeting of the Board of Director of the Legal Services Corporation, pursuant to notice duly given in the Federal Register. As is our custom, we will begin with the invocation, to be offered this morning by Rev. William Young, III, from Mt. Sinai Baptist Church in Washington.

Rev. Young, if you will come up here, I'll let you have my place where the microphone is. Would you be kind enough to lead us in prayers.

(Invocation was given.)

A P P R O V A L O F A G E N D A

CHAIRMAN WALLACE: The first item on the agenda is the approval of the agenda. Is there a motion to approve the agenda as printed in the Board book?

M O T I O N

MR. VALOIS: So moved.

MR. DURANT: Second.

M O T I O N

MR. UDDO: Mike, before you do that, I'd like to move to amend the order of the agenda. I would move that 6, 7, and 8 be placed after no. 2.

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1 MR. SMEGAL: Second.

2 CHAIRMAN WALLACE: All right. I think that you've got
3 to have something on the floor before you can amend it. I heard
4 someone move the agenda and someone second it. In any event,
5 where we stand is that there is a motion on the floor to approve
6 the agenda as printed in the Board book.

7 That motion is subject to amendment. Mr. Uddo has
8 moved to amend the agenda by putting 6, 7 and 8 immediately
9 after item 2. That has been seconded. Mr. Uddo, do you wish to
10 speak in support of your amendment?

11 MR. UDDO: I would just say that those are really the
12 most pressing items on the agenda. We spent some time on at
13 least two of those items at the last meeting there, carryovers
14 from the last meeting.

15 I think we ought to move into the head of the agenda
16 when we're fresh and have time to deal with them adequately.
17 The budget matters do not have to be Acted on today if we run
18 into time problems. So I think we should take those items
19 first.

20 CHAIRMAN WALLACE: Is the Inspector General here? So
21 presumably he's prepared to go on first, if that is the pleasure
22 of the Board.

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1 MS. MILLER: Is it possible to add on to the agenda at
2 this time?

3 CHAIRMAN WALLACE: The first thing on the floor is to
4 rearrange it. After we vote on Mr. Uddo's motion, I will
5 recognize you for the purpose of making another amendment to add
6 to the agenda. Let us see if there is any further discussion on
7 Mr. Uddo's amendment. Is there any further discussion?

8 (No response.)

9 CHAIRMAN WALLACE: All in favor of Mr. Uddo's motion
10 to rearrange the agenda by placing 6, 7 and 8 immediately after
11 item 2, say aye.

12 (A chorus of ayes.)

13 CHAIRMAN WALLACE: Opposed?

14 (No response.)

15 CHAIRMAN WALLACE: The amendment is passed. Ms.
16 Miller, I said I would recognize you for the purpose of an
17 amendment at this time. I do so.

18 M O T I O N

19 MS. MILLER: I would like to add on a discussion of
20 the mini conference that we had. I would like for the Board to
21 address that issue with Mr. Wear.

22 CHAIRMAN WALLACE: All right. Ms. Miller called me

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1 earlier this week on that subject. It was too late to put it in
2 the Federal Register. As no Action is contemplated, I don't
3 think there's any problem with putting a discussion on the
4 agenda without prior notice in the Federal Register.

5 I called Mr. Wear after you and I talked, and I asked
6 him to be prepared to talk about that today because I knew you
7 did want to put it on the agenda. So I don't see any reason why
8 we can't do that.

9 Ms. Miller has moved to amend the agenda by adding to
10 it the discussion of the mini conference on clients, which was
11 held several months ago. Is there a second to that motion?

12 MR. DURANT: I second that.

13 CHAIRMAN WALLACE: That's been seconded by Mr. Durant.
14 I would say that that would go at the end of the agenda since
15 everything else here has been noted. Is there any further
16 discussion of Ms. Miller's amendment?

17 (No response.)

18 CHAIRMAN WALLACE: All right, all in favor, say aye.

19 (A chorus of ayes.)

20 CHAIRMAN WALLACE: Opposed?

21 (No response.)

22 CHAIRMAN WALLACE: Ms. Miller's amendment is adopted.

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1 Is there any further amendments to the agenda?

2 A PARTICIPANT: Mr. Chairman, just a point of
3 information. On Nancy Clinch, who is here from the State Bar of
4 the Board of Governors in California, she needs to be gone by
5 3:00. She is here to talk about the disaster relief, so if that
6 could be kept in mind.

7 CHAIRMAN WALLACE: I'm sure that if we get to that
8 point, the Board will have no hesitation in hearing her out of
9 order. We would like to hear her in order if we can get
10 everything else done and get that done.

11 MS. CLINCH: Thank you.

12 CHAIRMAN WALLACE: We will look forward to hearing
13 from you. Any further amendments to the agenda?

14 (No response.)

15 CHAIRMAN WALLACE: If not, the question is on the
16 adoption of the agenda as amended. All in favor, say aye.

17 (A chorus of ayes.)

18 CHAIRMAN WALLACE: Opposed?

19 (No response.)

20 CHAIRMAN WALLACE: The ayes have it. The agenda is
21 adopted. Before we move to the approval of the minutes, I have
22 been most negligent. I have personally welcomed Mr. Erlenborn

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1 to the Board. I have not publicly welcomed him to the Board,
2 and I do so now. We are glad to have you here with us and look
3 forward to working with you for as long as we're all here.

4 MR. ERLNBORN: Thank you.

5 APPROVAL OF MINUTES

6 CHAIRMAN WALLACE: The next item on the agenda is the
7 consideration of the minutes from the last meeting. Is there a
8 motion to approve the minutes as printed in the Board book?

9 M O T I O N

10 MR. VALOIS: So moved.

11 CHAIRMAN WALLACE: Mr. Valois has moved the approval
12 of the minutes. Is there a second?

13 MS. BENAVIDEZ: I second that.

14 CHAIRMAN WALLACE: Seconded by Ms. Benavidez. Are
15 there any additions, corrections, or amendments?

16 MR. SMEGAL: Mr. Wallace, I've just gotten this
17 material recently. I don't see anything in a quick reading, but
18 if I could have the opportunity to bring something forward if I
19 should find anything, maybe by direct contact.

20 CHAIRMAN WALLACE: All right. I would think that any
21 amendments to the agenda would have to be approved by the Board.
22 If there are any corrections that anyone has overlooked, we've

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1 not hesitated to go back in subsequent meetings and make
2 corrections as need be.

3 MR. SMEGAL: That's acceptable if I can have that.

4 CHAIRMAN WALLACE: No problem. Does anyone have any
5 amendments to the minutes at this time?

6 (No response.)

7 CHAIRMAN WALLACE: Hearing none, the question is on
8 the approval of the minutes as printed in the Board book. All
9 in favor, say aye.

10 (A chorus of ayes.)

11 CHAIRMAN WALLACE: Opposed, say no?

12 (No response.)

13 CHAIRMAN WALLACE: The minutes are adopted. According
14 to the amended agenda, the next item is review of the Office of
15 Inspector General, Compliance with the Inspector General Act
16 Amendment of 1988, and Activities of the Inspector General to
17 date. Mr. Wear, the President of the Corporation, is recognized
18 to report on this topic.

19 REVIEW OF OFFICE OF THE INSPECTOR GENERAL, COMPLIANCE WITH
20 INSPECTOR GENERAL ACT AMENDMENT OF 1988 AND PUBLIC LAW 95-452,
21 AND ACTIVITIES OF INSPECTOR GENERAL TO DATE

22 MR. WEAR: Thank you, Mr. Chairman. As I think many

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1 of the Board members know, the Inspector General Act of 1978 was
2 amended by the passage of the statute in the fall of 1988, the
3 Inspector General Act amendments of 1988, Public Law 100-504,
4 which made the larger Inspector General Act applicable to the
5 Legal Services Corporation and required the Corporation to
6 establish an Office of Inspector General.

7 We discussed the passage of that statute in our Board
8 meeting. My recollection is that that was discussed in November
9 1988 and then subsequently in some other Board meetings. We
10 then went forward with that.

11 We identified a number of candidates by advertising in
12 the Wall Street Journal, the Washington Post, and received in
13 excess of 200 resumes and applications for the position. We
14 spent quite a bit of time, I should say, looking at those
15 resumes and narrowing the field down.

16 Eventually we settled on Mr. David Wilkinson to be our
17 Inspector General. Mr. Wilkinson was brought on Board in
18 September of this year and is in the process of setting up the
19 Office of Inspector General.

20 Under the statute that was passed, we were supposed to
21 establish the Office of Inspector General last April. Due to
22 other matters that I had to consider at that time, the process

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1 did not come to fulfillment until September.

2 Since that time, Mr. Wilkinson has been on Board. He
3 is in the process of interviewing staff. He has one individual,
4 I believe, on his staff at this point. He is looking at others.
5 He has approximately six investigations underway.

6 Mr. Chairman, I think that summarizes generally what
7 has been done on that. If there are any questions, I or Mr.
8 Wilkinson will try to respond.

9 CHAIRMAN WALLACE: All right. I will open it up for
10 questions and discussion among the Board. Before I do so,
11 General Wilkinson, do you have anything you would like to say by
12 way of introduction before we open it up to Board discussion?

13 MR. WILKINSON: I just as soon wait for questions.

14 CHAIRMAN WALLACE: All right, that's fine. If there
15 are going to be questions, you probably better come up here to
16 the microphone so we can all hear you. Does any member of the
17 Board have any questions for the President, the Inspector
18 General, or have anything else to say on this subject?

19 MR. UDDO: Yes, Mr. Chairman, I would like to speak to
20 this subject. I would like to speak to it because I am
21 concerned about the process that was used for the appointment of
22 Inspector General, which I think we will get to in a bit.

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1 I want to address something more personal because I
2 don't think, through any fault of Mr. Wilkinson's, but I think
3 the Inspector General's office has already been politicized
4 within Legal Services.

5 The reason that I think that's true is because I am
6 the subject of one of the first Inspector General
7 investigations. I want to make that public now because I think
8 that the whole purpose of the investigation with me is
9 politically motivated. I'll explain to you why.

10 I'm being investigated for a meeting I held at the
11 Corporation in October of 1987, a meeting with the principals of
12 the National Center for the Medically Disabled and Dependent,
13 which came about because I had received a complaint from them
14 concerning a monitoring visit in which they felt that they were
15 being singled out for particularly negative treatment.

16 As a Board member who had been a liaison to the ABA
17 SCLADE Committee, I had heard enumerable complaints about
18 monitoring and problems with monitoring. I was concerned that
19 there may be substance to that complain that this center was
20 being singled out.

21 I requested through the President a meeting with Mr.
22 Williams, who was the head of MAC at the time. The response I

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1 got back was that Mr. Williams suggested that the people from
2 the center might meet with the monitoring team in an effort to
3 see what problems there were with the monitoring visit.

4 We held that meeting sometime in October of 1987. The
5 meeting last about an hour and a half, maybe two hours, maybe
6 less. The upshot of the meeting, as I appreciated it, was that
7 some discourse took place that was helpful both to the monitors
8 and the people from the center in trying to clear up some of the
9 differences that existed.

10 My purpose was to see if there were any things that
11 were going to be done that would indicate that there was perhaps
12 personal animus or particular negative treatment being directed
13 toward that center.

14 I didn't hear anymore about it until the Monday before
15 Thanksgiving this year, when I got a call from one of the people
16 in the Inspector General's office saying he wanted to talk to me
17 about a matter. I offered to talk to him anytime he wanted.

18 I told him that I would be in Washington for the last
19 meeting, for Thursday and Friday. I was told that it was too
20 pressing a matter. It couldn't wait until our meeting on
21 December 1st. He asked if he could come to New Orleans to meet
22 with me. Of course, I agreed.

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1 He and Mr. Wilkinson came to New Orleans the Wednesday
2 before Thanksgiving and told me about this investigation and
3 asked me some questions about my meeting in October of 1987, two
4 years ago.

5 I answered all their questions to the best of my
6 recollection. I indicated that I thought there was nothing of
7 any substance or concern; that this Board had always been, as
8 Clark was fond of saying, a hands on Board, an Active Board.

9 I know that members of the Board consistently ask
10 questions about monitoring and about specific matters that were
11 of concern, complaints that they got. I answered all the
12 questions. That was my last official communication with that
13 office.

14 My concern is this, something that happened in October
15 of 1987, which deals with what I think is a matter of the
16 ordering of relationships between the Board and the staff,
17 suddenly becomes a priority matter that can't wait a matter of a
18 few days for me to come to Washington to talk to people in the
19 Inspector General's office is being pursued despite the fact
20 that there is, as Mr. Wear just said, no staff to speak of in
21 the Inspector General's office.

22 It's being pursued to be concluded in conjunction with

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1 some very delicate and sensitive matters before this Board,
2 including the President's performance. It's being rushed to be
3 concluded, as far as I'm concerned, at a time when the question
4 of appointments for the Board are on everyone's mind, when it's
5 very clear -- I think I made it clear at the last meeting--
6 that I'm being considered for reappointment to the Board.

7 This is being done at a time when there are people
8 that know that I'm being reconsidered for the Board. Yet, this
9 matter, two years old, that involves something that no one had
10 any problem with, at least not to my knowledge, for two years,
11 is now a priority matter that has to be decided at this time.

12 I think that it smacks of politics. I think it smacks
13 of an attempt to discredit me for possible reappointment to the
14 Board. I think it smacks of politics to the extent that I have
15 to vote on the future of Mr. Wear and his job here at the Legal
16 Services Corporation.

17 I think it's unfortunate that that has become one of
18 the first matters to be undertaken by the Inspector General's
19 office. I invite everyone to examine what I did with respect to
20 that meeting.

21 I would do it for any center that said they thought
22 they were being singled out for particularly adverse treatment.

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1 I will still do it. I would do it to this day. I did not ask
2 anyone to do anything wrong. The meetings were all arranged
3 through proper channels.

4 I did not ask anyone to change any opinion. As far as
5 I'm concerned the whole matter is a sword being held over my
6 head, both with respect to the vote on Mr. Wear and with respect
7 to the possible reappointment to the Board. I don't know if
8 there's a report yet.

9 I don't know what the report is going to say. I
10 haven't seen a report. If there is a report, I don't know if I
11 get a chance to see it before anyone else sees it. If and when
12 there is a report, I invite the public to request a copy of it.
13 I invite you to read it and study it.

14 I invite you to ask me any questions you have about
15 it. I invite any congressional oversight committee that has any
16 questions about it to please study it and ask me any questions
17 they have about it, because I have absolutely no hesitation in
18 defending that meeting. As I said, I would do the same thing
19 today.

20 Now that, to me, leads to some of the other questions
21 and concerns that are going to be raised about this matter and,
22 in particular, who the Inspector General reports to and the

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1 process by which we got to that point.

2 Again, I want to make clear that I don't think Mr.
3 Wilkinson is politically motivated, but I think that the whole
4 process by which his office has been used is political
5 manipulation. I don't see any other justification for it at
6 this point.

7 I would ask any Board member that has never made an
8 inquiry to the Corporation, never asked about monitoring, never
9 asked about particular problems, particular complaints, to
10 please let me know about that because I have been of the opinion
11 for four years that members of this Board freely inquired about
12 matters that they thought needed inquiry, freely inquired about
13 complaints, freely expressed their views.

14 I know on a number of occasions, members of this Board
15 expressed views that sometimes would be opposite the ones I was
16 expressing at that time with respect to being sure that a
17 program was not being singled out.

18 But I've heard and could quote occasions when members
19 of this Board said such and such a program is not being
20 monitored vigorously enough; that a program is not being pursued
21 vigorously enough.

22 I don't see any distinction between a member of the

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1 Board telling the staff that they're not being vigorous enough
2 in monitoring and my asking the staff to be sure that no one is
3 being singled out for particularly adverse treatment.

4 So, as I say, I want it to be public. If there is a
5 report, I want the report to be public. I want everyone to
6 examine it. I want the opportunity to answer any questions
7 anyone has about that report.

8 No matter what it says, I can assure you there is no
9 basis for saying that I did anything wrong. I want to have the
10 opportunity to make that clear to anyone who may get wind of
11 this, see the report, get access to the report or anything else
12 that might be done with the report.

13 CHAIRMAN WALLACE: Thank you, Mr. Uddo. Mr. Wear, I
14 don't know if you want to respond to that or not. You may do so
15 if you wish.

16 MR. WEAR: Well, Mr. Chairman, under the Inspector
17 General Act statute, when complaints are raised and they are
18 referred to the Inspector General, that's just the way the
19 statute works. I don't think the Inspector General has a choice
20 on that one way or another.

21 To the best of my knowledge, there's no motivation one
22 way or another on these investigations. When the allegations

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1 came up, they were referred to the IG. That's really about all
2 I had to say on it at this moment, anyway.

3 Under the statute, the Inspector General does his
4 investigation. He then makes a report to the head. The head
5 then transmits the report on to Congress. That is what I
6 suspect will happen with this.

7 As best I know, all of the IG's investigations are
8 done by the numbers. There not done to favor or to disfavor any
9 party.

10 MR. UDDO: Is there a report, Mr. Wear?

11 MR. WEAR: Not to my knowledge. I haven't reviewed
12 one.

13 MR. ERLNBORN: Mr. Chairman?

14 CHAIRMAN WALLACE: Mr. Erlenborn, I will recognize you
15 in a second. Mr. Smegal has been trying to get in.

16 MR. SMEGAL: Thank you. Mr. Wear referred to a
17 complaint. I'd inquire the source of that complaint, if I
18 could, please?

19 MR. WEAR: It came from some of the staff. I was not
20 aware of any of this until the complaint was raised with me.

21 MR. SMEGAL: Can you identify the staff, Mr. Wear?

22 MR. WEAR: Under the IG statute, Mr. Smegal, the

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1 sources of the investigation, the people who complained about
2 them are protected. There's a particular provision in the
3 statute, I think it's Section 7(C), that provides that those
4 individuals will be protected and their identities not revealed.

5 CHAIRMAN WALLACE: Mr. Erlenborn?

6 MR. ERLENBORN: Mr. Chairman, I think that the
7 responses from President Wear, though interesting, are not
8 really to the point. The Inspector General is independent of
9 the head of the Corporation, the President of the Corporation.

10 I happen to have been involved in the creation of the
11 first Inspector General and the expansion of the Inspector
12 General system. The Inspector General should be independent,
13 should decide whether he will conduct an investigation, should
14 receive the complaints directly.

15 He's not obliged to respond in any particular fashion
16 to the head of the Corporation. He will have to report to the
17 head of the Corporation. So I think these questions really
18 should be directed to the Inspector General to see why he
19 believed that there was reason to investigate and whether he
20 will tell us who was the complainant.

21 CHAIRMAN WALLACE: Mr. Wilkinson, can you respond to
22 that?

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1 MR. WILKINSON: First, to answer Mr. Uddo's question,
2 there has not yet been a report. It was my desire to wrap this
3 investigation up in a hurry so as to include it in the semi-
4 annual report, which I must submit. I must submit it over the
5 six-month period ending September 30.

6 Frankly, I hadn't really focused on that; that this
7 investigation began after September 30. Even though the time
8 had not yet passed for me to prepare the report and get it to
9 the President, it seemed incongruous for me to include in that
10 report, the semi-annual report that goes to the head of the
11 establishment and then onto Congress, an investigation which
12 came up after September 30, as the particular investigation that
13 you referred to did.

14 I can only say that I am investigating five other
15 matters. I should say in that connection, there are three ways
16 that I can, in effect, dispose of this investigation, which is
17 not yet through. It's not a matter of the report just not being
18 done; the investigation has not yet been completed.

19 There are three ways I can dispose of it. I can refer
20 to it somehow in the semi-annual report, which I just mentioned.
21 I can take the extraordinary step of writing to the President
22 what is called a 7-day letter.

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1 The statute provides that in the case of a matter that
2 is particularly egregious -- those are not the words -- it is
3 exception 5(D), "each IG shall report immediately to the head of
4 the establishment whenever he becomes aware of particularly
5 serious or flagrant problems, abuses or deficiencies relating to
6 the administration of programs and operations of such
7 establishment."

8 Then the head of the establishment, after receiving
9 that report, has only seven days to transmit it on to Congress
10 with whatever comments he considers appropriate. I have
11 recently learned through the IG community that that procedure
12 has been used only a handful of times since the 1978 Act.

13 That is a very unusual procedure to be used only where
14 the IG finds a particularly serious or flagrant abuse or
15 deficiency. I have no intention of using that procedure because
16 unless something comes up as we finish our investigation, I do
17 not find that what has occurred has been a particularly serious
18 or flagrant problem, abuse, or deficiency.

19 So that leaves me with two options. I can either
20 refer to this incident in the next semi-annual report, which is
21 not due until the last of April, or I can just treat it as an
22 internal report, in which case it really doesn't need to be

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1 transmitted to Congress.

2 I have not yet made that decision because we haven't
3 finished the report. As to -- and I appreciate very much your
4 going out of your way to say that your comments are not directed
5 at me. I only wish to point out -- and I guess I can point this
6 out by referring to a conversation I had with the Attorney
7 General of South Carolina earlier this week.

8 I was meeting with a group of state AGs, which I used
9 to be a member, and I was telling them about my new job. I was
10 telling them a bit about background of the LSC. I told them
11 that I was sure there were LSC recipients in South Carolina.

12 I did say to him that from time to time there are
13 allegations that certain recipients use this federal money
14 improperly. I named a couple of instances of such allegations.
15 He looked at me and said, "David, people in our state who
16 receive that money, they are not quite so sophisticated to use
17 that, but they will steal it."

18 Now I say that because the five other files we've
19 opened -- and we are at different stages in the progress of
20 those investigations -- all have to do -- actually, all but one
21 have to do with garden variety-type stealing of LSC monies.

22 I have been in an office for eight years, that of

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1 state AG, where the need to be independent, independent of the
2 Governor, independent of the legislature to find opinions, to
3 find statutes, which a lot of legislators worked hard to get
4 passed, were unconstitutional.

5 So I'm familiar with the heat that one must take to
6 hold down an independent position. I believe that the people
7 who have assisted me on this investigation, Mr. Reuter, who is
8 not here, Mr. Jones, who retired after a distinguished career of
9 33 years with the Federal Bureau of Investigation, who wasn't in
10 New Orleans but who has participated in a number of the other
11 interviews.

12 By the way, we've interviewed some 16 people in
13 connection with the investigation. I believe that they would
14 tell you, if you were to ask them, that we have done this by the
15 members and we have just tried to go right down -- as I believe
16 I told you, Mr. Uddo, I was very concerned with allegations that
17 were made that what was done in the one incident that you have
18 described was something that was done, maybe not every day but
19 at least with some frequency, by the Board members.

20 Quite frankly, we have spent, at this point, probably
21 a majority of our time trying to track down other incidents;
22 because, if what did happen at that meeting at the LSC office

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1 was only one of a number of such incidents, then obviously, that
2 -- I'm not saying at that point your conduct becomes completely
3 defensible, but at least it becomes one of a pattern.

4 Perhaps we need to address that pattern if, indeed,
5 there is something wrong with Board members on matters such as
6 visiting projects and doing monitoring reports, visiting those
7 members one on one is wrong. Frankly, that is where the report
8 has focused since we have spoken with you.

9 CHAIRMAN WALLACE: Mr. Durant?

10 MR. DURANT: Mr. Wilkinson, how do you prevent
11 yourself or your office from, frankly, being used for political
12 purposes because it is a little bit, I think, unusual that Mr.
13 Uddo should be in the first way of cases. I don't know what the
14 dates are on your stealing allegations? Are they before or
15 after October of '87?

16 MR. WILKINSON: The dates of the stealing?

17 MR. DURANT: The alleged stealing.

18 MR. WILKINSON: Some of them are before and some are
19 after.

20 MR. DURANT: How many are before?

21 MR. WILKINSON: I'd have to refer to the files.

22 MR. DURANT: How do you --

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1 MR. WILKINSON: I'm not personally handling each one
2 of these cases. Frankly, if I'm working in conjunction with Mr.
3 Jones on one. I'm also working in conjunction with our NAC
4 people on several others.

5 MR. DURANT: But how do you -- I don't know what the
6 statute says, and maybe you can enlighten me. But I think if
7 somebody comes to you with something that, maybe on a surface
8 given all the circumstances, frankly looks like bullshit, what
9 can you do so that you're not used for political purposes?

10 MR. WILKINSON: Well, I have to set my priorities.
11 The allegations, by the way, that were made in this particular
12 case, as they came to me, I understood secondhand, had been
13 verified by three or four or five staff members. Frankly, that
14 was the first such allegation that ever came to me.

15 Keep in mind it was only on, I think, November 9th
16 that the OMB came out with its long-awaited designation of who
17 the heads of these 33 designated federal entities were for
18 purposes of the IG Act.

19 It was only about then that I really got into full
20 gear; because, frankly, there was a big cloud over my head. I
21 had been hired by Mr. Wear. I missed the issue. I read the Act
22 before accepting the job. I had been in negotiations with Mr.

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1 Wear for some five or six months. I, frankly, didn't spot the
2 issue.

3 Two days after being on the job, I got a call from the
4 GAO, and they wanted to visit me, like, in the next day or two.
5 They came, and the question they were interested in, it was
6 obvious -- Mr. Santo was with me in that meeting -- they wanted
7 to know who I looked upon as my head. That's when I realized
8 there was an issue.

9 So, frankly, there wasn't a lot of work done to staff
10 up. My family was still back in Utah. I was not going to bring
11 back my family from Utah without there being some assurance I
12 was going to be around for a while.

13 MR. DURANT: I'm not asking how long you're going to
14 be around. I'm only asking how you would protect against
15 allegations that may be made to you -- I mean, so much in this
16 town is done for disingenuous reasons. What is your way of
17 protecting about being used in that fashion? If you are being
18 used in that fashion, that's obviously wrong.

19 MR. WILKINSON: I agree 100 percent. In the first
20 place, I think Mr. Wear has helped me in that regard. He has
21 put me in an office that is in the corner of the basement. I
22 commend him for that. It's a nice office. You're all welcome

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1 to come down and get acquainted. But I'm as far away from him,
2 I suppose, as I can be.

3 In this particular case, I knew enough, even though I
4 hadn't been around a long time, I knew enough about the
5 situation to know that I was or Mr. Wear was going to be
6 criticized from one side, the side that has been represented
7 here today, or from the opposite side that we were picking on
8 the BOP Center, the official name of it I don't recall.

9 As I quickly learned, that has been a very
10 controversial project. Indeed, when we went to New Orleans, Mr.
11 Reuter and I, the person who interviewed Mr. Uddo, his statement
12 to me at the end was, he was annoyed, not because he perceived
13 this as Mr. Wear retaliating, but rather he perceived it as
14 another attempt by those who wanted to kill the BOP center to do
15 so.

16 MR. UDDO: I don't recall making that statement. The
17 statement I recall making is that it annoyed me. I think I said
18 this very clearly, and I hope you recall it. It annoyed me that
19 your office was being used for political purpose.

20 I made that statement very clearly because the first
21 thing I thought when you folks showed up in New Orleans and told
22 me about this is that it is directly related to my possibility

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1 of reappointment to this Board. I said that as clearly as I
2 could because I believed it.

3 I would just ask you to do one thing. Go back and
4 look at the date when you got this complaint. Look at the dates
5 -- I may have to give to you the point at which the staff slate
6 of Directors, which was being lobbied, ran into some problems
7 because some groups told Mr. Wooton that they were supporting me
8 for the Board, and that they were not accepting the slate that
9 he was proposing to them.

10 I think you're going to see that the date that that
11 was made known to Mr. Wooton comes before the date that this
12 complaint was made.

13 MR. WILKINSON: Well, I can't speak for the date when
14 Mr. Wooton allegedly received these communications.

15 MR. UDDO: Well, it's important because I'll tell you
16 what has been told to me. What has been told to me -- again,
17 I'm not saying you because you get a complaint, and you're new
18 to the Corporation. You're at a somewhat disadvantaged position
19 to make a judgment about whether something is being used for
20 political purposes or has real substance.

21 What's been told to me is that this complaint is a
22 retaliation against me and the people who were supporting me for

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1 reappointment to the Board because they screwed up the staff's
2 proposed list of Directors.

3 The word retaliation has been used to tell me how they
4 have perceived what is going on and what has been told to them.
5 So I think the dates are very important.

6 (Simultaneous conversation.)

7 CHAIRMAN WALLACE: General Wilkinson, can I bring you
8 back, please, to what I understood to be Mr. Durant's question,
9 which is, if I may have delivery of rephrasing it for him, are
10 you obligated to make a full investigation of a complaint, which
11 appears to be frivolous or political, or do you have some
12 discretion in not making such an investigation?

13 MR. WILKINSON: Oh, yes.

14 CHAIRMAN WALLACE: If you have discretion, how do you
15 exercise that?

16 MR. WILKINSON: Oh, yes.

17 MR. DURANT: So far, the one thing that you've told me
18 is that your office is located in a corner.

19 MR. WILKINSON: Let me tell you something more
20 specific that applies just to this case for the very reason that
21 I knew there would be criticism coming. What I'm going to say
22 may sound irrelevant.

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1 When I was Attorney General in my first year, very
2 serious allegations were made against the speaker of the Utah
3 House of Representatives and three or four other key
4 legislators. I felt that needed to be investigated, but I felt
5 it needed to be investigated not by my office but by a group of
6 distinguished lawyers whose results would be credible, would not
7 be questionable.

8 So I appointed a bipartisan team of three; one
9 Republican, one Democrat and one person who claimed to be
10 independent. They conducted the investigation. In this
11 particular case, for the express reasons of guarding against
12 charges of criticism, I went out and hired Mr. Court Jones, who
13 had had no affiliation with the LSC up to that point at all.

14 Mr. Jones's resume, unfortunately, is not here with
15 us, but Mr. Jones, in his last years with the bureau, supervised
16 some 200 agents and their 7 supervisors, in counterintelligence,
17 worked for the bureau. He is a distinguished member of the
18 Retired FBI --

19 MR. ERLNBORN: Mr. Chairman, I wonder if we could
20 have the Inspector General answer the question.

21 CHAIRMAN WALLACE: I have tried to do that, Mr.
22 Erlenborn. I appreciate your calling it to the Chair's

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1 attention. I will press it again. I understand that in this
2 particular instance, you have hired Mr. Jones to try to keep a
3 level of independence in the investigation.

4 But the question, as I rephrased it, was a general
5 question. It is, are you obligated to look into complaints
6 which you believe to be frivolous or political. If you are not
7 obligated to do it, what discretion do you have and how do you
8 exercise that discretion?

9 That is a general question on which I think the Board,
10 quite obviously, would like to have some guidance.

11 MR. WILKINSON: I've answered at least the first part
12 of that, Mr. Chairman. That is, no, I'm not obligated to
13 investigate anything that comes to my attention.

14 CHAIRMAN WALLACE: So under what standards, if you
15 have set any standards at this point, do you exercise your
16 discretion in deciding which complaints to pursue?

17 MR. WILKINSON: Well, the answer is, there are no
18 written standards of which I am aware. At least there are no
19 written standards of the LSC. Perhaps some of the other
20 agencies have some.

21 The reason I took this among the first wave of cases
22 is because there were people within the organization, people I

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1 knew of already in my short stay there, who were making
2 allegations that the monitoring process had its integrity
3 threatened.

4 I knew enough about the LSC to know that we were dead
5 if people could not rely upon our monitoring reports. That's
6 why I chose this as one of those first cases.

7 CHAIRMAN WALLACE: I appreciate the specific answer.
8 Is there anything you can say at this early point in your tenure
9 to the general question of how you do exercise or plan to
10 exercise your discretion on investigating matters or planning to
11 investigate matters which may be frivolous or political?

12 MR. WILKINSON: Well, I could certainly try to get
13 some guidelines, but all the guidelines I know of in my former
14 office and in U.S. Attorney offices, of which I'm aware, they're
15 very flexible and, frankly, it depends upon the discretion in
16 the last analysis of the guy in charge.

17 CHAIRMAN WALLACE: I'm not asking about written
18 guidelines. Is there something you can tell us about what you
19 do to exercise the discretion which you say -- and I accept
20 because you know the Act better than I do -- that you have?

21 I'm not asking are there written guidelines or
22 standards or anything else. Is there anything you can tell us

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1 about how you exercise the discretion you have as a general
2 rule?

3 MR. WILKINSON: Well, your question, I'm not trying to
4 avoid, but I think it's a very difficult question. Obviously,
5 the way I go about this, there is some truth in the old adage
6 that "the squeaky wheel gets the grease."

7 When people from monitoring, who have wrestled with
8 cases for some time, come to me and say to me, "Dave, we can't
9 get the FBI to cooperate with us, maybe this is a case for you,"
10 or they say to us, as they've done on another case, "The U.S.
11 Attorney in Jamestown, New York" -- I guess I shouldn't identify
12 the project -- "tells us that he will not prosecute for theft
13 the case you packaged and gave to him because LSC is not a
14 federal agency and therefore the money has lost its federal
15 character and therefore he won't prosecute," now that's a
16 serious problem.

17 MR. UDDO: Mr. Wilkinson, I don't think that's what
18 Mike's asking, but let me just get something clear on the
19 record. You're not saying that monitoring told you that they
20 were trying to get the FBI to investigate me?

21 MR. WILKINSON: No, no; I'm sorry.

22 MR. UDDO: That's what it sounded like.

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1 MR. WILKINSON: That's another of our six cases.

2 MR. UDDO: Okay. Well, I think that the question
3 needs to be answered in the context of the investigation of me,
4 because I think the concern is -- can any one of us call your
5 office on any given day when an important vote is coming up and
6 get you cranked up on an investigation of a fellow Board member
7 in an effort to try to leverage that vote?

8 MR. WILKINSON: Let me just say, November 9th was the
9 date that this matter was referred to me. You'll have to find
10 out from Mr. Wooton when his contacts --

11 MR. UDDO: Before that.

12 MR. WILKINSON: I'd never heard of any such contacts.
13 I try to stay in my office --

14 MR. UDDO: I think that's the point, though. The
15 point is, and I've tried to be clear, that I don't think you
16 intentionally are conducting a political investigation. My
17 concern is that your office can be used that way.

18 I think that this is an example of it. As I said, I
19 will stand behind what I did. If your report ultimately is
20 critical, I will defend myself against whatever criticism there
21 is there.

22 If you point out something to me that violates some

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1 law, rule, regulation or otherwise, I will certainly, if I did
2 it, acknowledge it and accept the responsibility for it. The
3 question is, how are you going to avoid having your office
4 dragged into political kinds of investigations or investigations
5 where someone is primarily politically motivated?

6 I think the question Clark and Mike and now I am
7 asking.

8 MR. WILKINSON: The OMB, rightly or wrongly,
9 designated Mr. Wear as the head of the Agency for purposes of
10 the Act. That does not mean that he is my only boss. As Mr.
11 Erlenborn will well remember, I have a dual loyalty. My other
12 boss is Congress. If I think that Mr. Wear is improperly
13 leaning on me, that's who I get.

14 MR. UDDO: I'm not even so sure I'm talking about
15 leaning on you. I guess I'm talking about just allegations
16 being made.

17 CHAIRMAN WALLACE: Mr. Durant?

18 MR. DURANT: Let's just take this: You get an
19 allegation about a Board member who may or may not be in the
20 majority on a number of different cases which you, even by your
21 brief tenure, know there are obviously deep divisions within the
22 Board. Shouldn't your antennas go up a little bit?

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1 MR. WILKINSON: They did.

2 MR. DURANT: Maybe the concerns here at this stage of
3 the game may not be fully justified or that there is a way if,
4 in fact -- I don't know what the statute says in terms of Mr.
5 Wallace's question. Maybe your obligated to move at a certain
6 particular point.

7 Is there not a way to -- before you even begin any
8 kind of interview to make a judgment even in terms of the timing
9 or whatever of any complaint that comes to you and make some
10 determination that perhaps it arises in circumstances that are
11 inappropriate? How are you going to do that?

12 MR. WILKINSON: Mr. Durant, again, it's a hard
13 question. I certainly did make inquiries as to whether this was
14 a "politically motivated" matter. Indeed, there were two or
15 three other matters that came to my attention at about the same
16 time, maybe a little bit later, which also were suspicious.
17 Frankly, I've not looked into any one of them because my initial
18 feel, my initial smell was that they were not justified.

19 MR. UDDO: Then I'd like to know a little bit more
20 about your guidelines, then. I'd like to know why this one
21 smelled like it was not political, and the other ones did smell
22 political. I like to know your sniff test for that.

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1 MR. WILKINSON: Well, one of them happened four years
2 ago.

3 MR. UDDO: I don't' want the specifics of it. If
4 you've decided not to pursue them, I don't want to know the
5 specifics. Maybe we need a more formal response to what
6 procedure you're planning on following. But I would suggest to
7 you that it is a problem.

8 I think it's going to effect the credibility of your
9 office if there's not some way of dealing with the possibility
10 of politically motivated complaints. You came on in September.
11 You say this complaint came up in November. It obviously was
12 not something someone was waiting in line to tell you.

13 It took them two months to tell you. I can tell you
14 that the dates on some of the politics involved in this precede
15 that complaint. I can tell you that if you want to round out
16 your investigation, check into the allegation that this is a
17 direct reAction to what I have already indicated; a concern that
18 some people who were supporting me screwed up the staff list for
19 Board appointments. Maybe we beat this horse to death for now.
20 I don't want to take up the whole meeting with it.

21 CHAIRMAN WALLACE: Mr. Smegal?

22 MR. SMEGAL: If there's a response, I think we ought

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1 to give him the courtesy.

2 MR. WILKINSON: Well, I don't want this group to
3 believe that this was investigation directed at Mr. Uddo and Mr.
4 Uddo alone. This was an investigation into an incident.
5 Initially, as I talked with my team members, there were two or
6 three targets.

7 Indeed, as the report will come out, it will be seen
8 that the individuals involved are more than one, probably only
9 two. So this was not into a person; it was into an incident.
10 It broadened to get into the management problem of what are
11 appropriate contacts between members of the Board and members of
12 the staff. As IG, that is one of my responsibilities.

13 MR. UDDO: Would you please -- I'd really like a
14 clarification of that. That's something that we've debated on
15 this Board for four years, and I don't know that we've ever
16 determined exactly what the rules and the guidelines for that
17 would be. I would really like to know.

18 MR. DURANT: What's the that?

19 MR. UDDO: The relationship between the Board and the
20 staff. That is a perennial problem, and I'm trying figure out
21 why that's a matter for the IG if nobody is stealing or breaking
22 the law, and there are contacts between staff and the Board,

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1 which I can assure you over the past four years there are tens
2 of thousands of contacts between this Board and the staff on
3 every possible issue you can think of.

4 MR. WILKINSON: Well, the Act is quite clear.

5 CHAIRMAN WALLACE: Which Act? Legal Services or the
6 IG Act?

7 MR. WILKINSON: No, the IG Act as amended. It
8 authorizes me to do more than just look into six of the
9 instances of possible criminal Activities. I won't burden you
10 with all the statutory language, but one of the sections
11 authorizes me and indeed charges me to recommend policies for
12 the purpose of promoting economy and efficiency in the
13 administration of or preventing abuse in the programs and
14 operations of the establishment.

15 In other words, I'm supposed to be a lawyer, plus a
16 management analysis, plus a financial auditor. That's why I
17 need a staff because of those three. I'm only a lawyer. There
18 was one other part of your last comment I wanted to respond to,
19 but I've forgotten what you said.

