

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS MEETING

December 18, 1987

Commencing at 11:20 a.m.

The Mills House Hotel

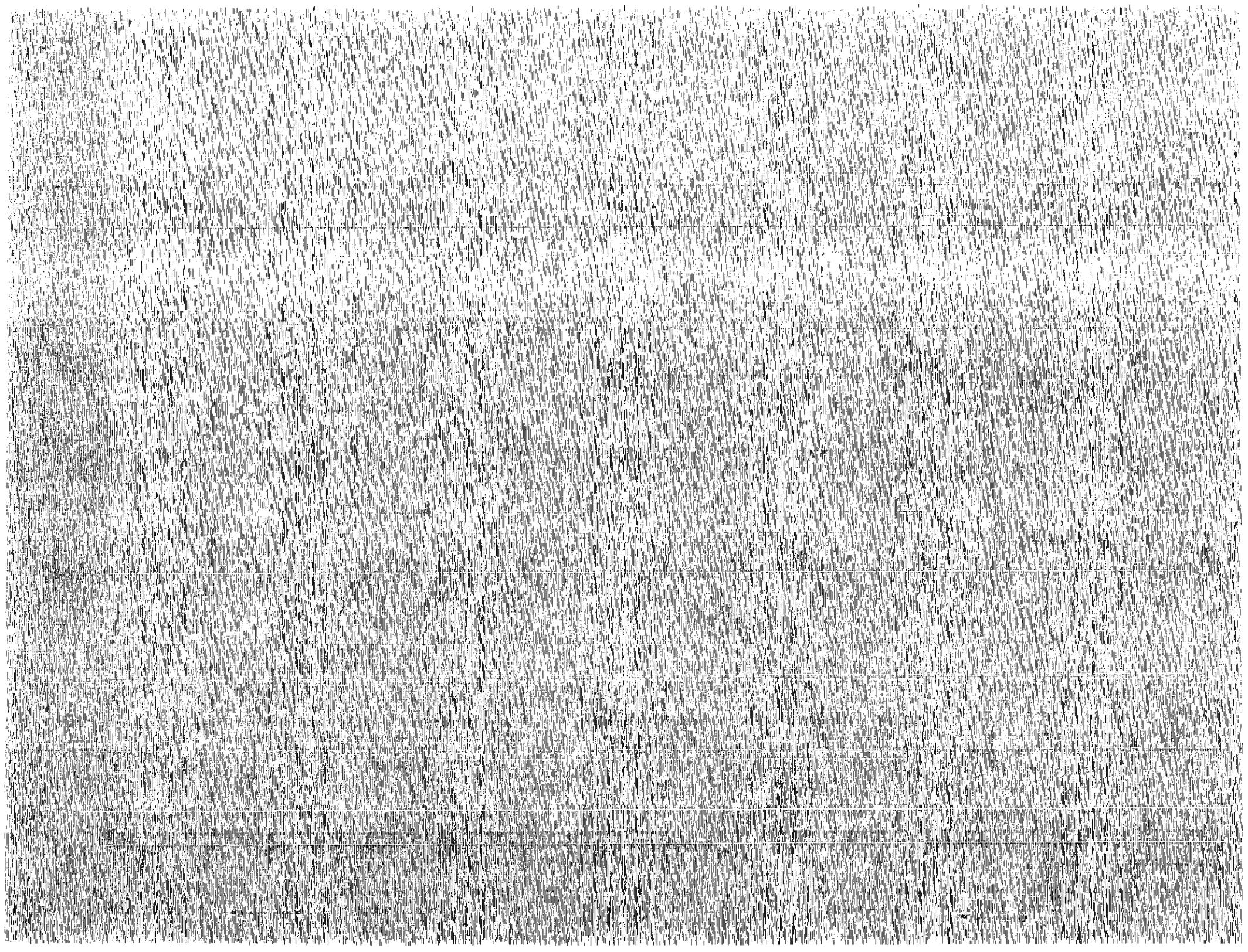
Indigo Room (Executive Session)  
Signers Ballroom  
115 Meeting and Queen Streets  
Charleston, S.C. 29402

**Diversified Reporting Services, Inc.**

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WASHINGTON, D.C. 20005

(202) 628-2121



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## P R O C E E D I N G S

1  
2 CHAIRMAN DURANT: I am going to call our board meeting  
3 to order in thirty seconds.

4 This is the board meeting for the Legal Services  
5 Corporation, convening on Friday, December 18th, it is now  
6 11:25.

7 We will begin this meeting asking Dr. Walter Cooke,  
8 the pastor of the Second Presbyterian Church at Charleston, to  
9 offer our invocation.

10 Dr. Cooke.

11 DR. COOKE: (Invocation.)

12 CHAIRMAN DURANT: Wade Logan, are you here?

13 MR. LOGAN: Yes, sir.

14 CHAIRMAN DURANT: How are you? Mr. Logan is the  
15 Treasurer of the South Carolina Bar Association, and is here to  
16 offer some brief remarks. Mr. Logan, the floor is yours.

17 MR. LOGAN: Thank you, Mr. Chairman.

18 Ladies and gentlemen, the fact that I am unfamiliar to  
19 you, does not mean that I am a candidate for the presidency of  
20 the United States, I am Wade Logan. I am Treasurer and I  
21 understand, the president elect to be, of the South Carolina  
22 Bar.

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1 I live and practice law here in Charleston, and on  
2 behalf of the 6,000 lawyers in South Carolina and 650 lawyers in  
3 Charleston County, I want to how ever belatedly welcome you to  
4 Charleston, and to South Carolina.

5 We are proud of our city, we hope you have enjoyed  
6 your stay. It may be of some interest to some of you to know  
7 that you are meeting very close to what we call the four corners  
8 of law, and corner B and Broad Streets.

9 The four laws represented are that corner, are the  
10 city laws, the city hall, the state, the state courthouse, the  
11 federal law, the federal courthouse, the post office building,  
12 and St. Michael's Episcopal Church.

13 Two signers of the Declaration of Independence in the  
14 court buried in the graveyard of Michael's --

15 CHAIRMAN DURANT: Which two are those?

16 MR. LOGAN: I was afraid you were going to ask me that.  
17 One is Paintney and the other I cannot remember.

18 CHAIRMAN DURANT: Okay.

19 MR. LOGAN: The relationship of both the South  
20 Carolina and of our local bar, with your organization have been  
21 excellent, and are excellent.

22 The Charleston County Bar Association appoints seven

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1 members of the Board of Directors of your local organization and  
2 Neighborhood Legal Assistants Program.

3           Those offices are much sought after. I note that the  
4 statute which created you requires that you insure that the  
5 attorneys employed by your programs carry out their obligations  
6 in a manner consistent with the ethical obligations of our  
7 profession, and I can assure you, that at least locally, they do  
8 so and do an excellent job of it.

9           We do appreciate your bringing us the cold weather for  
10 Christmas, and I hope you do not want to find out if any of our  
11 local laws, our police chief is the meanest man that I have met  
12 since I got out of Paris Island.

13           If you do, please give me a call, we hope you come  
14 back. Thank you for coming.

15           CHAIRMAN DURANT: Where is this four corners in  
16 relation to where we are?

17           MR. LOGAN: If you go out the front door of the hotel,  
18 you take a right, and you will see the Church. It is the most  
19 prominent of the four laws.

20           MR. WALLACE: Mr. Logan, could I ask you a question?

21           MR. LOGAN: Yes, sir.

22           MR. WALLACE: Doctor -- Walter is his first name, and

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1 I have --

2 CHORUS: Cooke.

3 MR. WALLACE: Dr. Cooke was telling me on the way out,  
4 I am not sure that I got all of the details, but it sounds like  
5 a story that would be dear to my Chairman's heart; he was saying  
6 that the first Legal Aid Society in Charleston for many years  
7 was run by a woman who was not a lawyer.

8 They would not let her into law school, and she just  
9 read the books and came here and done it. Is that right?

10 MR. LOGAN: Yes, that is correct sir.

11 MR. WALLACE: Can you tell me a little more about it?

12 MR. LOGAN: She read for the law, and it would be a  
13 source of some warmth and comfort to the none lawyers on your  
14 board to know that she was acknowledged to be the premier lawyer  
15 in her field in Charleston for a number of years.

16 We have got long tradition in that regard. We passed  
17 a change of rule that requires you to graduate from an ABA  
18 accredited law school some years ago.

19 A number of lawyers in Charleston and in South  
20 Carolina were admitted to the Bar, having read in the offices of  
21 the another lawyer.

22 MR. WALLACE: So she was eventually admitted to the

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1 Bar.

2 MR. LOGAN: Yes, sir, she was.

3 MR. WALLACE: Okay, we got rid of proctoring in  
4 Mississippi a few years ago. I regret it. I think we got a lot  
5 of good people the other way.

6 MR. LOGAN: Yes, sir. Thank you again for your  
7 interest.

8 MS. MILLER: That is very comforting.

9 MR. LOGAN: We were a leader in women's rights  
10 movement, before there was a women's rights movement back then.

11 MS. MILLER: Thank you.

12 CHAIRMAN DURANT: I thought you were going to say  
13 before women. I mean, I know you have a grand and glorious  
14 history, but it does not go back that far.

15 Thank you Mr. Logan.

16 The next item on our agenda, is the approval of the  
17 agenda. Is there any discussion on that, or any motion?

18 M O T I O N

19 MR. EAGLIN: Yes. Mr. Chairman, I would like to move  
20 to amend two items. The original package that we had, had  
21 included on it, an update by the Chairman on an update of the  
22 National Commission on Legal Services in response to -- I

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1 believe, in response to Mr. Wallace's letter.

2 I agreed with that, with Mr. Wallace's letter; and so  
3 I would like to ask for an update either by the Chairman or the  
4 present attorney on the status on the National Commission on  
5 Legal Services.

6 That is number 9 on the agenda. Then there is number  
7 10, Election of the Board Chairman and Vice Chairman. We have  
8 done this in the month of December; in our December Board  
9 Meeting.

10 We departed last year because as I recall, because of  
11 the turmoil that is surrounding Mr. Wentzel's departure. It was  
12 usually done in December, because it was then that we were doing  
13 our mark, and I saw a relationship there.

14 So, I would like to move the admission of number 9 and  
15 number 10 of the agenda.

16 MS. BERNSTEIN: I guess maybe I should see whether or  
17 not there is any second?

18 MS. BENAVIDEZ: I second.

19 MS. BERNSTEIN: I do not need progress of an update on  
20 where we are on the Commission. I would just say as far as the  
21 Chairmanship is concerned -- the vote on the Chairmanship at the  
22 annual meeting because it is the only one mandated in our by-

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1 laws and so forth, as the most appropriate time for it; and  
2 also, because it was not noticed I think it is reasonable for it  
3 to remain in January.

4 I think that is a more reasonable time for it. I  
5 frankly, have not looked back at the history of the Corporation  
6 to see whether it was always in December, or whether we just  
7 picked up in December because that was our first meeting; was in  
8 December.

9 MR. EAGLIN: I meant that the eleven of us have done  
10 it.

11 MS. BERNSTEIN: Well, I think that the reason that we  
12 started it was that when we first appointed, the December  
13 meeting was our first meeting, and we had to have a Chairman  
14 immediately.

15 Therefore, I think moving to the January annual time,  
16 makes a lot of sense. So, I would oppose your motion on that.

17 M O T I O N

18 MR. MENDEZ: I move to table Paul's motion on the  
19 elected, to a time specific, that is until January or our  
20 January meeting?

21 CHAIRMAN DURANT: Do I have a second?

22 MS. SWAFFORD: I Second it.

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1 CHAIRMAN DURANT: What is the parliamentary rule on a  
2 table motion?

3 MR. SMEGAL: You cannot do that.

4 MR. WALLACE: The first thing that you would have to  
5 do because you cannot table half a motion, you would have to  
6 move to divide it, and then having divided it, then you could  
7 table half of it.

8 CHAIRMAN DURANT: You need to amend your motion to  
9 divide.

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

11 MR. EAGLIN: Move to divide.

12 CHAIRMAN DURANT: Do we have a second on that?

13 MS. SWAFFORD: I will second.

14 CHAIRMAN DURANT: Okay, well, let's vote on it.

15 MR. VALOIS: What are we voting on, to take these up  
16 separately?

17 MS. BERNSTEIN: We are moving to divide the motion.

18 MR. EAGLIN: To divide the motion.

19 MR. WALLACE: Vote separately.

20 MR. EAGLIN: No.

21 MS. BENAVIDEZ: No.

22 MR. UDDO: No.

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1 MS. SWAFFORD: Yes.

2 MR. MENDEZ: Yes.

3 CHAIRMAN DURANT: Yes.

4 MR. WALLACE: Yes.

5 MR. VALOIS: Yes.

6 MS. BERNSTEIN: Yes.

7 MS. MILLER: No.

8 MR. SMEGAL: No.

9 CHAIRMAN DURANT: Motion to divide, carries. Motion  
10 to divide.

11 M O T I O N

12 MR. EAGLIN: Move to table what has been denominated  
13 as elective number 10.

14 A PARTICIPANT: Second.

15 CHAIRMAN DURANT: Table the motion, and have no  
16 discussion.

17 A PARTICIPANT: No discussion.

18 CHAIRMAN DURANT: Mr. Smegal, start at the other end.

19 MR. SMEGAL: What is the motion?

20 CHAIRMAN DURANT: Motion to table.

21 MR. SMEGAL: No.

22 MS. MILLER: No.

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1 MS. BERNSTEIN: Yes.

2 MR. VALOIS: Yes.

3 MR. WALLACE: Yes.

4 CHAIRMAN DURANT: Yes.

5 MR. MENDEZ: Yes.

6 MS. SWAFFORD: Yes.

7 MR. UDDO: No.

8 MS. BENAVIDEZ: No.

9 MR. WALLACE: Number 9 is still available for  
10 discussion. This was out of my letter. I have talked to the  
11 Chairman. As I understand, the Chairman is not prepared to  
12 report today; is committed to report at the January meeting. Is  
13 that a fair analysis of our discussion, Mr. Chairman?

14 CHAIRMAN DURANT: That is a fair analysis.

15 MR. WALLACE: That is about as much report as there  
16 is, Paul. We can put on the agenda, but I do not think we are  
17 going to hear anything more.

18 CHAIRMAN DURANT: There is not much point in adding  
19 anything in analysis.

20 MR. WALLACE: Okay.

21 CHAIRMAN DURANT: Do you want to withdraw your motion?

22 MR. WALLACE: Let's just deem it withdrawn, I think.

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1 MS. BERNSTEIN: Clark, it is in order, I would like to  
2 make another motion regarding the agenda.

3 CHAIRMAN DURANT: Okay.

4 M O T I O N

5 MS. BERNSTEIN: I think that there are some  
6 constraints in terms of time today, and I would move that we  
7 move to the first item on the agenda, the Report from the Audit  
8 and Appropriations Committee, so that we can take care of that  
9 business while all of the members of the board are here; and  
10 that we just move everything else down after that.

11 Just move back to the top. I would also, this is not  
12 part of the motion, but I would just note for the record, that  
13 we were all polled regarding the executive session which we will  
14 have at lunch, and that was all ready voted on and certified, so  
15 that is just for the record.

16 CHAIRMAN DURANT: Okay, so you made a motion that to  
17 amend the agenda to put number 4 as number 1, is that correct?

18 MS. BERNSTEIN: Well, number 2.

19 CHAIRMAN DURANT: Yes, number 2, I apologize.

20 MR. VALOIS: I second.

21 CHAIRMAN DURANT: It has been seconded. Is there any  
22 discussion?

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1 (No response.)

2 CHAIRMAN DURANT: All of those in favor, signify by  
3 saying Aye.

4 (A chorus of Ayes.)

5 CHAIRMAN DURANT: Opposed?

6 (No response.)

7 CHAIRMAN DURANT: Unanimity again, prevails.

8 M O T I O N

9 MR. WALLACE: Mr. Chairman, I have a further motion.

10 In that same letter I indicated my intention to offer a motion  
11 regarding procedures for the suspension of Funds Programs.

