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1 LEGAL SERVICES CORPORATION

2 OPERATIONS AND REGULATIONS COMMITTEE MEETING

3  
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6  
7 Friday, September 6, 1985

8 Commencing at 8:29 o'clock, a.m.

9  
10  
11 at Twin Bridges Marriott  
12 333 Jefferson Davis Highway  
13 Arlington, Virginia 22202

1 Committee Members in Attendance:

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Michael B. Wallace, Chairman

Lorain Miller

Basile Uddo

Paul Eaglin

Claude Swafford

Hortencia Benavidez

Thomas F. Smegal

LeaAnne Bernstein

Robert Valois

Pepe J. Mendez

P R O C E E D I N G S

(Whereupon, the Committee was convened at  
8:29 o'clock a.m.)

MR. WALLACE: Let me call the meeting to order.

This is the meeting of the Operations and  
Regulations Committee of the Board of Directors, Legal  
Services Corporation, held pursuant to notice given in the  
Federal Register.

The first item on our agenda is the agenda as  
printed in the Board Book. I would like to make a  
recommendation for an amendment to the agenda, which is  
just a rearranging of -- what I would like under Lobbying  
is for the Office of Compliance and Review to report before  
the outside witnesses which we've invited today.

It would be useful to get an overview of the  
matters from our Office of Compliance and Review before we  
hear about more specific cases from outside witnesses.

I would appreciate a motion to reverse those  
two subheadings under Line 3, to put Report from the Office  
of Compliance and Review ahead of Outside Witnesses.

MS. BERNSTEIN: So moved.

MR. WALLACE: Is it seconded?

MS. MILLER: So moved.

1 MR. WALLACE: Any discussion of the matter?

2 If not, all in favor say aye.

3 COMMITTEE MEMBERS: Aye.

4 MR. WALLACE: Opposed.

5 The amendment carries.

6 Does anyone have any other amendments they would  
7 like to make to the Agenda?

8 If not, the Chair will entertain a Motion to  
9 Approve the Agenda as amended.

10 MS. BERNSTEIN: So moved.

11 MR. WALLACE: Is there a second?

12 MS. MILLER: Second.

13 MR. WALLACE: Any discussion?

14 All in favor say aye?

15 COMMITTEE MEMBERS: Aye.

16 MR. WALLACE: Opposed.

17 The Agenda is approved.

18 The next item on the Agenda is Approval of the  
19 Minutes.

20 Now, I've been through the Minutes. I didn't  
21 have any problems with them. I understand that we may have  
22 misrepresented Mr. Houseman's clients at some point in here.

23 What correction do we need to make, Mr. Houseman?

1 MR. HOUSEMAN: On Page 4, the "Next Mr. Houseman  
2 presented the views of the Center," to strike the language  
3 "of the Center on Social Policy," and put in its  
4 place, "The views of PAG NADLA NOSSU," National Organization  
5 of State Support Units," and NOLSW," which is the National  
6 Organization of the Service's Workers."

7 Those are the clients I represent. The Center  
8 does not take positions in its own name.

9 MR. WALLACE: All right.

10 Is there any objection to that correction in  
11 the Minutes from members of the Committee?

12 If not, by unanimous consent, we will make that  
13 correction on Page 4 of the Minutes.

14 Any other items in the Minutes that need to be  
15 attended to?

16 Members of the Committee, any other problems  
17 with the Minutes?

18 COMMITTEE MEMBERS: (No response.)

19 MR. WALLACE: If not, the Chair will entertain a  
20 Motion to Approve the Minutes as Amended.

21 MS. BERNSTEIN: So moved.

22 MR. WALLACE: Is there a second?

23 MS. MILLER: Second.

1 MR. SMEGAL: I was not at that meeting and I will  
2 abstain from this vote.

3 MR. WALLACE: Thank you for making the record  
4 clear, Mr. Smegal. We missed you in Salt Lake.

5 MR. SMEGAL: I missed you, too.

6 MR. WALLACE: Glad to have you here.

7 All in favor say aye.

8 COMMITTEE MEMBERS: Aye.

9 MR. WALLACE: Opposed.

10 Approved unanimously with Mr. Smegal abstaining  
11 for the reason stated.

12 The first item after the Minutes is testimony on  
13 the Lobbying Regulations, Part 1612 of our Regulations.  
14 The first portion is a Report from the Office of  
15 Compliance and Review. Mr. Flowers from that Office is  
16 going to speak to us.

17 While you're getting settled, let me state the  
18 Chair's views on what we are here about today.

19 What I had asked the staff to provide, in  
20 connection with our consideration of these Regulations, is  
21 some up-to-date examples of how any problems we are having,  
22 how the Regulations are working in practice.

23 We are not conducting an investigation of any

1 program. We are not trying to resolve disputed facts  
2 about what this program is doing or what some other program  
3 is doing.

4 What we are trying to do today is to hear what  
5 programs think they ought to be able to do, what they think  
6 the Regulations permit them to do, what they think the  
7 Regulations don't permit them to do that they should be  
8 permitted to do.

9 I'm especially interested -- I am particularly  
10 interested in areas in which programs in the field and  
11 our staff differ on what our Regulations mean. If we think  
12 they mean one thing and the programs are telling us they  
13 mean something else, then that's a matter for this  
14 Committee to be especially concerned about, because we  
15 need everybody to understand what our Regulations mean.

16 Whether you like them or whether you don't like  
17 them, you shouldn't be fighting about what they say.

18 So, we are not here to conduct any investigation  
19 of any program. That is not our function. What we are is  
20 to try and get some current, up-to-date examples of how  
21 these Regs are working in practice and how they need to be  
22 improved. That's what we're here for today.

23 Mr. Flowers, we welcome you and we look forward

1 to your explanation of the experience of the Office of  
2 Compliance and Review with these Regulations since they  
3 went in place.

4 MR. FLOWERS: Thank you.

5 MR. WALLACE: Go on ahead and just talk as loud  
6 as you can.

7 MR. FLOWERS: I'm John Flowers. I'm an attorney  
8 in the Compliance Division of the Legal Services  
9 Corporation. I graduated from the University of Southern  
10 California in 1966, was licensed to practice law in  
11 California in that same year.

12 I've been a college instructor of Business Law  
13 for a year. I was a Deputy District Attorney at Napa  
14 County, which is Northern California, for a year and a  
15 half, and then I was in private practice in San Diego for  
16 fifteen years before coming to Washington, D.C. recently.

17 I have a wide variety of civil litigation  
18 experience.

19 In Compliance and Review, our job is to  
20 investigate complaints about programs, and when I came in  
21 May there were a number of pending matters on Lobbying  
22 Regulations, which is 1612, Legal Services Regulations.

23 Because the Regulations are extensive and in

1 some areas, not well understood, the Division Director  
2 thought that it would be better efficiency to have one  
3 resource person be responsible for that.

4 So, since I've come in May, I've become the  
5 person responsible for looking at cases involving 1612  
6 Regulations, and prior to coming today I reviewed files,  
7 both open and closed files, from 1983, '84 and '85.

8 Some of the '85 cases are still open, so I'm  
9 going to avoid mentioning any program names, because some  
10 of these are still under litigation.

11 In the process of my working at the Compliance  
12 Division, I have begun to gather an extensive notebook  
13 with the legislative history, the actual language of the  
14 Regs and the annotations, and so I am trying to thoroughly  
15 understand the area.

16 In addition, I've been out on some actual  
17 investigations and I'm going to try to give you an  
18 example in generic terms of the problem areas that we face.

19 In the beginning, the first problem that you face  
20 is just defining lobbying or legislative advocacy or administrative advocacy.

21 Our current Regs, as now written, do not have  
22 one definition, one comprehensive definition, in one place.  
23 There is a little Section on Definitions at the beginning

1 of the Regs, but does not include Lobbying.

2           There's been some confusion about what it entails  
3 and what it excludes. For example, if a 501C3 organiza-  
4 tion, which is a non-profit corporation, which all of our  
5 programs and their subgrants are required to be non-profit  
6 organizations, is making out its tax return, and especially  
7 if it is working with the Internal Revenue Code 4911, the  
8 definition of Lobbying under the Internal Revenue Code  
9 expressly excludes answering questions of legislators.

10           So, in one particular instance they were  
11 answering the question on their tax return, "Are you  
12 involved in legislative advocacy or lobbying?" they put  
13 "No," because their program was extensively involved in  
14 answering requests of legislators.

15           So, they were using the IRS definition. Our  
16 Regs include that kind of activity under Legislative  
17 Liaison Activity.

18           Another program defined Lobbying as only that  
19 very limited amount of time where they're actually giving  
20 testimony in a legislative committee or talking with a  
21 legislator and they put in a different category time spent  
22 monitoring legislative hearings, which meant sitting in  
23 there hour after hour, day after day, which can involve a

1 lot of time analyzing statutes. They were putting that  
2 under field support.

3 So, if someone in Washington or the regional  
4 office or even in the local program wanted to analyze how  
5 much resources were being devoted to lobbying, legislative  
6 advocacy and related matters, it might be very difficult to  
7 find out how much time is being spent on that if it is  
8 blended in with other kinds of field support activities  
9 like writing manuals and conducting seminars.

10 So, the Board might want to consider putting one  
11 comprehensive definition of lobbying right in the Regs  
12 explicitly, and then when it refers to lobbying, later on  
13 each Reg, it would streamline the Regs.

14 When you use the word Lobbying or Legislative  
15 Advocacy, it would be a word of art, defined precisely as  
16 possible.

17 We got in the field and we started looking at  
18 direct lobbying. We ran into three kinds of problems.  
19 One form of direct lobbying is answering requests of  
20 legislators, and these requests can be very frequent and  
21 very time consuming, especially if the person out there has  
22 become known as the spokesman for lower income people, has  
23 become an expert in a particular area. They can get many,

1 many requests.

2 For example, in one state, the Governor's office  
3 has an extensive mailing list, and when statutes and bills  
4 are passed by the legislature and he is considering whether  
5 to sign or veto a bill, he has a little series of postcards  
6 which each counsel in his office attaches to copies of the  
7 bills and they mail them out to the mailing list.

8 It's not a personal invitation. It's just a  
9 printed form that says, "This bill has been passed by both  
10 houses of the legislature and the Governor is trying to  
11 decide whether to sign it or veto it. We would appreciate  
12 your comments on this, and it has to be done quickly because  
13 we have only a limited amount of time."

14 Now, if they program -- an attorney got on a lot  
15 of mailing lists, this could consume a lot of that person's  
16 time in analyzing statutes.

17 Another form of request is to participate in  
18 commissions and study groups, and we have an example where  
19 one staff attorney on a program was requested to participate  
20 on a commission and she was asked to be on a commission  
21 whose mandate was to study the trial support system of the  
22 state, pinpoint the problems and suggest legislative  
23 changes that might be made.

1 Well, that kind of thing can also consume a great  
2 deal of time.

3 Another staff attorney was asked to participate  
4 on another commission involving another area of law, so  
5 these are almost open-ended type assignments and could be,  
6 more or less, self-defined in terms of the staff attorney  
7 being -- participating as extensively as he or she wants to  
8 and you might want to consider whether or not it should be  
9 that open-ended.

10 Another example of direct lobbying is under the  
11 Regs, as currently written, is you may engage in direct  
12 lobbying, which is going down to the legislature and either  
13 presenting testimony or contacting legislators directly as  
14 opposed to grass roots level, which I'll talk about in a  
15 minute, is representing clients.

16 The problem we're running into is in the field  
17 and in the programs and even in our office, the tendency  
18 has been and the analysis seems to stop at whether or not  
19 they signed a retainer agreement. That's where the analysis  
20 ends.

21 Very few facts are in our files to indicate  
22 anything beyond a signed retainer agreement, and what we  
23 have found in some instances is if, yes, there was a

1     retainer agreement signed and we have seen that, the  
2     identity of the client is blocked out, but there's no  
3     indication in the literature that we see passed out at the  
4     legislature or in the testimony at committees to indicate  
5     that there is any discussion, any real bona fide discussion,  
6     with that client about the legislative problem that they  
7     are trying to correct.

8             The client himself is very seldom brought to the  
9     legislature to testify. In some instances we've had cases  
10    where states require the lobbyist involved to register and  
11    indicate the name of his or her client and they don't do  
12    that, and when asked by the legislature who their client  
13    is, they refuse to give the name of their client and  
14    sometimes they claim attorney-client privilege for the  
15    identity of their client.

16            So, it begins to look like, based on the very  
17    dirth, amount of facts that we have in our files, we begin  
18    to doubt whether there's a genuine, bona fide attorney-  
19    client relationship.

20            What that leads to is if a lobbyist doesn't refer  
21    to the specific facts of that client's case, never mentions  
22    his name, never brings him to testify, he gets down to a  
23    discussion of poor people generally and lobbying for poor

1 people generally, and under our current Regs that's not  
2 allowed.

3           So, to come under that exception, it has to be an  
4 attorney-client relationship, and I doubt whether -- to give  
5 you a little example of that kind of thing in other areas,  
6 if you were to go to a different forum like a court and the  
7 judge asked you, "Do you represent a client in these  
8 proceedings?" you stand up and say, "Yes, Your Honor," and  
9 he says, "Well, who is it?" and you say, "Well, I do have a  
10 client, but I refuse to give that client's name because of  
11 attorney-client privilege," and you don't bring your client  
12 to testify and you don't discuss the facts of your client's  
13 case in that litigation, even though you have a piece of  
14 paper back at your office saying you're his attorney, are  
15 you really his attorney? That's a problem.

16           So, in the context of preserving attorney-client  
17 privilege, we need to have some mechanism at our office to  
18 verify these things; not that we want to know about  
19 attorney-client communications, we want to know is this a  
20 genuine attorney-client relationship.

21           There is such a procedure in another set of Regs,  
22 and I believe it is 1611, where when there's a question  
23 about eligibility, the 1611.7 says that our office is

1 authorized to look at some more details that perhaps might  
2 not ordinarily be revealed, but we are required to keep it  
3 confidential and we are required not to violate the  
4 attorney-client privilege.

5 If we had some time laws, for example, that  
6 indicated the number of times a staff attorney or a program  
7 attorney or a resource attorney contacted the client, the  
8 number of times he had conferences with the client, the  
9 number of times the client came with him to the legislature,  
10 and when they passed out literature they sometimes give  
11 examples of low income people, but they don't say that it's  
12 their client.

13 So, I think the whole purpose of lobbying  
14 statutes is to adequately inform legislators who they  
15 represent.

16 It's always been my understanding, practicing law  
17 in California, and coming to a legislative hearing such as  
18 a City Council or Planning Commission, it was unethical for  
19 me to stand up and start talking about merits or demerits  
20 of a zoning change, for example, and lead the legislators  
21 to believe that I'm speaking on behalf of myself.

22 In other words, I was required to state for whom  
23 I speak so they can tell if that person is typical or

1 non-typical; they could tell whether I represent one person  
2 or ten people or a hundred people.

3           Otherwise, you get into a situation where the  
4 legislature doesn't know how many people you represent.

5           The third area of problems that we've had in  
6 direct lobbying involving actual cases in our office is  
7 where a program attorney, or even the executive director,  
8 takes leave time and does something that's not normally  
9 permitted under the Regs.

10           We've had cases in which the program attorney  
11 went down to the hearing at a City Council or a County  
12 Board of Supervisors to talk about a zoning change or a  
13 redistricting of voting districts, was speaking on behalf of  
14 a particular client, and in the middle of the hearing,  
15 suddenly stand and say, "I would now like to speak as a  
16 private citizen," and then switch back to representing  
17 clients.

18           We've had staff attorneys involve cases that  
19 went on, quote, off time, unquote, and had press  
20 conferences and made statements that would ordinarily be  
21 grass roots lobbying.

22           In other words, they were proposing -- they were  
23 making very definite statements in favor of or against

1 certain legislative proposals and they did it in the format  
2 of a press conference, which naturally would be covered  
3 by the newspapers and anybody else who attended, would stir  
4 up members of the public to lobby for or against that  
5 measure, and they did that in off time and they argue that  
6 no resources from LSC were used for that purpose.

7 The other major kind of lobbying is what we call  
8 grass roots lobbying, and again that is not defined in the  
9 Regs, other than it has some references to it here and  
10 there.

11 They don't use the word grass roots, but this is  
12 to distinguish it from direct lobbying; grass roots being  
13 efforts to stir up members of the public, third parties,  
14 to participate in a lobbying campaign or to contact their  
15 legislator and persuade them to vote for or against the  
16 particular legislation.

17 Where we've been having problems is in areas of  
18 activity that are normally permitted, but what they've been  
19 doing in some instances is incorporating into these  
20 permitted activities what our Regs currently define as  
21 publicity and propoganda, which is an effort to persuadē  
22 people to do something, to contact their legislator to  
23 support or oppose legislation.

1           For example, many of the newsletters I've seen  
2 have articles about standard things like seminars and how  
3 to win pending cases under existing statutes.

4           Other articles are included in there and many of  
5 them are editorial type articles and opinion type articles  
6 by columnists from newspapers. They are just photocopied  
7 and attached to the newsletter, and they have a very  
8 decided viewpoint about what should be or should not be done.

9           This is passed out to lots of people and even  
10 publicity and propoganda can't really be used under our  
11 Regs even to pass out to program attorneys.

12           So, even if they say that the newsletter is  
13 being distributed only to program attorneys, if it is  
14 urging them to do something in the legislative area, to  
15 oppose or support certain legislation, unless that program  
16 attorney is a counsel or co-counsel of record for a client  
17 down at the legislature under the exception I just  
18 described, that's as much grass roots lobbying as passing  
19 it out to members of the public.

20           So, when you review some of these newsletters,  
21 you might be surprised by some of the statements and some  
22 of the articles that are included in there.

23           Scholarly articles are another area that we run

1 into, especially attachments and footnotes and appendices  
2 to articles concerning, say, joint custody of children.

3 They have been known to attach full transcripts  
4 of testimony of acknowledged lobbyists in legislative  
5 proceedings. They'll get a transcript of the testimony of  
6 the lobbyist, who identifies herself as a lobbyist in a  
7 legislative proceeding, and they attach that as a footnote  
8 to their scholarly article and distribute it to whoever  
9 wants that article and they call that legislative history.

10 There, again, our Regulations don't make a  
11 special exception to legislative history. They don't say  
12 that you can't pass out propoganda, except legislative  
13 history is okay.