20 CHAIRMAN WALLACE: Well, here's what I'd like you to
21 respond to because I'm not sure that you did. I think Mr. Uddo's
22 question was, is there anything wrong with Board members calling

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1 up the staff and trying to influence what they do?

2 MR. UDDO: That's my question.

3 MR. WILKINSON: That's the other part. Well, I have a
4 draft report. In that draft report, without revealing
5 everything it says because that would be clearly inappropriate,
6 I say that there should be a written policy.

7 That written policy should be banged out by a
8 committee appointed to include at least several members of this
9 Board plus the President of the Corporation and, among the
10 several members of the Board, there should be, if there are two
11 camps, as there seems to be, there should be a representative of
12 each camp.

13 Plus there should be a management consultant hired and
14 brought in to assist. I'm not talking about just plain contacts
15 to gain information. I point that out in the last part of my
16 corrective Action part of my report.

17 It's clearly appropriate to call some staff member up
18 one-on-one and be brief. It's clearly appropriate to visit the
19 offices and one-on-one either gather information or disseminate
20 information. The allegations, without being specific -- you've
21 certainly give your side. There is another side, which you will
22 see in the report.

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1 MR. UDDO: I expect there will be. Let me just say
2 this. I don't think Mr. Wallace is talking about just the
3 information either. I don't think there's any doubt that
4 committee chairman have told staff people that after they see
5 reports, change it.

6 I don't like the proposal. I don't see anything wrong
7 with a committee chairman saying to a staff person, "I don't
8 like the way that's come out," or "I don't like that proposal."
9 I'd like to see it stated differently or come out differently.

10 If your proposal is going to exclude a Board member
11 from saying to a staff person, "I don't like that," or "I don't
12 like the way it came out," we don't have any authority over
13 staff. We don't hire and fire staff. We don't have any control
14 over their job. Other than the President, that's it.

15 So I think if what you're suggesting is that he Board
16 cannot sort of freely express to staff what their opinions are
17 or what they think about a particular issue or what it is they
18 want in a proposal, which I think has been going on routinely
19 for years --

20 MR. WILKINSON: In my draft report, I am careful to
21 distinguish between contacts by Board members for the purposes
22 of formulating policy which is clearly okay; on the other hand,

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1 contacting staff members, Board members contacting staff members
2 for the purposes of trying to influence the implementations of
3 that policy in a particular matter.

4 Frankly, the allegations that came to me were that
5 that was what --

6 MR. UDDO: I have two final questions. The first
7 question is, do I get to see this report before it goes to the
8 President or after it goes to the President but before it goes
9 to Congress?

10 MR. WILKINSON: Well, as I told you, the convention -

11 MR. DURANT: Are you referring to the report on your
12 incident or are you talking about his report on the --

13 MR. UDDO: I'm talking about the report on the
14 allegations against me.

15 MR. WILKINSON: They're the same report.

16 MR. UDDO: The semi-annual report, which actually the
17 date was October 15th, so you're past the date for the semi-
18 annual report for this half year, as I understand it.

19 MR. WILKINSON: The investigation that we've been
20 talking about is not in the semi-annual report for the last six
21 months.

22 MR. UDDO: So this one won't be in until April?

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1 MR. WILKINSON: Until April, if at all.

2 MR. UDDO: Do I get to see it before it goes in?

3 MR. WILKINSON: The answer to that is, I had always
4 assumed that the Privacy Act did not apply to the LSC because we
5 are this strange neither-fish-nor-fowl creature. But just last
6 night I was reading in one of the transcripts of former Board
7 meeting, an executive meeting, where Mr. Bayly expressed opinion
8 that yes, the Privacy Act did apply to the LSC.

9 MR. UDDO: Do you have names in the report?

10 MR. WILKINSON: We have no names in the report.

11 MR. UDDO: Then what difference does it make?

12 MR. WILKINSON: Well, the report identifies the
13 (inaudible), and everybody here --

14 MR. DURANT: Can he see the report or not?

15 MR. WILKINSON: The answer is, the Privacy Act applies
16 to LSC.

17 MR. DURANT: Who gives that opinion? You or the
18 General Counsel?

19 MR. WILKINSON: I think I've been working with him. I
20 never really thought about it until last night. I think
21 probably I would have the ultimate -- either Mr. Wear or I would
22 have the ultimate say.

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1 As far as the IG Act is concerned, I give the report
2 to Mr. Wear. He gives it to Congress. If it's part of the
3 semi-annual report. As I said right off the bat, I may
4 determine, when it's all over, that this is not a report to go
5 to Congress at all either in the semi-annual report or as a 7-
6 day letter.

7 MR. DURANT: I don't know if we can take a motion on
8 it because I don't know what the rules are. The point is, it
9 seems to me that as a matter -- if you thought this was worthy
10 enough to open, and we'll leave that judgment aside for the
11 moment, as a matter of fairness, it seems to me he ought to be
12 able to see the report, comment on its accuracy or inaccuracy,
13 as he may see it to be.

14 I don't think it's particularly fair that some
15 document is going to float up there and become a matter of
16 public record. I mean the horrendous thing about so much of
17 this is that ethics things often are disguised, policy
18 differences.

19 What floats up under the aura of great objectivity is
20 not. It's just wrong; it's not right. It seems to me he ought
21 to be able -- I would encourage you, if you feel that this is
22 something that has to even be at this stage, that he ought to be

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1 able to see what's in that letter.

2 MR. WILKINSON: I agree 100 percent. One thing --

3 MR. DURANT: So that's the answer then? Yes?

4 CHAIRMAN WALLACE: No, this is a matter of law we're
5 talking about. If the Privacy Act applies, his answer is maybe.
6 If the Privacy Act doesn't apply, I haven't heard what your
7 answer is.

8 MR. WILKINSON: I'm not even sure of that, Mr.
9 Chairman. I want to consult with other IGs in the IG community.
10 As I read the Act, it goes on to Mr. Wear and then to Congress.
11 Again, it does not name names of anybody. It simply refers to a
12 Board member, the then President of LSC, the then Director of
13 MAC.

14 MR. UDDO: Well, I've waived my privacy into it then.
15 So to the extent that it refers to me, I'm waiving all privacy
16 interest in it. If there is a report, as I read the Act, 60
17 days after the President has it, the public can request it. So
18 I don't know how the Privacy Act applies to it.

19 MR. WILKINSON: That's if I include it in the semi-
20 annual report.

21 MR. UDDO: Well, that's what I'm talking about. If it
22 gets included in the report, apparently I don't get to see it

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1 ahead of time, but the public can see it 60 days after the
2 President gets it.

3 MR. WILKINSON: What you do get to do, though, is we
4 have prepared a written witness statement for you. We have not
5 yet gotten it to you. You are free to rewrite that and do
6 whatever you want with it. I have in my briefcase a list or a
7 sheet of witness statements about that thick. We have gotten
8 the signatures of maybe half of those but not of all.

9 CHAIRMAN WALLACE: Do all of those witness statements
10 go to the Hill?

11 MR. WILKINSON: No.

12 CHAIRMAN WALLACE: Then what difference does it make
13 whether Mr. Uddo gets to sign a witness statement or not as far
14 as his concern is to set the record straight when it goes to the
15 Hill? I think that's your concern.

16 MR. UDDO: Of course, it is.

17 MR. WILKINSON: He will certainly keep a copy of his
18 own witness statement.

19 CHAIRMAN WALLACE: I understand that, but he can do
20 anything he wants on his own to protect his name. The witness
21 statement doesn't help very much.

22 Mr. Smegal has been waiting patiently to be

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1 recognized.

2 MR. UDDO: I want the report public at any time it can
3 be made public, at the earliest possible time it can be made
4 public. To the extent that I've got a privacy interest in it, I
5 waive it.

6 I want it public, and I want to defend it on its
7 merits. If I can't see it before and have a chance to affect
8 what it finally says, make it public and I will defend myself in
9 the public form.

10 CHAIRMAN WALLACE: Mr. Wear, do you have something to
11 address to this particular issue before I go to Mr. Smegal?

12 MR. WEAR: Yes, sir. Mr. Chairman, I don't think
13 these questions have been examined by the staff. They certainly
14 haven't been examined by me as to what rights, if any, a target
15 of investigation has to look at the report before it's
16 published.

17 MR. UDDO: Don't I get Miranda warnings?

18 MR. WEAR: I used to be a prosecutor, and sometimes I
19 revert to my own language. I think the bottom line is, we
20 haven't looked at this. We're going to look at it. We're going
21 to do it by the numbers, whatever those numbers are.

22 The Inspector General has said we will look at the

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1 prActices in other agencies and see what they do. We will come
2 up with one and we will make sure that Mr. Uddo and the other
3 members of the Board all know what that is.

4 CHAIRMAN WALLACE: Mr. Smegal?

5 MR. SMEGAL: Thank you, Mr. Chairman. As a total
6 aside, I want the record to reflect that Clark has now
7 recognized, after only five years, how patient I am.

8 I have several questions, fairly short, for Mr.
9 Wilkinson. Then I want to go back to when I first raised my
10 hand, Mr. Wear, if I may. I might also point out that this
11 matter is here because I asked for it to be here. I do want to
12 go back to the more general questions in a moment.

13 Let me see if I understand now, Mr. Wilkinson, what it
14 is that you're doing. You've got five other pending
15 investigations, I believe you said.

16 MR. WILKINSON: Yes.

17 MR. SMEGAL: How many of those involve Board members?

18 MR. WILKINSON: None.

19 MR. SMEGAL: What is the process, if I can just
20 understand it, do you get a written request from someone to
21 initiate an investigation?

22 MR. WILKINSON: I have, not in all cases.

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1 MR. SMEGAL: What happens if you don't get a written
2 request? Do you make a memorandum?

3 MR. WILKINSON: Yes.

4 MR. SMEGAL: Is there some docketing system that you
5 employ chronologically? So you have a list of every
6 investigation that was suggested or has been suggested to you
7 since September 5th?

8 MR. WILKINSON: I have at least the six cases that
9 we're now handling, the five others plus the one we've been
10 talking about, in my briefcase, the files and the docketing
11 number for them.

12 MR. SMEGAL: Right. I'm asking you, though, with
13 respect to other matters that may have been brought to your
14 attention, are they in a docketing system also?

15 MR. WILKINSON: There have only been two or three of
16 them, and I'm sorry to say they're not. I don't have a
17 secretary, Mr. Smegal, at this point. I'll be interviewing
18 secretaries this week.

19 MR. SMEGAL: Chronologically, though, could someone
20 look at your records and determine when each of these matters
21 were brought to your attention either through a written request
22 or through an oral request which you reduced to writing?

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1 MR. WILKINSON: Yes. I told you the date that the
2 matter involving Mr. Uddo -- and he was one of just two or three
3 people involved in the incident we were looking at -- came to
4 me. I have the dates for the others as well.

5 MR. SMEGAL: The chronology of the request of your
6 investigations is, Mr. Uddo is the first one?

7 MR. WILKINSON: Yes. Indeed, it came to me on the
8 very day that the OMB published the list saying that I was
9 legitimately appointed as the AG.

10 MR. SMEGAL: That was November 9. If I understood
11 correctly, my understanding was, the request came to you, in a
12 sense, by hearsay. Did I hear Mr. Wear say or did you say that
13 it didn't come from Mr. Wear directly?

14 MR. WILKINSON: You did not hear me say that.
15 However, I'm afraid that I must respectfully decline to identify
16 who it came from because of the Act.

17 MR. SMEGAL: Can you tell us who on the staff --

18 MR. WILKINSON: It did come from somebody on the staff
19 in the building.

20 MR. SMEGAL: Have you discussed this matter since it
21 was brought to your attention with other members of the staff,
22 the present staff?

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1 MR. WILKINSON: Well, yes. My whole IG?

2 MR. SMEGAL: No, LSC staff.

3 MR. WILKINSON: Oh, yes. We've interviewed maybe
4 seven or eight.

5 MR. SMEGAL: So there's a number of staff people
6 involved in this investigation, which was originated by someone
7 in the LSC full-time staff, who you've refused to identify. So
8 it could have been anyone?

9 MR. WILKINSON: As I must refuse to identify.

10 MR. SMEGAL: The other matters that have been brought
11 to your attention that are in this docketing system you have,
12 and I understood you are not proceeding with those, or are they
13 just on hold because you're so busy?

14 MR. WILKINSON: We are proceeding.

15 MR. SMEGAL: Have you closed any matter that's been
16 brought to your attention?

17 MR. WILKINSON: I've told you of the six matters that
18 we have open files on. There have been two or three matters
19 that we were asked to look at. Unfortunately, I did not have a
20 document system. I will get that in place within a week or two.
21 Those came to me before November 9th. I just refused to look
22 into them.

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1 MR. SMEGAL: I have no further questions for Mr.
2 Wilkinson. I do have more questions for Mr. Wear. I don't want
3 to prevent anyone else from continuing with him.

4 CHAIRMAN WALLACE: All right, I have at least one
5 question for him. Let me see if any other members of the Board
6 have questions for the Inspector General?

7 MR. ERLNBORN: Not a question but just a quick
8 observation. I would hope that you would go back and study your
9 Act. I believe your interpretation of Mr. Wear as your boss is
10 incorrect. I think you're independent. I would just encourage
11 you to take a look at that.

12 CHAIRMAN WALLACE: Mr. Hall?

13 MR. HALL: When do you expect to have a report
14 completed on Basile's case?

15 MR. WILKINSON: I would hope in the next several
16 weeks. We just need to get these statements signed so there's
17 documentation for what we have. May I just say, Mr. Chairman,
18 Mr. Uddo, I'm sure meant this facetiously.

19 I do have the responsibility. I'm charged to refer
20 anything that smells criminal to the U.S. Attorney. We have not
21 done that in this case. There's no Miranda warning.

22 MR. UDDO: I meant because he said I was the target of

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1 the investigation. I don't deal with criminal law, but I sort
2 of remember that once you were the target, you were entitled to
3 Miranda warning.

4 MR. WILKINSON: I never used the term that you were
5 the target.

6 MR. UDDO: Mr. Wear did. I acknowledge that. I was
7 being facetious.

8 MR. EAGLIN: You've mentioned that in connection with
9 his case, that you've talked to some staffers as you have
10 processed that case; correct?

11 MR. WILKINSON: Yes.

12 MR. EAGLIN: Have they also had an opportunity to look
13 over the report that you're preparing on his case and to comment
14 on it?

15 MR. WILKINSON: They've all had an opportunity to look
16 over their statements that they either prepared individually or
17 were prepared for them by myself or the two people who have
18 assisted me in the investigation. But, by law, they cannot look
19 at the report itself until it goes to Mr. Wear.

20 MR. EAGLIN: So the seven staffers that you referred
21 to are persons who individually reviewed their separate
22 statements but only your staff has built the entire document?

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1 MR. WILKINSON: That's right. My staff consists of
2 one outside consultant and one person on loan to me from --

3 MR. VALOIS: Part of the material that has been
4 supplied to us is the Inspector General Act of the 100th
5 Congress. As I read page 10, paragraph (d), it says, "Each
6 Inspector General shall report to and be under the general
7 supervision of the head of the designated federal entity," which
8 I take is Mr. Wear unless there is some other meaning to that,
9 "but shall not report to or be subject to supervision by any
10 other officer or employee of such designated federal entity.
11 The head of the designated entity shall not prevent or prohibit
12 the Inspector General from initiating carrying out or completing
13 any auditor investigation or from issuing any subpoena during
14 the course of such auditor investigation."

15 My question is, is that --

16 MR. WILKINSON: I understand that to be the law. Mr.
17 Erlenborn is certainly correct from the standpoint of the spirit
18 of the Act. Mr. Wear is my boss. OMB has recently confirmed
19 that. But I have to be independent of him --

20 MR. VALOIS: I don't question that. I'm not raising
21 that issue at all. I'm wondering what our supervisory authority
22 over you is or whether you have any duty to report to us or not?

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1 MR. WILKINSON: That's a good question, and I knew it
2 would eventually be asked.

3 MR. VALOIS: Sorry I waited so long.

4 MR. UDDO: I think that's what's on the agenda today,
5 frankly, Bob, because I think the process by which Mr. Wear was
6 designated the head of the entity is what we really have to look
7 at. I think he requested that he be designated head of the
8 entity. I don't know that the Board was ever informed of that
9 request or whether it was discussed with the Board.

10 MR. VALOIS: Well, I had thought I read something else
11 in here, Basile, that made him the head of the entity by
12 operation of the statute.

13 MR. WILKINSON: No.

14 MR. UDDO: It's by his request to OMB.

15 CHAIRMAN WALLACE: I want to defer this line of
16 questioning for just a minute. The process by Mr. Wear got to
17 be head of the Agency, if we are an agency -- I guess we're an
18 entity -- probably ought to be addressed to Mr. Wear. I'd like
19 to focus on questions to General Wilkinson, if we can, and I
20 will get onto the other subject in a minute.

21 Do we have any further questions for General
22 Wilkinson?

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1 (No response.)

2 CHAIRMAN WALLACE: My question for you is this, I want
3 -- and it may be a question that Mr. Erlenborn, having worked on
4 the Act in years past, can enlighten us more than you can -- I
5 wonder to what concern the political motivation or any other
6 kinds of motivation of the complaining party ought to affect
7 your decision to go forward with an investigation, which seems
8 otherwise appropriate?

9 I will give you an example. Mr. Uddo, Mr. Durant and
10 I all testified at a congressional investigation into Mr.
11 Durant's finances. We found no wrongdoing on his part. It has
12 occasionally been rumored that members of Congress Act for
13 political motives.

14 It seems to me that they have a right to investigate
15 anything that needs investigating on its merits, whatever their
16 motives may be. I do not criticize Congress or the committee in
17 the least for investigating Mr. Durant's finances, although I'm
18 sure with the time and effort involved, he wished it hadn't
19 happened.

20 Is that something that you should take into
21 consideration? If the facts before you indicate that an
22 investigation ought to take place, is it proper for you to even

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1 care what the motivation of the complaining party or parties may
2 be?

3 MR. WILKINSON: That's a very difficult question, Mr.
4 Chairman. Neither of you are lawyers. You've all heard of the
5 judge who, when he is subject to being criticized for being
6 prejudiced, bends over backward to show he's not prejudiced and
7 becomes prejudiced the other way.

8 I think the answer has to be generally, just because
9 there could be a political motivation, there's no reason for
10 declining the case. On the other hand, if my smell test boils
11 down to that, I'm sorry to have to say, and tells me that there
12 could be no other motivation, then I guess I do have to decline.

13 CHAIRMAN WALLACE: Mr. Erlenborn, does that sound
14 consistent with the Act to you? You know more about this, I
15 imagine, than any of us here.

16 MR. ERLENBORN: Well, I would certainly agree with you
17 that if there appeared to be validity to the allegations,
18 whatever motivation caused the allegations to be brought, it is
19 irrelevant.

20 I think the other question is, though, if there
21 appears not to be validity, there's no requirement on the part
22 of the Inspector General to proceed, even if the head of the

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1 Agency has asked him to. I don't think the head of the Agency
2 can tell him not to investigate nor can he tell him that he must
3 investigate. I think he's independent in making that judgment.

4 MR. WILKINSON: Mr. Chairman, may I just conclude by
5 saying clearly in the case of these allegations surrounding this
6 incident, there were grounds up on which I could investigate,
7 quite apart from any possible prejudice or bias or improper
8 motive that might have existed among one or more of those
9 members of the staff with whom I spoke.

10 CHAIRMAN WALLACE: All right. Before we close the
11 books on this part of the discussion concerning the Uddo
12 investigation, your general performance of the duties, and turn
13 over to the question of how Mr. Wear got to be head, I do note
14 that the name Mr. Wooton has been injected into the discussion
15 today.

16 In fairness to him, I wonder if you have anything you
17 want to say? If you do, I'll let you. I'm certainly not asking
18 you to say anything, but your name has been called into this and
19 you ought to have a chance.

20 MR. WOOTON: Yes, Mr. Chairman. I do have a
21 statement.

22 MR. SMEGAL: Mr. Chairman, could we have a

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1 distribution of his statement? That might help us to follow
2 him.

3 CHAIRMAN WALLACE: Is this a written statement?

4 MR. WOOTON: No, this is just by way of allowing me to
5 follow my thoughts on this. I make this statement with some
6 reluctance, because I think these matters normally are best
7 handled in a business-like way without public discussion so that
8 the sensitivities and all these things can be weighed outside
9 the public view.

10 For reasons that are somewhat unknown to me, Mr. Uddo
11 has chosen to have it discussed in public view. I think Mr.
12 Wilkinson was at somewhat of a disadvantage because he rightly
13 has an obligation to protect whoever came to him with the
14 information that led to his investigation.

15 I made a memorandum to the file against the
16 possibility that this issue might be brought up. I'm concerned
17 of the current climate that there could be uninformed attempts
18 to misuse this investigation or its timing for political
19 purposes.

20 The first matter that must be understood is that I,
21 and no one else, was responsible for initiating this
22 investigation. By that, I mean not initiating the Inspector

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1 General's involvement in the investigation but the initial
2 gathering of the facts that led to a referral to the Inspector
3 General.

4 Mr. Wear has an admirable tendency to shield the
5 subordinates from the political attacks he has come to expect in
6 his position. However, let there be no mistake, Mr. Wear and
7 the Inspector General have done no more than perform their
8 statutory responsibilities in investigating facts which I
9 brought to their attention.

10 What were those facts? Why did I pursue them? The
11 facts which I presented to Mr. Wear and Mr. Wilkinson were
12 discovered as I prepared for the Board meeting scheduled for
13 December 1, 1989.

14 As I considered the issues which might be raised at
15 that meeting and try to evaluate how different Board members
16 might respond to those issues, I focused on Mr. Uddo as a
17 potential swing vote.

18 The facts I knew at that point included: Mr. Uddo's
19 involvement with the Right to Life Movement and the normal
20 affinity those in that movement have to the reform effort being
21 pursued at the Legal Services Corporation because of the
22 extensive proabortion Activities of Legal Services grantees; Mr.

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1 Uddo's statement at the House Subcommittee hearing in July of
2 1988, where he claimed to be a part of a conservative group on
3 the Board.

4 Three, Mr. Uddo has been lobbying, asking others to
5 lobby the White House to secure his reappointment to the LSC
6 Board and would be wary of offending reform-minded White House
7 staff prior to their decision. His vote for restricting
8 redistricting cases seems consistent with the theory that he is
9 a conservative and a member of the conservative group on the
10 Board.

11 My puzzlement was why, in despite of these facts, had
12 Mr. Uddo apparently aligned himself with Mr. Smegal, a former
13 Board member of the National Youth Law Center, which even today
14 continues to be aggressively involved in proabortion Activity,
15 whose proabortion Activity Mr. Smegal continues to aggressively
16 defend.

17 In other words, why was Mr. Uddo recently voting only
18 38 percent of the time with Mr. Durant, Mr. Wallace, Ms.
19 Swafford and Mr. Mendez, who seem more clearly pro-life? As I
20 discussed this, apparently on an unexplainable contradiction
21 with staff, these two things emerged; one fact, one rumor.

22 The fact is that Mr. Uddo voted with the conservative

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1 majority 70 percent of the time before the October 2, 1987,
2 meeting of the Board when the majority voted not to seek a
3 congressional appropriation for national and state support
4 centers.

5 The rumor was that Mr. Uddo had personally intervened
6 on behalf of the BOP Center during the monitoring process in
7 1987. As a result of that information, I undertook, with Mr.
8 Wear's approval, to investigate whether there was any substance
9 to the rumor.

10 Working with a member of the Office of General
11 Counsel, I collected and reviewed documents and interviewed
12 several current employees. A number of facts seemed to emerge
13 from that effort.

14 One, during the confirmation process, Mr. Uddo,
15 represented to the United States Senate that he could have
16 conflict of interest problems because his employer, Loyola
17 University Law School, received law school clinic grants from
18 the Corporation.

19 He pledged that he would recuse himself, resolve that
20 problem by recusing himself from such matters. In this first
21 month on the Board, Mr. Uddo requested an opinion of the Office
22 of General Counsel as to whether he could vote on matters

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1 involving law school clinics generally

2 An opinion was also rendered allowing Mr. Uddo's
3 presence to be counted for quorum purposes during those votes.
4 Subsequently, Mr. Uddo personally reported his committee's
5 recommendation to increase law school clinic funding by
6 \$700,000.

7 Four, later Mr. Uddo voted on a matter involving law
8 school clinics and later asked that his vote be counted as an
9 abstention. Five, on October 2nd, Mr. Uddo abstained from a
10 vote on law school clinics after pressure from other Board
11 members.

12 Mr. Uddo came to Washington, apparently at Corporation
13 expense, six, and met personally with then-General Counsel John
14 Bayly and President Jim Wensel as an apparent agent for Loyola
15 University South during negotiation of the Corporation grant to
16 Loyola University of funds for the Gillis Long Center in an
17 attempt to secure favorable treatment for Loyola.

18 MR. UDDO: Can I just stop you a second?

19 MR. WOOTON: Sure.

20 MR. UDDO: Where the hell are you getting that from?

21 A PARTICIPANT: He's reading it.

22 MR. WOOTON: I'm reading it.

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1 MR. UDDO: From what?

2 MR. WOOTON: The statement that I asked --

3 (Simultaneous conversation.)

4 MR. UDDO: How do you reach a conclusion that I came
5 to Washington to lobby for the Gillis Long -- that was
6 appropriated by Lindy Boggs, had nothing to do with Legal
7 Services. It had nothing to do with Legal Services money.
8 Legal Services is a funding vehicle for it. We had no control
9 over that money. Where do you come up with those conclusions?

10 MR. WOOTON: Mr. Uddo, at any time, I'd be glad to
11 give you the documents that show that very clearly.

12 CHAIRMAN WALLACE: I think we've got a
13 misunderstanding of what he said, or at least I do. I think
14 what he said was that he came here, not to lobby Congress but to
15 lobby John Bayly and Jim Wensel on the details of the grant,
16 which may or may not be true. But I want to make sure we all
17 understand what the allegation is.

18 MR. UDDO: I don't understand what the allegation is.
19 Explain it to me.

20 MR. WOOTON: The allegation is that you came to
21 Washington. You met with Jim Wensel and John Bayly, when he was
22 the then-General Counsel, to deal with a particular clause in

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1 the grant that was going to Loyola University as a result of the
2 congressional appropriation for the Gillis Long Center.

3 MR. UDDO: It has something to do with money and how
4 much money Loyola would get?

5 MR. WOOTON: No, it had -- well, it could eventually
6 have something to do with it.

7 MR. UDDO: How? It was a one-time appropriation.

8 MR. WOOTON: No, it had to do with the terms of the
9 grant and the reversionary interest in the grant, in the money
10 that went to Loyola, whether it would come back to the
11 Corporation as a result of some subsequent events, the
12 cancelling of the grant.

13 MR. UDDO: It couldn't come back to the Corporation.
14 Congress made that clear. So there was really nothing --

15 MR. WOOTON: Well, that's really not true because the
16 same thing went to Drake University, and there's a very specific
17 clause in that grant --

18 MR. UDDO: I want to see the document.

19 MR. WOOTON: I'd be glad to share them with you.

20 MR. UDDO: I want to see them.

21 MR. WOOTON: I'd be glad to share them with you. Mr.
22 Uddo came to Washington, at least twice, apparently at

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1 Corporation expense, and met together with then-President John
2 Bayly, together with the monitoring team, before and after it
3 monitored the BOP Center.

4 Eight, at the meeting with the monitoring team, after
5 the monitoring, which was attended by the President and the
6 General Counsel of the recipient, the employees with whom he met
7 felt intimidated and felt that one, his presence was improper.
8 He was clearly Acting on behalf of the BOP Center and not the
9 Corporation. He was clearly attempting to influence the
10 preparation and content of the monitoring report.

11 Nine, Mr. Bayly, in the month before his resignation
12 as President of LSC, attempted to alter the contents of the BOP
13 Center monitoring report, and then staff refused to send out the
14 report as altered by Mr. Bayly.

15 Ten, staff uniformly felt that Mr. Uddo's intervention
16 on behalf of the BOP Center was improper and extraordinary.
17 None of those interviewed were aware of a similar circumstance.

18 Both Mr. Wear and Mr. Wilkinson were kept appraised of
19 the progress of this investigation, but a referral was not made
20 until Mr. Wear, in consultation with Mr. Wallace, decided that
21 the Inspector General should pursue the matter.

22 I made a thorough report to the Inspector General of

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1 my findings and delivered to him copies of relevant documents in
2 my possession. From that point, the Inspector General conducted
3 his investigation without my involvement.

4 As a result of my inquiry, I am of the opinion that
5 one, Mr. Uddo came on the LSC Board aware of his potential
6 conflict of interest regarding Loyola University South, but
7 intent upon walking as close to the line of conflict of interest
8 as was legally permissible, and clearly crossed that line in
9 negotiating LSC contract terms on behalf of Loyola.

10 Two, Mr. Uddo abused his authority in intervening the
11 monitoring process on behalf of the BOP Center, with which he is
12 closely associated. Three, Mr. Uddo's alliance with Mr. Smegal
13 could be explained by his commitment to protect the federal
14 funding, which this year amounted to \$505,000, compared to
15 \$30,000 from other sources of the BOP Center, at all costs,
16 including his political principles and ethical standards.

17 MR. UDDO: You know, that is an outrageous comment.

18 MR. WOOTON: It is my opinion.

19 MR. UDDO: That's fine. Your opinion ought to be
20 qualified as your opinion.

21 MR. WOOTON: When you read the record, you'll see that
22 I said, "As a result of the inquiry, I am of the opinion that,"

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1 and this is the third element of that opinion.

2 MR. UDDO: Fine.

3 MR. WOOTON: Despite my past disputes with Mr. Uddo,
4 these conclusions give me no joy.

5 MR. UDDO: I got a clear picture of that.

6 MR. WOOTON: Under other circumstances, I would have
7 allowed the Inspector General's report to speak for itself.
8 However, I am also aware that certain members of this Board, in
9 fact, do want to use this performance appraisal and trumped up
10 charges of impropriety as an excuse to do just that, which is to
11 remove Mr. Wear.

12 In my opinion, Mr. Wear is not being attacked because
13 of what he had done wrong, but because of what he had done
14 right. In the 18 months Mr. Wear has been President, his
15 efforts to reform the federal Legal Service program have met
16 with success after success.

17 Mr. Wear has consistently voiced his support for a
18 federal Legal Services program both publicly and privately, and,
19 in my opinion, he means it. Mr. Wear has consistently insisted
20 that every Action by the Corporation is business-like and by the
21 book, including this Inspector General investigation.

22 Mr. Wear is a man of both courage and integrity and

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1 deserves your support. However, I hope those who are bent on
2 substituting character assassination to reason debate in
3 frustration over being consistently outvoted on this Board and
4 in fear of being outvoted in Congress will not attempt to using
5 the Inspector General's investigation of Mr. Uddo as ammunition
6 in your attack.

7 I was the one who initiated this investigation, which
8 Mr. Wilkinson felt compelled to do, and Mr. Wear behaved
9 professionally and with integrity throughout.

10 CHAIRMAN WALLACE: Before I open the floor for
11 questions, I need to clarify one thing because my name was
12 mentioned in that statement. I'm not sure what the word
13 "consultation" means. I will tell the Board and anybody else
14 who is interested what happened.

15 Mr. Wear called me at some point in this -- I don't
16 even remember whether Mr. Wilkinson was on the phone or not--
17 to tell me he was considering this. I told him that I
18 understood the IG to be independent. To the extent the IG was
19 not independent, he reported to the President and not to me.

20 As a Board member, I didn't think I had anything to do
21 with it. I didn't tell anybody to do anything, except follow
22 the law, which I presume is what the Inspector General has done.

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1 If that's consultation, then that's consultation. But the best
2 I can say is, I was told about it.

3 My response was, that's a matter for the Inspector
4 General and not a matter for me or the Board. That's the way I
5 still feel about it.

6 Now I see Mr. Smegal's hand on the floor. He's
7 recognized.

8 MR. SMEGAL: Thank you very much, Mr. Wallace. You
9 start off Mr. Wooten by referring to a memorandum to file. Do I
10 understand that's a separate document from the one you've just
11 read from?

12 MR. WOOTON: No.

13 MR. SMEGAL: I asked for a copy of the document. I
14 understood that was just an unofficial document. That's your
15 memorandum to file?

16 MR. WOOTON: This is my memorandum to file.

17 MR. SMEGAL: What is the date on it, Mr. Wooten?

18 MR. WOOTON: December 11, 1989.

19 MR. SMEGAL: Did you prepare a document for Mr.
20 Wilkinson subsequent to September 5 that he proceeded to use in
21 initiating his investigation?

22 MR. WOOTON: No, I prepared no documents in this

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1 investigation.

2 MR. SMEGAL: So your reference of this matter to him
3 was oral?

4 MR. WOOTON: No, not entirely. There were a number of
5 documents that were turned over to him. There was -- I think
6 the member of the Office of General Counsel staff who
7 participated in the interviews of the employees turned over
8 notes of those interviews as well as the document.

9 MR. SMEGAL: But as far as any specific request of Mr.
10 Wilkinson to conduct an investigation of Mr. Uddo, what form did
11 that take?

12 MR. WOOTON: Well, it actually occurred --

13 MR. SMEGAL: Was it oral or written?

14 MR. WOOTON: Well, it was oral. To my knowledge, it
15 was oral because it was really made initially by Mr. Wear with
16 my being told to brief him on what I had found out to that
17 point.

18 MR. SMEGAL: So, in fact, he isn't protecting you;
19 he's protecting Mr. Wear in his answer that he can't reveal who
20 brought it to him. actually, Mr. Wear did bring it to him.

21 MR. WOOTON: Well, I brought it to him. This was the
22 difficulty of the situation we're in. OMB had not yet

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1 designated who the head of the Agency was. There was some
2 question about whether or not Mr. Wilkinson was properly
3 designated as the Inspector General.

4 MR. SMEGAL: We're going to get to that when we get to
5 Mr. Wear.

6 MR. WOOTON: Well, I'm telling you what happened, Mr.
7 Smegal, that's all. So when I came across this, as I was
8 preparing it -- this is not something that I was looking for,
9 and I found from the staff when I tried to understand where Mr.
10 Uddo might come out on some things.

11 When I first started looking at it, it wasn't clear
12 that the IG was effectively on Board, or at least unassailably
13 on Board. So the internal discussion was, maybe there was a
14 reason to hold back.

15 There was also internal discussion about -- and this
16 is the unfortunateness of the timing of all of this -- there was
17 discussion about whether or not, if this was among the first
18 investigations that the Inspector General undertook, would there
19 be the kind of concerns, and I think rightly, that Mr. Uddo
20 would raise about whether or not the Inspector General's office
21 was being used for political purposes.

22 Everybody was aware of the sensitivity of the current

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1 situation. Everybody was aware that this kind of investigation
2 could be mislabeled however it was pursued by the Inspector
3 General.

4 MR. SMEGAL: With respect to bringing this matter to
5 the attention of Mr. Wilkinson, when did that occur?

6 MR. WOOTON: Well, the whole matter began the week of
7 November 6th and was referred to him by Thursday of that week.
8 So November 9th was the Actual date in which he took
9 responsibility for the investigation.

10 MR. SMEGAL: But the earliest discussions were
11 November 6th?

12 MR. WOOTON: Yes.

13 MR. SMEGAL: I believe he testified earlier that this
14 was the first matter that came to his attention?

15 MR. WOOTON: I don't think he testified to that, but I
16 think it was among the first matters. I don't know what other
17 matters -- he has been here and he has been talking to the
18 staff. There may well have been other matters of which he was
19 aware. I don't know whether they reached the stage of being
20 formally referred or not.

21 MR. SMEGAL: Which Board member or members instructed
22 you to prepare that statement you just read?

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1 MR. WOOTON: None.

2 MR. SMEGAL: Did you have conversations before this
3 Board meeting with any of the Board members regarding that
4 statement?

5 MR. WOOTON: No.

6 MR. SMEGAL: Mr. Wallace, you didn't know about that
7 statement when you asked Mr. Wooten to come forward?

8 CHAIRMAN WALLACE: No, I'd seen his hand up a couple
9 of times. He had been mentioned, but I did not know what
10 statement he had or what he wanted to say.

11 Further questions?

12 MR. EAGLIN: Yes, I have questions.

13 CHAIRMAN WALLACE: Mr. Eaglin?

14 MR. EAGLIN: As you read your statement there, you
15 mentioned some statistics which indicated to me that you've done
16 analysis on Mr. Uddo's voting pattern. Do you maintain files
17 like that on Board members?

18 MR. WOOTON: Yes.

19 MR. EAGLIN: All Board members?

20 MR. WOOTON: Yes.

21 MR. EAGLIN: Wouldn't it be fair -- wouldn't you agree
22 that we all ought to see our files that he's maintaining?

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1 MR. WOOTON: Oh, I think you've misunderstood. I
2 don't maintain a file. I've asked the OPCD staff to look over
3 the voting records and to come up with a printout. So I've got
4 a printout of the voting records.

5 MR. EAGLIN: I'd settle for that.

6 MR. WOOTON: Okay, I think I have enough copies for
7 everyone.

8 CHAIRMAN WALLACE: Mr. Smegal?

9 MR. SMEGAL: No, I was just asking if I could have the
10 printout.

11 CHAIRMAN WALLACE: Oh, all right, I'm sorry.

12 Mr. Uddo?

13 MR. UDDO: When did you start that?

14 MR. SMEGAL: Mr. Eaglin is not through yet.

15 MR. EAGLIN: I got interrupted.

16 MR. UDDO: I'm sorry.

17 CHAIRMAN WALLACE: I apologize. I'm losing track.

18 MR. UDDO: I'll leave the room and not interrupt you.

19 MR. EAGLIN: No, you can stay. I don't want you to
20 get kicked out.

21 CHAIRMAN WALLACE: Mr. Eaglin is on first. Go ahead,
22 Mr. Eaglin.

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1 MR. EAGLIN: When did you start doing that?

2 MR. WOOTON: You know, I'm not really sure. It may be
3 revealed if you look back through the dates. It's been probably
4 six or eight months ago.

5 MR. EAGLIN: Did you initiate that?

6 MR. WOOTON: Yes.

7 MR. EAGLIN: Why?

8 MR. WOOTON: To try to be able to better discern where
9 people would come out on various issues.

10 MR. EAGLIN: Did you discuss that idea with anybody?

11 MR. WOOTON: My staff.

12 MR. EAGLIN: Did you discuss it with Mr. Wear or any
13 Board member?

14 MR. WOOTON: No.

15 MR. EAGLIN: Has it been disseminated?

16 MR. WOOTON: I don't know. Some of the information
17 off of it may have been shared with people. I don't know where
18 the Actual documents have been disseminated.

19 MR. EAGLIN: So the sharing might have been extrAction
20 of, say, Mr. Uddo's voting record and then sharing just that
21 with others?

22 MR. WOOTON: Yes, but frankly, I don't know that

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1 that's happened. It may have. I can't recall.

2 MR. EAGLIN: Well, if it may have, how might it have
3 happened?

4 MR. WOOTON: Well, Mr. Uddo's record on the Board has
5 been discussed by a lot of people.

6 MR. EAGLIN: How did the extracts from your record
7 concerning Mr. Uddo get to anybody else? How might it have
8 gotten to anybody else if you maintained it in your office?