12 I also indicated an intention to offer a motion  
13 regarding the charges of political activity that were leveled  
14 against our staff by Senator Rudman last May, at the meeting of  
15 the Senate Appropriations Sub-Committee.

16 I would like to add those two items to the agenda  
17 following the budget, as items 3 and 4, and I so move.

18  
19 CHAIRMAN DURANT: The Chair, second.

20 MR. EAGLIN: Something briefly. In the letter I had  
21 one motion about suspension of funds where programs withhold  
22 information from us.

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1 I have another motion about the charges of political  
2 activity that Senator Rudman leveled against the board, and the  
3 short answer is that neither Senator Rudman or anybody else has  
4 produced any evidence to support those charges, and I think we  
5 ought to vindicate our staff publicly.

6 So, I would offer motions, -- I want to offer those  
7 two motions, and I want to do them in that order, after we  
8 finish the budget, and that would make them items 3 and 4 on the  
9 agenda.

10 CHAIRMAN DURANT: Any other discussion?

11 (No response.)

12 CHAIRMAN DURANT: All of those in favor of adding  
13 those two items to the agenda, signify by saying Aye?

14 (A chorus of Ayes.)

15 CHAIRMAN DURANT: Opposed?

16 (A chorus of Nays.)

17 CHAIRMAN DURANT: The motion carries. Any other  
18 amendments on the agenda?

19 M O T I O N

20 MS. BERNSTEIN: I move to approve the agenda as  
21 amended.

22 CHAIRMAN DURANT: Second. Any discussion?

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1 (No response.)

2 CHAIRMAN DURANT: All of those in favor, signify by  
3 saying Aye?

4 (A chorus of Ayes.)

5 CHAIRMAN DURANT: Opposed?

6 (A chorus of Nays.)

7 CHAIRMAN DURANT: The motion carries. The next item  
8 on the agenda is the report from the Audit and Appropriations  
9 Committee.

10 MR. MENDEZ: Mr. Chairman, the Audit and  
11 Appropriations Committee met yesterday, and two types of  
12 proposals were tendered to the Committee, and we are deadlocked  
13 two to two, and the Committee by unanimous consent voted to send  
14 both proposals to the Board.

15 If I might just briefly, without taking Paul Eaglin's  
16 thunder, he has given a document called Proposal FY '89 Budget  
17 Mark, which is a handwritten legal sized document.

18 Which I think is under here.

19 CHAIRMAN DURANT: Are there copies available.

20 MR. EAGLIN: Yes, they should have been handed out.  
21 Excuse me, Marlene?

22 MR. MENDEZ: Paul's budget is \$330,246,240.00. The

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1 proposal promoted by Mr. Wallace, contained -- now, I do not  
2 know if he had this one Paul's has been talking about -- is--  
3 David, do you have --

4 MR. SMEGAL: I do not have anything.

5 MR. MENDEZ: The budget proposal by Mr. Wallace  
6 was \$305 million, with essentially the first page of this sheet  
7 -- Mr. Richardson had, folding in directly delivery alternative  
8 dispute for the resolution initiatives into administration and  
9 development, making that a \$14,540,000, and directing the  
10 Corporation to come back and tell us how they proposed to expand  
11 the direct delivery alternative dispute initiatives; and if that  
12 is not -- the first part of January.

13 Is that a fair statement of Mr. Wallace's?

14 MR. EAGLIN: I believe so.

15 MR. MENDEZ: Also those were moved, neither one passed  
16 and I think that that is the place where we should start today.

17 CHAIRMAN DURANT: I promised Mr. Wallace I would wait  
18 for discussion until he comes back. What is the status--  
19 remember we were going to start off that 800 number hotline or  
20 whatever on the clients thing that Lorain had talked about; what  
21 is the status on that?

22 MR. BAYLY: The status is that Mary Higgins, who I

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1 thought was the most appropriate person to speak with because  
2 she is director of the office of field services, has far as I  
3 know, undertaken to make arrangements to do that.

4 I cannot give you any more details.

5 MR. MENDEZ: Mr. Chairman, I have one other item --

6 CHAIRMAN DURANT: Hold on just a second. Is that  
7 happening in the court with the way you had talked about?

8 MS. MILLER: Yes. Mrs. Higgins did agree to try and  
9 figure something out for us.

10 CHAIRMAN DURANT: Okay, is she making progress on  
11 that?

12 MS. MILLER: I have not heard anything from her, but  
13 that would be included into Paul's increase on the budget.

14 CHAIRMAN DURANT: It is the -- what specifically do  
15 you mean?

16 MR. EAGLIN: What area are you speaking of?

17 MS. MILLER: The 800 number for clients to be able to  
18 share their concerns with the Corporation.

19 MR. EAGLIN: It was my understanding that  
20 administratively things were being done to take care of that,  
21 and I am just trying to find out, if that is in fact, happening.

22 CHAIRMAN DURANT: To your knowledge it has not

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1 happened yet?

2 MS. MILLER: Not as yet, no. She said she would be  
3 willing to try and get together with the other staff to get it  
4 started.

5 CHAIRMAN DURANT: John, is there -- I assume, money in  
6 the budget to be able to do this.

7 MR. BAYLY: I expect so. One of the things that Ms.  
8 Higgins spoke with me and John Myer about, was how we best could  
9 accomplish this given the fact that the Corporation had recently  
10 changed its phone service.

11 It presents not a separable wrinkle, but something you  
12 have got to take into account. The second problem, of course,  
13 was staffing, and how incoming calls would be handled.

14 Whether it would be a period in the day when you  
15 called back; whether people would be on service all day long, or  
16 just what.

17 I hope that I will be able to report to you first by  
18 letter, if that is agreeable to everyone on the board, to Mrs.  
19 Miller; and then make a report if you like publicly at the next  
20 meeting.

21 MS. MILLER: I would appreciate that.

22 MR. MENDEZ: Clark, with regard to the '88 budget

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1 mark, Maureen -- with regards to the '88 budget mark, congress  
2 has not acted on it, so there is not much we can do with regards  
3 to that.

4 I have instructed Mr. Bayly, and we have asked him to  
5 come in today to give us some advice about whether or not it is  
6 possible -- not to sign any of the contract until we have met  
7 again, but to come back and give us his best advice as to what  
8 he can do in that regard towards the '88 budget.

9 I think we should only take about a minute or two to  
10 hear from Mr. Bayly.

11 MR. BAYLY: After yesterday's conversation, Mr.  
12 Mendez, I spoke with our general counsel, and asked him about  
13 the lawfulness -- the advisability perhaps, of deferring grant  
14 signing until some time in January, with the expectation that  
15 the Corporation would by then have gotten a budget from  
16 congress.

17 A bit of research showed that, for purposes of  
18 administrative convenience, the Corporation has in the past done  
19 that, and that if the same sort of situation takes place this  
20 year, we will find ourselves into January or late December, very  
21 late December without any word from congress; he expects that we  
22 could follow the same pattern or the same practice.

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1 I do not foresee that that kind of postponement ought  
2 to continue much longer than a matter of days or a few weeks  
3 following what we hear from congress, and of course, during that  
4 time we would have to continue funding of the programs at the  
5 previous level.

6 The fact to answer your questions, seems to me, that I  
7 cannot -- given that you will meet again on the fourth Thursday  
8 in January, report to you then, we expect -- we would have  
9 legislation by that time; and after that period, go forward.

10 MR. MENDEZ: One of the concerns that was raised  
11 yesterday, is that a double payment could be made. Did you make  
12 any determination about that issue?

13 MR. BAYLY: Well, I did not make a determination about  
14 that issue because we do not know yet how much money we are  
15 going to have.

16 When the Treasury acts, -- if we are going to have  
17 enough money to make a double payment in the full amount that  
18 the programs expect.

19 If the Treasury makes the money available, I expect we  
20 will be able to, and will do so.

21 I just mention that, because we have had some  
22 conversations with the Treasury about getting the cash from

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1 them.

2 MR. MENDEZ: So it is fair for us to assume that you  
3 will not grant any contracts until we meet again?

4 MR. BAYLY: Yes, that is fair.

5 MR. MENDEZ: Would you identify yourself please?

6 MS. ROGOFF: Regina Rogoff. I would just like to  
7 request that the board might consider an exception to the delay  
8 in the event that a budget is adopted by congress and in the  
9 event that that budget is specific as to the funding formula  
10 such as there really is not discretion as to how the funds will  
11 be distributed; that there would be no need to come back and  
12 reconsider this in January.

13 Therefore, if that is the case, or should be the case,  
14 then this board authorize Mr. Bayly to enter into the contracts  
15 and the matters as done in the past.

16 MR. MENDEZ: What I asked you to do yesterday, I  
17 instructed Mr. Bayly, was to meet with TAG, to go through the  
18 various contracts to insure us that the numbers of PAG that Mr.  
19 Bayly had were copasetic.

20 That is -- if there are any problems, we can raise  
21 those. I have also told him I do not want him to sign any  
22 contract, I have made this very clear, no contracts until the

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1 board meets and has a chance to review the documentation.

2 We will not give him any perspective authority to sign  
3 a contract.

4 MS. ROGOFF: I was only speaking to the situation,  
5 should you freeze budget where no line items will be changed,  
6 and where presumably then all funding remains at the current  
7 level, that that might be one instance in which an exception  
8 might be carved down.

9 If that is not at your pleasure, obviously the board  
10 does what it chooses, but if there is no discretion in its being  
11 -- congress should speak, that there is specifically you would  
12 ask Mr. Bayly be given that authority.

13 We would also ask that, again, if the funding is at  
14 the same level as FY '87, that both the first and last month  
15 checks be included in the payment.

16 CHAIRMAN DURANT: Is not that traditionally done, when  
17 it is done, the first and last month?

18 MR. BAYLY: Yes.

19 CHAIRMAN DURANT: There is no interruption of cash  
20 flow though, is there, in any event?

21 MS. ROGOFF: If the double check is not given, you can  
22 anticipate a cash flow problem by the end of the year, yes.

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1 MS. BERNSTEIN: Why?

2 MS. ROGOFF: Because we anticipate having that money  
3 and expenses are budgeted accordingly; and we use that money--  
4 many expenses are front end expenses insurance.

5 My experience is in that one year, and I am not  
6 remembering which year it was, not last year, possibly before  
7 '85, it gave a lot of dislocation in the field because of the  
8 way the expenses are incurred.

9 MR. MENDEZ: Mr. Chairman, I do not have any  
10 difficulty in giving them the double payments in whatever  
11 amounts. I just do not -- Mr. Bayly, make the appropriate  
12 determinations. I just do not want to have any contracts signed  
13 until the board has a chance to review those.

14 We will put them on month to month until we have a  
15 chance to review those.

16 CHAIRMAN DURANT: So your understanding is that there  
17 will be no cash flow interruption.

18 MS. ROGOFF: Are we to assume that you will meet the  
19 double payments, yes. Thank you.

20 MR. EAGLIN: Can we speak to ours and then yours?

21 MR. MENDEZ: But Lea Anne --

22 CHAIRMAN DURANT: Let Paul go first. All right, put

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1 yours on.

2 MS. BERNSTEIN: I was just going to suggest that if  
3 you are outlining for another budget, I can proceed however you  
4 would like; but I would suggest that I will be making a motion  
5 at some point during this consideration, for adopting a budget  
6 mark, other than those currently on the table.

7 If you want me to make my presentation now, if you  
8 want me to give my bottom line figure now, I will proceed at  
9 your will.

10 CHAIRMAN DURANT: All right, what I would like you to  
11 do is, I would like you to put it on the floor, and then Anne, I  
12 want Paul to make his presentation first, then you, and then  
13 Pepe with his bunch.

14 MS. BERNSTEIN: All right, so you want -- I will  
15 simply say that I am going to make a motion that we adopt a FY  
16 '1989 mark, of 285 million, basically on the direct delivery  
17 conception; and I will be glad to explain the components of that  
18 when it is appropriate.

19 CHAIRMAN DURANT: You could make the motion then after  
20 Paul makes his presentation.

21 MR. MENDEZ: She said she would like to move it. I  
22 would like to have it on the floor.

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1 MS. BERNSTEIN: I ask for a second for the purposes of  
2 discussion. I guess everybody else is on the floor, just by  
3 virtue of having been at the meeting yesterday.

4 CHAIRMAN DURANT: In terms of taking them in order, I  
5 want to take Paul first.

6 MS. BERNSTEIN: That is fine, but it is appropriate to  
7 get a second now, or do you just want this as a preview of what  
8 --

9 CHAIRMAN DURANT: No, I do not think you can have two  
10 motions on the floor at the same time.

11 MR. MENDEZ: Both -- as a matter of what happened at  
12 the Audit of Appropriations Committee, sent both motions up.

13 CHAIRMAN DURANT: That is right, so I want to deal  
14 with those. Hers was not a (inaudible) motion.

15 MR. MENDEZ: Yes, but there are two motions up on the  
16 floor right now.

17 CHAIRMAN DURANT: Two proposals. They are not two  
18 motions.

19 MS. BERNSTEIN: So you are saying, I do not need -- I  
20 need a second for it to be on the floor? I just do not want to  
21 be knocked out later --

22 CHAIRMAN DURANT: At some point, I am going to give

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1 you, after Mr. Eaglin finishes, the opportunity to make a  
2 motion. If you have second, then you can have discussion on  
3 your proposal.

4 MS. SWAFFORD: Does she have a motion on the floor?

5 CHAIRMAN DURANT: No, there is no motion on the floor  
6 yet. Mr. Eaglin do you have a motion to make regarding --

7 MR. EAGLIN: Just ask her to hold off.

8 CHAIRMAN DURANT: Mr. Eaglin, do you have a motion for  
9 the budget?

10 MR. EAGLIN: Yes, I have a motion.

11 CHAIRMAN DURANT: Would you like to make that?

12 M O T I O N

13 MR. EAGLIN: For proposed Fiscal Year, 1989 Budget  
14 Mark. I have recorded it on the paper and indicated earlier,  
15 that it has been copied, and each person here should have it,  
16 and I hope everybody in the audience also should have it so that  
17 I do not have to read in for the record; as I did yesterday,  
18 each of the figures.

19 I will just read the bottom line.

20 CHAIRMAN DURANT: The bottom line, the totals.

21 MR. EAGLIN: \$330,246,240. The process by which I  
22 arrived at this is as you will probably remember, I had voted

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1 for greater funds than this in the past for a fiscal year -- of  
2 budget mark for Legal Services.

3 The process that went into this one, this year, is  
4 that the clients were concerned about a number of things. One  
5 of which, had to do with assurances that increases, if approved,  
6 for Legal Services, should go to certain areas of concern to  
7 them.

8 I indicated in my support for that, and I indicated my  
9 -- that I was prepared to second a motion and to vote for  
10 motions to that affect, and they asked that I make the motion.  
11 So that is how this came about.

12 The areas of concern to them, had to do with number 2  
13 (inaudible) Native American (inaudible), 183 migrant programs,  
14 and then also a new line, client support which encompasses a  
15 program by according to which local award client members would  
16 receive training with respect to their duties; with respect to  
17 that which is to be a college by the local programs.

18 The relationship of legal services and the congress,  
19 just a gamut of areas that they would need more training on,  
20 more enlightenment on.

21 To note part of that client support, has to do with  
22 communications with the local client board members, and the

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1 Corporation, so that there would be more direct communication  
2 between the Corporation and those client board members; back and  
3 forth.

4 So, those are the components then, of this new 2B5,  
5 client support. The figure is there for that, \$1,715,000.00.

6 Then the other areas, Native American Migrant Groups,  
7 were of concern to them, also represent increases and then, of  
8 course, the basic field as well; there is a proposal for an  
9 increase.

10 The other figures that you see there, come from the  
11 Senate language for this year, that is the basic document that  
12 this was started from, coming up with this budget.

13 So, having sorted the figures and the appropriate line  
14 items that were concerned, we then came up with a total, and I  
15 have all ready indicated what that is. So, that is the process  
16 of where I got this proposal, '89 Budget Mark.