14 These are examples where the Regs seem to be okay,  
15 but we have trouble enforcing them because even though the  
16 programs are required to send a copy of each article down  
17 to the Washington office, that particular office, supervis-  
18 ing state support centers and national support centers,  
19 and there are about twenty national support centers and  
20 about sixty-five or seventy state support centers, most of  
21 the time, I understand, we've only had one or two people  
22 in that department, and there's not enough hours in the day  
23 for them to review all the articles that come in.

1           We have no systematic method of categorizing,  
2 cataloging these. The quarterly reports come in and they  
3 are systematically filed in files. That's where they report  
4 how much legislative activity they have and how much  
5 administrative advocacy they get involved with, but we have  
6 no systematic procedure at the moment for cataloging  
7 articles when they come in.

8           Some program attorneys are giving speeches and  
9 conducting seminars, and there again, when these articles  
10 and these speeches and newsletters get into areas of  
11 discussing pending legislation and they give a bill number,  
12 and then some of these packets of information they send out  
13 from some of the support centers also include sample letters

14           One particular example I can recall is a letter  
15 from a U.S. senator, urging people to write the President  
16 to ask him to sign a particular bill that had just come to  
17 his desk.

18           When I asked the program about that, they said,  
19 "Well, this wasn't sent out until after the President had  
20 already signed that bill." I said, "Yes, but it describes  
21 a mechanism for participating in grass roots lobbying."  
22 It even gave the address of the White House and the zip  
23 code, where to send it.

1 how much time they should be allowed to spend on lobbying  
2 techniques and discussing pending legislation, that kind of  
3 thing, because that leads to grass roots lobbying types of activities  
4 and I think those are the main areas of concern that we have  
5 at this time, based on the facts of the cases that are  
6 pending and the ones we've seen.

7 MR. WALLACE: Thank you, Mr. Flowers.

8 I have one question for you and then I'm going to  
9 open it up to members of the Committee and members of the  
10 Board that are with us this morning.

11 Give me an idea of the magnitude of the situation  
12 about how many programs currently have complaints pending  
13 on them that you are trying to investigate?

14 I don't want to know who they are, but I want to  
15 try to get an idea of how many programs we are talking  
16 about.

17 MR. FLOWERS: In the Compliance Division, we have  
18 something like 300 or 350 cases pending on all matters.  
19 I think 11 or 12 of those involve lobbying, but, as I say,  
20 there may be a lot more violations going on because of --  
21 for example, we have not been able to review all the  
22 articles that go out and the potential for grass roots  
23 lobbying is probably as great or greater in the area of

1 passing out articles and stirring up members of the public  
2 to involve grass roots lobbying as it is direct lobbying.

3 MR. WALLACE: Members of the Committee, do you all  
4 have any questions?

5 MR. SMEGAL: Are you familiar with the 11 or 12  
6 you're talking about, John? How did they come to the  
7 attention of OCR?

8 MR. FLOWERS: Some are reported by people in the  
9 community, some people contact their legislature and say --  
10 their congressman, for example, and object to federal funds  
11 being spent to lobby on public policy, and a few come from  
12 people that are having disputes with clients that are  
13 represented by attorneys at programs, and some come from  
14 legislators who get upset when the program attorney  
15 lobbyist refuses to identify his or her client or claims  
16 attorney-client privilege for the identity of his client.

17 MR. SMEGAL: This is an example of each one of  
18 these, the 11 or 12?

19 MR. FLOWERS: Yes. I tried to give -- we have at  
20 least one case in each of these areas that I've talked  
21 about.

22 MR. WALLACE: How do you handle the problem of  
23 people doing things on their own time? We do have one

1 provision about that in our current Regulations that has  
2 to do -- for instance, we pay somebody's way to Washington  
3 for a training session or a seminar. They are not supposed  
4 to use that time to go up on the Hill and lobby people.

5 I can understand the direct connection. They  
6 wouldn't be here and they wouldn't have the opportunity if  
7 we hadn't given them the money to get here, but when  
8 somebody is in Jackson, Mississippi fulltime and forty  
9 hours a week they're working for us, on Saturdays, what  
10 they do is their time.

11 We haven't given them any money to get to Jackson  
12 where the state capital is; that's where they are. We tell  
13 them they can't lobby and they can't have press conferences  
14 and they can't do things on their own time.

15 I understand the problem, but how far can we  
16 really push that, keeping people under control on their own  
17 time?

18 MR. FLOWERS: I didn't mean to say they couldn't  
19 lobby about everything. For example, if there is a road  
20 that is proposed to be -- property proposed to be condemned  
21 and it cuts their backyard in half, certainly you ought to  
22 be able to lobby on that.

23 I meant to restrict that to areas that have high

1 impact, a significant impact, on the programs such as the  
2 level of funding for a particular government program for  
3 low income people.

4 I don't think it's correct to say that because  
5 they took a Saturday afternoon off or an evening, they're  
6 not being paid for either work.

7 The fact is that Legal Services Corporation spent  
8 a very substantial amount of money training these people,  
9 sometimes over an eight or ten year period of time. That's  
10 our investment, so that should they be allowed -- we are  
11 saying if they are working on program time, they shouldn't  
12 be allowed to attach propoganda to scholarly articles;  
13 should they be allowed to write scholarly articles at night  
14 and attach the same propoganda as footnotes and defeat the  
15 entire purposes of our Regs by saying that they're doing it  
16 on their own time?

17 MR. WALLACE: It's a tough question, because I  
18 mean I've worked for two judges, one congressman and a  
19 chancery clerk, and when you're working for other people,  
20 it's always been my view I haven't got any of my own time.

21 What I say reflects on the people I work for and  
22 I'm pretty careful about it, but I don't know that we want  
23 to put the same restrictions that I felt on everybody that

1 works for Legal Services. I think there is an ethical  
2 problem; maybe I'm wrong. I think there's an ethical  
3 problem in the middle of a meeting switching horses and  
4 saying, "Here I'm representing the client and here I'm just  
5 going off the payroll for five minutes to tell you what I  
6 think."

7 That's pretty blatant and that's pretty  
8 outrageous and we'll be able to stop that if we don't.

9 On the other hand, telling people that because  
10 they work for us anything that relates to us, their hands  
11 are tied on, I worked that way for years, but I'm not sure  
12 I want to tell umpteen thousand people on our payroll --

13 MR. FLOWERS: Their hands wouldn't be totally  
14 tied. They could do a lot of things as long as it is  
15 consistent with our Regulations.

16 I'm just saying we have that restriction, that a  
17 person can't run for a partisan office, even on his own  
18 time. So, I'm just saying there is also an administrative  
19 problem. If you're breaking in and out of on time and off  
20 time, I'm saying to keep track of that and really  
21 substantiate it becomes an accounting nightmare also.

22 MR. WALLACE: Well, I understand the problem  
23 that we're facing and I understand the extent to which

1 somebody can use our efforts to build himself up as a  
2 spokesman and then take personal advantage of that against  
3 the intent of our Regulations.

4 That's a problem I don't -- they have to take  
5 Draconian measures.

6 MR. FLOWERS: If they use a lot of LSC resources  
7 over a ten year period of time, they may train themselves to  
8 be an expert, but then they take the afternoon off or  
9 evening off and make some statement involving grass roots  
10 lobbying, for example, and I just think the Board ought to  
11 consider that.

12 MR. WALLACE: What kind of investigation do we  
13 really need to establish whether there's a bona fide client  
14 relationship, because it seems to me that's the key to a lot  
15 of the problems, is whether lawyers are really representing  
16 the client or really representing themselves?

17 I'm sure there are ethical problems in getting  
18 deep into the files to find out whether we've got a  
19 bona fide relationship here, but at the same time, that's  
20 the key question. That's what we need to know.

21 Do you have any concrete suggestions as to how  
22 we walk that line and find out is there a real client here?

23 MR. FLOWERS: Yes. For example, in the states

1 that require lobbyists to register, and in California  
2 that's the case, they require every attorney to list his  
3 client and they can't simply list their law firm as their  
4 client -- as their employer.

5           There seems to be an unspoken assumption that  
6 every attorney participating in these programs should obey  
7 all state laws and those state laws ought to be obeyed and  
8 they ought to register as a lobbyist for their client, and  
9 when they're asked point-blank who they represent in a  
10 lobbying context, they speak in a public forum, I don't  
11 think it's the proper procedure to claim attorney-client  
12 privilege because there's been a waiver to that extent.

13           They're going into a public forum, lobbying for  
14 a client because they put that on their quarterly reports,  
15 this is a client case.

16           MR. WALLACE: Do you know of any ethical  
17 requirements anywhere that would indicate that you're  
18 ethically obligated not to reveal your client's name when  
19 you're involved in a proceeding?

20           I can imagine circumstances arising, but most of  
21 the time when you go to court you let somebody know who  
22 your client is.

23           MR. FLOWERS: That's a public forum. If the

1 client comes to you and consults you in your private  
2 office and you walk out down the street and somebody says,  
3 "Who do you represent?" and it comes up in the context of  
4 people that are politically unpopular or people who are  
5 accused of crimes, the news media may ask you point-blank,  
6 "Do you represent that man?" and I think in that kind of  
7 thing, that situation, he could claim attorney-client  
8 privilege on the identity of his client because he has not  
9 stepped into a public forum.

10 In lobbying, here they're contacting public  
11 officials and they're speaking at legislatures, that's, in  
12 my mind, clearly a public forum and the identity of the  
13 client shouldn't be subject to attorney-client privilege.

14 Our Regulations, in various parts of the  
15 Regulations, repeatedly say -- make a very big effort to  
16 keep confidential the identity of clients, because it is  
17 embarrassing for some people to be pinpointed as low  
18 income people and that may cause some repercussions.

19 So, the Regs, in various parts, not just the  
20 Lobbying Regs, but a lot of other Regs, make a big effort  
21 to maintain the confidentiality of the client's identity.

22 MS. BERNSTEIN: Going along those lines, one of  
23 the arguments we have always had as to why we should allow

1 lobbying in Legal Services Program is that big business can  
2 afford lobbyists and therefore we should not give second  
3 class representation, that we should not be in a situation  
4 where we're limiting the representation of the legal access  
5 that a poor person might have, and yet you could no more  
6 have a lobbyist go to the legislature for General Dynamics  
7 and say, "Well, I'm going to lobby for a huge contract  
8 here, but I'm not going to tell you who I'm representing."

9 MR. FLOWERS: Exactly. When you see the indexes  
10 and lists of lobbyists and their clients -- in some of the  
11 cases we have, it lists specifically these companies by  
12 name and which attorney or lobbyist represents them, but  
13 in the particular instance I'm thinking about, the program  
14 just lists their program name, but they don't list any  
15 client.

16 MS. BERNSTEIN: Going back, Mike, when you were  
17 talking about how do you limit what people are doing on  
18 their own time, and I'm being kind of -- having been  
19 accused rightly of having a few civil libertarian  
20 tendencies, I have a problem with too much regulation in  
21 that area myself, but by the same token, we're talking  
22 about lawyers and there's an overriding appearance of  
23 impropriety question here that I think overrides -- I

1 mean, when you go into the profession, you do a lot of  
2 things that you think, "Well, it kind of grates on me to  
3 be limited in this way," but I'm like Mike, you don't  
4 represent somebody for forty hours a week; you are that  
5 program if that's your fulltime job.

6 You've got closer questions, I think, where we've  
7 got part-time staff attorneys and people who are only  
8 working on contracts for the programs or various things  
9 like that, and I think those are really closer questions.

10 When someone has identified for, as you say, ten  
11 or twelve years for a program, especially in small  
12 communities or in a long time program, where they're  
13 identified with the program, then there is no such thing as  
14 speaking as a private citizen.

15 MR. FLOWERS: When that person speaks, the people  
16 in the audience know that he or she speaks for the program,  
17 in effect, because they're so devoted to that program,  
18 they've been there so long that they wouldn't say anything  
19 adverse to the program.

20 MR. WALLACE: Let me ask another question that  
21 you haven't touched on, one that worries me a little bit,  
22 and that's solicitation, because what concerns me is the --  
23 certainly you have to have a bona fide client relationship.

1 I'm not sure that's enough if what you did was  
2 go out and solicit the client instead of the client  
3 soliciting you.

4 To what extent do we have lawyers with agendas,  
5 then they're looking for clients to fit the lawyer's  
6 agendas, rather than trying to fit the client's agendas?

7 MR. FLOWERS: We have that kind of example where  
8 there's a lot of monitoring going on, programs that monitor  
9 legislation closely. They have people up there fifteen,  
10 twenty hours a week, following every little nuance of the  
11 legislation, and they find a bill that they feel may impact  
12 significantly on low income people and they make a --  
13 the typical pattern is they make a summary of that bill, and they  
14 may even make some recommendations. They say it's a good  
15 bill or a bad bill and should be supported or opposed.

16 Then they send that summary out to all the  
17 members of their task force and they say, "You haven't  
18 been invited to testify on this bill; therefore, we need a  
19 client," and they attach a retainer form, say, "If you  
20 have somebody that might have a, quote, direct interest  
21 in this bill, unquote, please sign him up and then we'll  
22 represent him down at the state legislature."

23 The direct interest is another area you might

1 want to define, because we've had cases where the direct  
2 interest doesn't seem to be any greater than the member of  
3 the public generally.

4 For example, if a bill is pending concerning  
5 interest rates, the direct interest, we've seen some cases  
6 is that the client has made loans in the past and expects  
7 to make loans in the future; therefore that bill, if it  
8 is passed, will directly impact on that client and  
9 therefore there's a direct interest, "Therefore I want  
10 the State Resource Center, or whichever program is nearest  
11 the state legislature, to lobby for me."

12 Then the typical pattern is they retain the State  
13 Resource Center or the program near the state legislature  
14 as co-counsel with their local program, which may be some  
15 distance away, and I don't know, that would be another hard  
16 definition question; how closely does their interest have  
17 to be?

18 It's not as difficult in administrative advocacy  
19 matters because the Regs say that in order to be a client  
20 in that situation, you have to have a case or claim, which  
21 means -- I take that to mean your interest has to be more  
22 distinct.

23 In the example of the road condemnation, if my

1 backyard is going to be cut in half by the condemnation,  
2 I have a lot closer interest than some other citizen out  
3 in the community that objects to taxpayers' money being used  
4 for that road.

5 So, in some cases they say, if you're just a  
6 taxpayer objecting to the expenditure of these public  
7 funds, your interest is not direct enough, but if your  
8 backyard is going to be cut in half by this highway, then  
9 you have a more direct interest and more distinct injury  
10 that's different and distinct from other members of the  
11 public; therefore you can go into court and try to block  
12 the road.

13 So, we haven't had that problem in administrative  
14 advocacy because there's more of a case or claim there,  
15 but here it would take a very skillful drafting here to  
16 distinguish what a direct interest is and what is a remote  
17 interest.

18 MR. WALLACE: I hope you understand standing law  
19 better than I do, because that's sort of what you just  
20 stated, how you're different from the public at large.

21 MR. FLOWERS: Well, sometimes it's hard to show  
22 distinct standing.

23 MR. WALLACE: Having looked at some of those

1 cases that the Supreme Court has written on it, I'm  
2 confident they don't understand it either, I don't know  
3 what we'd do writing it into our Regs, but I understand  
4 the problem that you're addressing and I'm not sure of  
5 the perfect way to deal with it.

6 MR. FLOWERS: There was one other matter I failed  
7 to mention, I would like to mention, that some people were  
8 concerned about the amount of secretarial time that would  
9 be required for extensive time logs, and I know that is a  
10 potential problem.

11 I made a copy of an article from the State Bar  
12 Magazine of California. I've given it out. There's some  
13 copies on your table.

14 These optical scanner devices, they are making  
15 great strides recently, and if they have the proper kind  
16 of time sheet, they can be fed automatically into the  
17 scanner like a photocopy machine.

18 Heretofore they've been very expensive. The  
19 prices are dropping very precipitously just like  
20 mini-computers. I thought that perhaps under our Private  
21 Attorney Involvement Program, if some law firms in the area  
22 of the program had this scanning device, they're so fast  
23 they can go two or three hundred pages an hour, that the

1 program might be able to utilize some of the downtime on  
2 the machine to do their time sheets, or several programs  
3 together might get together and share the cost of a machine  
4 or the time sheets could be mailed to a facility that does  
5 have one of these scanners.

6 So, there are some ways to streamline the  
7 administrative burden of time sheets.

8 MR. WALLACE: High technology or low technology,  
9 I've said several times, it seems to me people ought to be  
10 keeping time sheets, not just about lobbying, but so that  
11 the management of the program knows what's going on.

12 I don't know whether 1612 is the appropriate  
13 place to get into a thorough examination of time sheet  
14 problems, but I swear I don't see how you can run a business  
15 without knowing what your people are doing with their time.

16 MR. FLOWERS: In 1612, it requires time logs if  
17 you're a registered lobbyist or spend more than ten percent  
18 of your time lobbying.

19 We have a case in which we had reports of  
20 widespread lobbying by a particular staff attorney and we  
21 confronted her with that and she said, "Well, I don't keep  
22 any time logs because I don't spend more than ten percent  
23 of my time." We had no way to verify it.

1           So, you might want to consider whether if a  
2 person is going to get involved in lobbying, at least both  
3 people should be required to keep time logs of all their  
4 time, because the ten percent barrier is causing us  
5 administrative problems if there's a debate as to whether  
6 they're over or under.

7           Some smaller states, less populous states, their  
8 state legislature meets for three or four months and then  
9 doesn't meet at all, so there's a big flurry of activity  
10 in three or four months out of the year and maybe every  
11 other year.

12           What does that ten percent apply to? Does it  
13 apply to a particular month or the ten percent average on  
14 the year, and when you start off the year, how do you know  
15 whether you're going to spend ten percent or twelve percent  
16 or two percent?

17           So, it seemed like a good idea at the time it was  
18 written, but I'm sure it's causing administrative problems  
19 for us.

20           MR. WALLACE: So, it would be simpler, from your  
21 point of view, to say anybody that lobbies keeps time  
22 sheets, period?

23           MR. FLOWERS: Right. There seems to be a trend

1 to delegate the responsibility of lobbying to the State  
2 Resource Center in all different states, so that under  
3 those kinds of setups, typically the program attorneys are  
4 not involved in direct lobbying themselves, the Resource  
5 Center is.