9 MR. WOOTON: Well, if it did get to anyone else, I
10 probably shared it with them. I cannot remember actually having
11 shared the document with anyone else. I could have. I'm just
12 saying I don't remember having shared it with anyone.

13 MR. EAGLIN: You maintain it in your office, but you
14 might have shared that information with somebody else?

15 MR. WOOTON: Well, I've shared it with Mr. Wear. I
16 don't know, I mean even have shared it with other Board members.
17 But I don't recall having shared it with anyone specifically.

18 CHAIRMAN WALLACE: Further questions, Mr. Eaglin?

19 MR. EAGLIN: No.

20 CHAIRMAN WALLACE: Mr. Uddo?

21 MR. UDDO: Mr. Wooten, you were the prime mover behind
22 most of the lobbying for the slate or so-called Corporation

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1 candidates for the Board; weren't you?

2 MR. WOOTON: No, I was not.

3 MR. UDDO: You didn't meet with a number of groups
4 that you listed two weeks ago when we were here?

5 MR. WOOTON: Yes, I did.

6 MR. UDDO: But you don't consider that -- let's put it
7 this way. You were the most Active person involved?

8 MR. WOOTON: I would say I probably was.

9 MR. UDDO: Isn't it true that at one point you
10 contacted the National Right to Life Committee to try and
11 encourage them to engage in lobbying on behalf of your slate of
12 candidates?

13 MR. WOOTON: Yes, I did.

14 MR. UDDO: Isn't it true that they told you that they
15 would look at the slate, but that they were supporting me and a
16 couple of other people for the Board?

17 MR. WOOTON: Well, actually, what was really
18 remarkable to me, Mr. Uddo, is that a member of the National
19 Right to Life Committee said to me that their only goal was to
20 see that you got reappointed to the Board.

21 MR. UDDO: Why do you find that amazing?

22 MR. WOOTON: Well, because other people who were on

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1 the list that they sent to the White House were -- one of them
2 at least was on the list that the staff did in conjunction with
3 the Board and the members of Congress -- had equally strong
4 right to life preventions.

5 MR. UDDO: Yes, I would challenge that, and I would
6 ask you to go back and check the records and go back and check
7 my record, which is a very public record, and you impugn my
8 support for the Right to Life Movement in your statement, which
9 is a complete outrage to me. It's a personal -- I know it
10 doesn't bother you because that's the way you operate. I mean,
11 you operate in personal slurs and that kind of --

12 MR. WOOTON: Have you ever made any personal slurs,
13 Mr. Uddo?

14 MR. UDDO: Not against you. Everything I've said at
15 this table has been about lobbying, someone lobbying. I was
16 certain you were the one that made the allegation against me,
17 but I didn't say that. I try to keep things on a somewhat
18 objective level.

19 When you were in contention for the presidency last
20 time we were dealing with that, we had an Executive Session
21 where I raised some questions and asked some questions about
22 your background and your record and your prior government

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1 services, but that was in an Executive Session.

2 So I don't engage in that kind of conduct. I want you
3 to show me the public record where I have engaged in a slur of
4 you or anyone else.

5 MR. WOOTON: All right, I will.

6 MR. UDDO: I would appreciate it if you would.

7 MR. WOOTON: I shall.

8 MR. UDDO: Secondly, with respect to some group's
9 support for me, haven't you said and haven't you attributed to
10 that group the responsibility for having some effect on undoing
11 your plan to present a slate to the President that, as you put
12 it, the President couldn't refuse to appoint?

13 MR. WOOTON: I've never said that, for one thing.

14 MR. UDDO: Certainly, if we have to get into it, there
15 are people that can say that you said that.

16 MR. WOOTON: And the answer to your question is no.

17 MR. UDDO: You didn't see them as having frustrated
18 your attempts in any way?

19 MR. WOOTON: Well, I saw they had a slate. The ABA
20 had a slate.

21 MR. UDDO: Your intention, though, was to get the
22 Right to Life groups on your slate to lend that support to your

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1 slate; right?

2 MR. WOOTON: And a number of Right to Life groups do
3 support that slate.

4 MR. UDDO: The major Right to Life group in the
5 country didn't.

6 MR. WOOTON: That may be.

7 MR. UDDO: It did frustrate your attempts to get some
8 sort of unified commitment for your slate that, as you said, the
9 President couldn't refuse to appoint.

10 MR. WOOTON: Well, I don't know that I said that. I
11 may have said there wouldn't be any reason for the President not
12 to appoint it, but I think it would be very unrealistic to say
13 that --

14 MR. UDDO: So to the extent that this group had some
15 effect on frustrating your attempt, you're obviously displeased
16 with that group?

17 MR. WOOTON: They weren't my attempts, Mr. Uddo. The
18 conservative members of this Board asked the staff to Act in a
19 staff capacity to help present to the White House people that
20 they could be comfortable with appointing. That's the function
21 that we performed. Part of that was to --

22 MR. UDDO: There's a vote on the record where that was

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1 done?

2 MR. WOOTON: No, but I think that the assent --

3 MR. UDDO: What assurance do I have that you had a
4 majority assent of the Board of this Corporation to engage in
5 that conduct?

6 MR. WOOTON: You don't.

7 MR. UDDO: Point me to something that justifies your
8 conduct. You did it on Corporation time; right?

9 MR. WOOTON: Some of the work.

10 MR. UDDO: Corporation time; right? You used
11 Corporation resources. You used Corporation FAX machine. You
12 used Corporation stationary. You used Corporation copying
13 machine. So you were on Corporation time; right?

14 Point me to something in the record that authorized
15 the expenditure of Corporation resources for you to lobby for a
16 slate of people to be appointed to this Board.

17 MR. WOOTON: Mr. Uddo, most of the money that the
18 Corporation spent outside of the money that goes to the field
19 programs as part of the budget process doesn't get spent in each
20 instance as a result of a vote of the Board.

21 MR. UDDO: It certainly does. Everything that you do
22 traces back either to enforcement of regulations or attempts to

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1 get appropriations bills passed. Show me something that
2 authorizes you to use Corporation resources to lobby for a slate
3 of Directors that is supposed to be the Corporation slate of
4 Directors. Where did you get your authority to do that?

5 MR. WOOTON: I'll show you the vote from Mr. Wear as
6 President because I did it under his authority. You voted to
7 make him President and CEO.

8 MR. UDDO: But you just told me it was because a group
9 of Board members wanted you to do it.

10 MR. WOOTON: No, they assented to it.

11 MR. UDDO: When did they assent to it? Where's the
12 Board meeting that says they assented to that?

13 MR. WOOTON: I was at a dinner. I think it was in San
14 Diego when five out of the six members of the Board, who were at
15 that dinner, said very specifically that they'd like to see
16 people appointed to the Board that agree with them on the forum
17 of Legal Services.

18 MR. UDDO: They gave you the list?

19 MR. SMEGAL: I'm sorry. I thought this was an 11-
20 person Board. Who are the six you're talking about.

21 MR. WOOTON: I can't even remember the five that were
22 at the dinner table. I think I could probably look at the

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1 records of who was at the dinner.

2 MR. SMEGAL: And a majority of 11 is 5 if only 6 are
3 around; is that it?

4 MR. WOOTON: No, I think the other member who was on
5 the Board at that time made it also clear that he or she -- and
6 I can't remember who was there or not there -- assented to that
7 Activity.

8 MR. SMEGAL: Do we have two Boards? Is there a Board
9 of six you keep referring to, and then there's the rest of us,
10 the unwashed, or what is this? Mr. Wooton, let me clarify one
11 thing that Mr. Uddo asked you.

12 You indicated that you did all this. He went through
13 the laundry list of what you were doing with Corporate
14 resources. Then I heard you say it was all with the instruction
15 of Mr. Wear; is that correct?

16 MR. WOOTON: That's correct.

17 MR. SMEGAL: Thank you.

18 CHAIRMAN WALLACE: Mr. Durant?

19 MR. UDDO: Wait a minute. I'm not finished yet.

20 MR. SMEGAL: I'm sorry. I interrupted, and I
21 apologize.

22 CHAIRMAN WALLACE: Mr. Durant will have the floor

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1 next. Proceed, Mr. Uddo.

2 MR. UDDO: You have nothing then that you can refer us
3 to that would authorize your Actions of lobbying for that slate
4 of Directors; right?

5 MR. WOOTON: Well, you mean a written document?

6 MR. UDDO: I mean a vote. I mean something that
7 authorized you to do that.

8 MR. WOOTON: No.

9 MR. UDDO: Do you have letters from the Board members
10 saying we authorize you to do that, even the people that you say
11 have assented to?

12 MR. WOOTON: No.

13 MR. UDDO: So all we've got to go on is that you felt
14 you had the authority to do that; right?

15 MR. WOOTON: No. I told you there was an assent to
16 doing it. The President, who felt that there was assent to
17 doing it, instructed me to do it.

18 MR. UDDO: Where did the assent come from? How was it
19 expressed to you?

20 MR. WOOTON: Verbally.

21 MR. UDDO: Do you want to list who verbally assented
22 to your taking that list with those names and lobbying for them?

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1 MR. WOOTON: That list with those names?

2 MR. UDDO: I assume if you're taking your direction
3 from the Board, they told you the list you were supposed to
4 lobby for; right, or did you generate the list?

5 MR. WOOTON: No, I did not generate the list.

6 MR. UDDO: Where did the names come from?

7 MR. WOOTON: I think Mr. Wear testified the last time
8 they came from Congress. They came from groups. They came
9 sometimes from the White House. They came from lots of sources.

10 MR. SMEGAL: Excuse me, Mr. Wooten, who are the five
11 Board members that your refer to, the five out of six that
12 constitute this Board?

13 MR. WOOTON: Who were at the dinner?

14 MR. SMEGAL: Yes.

15 MR. WOOTON: I was sick. I was really sick in San
16 Diego. I came and had soup with the group and wasn't even there
17 for the whole discussion.

18 MR. SMEGAL: Was I in that group?

19 MR. WOOTON: I find that highly unlikely.

20 MR. SMEGAL: How about Mr. Eaglin, was he in the
21 group?

22 MR. WOOTON: I don't remember Mr. Eaglin being there.

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1 MR. EAGLIN: I probably wasn't permitted in the place.

2 MR. SMEGAL: How about Ms. Miller? Was she there?

3 MR. WOOTON: It was the hotel room we were all
4 staying.

5 MR. SMEGAL: How about Ms. Miller, was she in the
6 group?

7 MR. WOOTON: Not to my knowledge.

8 MR. SMEGAL: Ms. Benavidez?

9 MR. WOOTON: Not to my recollection.

10 MR. SMEGAL: Professor Uddo?

11 MR. WOOTON: Of course not.

12 MS. BENAVIDEZ: I don't remember being there.

13 MR. SMEGAL: Mr. Hall?

14 MR. WOOTON: Mr. Hall was not on the Board at that
15 time.

16 MR. SMEGAL: Mr. Durant?

17 MR. WOOTON: He may well have been there.

18 MR. SMEGAL: Mr. Wallace?

19 MR. WOOTON: He may well have been there.

20 MR. SMEGAL: Mr. Mendez?

21 MR. WOOTON: I think those three people were there.
22 I'm just telling you, I'm foggy on the evening.

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1 MR. SMEGAL: I'm almost through. Mr. Valois?

2 MR. WOOTON: There's only 11.

3 MR. SMEGAL: I'm almost there. Mr. Valois?

4 MR. WOOTON: I think he was there, but I can't be
5 certain.

6 MR. SMEGAL: How about Ms. Swafford?

7 MR. WOOTON: As I say, I think she may have been
8 certain, but I'm not certain.

9 MR. SMEGAL: And I assume Mr. Erlenborn?

10 MR. WOOTON: I don't remember him being there, guys.
11 He didn't recognize me when he came in today, and I might not
12 have recognized him.

13 MR. SMEGAL: Just one further inquiry of individuals.
14 Was Mr. Wear there?

15 MR. WOOTON: Yes, he was.

16 MR. UDDO: Let me just go back to one question. Your
17 concern and your report to the IG came after the point that you
18 discovered the National Right to Life Committee was promoting me
19 for reappointment to the Board.

20 MR. WOOTON: Your attempt to link that is pretty weak,
21 I think, because it was --

22 MR. UDDO: And some of the stuff you said is not?

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1 MR. WOOTON: Pardon me?

2 MR. UDDO: Some of the stuff you said is not?

3 MR. WOOTON: Well, it's my opinion.

4 MR. UDDO: You have asserted to the people here that
5 you've got documents to support it, and I tell you you don't.
6 You've got documents to support that I am not committed to the
7 Right to Life Movement?

8 MR. WOOTON: No.

9 MR. UDDO: You've got documents to support that I
10 compromise my ethical principles?

11 MR. WOOTON: Yes.

12 MR. UDDO: All right, I want to see those documents.
13 Realize what you're saying. You're not saying that you've got
14 documents that would indicate that I have taken a position that
15 you can't explain.

16 You're saying that you've got documents that I
17 compromised my ethical principles. I want to see those
18 documents. You say that I stayed just on this side of the law
19 with respect to Loyola; right?

20 How far away from the law are you on grassroots
21 lobbying?

22 MR. WOOTON: As far away as I can possibly be.

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1 MR. UDDO: Which isn't very much; right? It isn't
2 very much. We've split some hairs pretty fine on that one;
3 haven't we?

4 MR. WOOTON: Not in my view.

5 MR. UDDO: Let me just end with this. You and I have
6 never liked each other.

7 MR. WOOTON: Let the record show --

8 MR. UDDO: I want it clearly on the record that we
9 don't like each other. We haven't from the beginning. It's
10 principally because of this kind of stuff, because that's you
11 way of operating, Mr. Wooton.

12 Your way of operating is behind the scene. It's
13 through slurs. It's through innuendos. You very seldom come
14 forth and say what you have on your mind. Your operation is
15 strictly the kind of thing that gives politics a bad name, and
16 it continues on.

17 You, I think, have done more harm and more damage to
18 this Corporation, the reputation of this Corporation, than any
19 other individual involved in it. It's this kind of Activity--
20 you come in here with this list telling people it's based on
21 documents.

22 You didn't show me any documents before. You didn't

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1 give me the documents in an effort to give me a chance to defend
2 what accusations you make.

3 MR. WOOTON: Mr. Uddo, I wasn't going to bring this up
4 until you decided --

5 MR. UDDO: I know, I forced you to.

6 MR. WOOTON: You did. You absolutely did because you
7 came in here to try to make Mr. Wear look like he'd done
8 something wrong.

9 MR. UDDO: Let me tell you something. As a member of
10 the Board, I've got the authority to question the performance of
11 the President. I've got the authority to vote on the status of
12 the President. You don't know what I was going to do today.

13 You know, we've got the best bunch of mindreaders in
14 the world. Mr. Wear doesn't have to consult with certain Board
15 members because he already knows what they're going to do. You
16 read statements like this because you know what I'm going to say
17 about Mr. Wear.

18 What I'm going to say about Mr. Wear is, he's gotten
19 some bad advice from a guy like you, is his biggest problem.
20 But I'm not here to slur Mr. Wear. I've never said anything to
21 slur Mr. Wear. I want you to show me something on the record
22 where I've said anything to slur Mr. Wear.

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1 I defended Mr. Wear at the last meeting when I thought
2 he Acted appropriately. When the time comes, I'll point out
3 that he has done some things that are difficult to defend, such
4 as not keeping Board members informed of what's going on.

5 So for you to pull this out, tell people it's based on
6 documents, question my integrity, my honesty, my ethics and my
7 commitment to the movement is what I would expect from you.
8 Again, I'll defend myself in the public forum against those
9 kinds of things.

10 MR. WOOTON: Mr. Uddo, since we are in a public forum,
11 let me defend myself to some charges you made in the Executive
12 Session where you did everything you could to prevent me from
13 being hired.

14 MR. SMEGAL: Mr. Wooten, might I suggest if you're
15 going to do this, let's waive that Executive Session and bring
16 that record out in this public forum.

17 MR. WOOTON: I'd be glad to.

18 MR. SMEGAL: All right, I'd like to have it here,
19 please.

20 MR. VALOIS: There are other members who have a right.

21 MR. SMEGAL: He's the only one with a privilege and
22 he's just waived it.

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1 CHAIRMAN WALLACE: I'm not sure he's the only that has
2 the privilege.

3 MR. UDDO: I would just point out that was an
4 Executive Session.

5 MR. WOOTON: That may well be, but --

6 MR. UDDO: There's a reason for an Executive Session.
7 It so that you can speak candidly and you can speak your mind,
8 particularly when it refers to persons and personalities in
9 personnel decisions.

10 MR. WOOTON: I understand that. Is that why you voted
11 to have this performance appraisal of Mr. Wear in public? It's
12 never been done before.

13 MR. SMEGAL: I believe the Board was unanimous on
14 this, by the way.

15 MR. UDDO: That question has never come up. That
16 question has never come up. We have not been told about an
17 Executive Session, Mr. Wooton. So maybe you better get your
18 facts straight.

19 MR. WOOTON: I've got my facts straight, Mr. Uddo.

20 MR. UDDO: This Board was told about an Executive
21 Session? How did I vote to do it in public?

22 MR. WOOTON: Mr. Uddo, my facts are very straight that

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1 you stated things in that Executive Session and left an
2 impression that was not true. There's no privilege that covers
3 that kind of --

4 MR. UDDO: In an Executive Session --

5 MR. WOOTON: There's no privilege in an Executive
6 Session.

7 MR. UDDO: Everything that I said came out of the
8 reports that were presented to us.

9 MR. SMEGAL: Mr. Chairman, I ask again --

10 CHAIRMAN WALLACE: Let's get this back on track. An
11 Executive Session happened two years ago. I, frankly, do not
12 know what it takes to waive the secrecy of an Executive Session.
13 The full Board, some of whom are no longer members of the Board,
14 voted to have that session in private.

15 I don't know -- I know we don't have the transcript
16 here today. That much I do know. So talking about whether we're
17 going to get through it today is relatively moot point. Whether
18 we can vote to unseal a proceeding that was sealed by a vote of
19 Board, I don't know.

20 I think that's something that before Mr. Wooton goes
21 into defending himself in public to something that was said in
22 private and before any of us put that record on the table, we

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1 ought to have an opinion from the General Counsel that tells us
2 if we can put it in the table.

3 That seems to me to be something that ought to be
4 given careful consideration by the General Counsel before we
5 proceed. I would instruct, if I can, Mr. Wooton, not at this
6 session to reveal anything that went on in that Executive
7 Session.

8 I understand his concern, but it is a concern that
9 concerns not only him but everybody on this Board and the people
10 that were on the Board then, maybe some other people as well.
11 My view is, we should not get into that subject here until, if
12 it is the pleasure of the Board to get into it, that we have a
13 General Counsel's opinion that tells us we should.

14 Now, Mr. Smegal, I'll recognize you.

15 MR. SMEGAL: Thank you very much, Mr. Chairman. I
16 might remind you that at the last meeting of this Board on
17 December 1, I believe Mr. Wear also waived any privilege he
18 might have.

19 He testified to us that the reason he knew that he
20 didn't have to call Paul Eaglin a Board member and consult him
21 with respect to matters relating to Board policy was that he had
22 read the record of that particular Board meeting several times.

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1 It sounded like maybe it was bedside reading for him.

2 He explained to us what happened in that meeting.
3 That's why he didn't call Mr. Eaglin or possibly even some of
4 the others of us. I'm suggesting to you, Mr. Wallace, I'm going
5 to be very critical of this General Counsel's opinion. We've
6 got two people waiving it, the only two people that have
7 anything, in my view -- was confidential in that particular
8 proceeding.

9 The only reason we are in that confidential proceeding
10 is because -- my understanding of that proceeding was that we
11 were going to consider the qualifications of two people, Mr.
12 Wear and Mr. Wooten, to be President of this Corporation. That
13 is the only reason it was in closed session; no other reason:

14 There wasn't any Board member that had any reason for
15 it to be closed. We were discussing, frankly -- it turns out
16 with about five minutes notice, but nevertheless -- the
17 qualifications of Mr. Wooten and Mr. Wear. They, in my view,
18 have both waived the privilege.

19 CHAIRMAN WALLACE: You may be correct, Mr. Smegal.
20 I'm not arguing with you. I'm telling you I don't know. I
21 think the General Counsel ought to be consulted before we go any
22 further on a matter that the whole Board voted to conduct an

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1 Executive Session.

2 Are there any other questions for Mr. Wooten? Mr.
3 Durant has told me he has no questions. Any further questions?
4 Mr. Valois?

5 MR. VALOIS: It's not a question, Mr. Wooton, but just
6 an observation in connection with the issue of whether or not we
7 open to the public eye a record which was made in private. It
8 seems to me that one of the things I would like the General
9 Counsel to consider is whether or not people, Board members in
10 particular, have a right to rely on the continuing privacy of
11 statements made in that session and whether or not they have any
12 continuing right to rely on it remaining private or whether, at
13 the request of one Board member and one staff member, it can be
14 opened to public view.

15 CHAIRMAN WALLACE: All right, any further questions
16 for Mr. Wooten?

17 MR. ERLENBORN: Mr. Chairman?

18 CHAIRMAN WALLACE: Mr. Erlenborn?

19 MR. ERLENBORN: Just an observation. This all began
20 with a discussion of the Inspector General's investigation. I
21 must say that I'm absolutely amazed at the statement we got from
22 Mr. Wooten that brought up all of his motivation for initiating

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1 this investigation, which absolutely proved that it was
2 politically motivated.

3 There's no question about that now. So we really
4 don't have to guess about it. I think each one of us, as members
5 of this Board, ought to feel personally threatened when we have
6 staff that is keeping records of how we vote; and if the staff
7 disagrees with our voting record, they use the Inspector General
8 -- and I'm sorry you're being used -- but they use him for
9 political purposes.

10 Each one of us is personally threatened that they can
11 get the Inspector General to begin an investigation of anyone on
12 this Board if we have any contact with the staff. I think that
13 is just abominable.

14 CHAIRMAN WALLACE: Further comments from the Board?

15 MR. EAGLIN: Mr. Wallace?

16 CHAIRMAN WALLACE: Mr. Eaglin?

17 MR. EAGLIN: Just as Professor Uddo said it was all
18 right with him to reveal publicly what he is maintaining on the
19 record, I would also like to say when you reveal, at least, the
20 part of the record that relates to me, it should be made freely
21 available to anybody.

22 In asking for the provision of that to me, I did not

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1 mean exclusively to me; but anybody who wants to see it, may see
2 whatever you're maintaining on me or any other staff who is
3 maintaining any records on Board members.

4 CHAIRMAN WALLACE: By all means, Mr. Eaglin. Ladies?
5 Ms. Miller first.

6 MS. MILLER: Well, it was just a statement. I would
7 like to know what can be done about these people that are just
8 working for part of the Board and not all of the Board?

9 CHAIRMAN WALLACE: That is something that the Board
10 can set policies. We can hire and fire. There are a lot of
11 things we can do.

12 MS. MILLER: I think it's time that we hired and fired
13 because this isn't fair.

14 CHAIRMAN WALLACE: Ms. Benavidez?

15 MS. BENAVIDEZ: My question is to Mr. Wooten. Have
16 you given any more requests for investigation to Mr. Wilkinson?

17 MR. WOOTON: No. Well, it was not my decision to make
18 the request to Mr. Wilkinson to do an investigation. I have not
19 given any information to Mr. Wilkinson besides this.

20 MR. EAGLIN: You said you initiated it, but now you
21 say it was not.

22 MR. SMEGAL: It was the instruction of Mr. Wear. I

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1 asked him that question earlier, Mr. Eaglin, and I believe he
2 responded that Mr. Wear instructed him.

3 MR. EAGLIN: All right.

4 MR. WOOTON: Let me just clarify, particularly with
5 Mr. Erlenborn's comments, I did not set out to find out
6 information about Mr. Uddo that would lead to an Inspector
7 General investigation.

8 I sat down with staff and I said, here's a man who has
9 been a swing vote. There are critical votes coming up on the
10 Board. What is going on? What is missing in the puzzle? One
11 of the things that one of the staff members said was that first
12 of all, it all started after October 2nd when there was a vote
13 by the Board to not send a budget to Congress with the National
14 Support Center line in it.

15 In their view, that's when the break came to Mr. Uddo
16 and the rest of the Board. The second thing they said was, do
17 you know -- are you aware that there's a rumor that Mr. Uddo
18 came to town personally and met with the monitoring team that
19 was doing the monitoring of the BOP Center.

20 MR. ERLENBORN: Were you aware of it?

21 MR. WOOTON: I was not. I was not in any way aware of
22 it.

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1 MR. ERLBORN: How old was that?

2 MR. WOOTON: That rumor?

3 MR. ERLBORN: Yes. How old was the incident?

4 CHAIRMAN WALLACE: 1987, I think is the date.

5 MR. WOOTON: I guess a couple years old.

6 MR. ERLBORN: It was just lying around waiting to be
7 used when it was handy to get some information you could use
8 against Mr. Uddo; is that correct?

9 MR. WOOTON: No. When I asked about that, the
10 response of everyone was that something very secret, very wrong
11 had taken place, and that there was an ongoing sense of a need
12 to cover up.

13 One of the people who was interviewed said they
14 wouldn't -- they had talked to somebody about the incident at
15 the time that it happened, and they required a court reporter to
16 be there to even talk to fellow staff members. That's long
17 before I was there.

18 When I talked to the people who were directly involved
19 in the report that had been altered by Mr. Bayly, they said that
20 happened a month before he left office in July of, I guess,
21 1988; that he had blocked out all the staff conclusions that
22 were problematic for the BOP Center, and they couldn't send it

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1 out as a result of that.

2 They waited until after Mr. Wear was here. They sent
3 it around to all the people who were involved. They reincluded
4 all the things that Mr. Bayly had tried to take out of that
5 document.

6 They then asked for permission to send it out and
7 represent that it was a true and faithful copy of the monitoring
8 report. That's what I found out.

9 MR. UDDO: Did they also tell you there was somebody
10 in the monitoring division that didn't have a personal animus
11 toward the Center?

12 MR. WOOTON: That is absolutely possible. This is the
13 irony of this whole situation. It's the irony of the animus
14 between Mr. Uddo and I. I think, as far as I can tell,
15 everything that the BOP Center does is completely admirable, and
16 it's much needed.

17 Now one of the things that is a constant problem for
18 the BOP Center is, the programs don't use it because it's not
19 part of their network or they're not doing those kinds of cases.
20 So one of the things, apparently, that they consistently find on
21 these monitorings is the BOP Center is underused.

22 Another thing in that report, and I think it's public

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1 at this time only it's a problem to say it, is that they
2 maintain two offices. There's a strong feeling about the
3 maintenance of two offices. That strong feeling about the
4 maintenance of two offices continues.

5 The sense that I got when I asked relatively casually
6 about this rumor was something really was wrong. Everybody felt
7 that this was not proper. I think that it's really kind of
8 unfair because this is -- really what we're doing -- and it's
9 unfair to you, but I think it was unfair to Mr. Wilkinson and I
10 think it was unfair to Mr. Wear to have brought it up in this
11 arena.

12 We're trying to sort of try the merits of the case
13 without having the merits of the case before us.

14 MR. UDDO: I don't have any fear of the merits of the
15 case.

16 MR. WOOTON: Well, that's fine. You may well not--
17 you may be able to say that -- you may be able to demonstrate
18 that it was perfectly proper and it was in the normal force of
19 business.

20 MR. UDDO: Have you seen the draft report?

21 MR. WOOTON: I have not, and I don't know what's in
22 it. The fact remains -- and I have had experience. One of the

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1 things that will come out is that there was a period of time
2 that the Justice Department, when I was under investigation by
3 the FBI, because some people made some allegations, in my view,
4 they were politically motivated.

5 One of the things that came out in the FBI report was
6 that no substantive evidentiary data was found to support those
7 allegations. That's a document that was failed to be pointed
8 out, maybe, in a previous forum.

9 The point is, I had to recuse myself during that
10 period of time. There is a period of time when, rightly or
11 wrongly, some kind of a cloud gets created and that may be the
12 situation right now.

13 I don't think there was any choice, given the
14 information that we uncovered. Now we could have said, this is
15 not important. This isn't important, what happened. It can
16 wait until it's politically sensitive. We won't do anything
17 about it because we'll be criticized if we do.

18 MR. UDDO: We probably need a GAO report on the whole
19 thing.

20 MR. WOOTON: That may be.

21 MR. UDDO: I'd like to know how the memos got to you
22 and how serious these people felt about all of this and how big

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1 a deal it was.

2 MR. WOOTON: Sure.

3 MR. UDDO: We made need an outsider.

4 CHAIRMAN WALLACE: I have a suspicion that people who
5 can will do so, given the circumstances. Mr. Smegal?

6 MR. SMEGAL: I'd just like to summarize what Mr.
7 Wooton has just said. Do I understand that a number of staff,
8 including yourself, were sitting around trying to figure out
9 what they could get on Professor Uddo? As a result of that,
10 someone mentioned the BOP Center and off you went down that
11 road?

12 MR. WOOTON: Absolutely not.

13 MR. ERLBORN: That's what you report sounded like.

14 MR. SMEGAL: That's what you said.

15 MR. WOOTON: Well, that is absolutely not what was
16 happening.

17 MR. ERLBORN: In fact, when you were asked to report
18 on this Inspector General's investigation, I don't know why you
19 brought up all of that other information. It just sounded like
20 -- I was listening and it sounded to me like you were building
21 the case of why you had to get some Action started against Mr.
22 Uddo. You sat down with the staff and you found this.

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1 MR. WOOTON: No. That was not what was going on at
2 all.

3 MR. ERLENBORN: Well, reread your statement because
4 that is certainly what it sounded like to me. I don't know why
5 you brought up all those other issues if they were not relevant
6 to the Inspector General's investigation.

7 CHAIRMAN WALLACE: Go ahead and clarify what you said,
8 Mr. Wooton?

9 MR. WOOTON: What I was saying is that we were looking
10 at what were potential agenda items. One of the potential
11 agenda items is -- if we get to it, and I don't know if we'll
12 ever get to it -- the McCollum-Stenholm package. The question
13 is, who is going to be in favor of the McCollum-Stenholm package
14 and who is not going to be in favor of the McCollum-Stenholm
15 package.

16 MR. UDDO: I thought you all knew those things ahead
17 of time? You already knew that.

18 MR. WOOTON: Mr. Wear does, but that's because we do
19 good staff work. We brief him. So we're sitting around and
20 looking at all the issues that are going to be before the Board.

21

22 The question is, where are people going to come out on

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1 the various issues. My puzzle, and it continues to be my
2 puzzle, Mr. Uddo, for better or for worse, is that I sense that
3 maybe there is some personal friction between you and some other
4 Board members that's led you sort of into the other camp. That
5 may or may not be.

6 MR. UDDO: You better go back and look at the votes
7 again. I think you counted them wrong; redistricting, the alien
8 regulation, modify attorney's fee regulation. Go back and look
9 at them. All of them are major recent votes, I have voted with
10 the conservative Action. I am conservative. I don't know what
11 your puzzlement is, but you must be counting the votes wrong.

12 CHAIRMAN WALLACE: Let's get back to the question of
13 what he was sitting around doing, which I think is what you
14 wanted to clarify. Were you or were you not sitting around
15 looking for an Inspector General charge to file or were you
16 sitting around doing something else?

17 MR. WOOTON: Sitting around going over the agenda and
18 going over the different issues and trying to get a sense of
19 what should be on the agenda and what would the various
20 reActions of the agenda would be.

21 MR. UDDO: For what purpose?

22 MR. WOOTON: To advise the President and ultimately

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1 advise the Board.

2 MR. UDDO: On what? I mean, why do you have to check
3 how I vote to advise the President?

4 MR. WOOTON: This amounts to a legislative body. I
5 don't know, and Mr. Erlenborn can say, I think that the vote of
6 every member of Congress is dissected about every way it can be
7 dissected. The staff members of the Congress do it every day.

8 MR. UDDO: What are you looking for? I don't
9 understand what you're looking for. So you determine that on a
10 particular issue I may vote differently than you like. What do
11 you do then?

12 MR. WOOTON: Nothing.

13 MR. UDDO: Then why do you waste the time doing it?

14 MR. WOOTON: Well, for one thing, and I can't give you
15 all the examples, my understanding, we have -- we don't want to
16 necessarily get all the staff up here -- there have been times
17 when staff has spent a lot of time trying to explain the staff
18 rationale to you.

19 MR. UDDO: Not to me. I get very, very few phone
20 calls and very little explanation. I want to see the staff
21 member that says they spend a lot of time explaining something
22 to me.

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1 MR. WOOTON: I think I can introduce you to him, but
2 I'm not going to --

3 MR. UDDO: Yes, Bob Elgin tried to explain the
4 attorney's fee regulation quite a bit. That's the only one I'm
5 aware of.

6 MR. WOOTON: Well, maybe.

7 MR. UDDO: Well, I'm looking for a reason why you do
8 this and then when you decide that I'm going to vote with or
9 against the position that you apparently favor, what do you do
10 at that point? I mean, does it ever cross your mind that maybe
11 you are going to find something to hold over a Board member to
12 keep him from voting?

13 MR. WOOTON: That was not my intention in that session
14 at all.

15 MR. UDDO: That's why you looked into all the Loyola
16 votes? It had nothing to do with possibly suggesting that maybe
17 I shouldn't vote on Mr. Wear's future because maybe I had a
18 conflict back there that shouldn't be dredged up?

19 MR. WOOTON: No.

20 MR. UDDO: Then why did you need to know about the
21 Loyola votes?

22 MR. WOOTON: Why did I need to know about the Loyola

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1 votes when I looked at them?

2 MR. UDDO: Why did you need to know about the Loyola
3 votes?

4 MR. WOOTON: You mean why did I look at the Loyola
5 votes?

6 MR. UDDO: Yes.

7 MR. WOOTON: Because the seriousness was with people
8 within the staff. I can't -- it's hard to convey this. There
9 was a sense in which we had stumbled across -- that I had just
10 inadvertently stumbled across the deep dark secret. It may have
11 been overblown. It may be that the staff is overreacting. That
12 may all be true.

13 The fact is, the staff felt that this was a very
14 serious matter. Was this part of a pattern of helping people
15 with whom you had close association? When you look, it looks
16 like there's a pattern of helping people with whom you've --

17 MR. UDDO: That is an outrageous thing for you to say.
18 It is clearly outrageous.

19 MR. SMEGAL: Mr. Wooton, who is the staff in addition
20 to you and Mr. Wear that are concerned in this group that is
21 examining Mr. Uddo so carefully?

22 CHAIRMAN WALLACE: I want to add -- I don't know

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1 whether he can or can't. We have an Inspector General back
2 there. Whatever rights Mr. Wooton may have seemed to have been
3 waived. But I don't know who else was sitting around that
4 table, and I'm not sure whether their right is protected under
5 the IG Act. If this was the genesis of the claim --

6 MR. SMEGAL: I withdraw my inquiry then. I have
7 another question, if I can, of Mr. Wooton. If I get the flavor
8 of what we've been hearing from you now for the better part of
9 45 minutes, do I understand that the purpose of preparing that
10 statement on December 11, and the purpose of everything that
11 went before it, is to prevent this Board from terminating Mr.
12 Wear; is that what we're doing here?

13 MR. WOOTON: No.

14 MR. SMEGAL: Tell me what the purpose is?

15 MR. WOOTON: The purpose is -- the Board has always
16 been in the power to vote to do whatever they want to do about
17 who is going to lead the Corporation. The purpose is that Mr.
18 Wear not be made the scapegoat in something that he -- and I
19 have to say -- pursued by the book, as far as he saw the book to
20 be, and that he did not do anything to initiate the
21 investigation.

22 There was a strong flavor that that's really what had

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1 happened.

2 MR. UDDO: Wait a second, Jim. The only two things on
3 the agenda that deal with Mr. Wear's performance are the outside
4 counsel and the lobbying. How would this even become a matter
5 for discussion with respect to Mr. Wear?

6 MR. WOOTON: You made it a matter for today.

7 MR. UDDO: Today. You prepared that December 11th.

8 MR. WOOTON: I didn't know.

9 MR. UDDO: Oh, I see. Very well prepared. I've got
10 to hand it to you. You had no intention of using that
11 otherwise? The only things that we were evaluating Mr. Wear on
12 is outside counsel and lobbying. That has nothing to do with
13 either one.

14 MR. WOOTON: You say that I give such bad advice.

15 MR. UDDO: I think you did.

16 MR. WOOTON: I understand. I think the record
17 reflects otherwise, but when you started looking, and anybody
18 with any sense started looking at two kinds of trains running
19 together, one was the fact that there was a legitimately started
20 IG investigation that was on one track.

21 There was another track of this performance
22 evaluation. To say that those two trains might not collide

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1 would be that you didn't have any --

2 MR. UDDO: Wait one second, personal privilege here.
3 My awareness of the IG investigation is the Monday before
4 Thanksgiving. That's the first time I know about it. The
5 performance evaluation of Mr. Wear has been going on since the
6 summertime. The request for meetings and the request for that to
7 be an agenda item has been going on since the summertime, Mr.
8 Wooton.

9 There's no two trains on the same track. There's no
10 implication that I'm going to vote to get rid of Mr. Wear
11 because there's an IG investigation. That wasn't discovered
12 until a couple of weeks ago. We've been talking about a
13 performance evaluation of outside counsel and lobbying for
14 months.

15 CHAIRMAN WALLACE: Let the Chair reclaim the floor.
16 It is noon. The court reporter has not had a break, and neither
17 has anybody else. I do not want to adjourn for lunch at this
18 time. I do want to take about a ten minute break and come back
19 here. Hopefully, we can finish the IG matter before lunch.

20 If there is anything else that anyone feels like they
21 need to say to Mr. Wooton after the break, I'll put him back on.
22 I'd like to take a 10-minute break now if there's no objection

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1 from the Board.

2 MR. SMEGAL: Will Mr. Wear be here when we come back?

3 CHAIRMAN WALLACE: As far as I know. Off the record.

4 (A brief recess was taken.)

5 CHAIRMAN WALLACE: I said to all Board members if
6 there is anything else they wanted to say to Mr. Wooton after a
7 10 minute recess, I would reopen the previous conversation. I
8 think it would be best for all of us -- I don't mind stating my
9 position -- to get on to the rest of the Inspector General Act
10 question about how Mr. Wear got to be the head of the
11 Corporation.

12 I said I would do it if anybody has anything they want
13 to revisit with Mr. Wooton.

14 MR. SMEGAL: Well, Mr. Wallace, I'd only renew the
15 request that I made when Mr. Wooton first sat down that I'd like
16 a copy of that statement that he read.

17 CHAIRMAN WALLACE: He apparently has only got one with
18 him. I think the record has got a reflection of everything that
19 everybody wants. I haven't been taking notes on it, but we've
20 got a court reporter, and that will all be produced as soon as
21 possible.

22 Now, the next question with regard to the Inspector

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1 General Act, as I understand it, concerns Mr. Wear's status as
2 head of this designated federal entity, if that's the term for
3 it. That's been inquired into.

4 Does somebody not want to inquire into that?

5 MR. SMEGAL: No, I think that that's where I want to
6 get to, Mr. Wallace. If you don't mind, this is my item and I
7 would like to start at a different point.

