

LEGAL SERVICES CORPORATION
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TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

COMMITTEE ON AUDIT AND APPROPRIATIONS)
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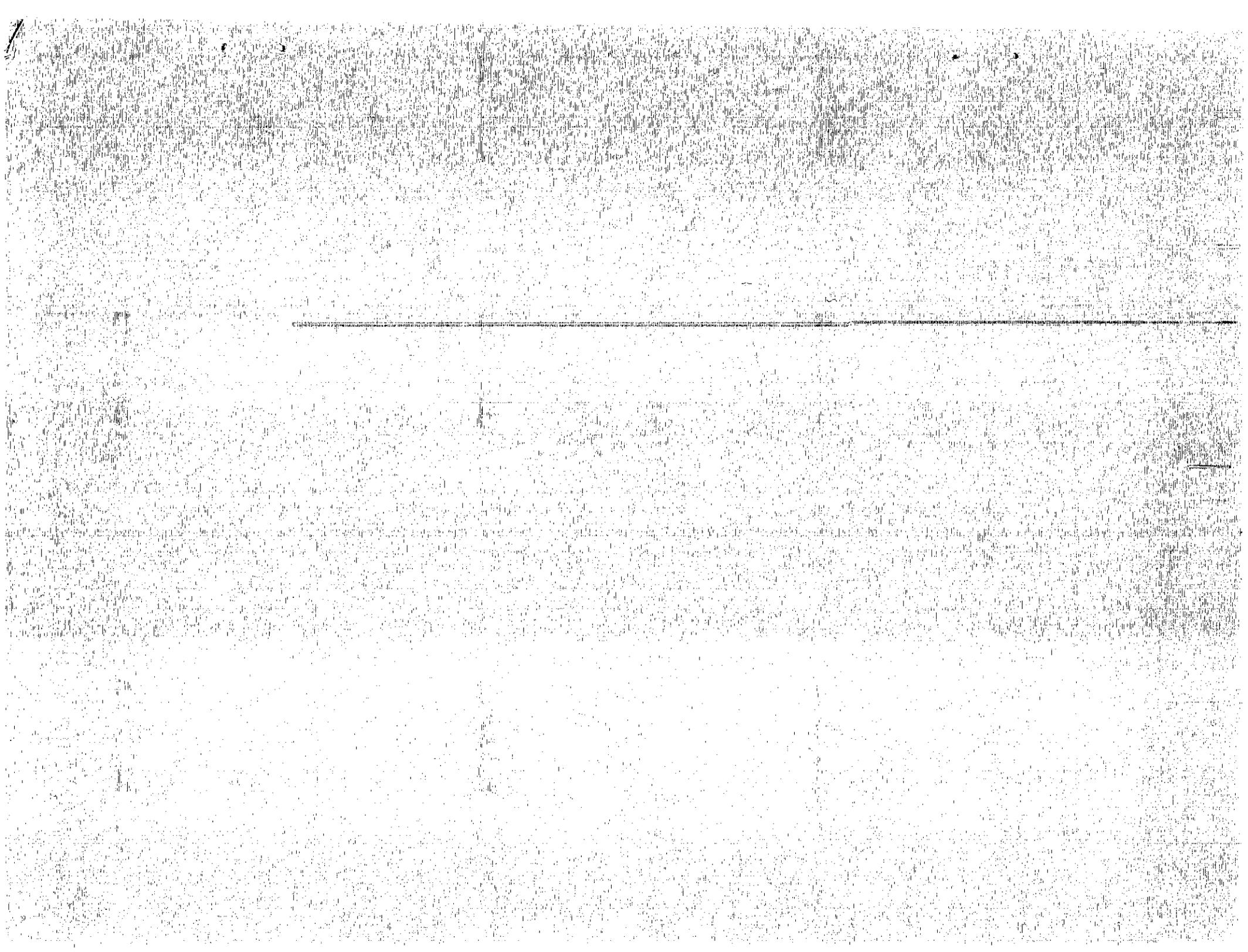
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1 LEGAL SERVICES CORPORATION

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3 COMMITTEE ON AUDIT AND APPROPRIATIONS

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Sheraton Hotel
Navajo Room
325 N. Kansas
El Paso, Texas 79901

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Wednesday,
December 18, 1985

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8

The Committee met, pursuant to notice, at

9

8:00 a.m.