17 CHAIRMAN DURANT: Is there a second to that?

18 MS. MILLER: Second.

19 CHAIRMAN DURANT: Any discussion? Paul I would like  
20 to ask you one question. On 2B5, on 1.78, do you have a -- have  
21 you done a budget for that? I mean --

22 MR. EAGLIN: I have not done a specific budget

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1 breaking down all of that, but it takes into account the fact  
2 that I am not sure how many local board client members there  
3 are.

4 I know that the number has increased substantially, I  
5 am sure on the order of 1,000 or more; taking into account,  
6 trying to train them all either within a year, which could be a  
7 rather vicious program or perhaps, even 18 months.

8 Trying to get them to approve training so they can get  
9 familiar with the areas of their responsibility, I think would  
10 be costly in terms of housing, transportation, paying for the  
11 trainers -- that I think would be one of the lesser elements of  
12 the cost -- the greater elements of cost would be the  
13 transportation, the housing.

14 When you take into account how many client board  
15 members there are. I would also like to just refer to the  
16 client members too, since that is an area specifically of  
17 concern to them.

18 Just one other remark too, is that they have indicated  
19 this in their own cases including --

20 CHAIRMAN DURANT: Hortencia, would you like to  
21 comment?

22 MS. BENAVIDEZ: I have from all of that for other

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1 people like yesterday, they come in with the -- so the lawyers  
2 need it, imagine how much we could give the information for  
3 education.

4 MR. UDDO: There was a conversation at the time I was  
5 speaking, and I might need to bring her up to date. He is  
6 asking to follow up to what I was saying, and what I briefly  
7 outlined, was that, in taking into account this \$1,758,000.00,  
8 the ideas was to try to take into account the hundreds of client  
9 board members that there are out there in the local programs.

10 The cost of housing them and transporting them to  
11 wherever we train them, whether nationally, regionally, or  
12 however we do that.

13 So, briefly, that is what I said.

14 MS. MILLER: That is correct. Meaning that in all  
15 points of the United States, we want someone to represent the  
16 clients; so we feel that there would be a need, this is why I  
17 agree with the increase.

18 The board has money to be used for that. The amount  
19 that we are asking for is specified just for that -- for nothing  
20 else.

21 MS. BERNSTEIN: Would you go with a budget that is  
22 \$1,170,000,00 above what we have, because that is all that is

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1 going for that?

2 MS. MILLER: Well, also the Native American and the  
3 Migrants, I feel that they need an increase also.

4 CHAIRMAN DURANT: Is the -- on the 2B5, Lorain, you  
5 had mentioned to me before in terms of communications that you  
6 have received from different clients, has there been specific  
7 proposals in terms of how these numbers were arrived at?

8 MS. MILLER: No. This is when I thought Mrs. Higgins  
9 was going to, you know, set out a figure for us. Or how to  
10 agree to handle this. How much money it would take.

11 CHAIRMAN DURANT: Generally she would handle this?

12 MR. BAYLY: I do not know that Mary Higgins has done  
13 that. If you are wondering about the number of client board  
14 members, that could fairly easily be derived.

15 The figure of course -- we could probably figure out  
16 right not, there are roughly 400 grantees, and the low medium  
17 number of members of each board is 20. You would have in the  
18 neighborhood of 8,000 board members locally, and less than half  
19 would be clients; they would have to be.

20 CHAIRMAN DURANT: Tom?

21 MR. SMEGAL: Yes, I would like to focus just for a  
22 moment on basic field programs that Senator Gram characterizes

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1 on December 11, 1987 as being correct delivery of the Legal  
2 Services.

3 I note that on October 2nd, before this board, you  
4 proposed that for FY 1988, not even 1989, a year further down  
5 the road, that the basic field programs include an increase in  
6 what I recall is 264, fiscal year '87 of 283.

7 Senator Gram, proposed 300, in fiscal year '88. What  
8 this motion would do, is increase that line on our budget by a  
9 modest 11 million dollars, compared to the 19 or 36 that Senator  
10 Gram proposed on December 11.

11 I might just point out to you that an 11 million  
12 dollar increase in this line, where there has been essentially  
13 no increase during the time we have been sitting on this board,  
14 represents four percent.

15 That is less than what you recommended, Mr. Durant,  
16 and I am sure it is a lot less than what Senator Gram  
17 recommended on December 11.

18 CHAIRMAN DURANT: Okay, thank you Mr. Smegal. Any  
19 other comments?

20 M O T I O N

21 MR. UDDO: I want to propose an amendment. I do not  
22 think that client support line -- well, it is an idea that I

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1 think deserves money that requires 1.7 million dollars.

2           It seems high to me. I would propose an amendment to  
3 make that line \$500,000, with the balance into Corporate  
4 Management and administration.

5           MS. SWAFFORD: Second.

6           CHAIRMAN DURANT: Paul is that a friendly amendment,  
7 or not?

8           MR. EAGLIN: I would say it is not a friendly  
9 amendment.

10           CHAIRMAN DURANT: All right, then we will do it  
11 separately. Is there a second to that?

12           MS. SWAFFORD: I vote for it, I just said.

13           MS. BERNSTEIN: I will second it for purposes of a  
14 discussion.

15           MR. MENDEZ: I do not think we need to discuss it.

16           MR. UDDO: I think we could just vote on it. I do not  
17 think that we need 1.7 million dollars to develop the idea of  
18 client support.

19           We do not have enough specifics about what it would be  
20 or how it would be done. I think a half million dollars is  
21 adequate to develop a pilot project along those lines.

22           CHAIRMAN DURANT: Any other discussion on this?

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1 MR. SMEGAL: This is a new budget line, it has never  
2 been in our budgets before?

3 MR. VALOIS: 2B5 has been.

4 MR. SMEGAL: 2B5 has been.

5 MR. BAYLY: Mr. Smegal, it may have previous to this  
6 board's service.

7 CHAIRMAN DURANT: David, please come up?

8 MS. BERNSTEIN: ---

9 MR. SMEGAL: Paul, did you point out where the number  
10 -- would you mind --

11 MR. EAGLIN: No, I was speaking of a calculation based  
12 on I do not know the exact number of local board client members  
13 there are and taking into account of the transportation of them  
14 all, the house, the training centers whether national or  
15 regional.

16 Taking into account the other expenses that would be  
17 involved in training and who they will be out of periodical--  
18 responsibilities --

19 CHAIRMAN DURANT: Is there any more discussion on Ms.  
20 Benavidez amendment?

21 (No response.)

22 CHAIRMAN DURANT: All of those in favor of Benavidez

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1 amendment, signify by saying Aye?

2 (A chorus of Ayes.)

3 CHAIRMAN DURANT: All of those opposed?

4 (A chorus of Nays.)

5 CHAIRMAN DURANT: Motion fails. We are back to  
6 Paul's. Any further discussion on Paul's proposal?

7 M O T I O N

8 MR. UDDO: I have another amendment. I would propose  
9 that Native American Migrant Programs be reduced to what they  
10 were in the Senate numbers and the balance in his proposed  
11 budget go into basic field programs.

12 CHAIRMAN DURANT: Do you know what those numbers were?

13 MR. WALLACE: I think I have it here.

14 MR. UDDO: The Senate numbers said what you have  
15 proposed excess into basic field programs.

16 MR. WALLACE: This is HR2763 as it --

17 MR. UDDO: It is about 4 million dollars?

18 MR. WALLACE: Yes, as it came out of the Senate  
19 appropriations committee, it had \$7,022,000.00 for Native  
20 American Programs, 9.7 million dollars for Migrant programs; I  
21 have not got a calculator, but I understand that you want to  
22 plug those numbers in and take the difference and put into basic

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1 field programs.

2 MR. MENDEZ: Those are the same numbers that exist  
3 now.

4 MR. UDDO: The excess going into basic field.

5 MR. WALLACE: I will second.

6 CHAIRMAN DURANT: Any discussion? All of those in  
7 favor of Mr. Uddo's second amendment, signify by saying Aye?

8 (A chorus of Ayes.)

9 CHAIRMAN DURANT: Opposed?

10 (A chorus of Naves.)

11 CHAIRMAN DURANT: We had better count this.

12 MR. EAGLIN: No.

13 MS. BENAVIDEZ: No.

14 MR. UDDO: Yes.

15 MS. SWAFFORD: Yes. With the explanation that in the  
16 event that my motion should carry, I still would be enable to  
17 vote no against.

18 CHAIRMAN DURANT: You can vote no in the main motion,  
19 and for the amendment then.

20 MR. MENDEZ: Yes.

21 CHAIRMAN DURANT: The Chairman will vote yes.

22 MR. WALLACE: Yes.

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1 MR. VALOIS: Yes.

2 MS. BERNSTEIN: Yes.

3 MS. MILLER: No.

4 MR. SMEGAL: No.

5 CHAIRMAN DURANT: The amendment carries.

6 MR. WALLACE: Some of my friends are for it, some of  
7 my friends are against it, and I agree with my friends.

8 CHAIRMAN DURANT: That amendment is now part of Mr.  
9 Eaglin's motion. Is there any further discussion on that?

10 MR. EAGLIN: I would like to recap where my motion  
11 stands now?

12 CHAIRMAN DURANT: Your motion stands as you presented  
13 it, with the one adjustment that was just passed, that reduced  
14 the Native American and the Migrant to its existing levels, and  
15 shifted that money to the basic field.

16 MR. EAGLIN: I understand, and I want to make sure  
17 that was understood because in making the motion that I did, I  
18 was communicating my support for the few that those items of  
19 concern should be increased.

20 Since the motion has been changed to reduce them back  
21 to where they are, the motion has been radically changed.

22 MS. BERNSTEIN: Could I ask a question about this

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1 motion?

2 CHAIRMAN DURANT: Yes.

3 MS. BERNSTEIN: I continue to be confused as to why  
4 supplemental field, since their direct delivery programs have  
5 been in existence for a number of year, are set out in a  
6 separate line in caps, so that they never get any increases  
7 despite the fact that they have been working serving clients  
8 directly for years, and years, and years.

9 Would you consider it to be a friendly amendment to  
10 put the supplemental field in with the basic field program and  
11 do away with that line item and equalize per capita the funding?

12 MR. EAGLIN: No, I want to keep the designations that  
13 the were indicated in the appropriations themselves. So, no I  
14 would not consider it a friendly amendment. I want to keep these  
15 designations as they are, rather than the format that was  
16 adopted at the October meeting.

17 MS. BERNSTEIN: Could I ask you a question though,  
18 just philosophically, what do you have against those programs?

19 MR. EAGLIN: I do not have anything against those  
20 programs.

21 MS. BERNSTEIN: Why do you not want them to be funded,  
22 in the same per capita level as other direct delivery programs?

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1 MR. EAGLIN: I have indicated that I do not have  
2 anything against them, and I do not see that view of the  
3 characterization of it as you were placing it.

4 I am choosing to leave the budget in the format that  
5 was used by congress and given the designation --

6 MS. BERNSTEIN: But there are real people out there  
7 being served by those programs, and you are saying to those  
8 people that are being served, "It is not worth it."

9 You are not as important per capita.

10 MR. EAGLIN: I was not permitted to finish, so I will  
11 not try to.

12 CHAIRMAN DURANT: Are there any other discussion on  
13 this? Paul, let me ask you this question.

14 Well, are there any other discussions on Paul's  
15 motion?

16 MR. WALLACE: Well, let me just say one thing. I  
17 regret that Mr. Eaglin is unable -- if I understood him  
18 correctly, to support his budget in the way it has now been  
19 amended.

20 It is a problem. We have got issues before us. I  
21 have intended, as Mr. Eaglin well knows, to vote against this in  
22 its final structure. There are ways to make it better, and that

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1 is why I supported Mr. Uddo's amendment, because I thought in  
2 the event we have a 330 million dollar budget, that Mr. Uddo's  
3 distribution would be better.

4           There is always a dilemma in voting to amend something  
5 that you ultimately intend to oppose, and I regret if we have  
6 bent Mr. Eaglin's motion beyond his capacity to support--  
7 because I certainly did not intend to do that.

8           It is a well reasoned and well intended motion, and I  
9 just felt that Mr. Uddo's proposal would improve it, even though  
10 I ultimately intend to vote against it.

11           MR. EAGLIN: When I indicated my support to the  
12 clients in their desire to get an increase, the first concern  
13 that they expressed, was the concern that increases if adopted  
14 to our budget, go to areas that might not go to areas that they  
15 were most concerned about.

16           These two specific areas that they wanted increases  
17 to, are Native American and Migrant programs. They wanted to  
18 see those specific line items, and that is why I made the  
19 motion.

20           So that is why it does really change it.

21           MR. UDDO: I want to try to persuade Paul to continue  
22 to support your motion, because I think, that the changes are

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1 justifiable.

2 I think that the net result is going to be consistent  
3 with what the client members of the board would like;  
4 particularly since the client support figure is going to stay as  
5 high.

6 I think that that money not being taken out, and  
7 shifted to the basic field program, will have a significant  
8 salutary effect on the client community.

9 Which, I understand is the major concern of the client  
10 members of the board. So, I would ask him not to back off in  
11 support of your amendment. I do not -- I have not seen anything  
12 to justify those increases and those two lines, but I think you  
13 can justify the increase in basic field programs, and that is  
14 why I made the motion that I did; and I think the amended  
15 version is a very respectable budget breakdown.

16 So, I would encourage you and the board members to  
17 support it.

18 MR. EAGLIN: As I indicated -- I was indicating to  
19 them, my support of those two specific line items. If they are  
20 comfortable with that, it would be the increase then, not to  
21 Native American and Migrants, instead, to the basic field; and  
22 they would still be the 2B5 at 1.7.

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1           So, I would score their intentions of Lorain and  
2 Hortencia on that.

3           MR. UDDO: I would encourage them to stand by their  
4 motion, that is all.

5           CHAIRMAN DURANT: Is there any other discussion of  
6 Paul's motion?

7           MR. SMEGAL: The motion has been amended to make it  
8 unpalatable to Mr. Eaglin, the mover, by those who would vote  
9 against it anyway. I think he has been placed in a very  
10 uncomfortable position.

11           He has certainly discussed this particular matter with  
12 Hortencia and Lorain, and he is very comfortable with those  
13 views and now he is in the uncomfortable position of having to  
14 vote against, what very well may be, what otherwise he would be  
15 voting for.

16                           M O T I O N

17           CHAIRMAN DURANT: Mr. Smegal, I agree with you. I  
18 will make the motion to amend, move to reconsider the amendment.

19           MS. BERNSTEIN: Am I wrong, but is not this what  
20 happens in legislation?

21           CHAIRMAN DURANT: Well, that may be, but I think that  
22 Mr. Smegal has placed it on a point, and I move to reconsider.

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1 MR. VALOIS: Let me say, in opposition to the  
2 Chairman's motion, even though it has not received a second, I  
3 agree also agree with Mr. Smegal.

4 The real point is that Paul Eaglin is not being  
5 deprived of opportunities to make proposed amendments to any  
6 other budgets, and there are at least two floating around in  
7 this room today, which may come up.

8 So, I find myself in agreement with Tom, in that Paul  
9 can do whatever he wants to, to Mr. Mendez budget or try, and  
10 Lea Anne's budget, or try.

11 MR. WALLACE: Mr. Chairman, may I say one thing in  
12 opposition to the motion to reconsider. I say it is a dilemma  
13 that you face when you have to vote on amendment to something  
14 you do not ultimately support.

15 There is two kinds of amendments, there is  
16 Ameliorating amendments and killer amendments. You can offer  
17 amendments that you think will make something better even if you  
18 do not like the ultimate package, and that is why I vote for  
19 this.

20 There is another kind of amendment where you try to  
21 change it in a way that will kill it; it is a practice we use to  
22 use when I was working in the House of Representatives all of

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1 the time.

2 I know Mr. Uddo did not offer this as a killer  
3 amendment. He offered it as an ameliorating amendment, and if I  
4 have got to vote on the merits of something, I am going to vote  
5 on it on its merits; I support the merits of Mr. Uddo's  
6 amendment, while I regret the situation that Mr. Eaglin's has  
7 been put in, I am still going to support Mr. Uddo's amendment,  
8 even on an reconsideration.