8 CHAIRMAN WALLACE: All right. Proceed, Mr. Smegal.

9 MR. SMEGAL: I'd like to start where Mr. Wear left off
10 an hour and a half ago, which was a reference to some Board
11 discussion that may have ensued out of one of our Board meetings
12 regarding our obligation, as I recall it, to establish the
13 Office of Inspector General before April 17, 1989.

14 Am I correct, Mr. Wear, that we did have such a
15 discussion at a Board meeting before April 17th? Is that what
16 you were referring to in your initial comments?

17 MR. WEAR: Mr. Chairman?

18 CHAIRMAN WALLACE: Go ahead, Mr. President.

19 MR. WEAR: Thank you, Mr. Chairman. Yes, we did -- I
20 should say the Board did discuss the Office of Inspector General
21 at more than one of the meetings. I think the initial
22 discussion was in November of last year and then later on in

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1 January and February or March.

2 MR. SMEGAL: Do you recall what Board Action was
3 taken? Do you recall at which meeting and what was the Board
4 Action taken with respect to that?

5 MR. WEAR: I don't know that any Board Action was
6 taken. There wasn't any interest, as best I can recollect, in
7 the Board in this issue. We discussed it initially as to the
8 implementation of the Act.

9 I consulted with the General Counsel about how the Act
10 would be implemented with regard to the Legal Services
11 Corporation. Out of those discussions, it appeared -- the
12 upshot of those discussions was that it appeared that the
13 President, for purposes of the IG statute, should be construed
14 as the head of the organization.

15 MR. SMEGAL: You're getting way ahead of my question,
16 Mr. Wear. I'd like to kind of go through this for a moment.
17 I'm back asking you if we had a meeting at which we complied
18 with the requirement of the Public Law 100-504, which obligated
19 the Legal Services Corporation a designed federal entity, I
20 believe, to establish an Office of Inspector General before
21 April 17th.

22 I just want to focus on that part of it for a moment,

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1 if I may. As I understand what you've said so far, we've had
2 several Board meetings during which that matter was discussed,
3 possibly as far back as November and as recently as January.

4 My question of you now is, how did that get on the
5 agenda?

6 MR. WEAR: My recollection is that it came up
7 initially as part of the President's report.

8 MR. SMEGAL: All right. Assuming for the moment that
9 we have complied with the law and established an office as we're
10 supposed to, assuming that in spite of the fact that you don't
11 recall that this Board did establish an Office of Inspector
12 General before April 17, 1989, when did we next discuss the
13 matter of a determination of how the head was to be selected for
14 the Legal Services Corporation? When did that come to the
15 Board?

16 MR. WEAR: My recollection is that we discussed that
17 when the issue initially came up as to who the head would be. I
18 made reference to having consulted with the General Counsel on
19 it.

20 It was staff's view that the purpose of the statute,
21 because of the reporting requirements of the IG and having to
22 turn the reports around and get them up to the Hill among other

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1 things, that the Act contemplated that the President would be
2 the head of the organization.

3 MR. SMEGAL: You've made reference now to some
4 discussions. Was that Board discussions with this Board? Was I
5 present?

6 MR. WEAR: I don't recall, but I think so.

7 MR. SMEGAL: Was it the Board of six that Mr. Wooton
8 refers to?

9 MR. WEAR: You were present at that meeting.

10 MR. SMEGAL: Which meeting?

11 MR. WEAR: This was the meeting of November 19, 1988.
12 I don't know whether you were physically in the room at the time
13 we discussed that. The transcript just shows who was there when
14 we started.

15 MR. SMEGAL: What happened? What does the transcript
16 show to have happened at that meeting?

17 MR. WEAR: Well, we discuss the IG statute. Some of
18 the Board members asked for copies. We went on from there.

19 MR. SMEGAL: What Action was taken?

20 MR. WEAR: There was no Action.

21 MR. SMEGAL: When did the matter next come to the
22 Board?

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1 MR. WEAR: It was discussed again in December.

2 MR. SMEGAL: What Action was taken then by the Board?

3 MR. WEAR: There was no Action taken by the Board, Mr.
4 Smegal. Back in February of 1989, the General Counsel drafted a
5 letter for me, which I signed. We sent it to the Director of
6 the Office of Management and Budget.

7 CHAIRMAN WALLACE: Stay off of OMB. Mr. Smegal is
8 inquiring as to --

9 MR. SMEGAL: Mr. Wear, you're getting way ahead of me,
10 and your data isn't even correct. I think I have a copy of the
11 letter. I don't think it was dated February. It was much
12 longer -- it was September.

13 In any event, let's get back to where we were, which
14 was -- I believe you mentioned a January meeting. You've
15 indicate there was no Action taken by the Board. When did the
16 matter next come to the Board, the matter of one, establishing
17 the Office of Inspector General, as we're obligated to do under
18 Public Law 100-504? When did that next come to the Board?

19 MR. WEAR: The issue was also discussed in connection
20 with the 1989 consolidated operating budget of the Corporation.
21 We talked about the staffing --

22 MR. SMEGAL: In fact, this Board voted -- a split

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1 vote, I might add -- to fund that office; didn't we?

2 MR. WEAR: Yes, they did.

3 MR. SMEGAL: So there was funding provided for that
4 office. Let's assume for the moment it was before April 17,
5 1989.

6 CHAIRMAN WALLACE: When was the Atlanta meeting?
7 That's when it happened. We don't have to assume things. That
8 date ought to be known.

9 MR. SMEGAL: I just wanted to make sure we're
10 complying with the law. I'm becoming satisfied that maybe we
11 did something as we were supposed to do before April 17. If we
12 didn't, I wish you would correct me, Mr. Wallace. If we
13 violated the law, let's find out right now.

14 CHAIRMAN WALLACE: I agree with you. What is the date
15 of the Atlanta meeting? My recollection is that's when we voted
16 the money.

17 MR. WEAR: I believe that was in March of 1989.

18 CHAIRMAN WALLACE: Have you got a date on it?

19 MR. SMEGAL: Good.

20 CHAIRMAN WALLACE: March 3, 1989, in Atlanta.

21 MR. SMEGAL: I'm satisfied then that at least implicit
22 in the Act of this Board was an establishment of the Office of

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1 Inspector General before April 17, 1989.

2 Now the next step. As I recall, we had a meeting--
3 the only meeting we had after that, Mr. Wear, was on June 13th
4 in Chicago.

5 MR. WEAR: I'm not sure that's accurate. I think
6 there was a meeting in between, but I don't know that this issue
7 came up.

8 MR. SMEGAL: Well, you don't recall this issue having
9 come up. I don't either. If any Board member does, I'd
10 appreciate the record reflecting that. Assuming that there
11 isn't such a correction, the next document that I've been
12 provided is a memorandum to you dated September 29, 1989, by
13 Timothy Shea, Vice President and General Counsel. The title of
14 it is, Designation of the "Head" of the Legal Services
15 Corporation for Purposes of Implementing the Inspector General
16 Act of 1978 as Amended.

17 In the background of that memo, Mr. Shea points out
18 that it is a requirement or an obligation of a designated
19 federal entity -- and I guess it's now clear that we are that.
20 We're one of several designated federal entities -- requires
21 that an Office of Inspector General be established within the
22 Corporation.

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1 I guess we can assume that we've satisfied our duties
2 as Directors. We've established that by putting it in our
3 funding. Then Mr. Shea's memo goes on to say, under the terms
4 of the IG Act, the Inspector General must be appointed by the
5 Corporation's head.

6 He then goes on to explain that our Legal Service
7 Corporation Act does not have an indication of who the head is
8 and concludes -- it points out that where no statutory
9 designation has been made, as in the case of the Legal Services
10 Corporation, the Director of Office of Management and Budget,
11 after consultation with the United States Comptroller General,
12 must determine the identity of the chief policy-making officer
13 or Board within the federal entity.

14 Did the matter of making a designation of the head of
15 this Corporation ever come to this Board?

16 MR. WEAR: Mr. Smegal, in February 1989, the General
17 Counsel -- actually, prior to February of 1989 -- the General
18 Counsel and I discussed this issue in light of what had happened
19 in the earlier Board meetings.

20 The General Counsel and I came to the conclusion that
21 in order to implement the Inspector General Act, that Act
22 contemplated that the President be the head of the designated

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1 federal entity for purposes of that statute.

2 The General Counsel subsequently drafted a letter.
3 the date on that letter is February 3rd. We sent that letter to
4 the Director of the Office of Management and Budget. The
5 Director of the Office of Management and Budget had previously
6 sent a memorandum to the Corporation on the implementation of
7 the Inspector General Act amendment.

8 In responding to that memorandum, we stated that we
9 understood that the Office of Management and Budget was charged
10 with designating an entity that we had analyzed. The statute
11 and the other relevant statutory and regulatory provisions and
12 the General Counsel had concluded that the President should be
13 designated as the head of the Agency.

14 The letter went on to indicate that I asked that the
15 letter published in the Federal Register reflect that
16 determination. My recollection is that that list is due to be
17 published sometime in April.

18 Because of other matters, I guess, it was subsequently
19 not published until November, the date to which General
20 Wilkinson referred during his testimony.

21 CHAIRMAN WALLACE: Mr. Wear, while I imagine Mr.
22 Smegal wanted to get to all that information eventually, it

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1 wasn't responsive to what I understood to be his question, which
2 is whether the precise issue of who the head of this designated
3 federal entity should be, was presented to the Board.

4 Was that your question, Mr. Smegal?

5 MR. SMEGAL: I thought it was.

6 CHAIRMAN WALLACE: As I've understood your testimony,
7 it's been discussed with the Board. My recollection is, there's
8 been no vote.

9 MR. WEAR: There was.

10 CHAIRMAN WALLACE: Except to fund the office. We did
11 move to fund the office.

12 MR. WEAR: There was no Board vote on this, but we
13 discussed it. I indicated to the Board that our analysis
14 indicated that I was the head of the entity for purposes of that
15 statute.

16 To the best of my knowledge, nobody raised any
17 questions about it. We went on. It was treated as a legal
18 question; how to implement the statute, what that statute meant.
19 We just went on from there.

20 MR. SMEGAL: Well, I don't want to belabor this
21 particular point, but I would certainly like for you to have the
22 staff select those pages from a transcript which would indicate

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1 that the subject of the head of this Corporation was actually
2 brought to this Board and discussed, irrespective of whether
3 there was a vote or not.

4 Now you keep referring to a February 3, 1989, letter.
5 The only one I have is one dated September 29, which I was
6 referring and from which I was reading. I also have an October
7 5, 1989, letter that you have prepared to Mr. Richard Darmon,
8 the Director of OMB.

9 If I understand correctly, the enclosure with that
10 letter was the September 29, 1989, memo. I see no reference in
11 your letter of October 5 to having written earlier either to OMB
12 or to anyone else. I'm a little confused as to your testimony
13 here.

14 Are there other documents I don't have?

15 MR. WEAR: There is another letter that was sent on or
16 about February 3, 1989.

17 MR. SMEGAL: I see. You jumped on and I guess I will
18 just jump over here, too. We've got a Federal Register of
19 Volume 54, No. 216, of Thursday, November 9, 1989. There's a
20 second -- in fact a whole page -- Office of Management and
21 Budget, list of designated federal entities in federal entities.

22 Then there are designated federal entities. I look

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1 down as see as No. 19 of 33, I see the Legal Services
2 Corporation and the word "President." Now this is dated, as I
3 indicated, November 9.

4 Let me first focus on the fact that there are 33
5 entities described as designated federal entities, reference to
6 which I have already made with respect to the April 17 date.
7 I've looked over that list, and I can't find another of those 33
8 entities that has its President as the head.

9 Can you explain that, Mr. Wear?

10 MR. WEAR: Well, Mr. Smegal, I think the Federal
11 Register release says what it says. The issue, I suppose, that
12 you're trying to get at is whether the President, the Executive
13 Director, whatever you call the CEO of the entity is the head.

14 I don't know that we can tell that from the list. I do
15 know that some of the entities, such as the Commodity Futures
16 Trading Commission, the Chairman of that entity is also
17 responsible for the administrative functions of the commission.

18 I haven't analyzed this, but I assume that the OMB was
19 trying to focus on that issue when they made these decisions.

20 MR. SMEGAL: Well, I guess where I'm going is, I've
21 served on this Board now for five years. I believe the Office
22 of Inspector General is an important adjunct that we are

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1 obligated -- we were obligated back before April 17th to
2 establish the office.

3 There was discussion. We funded the office. Then
4 without any further Board opportunity to be involved in a
5 determination of who would be the head -- and, in fact, I only
6 find out now, with documents provided to me just recently, that
7 internal of the staff, it was concluded that the head should be
8 the President.

9 This matter never came to the Board for consideration.
10 It was never discussed. I look at a listing from a November 9
11 Federal Register, and I note that of the 33 organizations of
12 which we are one designated federal entity, we are the only one
13 that has as our head the President.

14 I'm suggesting to you, Mr. Wear, that sounds a little
15 bit inconsistent with what the rest of the world is doing. I'd
16 like to get the matter back before this Board. I've been ruled
17 out of order on December 1 on several occasions, but I think,
18 Mr. Wallace, I'd like to try a motion.

19 M O T I O N

20 The motion would be that this Board designate as the
21 head of the Legal Service Corporation the Board of Directors.

22 MR. EAGLIN: Second.

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1 CHAIRMAN WALLACE: You can make the motion. I'm not
2 sure it will have any effect. Let me ask the General Counsel.
3 Am I mistaken that the Office of Management and Budget
4 designates the head of the designated federal entity?

5 MR. SHEA: The Act provides that it will be that OMB
6 will make that designation.

7 CHAIRMAN WALLACE: They have done so.

8 MR. SHEA: They have done so.

9 MR. SMEGAL: What the Act says is they will do so and
10 after consultation with the United States Comptroller General.
11 Mr. Shea, are you aware that that ever happened?

12 MR. SHEA: I believe they did. They, of course,
13 consulted with LSC and with Comp Gen.

14 MR. SMEGAL: Are there documents that would reflect
15 those consultations; memorandums or correspondence?

16 MR. SHEA: No, there were conversations. I don't know
17 that they would -- that would be, of course, between themselves,
18 and I wouldn't necessarily be privy to that.

19 MR. SMEGAL: Do you believe the Act is devoid of a
20 procedure for redefining who the head might be?

21 MR. SHEA: As far as I'm concerned, there's no Action
22 that isn't subject to reconsideration.

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1 MR. SMEGAL: Thank you, Mr. Shea. I renew my motion,
2 which has been seconded.

3 CHAIRMAN WALLACE: It's on the floor.

4 MR. UDDO: As I understand the motion, it would be to
5 ask OMB.

6 MR. SMEGAL: That wasn't the motion. The motion was
7 to designate us.

8 A M E N D E D M O T I O N

9 MR. UDDO: I think the intent is to ask OMB to change
10 the designation to the Board from the President.

11 MR. SMEGAL: I believe that to be a friendly
12 amendment, which would be acceptable to the move.

13 CHAIRMAN WALLACE: I just want to make clear what the
14 motion is.

15 MR. EAGLIN: I second it.

16 CHAIRMAN WALLACE: The motion, as friendly amended, is
17 that this Board request OMB to designate the Board as the head
18 of the Corporation. Get back up here, Mr. General Counsel,
19 because what we have is a legal question as well as anything
20 else.

21 I would like you to explain the reasoning which led
22 you to, in consultation with the President, to advise the Office

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1 of Management and Budget that the President was the head within
2 the purview of the Inspector General Act.

3 MR. SHEA: Well, I have a memorandum, which I think
4 has been made available to Board members. Of course, it speaks
5 for itself, but if I could take a moment, this is my September
6 29, 1989, memorandum.

7 If I may say, the fundamental premise of the memo was
8 that the Board and the President share management responsibility
9 for the Corporation. For practical reasons, because of the
10 reporting requirements under the Act, that the President should
11 properly be designated as the head within the meaning of the
12 Inspector General Act.

13 CHAIRMAN WALLACE: What management functions does the
14 Board have?

15 MR. SHEA: Excuse me, policy-making functions.

16 CHAIRMAN WALLACE: We certainly have that function.

17 MR. SHEA: This argument, principally, is that the
18 Board and the President share policy-making functions; hence,
19 the President should properly be designated as the head.

20 CHAIRMAN WALLACE: Any questions or debate on the
21 motion on the floor? Mr. Erlenborn?

22 MR. ERLENBORN: I'd like to ask a question of the

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1 witness. You say that the Board and the President share policy-
2 making functions. To what extent does the President have any
3 independent policy-making authorities?

4 MR. SHEA: To the extent that the President hasn't
5 been pre-empted, I think, by specific Board regulation,
6 resolution or other authoritative guidance. One area, for
7 instance, is on the making of grants, for instance, which, for
8 this kind of organization, is -- I don't know -- the
9 centerpiece, let's say, but it is an important function of the
10 President.

11 Under the statute, it's the President that makes the
12 awards of grants. The Board has constrained the way in which
13 the President, for instance, may terminate those grants,
14 constrained the way, in some form or fashion, the terms and
15 conditions under which to make those grants.

16 Within those parameters, the President has the
17 substantial discretion as to how to enter into these grants.
18 That's one area.

19 MR. ERLNBORN: Discretion? Can you equate with
20 policy, or is he implementing policy established by the Board?

21 MR. SHEA: To the extent it's not otherwise pre-empted
22 by the Board, he can, I think, apply policy -- when he is

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1 applying that discretion, he can take the Board policy or maybe
2 his own policy views into account.

3 MR. ERLNBORN: So you see the President as having
4 overall policy authority unless pre-empted by the Board? So our
5 function is kind of a break of what the President might do in
6 policy decisions rather than it being an affirmative
7 establishment of policy?

8 MR. SHEA: I think the answer is, it depends on what
9 the functions are. Because in practice, many of the -- there
10 are many functions that the President has that are other
11 constrained by specific regulations.

12 As a general proposition, where the Board hasn't
13 spoken with authority, it seems to me that the President does
14 have discretion. In applying that discretion, he can apply
15 policy considerations as well.

16 MR. SMEGAL: Mr. Wallace, may I proceed?

17 CHAIRMAN WALLACE: Yes, proceed, Mr. Smegal.

18 MR. SMEGAL: What we're talking about here, Mr. Shea,
19 is Public Law 100-504, entitled the Inspector General Act
20 Amendments of 1988. What I believe the exchange between Mr.
21 Wear and I established earlier on is, if not expressed at least
22 implicitly, this Board complied with its obligation to establish

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1 an Office of Inspector General by proposing funding for it.

2 It seems to me it couldn't be clearer that we've pre-
3 empted Public Law 100-504. It's no longer in that never, never
4 land where Mr. Wear makes policy in our absence. We're already
5 there. We were there, as he's explained to us, last December,
6 last January, last February. We established the office.

7 He's pre-empted, Mr. Shea, from now coming forward or
8 then coming forward in our absence and suggesting that we have
9 left this area to him. I like the word pre-empted; I think it's
10 a good one.

11 CHAIRMAN WALLACE: I'm confused, because what we did
12 in March was to appropriate or authorize, whatever are the
13 correct words, funds for the Inspector General office. I don't
14 know that we voted to establish it. We certainly didn't vote on
15 who was going to be the head of it.

16 In connection with a budget debate, that we voted the
17 money. Now I don't say that you're wrong, that it should have
18 come to the Board, but I can't construe a vote on a budget as a
19 pre-emption of whatever authority Mr. Wear may have had.

20 MR. SMEGAL: I was referring, Mr. Wallace, to the
21 obligation of Public Law 100-504, which is in the heading of
22 this Federal Register. I don't have the Act before me. I can

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1 only refer to this. Required: We, as a federal entity, fitting
2 into this particular designated federal entity, are required to
3 establish an Office of Inspector General before April 17, 1989.

4 I thought I understood what we did by funding -- by
5 proposing funding in our budget, we "did what we were supposed
6 to do," established an Office of Inspector General. I'm
7 suggesting to you, and I think Mr. Shea is correct, that we have
8 pre-empted this area.

9 Mr. Wear was not in a position to proceed to designate
10 himself as the head of this organization.

11 CHAIRMAN WALLACE: I understand what you're saying,
12 Mr. Smegal, but my recollection on the vote I passed in Atlanta
13 was a vote to spend money. I don't know whether we established
14 the Office of Inspector General; I rather doubt that we did.

15 We have offices, divisions. Initials get thrown
16 around in here that I have no idea what they mean. The
17 President, as part of his management authority, reorganizes the
18 Corporation all the time, and we don't vote on any of those
19 matters, at least not in my recollection.

20 So I understand your argument. I just have to say
21 that I don't think we did vote to establish anything. We voted
22 to spend money. If it was established, it was established by

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1 the President, not by us.

2 MR. SMEGAL: Well, you and I can quibble over the
3 nuances. I don't think it's getting us anywhere. Let me go on
4 to another question, Mr. Shea. I'm still on the motion, but I
5 have another question for Mr. Shea.

6 Mr. Shea, are you familiar with the Corporation for
7 Public Broadcasting?

8 MR. SHEA: Yes.

9 MR. SMEGAL: Can you describe to us what it consists
10 of? How is it chartered?

11 MR. SHEA: First of all, Legal Services Corporation
12 was, in part, modeled on Corporation for Public Broadcasting
13 when it was established. Its establishment antedated that of
14 LSC. They have a Board of Directors, which, I believe, such as
15 yourselves, don't consist of staff members.

16 I don't remember the number, but I think it's a larger
17 number than this Board. In principle, it is, of course, funded
18 by Congress. The Board works similar to the way this does.

19 MR. SMEGAL: Do they have an obligation to meet?

20 MR. SHEA: They are also covered by the Inspector
21 General.

22 MR. SMEGAL: No. Do they have an obligation to hold

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1 Board meetings? Our Act calls for four Board meetings, one of
2 which has to occur on the fourth Friday of January in
3 Washington.

4 MR. SHEA: I'm sorry. I don't know the answer to
5 that.

6 MR. SMEGAL: As far as you're --

7 MR. SHEA: I assume they do, because I think if
8 they're covered by the D.C. Corporation Law, they must hold
9 Board meetings.

10 MR. SMEGAL: As far as you're concerned, they were
11 there and the LSC was modeled after them?

12 MR. SHEA: The legislative history of the Legal
13 Services Corporation Act reflects that they were a model that
14 was employed in the establishment of LSC.

15 MR. SMEGAL: Are you aware that the Corporation for
16 Public Broadcasting has designated as its head the Board of
17 Directors?

18 MR. SHEA: Yes.

19 MR. SMEGAL: Thank you. I believe there's a motion on
20 the floor.

21 CHAIRMAN WALLACE: There is a motion on the floor. I
22 think we're debating it.

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1 MR. VALOIS: Mr. Chairman?

2 CHAIRMAN WALLACE: Mr. Valois?

3 MR. VALOIS: Mr. Smegal has overlooked one, I think.
4 Overseas Private Investment Corporation has designated its
5 President. That's on the reverse side, Mr. Smegal.

6 MR. SMEGAL: On where?

7 MR. VALOIS: On the reverse side. It's no. 51.

8 MR. SMEGAL: Yes, but that's in a different group,
9 Bob. We're looking at -- there's two different groups here and
10 you've got to focus on the designated federal entities, of which
11 we are one, and the Corporation for Public Broadcasting, after
12 which we're modeled.

13 MR. VALOIS: That's exactly the group I'm looking at,
14 Tom. Look at the back side.

15 MR. SMEGAL: I'm afraid you're not, Bob, because those
16 51 are entitled federal entities, and we're not in that group.
17 We're in the first group of 33, along with the Corporation for
18 Public Broadcasting, which is no. 8, I might add.

19 CHAIRMAN WALLACE: Mr. Durant wishes to be heard.

20 MR. DURANT: Mr. Smegal, on your list under the
21 designated federal entities, I didn't understand the point that
22 you made earlier. Is it that each of these has someone

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1 designated who is similar to our Board in terms of the amount of
2 time that it meets or what is --

3 MR. SMEGAL: First off, it's not my list.

4 MR. DURANT: I understand that. You mentioned earlier
5 in the meeting that we were the only one in which our President
6 was designated as opposed to the way these other agencies had
7 handled it.

8 MR. SMEGAL: I don't know all 33 of these, Clark. I
9 just pointed, out through the counsel here, that the
10 organization, the designated federal entity after which we were
11 modeled, the Corporation for Public Broadcasting, has as its
12 head the Board of Directors.

13 I look through here and I see -- I don't know what the
14 rest of these are. I think I've said enough right there. I
15 think my case is made.

16 MR. VALOIS: Mr. Wallace?

17 CHAIRMAN WALLACE: Mr. Valois?

18 MR. VALOIS: If the point that Mr. Smegal is
19 questioning is whether or not a single person or a board is
20 under the designated federal entities --

21 MR. SMEGAL: Mr. Valois, my point is a President
22 versus somebody else, a staff President.

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1 MR. VALOIS: That's fine. I would equate that -- I'll
2 say my opinion -- I would equate that with the Chief Executive
3 Officer in the case of a President of a Corporation. If you
4 look at item no. 1, Mr. Wallace, under designated federal
5 entities, it's the Director of something called ACTION rather
6 than the Board or rather than a Chairman or something.

7 If you look at the National Archives and Records
8 Administration, it's an individual called the archivist and so
9 forth. It's not the entire Board, and, in some cases, it's not
10 the Chairman of the Board. It's an individual who has the
11 equivalent of begin a CEO.

12 CHAIRMAN WALLACE: Anyone else?

13 MR. SMEGAL: I do have another question of Mr. Shea,
14 which has now been raised by Mr. Valois. Are we modeled after
15 ACTION, the number one organization?

16 MR. SHEA: I'll be honest with you; I don't know that
17 they have a Board of Directors.

18 MR. SMEGAL: I see. They don't even have a Board of
19 Directors? Oh! I move the question.

20 CHAIRMAN WALLACE: I do not wish to cut off the debate
21 if anybody has anything else to say. I wish to speak to the
22 motion, but I will certainly recognize you to close as its

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1 proponent, Mr. Smegal.

2 Does anyone else have anything to say? Mr. Uddo?

3 MR. UDDO: Mike, I would just say that I think we
4 ought to designate the Board to appropriate authority because I
5 think it will minimize the kinds of problems that we've
6 discussed this morning.

7 I mean, there's 11 of us on the Board. I think the
8 Board would have to act corporately. I think that that ensures
9 against the kinds of problems that I've raised this morning and
10 that we're concerned about this morning.

11 In the situation that we've discussed, it would be
12 appropriate for me or any other Board member to recuse
13 themselves from any consideration of a report, obviously, but I
14 still think that the 11 people on this Board appointed by the
15 President and confirmed by the Senate are the people to whom the
16 Inspector General should report.

17 CHAIRMAN WALLACE: Mr. Valois, did you wish to be
18 recognized?

19 MR. VALOIS: Well, Basile may be absolutely right, and
20 I think there's a lot of reason why, perhaps, the Board, as a
21 whole, ought to be so designated. I may well vote for it
22 ultimately.

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1 I do question, quite frankly, whether or not it should
2 be voted on today in view of the fact that it's not on the
3 agenda, number one. Number two, I don't really know the
4 practical effect of all of this, and I really suggest that this
5 ought to be more properly on the January agenda.

6 I'd like to know a little bit more from the General
7 Counsel and perhaps the IG himself and perhaps President Wear,
8 what the practical impact of this is going to be.

9 CHAIRMAN WALLACE: Mr. Valois, I have ruled that it is
10 within the scope of the agenda, although it is also true that
11 this particular item, this particular motion was not clearly
12 foreshadowed by the agenda. Very few of us are prepared to deal
13 with the legal argument that Mr. Smegal has just made.

14 I can't rule it out of order, but at an appropriate
15 time, we would certainly entertain a motion to table if that's the
16 pleasure of the Board. I don't want to cut off debate. I think
17 we all want to be able to talk about this and then decide
18 whether we want to act today or to defer it until we've all had
19 a chance to study the issue.

20 MS. SWAFFORD: Mr. President?

21 CHAIRMAN WALLACE: Ms. Swafford?

22 MS. SWAFFORD: I would then move to --

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1 CHAIRMAN WALLACE: Let me ask you not to move because
2 that's nondebatable.

3 MS. SWAFFORD: All right.

4 CHAIRMAN WALLACE: I want to give everybody a chance
5 to be heard because I'm not sure all of the considerations are
6 out on the table.

7 MS. SWAFFORD: All right, at the proper time. Very
8 good.

9 CHAIRMAN WALLACE: Mr. Durant?

10 MR. DURANT: Mr. Shea, in coming up with your opinion,
11 how much weight, if any, did you give to the similarities with
12 the Corporation for Public Broadcasting and its application as
13 an analogy to this?

14 MR. SHEA: First of all, they got -- none in
15 particular. First of all, they had considerable uncertainty as
16 to who was their head as well.

17 MR. DURANT: On the IG question?

18 MR. SHEA: Yes, on that precise question. I was aware
19 -- I might add, they got their disposition when we got our
20 disposition, at least as far as I knew. I was aware that there
21 were internal deliberations between the President and their
22 Board about who to designate.

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1 MR. DURANT: Do you know how that was resolved?

2 MR. SHEA: Yes.

3 MR. DURANT: Was it Board action?

4 MR. SHEA: Actually, there was a Board debate -- and I
5 speak generally -- the Board debated the matter and sought to--
6 first of all, I don't know that they were anxious to establish
7 an office of Inspector General.

8 Once it was clear that they were obliged to, I think
9 the Board sought to delegate its responsibility to the President
10 and thereby establish the President as the head within the
11 meaning of the Inspector General Act.

12 It's my understanding that OMB or GAO took exception
13 to that. Thereafter, OMB and GAO prevailed.

14 MR. DURANT: Do you know why they prevailed?

15 MR. SHEA: I don't know.

16 MR. DURANT: Is it public as to what their
17 reservations were or anything else?

18 MR. SHEA: I don't know why they prevailed. Would

19 MR. DURANT: Would we be able to get that information?

20 MR. SHEA: I'm sure I could find that out.

21 MR. DURANT: Before the next meeting?

22 MR. SHEA: I think I could find out very shortly.

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1 CHAIRMAN WALLACE: Do you know what motives led the
2 Corporation for Public Broadcasting to wish to delegate
3 authority to the President?

4 MR. SHEA: I don't know. The only thing I knew about
5 it is that they were -- I don't think they were enamored with
6 the idea of having such an office. I don't think they made any
7 secret of that either. Beyond that, I can't answer that.

8 MR. ERLENBORN: Mr. Chairman?

9 CHAIRMAN WALLACE: Yes, Mr. Erlenborn?

10 MR. ERLENBORN: A question to Mr. Shea. I'm not
11 familiar with the structure of all of these designated federal
12 entities. Maybe you could help me with the Tennessee Valley
13 Authority. Is the Board of Directors full time there or is that
14 pattern like a private corporation?

15 MR. SHEA: I don't know.

16 MS. SWAFFORD: I can answer that, Mr. Erlenborn. I'm
17 from Tennessee. Maybe we'll take judicial knowledge here that
18 the Board of Directors is composed of three, and they are full
19 time.

20 MR. ERLENBORN: They're full time?

21 MS. SWAFFORD: Yes, they are.

22 MR. ERLENBORN: So that is not a comparable situation.

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1 CHAIRMAN WALLACE: As I said, I do wish to be heard on
2 the issue. It may interest the Board to know that some of the
3 members of Congress who supported this Act, the appropriate
4 committees, wrote me maybe about a year ago asking what we were
5 doing, under the assumption that I, as Chairman, was head.

6 I did everything I could to disabuse everybody of the
7 notion that the Chairman ought to be the head. The Chairman is,
8 at best, first among equals and is not different in kind from
9 every other member of this Board.

10 I certainly feel, for practical reasons, that the
11 Board ought not to be in charge as head for purposes of the IG
12 Act. We've had the IG Act read to us. The function of the head
13 is to provide supervision, oversight -- I forget all the words
14 that are used.

15 I testified years ago in Congress that I feel it is
16 very difficult for this Board to provide supervision and
17 oversight of anything that goes on in the Corporation. It has
18 been our practice to hire Presidents and let the President
19 supervise what goes on at the Corporation.

20 If there are deadlines under the Act that would
21 require the head to consider a report and pass it up to Congress
22 within seven days, a very practical problem of getting us

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1 together to consider that report -- frankly, the debate we had
2 this morning leads me to believe that the farther this Board
3 stays away from discussions of the IG's investigation, the
4 better off we are.

5 Our successors, whoever they are, will have to live
6 with whatever OMB does not with what we do. I think they would
7 be much better off having the man who is here running the
8 Corporation full time to do these duties.

9 Since the IG does not set policy, the IG strictly
10 follows the Act, this Board, as a policy-setting board, seems to
11 me to be peculiarly ill-suited to supervise somebody who has
12 nothing to do with policy.

13 I would think it would be a mistake. It may be
14 illegal; I don't know. But ever since I found out about it, I
15 said it ain't me. Hope it's a legal matter. The General
16 Counsel and OMB will take care of it.

17 If this Board would like to be the head, I really do
18 think we need to know a lot more than we know right now. All we
19 know right now is that Corporation for Public Broadcasting is a
20 lot like us.

21 They didn't want to be the head of it. OMB and GAO
22 made them do it. OMB and GAO, for reasons unknown to me,

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1 haven't made us do it. I think that's a good break. I'd like
2 to keep it that way. But I certainly think that we ought to
3 have a lot more information than we have now before asking for a
4 decision in which GAO and OMB have concurred be overruled.

5 Unless anybody else has anything else to say on the
6 merits, Mr. Smegal, I did say I would recognize you to close as
7 proponent of your motion. Does anyone else desire to be heard?

8 Mr. Durant?

9 MR. DURANT: I'd just like to be -- Mr. Smegal can go
10 ahead, but I'd just like to be heard before Ms. Swafford's
11 motion.

12 CHAIRMAN WALLACE: Well, I'm going to let him close
13 before I let him -- he's the proponent and I'm going to give him
14 the right to close. Have you got something to say?

15 MR. DURANT: I support you, Mr. Chairman, on the idea
16 that I think we need more information before we can make a final
17 decision. I have, I guess, a parliamentary inquiry, a motion to
18 table is a need -- in order to come off the table at the next
19 Board meeting, it simply needs a majority at that Board meeting
20 to do that?

21 CHAIRMAN WALLACE: You can table to a time certain, at
22 which point you would not need a vote to take it off the table.

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1 If you table without a time certain, I think you would need a
2 vote to take it off the table.

3 I may be wrong, but that's my best recollection of how
4 tabling motions would work. So perhaps if there is a tabling
5 motion, it should be to a time certain.

6 MR. DURANT: Like the next Board meeting?

7 CHAIRMAN WALLACE: The next Board meeting, yes.

8 MR. DURANT: Well, Ms. Swafford, if you make that
9 motion, I would hope you would have that qualifier in there.

10 MS. SWAFFORD: I'll accept that as an amendment.

11 CHAIRMAN WALLACE: I haven't let you move it yet, so
12 you don't have to accept it.

13 MS. SWAFFORD: I recognize that; I'm sorry.

14 CHAIRMAN WALLACE: Any further debate on the merits
15 before I recognize Mr. Smegal to close?

16 (No response.)

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

18 MR. SMEGAL: Thanks, Mr. Wallace. I think we have a
19 classic example of tunnel hearing. You heard what went on this
20 morning and concluded from that that somehow the arrangement we
21 have with the Inspector General, who is shielded from us by the
22 President, is the way to go.

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1 I heard just the opposite. I heard we've got a
2 disaster going with the President supervising the Inspector
3 General. I might point out to you that at some point before
4 this meeting ends, I would hope -- and I will make the motion--
5 to ratify what I believe to have been possibly an illegal act
6 of Mr. Wear in hiring Mr. Wilkinson on September 5 and, I
7 assume, paying him with Corporation funds when, in fact, Mr.
8 Wear didn't even have the authority until November 9 to make
9 that employment offer and hire him. So at some point I would be
10 prepared to make that motion.

11 I see what's been going on here today just opposite
12 of you, Mike. We've got a real significant circumstance here
13 that we've got to change. For Mr. Wear to be responsible, as
14 head of this Corporation, for what the Inspector General does,
15 is going to continue to produce the kind of problems we've been
16 discussing for the last two and a half hours.

17 CHAIRMAN WALLACE: Thank you, Mr. Smegal. Ms.
18 Swafford is recognize for the purpose of making a motion.

19 M O T I O N

20 MS. SWAFFORD: All right, I'll just restate my motion.
21 I will limit it to the next -- the tabling be limited to the
22 next meeting, which is in January. I'm not dead sure of the

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1 date. Is that certain enough?

2 CHAIRMAN WALLACE: That's certain enough.

3 MR. DURANT: I'll second it.

4 CHAIRMAN WALLACE: I don't think a second is required.
5 It's been moved that this matter be tabled until the next Board
6 meeting. That's nondebatabable. On the motion to table, Ms.
7 Benavidez, how do you vote?

8 MS. BENAVIDEZ: Yes.

9 CHAIRMAN WALLACE: Ms. Miller?

10 MS. MILLER: No.

11 CHAIRMAN WALLACE: Mr. Hall?

12 MR. HALL: Vote to table.

13 CHAIRMAN WALLACE: Ms. Swafford?

14 MS. SWAFFORD: Yes.

15 CHAIRMAN WALLACE: Mr. Valois?

16 MR. VALOIS: Yes.

17 CHAIRMAN WALLACE: The Chair votes aye.

18 Mr. Durant?

19 MR. DURANT: Aye.

20 CHAIRMAN WALLACE: Mr. Erlenborn?

21 MR. ERLENBORN: Aye.

22 CHAIRMAN WALLACE: Mr. Uddo?

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1 MR. UDDO: No.

2 CHAIRMAN WALLACE: Mr. Smegal?

3 MR. SMEGAL: No.

4 CHAIRMAN WALLACE: Mr. Eaglin?

5 MR. EAGLIN: No.

6 CHAIRMAN WALLACE: The motion to table to the next
7 Board meeting carries by a vote of 7 to 4.

8 Is there any further business under this item, review
9 of Office of the Inspector General, before we move on to another
10 subject?

11 MR. SMEGAL: Well, I believe I did submit to this
12 Board that there is an action we have to take. I believe that
13 Mr. Wilkinson has been paid by funds that were not available to
14 Mr. Wear from September 5 to November 9 when he was authorized
15 by the announcement in the Federal Register. I think we have to
16 ratify those payments.

17 CHAIRMAN WALLACE: Let me ask Mr. Wear, who apparently
18 wishes to respond to that, and then I'll recognize you for the
19 purpose of making that motion, if you wish.

20 Mr. Wear?

21 MR. WEAR: Thank you, Mr. Chairman. As I tried to
22 state earlier, this issue is treated as a legal issue from the

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1 beginning. We consulted with the General Counsel on this. We
2 came up with this. We sent a letter to OMB in February; didn't
3 get any response back from anybody.

4 It was a requirement that we get the office set up.
5 In April, we moved forward on it. We hired General Wilkinson
6 under those circumstances. There was no reason to believe there
7 was any question about who the head of the agency was going to
8 be.

9 I don't think there is any need to ratify any payments
10 that were made to him.

11 CHAIRMAN WALLACE: Would there be any harm in
12 ratifying payments that have been made to him?

13 MR. WEAR: No, I don't think so.

14 CHAIRMAN WALLACE: There may or may not be a need. I
15 would not think that the motion would imply one way or another.
16 But if there is no harm in ratifying what has already been done,
17 it's hard for me to see any problem in proceeding on the motion
18 that Mr. Smegal wants to make.