10

PRESENT:

11

PEPE J. MENDEZ, Chairman

12

ROBERT A. VALOIS

13

MICHAEL B. WALLACE

14

W. CLARK DURANT, III

15

THOMAS F. SMEGAL

16

PAUL EAGLIN

17

LORAIN MILLER

18

CLAUDE G. SWAFFORD

19

LEANNE BERNSTEIN

20

HORTENCIA BENAVIDEZ

21

ALSO PRESENT:

22

JOEL THIMELL

23

MICHAEL J. COSTER

24

DAVID GESSNER

25

TERRY ROCHSE

CRAVEN THORNS

JUDY RAUSCH

P R O C E E D I N G S

(1:21 p.m.)

1
2
3 CHAIRMAN MENDEZ: Ladies and gentlemen at this time I
4 would like to call the Appropriations Meeting to order.
5 Just a couple of brief comments. We are prepared to go until
6 10:30 or 11:00 o'clock tonight in order to take all of the
7 testimony. Hopefully it will not go that long, however long
8 it goes, we will try and hear from everyone who wishes to
9 speak.

10 We will put time limits on everyone. The time
11 limits will depend on how many members and what the hour is.
12 At this time I would like to especially welcome Mr. Bill
13 Whitehurst who is the specialist elect to the State Bar.
14 He will be speaking to us later.

15 I would also like to welcome the Dean of Texas
16 Southern University, Mr. James Douglas. Gentlemen, thank you
17 for coming.

18 Let the record reflect that the following committee
19 members are present: Mr. Paul Eaglin, Mr. Thomas Smegal,
20 myself, Pepe Mendez, LeaAnn Bernstein, Hortencia Benavidez.

21 Let the record also reflect that Wayne Miller and
22 Bob Valois from the Board are present. We expect the other
23 members to arrive shortly.

24 At this time I would ask that we adopt the agenda
25 with the following amendments. After Section 3 we will have

1 a special panel from the Native American group for a short
2 period of time. Under the fiscal year 1987 budget report, the
3 approach will be as follows.

4 The staff will give their budget recommendations.
5 Second, PAG will give their budget recommendations. We have
6 set up a schedule with PAG as to the order that they will
7 proceed in.

8 Finally, we will have comments in that regard. We
9 will also take public comment with regard to Section 3 and
10 Section 4 before acting on them, but just so that everyone
11 understood exactly what would happen with the '87 budget, I
12 wanted to make sure we had it up front. There is always some
13 nervousness about some of these.

14 MR. EAGLIN: Mr. Chairman, I move to adopt the
15 agenda with the modifications as outlined.

16 MS. BERNSTEIN: I second that.

17 CHAIRMAN MENDEZ: It has been moved and second that
18 we adopt the agenda as modified. All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN MENDEZ: Opposed?

21 (No response.)

22 CHAIRMAN MENDEZ: Let the record reflect that it
23 was unanimous. At this time I invite your attention to the
24 draft minutes of October 25, 1985, and ask if there are any
25 amendments or corrections?

1 MR. MOLA: Mr. Chairman, John Mola representing the
2 Project Advisory Group.

3 CHAIRMAN MENDEZ: John, would you please spell your
4 name because we have some people that are taking notes of
5 this.

6 MR. MOLA: M-O-L-A, and I am also the Executive
7 Director of Rhode Island Legal Services. I have a number of
8 extensive comments about the Appropriations Committee minutes
9 of November 7 and October 25.