9 CHAIRMAN DURANT: Any other comments?

10 MR. UDDO: I just want to explain to Tom, I intend to  
11 vote for the amended version of the motion. It was an  
12 ameliorating amendment, it was not a killer amendment, and I  
13 think it improves it from my standpoint, and it makes it more  
14 palatable to me.

15 I am very distressed that it makes it less palatable  
16 to Paul, but as Paul is saying, that if it is not validative of  
17 the client members, that they have expressed to him as their  
18 concern, he will support it.

19 MR. SMEGAL: I am not suggesting that there was  
20 anything in your proposal other than where the money should go.  
21 I am suggesting to you and others who voted for your amendment  
22 did so not out of any generosity to your position.

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1 I am maliced about the whole matter.

2 MS. BERNSTEIN: I dispute that.

3 MR. SMEGAL: It has been stated by at least two  
4 members of the board, on the record again.

5 MS. BERNSTEIN: No, that is not true. I think you take  
6 the point, that you -- whatever the consensus of the board is,  
7 you would like it be as close to your position as possible.

8 That does not make it a killer amendment. You improve  
9 portions of it that you believe that can be approved.

10 CHAIRMAN DURANT: All right. Did it ever receive a  
11 second?

12 MR. SMEGAL: Yes, Pepe did.

13 CHAIRMAN DURANT: Mr. Smegal, on the motion to  
14 reconsider is called.

15 MR. SMEGAL: I --

16 MS. MILLER: No.

17 MS. BERNSTEIN: No.

18 MR. VALOIS: No.

19 MR. WALLACE: No.

20 CHAIRMAN DURANT: Yes.

21 MR. MENDEZ: No.

22 MS. SWAFFORD: No.

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1 MR. UDDO: No.

2 MS. BENAVIDEZ: Yes.

3 MR. EAGLIN: Yes.

4 MR. SMEGAL: Clark, I am delighted to see that your  
5 motion has seconded both of our votes.

6 (Simultaneous conversation.)

7 CHAIRMAN DURANT: So, now on the table is the amended  
8 version. Is there any further discussion on the amended motion  
9 of Mr. Eaglin?

10 MR. SMEGAL: Well, might I suggest in order to  
11 alleviate Mr. Eaglin's discomfort, that he vote last, and I vote  
12 first?

13 CHAIRMAN DURANT: Any other discussion?

14 MR. BAYLY: I wonder if Mr. Eaglin would permit the  
15 reporter to make his proposal an exhibit to the transcript since  
16 it is not in the board book?

17 MR. EAGLIN: Are you talking about the original one,  
18 or the version that is there now?

19 MR. BAYLY: The paper here, no where else.

20 CHAIRMAN DURANT: Mr. Smegal?

21 MR. SMEGAL: Yes.

22 CHAIRMAN DURANT: This is on Mr. --

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1           A PARTICIPANT: Mr. Chairman, is it possible for the  
2 public to comment on remarks?

3           CHAIRMAN DURANT: Sure Jonathan.

4           A PARTICIPANT: Mr. Chairman, I appreciate your  
5 courtesy in doing that. My name is Jonathan Ross. I am from  
6 Manchester, New Hampshire. I am a former president of the New  
7 Hampshire Bar Association, and I am the current vice president  
8 of the New England Bar Association.

9           I am the co-founder of the Bar Leaders for the  
10 preservation of Legal Services for the Poor.

11           I appear before you with respect to the fiscal year,  
12 1989 budget mark, for the Legal Services Corporation. This is  
13 not the first time that I have appeared here and given you the  
14 same message.

15           This board has a duty to actively support, nurture,  
16 and lead the legal services community towards the provision of  
17 equal access to justice to all Americans.

18           You have rejected that duty in my opinion, at every  
19 turn. You have set a course that runs directly contrary to your  
20 obligations.

21           As to your Chairman's performance at the American Bar  
22 Association Meeting last February in New Orleans, we thought we

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1 had seen it all; but October 2, 1987, was something that even we  
2 in our most Machiavellian of times, could not predict.

3 For a group of people who owe their conformation to  
4 the United States Senate, and to a group of people for whom the  
5 congress of the United States is a necessary body with which to  
6 deal to accomplish anything, and for a group of people who must  
7 at the same time have been politically astute enough to be  
8 appointed and confirmed to this board, the lunacy of October 2  
9 vote on the Corporation's budget cannot be explained.

10 If your intent was suicidal, it seems to have worked.  
11 My senator, Warren Rudman, from New Hampshire made it very clear  
12 on the floor of the Senate on December 11, 1987, that so far as  
13 he is concerned and let me quote, "The Legal Services  
14 Corporation Board, just does not want to deal above board."

15 I say that for the record. I have tried to deal with  
16 them both as Chairman of the sub-committee, and ranking member,  
17 and their word is not worth the paper it is printed on. That I  
18 say for the record.

19 Warren Rudman did not mince his words. He went on to  
20 say, "Quite frankly, I do not trust the board of Legal Services  
21 Corporation farther than I can throw the capital."

22 In closing that series of remarks, he paid particular

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1 attention to your action last October. He said without  
2 announcing an agenda, they pulled this out of the hat and passed  
3 it six to five at a board meeting, after the appropriation  
4 process was done, and are now trying to legitimize it for this  
5 Gram amendment.

6 He later limited this disdain to only six of you,  
7 assuming that you would know to whom he referred. You folks,  
8 have the unique opportunity to begin to attempt to restore some  
9 sense of credibility, some sense of honor, some sense of  
10 decency, and perhaps demonstrate a profile in courage when you  
11 deliberate and set the Corporation's 1989 fiscal year budget  
12 mark.

13 You should have the capacity to learn from the past  
14 and begin to those things that the public, the organized bar,  
15 the people that you serve and the congress of the United States  
16 expect from this board.

17 You can do that by shelving your hostile attacks on  
18 Migrant Workers, and State and National Support Centers on  
19 Clearinghouses and Computer Assisted Research, and function  
20 within the budgets scheme that congress has directed.

21 You can begin to reach on behalf of your constituency  
22 for a funding level that will allow those people who do the

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1 work, to have the tools to provide equal access to justice in  
2 this country to all people.

3 Mr. Eaglin's proposal is a step in that direction.  
4 You can take the well reasoned carefully researched presentation  
5 of PAG, and adopt it as you budget. I would like to see you do  
6 that.

7 I would like to see you do that because I have never  
8 seen any evidence that you have ever proposed any budget other  
9 than freeze funding, or one designed to destroy meaningful parts  
10 of the delivery of the legal service system.

11 You could take, what your audit and appropriations  
12 committee began to do last year, seek more money, even if it is  
13 not the full PAG amount, with the clear recognition that it is  
14 needed.

15 Congress has the duty to decide how much money should  
16 be spent in this country, not you. You have a duty to decide  
17 how much money is needed to do the job this Corporation exists  
18 to do; provide equal access to justice.

19 You have a chance in the limited time that each of you  
20 have left as hold over board members, to establish your  
21 individual and collective credibility; and to say to the Senate  
22 and the American people that you recognize the responsibility

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1 that you have, and put forth a meaningful and fair budget.

2 I urge you to do that. I urge you to adopt the PAG  
3 recommendation of 400 million dollars. If you cannot see your  
4 way clear to do that, Paul Eaglin's proposal makes a lot of  
5 sense.

6 This is not the political issue that you so fervently  
7 wish to make it. When I look at that list of 70 senators who  
8 joined in defeating the Gram amendment, I note that they come  
9 from both sides of the aisle and from a variety of political  
10 persuasions.

11 They all believe in the Constitution, and they believe  
12 that they should apply to all of our citizens; and I think they  
13 believe that it is your job to help see that that comes true.

14 You cannot do it on freeze funding. You cannot do it  
15 on a budget that has not been carefully thought out to  
16 accomplish results in the field. You cannot do it by continuing  
17 to play political ideological games with national and state  
18 support.

19 You cannot do it by macerating Migrant funding, you  
20 can only do it by adopting a budget that will be a step forward  
21 toward providing and returning to the concept of minimum access.

22 We had this discussion last year about minimum access;

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1 and I have not seen since January of 1987 research or a proposal  
2 from the Corporation or this board, that suggests a different  
3 standard.

4 As such, I still think it is the most viable standard  
5 that we have; and I urge you to move forward toward minimum  
6 access on the way to equal justice in this country.

7 I urge you to recommend the budget marked for fiscal  
8 year 1989, for 400 million dollars. Thank you Mr. Chairman.

9 CHAIRMAN DURANT: Thank you, Mr. Ross.

10 MR. WALLACE: Mr. Chairman, I was not here in October,  
11 and since October has been dragged out on the table again, let  
12 me have the opportunity that I did not have to state my views on  
13 that budget, since it has now come up here.

14 I voted for that budget, because it was the same  
15 budget that I proposed a year and half earlier. If any kind of  
16 it is on the table, I am going to vote for it; I think it is a  
17 good idea.

18 I did not think that it was sound strategy to do it in  
19 October, after the fiscal year had all ready started. As you  
20 recall, Mr. Chairman, I told you that, and if Mr. Uddo would  
21 recall, I told him that; and in fact, I called Senator Gram's  
22 office and told them that.

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1           Senator Gram's office said that they wanted to promote  
2 an idea that I believe is very strong and hold in good faith,  
3 and have been defending in public for several years now, I said  
4 if you want to do it and if you want my vote, you will have it.

5           I think I told all of you that Senator Rudman would  
6 come to the floor of the Senate, and tell us this was no way to  
7 play ball, and that we were double crossing the U.S. Senate; and  
8 that if Senator Rudman trusted me, he could hire me to write his  
9 speeches, because what he said in debate, is all most word for  
10 word what I told everybody in September.

11           So, I am not out to kill this program, never have  
12 been. I think the budget that this board adopted in October is  
13 a good idea. I think the motion that is on the floor now is not  
14 a good idea.

15           I intend to vote accordingly, and if people choose to  
16 construe that as the ABA Journal did as a vote to demolish Legal  
17 Services, I guess there is not a lot I can do about that.

18           CHAIRMAN DURANT: Any other comments?

19           MS. BERNSTEIN: I call the question, I am just  
20 thinking about time..

21           MR. EAGLIN: We have not doubt -- as amended by this.

22           CHAIRMAN DURANT: The motion amended by Basile.

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1 MR. SMEGAL: Is there any other public comment that is  
2 reasonable?

3 CHAIRMAN DURANT: Mr. Smegal?

4 MR. SMEGAL: I am sorry?

5 CHAIRMAN DURANT: Your vote. On Mr. Eaglin's motion  
6 as amended by Mr. Uddo.

7 MR. SMEGAL: Yes.

8 MS. MILLER: Yes.

9 MS. BERNSTEIN: No.

10 MR. VALOIS: No.

11 MR. WALLACE: No.

12 CHAIRMAN DURANT: No.

13 MR. MENDEZ: No.

14 MS. SWAFFORD: NO.

15 MR. UDDO: Yes.

16 MS. BENAVIDEZ: Yes.

17 MR. EAGLIN: Yes.

18 CHAIRMAN DURANT: The motion fails on a vote of six to  
19 five.

20 MS. BERNSTEIN: Is it appropriate now for me to put  
21 forth a motion?

22 CHAIRMAN DURANT: Yes.

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1 MR. WALLACE: I move that we recess, because they are  
2 waiting on our lunch, in our Executive Meeting, and we will come  
3 back in an hour, hour and a quarter, whatever it takes.

4 MS. BERNSTEIN: Since we are getting ready to recess,  
5 since we would be just in recess and since we know this time for  
6 us to come back into session, was simply because of the recess.  
7 May I make a suggestion, that we try to end the executive  
8 session no later than 1:15, and that we ask the public to  
9 reconvene here at 1:15.

10 CHAIRMAN DURANT: It suite me. Let's ask the  
11 Secretary if she can keep us in the hotel a little while longer,  
12 because we have got to check out at some point.

13 See what you can do, because I understand this is Ms.  
14 Bernstein's concern that we ought to just stay here and vote and  
15 get it over with.

16 MR. WALLACE: I move we recess until 1:15.

17 CHAIRMAN DURANT: Is there a second?

18 MS. BENAVIDEZ: Second.

19 CHAIRMAN DURANT: All those in favor of recessing  
20 until 1:15 and convening the Executive Session, signify by  
21 saying Aye?

22 (A chorus of Ayes.)

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1 CHAIRMAN DURANT: Opposed?

2 (No response.)

3 CHAIRMAN DURANT: Motion carries.

4 (A recess was taken.)

5 A F T E R N O O N S E S S I O N

6 CHAIRMAN DURANT: The board meeting of the Legal  
7 Services, the open session, is back in session. The next item  
8 was a -- Lea Anne, you had indicated that you wished to make a  
9 motion. The floor is yours to make the motion.

10 MOTION

11 MS. BERNSTEIN: I would move for an adoption of a 1989  
12 mark of \$284 million dollars. I will go through this fairly  
13 quickly.

14 I can count noses as well as anybody, but I think it  
15 is important for me to make this presentation because it is  
16 based on a look at the budget which I think that we as a board  
17 have a fiduciary responsibility to do, and that is not a budget  
18 from the top down, which is taking it from where we are right  
19 now and moving more or justifying why we need to spend as much,  
20 but taking our budget apart and looking about what our budget  
21 actually is doing and essentially starting with the concept that  
22 we have got to prove every aspect of our budget.

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1           We do not take it just because we had it last year.  
2 The proposed 1989 budget has a bottom line of \$284 million. It  
3 would be made up straightforwardly of \$265 million for direct  
4 delivery, \$1 million for law school clinics, \$7 million for  
5 Native Americans, and \$11 million for management and  
6 development; \$284 total.

7           The question at the bottom is, is this austere? Am I  
8 going beyond all possibilities of reasonable delivery of legal  
9 services in order to use these figures?

10           Let's look at what we are buying currently with that  
11 budget, \$265 million. The \$265 million is in round figures what  
12 we have during the last fiscal year for direct delivery of legal  
13 services. That comes out to be, if you are looking at case  
14 closures, and I want to make clear for the record these are not  
15 1986 case closure figures, I do not have 1986 case closure  
16 figures.

17           I talked with Mr. Bayly and he said by January we will  
18 have some figures for beyond the 1984 figures that I am relying  
19 on right now. However, I feel that the 1.2 million case  
20 closures is pretty reliable, since that is the figure that has  
21 been closed for the last five of six years by the corporation,  
22 no matter what the budget figures.

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1           So, I am going to use it as the basis. At 1.2 million  
2 case closures, we have a \$220 per case cost. This is direct  
3 delivery, this does not include Native Americans, and they do  
4 close some cases as well, and that is \$7 million additional, and  
5 it does not include our management budget.

6           That of the 1.2 million closures there are 208,000  
7 that are litigated, 992,000 are non-litigated. My question to  
8 this board and the question I think this board had better start  
9 addressing at some point is, is this reasonable?

10           What little private law firm projects that we have  
11 funded, and I realize that the number of the private law firm  
12 projects are limited, but I have to go on the figures that we  
13 have.

14           The most that it costs per case for a private law firm  
15 project, comes close to \$300, but I am told that across the  
16 board our average is about \$162 per case on these bidded private  
17 law firm projects.

18           I am using \$250 as a figure here to show you what this  
19 means. Now remember that this \$250 per case are litigated  
20 cases. When you take the litigated cases we have, \$250 per  
21 case, 208,000 cases gives us \$52 million being spent on the  
22 litigated cases out there if we were to do them through private

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1 law firm projects; \$265 million for direct delivery minus the  
2 \$52 million gives us \$213 million left for non-litigated cases.

3 Of those non-litigated cases we have got 414,000 that  
4 are advice only, and 229,000 that are brief service. So, we  
5 have got 643,000 cases which are very limited in work for the  
6 client in terms of the reasons that they were closed. At how  
7 many dollars?

8 If we took at \$100 per case, which I think is a  
9 generous figure for advice only or brief service cases, that  
10 would be \$64 million as what would be spent on those cases.  
11 That brings up the \$64 million question: What is the rest of  
12 this being spent for?