19 MR. WEAR: Mr. Chairman, I guess my point was, I
20 didn't want someone to call any question to the Inspector
21 General's authority as a result of this. He's conducting, as he
22 said, six investigations. I'd like to be sure that we're ready

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1 to go forward and do these, as I said, by the numbers.

2 So if there's no question about his authority and
3 ability to do that, I don't think there's any problem with the
4 ratification of the payments.

5 CHAIRMAN WALLACE: Well, let me just make it clear.
6 I'm sure Mr. Smegal will do that if I don't. I understand Mr.
7 Smegal to have raised the question about the legality of the
8 situation. So that's been raised. You can't put that cat back
9 in the bag.

10 I do not understand that opinion to be implicated in
11 the text of his motion. Since he hasn't made it yet, I don't
12 know whether it will be. I understood it to be a simple
13 ratification motion that does not take a position one way or
14 another as to whether anything done to this point has been
15 wrong.

16 If that is in the motion, it would be a little harder
17 to debate. But a simple ratification motion, I don't see any
18 objection to it. So I will recognize Mr. Smegal now for the
19 purpose of making his motion any way he wants to make it.

20 MR. SMEGAL: Let me suggest, I first have a response
21 to Mr. Wear. He did focus on the point of which I am concerned
22 in suggesting that in February he sent a letter off that

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1 designated himself as the head.

2 We just had an example with respect to the Corporation
3 for Public Broadcasting of their having designated a Mr. Wear as
4 their head and having the GAO or OMB, I guess, do just the
5 contrary.

6 For Mr. Wear to assume that because he wrote a letter,
7 that was going to happen, suggests to me that we are in a dire
8 need of a ratification of Mr. Wear's act on September 4 in
9 starting payment of Mr. Wilkinson's IG.

10 I'm not going to make a motion.

11 CHAIRMAN WALLACE: You are not going to make a
12 ratification motion?

13 MR. SMEGAL: No, I'm not going to ratify his act. I'm
14 not going to move to ratify it.

15 CHAIRMAN WALLACE: Does anyone else desire to move to
16 ratify it?

17 M O T I O N

18 MR. DURANT: I will.

19 CHAIRMAN WALLACE: All right, Mr. Durant has moved to
20 ratify the -- I'm not quite sure how you want to phrase it.

21 MR. DURANT: The hiring and the paying of Mr.
22 Wilkinson to be the Inspector General.

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1 CHAIRMAN WALLACE: Mr. Durant has moved to ratify the
2 hiring and paying of Mr. Wilkinson as Inspector General. Is
3 there a second?

4 MR. ERLNBORN: Mr. Chairman?

5 CHAIRMAN WALLACE: Mr. Erlenborn is recognized.

6 MR. ERLNBORN: I'd like to second the motion.

7 CHAIRMAN WALLACE: Would anyone like to be heard on
8 either side of the motion?

9 MR. EAGLIN: Is this going to them comprehend the
10 examination that we would normally do of senior officers? Is
11 this going to comprehend then our confirmation of it, so to
12 speak?

13 CHAIRMAN WALLACE: I'm not sure what examination we
14 normally do of senior officers. We've raised that question
15 before.

16 MR. EAGLIN: We're supposed to.

17 CHAIRMAN WALLACE: I think the term in the regulation
18 is "consultation." We've had arguments before this Board before
19 as to what consultation means. Regardless of our views on that,
20 Mr. Eaglin, I would think if this Board ratifies the hiring,
21 then this board has waived any objection it might have to the
22 manner of the hiring or any consultation that was necessary in

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1 advance.

2 MR. EAGLIN: I think your interpretation is accurate.
3 I would like this to reflect that. The extent of the
4 consultation with me was my receipt of this news release saying
5 that the man had been hired.

6 CHAIRMAN WALLACE: Okay. Well, that explains the
7 motion on the floor, I think. Does anyone else have anything
8 else to say about it?

9 MR. DURANT: Certainly, it seems to me, Paul, that
10 certainly you can -- how he was hired or not hired or whatever,
11 you could certainly raise that under any performance appraisal.

12 MR. ERLNBORN: Mr. Chairman?

13 CHAIRMAN WALLACE: Mr. Erlenborn?

14 MR. ERLNBORN: Mr. Chairman, I'd just like to explain
15 my second. I thought it was a good idea when Mr. Smegal moved
16 to ratify. I think it's, in fairness to Mr. Wilkinson,
17 something we ought to do, so that his status is not left in
18 question.

19 It may be that, as Mr. Wear anticipated, is what did
20 ultimately happen, and he moved a little too quickly. But I
21 don't think we ought to penalize Mr. Wilkinson for that.
22 Therefore, I did second and intend to vote for the motion to

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1 ratify.

2 CHAIRMAN WALLACE: Thanks, Mr. Erlenborn. Further
3 debate on the motion?

4 MR. SMEGAL: Yes, Mr. Chairman.

5 CHAIRMAN WALLACE: Mr. Smegal?

6 MR. SMEGAL: Let me clarify where we are here. My
7 intention in raising this was so Mr. Wilkinson wouldn't have to
8 get money back. I don't think the issue of whether Mr.
9 Wilkinson had been hired or not is before this Board.

10 The only issue that I think is here is whether he
11 continues to keep the money he received for the period September
12 5 to November 9, when Mr. Wear then had authority to do what he
13 did.

14 I don't think the question is hiring. The question is
15 whether we ratify payments that were made to Mr. Wilkinson
16 between September 5 and November 9. I'm prepared to vote on
17 that.

18 CHAIRMAN WALLACE: Well, let me restate the motion for
19 the gentlemen, because the issue of hiring is before the Board
20 as stated by Mr. Durant's motion. A vote for the motion will
21 ratify both the expenditure of the funds and the hiring of Mr.
22 Wilkinson.

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1 We may or may not be for that, but I want it to be
2 clear what we're voting on. We are approving the hiring and the
3 payment. That's the motion on the floor, unless somebody wants
4 to amend it.

5 Mr. Erlenborn?

6 MR. ERLENBORN: Mr. Shea, I'd like to ask him a
7 question if I can.

8 CHAIRMAN WALLACE: Certainly. General Counsel, please
9 come forward.

10 MR. ERLENBORN: I caught him just at the moment he was
11 having something to eat.

12 MR. SHEA: No, I just got hungry. I should have known
13 better.

14 MR. ERLENBORN: If you know the answer to this, I
15 think the Board should know what the situation would be if, in
16 the event the Board would request OMB to designate the Board as
17 the head of the Agency, at that time, what would happen with Mr.
18 Wilkinson's appointment?

19 MR. SHEA: Well, first of all, I think there were two
20 separate issues. The Board may be deliberating on the propriety
21 of his appointment as Inspector General -- can he encumber that
22 position? -- which may be all together different from whatever

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1 contract rights he may have.

2 So if the Board were to petition OMB to revisit the
3 issue of who is properly the head, and if OMB were to so decide
4 otherwise, change their minds, which -- my understanding is,
5 David Wilkinson pointed out to me, that they do this publication
6 annually, so it is a matter that has an opportunity for being
7 revisited in any event.

8 There may be an opportunity for the Board to decide
9 who should encumber that position, then, I think. For present
10 purposes, it seems to me, OMB has spoken, and that probably is
11 authoritative.

12 The Board may get it to change its view, in which
13 case, then, the Board may decide that somebody else should
14 encumber the position, I suppose. That would not prejudice that
15 or what may be any contract rights that Mr. Wilkinson has.

16 MR. ERLNBORN: Well, my recollection is -- and I
17 haven't looked at the Act lately -- that Inspectors General are
18 generally are protected against being fired. They have a tenure
19 in office.

20 MR. SHEA: No.

21 MR. ERLNBORN: I guess that's right. As a matter of
22 fact, in change of administrations, they usually all submit

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1 their resignations; don't they?

2 MR. SHEA: Keep in mind there are two kinds. There
3 are Inspector Generals for big agencies. They have a lot more
4 authority. Those have a lot more authority on people than we
5 have.

6 They are advice and consent people; okay. Now,
7 therefore, designated federal entities, such as LSC, they are
8 hired by the head.

9 MR. ERLNBORN: They can't be removed by the head?

10 MR. SHEA: They can be removed by the head. My
11 recollection is -- in fact, I can't tell you that I spent a lot
12 of time, but my recollection is that if an IAG for a designated
13 federal entity were to be removed, there is no particular remedy
14 except it has to be reported to Congress.

15 CHAIRMAN WALLACE: All right, General Wilkinson, do
16 you have anything else to say?

17 MR. WILKINSON: I just wanted to quote that language.
18 If IG is removed from office, the head of the designated federal
19 entity shall promptly communicate in writing the reasons for any
20 such removal and transcript to both Houses of Congress.

21 MR. SMEGAL: May I ask a question?

22 CHAIRMAN WALLACE: Sure.

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1 MR. SMEGAL: I'm a little troubled by what seems to be
2 going on here. We've had a long discussion over whether this
3 Board should be designated. I understand where we are is, we
4 have a November 9 Federal Register pronouncement that Mr. Wear
5 is the head.

6 I can't see how we could possibly have the authority
7 at this point to hire Mr. Wilkinson. I don't see how that is
8 even something that should be before us. The Office of
9 Management and Budget has designated and appointed the President
10 of this Corporation to be the head.

11 He's hired Mr. Wilkinson. We can't now vote to hire
12 Mr. Wilkinson. We don't have the authority anymore. It's his
13 authority. All I was suggesting is that maybe we should ratify
14 the payments to Mr. Wilkinson that occurred prior to Mr. Wear
15 having the authority on November 9.

16 I think we're going a little bit too far here, Mr.
17 Wallace.

18 CHAIRMAN WALLACE: All right, thank you, Mr. Smegal.
19 Any further debate?

20 MR. SMEGAL: Oh, I'm sorry. I'd like an opinion.

21 CHAIRMAN WALLACE: Oh, I'm sorry.

22 MR. SMEGAL: That was addressed to Mr. Shea.

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1 MR. SHEA: I heard everything you said, but I'm not so
2 sure I understood the question.

3 MR. SMEGAL: The question is, how can we hire Mr.
4 Wilkinson when we've already had the debate and tabled the
5 debate over whether we had that authority. It remains with Mr.
6 Wear, according to this November 9th Federal Register, until
7 such time that that matter comes off the table and this Board
8 votes that they want to request to OMB that the Board be the
9 head of this designated federal entity.

10 MR. SHEA: I'm still not so sure what your question
11 is.

12 MR. UDDO: I think the question is, Clark's motion say
13 ratify the hiring and the paying. Tom is saying how can we
14 ratify the hiring, since we're not the designated head. We have
15 nothing to say about the hiring.

16 CHAIRMAN WALLACE: Mr. Valois?

17 MR. VALOIS: Yes, I think Chairman Wallace has already
18 given his opinion about all of that. I think the General
19 Counsel is now being put in a somewhat odd position of being
20 asked to give a contrary opinion to that given by the Chairman.

21 CHAIRMAN WALLACE: I'm contradicted often, Mr. Valois.
22 If Mr. Shea has an opinion contrary to mine --

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1 MR. DURANT: Mr. Shea had done it before, and I'm sure
2 he would do it again.

3 CHAIRMAN WALLACE: Let me explain what I understand by
4 the motion on the floor. A ratification simply adds whatever
5 authority this Board may have to the decision that has been
6 made. If we don't have the authority, it doesn't matter.

7 If we do have the authority, we exercise that
8 authority. It is a ratification. It is not an affirmative
9 hiring. We are not hiring. We are ratifying something that has
10 already been done with whatever authority we have. That's the
11 motion as I understand it.

12 MR. SMEGAL: Mr. Wallace, may I ask just one further
13 question? Mr. Shea, under Public Law 100-504, the Inspector
14 General Act of 1986, who has the authority to hire the Inspector
15 General?

16 MR. SHEA: The head, as I understand it. Moreover,
17 under the LSC Act, as far as I'm concerned, it is the President
18 that hires the people. Hence, that was the reason why I
19 distinguished between his entitlement to compensation to his
20 authority to encumber the position.

21 He may be entitled -- someone may decide somehow that
22 he can't encumber that position for one reason or another, but

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1 he may, nevertheless, be entitled to compensation.

2 MR. SMEGAL: And our authority extends to hiring the
3 President, the Board's authority? Is that our only authority at
4 the present time under the act?

5 MR. SHEA: And directors -- I mean officers; excuse
6 me.

7 CHAIRMAN WALLACE: Do we hire officers?

8 MR. SHEA: No, but this is the consultation matter
9 that you referenced before.

10 CHAIRMAN WALLACE: We all know we're not sure what
11 that means.

12 M O T I O N

13 MR. SMEGAL: Would the Chair entertain a motion for
14 division?

15 CHAIRMAN WALLACE: Division, I think I have to
16 entertain a motion for division. I don't think I have any
17 choice on it. It's been so moved.

18 MR. SMEGAL: To divide the question.

19 CHAIRMAN WALLACE: Yes, I understand. I don't know
20 whether a motion for division requires a second, but I bet you
21 can get one.

22 MR. SMEGAL: I think I can find one.

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1 CHAIRMAN WALLACE: Somebody want to do it and save me
2 the trouble?

3 MR. UDDO: Second.

4 CHAIRMAN WALLACE: There's a motion to divide the
5 question. Let me explain the motion. We have before us Mr.
6 Durant's motion to ratify the hiring and the paying of Inspector
7 General Wilkinson.

8 If we decide to divide the question, we will then have
9 two votes on Mr. Durant's motion. First we will vote on whether
10 or not to ratify the hiring. Then we will vote on whether or
11 not to ratify the paying.

12 Before we get to that point, we have to decide whether
13 or not we want to divide the question. I don't think a motion
14 to divide is debatable. That's why I've just tried to explain
15 it.

16 With regard to dividing the motion so that we have two
17 votes instead of one, Mr. Eaglin, how do you vote?

18 MR. EAGLIN: I vote to divide.

19 CHAIRMAN WALLACE: Mr. Smegal?

20 MR. SMEGAL: Divide.

21 CHAIRMAN WALLACE: Mr. Uddo?

22 MR. UDDO: Yes.

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1 CHAIRMAN WALLACE: Mr. Erlenborn?

2 MR. ERLNBORN: No.

3 CHAIRMAN WALLACE: The Chair votes no.

4 Mr. Valois?

5 MR. VALOIS: No.

6 CHAIRMAN WALLACE: Ms. Swafford?

7 MS. SWAFFORD: No.

8 CHAIRMAN WALLACE: Mr. Hall?

9 MR. HALL: Vote to divide.

10 CHAIRMAN WALLACE: Ms. Miller?

11 MS. MILLER: Divide.

12 CHAIRMAN WALLACE: Ms. Benavidez?

13 MS. BENAVIDEZ: Divide.

14 CHAIRMAN WALLACE: The motion to divide passes by a
15 vote of 6 to 5. So we will have two votes on Mr. Durant's
16 motion. We will vote first on the hiring and then on the
17 paying. I presume debate is still in order on the divided
18 motion.

19 Does anyone else have anything to say on the merits of
20 the motion? Mr. Smegal?

21 MR. SMEGAL: Yes, I'd like to speak because my vote is
22 going to -- my vote may not be explained by what it is, but I

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1 don't believe we have authority to vote on hiring Mr. Wilkinson.
2 I'm going to abstain when we get to this vote.

3 MR. ERLNBORN: Mr. Chairman?

4 CHAIRMAN WALLACE: Mr. Erlenborn?

5 MR. ERLNBORN: I agree. I don't think we have the
6 authority, but I don't think it hurts anything, so I'm going to
7 support the motion.

8 MR. HALL: Mr. Wallace?

9 CHAIRMAN WALLACE: Yes, Mr. Hall?

10 MR. HALL: I think he's hired.

11 CHAIRMAN WALLACE: I think he has been hired. The
12 question is whether or not we add whatever authority we may have
13 to support that hiring.

14 MR. VALOIS: If the motion to ratify the hiring fails,
15 does that mean our Inspector General is fired?

16 CHAIRMAN WALLACE: No, sir. Let me clarify that. I
17 appreciate the gentlemen's parliamentary inquiry. The defeat of
18 the motion to ratify the hiring will not disapprove the hiring.
19 It leaves us exactly where we were when we came in the room
20 today, which may or may not be legal.

21 MR. VALOIS: Mr. Chairman, if the President did not
22 have the authority to hire the Inspector General in the first

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1 place, would your answer by the same?

2 CHAIRMAN WALLACE: I'm not sure I heard your question.

3 MR. VALOIS: Suppose the President did not have the
4 authority to initial authority, the primary authority, the
5 original authority to hire Mr. Wilkinson.

6 CHAIRMAN WALLACE: If he did not have the authority,
7 our failure to ratify would not effectuate a firing. Someone
8 would have to challenge, in some appropriate forum, the
9 President's authority.

10 So if we vote not to ratify the hiring, he goes on as
11 before until somebody decides the question of whether he was
12 validly hired.

13 MR. DURANT: What if that happens with -- he talked
14 about fraud cases or cheating cases. Why can't somebody say he
15 was acting under improper authority?

16 CHAIRMAN WALLACE: I'm not sure those are adversary
17 proceedings. Mr. Erlenborn may be able to advise me better, but
18 there is simply a matter of reports to the head and to Congress.
19 It's not a case of where you could challenge a prosecution
20 because the prosecutor was acting without authority; there's no
21 prosecution here. It's merely a report.

22 MR. ERLENBORN: I would agree. If it did become a

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1 prosecution, that would be a separate action initiated by the
2 U.S. Attorney.

3 CHAIRMAN WALLACE: I think that's correct.

4 MR. EAGLIN: Mr. Wallace?

5 CHAIRMAN WALLACE: Mr. Eaglin?

6 MR. EAGLIN: Earlier you made mention of the
7 uncertainty in your own mind about what consultation means.
8 Isn't that also accurate that had he consulted with us
9 beforehand, and, let's say, for example, when he consulted with
10 me, I expressed my indication that I was not in favor of hiring
11 Mr. Wooton, he could still do that.

12 For that matter, he could consult with all of the
13 Board. If he had a majority that said no, we're not in favor of
14 it, would he still not have the authority, if he were the head?

15 CHAIRMAN WALLACE: My view is that he would have the
16 authority both under the IG Act, as I've heard it explained
17 today, and under the LSC Act. He can hire people we don't like.
18 Our remedy is to fire him. That's what it amounts to.

19 MR. SMEGAL: Did we skip ahead? (Laughter)

20 CHAIRMAN WALLACE: I hope I've explained the motion to
21 the satisfaction of everybody here. Is there any further debate
22 or parliamentary inquiry?

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(No response.)

CHAIRMAN WALLACE: The first vote will be on the motion to ratify the hiring of Mr. Wilkinson. On that motion, Mr. Eaglin, how do you vote?

MR. EAGLIN: On the motion to hire? I abstain.

CHAIRMAN WALLACE: Mr. Smegal?

MR. SMEGAL: Abstention.

CHAIRMAN WALLACE: Mr. Uddo?

MR. UDDO: Abstained.

CHAIRMAN WALLACE: Mr. Erlenborn?

MR. ERLENBORN: Aye.

CHAIRMAN WALLACE: Mr. Durant?

MR. DURANT: Aye.

CHAIRMAN WALLACE: The Chair votes aye.

Mr. Valois?

MR. VALOIS: Aye.

CHAIRMAN WALLACE: Ms. Swafford?

MS. SWAFFORD: Aye.

CHAIRMAN WALLACE: Mr. Hall?

MR. HALL: No.

CHAIRMAN WALLACE: Ms. Miller?

MS. MILLER: No.

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1 CHAIRMAN WALLACE: Ms. Benavidez?

2 MS. BENAVIDEZ: No.

3 CHAIRMAN WALLACE: I, frankly, do not know whether the
4 motion passed or not. (Laughter) There are 11 people here.
5 Only five people voted for it. I don't know the effect of an
6 abstention under these circumstances.

7 There is not a majority of all people present. I'm
8 trying to figure out how I rule on the vote I just had. Mr.
9 Shea, do you have any insight, any parliamentary procedure?

10 MR. SHEA: I'm rushing to get my Robert's rules.

11 CHAIRMAN WALLACE: While we're doing that, can we move
12 on to the other portion? I'll ask unanimous consent that we
13 proceed out of order to the next vote while Mr. Shea is helping
14 me to rule on the vote we just had.

15 On the question of ratifying the payments to Mr.
16 Wilkinson, how do you vote, Mr. Eaglin?

17 MR. EAGLIN: I vote in favor.

18 CHAIRMAN WALLACE: Mr. Smegal?

19 MR. SMEGAL: In favor.

20 CHAIRMAN WALLACE: Mr. Uddo?

21 MR. UDDO: Abstained.

22 CHAIRMAN WALLACE: Mr. Erlenborn?

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1 MR. ERLNBORN: Aye.

2 CHAIRMAN WALLACE: Mr. Durant?

3 MR. DURANT: Aye.

4 CHAIRMAN WALLACE: The Chair votes aye.

5 Mr. Valois?

6 MR. VALOIS: Aye.

7 CHAIRMAN WALLACE: Ms. Swafford?

8 MS. SWAFFORD: Aye.

9 CHAIRMAN WALLACE: Mr. Hall?

10 MR. HALL: Yes.

11 CHAIRMAN WALLACE: Ms. Miller?

12 MS. MILLER: Aye.

13 CHAIRMAN WALLACE: Ms. Benavidez?

14 MS. BENAVIDEZ: Abstain.

15 CHAIRMAN WALLACE: By a vote ayes and two abstentions,
16 the motion to ratify the paying, it has been adopted.

17 Mr. Shea, have you got any help for me on how to rule
18 on the last vote?

19 MR. SHEA: Incredibly, I don't as yet.

20 CHAIRMAN WALLACE: I understand he's hired. I'm just
21 trying to understand what this Board did, and I'm not sure I do.
22 I will ask continuing unanimous consent to proceed out of order

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1 until Mr. Shea can advise me on how I ought to rule on the vote.

2 Now I will also ask unanimous consent that lunch be
3 brought in. Let us, as unpleasant as it may be to watch us talk
4 while we eat, let's proceed with as much work as we can do.

5 I would also ask that we proceed out of order at this
6 time to consider item 5, so that we can recognize Nancy Clinch
7 from California to be heard on that subject. She's got to get
8 out of here.

9 So bring on in the food, folks. Ms. Clinch, it's a
10 lovely way to do business, but I'm happy to recognize you.

11 MR. SMEGAL: Point of personal privilege, if I may.

12 CHAIRMAN WALLACE: Mr. Smegal is recognized for a
13 point of personal privilege. I'll ask the room to stay in as
14 much order as is possible under the circumstances. Mr. Smegal?

15 MR. SMEGAL: So the record might reflect, in
16 anticipating the modesty of Ms. Clinch, I should take a moment
17 to tell you who she is. The State Bar of California, consisting
18 of 122,000 lawyers, sometimes referred to as a hometown club,
19 has as its governing Board, 15 elected lawyers, 6 designated
20 non-lawyers, and a young lawyer appointed.

21 I'm proud to advise you that Nancy Clinch is one of 15
22 elected lawyers in the State of California that is responsible

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1 for the policy of running the State Bar of California. Welcome,
2 Nancy.

3 CHAIRMAN WALLACE: I add my welcome, Ms. Clinch. I'm
4 sure the whole bar joins me. Thank you for making the trip out
5 here. Please proceed.

6 Let's take a 5-minute break while the food is rolled
7 in and we get settled. We could probably use a 5-minute break
8 anyway. I will recognize Ms. Clinch as soon as everybody gets
9 settled.

10 (A brief recess was taken.)

11 CHAIRMAN WALLACE: My apologies again for the unusual
12 circumstances. I call the meeting back to order. I recognize
13 Ms. Clinch. Thank you for coming all the way to be with us. We
14 look forward to what you have to say.

15 REPORT AND ACTION ON REQUESTS FOR EMERGENCY FUNDING

16 MS. CLINCH: I thank all of you for having me here
17 today. I'm not only the Governor of the State Bar of
18 California, but I'm also Chair of the California State Bar
19 Regional Disaster Legal Services Program.

20 I became Chair because we had a big fire where I live
21 that made a lot of news in September of 1988. From that fire, I
22 created a model of how to set up legal disaster clinics. That

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1 has been adopted by the State Bar.

2 When the earthquake hit in the Bay area, it was easy
3 for me to then assume the role of Director so I could have the
4 experience in several disaster areas. In addition to that, I
5 had been in contact with the President of the State Bar of South
6 Carolina as well as different legal services programs in South
7 Carolina.

8 So I'm somewhat familiar with some of the problems
9 that South Carolina has faced as a result of Hurricane Hugo.
10 I'm also somewhat aware of the proposal that they have before
11 you also today. If I might speak to that, also since they don't
12 have representative.

13 We've assisted each other in dealing with FEMA, how to
14 do different things. As you are probably all aware from the
15 national news reports that came out of San Francisco, San
16 Francisco was on fire.

17 There was a collapse of the Nimitz Freeway and a
18 partial collapse of the Bay Bridge, as well as reported
19 widespread destruction. The Office of Emergency Services of the
20 State of California has compiled statistics.

21 As of December 11, 1989, the death toll from the
22 earthquake is 62; injuries, 3,759; homes damaged, 22,447--

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1 that's where the houses have over \$10,000 in repairs -- homes
2 destroyed, 967; businesses damaged, 3,490; businesses destroyed,
3 193; property damage -- and this is a conservative estimate
4 because all the appraisals are not in -- is over \$5.6 billion.
5 So that visually gives you some idea of the extent of the
6 earthquake.

7 There is still one shelter open two months after the
8 earthquake, and it still houses 350 from the earthquake. The
9 reason I'm here today is to speak on behalf of a one-time
10 emergency funding request from the Legal Services-funded
11 agencies in the Bay area. In addition, I'd like to speak on
12 behalf of the Berkeley Community Law Center as well as the South
13 Carolina programs.

14 Our Governor, George Deukmajian, has strongly endorsed
15 full funding for the proposals that came out of California as
16 has Senator Pete Wilson. They have both sent letters to Terry
17 Wear. I understand that some of the staff has not seen the
18 letters yet. If not, I have other copies for you.

19 I don't know if anyone has, but I can just briefly
20 read: "Senator Wilson, I am writing to express my strong
21 support, for an application that has been made to Legal Services
22 Corporation for a grant to help respond to problems created by

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1 the earthquake that hit northern California in October.

2 "I urge the LSC to fully allocate the funds requested
3 and direct their use to the most critical types of legal
4 assistance." Governor Deukmajian: "As Governor of the State of
5 California, I endorse this request for one-time emergency funds
6 to assist those Californians whose lives have been altered by
7 this tragic event."

8 They go on, but I can leave this here for the record.

9 CHAIRMAN WALLACE: Thank you.

10 MS. CLINCH: The California request of the original
11 aid to agencies is to hire nine attorneys for a nine-month
12 period of time, and also to help curb the funds for coffee
13 expenses, travel, video costs. I'm sure the programs also
14 reflect monies to replace office equipment and furniture.

15 To date, the Legal Services Corporation has only
16 funded one partial request. That is \$30,000 to the Santa Cruz
17 office for out-of-pocket losses. The Corporation has denied
18 money to fund the nine attorneys. The Corporation has also
19 denied monies for coffee, travel, video, preparing a disaster
20 manual and other costs.

21 This is another no-no emergency disaster manuals for
22 Legal Service programs in the country. The closest we were able

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1 to find was a short manual that was created by the American Bar
2 Association, Young Lawyers Division, that was very sparse on how
3 this was a claim. There is nothing that is actually out there
4 that could help other legal service programs that have this
5 need.

6 Some of the programs want to put together a manual.
7 We are sharing this mission back and forth to South Carolina.
8 We're pulling information so we can come up with some master
9 manual for legal service programs that can be used anywhere.

10 In addition, we have received some monies from the
11 American Bar Association as well as the California Trial Lawyers
12 Association to videotape some of our training sessions. The
13 training sessions were to assist attorneys in learning different
14 areas of law that impacted upon the earthquake victims.

15 None of these videotapes impact directly upon legal
16 service providers, although there is some carryover. They have
17 a video that could be distributed throughout the country that
18 would be extremely helpful, I believe, to all programs that
19 might face disasters like we faced.

20 It's my understanding that the Legal Service
21 Corporation has requested copies of our disaster manual and
22 compare it to the system of the California State Bar's videos.

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1 We would offer those to you if that would be of some assistance.

2 The reasons given by the Corporation for denial of the
3 funding request falls into six different categories. I would
4 like to briefly go over them. Number one, the programs -- this
5 doesn't apply to every single one. It's a compilation of the
6 responses to all of the requests -- that the programs didn't
7 sustain physical damage.

8 Again, there are two programs that did. Santa Cruz
9 office sustained \$34,700 in out-of-pocket damages. They were
10 awarded \$30,000. California Indian Legal Services sustained
11 \$30,370 in out-of-pocket damages; yet, they weren't given a
12 penny.

13 Number two, Legal Service Corporation stated it was
14 precluded from using basic field monies. Therefore, they could
15 not fund the attorney positions. However, this proposal -- I'm
16 presuming that all proposals including the Berkeley proposal as
17 well as South Carolina might be presumptuous, but that I believe
18 it is their intent, to send all of their proposals down like the
19 California proposals.

20 The proposals did not ask for basic field monies. The
21 programs were looking to part of the 1.75 to 2 million in
22 carryover monies from the LSC's 1988 budget. We believe that

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1 the Corporation has the flexibility to the administrative plays.
2 I know that in the past that there has been a budget line item
3 for contingencies.

4 In 1980, for instance, there was a \$250,000 line item
5 in the administrative offices for emergencies. Whether that
6 still exists or not, I don't know. We believe that there are
7 funds that exist out there. Perhaps they could be used for
8 programs that are in so much need as these are.

9 Number three, some letters of denial hinted that the
10 program should have used form guidelines for submitting
11 unsolicited grant proposals. We were sent copies of how you are
12 supposed to present an unsolicited proposal.

13 However, if the proposal was incorrect, why did the
14 Corporation wait one month to inform the requesting agencies?
15 Why did the Corporation collect additional information from all
16 these agencies; yet the forms and requests were incorrect and
17 improper? Why did the Corporation fund Santa Cruz \$30,000 if
18 the format was incorrect? There's some inconsistency.

19 We believe strongly that time is of the essence. If
20 we were to have to go back into the file, when all you might
21 need is additional information, I understand that you've already
22 received a lot of additional information, perhaps enough. If it

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1 isn't sufficient, we can provide you with more.

2 How FEMA works, which is the Federal Emergency
3 Management Agency, when a county or state is declared a federal
4 emergency, people have 90 days to file for FEMA funds. Then
5 it's cutoff. The time frame in California right now for seven
6 of the eight disaster counties is December 18th. An eighth
7 county was declared a week or so later.

8 Then anybody that has received denial of their request
9 has a 60 day right to appeal. People already are receiving
10 letters of denial. So we're already into the second part of the
11 system, not only advising people that they have a right to these
12 benefits and they apply, but now we're faced with trying to help
13 them when they've been denied their benefits.

14 Alameda County, I spoke with their person in charge of
15 the disaster clinic. They, to date, have received over 200
16 intakes. When I say intakes, because they have been able to do
17 nothing but take down the name, address, et cetera. These were
18 all earthquake-related issues.

19 Twenty-five percent are appeals already. They don't
20 have the staff to help them. A lot of the problems that people
21 have as lack of sufficient documentation stated they were
22 renting at least in a place 30 days or longer.

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1 Well, the staff has to go and interview a neighbor,
2 witnesses, take affidavits, do a lot of follow-up work. They
3 don't have the staff to do this, so the people are without any
4 legal representation other than being part of an intake system.

5 Number four, the fourth reason for denial, some
6 programs might receive funding from the Project Advisory Group.
7 It's my understanding that this promise is token at best,
8 because TAG is not set up to fund programs. They might be out
9 soliciting some funds, but not anywhere near what we need in
10 California and South Carolina at this time.

11 The fifth reason for denial, the programs have
12 carryover funds from 1988 budgets. It's my understanding,
13 however, that the Corporation did not inquire about the deficit
14 budgets that the Legal Service programs now face as a direct
15 result of the earthquake.

16 Just looking at the 1988 budget, it does not say what
17 the current financial situation is. The Corporation, it is my
18 understanding, did not inquire whether the carryover still
19 existed. They merely looked at the 1988 figures.

20 It's my understanding that the Legal Service
21 Corporation regulations allow for a 10 percent carryover. This
22 is seen as good budgeting. It's also my understanding that you

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1 will not allow deficit budgets. So this program is in a real
2 quandary.

3 For instance, California Indian Legal Services, in
4 1988, had to carryover \$272,000. However, they've had a budget
5 deficit in 1989 of \$250,000. They don't have the money to hire
6 additional staff. They've also had their office partially
7 damaged and destroyed.

8 California Rural Legal Assistance is the only one of
9 the eight programs who have a carryover in excess of 10 percent.
10 This carryover is 11 percent. It was denied its request to have
11 a carryover of more than 10 percent. However, this 11 percent
12 carryover is earmarked for salary increases. They don't have
13 additional monies to hire additional staff.

14 I wonder if Legal Service Corporation is penalizing
15 programs for their trying to prevent a deficit budget. That's
16 something that should be closely looked into in times of
17 disasters.

18 In San Mateo County, they have a \$300,000 fund
19 balance. This was from the sale of a building approximately
20 three years ago. Legal Service Corporation agreed in the past
21 several years that these funds are restricted to a building fund
22 and can't be used for any other purpose. Now the Corporation is

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1 saying use these funds to hire attorneys to assist with the
2 earthquake.

3 Number six, finally, a reason for denial has been the
4 per capital figures used by the Corporation to deny funding. We
5 believe that these per capita figures are very misleading
6 because they are based upon the 1980 Census. We have a great
7 influx of people, a tremendous influx of poor people in the
8 area, not only immigrants and farm workers and a lot of people
9 that only speak one language and it's not English.

10 A lot of people weren't counted in the 1980 Census.
11 There's a question whether they would be counted in the 1990
12 Census. But they are there. They exist. They are poor.
13 They're not being counted.

14 I'd like to now briefly go into the impact on the
15 programs with regard to the FEMA benefits. What should have
16 been delivered to each of you is a transcript, a purple
17 transcript.

18 The California State Bar had a hearing in San
19 Francisco on December 2nd. We heard from the programs of all
20 the effected counties; what has been working with this disaster,
21 what we can do better, and what didn't work.

22 A lot of ideas and good information came from this.

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1 What I'm giving you is an excerpt from one Legal Service
2 provider, Gary McNeil, from the Santa Cruz Legal Service office.
3 He quite eloquently goes into the problems that are being faced
4 by Legal Service programs and having to deal with disasters when
5 we're not prepared to do so; budget-wise, training-wise, anyway.

6 With regard to the effect on the programs, on November
7 29th, I wrote a letter to Mr. Smegal. We didn't know what the
8 impact would be on the Legal Service program, so I took a report
9 on a plan of 1986 in northern California.

10 I extrapolated the figures from that report to try to
11 see, based upon the same FEMA figures that we're using now, what
12 percent would be denials that might look for Legal Services
13 programs for representation.

14 That letter is incorrect at this point, grossly
15 incorrect, because at that time 61.1 percent of all requests for
16 funding were granted. Right now, FEMA is telling us that only
17 40 percent of all funding requests are granted.

18 There have been many more requests for funding from
19 the earthquake and the flood. So these are some of the figures
20 I briefly want to go into with you, again, using the Office of
21 Emergency Service figures.

22 As of December 11, 1989, almost 61,000 people have

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1 registered with FEMA for benefits. There are several different
2 types of benefits. We have pinpointed two types of benefits
3 that mainly impact or will impact on Legal Services programs.

4 The first is individual family grants. These are
5 granted to people that can't fit into any other grant at all.
6 If the persons have no other sources of assistance or their
7 other sources of assistance are inadequate to meet in emergency
8 needs, what you're doing is you're finding people who have
9 insurance, who have jobs, who are able to get loans that cannot
10 qualify for individual family grants.

11 So you're dealing with low-income people when you're
12 dealing with individual family grants. Of this, almost 20,000
13 applications have been received. So far, 1,368 have been
14 denied. Approximately 69 percent are still pending.

15 Of those still pending, using the FEMA figures
16 themselves, that they are only granting 40 percent of the 12,393
17 still pending, the 60 percent that will be denied, again using
18 their figures, is 7,436.

19 Of the 5,418 that have been improved, we believe that
20 at least 20 percent of those individual approvals will be
21 overpayments. This is based upon South Carolina's experience so
22 far. They are seeing at least 20 percent overpayments.

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1 They have to go and assist these people and try to
2 sort out and figure out how to pay back or what to do with the
3 overpayments. That adds another 1,581 people.

4 The second main area of impact programs on report has
5 to do with temporary housing. This is rental assistance for
6 people that have no place to go. We found that over 28,000
7 applications have been received.

8 So far 16,169 have been denied and there's 3,388 still
9 pending. Most of these have been already determined, so we have
10 a figure of denial of 57 percent. So I use that to say that 60
11 percent FEMA gave towards the other programs.

12 So the denial there or the amount pending is 1,932.
13 All of these added up totals 28,485. A majority of these, a
14 substantial majority are low income. These are people that are
15 going to be looking for legal assistance to help them with the
16 denial of these benefit applications.

17 That's the impact that is taking place right now in
18 the Bay area. It's quite frightening, particularly given the
19 fact that people can still apply for benefits. It's possible in
20 the FEMA regulations that they might extend it another 30 days.

21 We have a situation in California where we're doing a
22 lot of public relations. We're going out to communities. We're

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1 leafletting in different languages, in Cantonese and Spanish.
2 I'm told that James Edward Olmos is appearing on Spanish-
3 language television to inform these people they have a right to
4 file for benefits and what the deadline is.

5 So we're expecting a large influx of more cases, which
6 will impact, and the 28,485 that I mentioned here will be more.
7 With regard to FEMA, they have different types of housing
8 grants.

9 If you owned a home, you can have a three-month
10 allotment. If you rent an apartment, you can have a two-month
11 allotment. If you are near homeless or living in a single-room
12 occupancy hotel, you can have a one-month allotment.

13 Many of the people can't find another place to live.
14 They have to keep going back on a monthly basis to get the
15 benefits. This has an impact on the Legal Services programs,
16 because they have to help these people who go back.

17 Nine hundred SRO room have been totally destroyed.
18 These people are without any housing at all. These people need
19 some help in finding other housing and getting benefits while
20 they try to find housing.

21 In the grant request seen now before you from the
22 eight programs in California, Alameda County estimated an

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1 increased caseload of 700. Using the OES figures, they are
2 projecting a 4,200 caseload in Alameda County for individual
3 family grants only. This does not including overpayment or
4 housing. So that's the impact of the figures on one county
5 alone.

6 The non-FEMA impact on the Legal Service programs are
7 many. Many current plans have non-FEMA earthquake-related
8 problems such as lost possessions, where they can apply to the
9 state-funded special needs programs that doesn't involve FEMA at
10 all.

11 In addition, a lot of these people are being evicted.
12 Technically, they are not displaced due to the earthquake. The
13 landlords want to announce they can charge a higher rent or
14 maybe do something else with the property.

15 These are not FEMA benefits. They don't fall under it
16 because technically it's not due to the earthquake. In
17 addition, there is a tremendous rise in domestic violence that
18 is impacting on the legal communities because of the trauma of
19 heavy loss due to the earthquake and being displaced.