6 Then we come back to the problem of co-counsel,  
7 and if the co-counsel really is a co-counsel and they are  
8 involved in direct lobbying for a client, then they have  
9 to spend some time with it in order to substantiate  
10 bona fide relationship.

11 If they don't spend any time at all and nobody  
12 communicates with the client, then the question is is it a  
13 bona.fide relationship.

14 MR. WALLACE: Thank you. I thank you.

15 Is there any further questions of this witness?

16 COMMITTEE MEMBERS: (No response.)

17 MR. WALLACE: We thank you, Mr. Flowers. We  
18 appreciate the view of your experience on this. I guess  
19 you don't represent your office as such, but I'm glad to  
20 have you here, letting us know what your problems have  
21 been.

22 MR. SMEGAL: Let me ask just one question.

23 MR. WALLACE: Mr. Smegal.

1 MR. SMEGAL: Let me analogize it to private  
2 practice. I'm in the same Bar that you're in, California.

3 MR. FLOWERS: Okay.

4 MR. SMEGAL: I occasionally get a newsletter from  
5 some lawyers in San Francisco that specialize in some areas --  
6 bankruptcy or something, they bring me up to date, thinking I  
7 want to know about recent legislation, or cases in that area.

8 You mentioned newsletters that some programs sent.  
9 Are you concerned about a newsletter that talks about  
10 pending legislation as contrasted with cases that have come  
11 down or legislation that's passed?

12 Now, in this particular instance, I think this  
13 person was doing something clearly within the ethical  
14 boundaries of the State of California's rules on ethics of  
15 lawyers in sending me the synopsis, abstracts of bankruptcy  
16 cases, employment cases, some area. Do you have any  
17 problem with that?

18 MR. FLOWERS: I have no problem with cases --

19 MR. SMEGAL: You draw the line with pending  
20 legislation? You were talking earlier about these  
21 newsletters.

22 MR. FLOWERS: Yes. In fact, our Regulations talk  
23 about this, that if an article is required to be sent, a

1 copy is required to be sent to our office in Washington,  
2 D.C. It talks about pending legislation.

3 You can talk about pending legislation, but you  
4 can't go further and include propoganda or publicity, which  
5 means you cannot phrase it in such a way as to urge the  
6 reader to be starting to move to contact the legislators  
7 in support or oppose that pending bill.

8 That's why the problem doesn't arise in statutes  
9 that have already been passed or cases that have already  
10 been decided. It's an area when articles, scholarly  
11 articles, or a newsletter starts talking about pending  
12 legislation, they give bill numbers and they start giving  
13 the names of the senators or representatives who are  
14 sponsoring the bill, start giving the addresses of the  
15 legislators or they attach sample letters or that kind of  
16 thing, or testimony, then they attach transcripts of testimony of known  
17 lobbyists, I think the Reg currently says, and I don't know  
18 if we can make it anymore definite than that, it says  
19 either a direct suggestion or when the whole thing is read,  
20 an indirect suggestion, that they should be contacting the  
21 legislator to make an impact on that pending legislation.

22 MR. SMEGAL: John, I haven't read the dates for  
23 your Arizona -- and certainly as I understood it,

1 it at least changed the law in lawyer soliciation in  
2 advertising under those areas.

3 If one of our grantees has a mailing list of  
4 potential clients, just say a mailing list, and they send  
5 out a newsletter to that mailing list, do you have any  
6 trouble with that? Do you think that's within the  
7 scope of 16-- --

8 MR. FLOWERS: The Regulations used to be a lot  
9 simpler in that area before advertising became extensive.  
10 I don't have any problem with that as long as they don't  
11 include propoganda.

12 In other words, in that literature they pass out  
13 or mail out, if they start making pronouncements about a  
14 particular bill is good or bad and it's pending now and it  
15 gives the bill number and they're looking for a client,  
16 then that gets over into the area of grass roots lobbying.

17 If they're just talking about pending  
18 legislation without trying to urge people to move on it,  
19 then they haven't gone over the line of propoganda.

20 MR. SMEGAL: Terry Roche is standing up, so I'm  
21 going to use him as an example. I don't even know if he's  
22 got a newsletter.

23 Terry has a newsletter and he's got a mailing

1 that there are forms of soliciation in which we're going  
2 to tell them not to engage.

3 MR. FLOWERS: That's correct. There are whole  
4 categories of cases that we don't allow our programs to  
5 engage in, and when you're in private practice, you can  
6 engage in all kinds of grass roots lobbying and all of that.

7 The two are not exactly comparable, and the  
8 reason, in my mind, that they're not comparable is because  
9 we're using public trust funds.

10 MR. SMEGAL: I certainly understand that. In  
11 fact, I think this whole discussion we are having is in  
12 another area like that. Certainly what we're talking  
13 about, John, are activities which I don't think you would  
14 ever suggest I couldn't do as a member of the California  
15 Bar.

16 MR. FLOWERS: Right. I don't mean to suggest  
17 that lobbying is not a beneficial activity; otherwise there  
18 wouldn't be ten thousand fulltime lobbyists in Washington,  
19 D.C. I don't mean to say it's sinister. I'm just trying  
20 to interpret and enforce the Regulations that are written  
21 and some of the areas are unclear.

22 I'm just asking you if you might want to  
23 consider clarifying some of the areas, and with the overlay

1 that we're working with public trust funds here.

2 MS. BERNSTEIN: I have a couple questions.

3 MR. WALLACE: Ms. Bernstein.

4 MS. BERNSTEIN: This goes more to the kind of  
5 details of our Act and what are --

6 I presume that you know about Mr. Houseman's and  
7 Gary Swartz's book on which funds you can use for which  
8 lobbying which year?

9 MR. FLOWERS: Yes.

10 MS. BERNSTEIN: I am a little concerned with a  
11 lot -- with some of the conclusions that Mr. Houseman has  
12 reached, and I guess I'm just asking about some of the  
13 interrelationships between our Office of Compliance and  
14 Review, and, for instance, other agencies that give public  
15 funds, such as the Office on Aging and the Title 20; I  
16 mean, any kind of money that would come from either federal  
17 or state grants are considered public funds.

18 Therefore, they are not limited specifically by  
19 our Regulations, but they must abide by the law under  
20 which they were appropriated.

21 MR. FLOWERS: Right.

22 MS. BERNSTEIN: The thing that concerns me is on  
23 federal funds, it seems to me that we have to have a kind

1 of coordination, because if our programs are saying, "Well,  
2 I didn't do that with your money, I did it with" -- and  
3 private funds, by the way, are limited by the same  
4 restrictions that our LSC money is.

5 So, Alan disagrees with me on this and I disagree  
6 with him. The question I have is to what extent are we  
7 cooperating with other agencies? I mean, Circular A122,  
8 I believe, covers a lot of lobbying activities that are  
9 done with public money. Other OMB requirements cover those  
10 funds.

11 It seems to me that we've got a problem if  
12 somebody is going to say, "Well, I didn't lobby out of  
13 your pot. I lobbied out of somebody else's pot," and  
14 unless we -- I mean, what kind of interrelationships do  
15 we have -- I mean, maybe we have the complaint and maybe  
16 the lobbying was impermissible out of the other pot.

17 I'm just wondering what our procedure is.

18 MR. FLOWERS: That activity, when it's done, is  
19 identified with our program, and when it is written up in  
20 the newspaper, it doesn't necessarily differentiate that  
21 funds were used from another source.

22 We have been so swamped with complaints and so  
23 forth in our Department and feel we're understaffed so

1 much that we haven't had a chance to do much coordinating  
2 with other agencies, but the problem you described might  
3 be alleviated to some extent by time records, because if  
4 they're spending, say, twenty-five percent of their time on  
5 activities that we wouldn't ordinarily permit and then  
6 they're saying they're using other funds to do that with,  
7 they have to allocate overhead, rent, utilities,  
8 secretarial support to that activity.

9           So, that's another reason for keeping accurate  
10 time records. That other money, in quotes, has to be used  
11 to pay its fair share of the rent, utilities and secretarial  
12 time. They can't use our money for that, and without time  
13 records, I think that may be happening. It could easily  
14 happen.

15           It would be impossible to know for sure without  
16 the time records.

17           MS. BERNSTEIN: In your opinion, does our  
18 Regulation which talks about pending legislation cover the  
19 situation which you describe in terms of the postcards  
20 from the Governor's Office?

21           If a piece of legislation has been passed through  
22 the legislature, but it has not been signed by the  
23 President, is our Regulation sufficient to cover that situation.

1 MR. FLOWERS: I believe yes, because it talks  
2 about elected officials. The governor is an elected  
3 official and this has an impact on whether it's passed or  
4 vetoed.

5 MS. BERNSTEIN: So, that particular situation  
6 would have been impermissible under --

7 MR. FLOWERS: No. They were on a mailing list  
8 and they didn't solicit that invitation, so I regard that  
9 as an invitation the way the Regs are currently written.

10 MS. BERNSTEIN: But are just non-personal  
11 invitations covered in our Regs?

12 MR. FLOWERS: If they are requested to come and  
13 make a comment on it, our Regs currently don't require a  
14 personal invitation. So, I took that to mean any kind of  
15 invitation that was not solicited, as long as it's  
16 documented in writing.

17 So, if you want to make it more narrowing, I would  
18 think you're going to have to change the Regulations a  
19 little.

20 MS. BERNSTEIN: The form letters sent out from all  
21 the congressmen, I get them occasionally from the  
22 congressmen in my state, that says we are dealing with X  
23 and X, and I'd be interested in your --

1 MR. FLOWERS: We don't have access to the mailing  
2 lists of the governor, but we know that they have  
3 categories of mailing lists, and when a bill comes up and  
4 it is passed by the legislature or even being considered  
5 by the legislature, the category code on that bill triggers  
6 off a mailing of a copy of the bill to a specific mailing  
7 list.

8 The way we've been interpreting the current Regs,  
9 to say that that is an invitation, a little card comes in  
10 the mail with the bill.

11 I didn't read anything in our Regs to require  
12 more specific invitations than that. You might want to look  
13 at that area and decide just how specific the invitation or  
14 request has to be or personalized.

15 MR. WALLACE: I appreciate your time. Thank you  
16 very much.

17 Mr. Roche, we are going to have public comments  
18 later.

19 MR. ROCHE: May I ask one question?

20 MR. WALLACE: Sure.

21 MR. ROCHE: I'm curious as to how long he's been  
22 employed by the Corporation and --

23 MR. WALLACE: I think he said since May.

1 MR. FLOWERS: Yes, since May.

2 MR. ROCHE: How many programs he's visited since  
3 then.

4 MR. FLOWERS: We are not to reveal that kind of  
5 information. I've looked at a large number of files and  
6 I visited some programs and I've been a practicing attorney  
7 in San Diego for fifteen years and I've had a lot of these  
8 kinds of cases, had a lot of dissolution cases.

9 I've had a lot of litigation cases. I've had  
10 lessor, lessee cases.

11 MR. ROCHE: I heard that we went to the same  
12 law school.

13 MR. WALLACE: Thank you, Mr. Flowers. Thank you  
14 very much.

15 The next witness is Representative Ivan  
16 Mothershead of the House of Representatives of the State of  
17 North Carolina, who is going to discuss some of his  
18 experiences with Legal Services and his ideas on where we  
19 ought to be.

20 Again, as I said when we started, we're not going  
21 to conduct the factual investigation into what is or isn't  
22 going on, but as somebody who gets lobbied from time to  
23 time, we're very interested to have your perspectives on

1 the matter and we thank you for coming up here this  
2 morning.

3 MR. MOTHERSHEAD: Thank you. Good morning.

4 I was not fully understood before I came. I have  
5 a statement I'd like to read and the statement does include  
6 something that you didn't want to get into, but I think  
7 it's necessary to set the tone as to why I'm here and why  
8 I have an interest in this.

9 MR. WALLACE: Let me put it this way: You're  
10 entitled to base your statements on what you see and what  
11 you have experienced, but if somebody else thinks you're  
12 saying different things, we aren't going to try and resolve  
13 that here.

14 MR. MOTHERSHEAD: This is not the place to judge  
15 that. First, let me say, I am not an attorney. I'm not  
16 going to give you my full resume. I am a publisher, but  
17 I am a member of the North Carolina House.

18 First, let me say I support the concept of Legal  
19 Services Corporation. In a time of a more complex legal  
20 intrusions by the government to our citizens, I think it's  
21 essential that we have to have some legal help for everybody.

22 That's why I was so outraged by the work of the  
23 North Carolina Legal Services. In a period of shrinking

1 budgets, the North Carolina Legal Services chose to spend  
2 federal money, not on helping individual clients, but on  
3 fulltime lobbying efforts to support a flow of ideas of  
4 their own.

5 I came to this conclusion after watching the  
6 North Carolina Legal Services work in the North Carolina  
7 General Assembly.

8 Let me briefly review the experiences that led me  
9 to that conclusion and then I will summarize what I believe  
10 you should do to prevent this type of abuse from continuing.

11 I first met Ms. Margo Roten, a fulltime employee  
12 of the North Carolina Legal Services, the first week of  
13 the General Assembly in February. Ms. Roten appeared at  
14 the first Bank Committee meeting that I attended and she  
15 announced that she would be attending our meetings and that  
16 she would be the only lobbyist to appear before us that  
17 represented consumers.

18 I asked her who she thought the legally elected  
19 Representatives on the Committee represented. She didn't  
20 answer.

21 Ms. Roten attended every Banking Committee  
22 meeting, and to my knowledge, never attended with a client.  
23 She also attended other committee meetings, and to my

1 knowledge, was in attendance in the General Assembly every  
2 day of the session.

3           Coming down here, I did remember a few Monday  
4 nights. We meet in North Carolina on Monday night, Tuesday,  
5 Wednesday, Thursday, Friday, and then only on Friday  
6 morning, and coming down here, I remembered there were  
7 several Monday nights she wasn't in attendance, but every  
8 other day the General Assembly met, she was in attendance.

9           In April of '85, I became so outraged at Ms.  
10 Roten's fulltime lobbying efforts that I requested the  
11 official Regulations of your organization. I seemed to  
12 remember that Congress has specifically forbid fulltime  
13 lobbying by Legal Services' employees.

14           The Regulations were mailed April 18th, 1985.  
15 I became determined to find out why Ms. Roten had chosen to  
16 ignore these Regulations.

17           Since she attended every Bank Committee meeting,  
18 even those called on short notice, I thought maybe the  
19 chairman had requested her to attend. I asked him if he  
20 had requested her attendance. Mr. Evans stated, "Absolutely  
21 not."

22           How did she know of our meetings? She had  
23 requested that the clerk send her notifications of the

1 meetings. I could find no one on the Committee that had  
2 requested her attendance.

3 So, in June I asked her in Committee why she was  
4 there; did she have a client, and, if so, who was that  
5 client? She refused to answer the question and flatly  
6 stated it was none of my business.

7 I reminded her of your Regulations and she stated  
8 that that was a private lawyer-client relationship. For  
9 failure to state who her client was is a violation of North  
10 Carolina Lobbying Laws. You are to judge whether she  
11 violated your Regulations.

12 I believe Ms. Roten and other members of the  
13 North Carolina Legal Services are lobbying fulltime in the  
14 North Carolina General Assembly, do not have specific  
15 clients who have requested help with legislation.

16 If Ms. Roten had clients, how could she  
17 compromise her client's positions away without first  
18 consulting her client? How could she have a client at  
19 hand for every bill discussed? Even Committee amendments  
20 that she had no prior knowledge of? It's impossible.

21 I'll be glad to discuss at length with you the  
22 violations that I observed committed by North Carolina  
23 Legal Services, if the Board wishes, but I know that's not what you're

1 interested in.

2 Since the purpose of this meeting is to discuss  
3 possible changes in Lobbying Regulations, let me outline  
4 for you why I feel the current Regulations are totally  
5 worthless.

6 First, the big out. Legal Services employees can  
7 attend and testify if requested by a member of the  
8 legislature. If you were a legislator and knew that you  
9 could receive free fulltime help in lobbying and writing  
10 legislation, wouldn't you request that help?

11 This out means that when a legislator agrees  
12 with the political beliefs of a Legal Services employee,  
13 whatever those beliefs are, he can have a fulltime helper.

14 Federal money should not be used to support or  
15 oppose any legislation in state legislatures. This Rule  
16 should be eliminated.

17 Second, the I've got a client rule. As we see  
18 in North Carolina, this rule is a farce. The mystical  
19 client never appears and probably never exists. If pushed,  
20 the client can be rounded up after the fact.

21 Legal Services employees should be prevented  
22 from attending any legislative committee meetings without  
23 a client. They should probably be prevented from attending,

1 I used to work for a member of Congress and certainly  
2 anytime I could get somebody to do my work for me, I was  
3 delighted to do it. I don't know how prevalent that is  
4 in North Carolina.

5 That's what I'm asking you, I guess, is do you  
6 see members of the legislature who you believe are eager,  
7 willing and actually do use Legal Services staffers as  
8 extra staff members.

9 MR. MOTHERSHEAD: I think you'll see and the  
10 testimony follows that the people who will testify in  
11 support of Legal Services have a specific agenda, which  
12 happens to agree with that agenda of the Legal Services  
13 Corporation.

14 I don't believe that the Legal Services  
15 Corporation should be in the business of deciding policy  
16 about what helps poor people. Some people might say a  
17 free market does, other people might say that we should  
18 have government subsidies or something.

19 The Legal Services, to my knowledge, is not in  
20 that business. We shouldn't be deciding policy, but it does  
21 occur, and I can give you some specific instances where --  
22 for instance, Representative Paine opposed a bill in  
23 Committee. He got Ms. Roten to help him in that.

1 I've been on both sides. I had Ms. Roten help  
2 me defeat a bill one time. It was a bill to require you  
3 to put the date on a check -- the merchants wanted you to  
4 have -- when you opened a checking account, to put the date  
5 that you opened the checking account. Supposedly this was  
6 to help the merchants stop bad checks.

7 I thought it was kind of an intrusion on my  
8 rights and she didn't support that and lobbied to kill that  
9 bill. I didn't think it was her right to lobby to kill the  
10 bill, anymore than it was her right to lobby to kill other  
11 bills.