13 Now, \$213 million, that is balance of the litigated  
14 cases from the total allocated to direct delivery, minus the \$64  
15 million, which is for the non-litigated cases, gives us \$149  
16 million left over for what? Three hundred and forty-nine  
17 thousand non-litigated, now remember these are still non-  
18 litigated cases, at \$426 per case.

19 My allegation to you is that when we start with these  
20 figures, when we look at what our case closures are and what we  
21 could buy for those, if we went out into the market and bought  
22 them, as we have done in some projects, we have got a lot of

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1 slush here and this is not an austere budget.

2 Now, we are under a situation as board members, and I  
3 was told by Mr. Ross from New Hampshire, that we have the  
4 responsibility as board members to ask for more money. That was  
5 the bottom line that he had.

6 I disagree. I think that we as board members have a  
7 responsibility, yes, to increase services to clients, but over  
8 the last five or six years of this corporation's existence we  
9 have increased service and efficiency to clients only one year.  
10 Do you know what year that was?

11 That was the year that our budget went down 25 percent  
12 because we closed the same number of cases that year with 25  
13 percent less funds. We augmented our services by getting  
14 outside money. We also became more efficient in areas and went  
15 toward private attorney involvement cases.

16 It is very interesting to me that our figures right  
17 now show that we allocate approximately 12 percent to private  
18 attorney involvement. Those private attorney involvement  
19 projects, that 12 percent, is about \$144,000. That is, we close  
20 about 144,000 cases with that. That is \$100 per case.

21 So, our private attorney involvement numbers would  
22 support this as well. I realize that those of you who are dead

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1 set against moving away from our current system and stopping  
2 with the top down budgeting, are going to say well, your numbers  
3 are inaccurate, your numbers are not complete.

4 I say to you that we as board members have got to look  
5 for efficiency and ways to say this does not provide a budget  
6 that is unworkable for the clients, for the programs, this is a  
7 budget that will help to force us to get more efficient in the  
8 future.

9 I think it is a -- I think that there is plenty of  
10 money here and it is directed to where this board wants the  
11 money directed, which is delivery to clients. These figures ask  
12 questions that this board has never been willing to answer, and  
13 that is why it is costing us this much per case when we can buy  
14 it in the market place for less.

15 There are other things that I can say that I can count  
16 noses.. I simply offer this and I ask for a second so that we  
17 can get a vote.

18 MS. SWAFFORD: I will second it for purpose of  
19 discussion.

20 CHAIRMAN DURANT: Thank you, Ms. Swafford. Mr.  
21 Valois?

22 MR. VALOIS: I find a lot of merit in what Lea Anne

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1 says. I do, frankly, have some arguments about the meaning of  
2 some of the numbers that she set out there.

3 In the first place, Lea Anne, I would think you have  
4 to recognize that you cannot compare litigated and non-litigated  
5 cases in the manner in which you have compared them because very  
6 often you can have as much or more time in a non-litigated case,  
7 which simply means it went to trial, than you have had in a  
8 litigated case.

9 What your figures do indicate is that if we had time  
10 keeping, we would know how much time people in the field are  
11 spending on the various kinds of cases. So your figures may be  
12 right, I do not know whether they are or not because of the  
13 absence of time keeping.

14 I guess there are a couple of things that appeal to me  
15 that your budget and a couple of things that do not appeal to  
16 me. One is that, as you know, I support the idea of rolling the  
17 dollars from the support areas into basic field. Your budget  
18 line misses that by about \$4 million.

19 I have also held the opinion for some time that the  
20 so-called training for clients or clients afford or whatever, is  
21 probably not necessary. I would want to first find out why it  
22 is that the present efforts of the programs is so inadequate

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1 that we even -- that we have to consider a separate funding  
2 line.

3 It certainly seems to me that that is a responsibility  
4 of the individual programs. Why we have to fund that in the  
5 next budget, which is not on the table yet, to the tune of  
6 \$340,000, I really do not know.

7 CHAIRMAN DURANT: Any other discussion on that? What  
8 is our -- Mr. Smegal?

9 MR. SMEGAL: I apologize, I missed the beginning of  
10 this. It seems to me that further on down on our agenda today  
11 we are going to have a report on a comparison that we made in  
12 Orange County and I recall, as I think I reminded the board, I  
13 was privileged to pass out the three checks for \$150,000 each,  
14 as I recall, to the Orange County Legal Aid Society for the  
15 purpose of doing a comparative study between private attorneys  
16 and their staff programs.

17 I would assume rather than having to rely on Lea  
18 Anne's effort to try to determine what these numbers mean, in a  
19 little while we are going to have some information.

20 MS. BERNSTEIN: Let me just say that I asked for  
21 preview on that, and I am told that the programs have not  
22 furnished figures yet and so we do not have that project.

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1           My figures were based on that \$250 round figure. It  
2 was based on not just the private bidding portion of that  
3 project, that administration project that was three pronged, but  
4 also the other private bid projects that we have had over the  
5 las couple of years.

6           I prefaced my remarks, for your benefit, with the idea  
7 that we have had limited exposure with these things, but they  
8 are closed cases that were litigated.

9           MR. SMEGAL: I apologize, I did not hear what you  
10 said. Did you include in your numbers that the administrative  
11 costs were sorting out who got what case, taking the phone  
12 calls, is any of that in this?

13           MS. BERNSTEIN: Part of that would be it because I was  
14 \$75 above what the average was per case because part of the  
15 administrative figures would surely indicate it.

16           My figures are not exactly close in terms of the -- we  
17 do not come out to a very -- when you have got \$426 per case  
18 left over, even given the rounding that I did to give some  
19 cushion, so \$426 per case left over for the non-litigated cases  
20 is a lot of room to negotiate whether or not those were  
21 reasonable figures.

22           I guess my biggest point, and the reason I would ask

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1 the board to vote for this is, one we would not be cutting  
2 direct delivery.

3 Second, and I am not proposing by this that we move  
4 toward defunding staff programs in order to do this, I am simply  
5 saying that when we do a budget, when we promote something, when  
6 we ask congress to appropriate money, it ought to be on the  
7 basis of that we need it and this is what we need in order to  
8 purchase the services that we are getting.

9 You give me for Christmas to spend a \$1 million, I  
10 will get it spent, but it does not mean that I will have gotten  
11 the best deal or that I will have gotten the most useful items  
12 that I buy, I have just got the money.

13 I do not think we should look at it in terms of just  
14 providing more dollars. I think we have got to look at what we  
15 are purchasing.

16 Clark, you can go ahead. I know that there is no more  
17 in going forward.

18 CHAIRMAN DURANT: Is there any more discussion? Mr.  
19 Smegal, how do you vote?

20 MR. SMEGAL: It is for setting the budget at 285?

21 MS. BERNSTEIN: For 284.

22 MR. SMEGAL: Is there some breakout I do not have, I

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1 do not know? No.

2 CHAIRMAN DURANT: Is Ms. Miller here? Ms. Bernstein?

3 MS. BERNSTEIN: I vote yes.

4 CHAIRMAN DURANT: Mr. Valois?

5 MR. VALOIS: I am going to vote against it, but my  
6 central reason, frankly, is because I think so much of our  
7 October 2nd effort and our other efforts and hopefully our  
8 future efforts to permit the field to choose how to spend  
9 support dollars. That is my primary reason for voting against  
10 it.

11 CHAIRMAN DURANT: I am going to join with you, Mr.  
12 Valois, and I will have to vote no.

13 Mr. Mendez?

14 MR. MENDEZ: No.

15 CHAIRMAN DURANT: Ms. Swafford?

16 MS. SWAFFORD: No.

17 CHAIRMAN DURANT: Mr. Uddo?

18 MR. UDDO: No.

19 CHAIRMAN DURANT: Ms. Benavidez?

20 MS. BENAVIDEZ: No.

21 CHAIRMAN DURANT: Mr. Eaglin?

22 MR. EAGLIN: No.

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1 CHAIRMAN DURANT: The motion fails. Is there another  
2 motion on the budget?

3 MR. BAYLY: Mr. Chairman, may I ask to have this  
4 marked as Exhibit No. 2 since it is in the board vote?

5 CHAIRMAN DURANT: Consider it so done.

6 (Board Exhibit No. 2 was marked for  
7 identification.)

8 Ms. Bernstein if you would like to file an agenda for  
9 a dissenting view, please feel free to do so.

10 Mr. Mendez, do you have a motion?

11 MR. MENDEZ: A motion to what?

12 CHAIRMAN DURANT: Well, in the past, whatever our  
13 budget has been --

14 MR. MENDEZ: Oh, you are assuming we are going to pass  
15 the budget.

16 MR. WALLACE: We may not.

17 CHAIRMAN DURANT: Mr. Mendez, do you have a motion?

18 MOTION

19 MR. MENDEZ: Mr. Chairman, I would move that we adopt  
20 a budget of \$305,500,000. I can go through and break it down.  
21 I think we have all got it in front of us. It is the same as  
22 what Mr. Wallace and I discussed in our meeting yesterday.

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1           It is the same as the October initiatives directing  
2 the staff to come back in January to tell us how they are going  
3 to use that money because they cannot testify as well to dispose  
4 of in direct delivery.

5           MR. WALLACE: Mr. Chairman, I will second it. I would  
6 like to amplify what Mr. Mendez has said about that direct  
7 delivery alternatives. I would be delighted to see some ideas  
8 on client training. I am not adverse to funding client training  
9 if it is good training.

10           There is good training and there is bad training.  
11 Lawyers go to continuing legal education seminars all the time,  
12 and for the most part that is biggest racket and waste of money  
13 I know anything about. Good training is good training.

14           If we can think of a good way to spend some money  
15 usefully on client training, then I am not adverse to taking  
16 some money out of this \$2 million line and using it for that  
17 purpose, but in January I would really like to get some good  
18 solid ideas from our staff on what they are going to do with  
19 that money.

20           I do not want any asterisks floating around until next  
21 October in our budget.

22           CHAIRMAN DURANT: Any other comment on Mr. Mendez'

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1 motion?

2 MR. BAYLY: Mr. Chairman, can this be Exhibit No. 3?

3 CHAIRMAN DURANT: Yes.

4 (Board Exhibit No. 3 was marked for  
5 identification.)

6 I would just like to offer two things, and then to Mr.  
7 Bayly and staff when they are looking for ideas regarding that  
8 money. My primary purpose for including that in our earlier  
9 October resolution was so that there would be the opportunity to  
10 involve non-lawyers, frankly, in the dispute resolution services  
11 and the provision of services to the poor and I would like it  
12 involve -- consult with different paralegal groups and others  
13 regarding their ability to provide eligible services.

14 MR. VALOIS: I guess everybody else has been counting  
15 noses around here too, but I am just going to say about  
16 development what I said earlier. I want to know who is going to  
17 train whom to do what.

18 I have not heard an adequate answer to that yet, and I  
19 have been here three years. I think we spend money -- we throw  
20 it in as a bone, if you like, and I do not know what it means  
21 and I have not heard a proposal here that has put any flesh on  
22 what it means yet.

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1 MR. MENDEZ: Lorain and Hortencia will get together  
2 with Mr. Bayly and put specific numbers and dollars together for  
3 specific guidance before we meet in January, and come up with  
4 some things in that regard.

5 If we do not do it in January, this chairman will be  
6 very reticent to change anything from this budget for the rest  
7 of the year. As far as I am concerned all I want to do is meet  
8 four times next year, which is what the statute mandates.

9 CHAIRMAN DURANT: I share Mr. Mendez' desire to have  
10 that.

11 MS. MILLER: I will gladly do that.

12 CHAIRMAN DURANT: Good. Mr. Bayly also informed me,  
13 although I do not know -- has congress made a decision?

14 MR. BAYLY: I understand that if they voted a figure  
15 of \$305,500,000, maybe someone here -- Mr. Richardson might have  
16 heard.

17 MR. WALLACE: Is that subject to Gramm-Rudman?

18 MR. BAYLY: I think that it is..

19 MR. WALLACE: It is not? Okay.

20 MR. BAYLY: No.

21 CHAIRMAN DURANT: Whatever they pay you. Any other  
22 discussion?

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1 MR. SMEGAL: I gave my annual state of the state  
2 address. I guess here now we have before us a motion that  
3 assumes that we are supposed to try and guess what Gramm-Rudman  
4 -- congress is going to do and we are here again with  
5 \$305,500,00.

6 The difference this year is that it would eliminate  
7 several aspects of the delivery of legal services that congress  
8 has specifically told us not eliminate over and over and over  
9 again. It seems to me we are going to accomplish nothing as we  
10 have done for four years.

11 We are going to continue to reinforce the lack of  
12 credibility this board has, not only with the congress but with  
13 the organized bar and the field programs. This is not the way  
14 for us as a board to carry out our budget process.

15 We are not here to try and determine how the federal  
16 budget can be balanced. We are here to provide for this  
17 program. This program has been funded at \$305.5 million for  
18 several years now. Even the Senate of the United States has put  
19 \$10 into it.

20 Even Senator Gramm in the proposal that he discussed  
21 before the Senate on floor. So for us to come forward with this  
22 budget number again this year is a disservice to everybody,

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1 including ourselves.

2 CHAIRMAN DURANT: Mr. Smegal?

3 MR. SMEGAL: I vote no.

4 CHAIRMAN DURANT: Ms. Miller?

5 MS. MILLER: No.

6 CHAIRMAN DURANT: Ms. Bernstein?

7 MS. BERNSTEIN: Yes.

8 CHAIRMAN DURANT: Mr. Valois?

9 MR. VALOIS: Yes.

10 CHAIRMAN DURANT: Mr. Wallace?

11 MR. WALLACE: Yes.

12 CHAIRMAN DURANT: Mr. Durant? Yes.

13 Mr. Mendez?

14 MR. MENDEZ: Yes.

15 CHAIRMAN DURANT: Ms. Swafford?

16 MS. SWAFFORD: Yes.

17 CHAIRMAN DURANT: Mr. Uddo?

18 MR. UDDO: No.

19 CHAIRMAN DURANT: Ms. Benavidez?

20 MS. BENAVIDEZ: No.

21 CHAIRMAN DURANT: Mr. Eaglin?

22 MR. EAGLIN: No.

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1 CHAIRMAN DURANT: The motion carries six to five.

2 MR. EAGLIN: Can I ask a question as a matter of  
3 personal information?

4 CHAIRMAN DURANT: Sure.

5 MR. EAGLIN: In your dispute resolution ideas, did you  
6 have in mind something like the Fayetteville Program, that --

7 CHAIRMAN DURANT: I saw the Fayetteville Program.

8 MR. EAGLIN: Do you have in mind funding that or  
9 funding something set up different.

10 CHAIRMAN DURANT: Well, that may be one of the kinds  
11 of things that we ought to be supporting. I have seen different  
12 programs in Texas and in Ohio and California and I think we  
13 should be open to those kinds of alternatives.

14 MR. VALOIS: I might say for the record that there is  
15 a professor at Wake Forest, his name is Walker, who is the  
16 architect, I think, of the required arbitration provision in the  
17 Middle District, Paul..

18 He is somebody, Mr. President, if we are going to do  
19 something with we need to talk to Professor Walker because he  
20 has spent a ton of time on it already. It is required in the  
21 Middle District federal court arbitration cases -- arbitration  
22 or law suits.

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1           CHAIRMAN DURANT: One other thing. I think it is  
2 important that while this budget reasonably identical to our  
3 October vote, I think it is important for the record to reflect  
4 that the essential principles and premises of organization that  
5 October budget had been before this board in parts or in whole  
6 numerous times before, as recently as the June, 1986 vote, and  
7 that now we will go before congress with this structure even  
8 before the 1st of the year. That is as it should be.

9           Any other comments before we go on to the next item on  
10 the agenda?

11           MR. SMEGAL: Yes. I would especially point out that  
12 the observation I made earlier, I think, is not reinforced by  
13 this vote. As you have pointed out, by a 6-5 majority this  
14 board has now voted on two occasions to request of congress a  
15 particular budget as set forth in Exhibit No. 3.

16           I would also respectfully point out that Ms. Bernstein  
17 in both instances voted for it, and therefore I do not believe  
18 that it would appropriate for her to file any kind of report.