20 What we're finding is that we're facing a nightmare in
21 terms of Legal Services. The attorneys on the front line are
22 experiencing combat duty. The few attorneys that we have cannot

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1 take care of over 28,000 cases.

2 The State Bar and local bars in the area and
3 throughout California have risen to the occasion. We've been
4 involved with training of attorneys, with trying to find funds.
5 We've had private builders. We've had law firms.

6 We've had corporations donate money, as much as they
7 can. However, most of these businesses have already donated to
8 Red Cross, because that's the thing to do. You only think
9 afterwards, maybe the legal community might need some money,
10 maybe not everyone is not rich and wealthy.

11 We're doing as much as we can. We also have a lot of
12 private bar volunteers. Alameda County has 60 attorneys that
13 are willing to handle FEMA appeals. They are being trained
14 right now to do so.

15 The problem they have is they don't have a staff to
16 coordinate these people, so they can't link up the clients with
17 the attorneys that are offering pro bono services. In San
18 Francisco, there are over 100 attorneys who are willing to do
19 FEMA appeals.

20 This is in addition to the hundreds of attorneys that
21 have turned out at the FEMA centers and other clinics just to
22 tell the victims their legal rights, whatever their concerns may

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1 be as a result of the earthquakes.

2 Sacramento County has 43 attorneys that are ready to
3 go into the areas; some, in fact, have. They need to be
4 coordinated with the victims, which we lack those services.

5 Our last stop, from San Francisco/Sacramento have
6 travelled through Watsonville and other areas because they speak
7 two languages. They are able to help where other programs have
8 not been able to. We find that being bilingual is extremely
9 helpful also in the Chinatown area of San Francisco that was
10 greatly injured.

11 The State Bar of California recently passed a
12 unanimous resolution that was referred to us by a conference of
13 delegates, and that is that each attorney would provide 50 hours
14 of pro bono work for low-income persons or the administration of
15 justice. We're attempting to do that.

16 The State Bar and a local bar associations and all
17 members of California State Bar are attempting to help in every
18 way we can. We need more assistance. There's a lot of burnout
19 on the front lines. I know because I saw a lot of it during the
20 fire.

21 The earthquake, I'm more organized in administration,
22 but I feel sorry for the people who are out there day and night.

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1 They need some relief. President Bush spoke about a "kinder,
2 gentler" America and 100 points of life.

3 I'd like to know how the 28,485 and more cases will be
4 effected, those 28,000 cases. This is, again, only individual
5 and family grants and temporary housing programs, that without
6 receipt of the one-time emergency funds requested from Legal
7 Services Corporation, what they will do.

8 These requested funds would help to man some of the
9 gaping holes in the safety method, hopefully we'll catch and
10 legal assist those impoverished victims. I hope these holes in
11 the safety net will be mended or plugged to cut off the number
12 of otherwise throwaway victims.

13 I refer to these people as throwaway because if we
14 can't reach out and help every single one of them, there's
15 nobody else to help them. We don't have enough abilities as it
16 is right now to help them. What are they going to do? They're
17 just going to be without, without shelter, without food, without
18 any possessions, thousands of them, thousands of throwaway
19 victims.

20 This is not the kinder, gentler America that President
21 Bush had in mind. I believe time is of the essence, and I
22 strongly urge you to fully fund all of the grant requests before

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1 you for the eight programs in the Bay area as well as the
2 Berkeley request, in addition to South Carolina funding
3 requests.

4 It's my understanding -- I have some letters to the
5 effect -- that Senator Hollings and Harmon are strongly in
6 support, 100 percent, of the programs.

7 If anyone has any questions with regard to any issue,
8 I'd be happy to answer them.

9 CHAIRMAN WALLACE: Thank you. Does anyone have any
10 questions for Ms. Clinch? Mr. Smegal?

11 MR. SMEGAL: I'm familiar with the amount of funding
12 that has been requested by the eight California programs. I
13 believe it's \$294,000. Do you know what the funding request from
14 South Carolina and the other programs would be?

15 MS. CLINCH: It's all specified in the back part of
16 your agenda. I would have to go down it --

17 MR. SMEGAL: Has anyone totaled that, Mr. Wear; do we
18 know?

19 MS. CLINCH: It's around 70,000.

20 MR. SMEGAL: For the others?

21 MS. CLINCH: For South Carolina. Berkeley is \$20,250.

22 MR. SMEGAL: How about Puerto Rico? Isn't that in

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1 there also?

2 MS. CLINCH: I intended to contact them right after
3 Hugo to see if they wanted some assistance from the State Bar of
4 California. They never -- we didn't have contact, so I don't
5 know.

6 MR. SMEGAL: Mr. Wear, can your staff tell us or do
7 you know how much the total funding would amount to for all the
8 requests that you got in emergency basis?

9 MR. WEAR: Mr. Chairman?

10 CHAIRMAN WALLACE: Yes, Mr. President?

11 MR. WEAR: Thank you, Mr. Chairman. If I may, Mr.
12 Chairman, I'd like to invite Ms. Ellen Smead, our acting
13 director of the Office of Appeals Services to step up to the
14 table.

15 CHAIRMAN WALLACE: Well, for the purpose of answering
16 Mr. Smegal's one question, we have not decided yet to get into a
17 general debate. Maybe we will. We wanted to accommodate Ms.
18 Clinch because she needs to make an airplane, and so do the rest
19 of us. If Ms. Smead knows the answer to the question Mr. Smegal
20 asked, please have a seat.

21 The question was, how much total funding have we been
22 requested from Carolina and California together; is that

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1 correct?

2 MR. SMEGAL: For whatever programs, if you know.
3 There are some other on the sheets that --

4 MS. SMEAD: Approximately 550,000.

5 MR. SMEGAL: It's good to know the answer.
6 Approximately 550,000 is ballpark enough for immediate purposes.

7 Mr. Wear, do I understand correctly that \$30,000 has
8 been provided?

9 MR. WEAR: Mr. Chairman?

10 CHAIRMAN WALLACE: Yes.

11 MR. WEAR: Mr. Chairman, \$30,000 has been provided to
12 California. In addition, there are some additional monies that
13 have been provided to the Legal Services in the Virgin Islands
14 for the purposes of a generator. I think that amounted to
15 approximately \$9,000 some dollars, about \$9,400.

16 CHAIRMAN WALLACE: Mr. Smegal, further questions?

17 MR. SMEGAL: No. I have a motion if it's appropriate.
18 Yes, I do have some questions. Mr. Wear, do I understand from
19 the testimony we just received that, in essence, these requests
20 have been denied by you?

21 CHAIRMAN WALLACE: Go ahead, Mr. Wear.

22 MR. WEAR: Thank you, Mr. Chairman. Mr. Chairman, the

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1 requests have been reviewed by the board. We've taken action on
2 some of them.

3 MR. SMEGAL: By the Corporation, you mean.

4 MR. WEAR: I beg your pardon, by the Corporation.
5 We've taken action on some of them. I think, as most of you
6 know, there are no contingency funds in the budget. The monies
7 that come to the Corporation from the Congress are specified as
8 to the purposes for which they are spent. They are all tied in.
9 There is no longer a contingency fund in the budget.

10 CHAIRMAN WALLACE: Let me reclaim the floor for just a
11 minute. I want to ask the Board's pleasure on this matter. We
12 did have unanimous consent to hear Ms. Clinch and talk to her
13 because she has got to get going.

14 We are now into a general debate of the subject.
15 Before we get any farther into a general debate of the subject,
16 I want to know what the Board's pleasure is. Would you like to
17 deal with this matter in its completeness right now, or do you
18 just want to talk?

19 I see the witness responding. I've got no objection
20 to that. But if we're going to deal with it all right now, we
21 need to conduct this discussion one. If we're just talking to
22 Ms. Clinch, let's keep it to that.

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1 What is the Board's pleasure? Would you like to take
2 the whole agenda item right now, vote on whatever has to be
3 voted on and be done with it now?

4 MR. SMEGAL: Yes.

5 CHAIRMAN WALLACE: I see heads nodding around the
6 table. I will take that as unanimous consent to continue out of
7 order in the agenda. Let us proceed to the merits of the
8 question. There's no question yet before us, but I know Mr.
9 Smegal was about to put a question before us.

10 So for purposes of focusing the debate, Mr. Smegal,
11 would you like to make your motion now?

12 MR. SMEGAL: Yes, I will. I'm prepared to have it
13 amended. I will confine my motion to that part of the request
14 with which I am familiar, those that come from the area in
15 northern California, the eight programs there.

16 M O T I O N

17 I would move that we provide one-time emergency
18 funding in the amount of \$294,000 to the eight programs in the
19 San Francisco Bay area who have suffered the damages and
20 anticipate the burdens of representing the poor, as outlined by
21 Ms. Clinch.

22 CHAIRMAN WALLACE: Let me ask the gentlemen whether he

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1 intends to specify where those funds come from? The President
2 has identified problems in our Appropriations Act, which limit
3 the availability of funds.

4 MR. SMEGAL: Well, assuming I have a second, I will
5 proceed and respond to that.

6 MR. EAGLIN: I'll second.

7 MR. SMEGAL: I might add, I don't have the current COB
8 or whatever we call it, but I've looked at the one for July 31
9 that Mr. Eaglin has kindly loaned to me. I see in there that
10 there are funds available.

11 In fact, there are grant recoveries in the amount of
12 \$281,000 at that time. There is also interest income in there.
13 I understand what Mr. Wear's comment was. At this point, there
14 is still \$8 million in the other funds that, as he has
15 indicated, are earmarked.

16 These are funds which are not in our budget. They are
17 not emergency funds, but they are recoveries from programs or
18 interest on income. As of July 31, it was almost the amount
19 that I have indicated in my motion.

20 MS. CLINCH: It was an amendment request. It's
21 \$291,499. If I'm not out of order, I'd like to request you have
22 a friendly amendment to the motion --

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1 MR. SMEGAL: You are out of order, but maybe you will
2 find somebody sympathetic.

3 CHAIRMAN WALLACE: Are you talking about Berkeley,
4 California or Berkeley County, South Carolina.

5 MS. CLINCH: Berkeley, California. They are very,
6 very involved.

7 CHAIRMAN WALLACE: There are two place.

8 MR. SMEGAL: How much is theirs?

9 MS. CLINCH: \$20,250. That would bring it to a total
10 of \$311,749.

11 CHAIRMAN WALLACE: Will the gentleman accept that as a
12 friendly amendment?

13 MR. SMEGAL: Paul, did you second that?

14 MR. EAGLIN: Sure.

15 CHAIRMAN WALLACE: Well, the motion as revised stands
16 before the Board. Now that we know what we're debating about,
17 let's see if there are any further questions for Ms. Clinch.

18 MS. SWAFFORD: I have one question that doesn't have
19 to do with the substance. If we don't have time to do it, I
20 will withdraw my question. It has to do with the statement that
21 you made, Ms. Clinch, about -- I guess it was the 1980 Census
22 where I understood you to say that we know there are many poor

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1 people who were not counted.

2 What is your basis for that? This has been an ongoing
3 question of this Board for years; that they are counted and they
4 are counted twice in the case of the migrants and in other
5 cases. Like you say, they are not counted at all.

6 I just wondered if you could enlighten, at least me,
7 on this?

8 MS. CLINCH: Speaking with people out in the field,
9 they are in contact with a lot of people, particularly in the
10 immigration law area, in the area of poor people that are
11 underrepresented or are afraid of the government for one reason
12 or another.

13 They made comments that they hide out. They won't be
14 counted. They won't answer the forms. That was documented in
15 1980. I understand that there's a great debate throughout the
16 country and a specific debate in California right now in that
17 regard because it has a great bearing on the federal funding
18 that California will receive.

19 That's what I've read. It's people I've spoken with
20 who have been out there in the field and experiencing it.

21 CHAIRMAN WALLACE: Further questions?

22 MS. CLINCH: If I can respond to something Mr. Wear

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1 said, that you need to go back to Congress to have a change in
2 the budget, I was told today that Senator Hollings is willing to
3 make those changes through the Appropriations Committee, at
4 least with regards to the South Carolina proposal.

5 I assumed you might be willing to do so for California
6 also if there's a problem with the funds that Mr. Smegal has
7 earmarked for his motion.

8 CHAIRMAN WALLACE: Well, Congress has, I think, has
9 enacted some supplemental appropriations in regard to both of
10 these emergencies and may be willing to do so again. I wouldn't
11 be surprised.

12 If there are no further questions for Ms. Clinch right
13 now, let me recognize President Wear to explain the decisions
14 that have been made so far and presently pending. Mr.
15 President?

16 MR. WEAR: Thank you, Mr. Chairman. Going to page 21
17 of the Board book, the San Francisco Neighborhood Legal
18 assistance Foundation, the program that you see reflected the
19 monies as shown on the left-hand side of the page.

20 In looking at the issue, however, the Corporation
21 determined that the program had a general fund balance of
22 approximately \$179,000. We took that into consideration in

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1 deciding what to do in connection with that program.

2 Contrary to the statement -- the witness probably does
3 not know this -- I had the staff verify those figures to make
4 sure that they were accurate. We didn't just rely on the audit
5 of all the programs to see whether or not they had those funds.

6 Based on that, generally, Mr. Chairman, we decided
7 that the monies requested for that program could be covered out
8 of the general fund balance. In general, we looked at the
9 remaining programs in California.

10 For the Legal Aid Society of Santa Cruz, that program
11 had suffered damage to the building in which they were located.
12 My recollection was the building was destroyed. If Ms. Smead
13 finds the same things that aren't quite accurate, if you'll
14 correct me.

15 The program needed, really, a place to go, a place to
16 operate from and so we provided monies to do that. In addition,
17 I believe the Watsonville office was also damaged. The Santa
18 Cruz office, to my recollection, was the one that was destroyed.
19 The Watsonville office was damaged to the point that it was not
20 usable. It was a health hazard because there was damage to the
21 chimneys. So, the monies that went to that program were for
22 those specific problems.

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1 MR. ERLNBORN: Mr. Wear, could I ask a question at
2 this point?

3 MR. WEAR: Yes.

4 MR. ERLNBORN: I noticed that the one grant that was
5 made was for repair of physical damage. Is there any policy of
6 the Corporation for the local grantees to carry insurance to
7 cover these items?

8 When I looked at this, it seemed to me that the things
9 were kind of backwards. The things you might anticipate
10 insuring against were the ones the Corporation has given grants
11 for and other things that you could not insure against, like the
12 need for a short period of time for additional personnel, were
13 turned down.

14 MR. WEAR: Some of the programs do have insurance. If
15 I may, I'd like to refer to Ms. Smead on that question.

16 MS. SMEAD: They did not have insurance to cover the
17 damage, because it's earthquake insurance and their other
18 insurance did not cover earthquake damage.

19 In South Carolina and North Carolina both, they did
20 have insurance that would cover physical damage.

21 MR. ERLNBORN: I take it earthquake insurance in
22 California is very expensive.

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1 MS. SMEAD: That's what they told us. It was so
2 expensive that it would not have been worth their while to get
3 it. We did ask about that, though.

4 MR. ERLENBORN: Thank you.

5 CHAIRMAN WALLACE: Mr. Wear, go ahead and proceed.
6 Are you through, Mr. Erlenborn?

7 MR. ERLENBORN: Yes, Mr. Chairman.

8 CHAIRMAN WALLACE: Mr. Wear, proceed.

9 MR. WEAR: Thank you, Mr. Chairman.

10 Again, we looked at the programs. For those programs
11 that had suffered physical damage of the kind that the Legal Aid
12 Society of Santa Cruz County had suffered, we tried to assist
13 those programs. That money comes out of the Corporation's
14 management administration account. It's the same account that
15 we pay our personnel, do our monitoring and other things.

16 We did try to meet those problems, where there was a
17 physical inability to provide services. That is the general
18 explanation, I think, for the grants that had been made.

19 We have continued to look at some of the others in
20 North and South Carolina. We were interested in getting
21 additional information on insurance coverage and some other
22 things. That information may have come in by now, but we have

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1 not made, or I have not made, a final determination with regard
2 to the requests from North and South Carolina.

3 In general, the programs in California had either a
4 large fund balance that I felt could be used to meet this urgent
5 demand, or they were the programs that were very highly funded
6 on a per capita basis, so that is the basis for those decisions.

7 CHAIRMAN WALLACE: Questions of President Wear?

8 MR. SMEGAL: My basic preamble to my motion where I
9 pointed out that there were funds available, would you agree
10 with me?

11 MR. WEAR: I am not sure. I would need to refer to
12 the Corporation's Comptroller on that, as to what the grant
13 recovery amounts are.

14 MR. RICHARDSON: Grant recoveries last year that were
15 unencumbered were about \$300,000.

16 MR. SMEGAL: You are talking about through the end of
17 the year, so it's a little more than I envisioned. I said 281
18 or 290.

19 MR. RICHARDSON: As far as this year, it is
20 approximately \$15,000.

21 MR. SMEGAL: So, we are over 300?

22 MR. RICHARDSON: Yes.

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1 MR. SMEGAL: Yes.

2 CHAIRMAN WALLACE: Let me inquire. We will have to
3 vote at some point on a management administration budget.
4 Within the last several days, we have received reduced
5 appropriations for management and administration on the
6 assumption that there will be unencumbered funds carried over
7 from year to year.

8 So, do you know whether those presently unencumbered
9 funds are anticipated by the staff to be used for management and
10 administration in 1990?

11 MR. WEAR: Mr. Chairman?

12 CHAIRMAN WALLACE: Mr. Wear.

13 MR. WEAR: Thank you, Mr. Chairman. As you correctly
14 point out, the Congress has assumed that those carry over funds
15 will be used for management and administration and has
16 consequently appropriated a lesser sum for that purpose.

17 In addition, Mr. Chairman, the sequester will reduce
18 not only the overall funds available but the funds available for
19 management and administration. There have been some rough
20 calculations made and it is my best information here today that
21 all of those monies, including those grant recovery funds, are
22 going to be needed to operate the Corporation next year.

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1 MR. SMEGAL: Mr. Wallace, I have a document that the
2 staff has prepared for us on December 1, 1989. It lists, for
3 management and administration, \$11,000. Turn to page 3 and
4 there is an explanation of why you need the eleven and where it
5 is coming from. There is no indication in there that there is
6 going to be a carry-over applied from prior years.

7 Congress is being asked, if this were to be adopted by
8 this Board, for \$11 million for management and administration.
9 There is no component in there of carry-over funds. In fact,
10 the last sentence says it is unlikely that carry-over funds will
11 be available for use in the fiscal year of 1990.

12 I might add, with respect to prior budgets, Mr.
13 Wallace, and I might refresh your memory just a little, the
14 reason Congress has asked us to use carry-over funds -- and, in
15 fact, one year, Senator Rudman specifically in the language
16 pointed out to us that we had about \$5 million in carry-over
17 funds which the Corporation denied, there was a lot of rhetoric
18 in the editorial columns by such columnists as Mr. Bandeaux and
19 others, who took Mr. Rudman to task for that statement, the
20 Corporation taking the position there were only \$50,000.

21 It turned out there was exactly what Mr. Rudman had
22 indicated there was and it was applied, as it properly should

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1 have been, to the fiscal year budget for the next succeeding
2 year.

3 We got, as David has now indicated, over \$300,000 in
4 grant recoveries. There is no obligation on us to put that in
5 next year's administration and management. We go up to Congress
6 and we ask for what we need. We have this money now. It's from
7 fiscal year 1989. It's there and it can be used and this is an
8 appropriate use of it: delivery of legal services to poor
9 people; that's what we're here for.

10 We are not here to play shell games with carry-overs.
11 The money is sufficient to do what my motion indicates we should
12 be doing. I'd like to get us onto a vote.

13 CHAIRMAN WALLACE: I'm confused by Mr. Smegal's
14 historical message. If, in fact, Senator Rudman and his
15 colleagues on the Appropriations Committee are excellent
16 predictors of what we will actually carry over, as history would
17 tend to show they are, I would presume that they have predicted
18 our carry-over; that they have reduced our management
19 administration budget accordingly; and, that with the carry-over
20 and the appropriated funds, we have precisely as much as we need
21 and no more.

22 MR. SMEGAL: I don't believe they have our budget, Mr.

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1 Wallace. I don't believe they've had this matter before them
2 yet.

3 CHAIRMAN WALLACE: Well, of course, they haven't. It
4 may be in order to consider whether this ought to be amended to
5 make it a request for supplemental appropriations to Congress.
6 We are about to go into 1990. We have "X" dollars appropriated
7 for management administration and we have "Y" dollars in carry-
8 over.

9 If Senator Rudman's math is as good as you and I both
10 remember it to be, presumably, "X" plus "Y" is exactly what we
11 need to run this place. I presume that these grant recoveries
12 are part of the carry-over. The Comptroller is nodding his
13 head.

14 If we take these carry-over funds and put them into
15 disaster relief, we will have less than Congress intended us to
16 have for management and administration. Maybe we can do the job
17 with less. I don't know the answer to that question, but I
18 don't think there is just \$300,000 sitting around there doing
19 nothing, whether it's formerly been appropriated by this Board
20 or not. Congress took it into account.

21 Mr. Valois?

22 MR. SMEGAL: Mr. Wallace --

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1 CHAIRMAN WALLACE: I'm recognizing Mr. Valois, Mr.
2 Smegal. I will get back to you. I understand your component to
3 the motion.

4 MR. SMEGAL: No, I just want to respond to something
5 else.

6 CHAIRMAN WALLACE: I'm recognizing Mr. Valois. You
7 have had the floor a good part of the day. I'd like to
8 recognize Mr. Valois.

9 MR. VALOIS: I'd just like to understand what Mr.
10 Smegal's motion is at this time. If somebody would restate it,
11 I'd appreciate it.

12 MR. WEAR: The motion is that we spend \$311,000 from
13 the funds of the Corporation to meet the requests submitted by
14 programs in California.

15 MR. VALOIS: I thought that's what I heard, and I'm
16 concerned about the implications that obviously there are,
17 according to the document submitted to us, requests for
18 emergency assistance. There are equally legitimate requests, it
19 seems to me, from the South Carolina programs, North Carolina
20 programs, South Dakota and New York.

21 Either it ought to be included in the motion that it
22 is a good idea or it ought to be included in a supplemental

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1 appropriation request which I would tend to support, or the
2 policy implications of all of this should be weighed here. I
3 don't particularly want to put it off, because I think people
4 are here because they feel an immediate need.

5 Are we establishing a policy that, when there is a
6 natural disaster, we'll entertain requests for assistance each
7 time?

8 MR. SMEGAL: What has that got to do with it? Mr.
9 Valois, we established at the last meeting on December 1 that we
10 were operating under Robert's Rules of Order. That came as
11 somewhat of a revelation to me after five years.

12 In any event, if you want to amend my motion, and I
13 had prefaced my motion earlier by suggesting that maybe someone
14 could bring themselves to amend it, there is a process for
15 amending motions. You are perfectly welcome to add South
16 Carolina or the Virgin Islands or anywhere else.

17 I prefaced my motion by saying I'm familiar with the
18 applications from Northern California where the earthquake
19 occurred and where I live. I know of those programs physically.
20 I made my motion and the floor is open for an amendment, Mr.
21 Valois.

22 CHAIRMAN WALLACE: Let's debate the merits of the

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1 motion before the Board, which considers only California. Does
2 anyone have anything to say?

3 MR. SMEGAL: Mr. Wallace, I tried to be recognized
4 earlier --

5 MR. WEAR: You are recognized.

6 MR. SMEGAL: -- for the purpose of responding to what
7 you said. You've confused me an awful lot, because I was
8 quoting from the fiscal year 1991 budget which, as far as I'm
9 concerned, has not left this table now. If you've got some
10 information that tells you it's already up on the Hill and
11 people are counting how much carry-over we have, I am surprised
12 at your insight.

13 CHAIRMAN WALLACE: I'll be happy to amend the 1991
14 budget to give these folks their money in 1991, but I suspect
15 they need it a little sooner than that.

16 MR. SMEGAL: I'm not talking about 1991, Mr. Wallace.

17 CHAIRMAN WALLACE: You just told me you were.

18 MR. SMEGAL: No. You're trying to either confuse me
19 or confuse the issue. My point was -- and the point I made
20 earlier -- in years past, where we have had a carry-over and
21 Congress has recognized there is a carry-over, they've asked it
22 to be applied to the budget we've gone up and presented.

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1 We have a 1991 proposed budget by the staff. There is
2 nothing in there that says we're going to have carry-over and
3 please, make us credit this to our management and
4 administration. We have three hundred and some odd thousand
5 dollars. It's from grant recoveries from this year or last
6 year's funding of Legal Services for the poor.

7 My motion encompasses using this money for the
8 purposes intended in the period, substantially as close to the
9 period intended as we can, which is now.

10 CHAIRMAN WALLACE: Well, I understand. I understand
11 your point, Mr. Smegal. My point remains that Congress intended
12 us to spend 1989 carry-over, of which the \$300,000 is a part, as
13 part of 1990 management and administration. That money,
14 although it has not been formally allocated by the Board, has
15 been considered by Congress.

16 If we take that money and give it to California, then
17 we will not have \$300,000 that Congress thought we needed for
18 the management and administration of this place. We may decide
19 to do that. I'm just trying to get the facts out on the table,
20 when we're talking about funds available for 1990.

21 President Wear, do you have something to say?

22 MR. WEAR: No, Mr. Chairman. That was the point that

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1 I was going to make, that these carry-over funds are funds that
2 are going to apply to FY 90, which is where we are now, and not
3 to FY 91.

4 CHAIRMAN WALLACE: Ms. Swafford?

5 MS. SWAFFORD: I speak against Mr. Smegal's motion
6 because, whether or not we're going to need it to operate the
7 Corporation, it's just simply not prudent to spend every penny
8 you have just because you have it. I'm sympathetic to the needs
9 and I wish we could do all we could.

10 But, just because we've got a little bit of money that
11 we consider a carry-over, I think we ought to try to -- I think
12 we ought to try to keep some funds that have not been earmarked.

13 MR. DURANT: Are there any of the California programs
14 that are making a request with a fund balance not sufficient in
15 the amount of what that request is? I assume the fund balances
16 are existing fund balances. Is there anyone that is making a
17 request that does not have the money on hand to deal with the
18 amount?

19 MS. CLINCH: I would hate to speak against any of the
20 programs at all, but I can tell you the ones that were most
21 impacted and that need the most assistance, if I might do so.

22 CHAIRMAN WALLACE: Fine.

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1 MS. CLINCH: Alameda County, Berkeley, California
2 Rural Legal Assistance, Legal Aid Society-Santa Cruz are what I
3 would consider the top priority impacts, all of them needing
4 funding.

5 MR. DURANT: Is the Santa Cruz the Watsonville you
6 were talking about?

7 MS. CLINCH: Yes.

8 MR. DURANT: Is that one where LSC has sent, of the 34
9 they requested, the \$30,000?

10 MS. CLINCH: That's correct, but that was for
11 furniture and equipment only. It was not for staff.

12 MR. DURANT: Oh, there was an additional 35 requested
13 for that?

14 MS. CLINCH: No, there was 34 requested for furniture
15 and assistance. Then there was a request for two attorneys.
16 There were two programs requesting two attorneys: California
17 Rural Legal Assistance and Santa Cruz County. The others were
18 requesting one. I'd have to look at the program specifically to
19 see what it is per attorney.

20 MS. MILLER: Mr. Wallace?

21 CHAIRMAN WALLACE: Ms. Miller? I'm sorry.

22 MS. CLINCH: It's \$19,000 per attorney at straight

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1 salary, but then they have benefits and payroll taxes, so it's a
2 little lower than 19 per. There are different amounts for each
3 program, I'm sorry. Do you have a copy of the budget?

4 MR. DURANT: Yes.

5 MS. CLINCH: I can do this real quickly for you.

6 MR. WEAR: If I may, Mr. Chairman, could we ask Nancy
7 to work off this other sheet that all the Board Members have?

8 MS. CLINCH: I have several items.

9 CHAIRMAN WALLACE: Page 23 in the Board book is what
10 Mr. Wear seems to be looking at.

11 MS. CLINCH: What is your question?

12 MR. DURANT: You mentioned, with regard to Santa Cruz
13 County, that they made a request for the monies to repair
14 physical damage and that they also requested two lawyers.

15 MS. CLINCH: Yes, and it does have the exact amount
16 here. The \$35,625 was the salary and benefits for two lawyers
17 plus \$300 additional for client education efforts.

18 With regard to the 30,000 that was granted to Santa
19 Cruz County, they got it to purchase a modular unit. They
20 didn't receive the money for any of the funding requests that
21 are set forth on page 23.

22 CHAIRMAN WALLACE: Ms. Miller, did you want to be

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1 recognized?

2 MS. MILLER: Yes, I did. I wanted to know if there
3 are any programs that ask for money for these earthquakes and
4 hurricanes, do we have any money anywhere in the budget for
5 that?

6 CHAIRMAN WALLACE: There is no contingency fund or
7 emergency fund designated in the budget. There is no such
8 thing. If, from time to time, funds become available for one
9 reason or another, they could be used for this purpose.

10 As I understand the Comptroller and the President,
11 they are telling us that all the funds that we have are needed
12 for management and administration in 1990. They are not
13 available for this purpose. That might be right or wrong, but
14 that's what the staff's report is.

15 Let me claim the floor for a moment. I'm going to
16 offer an amendment in just a motion. I do not believe that, as
17 a board, at least at this point, we can analyze it program by
18 program and decide what ought to be granted and what shouldn't.
19 We set policy and we ought to have a policy of providing funds
20 to disaster relief where that's needed.

21 I can't make a judgment on what I've heard, as to
22 whether every dollar is needed or whether it is not needed.

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1 I've been through a disaster myself, having been through
2 Hurricane Camille in 1969, which was the worst hurricane ever to
3 hit this continent.

4 I will say that the first need in my mind was not for
5 manuals and videos and training. That sounds to me like
6 something that might be a good idea if funds are available some
7 day, but it's not an immediate emergency matter. There may be
8 other things in here that would be unnecessary. I don't know.
9 I don't have any way of knowing.

10 I believe, based on my experience with the
11 Appropriations Committee and the confirmations I've received
12 from the staff, that, frankly, we haven't got the money; that
13 these funds will be used for the purposes of running the
14 Corporation in the next year. I do not know where \$300,000 or
15 half a million is coming from.

16 Motion to Amend

17 I offer an amendment in the nature of a substitute,
18 that no later than 15 days before the next Board Meeting, the
19 staff be instructed to present us with a report and a
20 recommendation on all disaster requests received that they
21 believe are meritorious and should be granted, not to weigh the
22 merits of one program against another, not to consider is this

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1 more important than management or administration or something
2 else, but on the assumption that we have all the money in the
3 world, what would we do; and that at the Board's next meeting,
4 it consider the question of seeking a supplemental appropriation
5 from Congress for the purpose of meeting the needs, which our
6 staff has identified as meritorious.

7 That is an amendment in the nature of a substitute.
8 It requires a second.

9 MR. VALOIS: Second.

10 CHAIRMAN WALLACE: It has been seconded. First, if
11 the amendment in the nature of a substitute is passed, it will
12 displace Mr. Smegal's motion which would appropriate the money
13 for California today. It would bring this matter back to us
14 with an absolute wish budget at the next meeting. Then we'll go
15 ask Congress to borrow the money from the Germans to do it.

16 MS. MILLER: Mr. Wallace, I don't see it as that,
17 because I guess it's a matter of opinion of what we do with our
18 money. There have been things done that five of us knew nothing
19 about. Money was spent. Plenty of money was spent. Items like
20 that came up and we didn't have any money.

21 Why can't we spend some of this money for people that
22 really need it?

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1 CHAIRMAN WALLACE: Ms. Miller, if that's your
2 viewpoint, then you would want to vote against the substitute
3 I've offered and appropriate the money today.

4 I don't think that any expenditures in the order of
5 \$300,000 or \$500,000 have been done without the knowledge and
6 consent of this Board. That sounds a little -- it may have
7 happened, but it would surprise me. It's a lot of money.

8 Ms. Clinch?

9 MS. CLINCH: How long would it take to get such a bill
10 through Congress and get the money appropriated?

11 CHAIRMAN WALLACE: Considering the support of the
12 Senators from the affected states and that Senator Hollings is
13 the Chairman of our Appropriations Subcommittee, he has
14 jurisdiction over Legal Services, I would presume that if
15 Senator Hollings wanted to get a supplemental out of his
16 committee and onto the floor, he could do it pretty quickly.

17 There has always been one supplemental for disaster
18 relief in the first session of this Congress, as I recall. If
19 we can demonstrate that these matters are meritorious, I have no
20 doubt whatsoever that we can get a supplemental through in short
21 order. How short? We don't know.

22 MS. CLINCH: That's my concern.

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1 CHAIRMAN WALLACE: I understand your concern. My
2 concern is: I don't think we have the money to give you today,
3 based on what the staff has told us.

4 MR. UDDO: Mr. Chairman.

5 CHAIRMAN WALLACE: You'll have to get it someplace
6 else.

7 MR. UDDO: Two questions. One is: Why couldn't the
8 grant recovery money be appropriated for disaster relief now
9 with our intent to request more for management and
10 administration because we have to give up that money in an
11 emergency? I would imagine if they'd approve the supplemental
12 grant, they'd approve that, too.

13 Secondly, I guess the problem with further study is
14 that we've really had these things before us awhile. This isn't
15 the first time. It seems that if we were going to do any more
16 analysis of it, it should have been done before now.

17 CHAIRMAN WALLACE: Let me make two responses to that,
18 Mr. Uddo. One is: I don't accept the premise of your position
19 that Congress would be as likely to pass an emergency
20 supplemental for management and administration as they would for
21 emergency relief.

22 MR. UDDO: Understanding what we have already spent

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1 the money on this year.

2 CHAIRMAN WALLACE: I still believe that once the money
3 has gone out to California and South Carolina, their
4 constituents are not going to be burning up the phone lines
5 asking those Senators to give us more money for management and
6 administration.

7 Just as a practical matter, we've got a better chance
8 of getting an emergency appropriation for emergency relief.
9 It's late and I'm getting tired. You made a second point, Mr.
10 Uddo, and I --

11 MR. UDDO: Why do we need such a long time?

12 CHAIRMAN WALLACE: Mr. President Wear has looked at
13 this as "Which of these can he grant with the money available?"
14 I am asking him to look at them again from the perspective of,
15 "Which ones should be granted as meritorious if we had all the
16 money in the world?" Then, we'll go ask Congress to give us all
17 the money in the world. We don't have it right now.

18 MR. UDDO: Couldn't we also, Mr. Chairman, make the
19 judgment of using any of our M&A funds at that time, too?

20 CHAIRMAN WALLACE: We could, if we wished to take
21 money out of M&A, we could do that today, because that would be
22 the effect of passing Mr. Smegal's motion, to take money out of

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1 M&A to grant these requests.

2 As I say, some of the requests themselves -- not all
3 of them; most of them are meritorious, but some of the things I
4 heard sounded less than compelling to me.

5 MS. CLINCH: I think there was one request for \$3,000
6 for a video. That is minor.

7 CHAIRMAN WALLACE: I'm sure it is minor. All I'm
8 saying is I can't analyze what is in there and what is important
9 and what isn't. I think that's what we have a staff for. We
10 ought to instruct them to do it on the basis that Congress will
11 go find the money somewhere.

12 I do not think we have it. I do not think they've
13 looked at these requests with the idea that all the money in the
14 world might be available. That's what I'm asking them to do.

15 MS. CLINCH: May I respond to one of your points?

16 CHAIRMAN WALLACE: Please, go ahead.

17 MS. CLINCH: You'll find part of it on that page 139
18 of the transcript toward the bottom. These are recommendations
19 at the hearing on December 2nd, if there should be a special
20 emergency contingency fund available to Legal Services for
21 funding for services such as a volunteer coordinator, et cetera,
22 et cetera.

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1 This is something the State wanted us to pursue on a
2 national level. Myself and other members of the State Bar have
3 met with ABA, A Consortium on Legal Services. We spent a little
4 over two hours with them, telling them about the earthquake and
5 the disaster relief efforts.

6 We gave them an agenda of items we felt were national
7 in nature. This was one of them. You would have the State Bar
8 of California's support if you went in for additional funding.
9 If you do just the \$300,000 now, you might also get the ABA
10 Consortium.

11 I would do whatever I could to help you. I would not
12 wash my hands and walk away once we received any money. I would
13 see this as an agenda item of something that is
14 institutionalized, because more disasters are going to happen.

15 CHAIRMAN WALLACE: I certainly agree that they will
16 happen. It probably ought to be institutionalized. I don't
17 think we can institutionalize it today with the funds we have.
18 That's the basis of my substitute.

19 Is there further debate on the substitute?

20 MR. ERLENBORN: Mr. Chairman.

21 CHAIRMAN WALLACE: Mr. Erlenborn is recognized.

22 MR. ERLENBORN: Being new to the Board, and I don't

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1 understand the financial circumstances of the Corporation too
2 well, let me ask a couple of questions, if I might, of President
3 Wear.

4 What was the 1990, Fiscal Year 1990, request of the
5 Corporation in the budget submitted to the Congress for
6 management and administration?

7 MR. WEAR: I'm not sure I have that number with me.
8 Mr. Richardson, do you recall that number?

9 MR. RICHARDSON: If I recall correctly, it was
10 \$12,500,000.

11 CHAIRMAN WALLACE: So, that is the amount that the
12 Corporation felt was necessary for management and administration
13 for the coming calendar year?

14 MR. RICHARDSON: Yes.

15 CHAIRMAN WALLACE: What was the amount appropriated by
16 Congress?

17 MR. RICHARDSON: \$8,700,000, subject to sequestration.

18 CHAIRMAN WALLACE: What is the percentage on
19 sequestration? Do you have any idea?

20 MR. RICHARDSON: We do not have the exact percent.

21 CHAIRMAN WALLACE: You may have an idea.

22 MR. WEAR: Mr. Chairman, if I might respond, we made a

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1 rough guess as to what the amount of funding for management and
2 administration would be after the sequester. That number is
3 approximately \$8,581,000.

4 CHAIRMAN WALLACE: That is after sequester and with
5 carry-over or after sequester appropriation only?

6 MR. WEAR: That's after sequester appropriation only.

7 CHAIRMAN WALLACE: All right. Mr. Erlenborn, did that
8 answer your question?

9 MR. ERLBORN: That answers my question.

10 CHAIRMAN WALLACE: How much do we presently anticipate
11 the total carry-over to be?

12 MR. WEAR: Mr. Chairman, we've done a little bit of
13 arithmetic on that. The approximate carry-over will be \$2
14 million.

15 CHAIRMAN WALLACE: I'm looking at the numbers over
16 your shoulder, but after sequester, with carry-over, you expect
17 to have \$10,600,000 for management and administration; is that
18 correct?

19 MR. WEAR: Yes, sir.

20 CHAIRMAN WALLACE: We asked for \$12 million.
21 Presumably, we made a judgment at that time that that's what we
22 needed.

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1 MR. ERLNBORN: Might I ask a further question?