12 MR. WALLACE: But you happened to be on the same  
13 side?

14 MR. MOTHERSHEAD: I've been on both sides of her  
15 lobbying. She's a very good lobbyist, but I don't think  
16 she's anything but a lobbyist. If she's done anything  
17 but -- someone mentioned the ten percent rule. If that's  
18 ten percent of her time, she's got a lot more hours in the  
19 day than I do.

20 MR. WALLACE: I guess my point is not so much to  
21 get into examples, but this is not just an imaginary item  
22 in your mind. You think that legislators really do want  
23 to rely on our people?

1 MR. MOTHERSHEAD: They do. They were three  
2 fulltime lobbyists in North Carolina Legislature; Ms. Roten,  
3 a Don Saunders, I believe, and the other one I'm not  
4 familiar with.

5 They attended committee meetings all the time.  
6 They helped write legislation. They would even formulate  
7 compromises. We would be in a committee meeting and they  
8 would get together and work on a compromise.

9 MR. WALLACE: What's your budget for staff for an  
10 individual legislator in North Carolina, or do you have a  
11 budget for staff?

12 MR. MOTHERSHEAD: I've got one secretary.

13 MR. WALLACE: You do?

14 MR. MOTHERSHEAD: That's it. Committee Chairmen,  
15 I think that's all all of us get is one secretary, and  
16 there is, of course, a bill writing staff and what have you.

17 In one instance I know where a Legal Services  
18 representative actually drew the legislation, the legis-  
19 lation was passed, that directly affected the Legal  
20 Services Corporation, a law that would allow them -- it was  
21 redefining the Fair Practices Act and the corporate  
22 statutes to allow triple damages.

23 I was somewhat surprised when Ms. Roten showed

1 up with Representative Mav Brank on his bill.

2 It appeared to me to be a pretty self-serving  
3 bill. It passed.

4 MR. WALLACE: I will back off for a second.

5 Do other members of the Committee have any  
6 questions at this point?

7 COMMITTEE MEMBERS: (No response.)

8 MR. MOTHERSHEAD: What we've seen in North  
9 Carolina is, I think, an attempt, straight out, to go  
10 around the corner and you really have a fulltime lobbying  
11 organization. If there's anything else they're doing down  
12 there besides lobbying, I don't know what it is.

13 MR. WALLACE: What do you say to the folks that  
14 say to us that landlords have fulltime lobbyists in the  
15 legislature and banks have fulltime lobbyists; all the  
16 people that poor folks have to deal with on the other side  
17 of the issue, they're out there fulltime lobbying you?

18 MR. MOTHERSHEAD: There's no question about that.  
19 There's nothing more powerful to a state legislature than  
20 a constituent, an individual who comes to testify on  
21 legislation, and when that occurs it makes a big impression  
22 on legislators.

23 If the clients existed, which I do not think they

1 do, but if the client existed and they appeared with the  
2 Legal Services attorney, I believe their case would have  
3 been made very well, but since they never brought clients  
4 to the meetings, even after they were specifically  
5 requested to, it leads me to believe that the clients don't  
6 exist, especially since they knew that there were serious  
7 questions about the legitimacy of their so-called clients.

8           It would seem to me, if I was in their situation,  
9 I'd bring the clients in. It's hard for me to believe that  
10 you can have a client for every possible amendment in a  
11 committee meeting.

12           I would bring an amendment up and then Ms. Roten  
13 would say, "I don't think my client will agree with that."  
14 She'd telepath, but I don't know.

15           MR. WALLACE: Ms. Bernstein?

16           MS. BERNSTEIN: I have a real concern with this  
17 whole concept of future law and our utilizing Legal  
18 representatives to effect future laws, which, as you say,  
19 is a policy question.

20           It may be a situation wherein there are  
21 constituencies that do employ lobbyists, but I would say  
22 that the majority of people that pay taxes don't have  
23 lobbyists, and, as you say, they have representatives.

1 MR. MOTHERSHEAD: That's what I'm supposed to do.

2 MS. BERNSTEIN: That's the system. I'm a little  
3 concerned, and this is something that's always confused me,  
4 as to how a client can have a direct interest in getting a  
5 law changed if it is legal representation, because it seems  
6 to me that legal representation is enforcing the rights  
7 you currently have.

8 MR. MOTHERSHEAD: I couldn't agree with you more.  
9 I can't conceive of some of the legislation that was  
10 opposed by Legal Services even affecting poor people.

11 One bill to allow lines of credit was opposed by  
12 Legal Services, a flexible line of credit secured by real  
13 property, which some states have, and North Carolina now has

14 It was opposed by Legal Services. I couldn't  
15 conceive of how many poor people would have a flexible line  
16 of credit secured by real property, but maybe your  
17 definition of poor people is different from mine.

18 It was a continual deal. It wouldn't have been  
19 a burden if it had not been a daily event.

20 MS. BERNSTEIN: Do you think it would help for us  
21 to actually define -- we are the Legal Services Corporation.  
22 We're talking about funding legal access to the courts,  
23 access to judges.

1 MR. MOTHERSHEAD: I think that's what the point  
2 should be.

3 MS. BERNSTEIN: Would it be helpful to just  
4 define it that it is -- if you do not need a lawyer to do  
5 it, it is not permissible?

6 MR. MOTHERSHEAD: I think that would be good. I  
7 think you should prohibit the Legal Services employees from  
8 appearing unless a client comes to them and says, "Listen,  
9 I heard there's a law down there that's going to change my  
10 rent, it's going to change my interest payments, and I don't  
11 like it."

12 Now, if they have a specific request like that,  
13 I think they ought to go down there, but I don't think they  
14 should be able to say, "Well, don't you have a loan at  
15 Beneficial Finance?" and the guy says, "Yes," "Well, we're  
16 going to go down and defend your rights."

17 Fishing for clients is unethical for all  
18 attorneys, I believe, and I believe there's a lot of  
19 fishing going on down there.

20 MR. WALLACE: Used to be. It's not as unethical  
21 anymore.

22 MR. MOTHERSHEAD: Maybe I should say ambulance  
23 chasing. That's still unethical. I mean, I think there's

1 some of that that goes on.

2 MS. BERNSTEIN: Well, even that is unethical if  
3 it's done on a person-to-person basis where you just go up  
4 and say, "What can I do for you, fellow?"

5 I'm serious about this question of how something  
6 that might happen in the future affects someone's legal  
7 rights right now, because that's what legislation is.

8 MR. MOTHERSHEAD: I don't think there's any way,  
9 the way the current Regulations are written, to prevent the  
10 abuses, because I'm sure you will hear from my distinguished  
11 colleagues that appeared from North Carolina that they're  
12 following the Regulations to the letter, and I'm not an  
13 attorney and perhaps that is the case.

14 Like we said, we're not here to judge. If that is  
15 the case, I do not believe that you are obeying the clear  
16 intent of Congress. I think Congress' intent clearly is  
17 to prevent lobbying fulltime by Legal Services employees.

18 If they not in violation of your current  
19 Regulations, then I believe the Regulation should be  
20 changed, because they are fulltime lobbyists and I don't  
21 believe anybody here would argue the fact that Congress  
22 does not want that going on and that's my point.

23 I think if this continues, this will only add

1 fuel to the attack on Legal Services Corporation itself.

2 MS. BERNSTEIN: I don't think we're going to get  
3 exactly a poll of Congress to find out those that support  
4 the expansive lobbying. We probably are not going to get  
5 them to 'fess up as to how much time they're getting from  
6 the lobbyists they're supporting.

7 MR. MOTHERSHEAD: That's exactly true, and that  
8 is the other point. There will be a lot of strong  
9 defenders; these are good lobbyists. I won't argue that --  
10 Ms. Roten has been a lobbyist there for at least two  
11 sessions and maybe longer, and she has legally filled out  
12 her lobbying papers.

13 I have investigated them. I think she's misstated  
14 what she's spent, but that's a North Carolina law. It has  
15 nothing with what you've got here, but she has registered  
16 with the Secretary of State, as have three other employees  
17 of the Legal Services have registered, paid \$75 to be  
18 lobbyists.

19 So, by definition they are lobbyists and they  
20 put their employer down as Legal Services, or I guess they  
21 call it North Carolina Legal Resources or something like  
22 that.

23 MR. WALLACE: Do we have any other questions of

1 this witness at this time?

2 We thank you for being here. I'm sure you'll  
3 stay around for the rest of the hearing, because questions  
4 may arise and every once in a while we'll jerk somebody  
5 out of the audience, so please stay with us.

6 The next witness is Mr. Richard Taylor, Program  
7 Director of Legal Services in North Carolina.

8 Mr. Taylor, I'm going to ask you to introduce to  
9 the Committee the other folks you have brought with you  
10 from North Carolina.

11 MR. TAYLOR: Let me introduce to you John  
12 McMillan, who is the attorney for Legal Services of North  
13 Carolina, and will be speaking for us initially.

14 MR. WALLACE: Thank you, Mr. McMillan.

15 Could we meet the rest of the panel while we  
16 start?

17 MR. MC MILLAN: I'll be glad to do that. At the end,  
18 Lillian O'Bryiantis an attorney. She is a member of the  
19 Board of Legal Services of North Carolina. She's a member  
20 of the Board of Governors of the North Carolina Bar  
21 Association. She's President of the North Carolina  
22 Association of Women Attorneys, and she's Chair of the  
23 LSNC Field Program Operations Committee, which has

1 oversight of the lobbying activities.

2 Representative Paul Pully to my immediate left  
3 is an attorney from Durham, North Carolina. He has a been  
4 member of the North Carolina General Assembly for four  
5 terms. He has been Chairman of the Judiciary Committee in  
6 the North Carolina House for a number of terms. I don't  
7 remember when he was first appointed to that Committee  
8 Chairmanship.

9 He has been involved in a number of the issues  
10 that you will hear about. He was Vice Chairman of the  
11 Banking Committee at which Ms. Roten made her initial  
12 appearance and about which Representative Mothershead spoke.

13 We appreciate the opportunity to be here. Again,  
14 as with the case of Representative Mothershead, we didn't  
15 really have an agenda ahead of time.

16 We have prepared a presentation to give to you.  
17 A lot of that was in light of the fact that based upon  
18 Representative Mothershead's complaint, there has been,  
19 and apparently is, an ongoing investigation by Mr. Flowers.

20 We received yesterday a copy of Mr. Flowers'  
21 draft report, dated August the 13th, which we understand  
22 members of the Board have received.

23 MR. WALLACE: I have seen it in preparation for

1 chairing this meeting so I'll know what to try to stay  
2 away from primarily.

3 I don't know whether other members of the Board  
4 and Committee have seen that or not.

5 MR. SMEGAL: I do not have a copy.

6 MR. WALLACE: Okay.

7 MR. SMEGAL: I would be curious as to who does  
8 though.

9 MS. BERNSTEIN: I've seen it, but, again, it was  
10 the same kind of thing, to try to stay out of the --

11 MR. VALOIS: I have a copy.

12 MR. WALLACE: Let's put it this way: It ought to  
13 be available to any members of the Board that want to see  
14 it. I asked for it specifically because I knew you were  
15 coming and I don't want to judge an ongoing investigation, but  
16 as the Representative said --

17 MR. VALOIS: Mr. Wallace, I'm advised that it was  
18 also sent to Mr. Eaglin.

19 MR. EAGLIN: I was given it yesterday and that was  
20 the first response to my request back in Salt Lake City for  
21 information about this matter, was when I was handed this  
22 report by Mr. Baker yesterday.

23 MR. WALLACE: I have a draft report. I think

1 it's the same.

2 MR. MC MILLAN: I think it is all in a draft  
3 report. I think that one of the issues that you have  
4 raised and one of the series of questions that you have  
5 asked for comments on is our interpretation of the  
6 Regulations and how they're working and that sort of thing.

7 I think that at some point in our presentation  
8 we will want to talk about Mr. Flowers' interpretation of  
9 the Regulations, because we disagree with some of them.

10 MR. WALLACE: That is exactly what I would like  
11 to hear. I don't want to resolve factual disputes between  
12 you and Representative Mothershead, but obviously you think  
13 you're abiding by the law, and if we have a different  
14 interpretation of what our Regulations are, we need to make  
15 that clear to people.

16 MR. MC MILLAN: I guess with that, and because  
17 Representative Mothershead's testimony is fresh in  
18 everyone's mind, we'd change our order a little bit and ask  
19 Representative Pully to state his position on lobbying in  
20 North Carolina generally, what light he can bring to the  
21 LSNC lobbyists, what they do and how they're perceived by  
22 the North Carolina General Assembly.

23 At some point in the presentation we will hand

1 up some documents to you. Some exhibits, included in those  
2 are a long list of letters we have -- within the past few  
3 days we have gotten from legislators, supplementing  
4 Representative Pully's testimony.

5 They were solicited, but this was overwhelming  
6 response to a very short solicitation, so we look forward  
7 to your reading those at some convenient time.

8 MR. WALLACE: Thank you.

9 Representative Pully, the Chair is going to  
10 exercise its prerogative of getting a cup of coffee, but I  
11 think I can hear you, so please go ahead and proceed.

12 MR. PULLY: Thank you, Mr. Chairman, ladies and  
13 gentlemen.

14 I'm pleased to be here today. Like Mr. McMillan,  
15 I certainly didn't know what format this would take and I  
16 would like to have been a little better prepared than I am,  
17 but I would like to make a few comments as to how, in the  
18 North Carolina General Assembly, lobbying takes place, and  
19 with regard to some of the involvement concerning North  
20 Carolina Legal Services.

21 I do not know a great deal about Legal Services  
22 and/or your Regulations, except that I know that I am  
23 delighted Legal Services is there. It makes it much easier

1 on my conscience when I turn down, as a lawyer, clients who  
2 are deserving of representation and I know that I'm not in  
3 a position to represent them because they have inadequate  
4 funds.

5 To the lobbying idea, Mr. Mothershead, who filed  
6 this complaint, has reminded me of a colloquy that took  
7 place at the very early session in the Banking Committee.

8 During that colloquy there was discussion and the  
9 purpose, as announced by the Chairman, was to have all the  
10 lobbyists who might be appearing before the Committee to  
11 identify who they were, who they represented and what they  
12 did, what their interests were.

13 There were lobbyists lining the walls, as that  
14 Committee is very heavily lobbied by many industry people,  
15 most of them very significantly being paid.

16 All of the individual groups identified who they  
17 worked for or lobbyists who they worked for or what their  
18 positions were and generally how wonderful their  
19 institutions and organizations were of whatever nature, and  
20 Ms. Roten was recognized and she explained something about  
21 Legal Services and she received some fairly antagonistic  
22 questions, which rather amused me, because I knew that I was  
23 going to be handling a bill in that Committee which she

1 would probably oppose, and which she did not disappoint me  
2 in that; she did oppose me.

3 She handled the questions, I thought, reasonably  
4 well, and somewhere in the course of that, Representative  
5 Diamond from Surrey County said, "It's sort of strange,  
6 Mr. Chairman, that the only person to get any questions  
7 and any flak from the Committee is the only person here to  
8 represent consumers," which is what Representative Diamond  
9 said, and my recollection was not that Ms. Roten said that.

10 To which Representative Mothershead, in his  
11 personal exuberance, interrupted and said, "I resent that.  
12 The banks also represent consumers," and there was  
13 considerable laughter and concern and the conversation  
14 went on from there.

15 Well, ladies and gentlemen, the fact of the  
16 matter exists that the banks represent the shareholders  
17 and they do lots of good things and they provide funds for  
18 lots of us to borrow, and I've borrowed my share and  
19 borrowed my share for clients, but their interest is there  
20 for the shareholders.

21 We have in North Carolina approximately 450  
22 registered lobbyists. Most of them are compensated and  
23 paid for by their groups and their individuals and they

1 represent them well.

2 We, as members of the General Assembly, need them  
3 and rely upon them. There are many other lobbyists who  
4 are not registered and who are there and available because  
5 they are exempt from registration or because they don't  
6 bother.

7 A volunteer legislature or a citizen legislature  
8 like we have, where you earn your livelihoodsomeplace else,  
9 has only limited time which we can spend with regard to  
10 the General Assembly, and most of us spend far more than  
11 we can financially afford to do, but we do, in fact, rely  
12 on lobbyists.

13 We listen to what they have to say. We listen  
14 to what the other side has to say, and hopefully we can  
15 divide it by two or decide who we believe the most or who  
16 we rely upon, and we may do our own independent check, but  
17 it is a valuable function to have performed.

18 With regard to the Banking Committee, in  
19 particular, I will tell you that I cannot recall lobbying  
20 by anybody else for the consumers in that Committee but  
21 Legal Services.

22 Now, if they violated your Regulations or they  
23 didn't comply with something there, I don't know that.

1 That's for you to determine, but I will tell you they did  
2 a valuable function.

3 I think the most controversial issue in that  
4 Committee this year was my bill, or a bill that I handled,  
5 that ultimately passed, a Senate version passed, which came  
6 through the Senate fairly simply and got to the Committee.

7 It dealt with the Consumer Finance Law. One of  
8 the things it did, it allowed consumer finance companies  
9 to make first mortgage loans to people competitively.

10 The Legal Services position was that this was bad  
11 for low income people because these people turned over and  
12 rolled over a lot of their money, and we had some violent  
13 arguments about it and some terrible disagreements about it.

14 As to whether they ever bring in clients, I will  
15 tell you they did bring in a client on that. They brought  
16 in a horror story and I did everything that my skill could  
17 muster to keep that horror story away from the TV cameras.

18 I was finally successful to do that and we got  
19 the bill passed, but we worked out a compromise which I  
20 believe is a good bill. It allows the consumer finance  
21 to make those first mortgage loans. It has some  
22 restrictions on it. They have to report to the Attorney  
23 General what they're doing.

1           Instead of being unbridled without any  
2 regulation on the interest, there's a formula where they  
3 can charge a T-Bill plus figure, and there were many other  
4 ramifications of that bill, but I don't want to get into  
5 the particulars of them.

6           I will tell you that Ms. Roten and I had some  
7 personal disagreements with regard to that. I never found  
8 the information she was disseminating to be inaccurate.  
9 I thought it was exaggerated and I thought her positions  
10 weren't as well-justified, but that was a legitimate  
11 difference of opinion.

12           There were other representatives and legislators  
13 who she assisted, and I think that's where Mr. Mothershead  
14 mentioned Mr. Paine's role in that, so Representative Paine  
15 was relying largely on her information.