19           She is in the majority, she is the reason there is a  
20 majority and I cannot imagine a circumstance under which it  
21 would be appropriate for her to make any presentation to  
22 congress, apart from the majority of six that just voted on

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1 your bid.

2 In contrast thereto, I think it would be appropriate,  
3 Mr. Chairman, for your invitation previously extended to Ms.  
4 Bernstein to be extended to the five of us.

5 CHAIRMAN DURANT: You mean in terms of filing a  
6 dissenting --

7 MR. SMEGAL: That is correct.

8 CHAIRMAN DURANT: I have no objection to that. I do  
9 not think that Ms. Bernstein wants to submit a defense of her  
10 original proposal. I have no objection to that.

11 MR. SMEGAL: I think that is inconsistent with her  
12 vote and I would expect the congress to refuse to accept it.

13 MR. WALLACE: Mr. Chairman, let me suggest that the  
14 practice in committee reports in congress you will have the  
15 committee views, you will have minority views and you will have  
16 separate views or additional views.

17 Separate views or additional views are very often used  
18 by people who wound up voting with the majority to express what  
19 they really would have liked to have had, could they have gotten  
20 other people to go along with them.

21 Mr. Smegal is quite right, that is not a dissent, that  
22 is not a minority, but it is a practice that is followed fairly

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1 consistently on the Hill to permit members of the majority to  
2 file separate views on what they really would have liked if they  
3 could have gotten the votes for it.

4 I do not see anything pernicious about that in this  
5 board's practice.

6 MS. BERNSTEIN: I would say 99.9 percent of the things  
7 that you have told congress when you have testified. I will  
8 defend to the death your right to do as a member of this board.

9 MR. SMEGAL: I recall in testifying before congress,  
10 and I did not submit a minority report after voting with the  
11 majorities, I think this is --

12 MS. BERNSTEIN: I did not submit anything either last  
13 year, Tom. I submitted a dissent the year I dissented.

14 MR. SMEGAL: I did not suggest that you did, I was  
15 merely pointing out to you that year -- I am sorry, I did make  
16 that point and I should have and that is correct.

17 The year you had a dissent filed you did vote with me  
18 in the minority, we did lose that vote, you and I happened to  
19 vote together on that occasion and I thought it appropriate at  
20 the point for you to do what you did. I could have had a  
21 similar opportunity if I had chosen.

22 I think in this particular instance, we do have, in

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1 effect, made the majority. You are not in the position to file  
2 a minority report on that.

3 MS. BERNSTEIN: For the record, I did not ask Clark to  
4 make that statement. I do reserve my right say in congress  
5 whatever I want to say regarding how I think this program ought  
6 to be funded.

7 MR. VALOIS: You and Mr. Smegal defend your right to  
8 say whatever you want, even to the death.

9 CHAIRMAN DURANT: The next item on the agenda -- Mr.  
10 Wallace?

11 MOTION

12 MR. WALLACE: On Pearl Harbor Day I sent Mr. Bayly a  
13 letter, copies to all board members, saying that I would offer a  
14 resolution in substantially this form. Mr. Valois has suggested  
15 an amendment to what I had in the letter and it does not come  
16 until the last phrase, so let me read what it is I sent all of  
17 you a few weeks ago.

18 Whenever any recipient shall, by refusal or by  
19 invitation to negotiate or by any other means, fail to produce  
20 any material, in whole or in part, at the corporation's request,  
21 the president of the corporation shall be informed of that  
22 failure within 48 hours thereafter.

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1           "Within five working days after the receipt of such  
2 information, the president shall serve upon such recipient a  
3 written preliminary determination of grounds for suspension of  
4 financial assistance under part 1623 of the corporation's  
5 regulations, unless the president shall have previously  
6 determined that the corporation has no right to the requested  
7 information under the Legal Services Act and the regulations and  
8 guidelines issued pursuant thereto.

9           The president shall report to the board of directors  
10 in writing on all such refusals," and this is the modification  
11 suggested by Mr. Valois, "no later than 30 days after the  
12 initial date of such refusal, and no later than 10 days before  
13 the next board meeting, which ever first occurs."

14           That is my motion, Mr Chairman, if I may have a  
15 second I will briefly explain it.

16           CHAIRMAN DURANT: Is there a second?

17           MR. VALOIS: I will second it, but I would ask that I  
18 be permitted to correct what is probably a failure because of my  
19 handwriting, and that is the last thing is an "or" rather than  
20 "an".

21           MR. WALLACE: I will read the last sentence. "The  
22 president shall report to the board of directors in writing on

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1 all such refusals, no later than 30 days after the initial date  
2 of such refusals, or no later than 10 days before the next board  
3 meeting, which ever first occurs."

4 MR. VALOIS: Thank you. I second it.

5 CHAIRMAN DURANT: Any discussion?

6 MR. WALLACE: Let me explain it briefly, because that  
7 is a lot of gibberish if you do not happen to have it in front  
8 of you. Let me tell you what it says.

9 MS. BERGMARK: Are there copies of that?

10 MR. WALLACE: This is the only copy I have got with  
11 me, but I sent it to other members of the board and I will let  
12 you copy mine after I have finished using it.

13 MS. BERGMARK: This item is not on the agenda, nor to  
14 my knowledge has it been noted as an amendment to the regulation  
15 in the Federal Register.

16 MR. WALLACE: It is not an amendment to the  
17 regulation, and I do not believe it has to be. We are telling  
18 our president under what circumstances to invoke procedures  
19 already set up by the regulations. I think that is entirely an  
20 internal matter and not subject to notice and comment in the  
21 Federal Register.

22 It is not in the printed agenda in the Federal

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1 Register, despite my request in my letter of Pearl Harbor Day,  
2 but that is why I moved to amend the agenda when we started, put  
3 it on the agenda today.

4 All it says is that we are not going to be in the  
5 business of having consultants or temporary employees or  
6 permanent employees or anybody else, negotiating the  
7 corporation's right to information it requests from recipients.  
8 That responsibility is to be discharged by the president and by  
9 nobody else.

10 Unless the president decides that we do not have a  
11 right to that information, he is to initiate suspension  
12 proceedings within five days. This regulation does not tell him  
13 how to resolve the suspension proceedings, but it does tell him  
14 to get them started, get the regulation invoked and to report to  
15 this board on what is going on.

16 This member has seen entirely too many situations come  
17 up where programs invoke this privilege or that privilege are  
18 just an out right refusal to let us have it. If they are right,  
19 they are right, but I do not want it resolved by consultants or  
20 anybody else.

21 I do not want it to drag on for years and years. I  
22 want the president to resolve it fast, and that is what the

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1 intention of the amendment is. That is what this proposal is,  
2 and that is why I have proposed it.

3 MR. VALOIS: I seconded it primarily because I support  
4 and I am certainly going to vote for it. I have shared the same  
5 kind of frustration, and frankly, I have heard it from program  
6 directors and not little teeny programs, but large programs,  
7 that our monitoring reports are issued very late.

8 Part of the reason that that occurs is that we seem to  
9 have an ongoing, unresolved question of whether we are entitled  
10 to a certain piece of paper or not.

11 I think that this would speed the early release--  
12 completion and release of monitoring reports, quite frankly, if  
13 we would get these questions of whether or not we are going to  
14 stand our ground on the request for the information or we are  
15 going to give way because we are wrong.

16 In either event, the question is going to get resolved  
17 immediately and not some year and a half or two years later.

18 CHAIRMAN DURANT: Are there any other comments or  
19 discussion? Mr. Smegal?

20 MR. SMEGAL: First off, where would this go, Mike,  
21 assuming we are to vote for it? What happens.

22 MR. WALLACE: It is not a regulation, it goes in the

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1 minutes and it is just our instruction to the president on how  
2 the board expects him to carry out his duties.

3 I do not believe it is a regulatory matter. I believe  
4 it is strictly an instruction from the board to the  
5 corporation's officers on how to use the regulations that are  
6 already in place.

7 MR. SMEGAL: Is there any reason why he cannot already  
8 do exactly what you have here, or structure this for himself to  
9 do it?

10 MR. WALLACE: There is no reason he cannot do it, but  
11 practice over the last several years has been to permit these  
12 things to go on and on and on, and we have discussed several  
13 examples of it in executive session over the last few meetings.

14 I just do not want them to go on and on and on any  
15 more. I want the trigger to be pulled early and let's have it  
16 out and resolve it one way or another.

17 MR. SMEGAL: Mr. Bayly has not present over the last  
18 several years, he has only been present over the last several  
19 months. Is there any reason Mr. Bayly could not do this on his  
20 own?

21 MR. WALLACE: Absolutely not. There is no reason he  
22 cannot do it on his own and there isn't any reason we cannot

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1 tell him to do it and get it done, and that is my proposal.

2 MR. SMEGAL: Mr. Bayly, do you agree that you could do  
3 this yourself?

4 MR. BAYLY: Yes.

5 MR. SMEGAL: That you do not need a board instruction  
6 to do this, that your authority includes doing this on your own?

7 MR. BAYLY: Yes. I think my authority would be to do  
8 that.

9 MR. SMEGAL: My other question is, Mike, I do not  
10 understand the phrase that starts after -- "by refusal or by  
11 invitation to negotiate."

12 Why do you need that at all? Why couldn't your  
13 resolution read, "Whenever any recipient shall fail"?

14 MR. WALLACE: Because we are going to get into  
15 arguments about what is a failure, and that is why I put that in  
16 there. We get a lot of -- as I have seen the monitoring  
17 materials that flow back and forth, there is a letter saying we  
18 want this and then there is a letter that comes back that says,  
19 "Well, we do not think you ought to have this, we would like to  
20 sit down and talk to you about it."

21 Then it drags on for ever and ever. To me that is a  
22 failure. I want the president involved in it at that point. I

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1 do not want there to be any doubt that we tell you give it to us  
2 Wednesday, if it is not here Wednesday, for whatever reason,  
3 bingo the president needs to know about it and needs to get the  
4 process going.

5 MR. SMEGAL: Do these requests have to be reasonable?

6 MR. WALLACE: Unless the president determines--  
7 "unless the president shall have previously determined that the  
8 corporation has not right to the requested information under the  
9 Legal Services Act and the regulations issued pursuant thereto,"  
10 if we are not entitled to it, then the president can say so and  
11 he does not have to initiate any proceedings of any kind. If we  
12 are entitled to it, then we ought to get it.

13 MR. SMEGAL: Reasonable has several connotations.  
14 Another reasonable would be reasonable time. You have got a  
15 request in here -- the corporations request, for example, of  
16 10,000 documents tomorrow morning. It may be reasonable to ask  
17 for 10,000 documents, but it is not reasonable to ask for them  
18 tomorrow morning.

19 MR. WALLACE: Under those circumstances --

20 MR. SMEGAL: This would cover that. This would  
21 circumstances where the corporation requests 10,000 tomorrow  
22 morning, they do not appear and 48 hours later the president is

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1 informed and five working days later he is reporting it in  
2 writing to this board.

3 MR. WALLACE: Under those circumstances there are 30  
4 days before any adverse action finally takes place. One  
5 presumes that the president will have the ability to work out--  
6 assuming that our staff has done anything so unreasonable -- I  
7 presume that within 30 days the president will have found a way  
8 to ameliorate that and to resolve the problem.

9 It is not going to be drug out for months and years  
10 like some of the monitorings we have had going on. I believe  
11 this is absolutely essential. We are getting complaints from  
12 congress that we do not finish these up. I think the complaints  
13 are well justified, and I think the battles over information  
14 have been one of the reasons we have not gotten them finished  
15 up.

16 This is going to resolve them, one way or the other.

17 MR. SMEGAL: If I may ask one more thing. We have the  
18 term, two thirds of the way down "have previously determined,"  
19 and this is an action by the president. Is that intended that  
20 that previously determined having occurred within those five  
21 working days, or would this encompass the president having  
22 previously determined that with respect another monitoring

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1 activity.

2 MR. WALLACE: If he has determined, at any point,  
3 prior to the five days that we are not entitled to these  
4 documents, he may have a standing staff memo running around the  
5 office that says we are not entitled to get particular classes  
6 of documents.

7 If the staff, for some reason, has ignored that memo  
8 in making the demand I am sure that would constitute as a prior  
9 determination that we are not entitled to those documents. If  
10 on the fifth day he cannot tell us that we have not got any  
11 right to the documents we have asked for, I want him to invoke  
12 the procedures established by law.

13 MR. SMEGAL: So with respect the explanation you have  
14 just given me, the next sentence with the word "the" appears  
15 before a request of information, might it be more appropriate to  
16 have the word "such"? No right to such requested information?

17 MR. WALLACE: I am not sure --

18 MR. SMEGAL: There are lots of monitoring teams doing  
19 lots of things, and it seems to me that maybe there is a desire  
20 for some consistency. That consistency, the way this is  
21 written, would not extend to other monitoring activities, but  
22 only to this one.

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1           MR. VALOIS: I think "the" is a better word than  
2 "such." I think that makes it more specific because we are just  
3 reading this differently. I think the use of the word "the",  
4 the requested information (about which there is dispute), I  
5 think.

6           MR. SMEGAL: One further question. The last sentence,  
7 "directed to such refusals." I again go back and I guess to the  
8 first sentence, we have circumstances where a recipient refuses,  
9 we then have 48 hours for the president to be informed and then  
10 we have five working days for the president to then tell us  
11 about the program.

12           At what point is such a refusal reportable to the  
13 board?

14           MR. WALLACE: Well, under --

15           MR. SMEGAL: When do you want to hear about it, Mike?  
16 What was it Mr. Bayly says are not meritorious and I am not  
17 going to ask the program to forward that information? What is  
18 such refusals in that particular instance?

19           MR. WALLACE: The initial refusal, the initial date of  
20 such refusal is the language that we have gotten from Mr. Valois  
21 and as I would interpret that to mean the program tells us on  
22 January 1 we cannot have it. Now, regardless of what Mr. Bayly

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1 does in the meantime, on January 31 or ten days before the next  
2 board meeting, he must report on the incident.

3 MR. VALOIS: That is what I intended.

4 MR. EAGLIN: In other words he has got two --

5 MR. WALLACE: That is right, whichever comes first.

6 MR. EAGLIN: We would know about it before we come  
7 together?

8 MR. WALLACE: That is right, whichever comes first.

9 MR. SMEGAL: We are going to hear about those even  
10 when Mr. Bayly or his successor determines that we were not  
11 entitled to that information.

12 MR. WALLACE: That is right.

13 MR. SMEGAL: We are going to find out about it.

14 MR. WALLACE: That is right. We made this agree that  
15 he is going to tell us that we ask X program for the following  
16 documents, I determined we did not have any right to them, and  
17 this board has a right to know that.

18 MR. SMEGAL: Do we have funds available for the third  
19 day of our meetings?

20 MS. BERNSTEIN: Are you intimating that it comes up  
21 that often?

22 MR. VALOIS: I do not think we are going to have a

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1 trial on the issue of each program.

2 MR. SMEGAL: I do not know what we are going to do.  
3 It does not tell me here what we are going to do, we are going  
4 to find out about it in each instance, even where Mr. Bayly  
5 agrees that the program -- that the request of the program is  
6 inappropriate and suggests that the monitoring team or whoever  
7 has asked for the information, is not entitled to it, we are all  
8 going to hear about it.

9 That is a lot of information I do not particularly  
10 want to hear about and I do not think it is particularly  
11 relevant to the board.

12 CHAIRMAN DURANT: Mr. Mendez?

13 MR. MENDEZ: John, can you live with this regulation?  
14 I should not say regulation, but this letter of instruction?

15 MR. BAYLY: I think I can only say yes.

16 MR. MENDEZ: Are you going to have any difficulties  
17 with it?

18 MR. BAYLY: I can only say yes.

19 (Laughter.)

20 MR. VALOIS: But you will do your duty, won't you?

21 MR. BAYLY: Oh, yes.

22 MR. MENDEZ: Why will you have difficulties living

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1 with it?

2 MR. BAYLY: Well, the difficulty that would probably  
3 be presented is that to be sure that I comply with such a  
4 directive, I have to have immediate descent channeled to me,  
5 every separate individual back and forth about a discovery  
6 demand, I guess. It would take up, perhaps, a disproportionate  
7 amount of my time.