2 CHAIRMAN WALLACE: Certainly, Mr. Erlenborn.

3 MR. ERLNBORN: What was the actual amount expended in
4 the fiscal year 1989 in M&A?

5 MR. WEAR: The actual amount expended, again, Mr.
6 Richardson, I'm going to have to rely on you on that.

7 CHAIRMAN WALLACE: I realize it's not quite over, Mr.
8 Richardson.

9 MR. RICHARDSON: The fiscal year was over September 30
10 and the total amount expended was \$900,000 with a carry-over of
11 a little over a million dollars. Less than \$10 million was
12 spent.

13 CHAIRMAN WALLACE: I'm sorry. So, we spent, if I'm
14 understanding your testimony, \$9.9 million in 1989 and we expect
15 to have \$10.6 million available for 1990.

16 MR. RICHARDSON: Yes.

17 CHAIRMAN WALLACE: Thank you. Mr. Wear?

18 MR. WEAR: Mr. Chairman, there are two principal costs
19 that we did not have last year that we will have this year and
20 that is, the full cost of the Office of the Inspector General,
21 which is budgeted at \$500,000 and another approximately \$170,000
22 increase in rent, which means that I'm going to have to make

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1 some reductions in order to get to the 10.6 number because I am
2 certain there will not be more than 10.6 available.

3 CHAIRMAN WALLACE: Further debate?

4 (No response.)

5 CHAIRMAN WALLACE: Hearing no --

6 MR. SMEGAL: Mr. Wallace, let me suggest to you -- I
7 don't know where we are in this procedure, but I think it's
8 either under Robert's or Sturgiss, that it is highly unusual for
9 the Chairman to make motions.

10 CHAIRMAN WALLACE: Chairmen make motions and vote.

11 MR. SMEGAL: Let me finish. The motion also was
12 entirely inconsistent with the underlying motion. You
13 characterized it as being a motion to amend.

14 The motion I made was fairly specific. The motion you
15 have made is entirely inconsistent with it, Mr. Wallace.

16 CHAIRMAN WALLACE: That is why it is an amendment in
17 the nature of a substitute, Mr. Smegal.

18 MR. SMEGAL: Then it is not an amendment, Mr. Wallace,
19 and you can't amend my motion in the way you've indicated.

20 CHAIRMAN WALLACE: If the Board votes, if the Board
21 casts its vote for it, Mr. Smegal, it will stand amended. That
22 is where I think we are right now, unless anybody else has any

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1 debate on the merits.

2 The first vote is on the motion on the amendment in
3 the nature of a substitute, which would replace Mr. Smegal's
4 motion with the motion I made, that the staff be instructed to
5 bring back to us a number on all meritorious requests and that
6 it be circulated to us 15 days before the next Board Meeting, so
7 that we can ask Congress for a supplemental appropriation to
8 meet those meritorious needs.

9 Mr. Durant?

10 MR. DURANT: Mr. Chairman, do we intend to have a
11 meeting before January 25th, or whenever it is?

12 CHAIRMAN WALLACE: That's something that we're going
13 to have to decide at the end of the day. It would be my hope
14 and prayer that we not do so, but that's something the Board as
15 a whole will decide. Whenever we meet, I am asking that this be
16 given to us 15 days in advance.

17 Now, the motion is as I've just stated, to substitute
18 the report of the staff looking toward the request for
19 supplemental appropriations in place of Mr. Smegal's amendment.
20 An "aye" vote will effectively defeat Mr. Smegal's motion and
21 will place the issue of the supplemental appropriation on the
22 floor for final action.

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1 MR. DURANT: But, again, your motion will allow, upon
2 review of those meritorious requests, we're not precluded, then,
3 from voting to allocate money.

4 CHAIRMAN WALLACE: Absolutely not, Mr. Durant. If we
5 come back here and we find out at our next Board Meeting that
6 we've got plenty of management and administration money or some
7 other money, other funds that we can provide for this purpose,
8 we certainly can do so.

9 My intention at this point would be to ask for a
10 supplemental appropriation, unless for some reason we've got the
11 funds available.

12 MR. VALOIS: Your motion that I seconded is not just
13 to California.

14 CHAIRMAN WALLACE: All disaster requests.

15 MR. VALOIS: Including North Carolina and South
16 Carolina?

17 CHAIRMAN WALLACE: And the Islands in the Caribbean
18 under American jurisdiction; that's correct.

19 MS. MILLER: Mr. Wallace?

20 CHAIRMAN WALLACE: Yes, ma'am.

21 MS. MILLER: We're talking about approximately forty
22 days on something for emergencies, right?

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1 CHAIRMAN WALLACE: That's what we're talking about,
2 but the date of the next meeting is not what is on the floor.
3 At the close of whatever business we do today, this Board may
4 decide to come back on Christmas Eve, but that will be something
5 we can take up later.

6 All right. Does everyone understand what the vote is
7 on the Wallace amendment in the nature of a substitute, Mr.
8 Eaglin, and how do you vote?

9 MR. EAGLIN: No.

10 CHAIRMAN WALLACE: Mr. Smegal?

11 MR. SMEGAL: No.

12 CHAIRMAN WALLACE: Mr. Uddo?

13 MR. UDDO: No.

14 CHAIRMAN WALLACE: Mr. Erlenborn?

15 MR. ERLENBORN: Aye.

16 CHAIRMAN WALLACE: Mr. Durant?

17 MR. DURANT: Aye.

18 CHAIRMAN WALLACE: The Chair votes "aye." Mr. Valois?

19 MR. VALOIS: Aye.

20 CHAIRMAN WALLACE: Ms. Swafford?

21 MS. SWAFFORD: Aye.

22 CHAIRMAN WALLACE: Mr. Hall?

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1 MR. HALL: Yes.

2 CHAIRMAN WALLACE: Ms. Miller?

3 MS. MILLER: No.

4 CHAIRMAN WALLACE: Ms. Benavidez?

5 MS. BENAVIDEZ: No.

6 CHAIRMAN WALLACE: All right. The amendment in the
7 nature of a substitute is adopted by a vote of six-to-five. We
8 still have to have a vote on final passage. Is there any
9 further debate?

10 (No response.)

11 CHAIRMAN WALLACE: Just for parliamentary purposes, we
12 are now voting on final action to require the staff to make this
13 study and bring it back to us 15 days before the next Board
14 Meeting, looking toward a supplemental.

15 Mr. Eaglin, how do you vote?

16 MR. EAGLIN: Yes.

17 CHAIRMAN WALLACE: Mr. Smegal?

18 MR. SMEGAL: Abstain.

19 CHAIRMAN WALLACE: Mr. Uddo?

20 MR. UDDO: Yes.

21 CHAIRMAN WALLACE: Mr. Erlenborn?

22 MR. ERLENBORN: Aye.

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1 CHAIRMAN WALLACE: Mr. Durant?

2 MR. DURANT: Aye.

3 CHAIRMAN WALLACE: The Chair votes "aye." Mr. Valois?

4 MR. VALOIS: Aye.

5 CHAIRMAN WALLACE: Ms. Swafford?

6 MS. SWAFFORD: Aye.

7 CHAIRMAN WALLACE: Mr. Hall?

8 MR. HALL: Yes.

9 CHAIRMAN WALLACE: Ms. Miller?

10 MS. MILLER: Yes.

11 CHAIRMAN WALLACE: Ms. Benavidez?

12 MS. BENAVIDEZ: Yes.

13 CHAIRMAN WALLACE: All right. By a vote of ten ayes
14 and one abstention, the motion is amended as carried.

15 Ms. Clinch, I know that isn't the report you wanted to
16 take back to California. I wish we could do better for you, but
17 that is the judgment of the Board. I appreciate your time in
18 coming to meet with us today. I hope we'll be able to get you
19 something.

20 MS. CLINCH: I hope it will be in time.

21 CHAIRMAN WALLACE: I hope so.

22 All right. We are going to be vacating this room at

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1 5:00. We haven't got it rented any longer. It looks right now
2 like the chances of us getting out of here before 5:00 are
3 practically zero. If there are any members of this Board,
4 myself included, who have flights they need to change, can we
5 get a staff member up here while we're talking and get the
6 details?

7 MR. DURANT: It may be appropriate to -- I know there
8 are a couple of other things that Tom wants to cover, but maybe
9 some of these can be adjourned to the next Board Meeting.

10 CHAIRMAN WALLACE: My expectation is a lot of this may
11 be adjourned until the next Board Meeting, but I have confidence
12 that at least one item is going -- maybe I'm wrong -- to survive
13 a motion to adjourn or a motion to table.

14 The things still on the agenda today -- let me tell
15 you what we're doing next. We have finished emergency funding,
16 inspector general, and basically, that's all.

17 The next item is the performance appraisal of
18 President Wear and action thereon. We can vote to adjourn right
19 now if somebody wants to, but my guess is we're probably going
20 to go forward at least on that item.

21 Hearing no motion to adjourn or to table, then let's
22 go to the performance appraisal of President Wear. I repeat my

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1 request that some staff come up here and help those of us who
2 are going to have problems with flights.

3 We are on Item 7A. It has been divided into three
4 parts. The last two parts we went through in some detail at the
5 last meeting. I will hope that the factual matters that we got
6 at the last meeting we won't have to go over again today. I
7 think we know the facts, at least on "B" and "C". We can simply
8 tell each other what we think about them.

9 President Wear would like to present some facts we
10 didn't consider last week under Item 7A. Mr. Wear?

11 MR. SMEGAL: Mr. Wallace, I don't believe we're
12 through with 7B.

13 CHAIRMAN WALLACE: I didn't say we were through, Mr.
14 Smegal. It's on the agenda. I am reporting to the Board that
15 we have gone through B and C in some detail. It is on here
16 again for such things we didn't get last time. I'm just hoping
17 that all members of the Board will not repeat what we already
18 know. I'm not taking it off the agenda.

19 MR. SMEGAL: I'm suggesting maybe we should continue
20 that before we go to a new item. I consider 7A to be a new
21 item.

22 CHAIRMAN WALLACE: The agenda has been adopted and 7A

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1 is where we are right now. Unless there is a motion to do
2 something else, I'm going to recognize President Wear for
3 proceeding with 7A. Hearing no motion, President Wear is
4 recognized.

5 MR. WEAR: The staff is now passing out a handout that
6 was prepared by my staff earlier this week. If I may, Mr.
7 Chairman, at some peril, invite Mr. Wooten back to the table to
8 talk about the government's public affairs portion of the paper.
9 I'm sorry. Mr. Boehm will cover that.

10 CHAIRMAN WALLACE: For what purpose? We've been
11 handed a paper which seems to be fairly complete. For what
12 purpose do we need testimony?

13 MR. WEAR: I think the staff will be able to explain
14 this in a fashion that will help you understand it and get a
15 better picture of what has happened during the past 18 months.
16 If I may, I'd like to ask Mr. Boehm and Ms. DeSanto to come up
17 to the table for purposes of going through the government and
18 public affairs portion and the monitoring portion of this
19 handout.

20 CHAIRMAN WALLACE: Mr. Boehm and Ms. DeSanto will come
21 forward.

22 Mr. Boehm, if you would proceed.

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Presentation by Mr. Kenneth Boehm

1
2 MR. BOEHM: I'm Ken Boehm. I am the fairly new
3 Director of the Office of OPDC, the Office of Policy Development
4 and Communications. I'll just run through, in order, amplifying
5 some of the points made under the Government/Public Affairs
6 portion. Then I'll turn it over to Emilio DeSanto for the
7 monitoring portion of the report.

8 The chronology here is not in absolute chronological
9 order, but more or less, it covers the last 18 months, goes
10 through some of the significant points that occurred vis-a-vis
11 the Corporation's relationship with Capitol Hill and also folds
12 into that some different things that have happened in public
13 affairs.

14 In 1988, you had a series of events. There were 181
15 Congressmen that signed the letter to President Reagan, the
16 thrust of which was endorsing reforms. A number of reforms were
17 reforms that had been supported by this Board of Directors.
18 This was further backed up by a letter from the Director of the
19 Office of Management and Budget, Mr. Jim Miller.

20 MR. UDDO: Excuse me, Mr. Chairman. If he's going to
21 read this to us, why don't we just take ten minutes and read it
22 to ourselves and ask questions? I'm concerned about sitting

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1 here with a deadline to have somebody go through things that we
2 can read.

3 CHAIRMAN WALLACE: Mr. Uddo, I appreciate that and I
4 will ask the witnesses to be concise, but Mr. Wear was
5 interrogated at great length last time and probably will be
6 again today, and I think he's entitled to put on witnesses that
7 say whatever he wants us to hear.

8 I'm going to ask the witnesses to proceed with the
9 admonition that we have got it in writing in front of us.

10 Ms. Miller?

11 MS. MILLER: Is there any problem, if he is
12 interrogated again today, for him to answer the questions and
13 not you?

14 CHAIRMAN WALLACE: I will do my best to let the
15 witness answer the questions, as I think I did last time.

16 MS. MILLER: No. Last time, you answered the
17 questions for him.

18 CHAIRMAN WALLACE: My job -- and it's not an easy one,
19 as Chairman of the Board -- is to try to keep the proceedings in
20 order, to try to make them as non-personal as I can. That has
21 not always been easy. There were times last week or two weeks
22 ago when I thought I needed to do that.

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1 I made lots of mistakes and I may make some again here
2 today, but I think Mr. Wear has testified fully. He'll testify
3 fully again. If I feel the need to say something as Chairman, I
4 will do so, as I'm sure any member of this Board will do and
5 will be recognized to do.

6 Now, Mr. Boehm?

7 MR. SMEGAL: Mr. Wallace?

8 CHAIRMAN WALLACE: I'm sorry. Mr. Smegal?

9 MR. SMEGAL: Before we go forward, who asked for 7A to
10 be put on this agenda? This is not anything we discussed on
11 December 1. 7B and 7C were items from the prior agenda that we
12 all agreed to move forward. I don't understand how 7A got here.
13 Can you explain that for us?

14 CHAIRMAN WALLACE: Yes, I certainly can. President
15 Wear asked that it be put on. It is the Chairman's
16 responsibility to print the agenda, subject to amendment when we
17 get here. Nobody amended it. I believe President Wear, who has
18 come under attack, is entitled to defend himself. This is part
19 of the defense.

20 I put it here. Nobody voted to delete it. I will
21 certainly vote against any effort to delete it now.

22 MR. SMEGAL: You are going to have the opportunity,

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1 Mr. Wallace, because I'm going to make the motion.

2 Motion

3 MR. SMEGAL: I move we delete 7A from the agenda.

4 CHAIRMAN WALLACE: All right. It has been moved. Is
5 there a second to the motion that 7A be deleted?

6 MS. BENAVIDEZ: I second that.

7 CHAIRMAN WALLACE: Ms. Benavidez has seconded it. I
8 presume -- it is a procedural motion and I presume it's open to
9 debate. I don't know of any reason why it isn't.

10 You may be recognized in support of your motion, Mr.
11 Smegal.

12 MR. SMEGAL: We have several items that we carried
13 over from the last meeting, Mr. Wallace, and they are very
14 properly noted here. For what reasons I know not, they have
15 been subrogated, so to speak, to this new item.

16 In the event that this item is to be discussed, I
17 think it properly should follow the items that we have pending
18 that we started and were unable to complete on December 1, that
19 being 7B and 7C.

20 CHAIRMAN WALLACE: Is there further discussion? Mr.
21 Uddo?

22 MR. UDDO: I don't want to cut off the presentation,

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1 but on the other hand, I don't want it to take so long that we
2 can't complete our business, so I would vote against the motion
3 if we could have some sort of agreement that there is some time
4 limit within which this will be presented. I think you could
5 easily go past 5:00 o'clock.

6 MR. DURANT: Do we have a time limit for all the rest?

7 MR. UDDO: I don't think "B" and "C" need to be
8 discussed anymore, as far as I'm concerned. We did that at the
9 last meeting.

10 CHAIRMAN WALLACE: That's what I thought.

11 MR. UDDO: Apparently, Mr. Smegal has something he
12 wants discussed on "C". I would say there be a time limit on
13 any so we don't go past 5:00 o'clock just on "A". If we could
14 get some sort of a suggestion on how long you think it's going
15 to take to do part "A", maybe we could reach some sort of an
16 agreement.

17 CHAIRMAN WALLACE: President Wear, being from the
18 Senate, has more familiarity with time agreements than I do,
19 because we just had them in the Rules in the House. But, I
20 would think that if there were a time agreement, that the
21 agreement should encompass Item 7 in its entirety, and that we
22 should pick a time certain to wrap up whatever business members

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1 of this Board may contemplate under Item 7.

2 I am happy to pick a time certain and, if you would
3 like to pick a sub-time under which "A" will be completed, I
4 would be happy to ask for the unanimous consent of the Board to
5 do so. I would think that we would want to wind up our business
6 on Number 7.

7 It is 3:10 now. We've got to be out of here at 5:00
8 o'clock. Obviously, we are not going to finish the entire
9 agenda. This is a matter that has been hanging on and I think
10 we ought to vote on whatever it is we're going to vote on no
11 later than 4:30.

12 If that is the case, then I would think the time
13 between now and then should be equally divided between "A,"
14 which has not been heard from, and "B" and "C" which were heard
15 from last week.

16 I will ask unanimous consent, therefore, and see how I
17 do, that 7A be completed in forty minutes. Can you complete 7A
18 in forty minutes, Mr. Wear? Then, at 4:30, we vote on whatever
19 it is to be voted on.

20 MR. WEAR: Mr. Chairman, I suspect that's a function
21 of the amount of questioning. I think that it is important that
22 all the items be covered by the staff. I suppose it is

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1 possible that some person who is unhappy with the presentation
2 could simply filibuster and eat up the forty minutes.

3 CHAIRMAN WALLACE: There is a unanimous consent
4 request reserving the right to object, Mr. Durant.

5 MR. DURANT: Would it be appropriate to have, so that
6 whatever time is necessary for "A," "B," and "C" that will allow
7 Tom and anyone else to deal with "B" and "C" and Terry and
8 whatever on "A." If I were to make a motion to table three,
9 four, eight and nine, for our next meeting.

10 CHAIRMAN WALLACE: No. A motion to table would not be
11 in order. There is on the floor -- the pending motion is to
12 delete 7A. I've made a unanimous consent request, which you can
13 do any time because any time you get unanimous consent, you can
14 do whatever you want.

15 But, it would not be in order to move to table until
16 we've voted on Mr. Smegal's pending motion. So, if somebody
17 wants to object to my unanimous consent request, we can get back
18 to Mr. Smegal's pending motion and, after it is disposed of, we
19 can hear your motion to table, Mr. Durant.

20 MR. DURANT: Mr. Smegal's motion is on deleting 7A?

21 CHAIRMAN WALLACE: It's to delete 7A.

22 MR. DURANT: I'm not going to give you unanimous

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1 consent. I think you ought to vote on that.

2 MR. ERLNBORN: Mr. Chairman.

3 CHAIRMAN WALLACE: Yes, Mr. Erlenborn.

4 MR. ERLNBORN: Might I suggest, as a kind of a
5 substitute for an overall time limitation, that we first have
6 unanimous consent for a time limitation for the direct
7 presentation without questioning from President Wear. We'll see
8 how much time is left then and, after that, decide piece by
9 piece time limits for whatever else has to be handled.

10 CHAIRMAN WALLACE: How much time do you think you need
11 for direct presentation without questioning? I won't try to
12 keep the lid on it.

13 MR. WEAR: Forty-five minutes ought to do it.

14 CHAIRMAN WALLACE: Forty-five minutes for no
15 questions?

16 MR. SMEGAL: To read seven pages, Mr. Wallace?

17 CHAIRMAN WALLACE: I didn't say --

18 MR. ERLNBORN: I guess you have a unanimous consent
19 request pending, but I would suggest a thirty-minute limit.

20 CHAIRMAN WALLACE: A thirty-minute limit on the direct
21 presentation without questioning. Mr. Wear, can that be done?

22 MR. WEAR: Yes, I think staff will try and do that.

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1 CHAIRMAN WALLACE: I will withdraw my previous
2 unanimous consent request and ask unanimous consent that the
3 presentation under 7A, without questioning, be terminated at
4 quarter of 4:00; that's the unanimous consent request.

5 Is there objection?

6 MR. VALOIS: Yes.

7 CHAIRMAN WALLACE: I hear objection, so what is on the
8 floor is Mr. Smegal's motion to delete 7A altogether. Does
9 anybody want to speak to that motion?

10 MR. VALOIS: Yes.

11 CHAIRMAN WALLACE: Yes, Mr. Valois.

12 MR. VALOIS: We've been here for at least two or three
13 days, it seems, discussing what is in Item 7. I don't know how
14 many hours we've contributed to this task. I realize that at
15 least a couple of members made up their mind for whatever
16 appeared on our agenda and are quoted as having done so in a
17 newspaper article.

18 CHAIRMAN WALLACE: Newspapers make mistakes, Mr.
19 Valois.

20 MR. VALOIS: In this case, I haven't heard any
21 denials. "I will take the first chance I get to get rid of the
22 guy," I think is the quote, and that was before we even had it

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1 on our agenda, so I don't really think it is fair -- and we do
2 try to be fair around here, I think -- to put such a time
3 limitation on Mr. Wear and the staff and whoever else wants to
4 speak in his behalf under Item 7A.

5 CHAIRMAN WALLACE: That is an opposition to Mr.
6 Smegal's motion.

7 MR. VALOIS: It is.

8 CHAIRMAN WALLACE: Is there any other debate on the
9 motion?

10 MR. SMEGAL: I'll withdraw the motion.

11 CHAIRMAN WALLACE: Does the second withdraw? I don't
12 even remember who the second was. Does the second withdraw the
13 second? Mr. Smegal has abandoned his motion to delete 7A. Is
14 that all right with you, Ms. Benavidez?

15 MS. BENAVIDEZ: Yes, I'll go along.

16 Motion

17 MR. UDDO: I move a thirty-minute time limit on the
18 presentation without questions.

19 MR. ERLNBORN: Second.

20 CHAIRMAN WALLACE: All right. There's been a motion
21 and a second for a thirty-minute time limitation without
22 questions.

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1 CHAIRMAN WALLACE: The motion which is available for
2 debate is to put a thirty-minute time limit on the affirmative
3 presentation without questions. It has been moved and seconded.
4 I presume Mr. Valois' last speech will count for this one, so
5 I'll ask him not to repeat it.

6 Is there anybody else that has anything to say about
7 the motion?

8 MR. DURANT: Yes. I'm going to vote against it,
9 because I think we've been very patient in listening to all the
10 objections to Mr. Wear, and I think we should be as patient in
11 listening to his affirmative accomplishments, so I'm going to
12 vote against it. I think it is terribly unfair.

13 MR. SMEGAL: May I remind you that you left two hours
14 before the last session ended?

15 MR. DURANT: I understand that. The session went on
16 and on, and that's what ought to happen. It should not
17 arbitrarily cut off.

18 MR. SMEGAL: It has been arbitrarily cut off, because
19 the purpose of this meeting was to continue that discussion, as
20 Mr. Wallace very well knows. We put that right on the record.
21 We are frustrating that by this process right now.

22 CHAIRMAN WALLACE: This agenda was adopted by the

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1 Board.

2 MR. SMEGAL: Mr. Chairman, isn't that discussion out
3 of order?

4 CHAIRMAN WALLACE: It does address the question of
5 whether there ought to be a time limit. Mr. Smegal's remarks I
6 think go fairly to that issue, as I think do mine.

7 MR. SMEGAL: I call the question.

8 CHAIRMAN WALLACE: Is there any further debate on the
9 motion by Mr. Uddo?

10 MR. UDDO: Yes. Let me say one thing in response to
11 what Clark said. Presumably, accomplishments are not secrets
12 and, as such, everyone should be familiar with them and not need
13 to be educated about accomplishments.

14 The things we spent some time on at the last meeting
15 were things that many of us had no information about and that is
16 why it took some degree of time to ferret out the information
17 and be informed on those negative aspects.

18 This paper, coupled with our general knowledge of what
19 has been going on since Mr. Wear has been here, I think informs
20 us quite well of what his accomplishments are, so I do not think
21 it takes as long.

22 CHAIRMAN WALLACE: All right. The pending motion is

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1 that 7A be limited to thirty minutes without questions. Is
2 there any further discussion?

3 MR. ERLNBORN: I did not understand the motion to be
4 that we would only hear the affirmative and have no chance to
5 ask questions.

6 CHAIRMAN WALLACE: And you are quite correct. I
7 appreciate the clarification. The questions will start in
8 thirty minutes, whether you are through or not, is what it
9 amounts to. Is there any further debate?

10 (No response.)

11 CHAIRMAN WALLACE: All right. On the time limitation,
12 Mr. Eaglin, how do you vote?

13 MR. EAGLIN: Yes.

14 CHAIRMAN WALLACE: Mr. Smegal?

15 MR. SMEGAL: Yes.

16 CHAIRMAN WALLACE: Mr. Uddo?

17 MR. UDDO: Yes.

18 CHAIRMAN WALLACE: Mr. Erlenborn?

19 MR. ERLNBORN: Yes.

20 CHAIRMAN WALLACE: Mr. Durant?

21 MR. DURANT: No.

22 CHAIRMAN WALLACE: The Chair votes "no." Mr. Valois?

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1 MR. VALOIS: No.

2 CHAIRMAN WALLACE: Ms. Swafford?

3 MS. SWAFFORD: No.

4 CHAIRMAN WALLACE: Mr. Hall?

5 MR. HALL: No.

6 CHAIRMAN WALLACE: Ms. Miller?

7 MS. MILLER: Yes.

8 CHAIRMAN WALLACE: Ms. Benavidez?

9 MS. BENAVIDEZ: Yes.

10 CHAIRMAN WALLACE: It is adopted. By the way, the
11 five-to-three vote on whatever it was three hours ago passed. I
12 got a parliamentary ruling on that. The Chair rules that motion
13 was adopted.

14 This motion has been adopted. At ten minutes to 4:00,
15 you will be available for questions on 7A. Proceed, Mr. Boehm.

16 MR. BOEHM: Thank you, Mr. Chairman.

17 I already mentioned what had happened vis-a-vis the
18 Congressmen signing off on the letter and Mr. Miller's letter
19 following up on that.

20 For FY 1989, the appropriations bill had, for the
21 first time, the actual language about developing and
22 implementing a system of competitive bidding. That's the first

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1 time that was actually put into law by Congress, reflecting
2 Congress' views.

3 On the authorization, I won't directly quote from this
4 since, in fact, you've got it in front of you, but on the
5 authorization front, there is a bill right now that Congress has
6 put in that has a number of points in it.

7 As you are all well aware, there hasn't been an
8 authorization that's been signed into law since 1977. There was
9 one in '80 that didn't get past the House and that was it. Now,
10 for the first time, there are significant developments on the
11 Hill, as many of you are aware, showing that there will probably
12 be movement towards an authorization this next year.

13 You may be aware that the subcommittee dealing with it
14 is Congressman Barney Frank's subcommittee. That change was
15 made earlier this year. He has made statements, public
16 statements, to the effect that he will have authorization
17 hearings. There have already been some hearings and there is
18 some expectation that we may get that in the course of the next
19 year.

20 There is also feeling by some key Congressmen,
21 publicly and privately -- Congressman Neal Smith wants that
22 authorization because he doesn't want legislating on the

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1 appropriations process, and I think those views reflect the
2 views of the majority of the Board. So, that's a major
3 accomplishment, but it's also something to look forward to in
4 the next session of Congress.

5 I will go over one thing, the Dire Supplemental here,
6 that also contains language similar to what was the previous
7 language on developing competitive bidding. That, once again,
8 states our views to Congress on that issue, and that was a step
9 forward in terms of the goals and objectives.

10 The 1990 appropriations bill is very close. There was
11 the McCollum/Stenholm package of amendments. There was a vote
12 of 199-to-206 in the House of Representatives.

13 CHAIRMAN WALLACE: Excuse me. Let's try to keep the
14 room in order, especially around the Court Reporter. Proceed,
15 Mr. Boehm.

16 MR. BOEHM: During the course of the FY 1990
17 appropriations, there were a package of amendments, the
18 McCollum/Stenholm package of amendments, which came very close
19 to passing. It was 199-to-206 in the House of Representatives,
20 with a significant number of absences, for a variety of
21 different reasons.

22 Many of the amendments, as you are familiar with, are

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1 issues that have been discussed among the Board of Directors
2 here. There was a lot of debate on the floor to the effect that
3 many of the amendments were acceptable, although some individual
4 members had some objections to particular parts of them.

5 The feeling is that the package of amendments will be
6 one of the things that will be under discussion when the
7 reauthorization process gets underway next year in Barney
8 Frank's subcommittee.

9 So, that was viewed, in some cases, as an being
10 particularly helpful to the initiatives taken by this Board.
11 For example, the question of redistricting and whether Legal
12 Services' grantees should be involved in the redistricting
13 questions, which is particularly timely because of the Census
14 coming up and so forth.

15 So, that was yet another example of Congress following
16 up on what they did in 1988. In 1989, in effect, giving their
17 substantial stamp of approval, it failed, but in terms of the
18 rhetoric of the debate to many of the initiatives taken by the
19 Board of Directors.

20 Mr. Wear was very much involved with that. Many
21 Congressmen asked to talk with him. I participated in some of
22 the meetings and he was well received. The fact that the vote

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1 was as close as it was, with many of the comments, even from
2 people opposing it, to the extent that they favored many of
3 them, I think, was a vote of confidence for the Board of
4 Directors because many of these first saw the light of day as
5 initiatives by the Board of Directors.

6 There have been a number of other committee and so
7 forth on the Hill. As mentioned earlier, the House Subcommittee
8 on Administrative Law has held hearings. That has gone into a
9 number of areas such as the area of applying federal waste,
10 fraud and abuse statutes to Legal Services.

11 In that area, yet again, there seems to be an emerging
12 consensus on the Hill by people on both sides, if you will, of
13 the debate, that there is a need in this area. Congressman
14 Frank has said as much on some of the examples that were brought
15 forth in that particular set of hearings.

16 There is a strong feeling that that was one of the
17 areas in the package of amendments where there seems to be the
18 most consensus. In 1990, that would then be one of the
19 particular points of the authorization.

20 In terms of the public affairs, a couple of different
21 points. Our LSC Record has just been coming out for the last
22 year. We've had three issues out. That was at the direction of

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1 the Board of Directors.

2 It has a substantial distribution. As noted here, we
3 send it out not only to the programs and members of Congress,
4 but to many leaders and members of the State and local Bar
5 Associations. It has dealt with a number of the issues related
6 to the Legal Services community.

7 In cases where there have been controversial issues,
8 and redistricting is one that comes to mind again, there have
9 been opportunities for both the majority and minority views on
10 the Board of Directors to be represented within the Legal
11 Services Record.

12 There is a third edition that has just come out. To
13 my understanding, it hasn't been distributed. It will be
14 distributed to the Board; that just came out within the last day
15 or so. We are going to continue to publish that, as directed by
16 the Board of Directors.

17 We are going to be increasing some of our press
18 initiatives. We sent out a press release on a variety of
19 different issues. We have one that is underway now,
20 complimenting the close work between not just the Corporation
21 but the field programs and a New York program that was in the
22 process of having financial difficulties.

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1 I really am probably stepping on Amelia's turf on this
2 one, but the Corporation worked very closely with the New York
3 field programs to incorporate the surface area of the one that
4 was having difficulties with another program that was not having
5 difficulties, to the satisfaction of all the parties involved.

6 It saved the Corporation a lot of money. Mr. Wear was
7 personally involved in it. It was an example of cooperation
8 that sometimes is put off in the background because of all the
9 controversy that seems to take the spotlight.

10 As I say, that's an example of a release that's in the
11 works now. It's a success story that, although it's short, I
12 think it's sweet. With that, I'll turn it over to Amelia
13 DeSanto.

14 Presentation of Emilia DeSanto

15 MS. DeSANTO: Good afternoon. My name is Emilia
16 DeSanto. I am the Director of the Office of Monitoring, Audit
17 and Compliance. I have been asked to report to you today on the
18 activities of the Office of Monitoring, Audit and Compliance
19 over the last 18 months, and I truly appreciate this
20 opportunity.

21 Over the last 18 months, MAC has conducted over 270
22 on-site monitoring and compliance reviews. These reviews were

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1 conducted according to the policies and procedures set forth in
2 LSC's Monitoring Handbook, which was issued in March 1989.

3 In addition, these on-site reviews were conducted by
4 individuals who received training during 1988 and during 1989
5 on, among other things, the LSC Act, its implementing
6 regulations, and the law governing 501(c)(3) not-for-profit
7 corporations.

8 As a result of these on-site reviews, MAC has issued
9 over five hundred monitoring reports. Each of these monitoring
10 reports includes findings of fact, areas requiring further
11 review, significant accomplishments, and recommendations to the
12 program intended to enhance the provision of legal assistance.

13 Subsequent to the issuance of monitoring reports, MAC
14 engages in numerous followup actions. These actions include the
15 issuance of appropriate followup correspondence to recipients
16 regarding their activities and their operations.

17 In addition, in the last 18 months, MAC issued over
18 forty notices of corrective action. Each notice includes
19 approximately five or more areas requiring the program's
20 attention first. Also, MAC issued seven notices of question
21 costs and final determinations.

22 Apart from these actions, MAC executed two settlement

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1 agreements. One was with regard to the inappropriate
2 expenditure of LSC funds and the other involved the
3 establishment of an alternate provider, which Mr. Boehm talked
4 about briefly just a moment ago.

5 Subsequent to the issuance of monitoring reports, MAC
6 has also performed about twenty on-site followup monitoring and
7 fiscal reviews at the programs. We have also coordinated
8 referrals and provided support to the appropriate law
9 enforcement officials, including but not limited to United
10 States Attorneys, State Attorney Generals and the Internal
11 Revenue Service.

12 In addition to these followup actions, taken after a
13 report has been issued, MAC engages in numerous day-to-day
14 activities over the past 18 months. First, MAC provided timely
15 responses to 150 complainants and developed a complaint data
16 base. MAC has also conducted independent research on such
17 issues as the attorney/client privilege and the measures of
18 efficiency and effectiveness of non-profit corporations.

19 MAC has reviewed over 350 independent audit reports.
20 It has also identified recipient fund balances and private
21 attorney involvement expenditures in coordination with the
22 Office of Field Services. In addition, work plans and briefing

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1 materials have been prepared for each on-site monitoring and
2 complaint review.

3 In addition, MAC has developed and maintains data
4 bases that include information on governing bodies, Bar
5 Associations and non-LSC funding sources. Pursuant to its
6 authority, to the Corporation's authority under 45 CFR, part
7 1630.5, MAC provided over 120 timely reviews and responses to
8 recipient requests for approval to expend LSC funds.

9 MAC has also worked with the Office of the General
10 Counsel to develop two preliminary notices to suspend funding as
11 a result of denial of access to documents. MAC has also
12 provided timely responses to routine grantee correspondence.

13 In addition, followup reviews have taken place in all
14 instances where recipients have identified the loss of client
15 trust funds. On an administrative note, in the past 18 months,
16 MAC has computerized and revised the independent consultant
17 contracts to enhance efficiency.

18 Also, revised travel guidelines were issued to each
19 independent consultant to ensure the effective and efficient use
20 of LSC resources. Finally, MAC has increased the levels of
21 review for all monitoring reports prior to their issuance to
22 each grantee.

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1 Most of the activities that we have identified have
2 been performed over the past 18 months and are ongoing. They
3 serve as the basis for MAC's continued review of the activities
4 and operations of LSC's recipients.

5 Once again, I thank you for this opportunity.

6 CHAIRMAN WALLACE: Thank you, Ms. DeSanto.

7 Are there further speakers to come forward on the
8 regulatory and other areas?

9 MR. WEAR: Mr. Chairman, yes, there are. Next will be
10 Mr. Shea to cover the regulatory matters and Ms. Ellen Smead to
11 cover the issues on field services.

12 CHAIRMAN WALLACE: I will ask these witnesses not to
13 go far, because questions will begin in about 15 minutes. Mr.
14 Shea, why don't you go ahead while Ms. Smead is getting here?

15 Presentation by Timothy Shea, Esq.

16 MR. SHEA: Thank you, Mr. Chairman. As the Board
17 Members well know, the Office of General Counsel has full
18 responsibility for preparing proposed regulations for
19 consideration by the LSC Board.

20 In the last year and a half or so, there have been
21 five separate matters that the Office of General Counsel has
22 prepared for Board debate. Typically, as you know, what this

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1 involves is:

2 First, preparation of a legal discussion as well as
3 factual materials that bear on policy decisions; the publication
4 of either a proposed rule or a Notice of Proposed Rulemaking in
5 The Federal Register; examination of comments; a summary of the
6 comments; a debate leading to a vote by the Board of Directors
7 with respect to particular rules.

8 There were two rulemakings or notices of advanced
9 proposed rulemaking in the notice in The Federal Register with
10 respect to the implementation of a competitive system for the
11 awarding of grants. As the Board knows, in the 1989
12 appropriations language, there was a mandate that the Board
13 proceed to evaluate a competitive award system.

14 There were two such notices made. Hearings were held
15 by the Board and I think actually by a competition committee.
16 Comments were received, issues were identified, and staff has
17 been pursuing both the legal and practical issues that were
18 identified in those hearings.

19 Secondly, there was a 45 CFR, Part 1632, a rule
20 prohibiting involvement by recipient attorneys in redistricting
21 and census litigation was passed by the Board of Directors and
22 was put in place in August of 1989. That prohibition provides

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1 that LSC recipients cannot, either with LSC money or private
2 money, undertake litigation that would result in the challenge
3 of the census or result in a reapportionment of any vote against
4 redistricting.

5 The third item was the Board passed an amendment to
6 its regulation 45 CFR, Part 1609 which deals with the
7 prohibition on fee generating cases. Our statute and the
8 existing regulation prohibits LSC recipients from pursuing fee
9 generating cases.

10 In this proposed rule, the changes would have
11 tightened existing provisions with respect to identification of
12 potentially fee generating cases and, as well, would have
13 provided that, beyond certain thresholds, fees would have been
14 returned to the Corporation, ultimately to be redistributed to
15 programs that are funded on the lowest levels.

16 Although that regulation was passed by the Board, the
17 language in the 1980 Supplemental Appropriations Act and in the
18 1990 LSC Appropriations Act precludes implementation of that
19 rule, so it's not in place.

20 Similarly, the Board passed a regulation or amendments
21 to its existing regulation dealing with legal services to
22 aliens. Among other things, there was a provision of that

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1 amended rule which would have precluded the provision of legal
2 services to Amnesty aliens. That also was finalized in I
3 believe it was approximately May of 1990.

4 Thereafter, the provision was challenged by a number
5 of plaintiffs, including some program plaintiffs, and it has
6 been enjoined by a District Judge in California. The matter is
7 now on appeal.

8 I might add the only issue there was provision of
9 legal services to Amnesty aliens; that was implementing portions
10 of the Immigration Control Reform Act of 1986. The Attorney
11 General prefers the view that I urged on the Board, namely, that
12 that law specifically precludes provision of legal services to
13 Amnesty aliens for a certain period of time. The District Judge
14 and the Court so far has disagreed.

15 The final matter was the proposed adoption of
16 amendments to LSC regulations governing the use of private
17 funds, 45 CFR Part 1610. As you know, the Legal Services Act
18 has a number of restrictions on what can be done with LSC funds.
19 There are likewise restrictions and prohibitions on what can be
20 done with private funds. Those are identified in Part 1610.

21 Those, as well, have been affected by the Supplemental
22 Appropriations Act of 1989 and the 1990 Appropriation Act, so

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1 that those amendments, although adopted by the Board, have not
2 been put in place. That's all I have on regulations.