10 CHAIRMAN MENDEZ: All right, let's start with
11 October 25th first.

12 MR. MOLA: Give me a moment to juggle papers. The
13 first one is on page 5 of those minutes. There is a typo-
14 graphical error immediately on the first page. More impor-
15 tantly the suggestion of the inclusion of the third, the
16 second full paragraph, after the paragraph starting the
17 Committee next proceed.

18 I believe these comments accurately reflect what
19 occurred at the meeting in which I was present. The new
20 paragraph would be, Mr. Mendez indicated that he had to leave
21 to catch a plane within an hour, and asked Mr. Simpson to
22 address the most pressing points first to be sure that they
23 were reached within that time period.

24 Mr. Simpson said he would stand on his written
25 memorandum regarding the proper method for promulgation of the

1 guide as a rule.

2 CHAIRMAN MENDEZ: What you wish to have in there
3 is that you wanted the written memorandum entered into the
4 record. Is that correct, John?

5 MR. MOLA: Yes, and that the written memorandum
6 stood for the other items that Mr. Simpson could not orally
7 address because of the time pressures.

8 CHAIRMAN MENDEZ: Does anybody disagree with that?
9 I think that we can just for ease of everyone just put a
10 note in the minutes that his written memorandum was introduced
11 in the record and stands.

12 MR. MOLA: That he only orally presented the major
13 points at your request, fine.

14 The second is on page 6.

15 MR. SMEGAL: The second paragraph already states
16 that the memo was entered into the record.

17 MR. MOLA: The important point on the memorandum was
18 that he would stand on his written memorandum regarding the
19 proper method for promulgation of the guide as a rule.

20 It is true that the memorandum was entered into
21 the record.

22 MR. SMEGAL: Yeah, I think his point -- I was not
23 here at the meeting, Pepe, so I am at somewhat of a disadvan-
24 tage, but if I understand Mr. Mola correctly what he wants
25 is the record to reflect that Mr. Simpson's discussion was

1 somewhat limited by the circumstances that October 25 provided.

2 MR. MOLA: That is right, and that there are other
3 points in the memorandum which could not be addressed
4 orally. Was that addition made?

5 CHAIRMAN MENDEZ: John, I do not understand. If
6 the written memorandum is incorporated into the record, what
7 difference does it make?

8 MR. MOLA: Only that we could not give the
9 oral presentation that we had anticipated because of the time
10 pressures.

11 CHAIRMAN MENDEZ: Well, John, I limit people all
12 the time.

13 MR. MOLA: I am sorry?

14 CHAIRMAN MENDEZ: I limit people all the time on
15 their oral presentations.

16 MR. MOLA: I have noticed.

17 (Laughter.)

18 CHAIRMAN MENDEZ: And I am going to continue to
19 do it. This record stands. I do not see any changes unless
20 the Board -- unless the Committee asks for this specifically,
21 I suggest we move to the next item.

22 MR. EAGLIN: Mr. Chairman, I would like to point out
23 that I was not there. So I do not think that I should have
24 the responsibility.

25 CHAIRMAN MENDEZ: That is fine.

1 MR. SMEGAL: As I have indicated to you I am
2 operating under the same disadvantage. I hear what Mr. Mola
3 says. I understand it to be a little more complete than
4 what I have read here.

5 I was not at the meeting. I do not think it is
6 appropriate for me to amend the minutes of a meeting that I
7 did not attend.

8 CHAIRMAN MENDEZ: We have a transcript of this
9 item, and let's just check it out.

10 By the way are you saying that I should not limit
11 your speakers to 10 minutes each today, John?

12 MR. MOLA: No, sir. The next one is on page 6,
13 the second full paragraph.

14 CHAIRMAN MENDEZ: I am sorry?

15 MR. MOLA: Page 6, the second full paragraph. I
16 I suggest that the phrase "any special work" be deleted, and
17 in its place, such problems be included, and the following
18 phrase be inserted after the word corporation.