8 Alternatively, we would have to set up some mechanism  
9 where someone on staff filters these requests and works them up.  
10 That is the only difficulty, if you will, it is a complication.

11 MR. MENDEZ: If we do this, say review it in 30 or 60  
12 days, would you make a review of the time spent and that sort of  
13 thing and what have you, so that we can make the determination.

14 I am interested in this, but I do not want to have  
15 another interference on your time, that sort of thing. If you  
16 can report back to me I want to change my opinion.

17 MS. BERNSTEIN: May I ask how many -- what percentage  
18 of our programs right now tell us we cannot have documents?

19 MR. BAYLY: Very small, very small percentage.

20 MS. BERNSTEIN: That is what I thought.

21 MR. SMEGAL: May I point out, though, to Ms. Bernstein  
22 that that is not what this is directed to. This says "failure"

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1 it does not say that they refuse, this is any failure.

2 For example, I can anticipate that Mr. Bayly's staff  
3 or possibly even Mr. Bayly, our president, will have to review  
4 every request that is made of every grantee to determine whether  
5 they have failed to provide the documents.

6 This does not say "refuse" this says fail. So, Mr.  
7 Bayly, you are going to have to go through every one of those  
8 requests for documents to determine whether in your view, as  
9 president of this corporation, the response was full, the  
10 response did include a "failure." That is the way this reads.

11 MR. VALOIS: I think, Mr. Smegal, you should direct  
12 your attention to "the president of the corporation shall be  
13 informed of that failure." I think that anticipates that Mr.  
14 Santo would inform the president and then he would take some  
15 action. I would suggest to you if she fails to inform him, Mr.  
16 Bayly does not have any paper to shuffle through.

17 MR. SMEGAL: So you are suggesting that Mr. Bayly  
18 should hire some very incompetent staff who would fail to inform  
19 him and then to inform us and then would we be fined.

20 MR. VALOIS: No, no.

21 MR. SMEGAL: You are missing my point, Mr. Valois,  
22 which is any -- it does not say refusal, it says a failure. If

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1 serve a set of interrogatories on me and I fail to respond to  
2 interrogatory 29 and you miss it, have I failed?

3 MR. MENDEZ: Mr. Chairman, I move for the question.  
4 We have got --

5 MR. BERNSTEIN: Could I make a suggestion that Mr.  
6 Mendez has suggested that some data be gathered by Mr. Bayly on  
7 the workability of this proposal. We, as you know, have had no  
8 opportunity to review this and it has not been made available to  
9 us. It has not been noticed on the Federal Register.

10 MOTION

11 MR. UDDO: I am going to move that it be tabled until  
12 the January meeting.

13 A PARTICIPANT: Second.

14 CHAIRMAN DURANT: All those in favor of tabling,  
15 signify by saying aye?

16 (A chorus of ayes.)

17 CHAIRMAN DURANT: Opposed?

18 MS. BERNSTEIN: No. I would like to say that if John  
19 finds it in his heart to start this tomorrow, I think that would  
20 be fine.

21 CHAIRMAN DURANT: Do you want a roll call?

22 (Simultaneous conversation.)

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1 MR. WALLACE: That is fine. I am going to read my  
2 next motion that is on the agenda and I presume it will likewise  
3 be tabled, and I will not opposed any effort to table since  
4 people are heading for the airport.

5 My next resolution is: Be it resolved by the board of  
6 directors of the Legal Services Corporation, that the president  
7 of the Legal Services Corporation, at the direction of the  
8 board, has investigated the charges against staff members of the  
9 Legal Services Corporation brought by Senator Warren Rudman at  
10 the meeting of the Senate Appropriations Subcommittee in May of  
11 1987, as amplified by subsequent communications from his staff.

12 The board has considered the president's report and  
13 concludes that staff members did not engage in efforts to defeat  
14 Senator Rudman during his campaign for re-election in 1986, nor  
15 did they engage any illegal or improper political activities."  
16 Now that is the resolution. ..

17 MR. VALOIS: Second.

18 MR. WALLACE: I will be happy to have anybody move to  
19 table that if you want to.

20 MS. BERNSTEIN: I do not want it tabled. Let's vote  
21 on it

22 MR. SMEGAL: I will move to table it.

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1 A PARTICIPANT: Second.

2 CHAIRMAN DURANT: All those in favor of tabling it?

3 (A chorus of ayes.)

4 CHAIRMAN DURANT: All those opposed?

5 (A chorus of nos.)

6 CHAIRMAN DURANT: Not tabled.

7 MR. WALLACE: Call the question.

8 CHAIRMAN DURANT: All those in favor of discussing --

9 MR. SMEGAL: You cannot call the question with out a  
10 vote.

11 CHAIRMAN DURANT: Go ahead, Mr. Smegal.

12 MR. SMEGAL: I realize that there has been a letter to  
13 Senator Rudman from Mr. Bayly, and there are several preliminary  
14 questions -- I read the letter and I understand what it said,  
15 there were several hundred employees in this corporation in  
16 October of 1986, and a number before that, let's say six months  
17 before that from April to October of 1986.

18 I do not know how many of them are still with us. I  
19 realize a lot of them are not, and there are several questions I  
20 have asked Mr. Bayly, for example, was every staff member who  
21 was with us in June, 1986, interviewed?

22 MR. BAYLY: No.

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1 MR. SMEGAL: In fact, was every staff member that was  
2 with us in October, 1986, interviewed?

3 MR. BAYLY: No, only those staff members who were  
4 specifically mentioned by Senator Rudman or who could be  
5 expected to have been included within the scope of his remarks.

6 MR. SMEGAL: So in other words you did interview  
7 several people and there is a list of those people?

8 MR. BAYLY: I had them interviewed, yes. I do not  
9 mean --

10 MR. SMEGAL: It seems to be more appropriate then, Mr.  
11 Chairman, that this resolution be directed those staff members  
12 who were interviewed and who, in Mr. Bayly's view, were  
13 exonerated from any activity that fell within the scope of Mr.  
14 Rudman's --

15 CHAIRMAN DURANT: Do you know of any that -- because  
16 if so, then we ought to reopen the investigation? Do you know  
17 of any or does anybody else know of any staff members who did  
18 engage in improper political activities as was alleged.

19 MR. SMEGAL: Certainly Senator Rudman thought there  
20 were some.

21 MS. BERNSTEIN: We have asked him to bring forth  
22 information and he did not.

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1           CHAIRMAN DURANT: He was asked to provide information.  
2 Mr. Bayly went up and met with his staff.

3           MR. SMEGAL: We cannot exonerate the whole world. We  
4 can exonerate those who Mr. Bayly and his staff interviewed and  
5 Mr. Bayly then responded to Senator Rudman and advised him that  
6 of those that were interviewed, in his view, they are  
7 exonerated and I am prepared to vote for that.

8           MR. WALLACE: Mr. Chairman, as I told Senator Rudman  
9 when he brought this up in public at his subcommittee meeting,  
10 he has accused the whole world, and it is absolutely my  
11 intention to exonerate the whole the world until I have seen  
12 some evidence to indicate to me that there is somebody that  
13 should not be exonerated.

14           We have gone through the investigation in great detail  
15 in executive session, presumably neither Mr. Smegal, nor anybody  
16 else, saw any evidence which indicated anybody working for us  
17 ought to be reprimanded, disciplined in any way, or presumably  
18 Mr. Smegal would have insisted upon doing that.

19           So, we have had a thorough investigation. We have  
20 asked for evidence from everybody involved and there is not any  
21 evidence, satisfactory to this board, to impugn any member of  
22 our staff. That is why I have written this in a way simply to

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1 say we conclude that it did not happen.

2 I am ready to investigate it again if somebody wants  
3 to show me some evidence. I am not going to limit the  
4 exoneration, because the charge was not limited.

5 MR. SMEGAL: Mike, I was present in the same  
6 congressional hearing before Senator Rudman, where I believe  
7 that this whole thing started, in your view. I did not hear him  
8 accuse the whole world of doing anything.

9 I heard him suggest that he had evidence that several  
10 members of our staff, at a particular time period, had engaged  
11 in activities that he thought were detrimental to him. There  
12 was not attempt on his part to accuse the whole world of doing  
13 anything and I am not suggesting we should exonerate the whole  
14 world.

15 We do not agree on that.

16 MR. WALLACE: I told him at that time, and I will say  
17 it again, that the effect of a charge without specifics is to  
18 cast a cloud over everybody who might possibly be associated  
19 with it. I asked him to provide us with evidence, I did so in  
20 public. We have done so in private.

21 Since the completion of our investigation, I have  
22 written to him, copies to all of you, saying that we have not

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1 found any support for his charges and I personally would  
2 appreciate supporting evidence or a withdrawal of the charges.

3           Senator Rudman is not obliged to respond to me and he  
4 did not do so. I am obliged to the employees of this  
5 corporation, and until I see some evidence to support the  
6 charges made against them, I intend to stand up for them and  
7 exonerate them, every one of them.

8           MR. SMEGAL: I could not agree with you more with  
9 respect to those employees about whom you are talking that were  
10 interviewed by Mr. Bayly or staff, and as a result of that we  
11 responded to Mr. Rudman and said we have interviewed certain  
12 people and those certain people at this point should be  
13 exonerated.

14           MR. VALOIS: Thomas, the burden is not on us to  
15 disprove some broadside allegation. If either you or Senator  
16 Rudman or anybody else who had knowledge of this dispute, had  
17 any evidence that any employee had engaged in any kind of effort  
18 to unseat Senator Rudman, the burden is on him to come to us and  
19 say what that allegation is.

20           If we had gotten such information, we have not gotten  
21 it yet, that burden is on us to interview those people. It is  
22 not on us to go out and interview everybody in the corporation

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1 just because some broadside allegation. I do not think you are  
2 a clever fellow, but getting us to disprove some kind of rather  
3 loose allegation, I think is a bit off base.

4 CHAIRMAN DURANT: Mr. Bayly, did you -- through Mr.  
5 Shea or yourself, talk to more than just the people that or  
6 investigate more than just the people that Mr. Rudman  
7 specifically named to you?

8 MR. BAYLY: I am fairly certain that we must have,  
9 yes.

10 CHAIRMAN DURANT: Any other discussion on this? The  
11 question then has been called. I think we better do this by  
12 roll call vote.

13 Mr. Smegal?

14 MR. SMEGAL: No.

15 Ms. Miller?

16 MS. MILLER: What is this for?

17 CHAIRMAN DURANT: To support the staff after the  
18 investigations by Mr. Bayly.

19 MS. MILLER: Yes.

20 Ms. Bernstein?

21 MS. BERNSTEIN: Yes.

22 Mr. Valois?

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1 MR. VALOIS: Yes.

2 Mr. Wallace?

3 MR. WALLACE: Yes.

4 Mr. Durant? Yes.

5 Mr. Mendez?

6 MR. MENDEZ: Yes.

7 Ms. Benavidez?

8 MS. BENAVIDEZ: Yes.

9 Mr. Eaglin?

10 MR. EAGLIN: No.

11 CHAIRMAN DURANT: The motion carries.

12 The next item on the agenda are the approval of the  
13 minutes for the meeting of October 2, 1987.

14 MS. BERNSTEIN: I have some changes to minutes as  
15 suggested.

16 CHAIRMAN DURANT: At least no one can say this is a  
17 political board.

18 (Laughter.)

19 MS. BERNSTEIN: On page 3, I regret that Mr. Uddo is  
20 not here, but I would simply state that I think the  
21 characterization that introduced the work of his committee was a  
22 little bit inadequate and I would suggest the following changes

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1 to the second paragraph.

2 "Before Professor Booker could begin, however, Mr.  
3 Uddo asked when the report had commissioned and noted that  
4 Professor Booker had not been asked to work through Mr. Uddo's"  
5 -- and it should be subcommittee, it is -- you have gone back  
6 and forth within the minutes. Most of the time you have said  
7 subcommittee, but you have referred to it as the committee.

8 It is the subcommittee, then I would strike the last  
9 five words "studied national and state support programs."  
10 Clark, correct me if I am wrong, but when you commissioned the  
11 program it was not to study what is, but what we should do in  
12 the way of support; what the role of support should be in legal  
13 services programs.

14 Correct me if these words do not reflect what you did  
15 when you appointed the subcommittee, which was to study the  
16 concepts of and need for support functions in legal services  
17 programs.

18 CHAIRMAN DURANT: Lea Anne, I cannot honestly tell you  
19 specifically. Maybe this part should be simply researched, but  
20 I cannot tell you as I sit here specifically what it was and so  
21 I do not want to --

22 MS. BOZELL: Ms. Bernstein, if I may. This was taken

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1 directly from the transcript. It is possible that whoever said  
2 it, said it wrong.

3 MS. BERNSTEIN: From which transcript from which  
4 meeting?

5 MS. BOZELL: The October 2nd transcript.

6 CHAIRMAN DURANT: She is referring back to the  
7 original point --

8 MS. BERNSTEIN: I am referring back to when he made  
9 the appointment to this subcommittee and he asked Mr. Uddo to  
10 check into it.

11 MS. BOZELL: I guess what I am asking -- even if that  
12 is true, if that is what you are referring to, can I change what  
13 actually was said in the transcript?

14 MR. EAGLIN: You have to say what Mr. Uddo says --

15 MS. BERNSTEIN: I think give Mr. Uddo credit, then,  
16 for the quotation. That is all I ask, because I do not believe  
17 that is what the subcommittee was charged with.

18 CHAIRMAN DURANT: I think that -- if this is what Mr.  
19 Uddo said, then obviously we have what Mr. Uddo said. Whether  
20 it is an accurate --

21 MS. BERNSTEIN: Just put it in quotations and give him  
22 credit for it.

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1 MR. SMEGAL: You can do better than that. If you want  
2 you can go back to that particular meeting in January. Also,  
3 you can go back -- I quoted from Mr. Durant's mandate that  
4 Professor Uddo, in the board meeting you are talking about here,  
5 so you have a quote. I believe an accurate quote because I was  
6 reading from the transcript.

7 MS. BERNSTEIN: The further suggestion as far as the  
8 change in the minutes, would be on page 13. In the fourth  
9 paragraph down you have the introductory remark entering the  
10 discussion.

11 I think that the record would show that I had been in  
12 the discussion a while before that point. It makes it look like  
13 I came into the room.

14 A PARTICIPANT: Where?

15 MS. BERNSTEIN: The fourth paragraph down. I would  
16 just ask you to go through the minutes and correct where -- make  
17 it consistent regarding the subcommittee.

18 CHAIRMAN DURANT: Any other comments? We are talking  
19 about the October 2nd meeting?

20 MR. SMEGAL: Yes, that is correct. Lea Anne has just  
21 done these. Characterizing the discussions on page 10, the  
22 third full paragraph, Mr. Durant I have accused of a lot of

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1 things, I am sure, but what I think I was doing was expressing  
2 my views.

3 I believe that this would more accurately reflect what  
4 happened if it read, "Mr. Smegal expressed his view that  
5 Chairman Durant was abusing the power."

6 CHAIRMAN DURANT: Whatever it is I still love you, so  
7 if that is what it was, that is fine with me.

8 MR. SMEGAL: He also inquired whether, rather than  
9 asking me to.

10 CHAIRMAN DURANT: I never take anything personally.

11 MR. SMEGAL: Page 11, second paragraph. I believe I  
12 expressed my concerns, I did not object.

13 MR. MENDEZ: Are these euphemisms?

14 MR. SMEGAL: Yes. I do not mind being the heavy in  
15 this group, but the accurate record --

16 MS. BERNSTEIN: Excuse, Mr. Smegal, could you repeat  
17 that last one?

18 MR. SMEGAL: Yes, page 11, second --

19 MS. BERNSTEIN: He does not mind being the heavy.

20 MR. SMEGAL: I do not mind being the heavy. Second  
21 paragraph, make it Mr. Smegal said his -- rather than  
22 objections, concerns. Page 14, I believe at that point there

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1 had been an interruption at the top of the page. I think I  
2 would assume I resumed the questioning rather than took up.