3 CHAIRMAN WALLACE: Thank you, Mr. Shea.

4 Ms. Smead?

5 Presentation of Ellen Smead

6 MS. SMEAD: Thank you. My name is Ellen Smead and I
7 am the Acting Director of the Office of Field Services. My main
8 responsibility is the administration of grants.

9 During the past 18 months, we have revised the funding
10 process for our annualized grants in that we have revised the
11 refunding application so that we get more objective data so that
12 we can compare from program to program.

13 This has also made it easier to prepare a Fact Book,
14 which also has very useful data in it in terms of the operation
15 of programs.

16 We have also computerized the review, so that we have
17 been able to cut down on the time and resources required for
18 reviewing.

19 In the grant award process itself, for the first time
20 last year, we worked with enforcing the Congressional
21 requirements in the McCollum Amendment, which requires local
22 majority bar associations to make director appointments to

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1 boards of directors of local programs.

2 We have also, on a related matter, worked with
3 approximately sixty programs and helped them with amendments to
4 their by-laws, to give them advice on whether they comply with
5 the Act.

6 On other grant conditions, we have also become aware
7 of loss of funds through fraud or abuse, and the programs are
8 now required to report any alleged loss of funds. We have
9 already produced a Fact Book. We do expect to have another Fact
10 Book come out very shortly.

11 Several programs are required to report to us on their
12 activities on a routine basis. Hopefully, this will make it
13 easier for them to report, but also supply us with more
14 objective data.

15 We also, in addition to regular funding, handle one-
16 time grants. Our latest project there is our law school
17 clinical program. This is a competitive program which not only
18 means we are able to provide more services, but it also has
19 given us experience with the administration of competitive grant
20 making.

21 We have been involved in training matters, too. We
22 have helped with the coordination of three trainings on trial

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1 advocacy. These are advanced trainings in the NITA style. We
2 have also coordinated training on Native American issues.

3 There was a conference held in July of this year for
4 client self-help and we are currently working to develop a
5 packet of training materials for the Board Members of local
6 Legal Services programs. That's all I have for right now.

7 CHAIRMAN WALLACE: Thank you, ma'am.

8 Administration and Human Resources is our next
9 witness?

10 MR. WEAR: Yes, Mr. Chairman. If I may, I'd like to
11 ask Mr. Richardson and Ms. Dickerson to come forward.

12 CHAIRMAN WALLACE: All right. These two witnesses
13 have seven minutes.

14 Presentation of David Richardson, Corporate Treasurer

15 MR. RICHARDSON: My name is David Richardson, the
16 Corporate Treasurer. I'll be brief.

17 In the last 18 months, I think we've had some major
18 items addressed by Mr. Wear. The main one that comes mind, of
19 course, in my area is in the area of finances. In 1987, we
20 spent \$10,800,000 in regards to our management and
21 administration.

22 In '88, when Mr. Wear came aboard, we were running

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1 very close to going over budget. We then put a spending freeze
2 on and ended up spending \$9.9 million. Last year, in '89, we
3 spent \$9.0 million.

4 One of the main reasons for that was because we were
5 so late, of course, in receiving the final consolidated
6 operating budget last year. It was March of last year before we
7 were able to put one in place.

8 Also, under his tenure, we've had a major
9 restructuring. We no longer have an Office of Management
10 Services. That has been incorporated with my office, the
11 Comptroller's Office, and we have now established an Office of
12 Financial Administrative Services.

13 We continue to move forward there and show great
14 improvement in our production of activities, also. We are, at
15 this time, trying to clarify work on case service report
16 definitions. We have identified some problems there and we are
17 trying to clarify those so that we can get them into the field
18 in our grantees' hands in the next few weeks.

19 We have also looked at timekeeping. We have reviewed
20 the GAO report. We are devising a way of timekeeping
21 requirements, and we hope to have something before the Board
22 very shortly on that, also. Again, this is all being done under

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1 Mr. Wear and the accomplishments that we have seen come forward
2 are as a direct result of his guidance in these areas.

3 CHAIRMAN WALLACE: Ms. Dickerson?

4 Presentation of Alice Dickerson

5 MS. DICKERSON: I am Alice Dickerson. I am Director
6 of the Office of Human Resources. I am happy to have this
7 opportunity today to make you aware of some of the significant
8 accomplishments that we have made in the area of human resources
9 over the last 18 months.

10 During that time, we have implemented a new benefit
11 package for employees who have been hired since October of 1988
12 who were excluded from the federal benefit plans by Public Law
13 100-238.

14 In addition to that, we have implemented a Merit
15 Performance Evaluation System, which has been very well accepted
16 by employees and we are seeing an increase of morale now that
17 employees feel that they are being recognized for their
18 performance.

19 In March of this year, as David Richardson mentioned,
20 the Office of Management Service was reorganized and
21 incorporated into what has become the Office of Financial
22 Administrative Services.

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1 We have also taken some very important steps this year
2 toward becoming a proactive, or toward practicing proactive
3 employee relations. This was implemented through a three-step
4 process in which Mr. Wear advised all management personnel of
5 his desire to implement a proactive employee relations program.

6 Employee were advised that this was the manner in
7 which employee relations would be handled. As the third part of
8 implementing this process, we then conducted management training
9 to enhance the skills of all of our managers so that we could
10 move forward in proactive employee relations.

11 In addition to that, we have conducted sexual
12 harassment awareness training for employees and management
13 personnel, so that we could make them aware of what constitutes
14 sexual harassment in the workplace and also what potential
15 liability that may pose for the Corporation.

16 In January of 1990, we plan to implement a Section 125
17 Cafeteria Plan, which will enable the employees who participate
18 in the LSC Health Plan to contribute their share of their
19 contributions to the plan on a pre-tax basis. We are also
20 reviewing other possible areas for consideration of the
21 Corporation in that plan, which would include dependent care and
22 possible medical reimbursement.

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1 I thank you for this opportunity.

2 CHAIRMAN WALLACE: Thank you, Ms. Dickerson.

3 Mr. Wear, there are two minutes remaining. Do you
4 have anything to say or any further witnesses?

5 MR. WEAR: Mr. Chairman, I don't believe so. I yield
6 back my time.

7 CHAIRMAN WALLACE: Thank you all. We are now
8 available for questioning of these witnesses or anything else
9 that anybody on the Board wants to get into under the heading
10 7A.

11 Are there questions for the witnesses?

12 (No response.)

13 Is there any debate on 7A?

14 (No response.)

15 There is no motion pending, but if anybody has any
16 comments to make, I will recognize Mr. Durant for the purposes
17 of saying what he wants to say.

18 MR. DURANT: I appreciate that, Mr. Chairman. I'd
19 just simply like to say under 7A that Terry, I'm glad you are
20 our president. I think you have done a good job and I would
21 sure vote to support you again.

22 MR. WEAR: Thank you.

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1 CHAIRMAN WALLACE: Does anyone else have anything to
2 say about the subject? There is no motion, as 7A, B and C so
3 far are discussion items, unless somebody wants to take some
4 action.

5 If there is no further discussion on 7A, I will
6 proceed with the agenda to 7B, which concerns the report and
7 accounting of use of outside law firms by Corporation staff. I
8 remind the Board we have discussed this at some length two weeks
9 ago. If there is anything further to be developed on this
10 issue, the floor is open at this point.

11 Does anyone seek recognition on 7B?

12 (No response.)

13 I hear no one seeking recognition on 7B. 7C is Report
14 and Accounting Pursuant to Lobbying Activities by Corporation
15 Staff. Again, we have discussed this two weeks ago. It is
16 available for further discussion.

17 Does anyone seek recognition on 7C?

18 (No response.)

19 I hear no one seeking recognition. I'm sorry. Mr.
20 Erlenborn?

21 MR. ERLENBORN: Mr. Chairman, I was not, of course, on
22 the Board or was not physically present at the last meeting,

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1 having been appointed just the day before that meeting, so I
2 didn't take part in that discussion.

3 I have read the transcript of that meeting, the debate
4 back and forth, and I've also read the legal opinion relative to
5 lobbying activities. Let me say I've not done any legal
6 research, nor do I intend to, as to the legality of lobbying.

7 My own feeling, as a member of Congress when we were
8 discussing limitations on the Legal Services Corporation
9 relative to lobbying was that members of Congress didn't like
10 the idea of appropriating money so that the recipients of those
11 appropriations could use that money to lobby Congress or to
12 conduct grass roots lobbying.

13 I think, certainly, there is a good deal of this that
14 goes on in the administration, by various secretaries of other
15 agencies and departments, so it is not altogether out of line.
16 But, from the discussion I read at the last meeting, I must say
17 that I am a little nervous about it and a little unhappy about
18 the kind of lobbying that I have heard. Just put that on the
19 record.

20 CHAIRMAN WALLACE: Thank you, Mr. Erlenborn.

21 Any further comments on 7C? Mr. Smegal?

22 MR. SMEGAL: I want to ask unanimous consent for a

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1 minute.

2 Mr. Wear, what is the Legal Services reform?

3 MR. WEAR: What is your question, Mr. Smegal?

4 MR. SMEGAL: What is Legal Services reform?

5 CHAIRMAN WALLACE: Mr. Wear.

6 MR. WEAR: Thank you, Mr. Chairman. Mr. Smegal, when
7 I came on board the Legal Services Corporation, a number of
8 Board Members commonly, I guess, denominated by the press and
9 others as the conservative group, the reform group, mentioned to
10 me they were interested in shifting the Legal Services program
11 away from what it had been doing and to get the program into the
12 day-to-day legal services for individual poor people; that is,
13 helping individual poor persons with their child support claims,
14 with individual landlord/tenant complaints and to get the
15 programs out of the esoteric law suits or esoteric issues that
16 some of the programs, at least in the past, had a track record
17 of becoming involved with.

18 MR. SMEGAL: Excuse me, Mr. Wear. Is there a Legal
19 Services Reform Coalition?

20 MR. WEAR: Yes, sir, there is.

21 MR. SMEGAL: Is that a special interest group?

22 MR. WEAR: I wouldn't say so, no more than the people

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1 on the other side.

2 MR. SMEGAL: What does that mean, the people on the
3 other side of what?

4 MR. WEAR: Those who did not favor reform.

5 MR. SMEGAL: That is not a special interest group, the
6 Legal Services Reform Coalition?

7 MR. WEAR: I would characterize it, Mr. Smegal, as a
8 group that is interested in getting Legal Services out of the
9 front pages of the newspaper and into the business of handling
10 nuts and bolts legal work.

11 They are people who, as I understand it, and I've had
12 occasion in the last months to go back and read some of the
13 history of Legal Services, who have been interested in getting
14 Legal Services back to its basic mission when it was set up in
15 1974.

16 Now, if you consider that a so-called special interest
17 group, you know, perhaps it is; I don't know. I know that this
18 group also has other interests. I know that it is interested in
19 the reform of Legal Services.

20 MR. SMEGAL: What other interests?

21 MR. WEAR: I don't know. I know that the people
22 involved are also involved in other issues. The American Farm

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1 Bureau, for example, in the past, has -- at least in my
2 knowledge -- always been interested in the welfare of the
3 American farmer.

4 MR. SMEGAL: Is that a special interest group?

5 MR. WEAR: The American farmer?

6 MR. SMEGAL: Yes.

7 MR. WEAR: I suppose it depends on who you talk to.
8 The American farmers don't consider themselves a special
9 interest group. They consider themselves God-fearing tax payers
10 who are interested in making sure that their voice is heard in
11 Washington, among other things.

12 MR. SMEGAL: Who is David King?

13 MR. WEAR: I believe that he is a government relations
14 consultant who works here in the District of Columbia.

15 MR. SMEGAL: Does he chair the Legal Services Reform
16 Coalition?

17 MR. WEAR: I believe he does. Oh, he may not. I beg
18 your pardon. I'm told --

19 MR. SMEGAL: Linda Whitley from the Farm Bureau is
20 shaking her head and pointing to herself.

21 MR. WEAR: I believe she is the Chairman, Mr. Smegal.
22 Mr. Smegal, if you'd like, Ms. Whitley might be willing to come

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1 forward to talk to you about the group. She probably knows it
2 better than I.

3 MR. SMEGAL: My question, I guess, is answered. I
4 asked if you understood the Legal Services Reform Coalition to
5 be a special interest group but I guess I hear you saying you
6 don't. If you don't, I have no interest in talking to anyone
7 else about it.

8 MR. WEAR: Well, I think Mrs. Whitley can offer her
9 explanation of that perhaps better than I can. I do not
10 consider them a special interest group, per se.

11 CHAIRMAN WALLACE: We can, but apparently Mr. Smegal
12 does not want to question her and I'm not sure whether any other
13 Board Member does. Mr. Smegal, do you have any further
14 questions of anyone?

15 MR. SMEGAL: I do not.

16 CHAIRMAN WALLACE: Any further questions or any
17 further discussion on 7C?

18 (No response.)

19 Is there any further business of any sort under the
20 heading 7A, 7B or 7C, the Performance Appraisal of President
21 Wear and action thereon?

22 MR. EAGLIN: I have a motion to make with respect to

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1 that.

2 CHAIRMAN WALLACE: Mr. Eaglin is recognized.

3 Motion

4 MR. EAGLIN: My motion is to discharge Terrance Wear
5 as President of the Legal Services Corporation for cause for his
6 failure to carry out his obligations as President of the
7 Corporation.

8 CHAIRMAN WALLACE: There is a motion to discharge Mr.
9 Wear for cause. Is there a second?

10 MR. SMEGAL: Second.

11 CHAIRMAN WALLACE: The motion has been made and
12 seconded that Mr. Wear be discharged for cause. Mr. Eaglin, you
13 are recognized in support of your motion.

14 MR. EAGLIN: My concern concerning the conduct of
15 President Wear has to do with a number of areas. Since he took
16 over as President, our relations with Congress I think have
17 worsened as compared to what they were with President Bayly.

18 I am concerned that, in his conduct as President, has
19 on occasion issued press releases, and the specific one that I'd
20 like to refer to is the one that I referred to at the last
21 meeting and that was the June press release indicating that this
22 Corporation was vowing to resist Sen. Rudman with respect to

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1 some Congressional action that the Senator was engaged in and
2 interested in.

3 This was released as a press release by this
4 Corporation under the authority of President Wear. Of course,
5 I'm concerned with lobbying. We went through that the last
6 time. We don't need to go through all of that again.

7 I am opposed to what was done with respect to grass
8 roots lobbying, with respect to lobbying anybody for positions,
9 for nominees for this Board, the Board that will succeed us. I
10 think it is wrong.

11 I'd like to recall, too, before I go on to a couple of
12 other points, it is also my understanding that the funds
13 appropriated to this Corporation were not appropriated to permit
14 President Wear or Mr. Wooten anybody else to use those funds to
15 engage in lobbying for nominees who are of interest only to
16 them.

17 At the confirmation hearing in the spring of '85, we
18 were already recessed to this Board, you remember, the year
19 before. But, I remember it was either during a break of the
20 hearing or at the conclusion of the hearing, Sen. Hatch was
21 coming down to speak to a number of persons who were there in
22 the room.

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1 The particular scene that I remember was he spoke to
2 Basile Uddo and me concerning a number of activities. I don't
3 know if you remember that, but he said that the political
4 activities of the Corporation are wrong. It doesn't remember
5 whether it is Republican, Democrat, liberal or conservative. I
6 remember that specifically. There were just the two of us,
7 because people were milling about in the room.

8 I agreed with him then, and that is still my view,
9 that we did not hire him and he did not hire Mr. Wooten to use
10 Corporation funds, their salary, and the resources of this
11 Corporation to engage in the activities that they engaged in as
12 described at the last meeting.

13 The information that came to light just this morning
14 is new, but it indicates to me that Mr. Wear is lacking in his
15 control of the staff or, to whatever extent he is responsible
16 for what I heard there this morning, then he is also out of
17 control, just as Mr. Wooten is out of control.

18 His relations to this Board and his comment at the
19 last meeting, specifically with respect to me and to others, as
20 he didn't reserve it just to me, but his own comments indicate
21 that his feelings towards the Board and his obligation as
22 President is to work for this Board. It doesn't matter whether

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1 I am in the minority on votes on the Board; he still has an
2 obligation to work with me.

3 Mr. Bayly did that very well, better than anybody
4 else. I was in the minority when Mr. Bayly was president, as I
5 am now, and yet, he managed to have good relations with me and
6 kept me informed about what was going on, even though I was out
7 voted on case after case in different matters.

8 Then the last thing that I wrote to all of you about,
9 and actually, it's a letter addressed specifically to Mr.
10 Wallace and Mr. Wear, is a matter that just came to my
11 attention. It was a concern about a news release that came out
12 of the Corporation criticizing a Trial Court Judge about a
13 matter that came out of Texas.

14 I don't think it is appropriate for Mr. Wear to issue
15 releases criticizing Trial Court Judges who have before them, I
16 think, all the information that that man might need in order to
17 make a decision about an appropriate sentence.

18 I am speaking specifically about Patrick Clark. I'm
19 not saying I support what Mr. Clark did. I'm speaking about the
20 criticism that was levelled at the Trial Court Judge by this
21 Corporation on the authority of Mr. Wear in that press release.
22 It is not appropriate to do that. I think he is out of line.

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1 I think, with respect to these activities and other
2 matters, he shows a severe lapse of judgment and he is not the
3 type of person we need heading this Corporation now.

4 CHAIRMAN WALLACE: Thank you, Mr. Eaglin.

5 Is there further debate on the motion? Who seeks
6 recognition? Mr. Valois.

7 MR. VALOIS: We have all been -- Most of us have been
8 on this Board since, I think, 1984. We have had four presidents
9 by my count -- Mr. Bogard, Mr. Winslow, Mr. Bayly and now Mr.
10 Wear. Not one of those presidents has had perfect relations
11 with Congress and I suspect no occupant of this particular job
12 ever will.

13 In my opinion, contrary to Mr. Eaglin's, Mr. Wear has
14 had probably the most open, frank, fair and free exchange with
15 Congress and I think he has gained their respect, as reflected
16 in this several page document that you all have been given a
17 little while ago.

18 Frankly, without naming his predecessors, from my
19 standpoint and I think the standpoint of every member of this
20 Board, he has been more responsive to any request we have made.
21 Things get done. The Corporation morale is better. I frankly
22 think he has done a terrific job as president.

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1 None of us is perfect and I will certainly go to the
2 top of the list on that, but there is nothing that I have heard
3 over the several days of this discussion that, in my opinion,
4 warrants any finding of cause for discharge. Weighed in any
5 manner you want to weigh it, Terry Wear has put his shoulder to
6 the wheel and done a heck of a good job to move Legal Services
7 forward.

8 The fact that my friend Paul Eaglin and my friend Tom
9 Smegal don't happen to agree with the culture or the objective
10 of those of us, the majority of us, who have tried to have a
11 different kind of Legal Services is certainly not cause to
12 discharge Terry Wear. Yet, that's all you're dealing with here.
13 That's all you've ever dealt with here is they don't like the
14 program; they are frustrated; they want to take it out on
15 somebody and Terry Wear is available, they think.

16 I hope that after the vote is taken, they will find
17 out that they are wrong.

18 CHAIRMAN WALLACE: Who seeks recognition? Mr. Uddo.

19 MR. UDDO: I'm not going to try to address everything
20 because, really, for me, the whole thing boils down to the
21 relationship of the Board as a whole. I think it is a mistake
22 to characterize this as solely a question of majority and

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1 minority or a question of conservative or liberal.

2 I think I have said on the record a number of times
3 that my voting record is much more conservative than it is
4 liberal and yet, Terry, who I have absolutely no personal animus
5 toward and no personal disagreement with, has consciously made
6 the decision that not all Board Members are going to be treated
7 the same. Not all Board Members are going to get the same
8 information, the same consideration and the same consultation as
9 others.

10 I think that is inappropriate. I don't think the
11 president of a corporation, let alone one like this that is
12 serving a public function, ought to be picking and choosing
13 which directors he is going to deal with.

14 We know that this Corporation is political. It is
15 unlike your ordinary business corporation. The fact of the
16 matter is that we are entitled to have political differences and
17 we are entitled to have them based upon the facts, everyone
18 getting the facts, and everyone having the same amount of
19 information.

20 I think it is inappropriate for the president
21 unilaterally to make the decision that certain people are not
22 going to get the same information, are not going to get the same

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1 consideration, not have the same opportunity to weigh the issues
2 and to make decisions according to the information that all
3 directors have.

4 I think on the two specific issues that we have
5 reviewed, I think that it was wholly inappropriate to expend the
6 kind of money that was spent on outside counsel on the question
7 such as the constitutionality of the Corporation. To me, that
8 was a total waste of money and that should have come to the
9 Board.

10 If there was a serious legal constitutional issue
11 there, this Board should have had an opportunity to debate
12 whether or not we should expend money on reviewing that and to
13 debate who should review the question and to debate whether or
14 not something should have been pursued and a vote should have
15 been taken and that would have been a completely different
16 story.

17 Instead, a few Board Members apparently made the
18 decision and I think the president abdicated his responsibility
19 when he allowed that to go on, even so far as to add additional
20 resources to making a judgment about whether or not the board
21 would have standing to sue for what -- the declaration of the
22 unconstitutionality of the Corporation?

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1 I mean something with such tremendous implications for
2 this program should never have been done in secret. If that was
3 a legitimate question, it should have been done open to public
4 scrutiny, public debate. If six members of this Board were
5 willing to vote in favor of a lawsuit to declare the
6 unconstitutionality of the Corporation, let them do it and let
7 them do it in open public session and public debate.

8 I think Mr. Wear, again, abdicated his responsibility
9 by letting that go forward without it being subjected to the
10 appropriate procedures.

11 I won't belabor the lobbying, but I agree with Mr.
12 Erlenborn and Mr. Eaglin. It is inappropriate. It is
13 inappropriate for anyone -- again, in secret, without a Board
14 vote, without some sort of judgment that this is the position of
15 the Corporation -- to go on and to hold out a list of persons as
16 the Corporation's list for appointments to the Board.

17 If it was going to be done -- and, again, I agree with
18 Mr. Erlonborn: I don't think it should have been done, period,
19 but if it was going to be done -- there is a way to authorize
20 that; there is a way to debate it; there is a way to make a
21 judgment about whether or not corporate resources should be
22 spent on that.

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1 So, contrary to what Mr. Wooten said this morning, I
2 am not interested in character assassination. I am not
3 interested in saying anything derogatory about Mr. Wear
4 personally. It is a matter of substance, a matter of issues.

5 I think Mr. Wear has made a decision to adopt a
6 relationship with this Board that I think is unacceptable and,
7 therefore, I'm going to support the motion.

8 MS. SWAFFORD: Mr. Chairman.

9 CHAIRMAN WALLACE: Ms. Swafford is recognized.

10 MS. SWAFFORD: Yes. This, I guess, would be addressed
11 to Professor Uddo. Professor Uddo, don't you think, in light of
12 what has gone on here today, that it might be appropriate for
13 you to recuse yourself from voting on this issue?

14 MR. UDDO: Absolutely not.

15 MS. SWAFFORD: Well, I would go on record that I
16 believe that it would be appropriate and would ask you to do so.

17 MR. UDDO: I appreciate you doing that because it just
18 rounds out the whole picture and it confirms what I said this
19 morning when we started. The whole thing was an attempt to
20 leverage me out of voting and I am not going to be leveraged out
21 of voting on this issue.

22 MS. SWAFFORD: Basile, one other thing. I did not

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1 know, so there is no preconceived attempt on my part.

2 MR. UDDO: All right.

3 CHAIRMAN WALLACE: Who seeks recognition? Mr. Durant
4 and Ms. Benavidez will be next.

5 MR. DURANT: Thank you, Mr. Chairman. A couple of
6 things. Number one, first of all, I don't mind if you vote,
7 Basile.

8 Second, though, I think if we look at these changes
9 that have taken place when we've talked about our four different
10 presidents that Mr. Valois talked about, when we decided to make
11 a change, in each of those cases, there were people who were
12 initially supportive of a particular candidate or, if you will,
13 there was a bipartisan decision that changes ought to be made.

14 Clearly, though, that doesn't exist here. When we
15 made the change that brought in Mr. Wear, previous supporters of
16 our other president decided that a change was also necessary. I
17 think it is clear that Mr. Wear has tried to effectuate the
18 majority policy of the Board in terms of bringing about changes.
19 There is disagreement about that.

20 The criticisms of Mr. Wear's performance may focus on
21 one or two things that perhaps, you know, could have been
22 handled in a different way and were not, but are, nonetheless,

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1 more designed to undermine Mr. Wear and to remove him from
2 office when, in fact, he has done an admirable job under very
3 difficult circumstances.

4 I do not think any one of us would accept the job. It
5 is to his credit that despite the diversity of our personalities
6 and our interests, he has tried to act in a way that would
7 reflect a majority position of the Board.

8 I think, to some extent, the Board is at fault if
9 there is concern that there has not been the proper
10 communication between the president and members of the Board.
11 If you recall, Mr. Wallace twice -- even at the time when Mr.
12 Bayly was first made president -- had recommended that we
13 establish a policy that all of us could agree on in terms of
14 relationships and how things ought to be handled between the
15 president and members of the Board.

16 All of us were in favor of trying to do something in
17 particular but, unfortunately, for whatever reason, that has
18 never been adopted, so I think to fault Mr. Wear for things that
19 may very well, frankly, be our fault as a Board is, frankly,
20 unfair.

21 I think, again, that it is a reflection of more the
22 political differences, no more than how they may be framed in

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1 other things, but the political differences that exist among the
2 Board. As I say, those who, for the most part if not
3 substantially always, opposed the reforms that have been
4 attempted by this Board are now looking for Mr. Wear's scalp.

5 I think Terry has done an admirable job. I intend to
6 vote against the motion. I am glad that he has been here the
7 time that he has been.

8 CHAIRMAN WALLACE: Thank you, Mr. Durant. Who seeks
9 recognition? Mr. Smegal.

10 MR. SMEGAL: I do not want to belabor this, but I do
11 want to make sure that the record clearly reflects that
12 everything that Mr. Eaglin said and everything that Mr. Uddo
13 said are words that I would have said had I had the opportunity
14 to speak first.

15 CHAIRMAN WALLACE: Thank you, Mr. Smegal. Ms.
16 Benavidez, I'm sorry, I promised you before Mr. Smegal. You are
17 recognized.

18 MS. BENAVIDEZ: Well, for the record, I want the Board
19 to know that I agree with Mr. Uddo. I do not like the way Mr.
20 Wear handled the matters. He never consulted with us. He is
21 supposed to represent the poor. We have two client members and
22 he never called us about. He left us aside. Everything was in

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1 secret and I want the record to reflect that.

2 CHAIRMAN WALLACE: It will so reflect. Thank you, Ms.
3 Benavidez.

4 MS. MILLER: I echo everything that the last,
5 excluding Mr. Durant, said.

6 MR. DURANT: Let the record reflect.

7 CHAIRMAN WALLACE: The lady from Michigan has made a
8 point, I think, and the gentleman from Michigan understands it.
9 Who else seeks recognition? Mr. Erlenborn.

10 MR. ERLENBORN: Let me say that it is obvious that
11 there is a lot of history that has gone on for the last several
12 years that leads up to this point that has, I think, created
13 some obvious animosities and has set the tone for the debate in
14 the last couple of meetings. This is the only one, of course, I
15 have attended, but I have looked at the record of the previous
16 one.

17 I was hoping that maybe the whole issue could be
18 avoided. That is very difficult to do but it had been reported
19 in the press that the president might make additional recess
20 appointments early next year before the Congress goes back into
21 session.

22 Obviously, if that was done, there would be a new

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1 board to look at this and make the decision. As far as I can
2 tell, that's not likely to happen, so the decision is going to
3 have to be made by this current board within some period of
4 time.

5 Frankly, I do not have the history, the background and
6 the understanding of what is going on. Let me say, thankfully,
7 I wasn't around here when all of this happened. I am pleased to
8 be coming in without that baggage. I am just not ready,
9 frankly, at this point, to vote to discharge President Wear.

10 I want, in no way, that to be understood as an
11 endorsement by me of what I have heard about his conduct and I
12 want to find out a lot more.

13 CHAIRMAN WALLACE: Thank you, Mr. Erlenborn. The
14 Chair will have some points to make and I will recognize Mr.
15 Eaglin to close in support of his motion. What I intend to do
16 is this: Let any Board Members talk, I will speak, I will ask
17 Mr. Wear if he has anything to say. Then, as the proponent of
18 the motion, Mr. Eaglin will have the right to close.

19 Does any other Board Member at this point have
20 anything else they want to say? Mr. Hall.

21 MR. HALL: Mr. Wallace, at this point, I want to give
22 my views on it. I have difficulty voting to fire Terry. I

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1 think he has done a lot of good for the Corporation. Maybe
2 that's because his and my views are similar.

3 I think there is certainly room for improvement. I've
4 had some conversations with Paul and with Basile, as we came up
5 to investigating the lobbying and those expenditures. There is
6 no question that a lot of times, some Board Members are left out
7 of some things. I don't know whether it's on purpose or not;
8 I'm not able to read Terry's mind, so I do not know that.

9 I think there is room for improvement there and there
10 is certainly room for him to make an attempt to bring everybody
11 under the fold. After hearing what he has heard, I would think
12 that he would do that.

13 So far as the expenditures, those bother me the most.
14 It seems like there should be some type of regulation proposed
15 that would prevent an expenditure. There perhaps should be a
16 ceiling put on it if it didn't have to do with litigation or
17 anticipated litigation, if it was just merely advisory or to see
18 what the point of law was. I really don't understand why Tim
19 can't do those types of things.

20 It is a judgment call. If we had that, it would
21 certainly prevent that problem in the future. It would prevent
22 these types of arguments in the future.

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1 But, overall, I think Terry does not have the nature
2 that you would call likeable, and I say that with all due
3 respect to you. He is one of those kinds of guys. He is an ex-
4 prosecutor, and I deal with them over in the Dallas Courts and
5 they are not likeable guys, but I like a guy like that running
6 the show.

7 He is aggressive and he doesn't mind telling you what
8 he thinks about it. He may be wrong or right, but I kind of
9 like to have a guy like that watching my money.

10 I do think we need to consider some type of regulation
11 in the future that would give the Board some type of say-so on
12 expenditures that aren't litigation related, because I would
13 have rather seen that money go out to California, and I think
14 that there are others here that wanted that, too.

15 I think that can be done. I think it can be improved.
16 I think that Terry has shown hard work. He has shown
17 improvement. He has shown accomplishment after accomplishment.
18 I don't see why he can't continue to do that. I think he will.
19 He may not please us all along the way, but I feel that he will.
20 I feel like he makes a good president and will continue to do
21 so. Those are my sentiments on it.

22 CHAIRMAN WALLACE: Thank you, Mr. Hall. Further

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1 comments from the Board Members?

2 (No response.)

3 Let me address myself to the motion before the Board,
4 then, if I may. Mr. Durant has alluded to our past efforts to
5 establish a policy for relations between this Board and the
6 president and the staff.

7 Those efforts were initiated by me when President
8 Winslow left in 1986. Without reviewing all that history, I was
9 not satisfied with the relations between the staff and the
10 board. Having served three years on the minority staff in the
11 House of Representatives, I was and am very sensitive to the
12 rights of minorities to be heard and to participate.

13 I made proposals at that time which would govern
14 relationships between the Board and the staff, would provide
15 staff for the Board for our committees separate from the staff
16 of the Corporation.

17 I asked that the president be required to advise us
18 monthly -- none of you all have heard this before, as it was all
19 done in executive session, but that's what we did -- on major
20 initiatives going on at the Corporation.

21 As I gather, the chief offense of which Mr. Wear
22 stands accused is that he does not inform everybody of major

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1 initiatives going on at the Corporation. I asked that that
2 policy be considered before we voted to hire the next president.
3 It may have been considered, but we took no action on it.

4 We voted to hire a president and we took no action on
5 it thereafter. When Mr. Bayly resigned, as he said in his
6 letter, because he decided that he did not support the policies
7 which this Board had, Mr. Uddo was kind enough to remember the
8 procedures that I had proposed a year and a half before. They
9 were circulated again to everybody. They were brought to the
10 Board's discussion and no action was taken.

11 Both Mr. Bayly and Mr. Wear did not think very much of
12 the procedures that I suggested. I don't know whether it was
13 for the same reason, but I think both men thought that the
14 president ought to be in control of everybody in that building
15 and have his finger on what goes on and what happens between the
16 staff and the Board.

17 Whatever the reasons may have been, this Board has had
18 two opportunities to establish a policy governing the
19 relationships between the president and the Board. We declined
20 to do it, for whatever reasons we may have had.

21 So, it seems to me, whether we want to continue Mr.
22 Wear's services or not, unfair to discharge him, as this motion

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1 would, for cause. We have an opinion from the General Counsel
2 with regard to the hiring of outside counsel on the
3 constitutional question and the other questions that were
4 considered, that it was within his legal authority, as president
5 of the Corporation, to do.

6 We have an opinion from outside counsel that the
7 lobbying was also legal. Mr. Shea has advised us today that it
8 is his view that the president has broad authority to act, even
9 in the policymaking field, except where the Board has
10 specifically restrained him.

11 So, I think that the record before us shows that he
12 has behaved legally. He has not violated any policy of this
13 Board. While it may be this Board's pleasure to discharge him,
14 it does seem to me unfair to say that he is being discharged for
15 cause when he has violated no policy and no law.

16 I will say that I believe that the things he did were
17 in support of the policies enunciated by the majority of this
18 board and I think the president has to act in support of the
19 policies enunciated by a majority of the Board.

20 This is a strange beast. It does have the nature of a
21 legislative committee about it. While it is structured as a
22 corporation in which all directors are equal, in fact, it is

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1 much more like a legislative body. Legislative bodies do
2 require a certain amount of secrecy in the way they behave.

3 In the years that I served on the House leadership
4 staff on the Republican side, I assure you I was never invited
5 to any meetings of the House leadership staff on the Democratic
6 side. They didn't tell me what was going on. They shouldn't
7 have told me what was going on. It was necessary to get their
8 job done sometimes that I not know what was going on.

9 I think that analogy applies here, although I
10 recognize the argument of those who disagree. I regret that we
11 have come to this pass, but I think Mr. Wear has behaved within
12 his rights. He has sought to promote the policies of this
13 Board. I do not believe he has to get a vote of this Board
14 every time he acts.

15 The first thing I learned when I came to Washington is
16 personnel is policy. I believe the lobbying effort on personnel
17 is directly related to the politics. He got us 199 votes on the
18 floor of the House. I grant you that that's an uninformed
19 opinion coming from a thousand miles away. I wasn't here. But,
20 I suspect the two things were tied together.

21 I think we have had wonderful legislative
22 accomplishments. We are close to victory and I think victory

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1 will be ours, assuming this Board chooses to continue to adhere
2 to the policies that it has over the last few years. Mr. Wear
3 has done an excellent job. I recognize the force of the
4 criticisms but I cannot accept them. I think he has been a good
5 president.

6 Mr. Wear, I will recognize you if you have anything to
7 say, and then I will recognize Mr. Eaglin to close.

8 MR. WEAR: Thank you, Mr. Chairman. I don't believe I
9 have anything further.

10 CHAIRMAN WALLACE: Thank you, President Wear. Mr.
11 Eaglin?

12 MR. EAGLIN: Nothing further, Mr. Chairman.

13 CHAIRMAN WALLACE: Mr. Eaglin waives his right to
14 close the debate. The debate is, therefore, closed unless
15 someone has something further to say.

16 The question occurs on the proposal on the motion that
17 Mr. Wear be discharged as president of the Corporation for
18 cause. Ms. Benavidez, on that motion, how do you vote?

19 MS. BENAVIDEZ: Yes.

20 CHAIRMAN WALLACE: Ms. Miller?

21 MS. MILLER: Yes.

22 CHAIRMAN WALLACE: Mr. Hall?

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1 MR. HALL: No.

2 CHAIRMAN WALLACE: Ms. Swafford?

3 MS. SWAFFORD: No.

4 CHAIRMAN WALLACE: Mr. Valois?

5 MR. VALOIS: No.

6 CHAIRMAN WALLACE: The Chair votes no. Mr. Durant?

7 MR. DURANT: No.

8 CHAIRMAN WALLACE: Mr. Erlenborn?

9 MR. ERLENBORN: No.

10 CHAIRMAN WALLACE: Mr. Uddo.

11 MR. UDDO: Yes.

12 CHAIRMAN WALLACE: Mr. Smegal?

13 MR. SMEGAL: Yes.

14 CHAIRMAN WALLACE: Mr. Eaglin?

15 MR. EAGLIN: Yes.

16 CHAIRMAN WALLACE: The motion fails by a vote of six-
17 to-five. Mr. Durant, for what purpose do you seek recognition?

18 MR. DURANT: I seek recognition to make a motion,
19 frankly, to adjourn. Is a motion to adjourn debatable?

20 CHAIRMAN WALLACE: A motion to adjourn is not
21 debatable.

22 MR. DURANT: Well, I'm still going to make a motion to

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1 adjourn and we can take up these other matters at the next
2 meeting.

3 CHAIRMAN WALLACE: Before there is a second, I would
4 ask you if you would consider, because one of the questions we
5 have before us is when we want to meet again. I think we've
6 learned that four members can call a meeting when they want to.
7 I would like to ask you if you would like to adjourn to a date
8 certain.

9 MR. VALOIS: We are required to meet January 24th.

10 MR. DURANT: To the date required by statute by the
11 meeting.

12 CHAIRMAN WALLACE: The motion is that we adjourn to
13 the date required by law for a meeting. Is there a second?

14 MR. VALOIS: Second.

15 CHAIRMAN WALLACE: It has been moved and seconded. It
16 is not debatable. All in favor of the motion to adjourn, say
17 "aye."

18 (A chorus of ayes.)

19 CHAIRMAN WALLACE: Opposed?

20 (A chorus of nays.)

21 CHAIRMAN WALLACE: We will have a roll call vote on
22 the motion to adjourn. The motion is to adjourn to the date set

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1 by law. Ms. Benavidez, how do you vote?

2 MS. BENAVIDEZ: No.

3 CHAIRMAN WALLACE: Ms. Miller, how do you vote?

4 MS. MILLER: No.

5 CHAIRMAN WALLACE: Mr. Hall?

6 MR. HALL: Yes.

7 CHAIRMAN WALLACE: Ms. Swafford?

8 MS. SWAFFORD: Yes.

9 CHAIRMAN WALLACE: Mr. Valois?

10 MR. VALOIS: Yes.

11 CHAIRMAN WALLACE: The Chair votes "aye." Mr. Durant.

12 MR. DURANT: Yes.

13 CHAIRMAN WALLACE: Mr. Erlenborn.

14 MR. ERLNBORN: Aye.

15 CHAIRMAN WALLACE: Mr. Uddo.

16 MR. UDDO: Yes.

17 CHAIRMAN WALLACE: Mr. Smegal.

18 MR. SMEGAL: No.

19 CHAIRMAN WALLACE: Mr. Eaglin.

20 MR. EAGLIN: No.

21 CHAIRMAN WALLACE: The adjournment motion passes by a
22 vote of seven-to-four. This Board stands adjourn until the date

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1 set by law.

2 (Whereupon, at 4:33 o'clock p.m., the Board Meeting
3 was adjourned.)

4

* * * * *

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