19 "Even when they are discovered during nonaudit
20 special work." So that that sentence would read, "Mr. Simpson
21 next suggested that deleting the requirement that auditors
22 report such problems to the Corporation even when they are
23 discovered during nonaudit special work."

24 I think this is a better description of the point that
25 we were making.

1 MR. BAKER: Well, I would say it is not inaccurate.
2 We cannot rewrite the minutes here.

3 CHAIRMAN MENDEZ: No.

4 MR. BAKER: We may not like the style.

5 CHAIRMAN MENDEZ: Unless I hear an objection from
6 the Board, these minutes stand.

7 MR. MOLA: On page 7 at the top of the page,
8 substituting for the phrase, "were too broad", the words at
9 the top of that page 7, substitute the words "were too broad"
10 to accurately reflect our comment that exceeded the Corpora-
11 tion's authority.

12 MR. SMEGAL: You would delete "were too broad" and
13 replace it with?

14 MR. MOLA: Replace it with exceeded the Corporation's
15 authority.

16 MR. SMEGAL: Well, if that is what the record says,
17 I would like that change made, Mr. Chairman, if that was
18 the testimony.

19 MR. MOLA: Do we have the transcript here?

20 MR. BAKER: We do not have the transcript. We do
21 not have the transcript. We have the transcript of November 7.

22 CHAIRMAN MENDEZ: Report this back to us at the
23 next meeting.

24 MR. MOLA: On page 9, the fifth sentence after the
25 sentence ending with the word "service". I suggest including

1 in the sentence, Mr. Simpson suggested--

2 CHAIRMAN MENDEZ: Now, hold on, where are you?

3 MR. MOLA: Fifth line, page 9.

4 CHAIRMAN MENDEZ: Oh, fifth line.

5 MR. MOLA: After the sentence ending with the word,
6 "service" and before Ms. Bernstein, inserting the sentence,
7 Mr. Simpson suggested dealing with this issue through grant
8 language rather than a guideline. I am sorry, rather than
9 a general rule.

10 Mr. Simpson suggested dealing with this issue
11 through grant language rather than a general rule.

12 CHAIRMAN MENDEZ: Do I hear a motion to make that
13 change?

14 MR. SMEGAL: I would ask that you check the trans-
15 cript if that is accurate. Him or Joel, let's make the
16 minutes accurate.

17 MR. THIMELL: I do not have a problem with that.

18 MR. BAKER: Check the transcript. If that is it,
19 bring it into us.

20 MR. MOLA: The last one, Mr. Chairman, is on page 12,
21 the next to the last full paragraph, adding this to the last
22 sentence starting, "Chairman Mendez, that the issue would be
23 addressed at the California meeting."

24 Here is the additional language, and directed the
25 staff to meet with Mr. Simpson regarding implementation of

1 functional accounting. And directed the staff to meet with
2 Mr. Simpson regarding implementation of functional accounting.

3 CHAIRMAN MENDEZ: Check the transcript. With the
4 exception of those three items that we have asked the staff
5 to check on, are these minutes, is there any further objection?

6 MS. BENAVIDEZ: On page 5, the very top line, the
7 word immediately is misspelled.

8 CHAIRMAN MENDEZ: Okay, make the correction of that.
9 Anything else?

10 MS. BENAVIDEZ: No, sir.

11 CHAIRMAN MENDEZ: On page 5 immediately was
12 misspelled. With those corrections are the minutes approved,
13 and with the reservations of these three items?

14 MS. BENAVIDEZ: I think we can approve the minutes.

15 MR. SMEGAL: Well, I am still at a disadvantage.

16 CHAIRMAN MENDEZ: Is there a second for the purposes
17 of the motion.

18 MS. BERNSTEIN: Second.

19 CHAIRMAN MENDEZ: LeaAnn seconded. All in favor?

20 (Chorus of ayes.)

21 CHAIRMAN MENDEZ: Opposed?

22 (No response.)