16           In the past three terms, at least, I have handled  
17 other legislation which has been very controversial and  
18 which Legal Services has appeared, so I hope that has some  
19 credibility with you, having battled with these people, but  
20 I recognize there are lobbyists lining the halls and the  
21 walls, representing the banks and those institutions, and  
22 the multiplicity of institutions are honorable people, but  
23 they are paid to represent their clients.

1           They are not going to voluntarily tell me when  
2 they want to increase late loan fees that their profits  
3 have increased by twenty-five percent each of the last  
4 five years, but what they're going to tell me when they go  
5 in there is that, "This particular area of our business is  
6 losing money," and those kinds of pieces of information are  
7 very helpful.

8           A couple of other comments with regard to a note  
9 or two I made as the discussion took place as to whether  
10 they should identify their clients in every instance.

11           I don't know the answer to that. That, again, is  
12 for you to decide, but it is a very different forum from  
13 going into court where your client is, in fact, identified.

14           There are many times I have been hired by clients,  
15 very wealthy clients, who were substantially able to stand  
16 on their own feet, to find out information, to talk with  
17 the planners about the possibility of having a lot rezoned  
18 or a block rezoned or an intersection rezoned, who wouldn't  
19 let anybody know what their name was or who they were.

20           There have been many instances where clients did  
21 not want to be known, that they were interested in  
22 purchasing a particular tract of land where I have  
23 represented people, and many other instances of that nature.

1           There are many instances where people made  
2 inquiries as to whether a law can be changed to accomplish  
3 a particular result and the lawyer never lets people know  
4 who they are representing or who really wants that law  
5 changed.

6           So, that is not, by itself that knowledge,  
7 and as to whether these clients come into the legislative  
8 process or come to the legislature, I would say to you that  
9 lobbyists bring their clients to the legislature to  
10 represent themselves if they articulate and make a good  
11 picture to the legislature.

12           The reasons that many are successful is because  
13 they are members of the same clubs, they are members of  
14 the same civic club or country club or go to church with  
15 the legislators when they go home.

16           These poor people that Legal Services represent  
17 don't articulate that well. They don't make terribly good  
18 impressions in many cases, except that horror story I was  
19 telling you about where this little lady had been fore-  
20 closed on her house and was out in the cold, I thought was  
21 going to make a pretty substantial impression on the TV  
22 cameras and that alarmed me very greatly and I didn't  
23 want to deal with that.

1           Apparently there is some misunderstanding or  
2 maybe there is some misunderstanding on the part of Mr.  
3 Flowers about the lobbying process in North Carolina. I  
4 think it's very similar in other places.

5           The comment about them being there all the  
6 time, or much of the time, I know many lobbyists; certainly  
7 I can think of a few specific examples off the top of my  
8 head of the 450 registered lobbyists that are in the  
9 General Assembly every day and never have a bill that they  
10 lobby.

11           It is essential to do a good job of lobbying in  
12 the General Assembly, or any other body, to become  
13 acquainted with its members, to gain some information about  
14 the rapport and the esteem they hold for each other, or the  
15 lack thereof, and to gain some evaluation as to their  
16 voting pattern.

17           For example, there may be some personal tie that  
18 crosses philosophical lines where a particular legislator  
19 would have an influence over another legislator.

20           Most lobbyists who have an interest in perhaps  
21 one bill, for example, we talked about the Banking  
22 Committee, which has been talked about before, the Banks  
23 and the Thrift Institution Committee, I believe, or the

1 Judiciary Committee, which I chair, but, in particular, the  
2 Banking Committee, most of the lobbyists who are  
3 interested there attend all of the Committee meetings.

4 They all request to be notified when there is a  
5 meeting so that something will not happen in their absence  
6 for which they learn about later, and so they may  
7 evaluate that.

8 Mr. Chairman, I can comment on a lot more things,  
9 but you are busy and there are other people to do that, and  
10 I'm sure I will think of a point I wish I had made as soon  
11 as I leave or if somebody reminds me of it, but I will  
12 leave it there.

13 MR. WALLACE: We will try to give you the chance  
14 to follow up later, because I know there will be some  
15 questions, but what I think I'd like to do, Mr. McMillan,  
16 is let you go ahead and finish your presentation as a  
17 group and then we'll try to hold questions until you put  
18 your whole case on the table.

19 I've got some questions for Mr. Pully, but let's  
20 hear from the other folks first, if we can.

21 MR. MC MILLAN: Thank you, Mr. Chairman.

22 I guess to now back up and give you a little  
23 insight into Legal Services of North Carolina, how we do

1 business, I would ask Ms. O'Bryant to do that.

2 MR. WALLACE: Ms. O'Bryant, Thank you.

3 MS. O'BRYANT: I feel it is important for you to  
4 understand how the Services operate in North Carolina and  
5 how it is governed in light of the investigations from your  
6 organization. I think that's the reason we decided to do  
7 this.

8 In North Carolina we have a statewide Legal  
9 Services Program, and the statewide program was created in  
10 1976 by the North Carolina Bar Association. Prior to its  
11 creation, there was sort of a blue ribbon study, committee or  
12 commission that studied whether or not North Carolina  
13 needed a Legal Services organization.

14 This is a copy (indicating) of their report, and  
15 it was decided that this was needed.

16 It is a membership corporation. The members of  
17 the corporation are the Board of Governors -- are the  
18 members of the Board of Governors of the North Carolina  
19 Bar Association.

20 The statewide organization, the LSNC, Legal  
21 Services of North Carolina, is governed by a Board of  
22 Directors. The Board of Directors consist of attorney  
23 members and client eligible members.

1 All the attorney members and the majority of the  
2 Board would be attorney members. All of the attorney  
3 members are appointed by the Board of Governors of the  
4 North Carolina Bar Association.

5 As a matter of fact, one member of the Board of  
6 Governors of the Bar Association is Keith Caps, who is  
7 a member of Mr. Valois' law firm.

8 We have a very, I guess you would say,  
9 interested Board of Directors of Legal Services. We take  
10 our jobs very seriously. This is a volunteer job and it  
11 takes many hours during the year, and we oversee the  
12 budget. We distribute the money that you send to us,  
13 which is one of our, I guess, most important jobs.

14 We all feel, well, we have to take this seriously,  
15 because we're spending the public funds, and we probably  
16 take it more seriously than the way we spend our own funds.

17 We also review the Regulations which come from  
18 Legal Services Corporation. We try to interpret these.  
19 We try to let our individuals -- we have fifteen individual  
20 programs. These programs are autonomous practically.

21 We set policy and we interpret the Regulations.  
22 We send them their money, but they each have individual  
23 Boards of Directors, and of these fifteen local Legal

1 Services Programs, there are 217 Board members, and of these  
2 217, 133 are attorneys, private practicing attorneys in  
3 North Carolina.

4 Getting back to the role of our State Board, if  
5 any of these local programs are not doing their jobs, then  
6 we don't feel like we are doing our job, and since Dick  
7 Taylor has been our State Director, he has instituted an  
8 annual review or evaluation of all the local programs and  
9 then he brings back what he finds out in the field to my  
10 Committee for review.

11 Part of what he is doing is trying to find any  
12 problems that exist, and if there are problems, trying to  
13 correct them; also, trying to find out how well these  
14 programs are doing and sharing with all the programs,  
15 expertise of other programs.

16 This has been very informative and very good.  
17 If something is wrong in the field, no one tells us about  
18 it, there is not anything we can do to correct it.

19 Our Board of Directors, our central office, who  
20 is really in charge and makes policy for all of our local  
21 programs, were never informed by Mr. Mothershead or anyone  
22 else that someone thought that we were illegally lobbying  
23 in the General Assembly.

1           If someone had called this to our attention, I'm  
2 sure that we would have looked into it, and if we felt like  
3 there was a problem, we would have corrected it, and our  
4 investigation, I'm sure, would have been reviewed by your  
5 group, and if you felt like we were wrong, it could have  
6 come down, but we feel very concerned that we were never  
7 informed of this and that some parts of our program were  
8 being investigated without our knowledge of it, and without  
9 a grievance procedure, which we do have.

10           We felt like we should be the first to know,  
11 because ultimately in North Carolina, the responsibility  
12 is the Board of Directors, and we had no information.

13           Since there are a number of people to speak, I  
14 would like to say just a few more words and then close.

15           I would first just like to tell you that Legal  
16 Services of North Carolina receives over thirty-five  
17 thousand requests for assistance annually and we have  
18 served over twenty-five thousand people annually.

19           I would really like to -- well, it was mentioned  
20 that we have some handouts for you. There are some other  
21 things included in here, but since we became aware -- no  
22 formal procedure at all -- that there has been an  
23 investigation going on, not only in the area of lobbying,

1 but we found out that we have been investigated in other  
2 areas, that it would have been nice if we had known that,  
3 too, originally or before anyone else did.

4 Our Director has sent five letters to either the  
5 President of LSC or someone in charge, trying to get some  
6 explanation for the situation so that it could be solved.  
7 If you don't have communication, you don't have under-  
8 standing, and you can't solve anything.

9 He (indicating) has not received an answer to  
10 not any one of these five letters and this has been over  
11 the past year, I believe, that these letters have been  
12 written, not only with the lobbying, but with another  
13 investigation by your group.

14 MR. WALLACE: Let me say this, Ms. O'Bryant, with  
15 regard to that. As you know, what we're here today is to  
16 look at the substance of our Lobbying Regulations. If LSNC  
17 has been mistreated procedurally, members of this Board are  
18 concerned about that and I want to know about it.

19 I don't want to take up a lot of time this  
20 morning on any procedural wrongs that have been done to you.  
21 We're on a schedule and we want to look at substance, but  
22 I do want to know about that.

23 If we get letters from anybody that aren't

1 answered, that concerns me as a member of the Board. The  
2 extent of your procedural rights may be a subject of  
3 dispute, but as a matter of common courtesy, letters ought  
4 to be answered, and that's a concern to me and I think  
5 it's going to be a concern to most members of the Board.

6 It's not something that I want to spend a lot  
7 of time focusing on in a public hearing, because we've got  
8 another subject we're really dealing with, but I hear your  
9 concern and I apologize if that's exactly the way it's  
10 been happening.

11 I want to look into that and see what we can do.

12 MS. O'BRYLANT: Well, thank you. We do have  
13 copies of those letters for you.

14 MR. WALLACE: Thank you.

15 MS. O'BRYLANT: We just thought that in under-  
16 standing this whole procedure, even though it's about the  
17 lobbying, to know how -- not only the lobbying, but how  
18 Legal Services of North Carolina is run, would probably  
19 be helpful to your Committee to know about the  
20 consideration and that there is a central governing body.

21 I would like to close by reading a letter from  
22 the President of the North Carolina Bar Association, R.C.  
23 Vaughn, Junior, that he wrote to the ABA Committee on

1 Legal Aid and Indigent Defendants, and this letter was  
2 written to the ABA Committee in response to the  
3 investigation of the lobbying in North Carolina.

4 It's just a short letter, so I'd like to just  
5 read it quickly and I will close with the letter.

6 MR. WALLACE: Okay.

7 MS. O'BRYAN: It's written to Mr. Curtin.

8 "Dear Mr. Curtin, Legal Services of North  
9 Carolina, Incorporated is the organization in North  
10 Carolina to which grants are made by LSC. It is a child  
11 of the North Carolina Bar Association, the Bar Association  
12 having caused its organization and still contributes  
13 Board members, advice and support.

14 "We've maintained a close working relationship  
15 with this organization in North Carolina; the President  
16 and Executive Director invited to and actually attend and  
17 participate in our Board of Governor's meetings.

18 "We have a situation that has arisen within the  
19 last several months whereby representatives of LSC have  
20 appeared to investigate the Legal Services of North  
21 Carolina or some of its component organizations. We have  
22 no problem with that if carried out pursuant to the  
23 applicable laws and rules.

1 "It has been reported to me that in some instances  
2 this has not been done. LSNC has, on two separate  
3 occasions, recently been apparently subjected to what  
4 amounted to harassment. It has been further reported to  
5 me by the President of LSNC that an investigation was  
6 conducted partially in secret.

7 "The nature of the investigation was not  
8 disclosed. Requests were made for information which would,  
9 if granted, pose potential ethical problems. Requests  
10 for meetings with the investigators were refused and no  
11 written statements or allegations of wrongdoing have ever  
12 been given.

13 "I am informed that one of the investigators, a  
14 Mr. Flowers, stated that Legal Services of North Carolina  
15 had the burden of proving, by convincing evidence, that it  
16 never violated the law, an interesting twist on what I have  
17 always perceived as basic rights and fairness.

18 "I am writing in my capacity as a representative  
19 of the North Carolina Bar Association. The responsible  
20 officers of Legal Services of North Carolina and this  
21 association are both amenable to any reasonable investi-  
22 gations and inquiries, but would presume that the agency's  
23 own rules and regulations would be complied with.

1           "The Bar Association is concerned about this.  
2 We ask that your Committee investigate these occurrence  
3 and then take appropriate action. I am enclosing a  
4 chronological listing of what has happened. We appreciate  
5 your interest." If you need information --

6           MR. WALLACE: Thank you, ma'am. We appreciate  
7 that, and Mr. McMillan.

8           MR. MC MILLAN: Thank you, Mr. Chairman.

9           As indicated, LSNC has taken a special interest  
10 in these proceedings because of the pending investigation  
11 involving the work of LSNC in the 1985 Session of the North  
12 Carolina General Assembly.

13           We're concerned about the investigation, not  
14 because LSNC fears that it has not complied with the law  
15 and with the Regulations. We're concerned about the  
16 interpretations of Mr. Flowers of the Regulations and the  
17 manner in which the investigation has been conducted.

18           I'm going to leave the manner in which the  
19 investigation has been conducted and deal with that later.  
20 We will submit a detailed response to the draft of the  
21 Investigation Report of Mr. Flowers, and I won't get into  
22 that in any detail. I may make a comment or two about it  
23 a little bit later.

1           As background to my comments on what LSNC does  
2 in the North Carolina General Assembly, I'd like to say  
3 that during 1984, LSNC carefully drafted and submitted to  
4 the Legal Services Corporation policies and procedures  
5 which prescribe the circumstances under which legislative  
6 advocacy would be undertaken by Legal Services lawyers,  
7 under the parameters set out by the Regulations.

8           These policies and procedures were subjected to  
9 a full review by the monitoring teams sent by the Atlanta  
10 Regional Office to LSNC exactly one year ago, September of  
11 1984.

12           In the oral debriefings of that monitoring, the  
13 Corporation representatives spoke very highly of our  
14 program generally, and specifically about the careful way  
15 in which we had undertaken to participate in legislative  
16 advocacy in conformance with the relevant Regulations.

17           Unfortunately, Legal Services Corporation has  
18 never released the written report of that monitoring  
19 visit.

20           LSNC does use a Resource Center. We have  
21 approximately 280 employees. It's my understanding that  
22 there were four registered lobbyists, although only three  
23 participated to any great extent in the North Carolina

1 General Assembly during the 1985 Session.

2 MR. WALLACE: Two hundred and eighty employees  
3 of the Resource Center or of LSNC?

4 MR. MC MILLAN: No; LSNC affiliated group.

5 I'd like to give you an overview of what these  
6 basically three LSNC lobbyists did during the 1985 General  
7 Assembly.

8 As indicated earlier, the proposed procedures  
9 were approved by the monitoring team; the forms which were  
10 developed to comply with the Reporting Regulations, for  
11 example.

12 Lobbying, as you well know, is permitted by both  
13 the law and Regulations, primarily in two areas; one which  
14 is offensive to Mr. Mothershead is where a legislator makes  
15 a request to the employee.

16 Clearly that's authorized by the Regulation, but  
17 it's also authorized by Congress, and I don't think that  
18 he understands -- that I think the Board -- Regulations of  
19 the Board would have to allow that sort of a lobbying,  
20 because Congress has authorized it.

21 MR. WALLACE: I'm not sure I understand that  
22 either.

23 MR. MC MILLAN: Okay. In any event, where a

1 legislator makes a request to an employee, LSNC has been  
2 involved in some form of lobbying. Mr. Flowers' report  
3 says that is an insignificant amount of the lobbying which  
4 is involved. He uses the figure ten percent. I won't  
5 quarrel with that figure.

6 Examples of how that comes about would be that a  
7 legislator might ask an employee, an LSNC registered  
8 lobbyist, about the impact of a particular bill or an  
9 amendment to a bill, and the LSNC lobbyist would respond to  
10 that legislator.

11 There is a specific situation like that documented  
12 in the materials which were sent to Mr. Flowers.

13 Another example would be a legislator would ask  
14 for a lobbyist to draft an amendment to a bill, and there  
15 is a specific example of that.

16 The second area in which we obtain clients is  
17 when we -- which we lobby is when we are representing  
18 clients and have a retainer agreement to do that.

19 The question comes up as to how does LSNC obtain  
20 a client, and the concern that we really don't have a client.  
21 We are confident that any competent investigation of the  
22 facts will reveal that we have clients for every single  
23 time that we have submitted a retainer to do that.

1           We get clients in a number of ways. We may  
2 already be representing a client, may already have a  
3 retainer agreement from a prior session. There are some  
4 issues that come up over and over and over again.

5           One of the examples, during the 1985 Session is  
6 for credit insurance, and what is the premium for credit  
7 insurance. In North Carolina it is set by statute. It is  
8 contended by some that the statutory setting of that is  
9 arbitrarily high and the advocates would ask that the North  
10 Carolina Insurance Committee set that rate instead of the  
11 North Carolina General Assembly, as the North Carolina  
12 Insurance Commission does in other situations.

13           That has been an issue that has come up. It has  
14 never been successful in the past, but in 1985, there was  
15 a client retainer agreement to deal with that issue again, it  
16 arose from an earlier session.

17           The second possibility is that we may be  
18 retained on an issue in some other matter unrelated to the  
19 General Assembly already in which that client has an  
20 interest that they wish to have advocated in the North  
21 Carolina General Assembly.

22           In connection with the monitoring of legislation  
23 and the Resource Center's work in trying to keep LSNC

1 attorneys informed of the state of the law, as we contend  
2 that is what they are there to do, they do monitor  
3 introduced legislation in the North Carolina General  
4 Assembly.

5 They do, and we contend that it does comply with  
6 the Regulations to send out information regarding bills  
7 that are introduced in the North Carolina General Assembly.