3 The second paragraph, I think it accurately reflects  
4 that when Ms. Bernstein suggested that the board go into  
5 executive session, there was no vote and I believe more  
6 accurately it should read that Ms. Bernstein suggested that the  
7 board go into executive session.

8 That did not occur, Mr. Smegal continued questioning.  
9 Nobody discussed it. Page 15, the second full paragraph. "Mr.  
10 Smegal continued questioning" we have got a big break here and  
11 I did not continue questioning, but I next asked Professor  
12 Booker whether -- no, I am sorry that is not correct. Mr.  
13 Booker crossing off asking that he, and making it to give.

14 "I next asked Professor Booker to give," I think that  
15 accurately reflects it. Thank you very much, Mr. Chairman.

16 CHAIRMAN DURANT: Any other corrections or additions,  
17 modifications on the October 2nd meeting?

18 MR. SMEGAL: I am sorry, there is one more, if I may.  
19 On page 21, the last paragraph, "Mr. Smegal reiterated he held  
20 the motion," I do not believe I have the authority to hold  
21 anything. I expressed a view. I believed the motion to be out  
22 of order rather than held.

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1           You might hold it out of order, Mr. Durant, but I  
2 could not. Thank you.

3           CHAIRMAN DURANT: Thank you, Mr. Smegal. Any other  
4 corrections, modifications, adjustments to the minutes of  
5 October 2nd?

6           (No response.)

7           CHAIRMAN DURANT: Hearing none, all those in favor of  
8 the minutes as amendment signify by saying aye?

9           (A chorus of ayes.)

10          CHAIRMAN DURANT: Opposed?

11          (No response.)

12          CHAIRMAN DURANT: I am going to abstain just because I  
13 have not read these yet. The approval of the minutes, then, of  
14 November 20th, 1987.

15          Anybody have any?

16          MR. EAGLIN: Page 35, the end of the first paragraph,  
17 that is "denominated to." You are enumerating a couple of  
18 points in that first paragraph on page 35. I think a more  
19 accurate statement, the second enumeration is "that a report to  
20 the board members be made at each meeting as to the costs  
21 incurred to defend a lawsuit."

22          MR. MENDEZ: You cannot change recorded testimony and

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1 minutes. The transcript, I think, stands. We can editorialize  
2 the minutes all we want, but a transcript is a transcript.  
3 Nobody is moving to correct the transcript.

4 MS. BOZELL: I am sorry, I am lost again. Do you want  
5 me to correct something there?

6 CHAIRMAN DURANT: Well, why don't you check the record  
7 to see what --

8 MR. MENDEZ: It makes no difference. What is it, the  
9 language?

10 CHAIRMAN DURANT: That a report to board members be  
11 made at each meeting as to the cost incurred in the lawsuit.

12 MR. VALOIS: I do not object to it, I do not see it  
13 makes any difference.

14 MR. EAGLIN: The third paragraph there, the end of the  
15 first sentence, where constricted is used there. I think it  
16 should be "screened by Mr. Bayly," is what I am referring to.

17 CHAIRMAN DURANT: I was not there, Paul.

18 MR. EAGLIN: That is the idea there to be screened by  
19 Mr. Bayly, rather than just be -- it is not specific enough as  
20 to what we are talking about.

21 MS. BOZELL: I think it developed into that.

22 MR. EAGLIN: That is two sentences later. The word

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1 funneled is used instead of screened by Mr. Bayly. That is what  
2 we are talking about there.

3 MS. BERNSTEIN: It only developed afterwards. With  
4 all due respect, Paul, you did say first that you wanted my  
5 contacts with the --

6 MR. VALOIS: I remember specifically because I  
7 remember objecting to it.

8 MS. BERNSTEIN: It developed into the funneling.

9 MR. SMEGAL: In that regard it seems to me we need  
10 just two more words added on that paragraph. "Mr. Smegal said  
11 that theoretically all communications -- what I intended to do  
12 if I did not say it, was to staff.

13 That is what we were talking about, that we would not  
14 be contacting them in my view.

15 MR. MENDEZ: From board members to staff, that is  
16 correct.

17 MS. BOZELL: Excuse me again. What I do I do about  
18 restricted?

19 MR. MENDEZ: Communications from board members and put  
20 inter. (inaudible) to staff.

21 MS. BOZELL: Leave restricted as is?

22 MR. MENDEZ: Yes, leave restricted as is, but you have

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1 that.

2 MS. BOZELL: Yes.

3 MOTION

4 MS. BERNSTEIN: Move that they be adopted as amended.

5 MR. MENDEZ: Second.

6 CHAIRMAN DURANT: All those in favor?

7 (A chorus of ayes.)

8 CHAIRMAN DURANT: The next item.

9 MR. EAGLIN: I vote no.

10 CHAIRMAN DURANT: The next item is Ops and Regs.

11 MR. WALLACE: I have nothing to report, Mr. Chairman.

12 We had two days of testimony on the board composition  
13 regulations. We will be voting, I hope, at the January meeting  
14 and I solicit input from all members of the board and from  
15 anybody else that wants to talk to us as this thing gets put  
16 together.

17 MR. SMEGAL: May I point out -- I did miss your  
18 meeting yesterday, Mike. Am I not correct in my understanding  
19 that the materials that I reviewed, that with one exception,  
20 every response we have gotten has been negative?

21 MR. WALLACE: Yes, I think that is right.

22 MR. SMEGAL: There have been 400?

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1 MR. WALLACE: Absolutely. Most of them come from the  
2 people that we are trying to get to assume responsibility for  
3 programs and I cannot say that I blame them.

4 MR. SMEGAL: I saw that and I saw two categories,  
5 Mike. It seems to me there were also letters from the local bar  
6 associations that presently have the responsibility and ask that  
7 it not be removed from their area. I do recall a letter from  
8 Milwaukee or somewhere in Wisconsin particularly.

9 CHAIRMAN DURANT: Anything else on that subject? Next  
10 item is the Report from the from the Provisions Committee.

11 MR. VALOIS: Nothing to report, Mr. Chairman.

12 CHAIRMAN DURANT: The next item is the status of the  
13 Orange County Voucher Project.

14 PRESENTATION BY MR. RUSSELL

15 MR. RUSSELL: I believe at the prior board meeting  
16 some of the board members were questioned as to the status of  
17 the Orange Country project and the manner in which it may  
18 compare to the San Antonio Project.

19 In that vein, initially it is important to note that  
20 the Orange County Project was not initiated as a validation for  
21 the San Antonio Project, it was initiated as a replicability  
22 test under phase two of the Private Law Firm Project, to address

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1 concerns of individuals that the Private Law Firm Project was  
2 able to realize low prices because of private attorneys  
3 inexperience with the model and their experience with the amount  
4 of work that the cases involved.

5 We undertook the Orange Country Project initially to  
6 establish that we could go back to the same city and get low  
7 prices again. While we tested that, we also wanted to test the  
8 Private Law Firm Project against the staff mark, so we added a  
9 staff component to it.

10 Also, as we had just done a voucher in San Antonio, we  
11 thought it might be reasonable to test the efficacy of the  
12 voucher against the other two also. That is how the project  
13 initiated.

14 There are some logical differences between the two  
15 projects, which makes a complete comparison between the two not  
16 practical. The San Antonio Project was administered by an  
17 independent project director, the Orange County Project was  
18 administered by the staff.

19 However, there are many similarities also that make  
20 some comparisons possible. Each project tested three different  
21 service delivery models. Each tested an equal number of  
22 domestic relations cases and each utilized similar formulas at

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1 arriving at a voucher value.

2           Some additional differences would probably be that in  
3 San Antonio each component is started on the same date. In  
4 Orange County they started on different dates. There was no  
5 quality review panel for the Orange County Project.

6           The CSS forms for the staff and voucher components of  
7 the Orange County Project were not distributed until after the  
8 project was completed. Additionally, the manner in which  
9 clients chose the private attorneys different somewhat in the  
10 two project cities.

11           At this point, service delivery for the Orange County  
12 has been substantially completed. There are some cases  
13 remaining open for the staff and voucher component. Our  
14 referrals have ended for the staff and voucher component, two  
15 contract attorneys are still receiving referrals.

16           That is only because we, as a rule, the Private Law  
17 Firm Project allowed one extension and they are still in their  
18 extension period. I believe when we receive CSI data from  
19 Orange County on the staff and voucher components, however, we  
20 have yet to receive any CSS forms.

21           That is the only mechanism within the Orange Country  
22 Project which would allow us to make quality determinations. At

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1 this point I would project that March would be a reasonable  
2 estimation of time as to when at least a draft report could be  
3 released.

4 CHAIRMAN DURANT: Any questions?

5 MR. SMEGAL: The reason for that is because the  
6 private attorney component has received an extension for time,  
7 therefore the cases are not completed.

8 MR. RUSSELL: That is one reason. I think this is one  
9 reason. I think we have enough information on the private  
10 attorney contracts to make a report. However, in terms of  
11 quality, we have no CSS forms as yet from the staff and voucher  
12 components. We are waiting for that information to come in.

13 Also, we do not have the final audit numbers on  
14 expenditures by the Orange County program for the staff and  
15 voucher models. I think that, in terms of making valid  
16 calculations as to cost per case, that would be important. We  
17 can just use the basic grant amount, the program amount and  
18 divide it by the number of cases.

19 I am not certain that that formula would be fair to  
20 the program; to the staff model or to the voucher model.

21 MR. SMEGAL: Why wouldn't it be fair?

22 MR. RUSSELL: I am not sure at this point that they

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1 spent all the money, or whether every dollar of that money was  
2 spent for service delivery. I am not certain whether or not the  
3 programs used some of the money for administrative purposes, for  
4 instance.

5 MR. SMEGAL: They cannot tell you that now?

6 MR. RUSSELL: They can, but I would prefer to wait for  
7 -- what I would prefer is to have an auditor go out and check  
8 their books. I think that would result in a more exact number,  
9 rather than rely on the program assessment just for verification  
10 purposes, if for nothing else.

11 MR. SMEGAL: What troubles me is that we are going  
12 ahead as if the voucher or private attorney contract program  
13 procedure is going to be much more economically efficient in  
14 delivering legal services. We have got them in fiscal year 88,  
15 fiscal year 89 budgets based upon, I assume, that other than  
16 maybe a desire to distribute funding.

17 It seems to me this is vitally important. Here is the  
18 program that did a three-pronged test. It is the only one we  
19 have like this and Lea Anne held up some numbers earlier she got  
20 from --

21 MS. BERNSTEIN: It was not based on that program.

22 MR. SMEGAL: No? I do not understand that. You were

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1 limited in what you could show us because of the fact that  
2 information such as this program was supposed to have had made  
3 available to us is not available to you, and you could not use  
4 it and it may have been very helpful to you.

5 MS. BERNSTEIN: I am also limited because I do not  
6 have time keeping to know what an advice only case like -- I am  
7 also limited because I do not have information on how -- whether  
8 staff attorneys are doing work or whether paralegals are doing  
9 the work or whether private attorneys are doing the work in a  
10 given program.

11 MR. SMEGAL: That is right. So we have, as I  
12 understood it when this program started, we have a very unique  
13 way of making a comparison here. The standard of criteria by  
14 which each of these three prongs were going to function was  
15 essentially identical.

16 Someone was going to do the screening, there were  
17 going to be distribute cases of similar characteristics to each  
18 one of the three prongs. It seems to me that the sooner we get  
19 that information, the more effective we can be in determining  
20 how best to deliver legal services.

21 MR. SMEGAL: I agree with Tom. The sooner we get  
22 these things in final form the better off we are. Could you

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1 make this a fairly high priority to see if we can get this out  
2 the next -- in intermediate form?

3 A PARTICIPANT: I will continue to try expedite it. I  
4 have had a couple of conversations with Mr. Russell and he  
5 understands, as do I, as does Mary Higgins, the importance of  
6 getting this information as quickly and as accurately before the  
7 board as possible.

8 MR. SMEGAL: I do not mind however much time you need,  
9 but it seems to me like we ought to -- the amount of time that  
10 has gone by, we ought to be able to have something in final form  
11 by March, not just a rough draft.

12 MR. VALOIS: Can I quote that? I do not care how much  
13 time you need?

14 MS. MILLER: Just have it by March.

15 MR. MENDEZ: I do not care how much time, I want it by  
16 March.

17 MR. SMEGAL: Do you have other sources of information  
18 on this particular activity, do you? Was the program audited?

19 MS. MILLER: That was Orange County. What was the  
20 other?

21 MR. RUSSELL: Orange County and San Antonio.

22 MS. MILLER: Did you have information on San Antonio?

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1 MR. RUSSELL: As far as private aid, we are still in  
2 the process of contracting or negotiating with Professor Cox,  
3 and we are still hoping the ABA will join us in our next  
4 efforts.

5 MR. MENDEZ: My understanding was that at the last  
6 meeting, wasn't it the last meeting that the ABA came in and  
7 said that by mid-year that we would have a -- that they would  
8 have it recorded at the mid-year meeting.

9 MR. RUSSELL: They plan to release the final  
10 report at the mid-year meeting in May, I believe.

11 MR. SMEGAL: The mid-year meeting is in February.  
12 Their mid-year meeting is in February. Do you know what they  
13 are going to have up?

14 MR. RUSSELL: No. They plan to release it in May, I  
15 believe.

16 MR. SMEGAL: Oh, so it was a mid-year then.

17 MR. BAYLY: I think that at first they wanted to have  
18 it at the mid-year meeting and I do not think they understand  
19 that it can be released in May at meeting of the Provisions  
20 Committee or -- I cannot remember the name of the other group  
21 that was sponsored. It was later than they originally thought.

22 CHAIRMAN DURANT: Any other questions or comments?

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1 (No response.)

2 CHAIRMAN DURANT: Thank you, Mr. Russell, very much.

3 MR. RUSSELL: Thank you.

4 CHAIRMAN DURANT: The next item on the agenda is a  
5 report on Crane versus the United States. Mr. Bayly.

6 MR. BAYLY: Thank you, Mr. Chairman. My report will  
7 be brief.

8 On October 9th, 1987, the plaintiffs in Crane versus  
9 the United States, two congressmen and board member Lea Anne  
10 Bernstein, filed a complaint in the United States District  
11 Court. It asserted three counts in support of a request for a  
12 variety of non-monetary relief against the United States and the  
13 Legal Services Corporation.

14 The case was assigned to Judge Norma Holloway Johnson  
15 of the United States District Court. On November 13th, the  
16 Legal Services Corporation filed a motion to dismiss the  
17 complaint, citing a variety of arguments to the court.

18 On December 11th, plaintiffs proposed the  
19 corporation's motion to dismiss. On January 8th, the United  
20 States is now scheduled either to answer the complaint or to  
21 file its own disposal of motion.

22 That is the report that I have to give.

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1 MR. SMEGAL: Do you intend to file some sort of reply?

2 MR. BAYLY: I expect we will file a reply to the  
3 opposition filed by the plaintiffs. That is permitted under the  
4 rules of that district.

5 MR. SMEGAL: How much time?

6 MR. BAYLY: Ordinarily you would have ten days,  
7 excluding weekends and holidays.

8 MR. SMEGAL: Will you be doing that within ten days or  
9 will you --

10 MR. BAYLY: I expect so. It was filed on the 11th. I  
11 do not know whether that was served on us until the 12th or  
12 13th. We have ten days beyond that, and we exclude Saturdays  
13 and holidays and Sundays.

14 So, we expect to file it timely. I am very certain if  
15 we do not we will seek only a small enlargement pursuant to  
16 stipulation by the court.

17 CHAIRMAN DURANT: Is there any public comment?

18 (No response.)

19 CHAIRMAN DURANT: I will entertain a motion to  
20 adjourn.

21 MR. WALLACE: So moved.

22 MS. BERNSTEIN: Second.

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1           CHAIRMAN DURANT: All those in favor, signify by  
2 saying aye?

3           (A chorus of ayes.)

4           CHAIRMAN DURANT: Opposed?

5           A PARTICIPANT: No.

6           CHAIRMAN DURANT: Meeting is adjourned.

7           (Whereupon, at 4:00 p.m., the Board of Directors  
8 Meeting of the Legal Services Corporation was adjourned.)

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