8 In connection with that, an LSNC staff attorney  
9 in the western part of the State may have a client in  
10 which they are already representing, who has an interest  
11 in that, and they are under a duty to disclose that client,  
12 that this is something that might affect your case.

13 "It is a matter that is being considered in the  
14 North Carolina General Assembly. We think that it will  
15 have the ultimate effect on your case. It would take  
16 precedence over the court's ruling that is about to be  
17 decided or has been decided, and you may want us to do that,  
18 to represent you," in which case there may be a retainer  
19 agreement out of that.

20 That LSNC field attorney would send a retainer  
21 agreement to the Resource Center, and if it complied with  
22 all of the Regulations, and the managing attorney, Don  
23 Saunders, would make that determination, then it is

1           The LSNC registered lobbyists keep the staff  
2 attorneys in the field apprised of what is going on in the  
3 North Carolina General Assembly. They keep them apprised  
4 of -- if a staff attorney has referred a retainer, they do  
5 keep that person apprised of the status.

6           They do talk to clients. They do, on occasion,  
7 bring clients to the General Assembly. They do write to  
8 clients and give them information about what the outcome  
9 of the bill was. They do file expense reports, as Mr.  
10 Mothershead said he had checked out with the Secretary of  
11 State. They do file the quarterly reports with LSC as  
12 they're required to do.

13           They do keep the time logs that they are required  
14 to do, and on the forms that they had approved by the  
15 monitoring team prior to the beginning of the Session.

16           Generally, LSNC is comfortable with its  
17 compliance with the Regulations as we interpret them.

18           A couple of thoughts, and then I want to ask Mr.  
19 Taylor to make a few comments. Compliance with North  
20 Carolina law and identification of clients; the North  
21 Carolina law, as it has been interpreted by the Secretary  
22 of State of North Carolina, who is the person who registers  
23 the lobbyists, deals with that law, receives the expense

1 and going to the press, but we do respond to questions  
2 about that.

3 I want to talk a little bit about an  
4 interpretation that says that there is a violation because  
5 you keep the time logs in a particular way.

6 There is some concern that the North Carolina  
7 Legal Services Corporation did not record its lobbying  
8 time until February of 1985, despite the fact that the  
9 Regulation went into effect in July of 1984.

10 The fact of the matter is is that the North  
11 Carolina General Assembly wasn't in effect between the  
12 time -- was not in session between the time of the passage  
13 of the Regulation until February of 1985.

14 MR. WALLACE: I don't mean to interrupt, but  
15 we're getting down to fine points on the legislation.

16 Do you mean that all the time that your lawyers  
17 have spent in November and December preparing for that  
18 legislature, and I'm sure they did if they were going to  
19 do their job properly, they put in some groundwork before  
20 the General Assembly came in, do you consider that to be  
21 lobbying that ought to be reported on time sheets or  
22 don't you?

23 MR. MC MILLAN: Well, Mr. Flowers, in the

1 beginning of his remarks, had trouble defining what  
2 lobbying was, and I think we need a definition of that.

3 Under North Carolina law, what lobbying is, and  
4 we have a lobbying statute, Article 9-A of Chapter 120 of  
5 the North Carolina General Statutes entitled Lobbying; it  
6 talks about what it is, and what it is is talking to  
7 legislators about pending legislation. That's the North  
8 Carolina definition.

9 If it means going out and obtaining retainer  
10 agreements, getting the paperwork done and that sort of  
11 thing, if it means drafting position papers on some issue  
12 that you know that you're going to come up and advocate  
13 like increasing AFDC payments, then it would be helpful  
14 for the Regulation to say that, and we have absolutely no  
15 problem with complying with that.

16 MR. WALLACE: Okay. It sounds like that is an area where  
17 we could use some clarification

18 MR. MC MILLAN: We have no problem with that,  
19 but what we're saying is that we don't feel we violated  
20 the Regulations because we complied with our interpretation  
21 of it, to say that when we started lobbying, as North  
22 Carolina law says, then we start filing our reports.

23 MR. WALLACE: Okay. I understand that.

1 MR. MC MILLAN: The other thing is is monitoring  
2 lobbying. Under this --

3 MR. WALLACE: The statute.

4 MR. MC MILLAN: The statute, it's not under this,  
5 and how we entitle the column is of no concern to us. We  
6 had submitted the forms ahead of time. The Monitoring  
7 Committee had said, "Yes, they're fine. Go to it," and  
8 so that's the way it was done.

9 If it's some other way, then so be it.

10 With that explanation, and subject to my trying to  
11 answer questions, I'd like to ask Dick Taylor for his  
12 remarks.

13 MR. WALLACE: Mr. Taylor, I'm going to ask you to  
14 keep it as brief as you can. It's 10:30 and we're supposed  
15 to adjourn at 11:00, and I'm sure all the members have some  
16 questions that we want to get for all four of you.

17 MR. TAYLOR: Thank you.

18 Mr. Chairman and Members of the Committee, I  
19 submit to you that the real problem that you ought to  
20 address is not lobbying in North Carolina, but the lack of  
21 procedural regularity in the conducting of investigations  
22 by the Office of Compliance and Review.

23 MR. WALLACE: That's not what we're here for

1 obvious procedural irregularities in that.

2 I don't intend to be argumentative with you at  
3 all, and I am going to conclude with this statement. I  
4 just think that it should be a high priority of this  
5 Committee and of the Board to adopt procedures for the  
6 operation of the Office of Compliance and Review.

7 It will benefit the Corporation; it will benefit  
8 the field; it would benefit the public; and it needs to be  
9 done. Thank you.

10 MR. WALLACE: Mr. Taylor, I appreciate that, and  
11 we're going to review what you give to us, because if we  
12 are not conducting our investigations fairly, then that is  
13 a matter of concern to the Board.

14 It is not what we're going to hold the hearing on  
15 today, but I want to know about it, as I said to Ms.  
16 O'Bryiant.

17 MR. TAYLOR: The subject is covered in the  
18 materials. We've written a number of letters, as Ms.  
19 O'Bryiant said, to the President of the Corporation. None  
20 of them have been responded to. It would be helpful if  
21 the Committee would take an interest in that.

22 MR. WALLACE: I do take an interest in letters  
23 not being answered and in the larger problem of how our

1 investigations ought to be conducted, and I want to see  
2 what you've got and I want to get you an answer to your  
3 letters.

4 MR. TAYLOR: May I hand up the materials then?

5 MR. WALLACE: Mr. Secretary, will you take the  
6 materials and distribute them to the Board, and you can  
7 pass them out now while we're asking questions.

8 I've got a couple of questions and then I'll open  
9 it up to the rest of the Committee.

10 What do you think we ought to be able to do to  
11 investigate whether or not a client relationship is  
12 bona fide. We've got to be able to investigate that.

13 I've got no reason to think that you do not have  
14 good, solid, bona fide relationships with your clients on  
15 lobbying in North Carolina. We've got to know that. We've  
16 got to be able to demonstrate to Congress that it's true.

17 What do you think we ought to be able to do in  
18 our Regulations to determine the extent to which bona fide  
19 client relationships exist for lobbying?

20 MR. MC MILLAN: The Director of the Program ought  
21 to respond to that, unless you want me to.

22 MR. TAYLOR: There are numerous ethical opinions  
23 of the American Bar Association regarding funding source --

1 let me say this: As Mr. McMillan says, we don't contend  
2 that we shouldn't inform the General Assembly or the Secretary  
3 of State or any forum before whom we appear, whose rules  
4 require that we identify a client with the consent of  
5 our client, we would certainly make that disclosure.

6 It's a different issue to make a disclosure  
7 about the identity of clients in a pending representational  
8 matter to the funding source who pays for that  
9 representation.

10 MR. WALLACE: Why is it different?

11 MR. TAYLOR: Well, ethical consideration, 5-21  
12 of the North Carolina Code of Professional Responsibility  
13 very clearly states that a party who is paid by a third  
14 person to represent a client has to exercise extraordinary  
15 caution to act on -- to exercise independent judgment in  
16 the representation of that client.

17 The ethical opinions, starting with Formal  
18 Opinion 324, Formal Opinion 334, of the ABA, and then  
19 Informal Opinions, I think Informal Opinion 1081, speaks  
20 to the fact that it is specifically prohibited for us to  
21 inform a funding source of the identity of our client,  
22 that that is a secret which is protected.

23 There are procedures, however, that are

1 described in a number of those opinions where there could  
2 be third party verification, and it talks about exercising--

3 MR. WALLACE: Third party verification by some-  
4 body other than us?

5 MR. TAYLOR: An accounting firm or someone else.  
6 It talks about ways in which you negotiate these things in  
7 advance, but the thing that bothers us is, as we had in  
8 North Carolina, we received five days notice of a visit  
9 of Mr. Flowers and Mr. McIntyre to our State Support Office,  
10 with no indication about what the visit was about, what  
11 the complaint related to, what -- and then to come in, as  
12 Mr. Flowers did, and essentially demand to know the  
13 identity of our clients, we think, raises serious ethical  
14 questions.

15 Had there been an opportunity for us to counsel,  
16 to talk with your Office of General Counsel about how we  
17 might do this, I think we could have negotiated something.

18 MR. WALLACE: Here's the situation that we're in:  
19 You are generally restricted in lobbying. Congress has  
20 generally said you're not supposed to do it unless you have  
21 a client who wants you to do it, and we need to be able to  
22 know that.

23 I mean, Congress has said, "Don't do it unless

1 you have a client," and if we've got ABA opinions that tell  
2 us that we can't determine whether you're complying with  
3 Congressional will or not, we've got a problem letting you  
4 do any lobbying at all.

5 I want to know how we can do it.

6 MR. MC MILLAN: The easy thing is if North  
7 Carolina were to take the position like some other states  
8 have done and said you had to register.

9 We have not lobbied them to keep them from doing  
10 that. That's their interpretation. Now that they have  
11 made that interpretation, then we're thrown against these  
12 other ethical considerations that put us in a box, and so  
13 I guess we would love to try to work with you to find some  
14 way to do that.

15 We have no problem with doing it.

16 MR. WALLACE: Mr. Mendez?

17 MR. MENDEZ: I have a question. I'm a little bit  
18 confused on names of you gentlemen, but earlier you said  
19 that North Carolina does not have a requirement that  
20 lobbyists register or disclose their clients; is that  
21 correct?

22 MR. MC MILLAN: The way the North Carolina law  
23 has been interpreted, you are required to state that you

1 are appearing in a representative capacity. You are  
2 required to register with the North Carolina Secretary of  
3 State. You are required to file expense reports, but the  
4 way the law has been interpreted, you are not required to  
5 disclose the name of your client.

6 MR. MENDEZ: If North Carolina law requires you  
7 to disclose the name of your client, would you have any  
8 difficulty doing that?

9 MR. MC MILLAN: No. I'd say, no, we would not.

10 MR. MENDEZ: Tell me what the difference is  
11 between that and if we required you to disclose the name  
12 of the client. Tell me what the difference is between  
13 those two.

14 MR. MC MILLAN: I think the question is whether or  
15 not under the ABA you can require that.

16 MR. WALLACE: We are responsible to Congress and  
17 not to the ABA and that's where our authority derives from.

18 MR. TAYLOR: Well, my understanding is that the  
19 Congress has incorporated the Code of Professional  
20 Responsibility in several respects into the Act, that the  
21 Code is referred to in the Regulations and that --

22 MR. WALLACE: That's right.

23 MR. TAYLOR: -- it's my understanding, as an

1 attorney, that despite the authority of this Board, that  
2 I have an ethical responsibility under the Code, which  
3 despite your mandate to the contrary, I'm not permitted to  
4 disclose.

5 MR. WALLACE: We may have to cut off your money  
6 if your view of your ethical responsibilities differs  
7 with the responsibility to us.

8 MR. TAYLOR: In this situation the thing -- the  
9 facts and the circumstances where we were operating under  
10 an interpretation of state law where we were not required  
11 to disclose the name of our clients.

12 We did not routinely ask clients for the consent  
13 to disclose their name. I don't think anyone could argue  
14 with the fact that absent the consent of the client to make  
15 the disclosure of the identity that we couldn't do it.

16 In this particular instance, Mr. Mothershead  
17 made a request, which under the circumstances we couldn't  
18 comply with. Given negotiating a procedure with you or  
19 a change in state law or something, we have no problem  
20 with that.

21 MR. WALLACE: Do you believe that we have the  
22 authority to require you, through these Regulations, to  
23 disclose the names of your clients?

1           MR. TAYLOR: No, sir, not to you, but I believe  
2 you have the authority to require us to verify to you that  
3 we have a bona fide client relationship. We stand ready to  
4 do that.

5           MR. WALLACE: How can you do that?

6           MR. TAYLOR: Well, we can do that through some  
7 mechanism which doesn't allow you to know the identity of  
8 the persons we represent or to inappropriately intrude into  
9 our independent professional judgment on behalf of our  
10 clients.

11          MR. WALLACE: What would that mechanism be?

12          MR. TAYLOR: Well, I suggested one, third party  
13 verification by an accounting firm or someone else, that  
14 there is -- what is impermissible, certainly under Canon  
15 5 -- are you not familiar with the rules under Canon 5,  
16 about when a third party pays a lawyer to represent someone  
17 else, and the fact that the lawyer has carefully had his  
18 allegiance to the client and not to the one that pays him?

19          MR. WALLACE: You believe it is better to  
20 disclose it to some third party rather than to us? You  
21 don't see an ethical problem with disclosing it to a third  
22 party rather than us?

23          MR. TAYLOR: There may be people here better able

1 to respond to this than I am. I am operating under my  
2 understanding of what the ethical opinions are. We have  
3 copies of the ethical opinions with us if you're not  
4 familiar with the longstanding rules of the ABA.

5 MR. UDDO: I teach Professional Responsibility.

6 MR. TAYLOR: Maybe you can help me, sir.

7 MR. UDDO: Yes. I think the identity of the  
8 client is seldom considered confidential information.

9 MR. TAYLOR: Maybe Mr. Houseman can help us.

10 MR. HOUSEMAN: There are a series of opinions  
11 by the American Bar Association on Committees on Profes-  
12 sional Responsibility, which has held absolutely clear-cut  
13 the identity of the client is a confidence that cannot be  
14 disclosed without the client's consent.

15 These opinions have been in the context of  
16 Legal Services. There have been a series of opinions over  
17 the years. A lot of rules of professional conduct  
18 explicitly deal and cross-reference these opinions.

19 There's a explicit discussion in the commentary  
20 to the Model Rules on these.

21 In addition, there are numerous state bar  
22 ethical opinions in virtually every state that have held  
23 the same thing.

1 MR. UDDO: Let me ask you a question.

2 MR. WALLACE: I'm sorry. Go ahead.

3 MR. UDDO: Are the clients asking that their  
4 names not be disclosed? Mr. Houseman, there is a  
5 distinction between something that's kept confidential  
6 because the client has asked that it be kept confidential,  
7 and those things which the Code requires be kept  
8 confidential, just as a matter of ordinary course of  
9 events.

10 Ordinary course of events of a client's identity  
11 is not confidential.

12 MR. HOUSEMAN: That is not the interpretation  
13 given by the ABA.

14 MR. UDDO: You said yourself that the client  
15 doesn't want their names disclosed.

16 MR. TAYLOR: There are four specific opinions  
17 that hold to the contrary.

18 MR. HOUSEMAN: The ABA opinions have held that  
19 unless the client consents, the attorney cannot disclose  
20 the client's identity.

21 MS. BERNSTEIN: Did you ask?

22 MR. WALLACE: Ask the client?

23 MS. BERNSTEIN: Did you ask the client whether

1 they had an objection?

2 MR. MC MILLAN: Let me give this --

3 MR. WALLACE: Hold on, Mr. Houseman. Let's stay  
4 with the panel. I appreciate your help with Professor Uddo  
5 on the Model Rules, and as we know, the Model Rules aren't  
6 in our statute. The Code of Professional Responsibility  
7 is in our statute.

8 MR. MC MILLAN: Let me bring this where we are  
9 currently. The issue has not come up except in one  
10 instance and before one committee in which Mr. Mothershead  
11 asked a question of Ms. Roten about who she represented.

12 She said that she had an ethical consideration,  
13 that she couldn't disclose that. The Committee Chairman,  
14 as I understand it, ruled that she was not required to do it.

15 The issue was dropped until we hear that there is  
16 an investigation by Mr. Flowers, and he says he wants to  
17 come to LSNC's offices and see these retainers and gives us  
18 short notice.

19 I'm confident that something can be worked out  
20 about that. I'm saying that what we have done to date,  
21 during the 1985 General Assembly, complied with the  
22 Regulations, but we have no objection to trying to working  
23 with you.

1           We do have the client's -- we have seen --  
2 LSNC has the retainer agreement with the names not masked.  
3 We know who they are. The addresses were not masked;  
4 they're there.

5           We have no problem with going to them and asking,  
6 "Can we release this? Can we give them this name?" We  
7 have no problem at all with doing that.

8           My feeling is that they will say, "Yes," but we  
9 cannot, on short notice, get that done, so if you would  
10 give us an opportunity --

11           MR. WALLACE: My question, again, is not so much  
12 short notice, but in the long run, what procedures do we  
13 need to have?

14           MR. TAYLOR: I'd say this, Mr. Wallace, that we  
15 would be glad to comply with the procedures which you and  
16 the State Bar regulatory agencies and the ABA work out  
17 regarding this question.

18           We are not in the business of trying to frustrate  
19 your legitimate regulatory authority.

20           MR. WALLACE: Okay. That's what we need to do,  
21 is how we're going to exercise it, and we have to know  
22 that a bona fide relationship exists.

23           MS. BERNSTEIN: I think Mr. Flowers suggested in

1 his overview a possibility, which is a random numbering  
2 system, whereby there is a client file to be checked with  
3 the names blocked out and so forth to back up the fact that  
4 the retainer was executed by LSNC 0132 client, and that  
5 there are then documentations that there is a client there.

6 That's the problem, as I see it, is that a  
7 retainer just basically filled out with the client's name  
8 blocked out is nothing that we are capable of checking.

9 MR. MC MILLAN: We have no problem with working  
10 with you to verify the fact that we had clients during the  
11 1985 General Assembly, but we represent to you that we did.

12 We have the documentation. We need to find a  
13 way for us to satisfy our ethical obligations to our  
14 clients and we'll be delighted to do that.

15 MR. WALLACE: That is what we need to do.

16 MR. PULLY: Mr. Chairman?

17 MR. WALLACE: Yes, Representative Pully?

18 MR. PULLY: I have a comment very briefly, and I  
19 shouldn't get into this, but they drug me up here anyway.

20 I'm hearing two different things. I'm hearing  
21 concern on the Board and the investigators and Mr.  
22 Mothershead as to where there actually was a client.

23 I think that is a legitimate concern and a

1 reasonable concern.

2 I'm hearing Mr. Taylor, on the other hand, very  
3 defensive, that they've done what they're required to do,  
4 and he's convinced me that they have with regard to this.

5 You're talking about future and what you can do  
6 to improve the program and there are any number of things  
7 that could be done. Mr. Flowers possibly -- I don't know  
8 whether it would work, these people would know whether it  
9 would work, you could have a conversation or give and take  
10 and work that out, but surely this is not going to be a  
11 big, major point.

12 It seems to me it can be worked out. Maybe they  
13 can go to the clients and get them to sign a consent in  
14 the future to release their names, but I just hate to see  
15 a lot of getting bogged down with this point, which I think  
16 can be worked out in the future.

17 You can argue about whether they complied last  
18 time with the Regulations or not.

19 MR. TAYLOR: That's probably helpful.

20 We submitted all of our client retainers to Mr.  
21 Flowers. We did that in a way which we think complies with  
22 professional responsibility, and consistent with that, we  
23 are glad to work with you in any way to conform.

1 MR. WALLACE: Ms. Bernstein, you have a question?

2 MS. BERNSTEIN: Actually I was going to ask you  
3 what you wanted the procedure to be, because I have a  
4 series of questions for Representative Pully, and I don't  
5 know whether you want each of us have a turn.

6 MR. WALLACE: It's not quite as formal as it is  
7 in a Senate Committee and we're going to need to bring this  
8 to a close, because we have a Board Meeting that is  
9 supposed to start in ten minutes. I know the Vice Chairman  
10 will give us a little leeway on that, but I want to give  
11 you a chance to ask a couple of questions and I want to  
12 give other Board members a chance to ask a couple of  
13 questions and then we're going to need to close.

14 So, hit your big ones and let me see who else has--

15 MS. BERNSTEIN: Okay. I'm really glad you came  
16 and I appreciate your comments. I think you and I have a  
17 different opinion about whether or not certain activities  
18 should be funded with public money.

19 I don't dispute for one minute that there is a  
20 valuable bit of information that representatives can gain  
21 from legislators, and from the information that was just  
22 given to me, I see that we have some other Legal Services  
23 attorneys that have been appointed to new committees, new

1 task forces in North Carolina, and they are going to be  
2 giving a lot of program time to being resource people for  
3 the legislature and I have a couple questions along those  
4 lines, as to how much money should we allocate?

5 We have very scarce resources here. How much  
6 money should we allocate to each legislator for staff  
7 people?

8 MR. TAYLOR: Did you come prepared for that?

9 MR. PULLY: Well, yeah, I'll give it a try.

10 You don't allocate very much to each staff person  
11 in North Carolina. So far as I know, they said three. I  
12 don't know what the names were. I'm familiar with two  
13 people who were in the General Assembly during a period of  
14 time and they spent a lot of their time working against my  
15 bills, so, hell, if you cut them off, fine.

16 MS. BERNSTEIN: That's the whole point, we want  
17 to stay away from --

18 MR. PULLY: Let me talk about one particular thing  
19 that I am familiar with on one of those Study Commissions.

20 One of the people in the General Assembly -- I  
21 now recall the third person, Pam Schriver --

22 MR. TAYLOR: Pam Silverman.

23 MR. PULLY: Pam Silverman is a lawyer that did

1 lobbying concerning AFDC, and she has been appointed --  
2 and concerning other indigent compensation matters -- she  
3 has been appointed to Indigent Care Commission, Health and Hospital  
4 Care, Indigent Care, which is an extremely controversial  
5 issue nationally and statewide.

6 I think it is something that somebody with her  
7 expertise in dealing with these people can make a  
8 significant contribution to the general balance of things;  
9 where the hospitals are represented, the physicians are  
10 represented, everybody is represented, make a significant  
11 contribution to the balance of what comes out of that  
12 Commission with regard to legislation concerning indigent  
13 care and health care.

14 I think it is a reasonable thing for lawyers and  
15 law firms to do. Any law firm worth its salt spends a lot  
16 of time doing bar work, doing other kinds of pro bono work,  
17 where they devote and do things for the betterment of  
18 mankind.

19 MS. BERNSTEIN: Is she going to be doing this on  
20 her own time?

21 MR. PULLY: I don't know. That's a question  
22 they'll have to ask. I don't know, but, again, we're not  
23 talking about heavy outlays of time.

1           The question on staff, there were three people or  
2 so who worked on these things out of Legislative Services,  
3 and they say two hundred and some employees. That's not  
4 very many.

5           We have a lot more staff than has been mentioned.  
6 We have the Legislative Services. In our offices we have a  
7 secretary, but we have a Fiscal Research Division that I  
8 can call on at any time and get a lot of information from  
9 our own people.

10           MS. BERNSTEIN: Okay.

11           MR. PULLY: We have a General Research where we  
12 can do the same thing. So, you're not furnishing very much  
13 staff.

14           MS. BERNSTEIN: You were talking about the  
15 lobbyists for the bank won't tell you that their profits  
16 have increased when they want the late loan fees up.

17           You just said you have a Legislative Research  
18 staff. You don't need to have very scarce legal represen-  
19 tation resources that could be dealing with individual  
20 problems of clients in courts where they cannot function  
21 at all without a lawyer, being dedicated to answering  
22 your questions.

23           MR. PULLY: Well, this is a policy question that

1 I suppose Congress decides, so --

2 MR. WALLACE: Or maybe we do, too.

3 MS. BERNSTEIN: My feeling is that the other  
4 thing that we get down to is is that you said that you're  
5 a Citizen Legislature and it's important to have access to  
6 all this information.

7 The tax payers though are paying for these  
8 lobbyists, and we cannot get around that. The question  
9 that I have is if we -- you said that there was no one else  
10 in the Committee -- or someone else had mentioned that this  
11 individual was representing the consumer.

12 Well, this individual presumably, if the retainer  
13 agreement was accurate, was representing one client or  
14 maybe a group of clients, but that individual, if they were  
15 indeed representing consumers as a whole, were operating  
16 illegally under our Act, because they're supposed to be  
17 representing low income clients.

18 MR. PULLY: Well, I would say to that that every  
19 time I've seen them operate, they are, in fact, representing  
20 low income people.

21 Now, whether they have a retainer agreement, I  
22 don't know in every instance. I have asked the question  
23 myself, "Who is your client?" or "Have you got a client?"

1 They are, in fact, representing him.

2 The fact that they coincidentally -- the person  
3 that they're representing is also in a class of people  
4 that it benefits likewise should not be a detriment to  
5 their representing that particular client.

6 MS. BERNSTEIN: No, as long as there is a direct  
7 necessary reason for them being there and not just a  
8 public policy changing reason.

9 MR. PULLY: Are you going to say that in a banking  
10 matter, for example, that the poor person cannot be  
11 represented because he has only one or two loans, whereas  
12 the banks obviously can be represented because they have  
13 hundreds of thousands of loans?

14 That creates a great imbalance, because you have  
15 a mass of consumers out there to discount their  
16 representation because they have only a very limited  
17 number of loans.

18 MS. BERNSTEIN: But I presume that they voted and  
19 they have legislators who would be representing their  
20 interests?

21 The question relating to the essential activities,  
22 in terms of their monitoring, establishing credibility,  
23 they note the voting patterns; it's important for the

1 lobbyists to be there all the time.

2 Well, I would agree if these individuals are  
3 going to be fulltime lobbyists, but how can you justify  
4 that if the individual maybe doesn't even have a client up  
5 to that point or if the individual then after hours spends  
6 an eight hour day for five or six months during the  
7 legislature, and getting all of this information and making  
8 all these contacts, and then spends time on his own on  
9 Friday nights and Saturdays passing out grass roots  
10 leaflets in the local shopping center or holding press  
11 conferences?

12 How can you make a division between what's going  
13 on during the daytime and after hours?

14 MR. PULLY: Ms. Bernstein, that question sort of  
15 escapes an answer. You went on a while and I'm not sure  
16 what your question is. Would you repeat the question?

17 MS. BERNSTEIN: We talked about the distinction--

18 MR. PULLY: I'm very sincere in my comment. I  
19 apologize for the noise.

20 MR. WALLACE: I think she used a lot of terms  
21 that we're used on this Committee and you probably don't  
22 know much about them.

23 MS. BERNSTEIN: The difference between the staff

1 time during the day being used and after hours, kind of  
2 civil libertarian free speech, seems to be a little bit  
3 mixed when the individual has spent six months establishing  
4 credibility, spending time as a fulltime lobbyist.

5 How do you separate that?

6 MR. TAYLOR: It may be helpful, Mr. Chairman, and  
7 Mr. Pully, if I state we just don't do that.

8 You may answer if you want, but we don't do that.

9 MS. BERNSTEIN: Do you think that it's within  
10 our prerogative to prohibit that, that those individuals  
11 who are registered lobbyists for a program may not engage --

12 MR. TAYLOR: It's not relevant because we don't  
13 do it.

14 MR. WALLACE: It's relevant to our inquiry. We're  
15 trying to learn what we ought to be able to do. If you  
16 don't have an opinion, you don't have one.

17 MS. BERNSTEIN: In other words, I think it's a  
18 much finer line for staff attorneys who may work only in  
19 the courts, may be interested in the problems of poor  
20 people, may be involved with various issues of which they  
21 are very concerned, and may, on their own time, want to  
22 spend some time doing grass roots lobbying or holding press  
23 conferences or whatever, if they can do that as a private

1 citizen.

2 MR. TAYLOR: I think when a person like Mr.  
3 Houseman, who represents --

4 MS. BERNSTEIN: Can I finish, please?

5 MR. WALLACE: I'd like to hear his answer.  
6 Go ahead, please.

7 MR. TAYLOR: When a person like Mr. Houseman,  
8 who represents --

9 MS. BERNSTEIN: I didn't finish, Mike.

10 MR. WALLACE: It's 11:00 o'clock and I want to  
11 hear what the gentleman has to say and I want to open it  
12 up to other members of the Board.

13 MR. TAYLOR: I apologize for interrupting.

14 MR. SMEGAL: I'm not sure I understand her  
15 question.

16 MR. WALLACE: Go ahead and say what you're about  
17 to say.

18 MR. TAYLOR: I was just going to say that perhaps  
19 there are other people present who are better able to  
20 respond to this general level, and I do apologize, Mr.  
21 Smegal, if I cut her off.

22 MR. WALLACE: We had told the full Board we would  
23 vacate for them about 11:00 o'clock. I'm going to run a

1 little over, but I'm going to ask other members of the  
2 Committee, do they have questions of these witnesses  
3 before we let them go?

4 You have come a long way and we appreciate that.

5 MR. SMEGAL: I've got just a few questions.

6 MR. WALLACE: Mr. Smegal, go ahead.

7 MR. SMEGAL: They may be here in your fact sheet.

8 I understood you have 280 employees throughout the State  
9 of North Carolina. Is all your funding from the Legal  
10 Services Corporation or does the State Bar give you some?

11 MR. TAYLOR: We began to receive IOLTA funds in  
12 July. Last year we received statewide about ninety  
13 percent. I think it was ninety-three percent of our funds  
14 were corporation dollars last year, which is a very high  
15 percentage.

16 Some of our component parts received a larger  
17 percentage of local dollars than others. We hope that the  
18 State Bar IOLTA Program will become a very substantial  
19 source of revenue for us.

20 MR. SMEGAL: It's a volunteer program in North  
21 Carolina?

22 MR. TAYLOR: The IOLTA Program, yes, sir. It  
23 made its first allocations in July.

1           MR. SMEGAL: There was some talk earlier on about  
2 a ten percent rule... on lobbying. I haven't read the Regs  
3 lately, I guess. I just looked at the section of the Act  
4 that was in my Board Book and I don't see that number  
5 in here.

6           Is that a proposal that we have, Mike?

7           MR. WALLACE: What the rule says, Mr. Smegal, as  
8 I recall is that anybody who spends more than ten percent  
9 of his time on lobbying has to keep time sheets, so we  
10 know --

11          MR. SMEGAL: So, that's an individual as opposed  
12 to a program?

13          MR. WALLACE: I think that's right.

14          MR. MC MILLAN: That's an individual and I think  
15 that applies more where you have individuals from a number  
16 of programs all over a particular state coming in and only  
17 have one client.

18          Our situation is that everybody who registers --  
19 who is registered for LSNC, either three or four people do,  
20 anybody that does any lobbying for LSNC in North Carolina  
21 keeps time sheets.

22          MR. TAYLOR: The one thing I might comment about  
23 that, Mr. Smegal, is the beginning of that section on

1 Recordkeeping about which you asked the question, states  
2 that we shall do that in conformance with the manner  
3 specified by the Corporation, and there has been no manner  
4 specified.

5 MR. SMEGAL: Yes, there are some gaps in there  
6 which hopefully this Board will fill in.

7 MR. TAYLOR: We tried to interpret the  
8 Regulations and we think we're doing a good job.

9 MR. SMEGAL: I'm going to ask LeaAnne's question.  
10 I was trying to hear her question. I don't know that I  
11 heard it. Maybe she was saying it a number of different  
12 ways.

13 She's concerned about somebody who is lobbying  
14 fulltime, then going out and doing these other things on  
15 their own time, an extension of that lobbying activity, as  
16 opposed to someone who is in court all the time and they  
17 do this on their own time.

18 Do you see a distinction there between those two  
19 kinds of persons? I guess it would be Ms. Roten on one  
20 hand and some lawyer who writes Law Review articles with  
21 footnotes, whatever. Do you make a distinction? Would  
22 you make a distinction?

23 MR. PULLY: I don't have any strong feeling about

1 that. They said they don't do it. I'm not real familiar  
2 with it.

3 The comment that the Chairman mentioned a while  
4 ago, I agree with the Chairman in that they are before a  
5 group representing somebody in their official capacity,  
6 and then they say, "But now I'm going to put on my private,  
7 personal hat," I think that's ridiculous.

8 I guess somewhere in the middle it gets to be a  
9 gray area and I don't know. I don't have any basis for  
10 which to respond to that.

11 MR. SMEGAL: Let me proceed a little further.  
12 if I may have one more minute.

13 On these IOLTA funds, now, we, in California,  
14 generate an awful lot of this money and it's going to the  
15 programs in California and there are different sets of  
16 rules at the moment between how that money is to be spent,  
17 the IOLTA money, by Legal Services Corporation entities,  
18 as contrasted with possibly the Legal Services Corporation  
19 Act.

20 How are we going to deal with that? I mean,  
21 we've got the problem with the two hats now.

22 MR. TAYLOR: One question about --

23 MR. SMEGAL: You've got the IOLTA money in North

1 Carolina or in California and you have the Legal Services  
2 Corporation money at the same entity.

3           Should we be looking at that, too? Do we have  
4 to worry about that right now?

5           MR. TAYLOR: That might be related to the question  
6 Ms. Bernstein raised earlier with someone about Mr.  
7 Houseman's analysis of what kind of money you can spend on  
8 what, but there is a question in North Carolina about what  
9 our IOLTA dollars are, because we have what's referred to  
10 as an unintegrated Bar, and it doesn't refer to race, but  
11 it did once probably.

12           We have a mandatory Bar to which everyone who  
13 practices law must belong to, and a voluntary Bar Asso-  
14 ciation, and the mandatory Bar, the State Bar, is a State  
15 agency, and it administers as a state agency the IOLTA  
16 funds.

17           The IOLTA funds are, however, private in  
18 character in that they come from insubstantial amounts of  
19 client funds, which aggregate interest, and it's not clear  
20 to me whether they fall within the restriction of the Act  
21 or not.

22           At this point the IOLTA funds in North Carolina,  
23 and Ms. O'Bryant, as a new member of the IOLTA Board of

1 Directors, and this is something she can think about, but  
2 at this time the IOLTA Board is not permitting legislative  
3 advocacy as a use of those funds while the question of about  
4 whether these are private funds with 501C3 or 508 type  
5 restrictions.

6 So, that's an issue that we are aware of, but I  
7 don't have a firm answer about what rules apply to IOLTA  
8 dollars in North Carolina.

9 MR. SMEGAL: Let me give you a practical problem.  
10 In the time I have left over from this activity, I serve  
11 on the Board of Governors of the State Bar of California  
12 and we have a little IOLTA Program, and one of the issues  
13 that has come up in our last Board meeting was that can  
14 the grantees of our IOLTA funds buy real estate, buy  
15 property, buy buildings, buy some space to occupy over  
16 some period of time.

17 It's a real issue we're having now. It's not  
18 presently treated in our ranks. There are some proposed  
19 regulations, but it's a real mixed bag, if we allow in  
20 California IOLTA funds to be spent to buy some property  
21 for a Legal Services Corporation funded grantee, there are  
22 all kinds of issues.

23 It seems to me there's a whole area in there

1 we're going to have to look at and maybe hopefully you in  
2 North Carolina can give us a hand.

3 MR. TAYLOR: We'll be glad to talk to you about  
4 that.

5 MR. WALLACE: I have one last question before we  
6 try to turn this over to folks that may or may not go to  
7 the heart of the matter, but it sounds from your factual  
8 description that at least during the six months that the  
9 General Assembly is in session, LSNC is running a fulltime  
10 lobbying operation. That's what they do pretty much all  
11 of the time; not the whole -- not everybody that works  
12 for you.

13 MR. MC MILLAN: Two people are there pretty much  
14 fulltime doing the combination of things, and I guess it  
15 stands out because it is concentrated in the two people  
16 covering the whole state.

17 I know of some instances where one particular  
18 entity may have three lobbyists representing just one  
19 entity.

20 MR. WALLACE: Representative Mothershead said he  
21 doesn't think Congress intended you to be running a full-  
22 time lobbying operation in any degree.

23 I want to know, do you think Congress intended

1 those twenty issues was not unreasonable, in light of the  
2 fact that they're not only doing those issues, but they're  
3 also monitoring for the purpose of assisting the staff  
4 attorneys in the field on modifications to the law that  
5 they just may need to be made aware of, that they would be  
6 monitoring legislation that is introduced whether they  
7 were lobbying or not.

8           It is one of the things that I do in my law  
9 firm, is to see what bills are introduced in the North  
10 Carolina General Assembly; will they have an effect on some  
11 of my clients' cases that are pending?

12           I refer tax bills that are pending to my tax  
13 lawyers in my firm, real estate bills to the real estate  
14 lawyers. I say to them, "Here is a bill that has been  
15 introduced and may have an effect on one of your clients.  
16 You ought to look at it."

17           So, that's my answer, yes, I think they should  
18 be allowed to. I don't think that we are doing it in  
19 North Carolina to any unreasonable extent. I think it is  
20 concentrated in two people who are pretty effective, and  
21 so therefore those people who say that you should not lobby  
22 at all with public funds, would strictly prohibit that,  
23 may be offended by the fact that they do it well.

1 MR. WALLACE: Thank you very much, Mr. McMillan  
2 and members of the panel, thank you for being with us.

3 We have one other outside request that has been  
4 here before, because Pacific Legal has asked to --  
5 distributed this to us (indicating), and I would like Ms.  
6 Swartz to say just a few brief remarks, because we have  
7 heard from Pacific before.

8 Tell us what you have here. Ms. Swartz, welcome  
9 briefly.

10 MS. SWARTZ: Thank you.

11 I will be very brief. This is the third time  
12 that Pacific Legal Foundation has submitted comments on  
13 the Lobbying Regulations. We did so in '84, earlier this  
14 year and then what was submitted yesterday is just a  
15 supplement to all of that.

16 I will assume that you have read it or are at  
17 least familiar with our position, which is that very strict  
18 regulations should be enacted to give effect to Congress'  
19 prohibitions on lobbying.

20 The PLF's position is that Congress has prohibited  
21 lobbying except in specific instances. Several people today  
22 have said lobbying is permitted in these specific  
23 instances. I look at it completely different.

1           It is prohibited except -- if lobbying continues  
2 the way it has, public support for the Legal Services  
3 Program, I believe, will continue to be undermined.

4           I believe it's unfair for the clients that Legal  
5 Services hopes to serve by spending money on lobbying. I  
6 also believe it is terribly unfair to the tax payer to  
7 fund positions that they may not believe in.

8           I will rest there and let you continue with your  
9 business. Thank you for the opportunity.

10          MR. WALLACE: We thank you very much.

11          MR. SMEGAL: I have a question. I appreciate  
12 getting this along with the other materials. Is there any  
13 document prepared by the Pacific Legal Foundation that  
14 supports any part of the Legal Services Corporation  
15 concept?

16                 Do you have anything that would show your  
17 position more broadly? I heard in what you're saying that  
18 you're in favor of the delivery of Legal Services, and is  
19 there any document that would demonstrate that expression?

20          MS. SWARTZ: I believe so. For example, the  
21 comments that we have submitted certainly show --

22          MR. SMEGAL: I appreciate that, but I'm talking  
23 about a document like this. I'm going to read this, and

1 whether that's our money or that money belongs to the  
2 clients, in whose trust we hold it?

3 MR. SMEGAL: I wouldn't argue with you, Bob.  
4 I'm just curious if she has an opinion. I can appreciate  
5 that opinion. I would certainly argue the brief.

6 MR. WALLACE: Did you work on that lawsuit?

7 MS. SWARTZ: I did work on a lawsuit. I'm not  
8 familiar with exactly what PLF's position was in that  
9 lawsuit.

10 If one of the positions was this IOLTA money  
11 can be used to perform activities such as lobbying, then  
12 I can see why PLF would be opposed to it, because what they  
13 want, or what they are in favor of, is actual legal  
14 services, courtroom services, services before various  
15 regulatory bodies to decide a particular claim, a  
16 particular case on behalf of a particular client.

17 MR. SMEGAL: Thank you.

18 MR. WALLACE: Further questions?

19 COMMITTEE MEMBERS: (No response.)

20 MR. WALLACE: Thank you, Ms. Swartz. We  
21 appreciate you being here today.

22 We have one other item on the agenda which we  
23 must get to. We had hoped to take some testimony today

1 on questioned cost. Those have been published. All the  
2 comments aren't in and we will really work on that after  
3 that is over. It was on here in case we had some time.

4 We are running a little late. I don't want to  
5 cut off public comment altogether on lobbying, but if there  
6 is somebody here that has two or three short remarks we  
7 haven't heard yet, I want to give you a chance to do it  
8 and then get on to the Board.

9 Could you identify yourself, please, sir?

10 MR. STROMBURG: I'm Cliff Stromburg, a partner  
11 in the law firm of Hogan and Hartson in Washington.

12 I'm here representing the American Bar Associa-  
13 tion's Standing Committee on Legal Aid and Indigent  
14 Defendants.

15 MR. WALLACE: Welcome.

16 MR. STROMBURG: Thank you. I'll just try to  
17 take about two minutes.

18 The ABA's name was invoked both vainly and  
19 properly along the way, so I thought I should define a  
20 couple of points.

21 First of all, we have written you in the past,  
22 specifically commenting on Lobbying Regulations in the  
23 past, and you may want to look at those again.

1           We basically want to underscore the point that  
2 lobbying is a valid part of the armament the lawyer brings  
3 to representing a client. There's been some doubt cast on  
4 this along the way here.

5           It is our view that Congress has ratified that  
6 principle, in part, by incorporating the Code of  
7 Professional Responsibility, and in other ways as well.

8           I would point out, in part, the Code says that  
9 a lawyer must represent a client zealously, using all of  
10 the available mechanisms.

11           A question has been raised by Ms. Bernstein and  
12 I'm sorry she isn't here, as to whether that isn't  
13 redundant. She said that she doubts the tax payers, for  
14 example, have independent lobbyists.

15           I would submit to you that although they have  
16 elected representatives, they also have lobbyists, whether  
17 they know of them or not. If you're a shareholder in General  
18 Motors, you have lobbyists whether you know it or not.  
19 If you're a member of the UAW, you have lobbyists. If you  
20 join the National Rifle Association or the National  
21 Wildlife Federation, you have lobbyists, and even some  
22 churches do.

23           So, I don't think that redundancy is bad, and,

1 in fact, I think the poor, like other people, have a right  
2 not simply to lobbyists who are chosen for them, but also  
3 those that they specifically choose and believe will  
4 represent their interests.

5 I think also the question was raised as to  
6 whether it is inappropriate if a client is not physically  
7 present. We all know that for many people that is just not  
8 realistic, particularly if you're talking about poor  
9 people. It is just not realistic to say, "You have a  
10 franchise. You may be represented by a lobbyist, but you  
11 have to travel to the state capital, find lodging, pay for  
12 your meals, and live there until the lobbyists has to go  
13 home."

14 The question was also raised again by Ms.  
15 Bernstein as to whether it isn't inappropriate to try to  
16 lobby for an extension of your rights rather than your  
17 existing rights.

18 One could debate that at length, but I just point  
19 out to you examples with which you're all familiar. If  
20 the issue in the South during a certain part of our history  
21 is whether you have a right to be present at a public  
22 accommodation, the answer is no.

23 I think it would be preposterous to suggest that

1 Legal Services couldn't represent you in finding that the  
2 laws which defined your rights at that point in history  
3 were unconstitutional and should be changed.

4 In addition, it wasn't just unconstitutionality  
5 for the passage of the Civil Rights Act. It seems to me  
6 it's the proper role of the lawyer to do that. In the  
7 North, Fair Housing laws have the same effect.

8 I think there are lots of circumstances in which  
9 it is quite proper to say, "The law, as it currently  
10 exists, violates the Constitution or otherwise it ought to  
11 be changed."

12 By the way, I point out that a lot of Legal  
13 Services' cases that we've looked at, the court that the  
14 case has in the first instance, been litigated on behalf  
15 of a client, the court has said, in essence, "We have  
16 trouble with the law. It appears that this ought to be an  
17 individual's right, but the law is simply unclear. We  
18 hope the legislature will clarify this."

19 It would again, in our view, be a waste of  
20 resources to then proscribe Legal Services lawyers from  
21 going in the legislature and helping them to clarify what  
22 the courts invited them to clarify.

23 MR. WALLACE: All the court is saying there is

1 it's a political issue, isn't it?

2 MR. STROMBURG: They may not. They may be saying  
3 that there's an inconsistency in the law and that unless  
4 a third provision clarifies or reconciles existing law,  
5 they don't know how to interpret it.

6 Finally, the question has been raised as to  
7 whether it is inappropriate to speak out on your own time.  
8 It's, again, a complex issue that I think we'll look at  
9 in more detail, but I would just point out the ABA, for  
10 example, has a private attorney involved in the project.  
11 We even involve corporate counsel in that.

12 They do not generally feel it inappropriate to  
13 work eight hours a day for a corporation and then on  
14 Saturdays speak, despite the fact that they may be  
15 identified with that corporation. We in law firms have  
16 the same problem.

17 I think if you're going to seriously recognize  
18 a person and the rights of people to have something called  
19 their own lives, you can't say then, "But you may not use  
20 it except in ways that we happen to think are appropriate."

21 So, I think you really do have to come to  
22 serious grips with that.

23 Finally, and I'm mindful of the Chairman's

1 injunction that he doesn't want us to discuss the position  
2 at this point, but we, too, have written to the Corporation  
3 two years ago, expressing grave concern over the lack of  
4 due process in the procedures used to investigate  
5 complaints to the Office of Compliance and Review.

6 We received no response. We have orally inquired  
7 on several other occasions, received no response. We would  
8 urge you again to come to grips with that problem.

9 Thank you.

10 MR. WALLACE: Before you go, let me ask you one  
11 question about one of Ms. Bernstein's remarks that you  
12 didn't pick up on, and it's also a remark that Pacific  
13 Legal has taken in some of their remarks before us.

14 We have a limited amount of money and there are  
15 unlimited number of things that lawyers can do, but in a  
16 lot of areas, other people can do them, too. Lobbying is  
17 one of them.

18 Shouldn't we try to focus our efforts on areas  
19 where you have to have a lawyer because nobody else can  
20 serve you, and lobbying is an area where a lot of people  
21 can serve you, including your elected representatives?

22 Shouldn't our money be focused on places where  
23 you have to have a lawyer or you don't get in the front

1 door?

2 MR. STROMBURG: There may be something to what  
3 you say. I think in the legislation that I am familiar  
4 with, it is quite frequently the case that it is so complex  
5 and the tracking of legislative process is so complex,  
6 that unless you have a professional, who very often is a  
7 lawyer, it is impossible to get adequate representation.

8 I basically don't accept the premise that  
9 litigation is a sort of good bank for the buck investment  
10 in terms of representing the poor, whereas legislation  
11 always stands on a lower footing, because it doesn't give  
12 you more bank for the buck.

13 We have lots of examples where the most  
14 economical solution to a problem may, in fact, be  
15 legislative representation.

16 MR. WALLACE: Further questions?

17 MR. VALOIS: I've got a couple.

18 Mr. Stromburg, the concept that I'm having  
19 problems with in this whole thing is the use of public  
20 money and so forth. The President of the United States is  
21 advocating a piece of tax legislation now.

22 Would it be okay for the general counsel of the  
23 IRS to go around lobbying or to hire a lobbyist to lobby

1 for or against the legislation?

2 MR. STROMBURG: Well, I'm not an expert on the  
3 Hatch Act and that may address it. We'll have to look  
4 at that more carefully.

5 I believe, and I've been a government official  
6 myself, if I can remember back that far, I might be able  
7 to remember the rules that proscribe conduct, but where the  
8 conduct specifically would injure the very interests of  
9 the agency, which you in your primary capacity are sworn  
10 to uphold, I can see some proscriptions, but a blanket  
11 statement that you may not engage in any First Amendment  
12 activity, petitioning a legislature, lobbying of whatever  
13 kind, if you have a certain government position, I think  
14 may be too extreme, particularly if you are not, in fact,  
15 a high government official who is publicly identified, but  
16 you are a staff employee, a staff lawyer.

17 I do not believe that there are no restrictions  
18 which would be reasonable, but the ones that have been  
19 ventilated so far, that there ought to be a general  
20 proscription, I think probably are much too broad.

21 MR. VALOIS: The other concept that I guess we  
22 are dealing with, and we've sort of skirted around it all  
23 morning, is whether or not the various Legal Services

1 grantees of ours, because they are charged with  
2 representing poor people, have a general license or  
3 franchise to lobby on anything which, in their opinion, is  
4 bad for poor people or good for poor people, for that  
5 matter.

6 I guess I raised the same question. Can one of  
7 our grantees come up to Washington and lobby for or  
8 against a particular tax bill if they think it would be  
9 good or bad for one of their clients?

10 MR. STROMBURG: I don't know that I can contribute  
11 much on that. My understanding is that there has to be  
12 an existing client relationship, and the real dispute here is  
13 how that is to be verified.

14 I don't think there's anything in the ABA  
15 positions that would support anything other than represen-  
16 tation, in fact, of existing clients, but I think though  
17 we would be concerned if the verification process did make  
18 it likely that there would be reprisals or that the client  
19 who did not want his identity disclosed was forced to have  
20 that disclosed.

21 It sounded to me as though third party  
22 verification or some kind of indexing system might solve  
23 that problem and yet assure you that there was, in fact,

1 a client whose interests were being represented.

2 MR. VALOIS: What we deal with all the time, as  
3 Mike has said, is the use of our funds, and at some point  
4 somebody has to make a judgment about whether or not that  
5 is a proper or sensible expenditure. Thank you.

6 MR. WALLACE: Any further questions of this  
7 witness?

8 COMMITTEE MEMBERS: (No response.)

9 MR. WALLACE: Thank you very much, Mr. Stromburg.  
10 We appreciate it.

11 MR. UDDO: Mr. Chairman, I have a question, not  
12 of the witness, but I am concerned about the several  
13 references to the method of investigation and unanswered  
14 letters.

15 I was just wondering if this Committee is  
16 intending to put that on its agenda sometime.

17 MR. WALLACE: I think I stated at one point, and  
18 I know that you've been in and out, because you're not a  
19 member of the Committee, and we appreciate your being in  
20 here as much as you have been.

21 I have stated that as a matter of common  
22 courtesy, letters ought to be answered. I don't know what  
23 our investigatory procedures are. I don't know if they have been

1 followed or if they haven't been followed. I want to find  
2 that out. If procedures are not appropriate, we ought to get  
3 some new procedures, but simply as a matter of common  
4 courtesy, if they have five records to our successive  
5 presidents here, none of which have been answered, that  
6 needs to be fixed.

7 I've said it and I mean it and I think we all  
8 mean that.

9 MR. UDDO: But it would be within the jurisdic-  
10 tion of this Committee to find out about the investigative  
11 procedures?

12 MR. WALLACE: I think it's within our  
13 jurisdiction to find out about the investigative procedures  
14 and to set up a regulation governing investigative  
15 procedures if we find the need to do so.

16 Apparently there's a complaint about it. We  
17 need to look into it and I intend to ask that that be done.

18 MR. UDDO: Thank you.

19 MR. EAGLIN: Would that be a regulation?

20 MR. WALLACE: I don't know whether it would be a  
21 regulation or an instruction or a guideline. That's  
22 another thing we're going to have to ask, but I think it  
23 is within the jurisdiction of any member of this Board to

1 ask that something be looked into, and I think that's  
2 something that merits looking into.

3 Do we have further comments from the floor  
4 before we let Mr. Valois have the Board?

5 All right.

6 MR. SMEGAL: Excuse me, Mike. Then we are  
7 putting over the Report of the Office of General Counsel  
8 also?

9 MR. WALLACE: The Office of General Counsel, he  
10 has indicated that he will be in a better position to  
11 report in October, and on four and five, we still have  
12 comments pending on 1630. The comment time is still  
13 running.

14 That will be completed when, Mr. Bovard?

15 MR. BOVARD: At the end of September basically.

16 MR. WALLACE: It's the 30th of September and then  
17 we meet ten days later in New Hampshire. We'll try to have  
18 those comments digested and ready to do business.

19 Mr. Houseman, you look like you have a question  
20 or a comment?

21 MR. HOUSEMAN: Question. What are you going to  
22 take up at the next meeting? My understanding from Tom  
23 was you were going to focus principally on these 1612

1 Regulations, so-called Lobbying Regulations.

2 MR. WALLACE: The next meeting?

3 MR. HOUSEMAN: Yes.

4 MR. WALLACE: I don't know whether it will be  
5 principal or not, and I want to look at the time factor,  
6 because, for instance, the Questioned Cost Regulation, if  
7 it's going to go into effect for the next fiscal year, we  
8 need to work on it fairly quickly.

9 If we're able to work on it in October, I'd like  
10 to work on it in October.

11 I'd also like to deal with 1612, to the extent  
12 we can, and I'm going to ask for longer than a three hour  
13 meeting in New Hampshire, because we have two important  
14 pending sets, and I want to do as much of them as I can.

15 MR. HOUSEMAN: Maybe I can work with Tom. We  
16 do want to make one other substantial presentation to you  
17 on 1612 before we get to language, and dealing with a  
18 number of things that have been said here today and a  
19 number of the legal points that have been raised.

20 MR. WALLACE: We will try to get that organized,  
21 but that's what we're facing in New Hampshire. It's a  
22 lot of work.

23 With that, the Chair will entertain a motion to

1 adjourn this Committee and let the Board get on with its  
2 work.

3 Is there such a motion?

4 MS. MILLER: I make that motion.

5 MR. WALLACE: Mr. Smegal, would you like to  
6 second the motion to adjourn?

7 MR. SMEGAL: Yes.

8 MR. WALLACE: All in favor say aye?

9 COMMITTEE MEMBERS: Aye.

10 MR. WALLACE: Opposed?

11 COMMITTEE MEMBERS: (No response.)

12 MR. WALLACE: There being no dissent, the  
13 Committe is adjourned.

14 \*\*\*\*\*

15 (Whereupon, at approximately 11:32 o'clock a.m.,  
16 the meeting was recessed to reconvene at 1:00 o'clock p.m.,  
17 that same day.)

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CERTIFICATE OF REPORTER

I, Carol T. Carpenter, the stenographic reporter who did well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no interest in said proceedings, financial or otherwise, nor through relationship with any of the parties in interest.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of September, 1985.

*Carol T. Carpenter*  
Carol T. Carpenter