23 CHAIRMAN MENDEZ: Hearing nothing, the minutes are
24 approved.

25 MS. BERNSTEIN: Could I take about a couple of

1 minutes?

2 CHAIRMAN MENDEZ: Sure.

3 MS. BERNSTEIN: I do not know the best way to do
4 this because I do not have a voice, excuse me. I am a little
5 bit concerned that the minutes reflect accurately of course
6 what went on. As long as they do not misrepresent what
7 went on and reflect accurately what was taken, it is my
8 view and opinion that they serve the purpose that the minutes
9 are supposed to serve. They after all our minutes of our
10 activities.

11 Now, some of the things that you brought up, John,
12 may be things that would be shown in the transcript, but
13 since we have access to the transcripts, I would just say that
14 it does not make sense to get down into the wording and style
15 of how they are suppose to be.

16 CHAIRMAN MENDEZ: All right, we will take a couple
17 of minutes break here so I can get my group together.

18 (Whereupon, a short break was taken.)

19 CHAIRMAN MENDEZ: Let the record reflect that
20 Mr. Durant and Claude Swafford came in, and we are now back
21 on the October -- excuse me, November 7, 1985 minutes.

22 MR. MOLA: Mr. Chairman, if I may, I appreciate
23 Ms. Bernstein's comment that the minutes are the Board's.
24 There are some omissions perhaps that indicate action to be
25 taken by the staff.

1 For example, the last comment made, for the purposes
2 of efficiency, Mr. Mendez, if you wish I have extensive comments
3 similar to those of the December 7th meeting. If you would
4 like I can submit those in writing as long as the Committee
5 would then have the transcript checked.

6 We could take it up very quickly at the next
7 meeting of this Committee.

8 CHAIRMAN MENDEZ: I am at the pleasure of the other
9 members of the Committee, but I would prefer to take these
10 items up now and approve these minutes with the exception of
11 whatever comments we feel are necessary.

12 Then only address those other items at a later date,
13 because I do not know what your general comments are. Now,
14 before we recognize you gentlemen on this one, we are on the
15 November 7, 1985. Are there any comments or any corrections
16 by the Board -- excuse me by the Committee? None?

17 MR. SMEGAL: Again, I was absent from that meeting
18 and I read them with great interest, but I can offer no
19 corrections.

20 CHAIRMAN MENDEZ: Then the Chair would move that they
21 be approved as read, and we will allow you to make your
22 comments, John.

23 MR. MOLA: On page 17 of those minutes at the top
24 of the page including new material before the first full
25 paragraph that starts, Gary Simpson, consultant.

1 The new paragraph would be Mr. Mendez stated his
2 position regarding program implementation of functional
3 accounting. All programs will be required to make a good
4 faith effort to provide a functional distribution of FY'86
5 expenses.

6 In 1987, on the other hand, the functional report
7 will be held to the same standard as all other financial
8 statements. Continuing new paragraph.

9 Mr. Mendez asked Mr. Coster whether it would be
10 possible for the Corporation staff within six to eight weeks
11 to develop guidelines and have all the necessary steps in
12 place at an appropriate level of detail for implementation of
13 functional accounting.

14 Mr. Coster responded that it would not be possible
15 to develop such guidelines by January 31, 1986 including
16 input from field programs and outside consultants.

17 He noted however that a principal issue that could
18 cause delay would be the level of Corporation assistance to
19 be provided to recipients on such matters as the use of
20 computers.

21 Mr. Mendez asked whether recipients would be able
22 to reconstruct their records for the first part of the year
23 and if the guidelines were not in place by January 1,
24 Mr. Coster replied that it would be possible for programs to
25 make estimates for the first part of the year.

1 For example, the second half of the year or two
2 two-month sample periods could be used as the basis for
3 allocation of expenses for periods in which functional records
4 were not being kept.

5 CHAIRMAN MENDEZ: John, I agree with everything that
6 you said except one, I have to rely on the collective memory
7 of the Board. Did Mr. Coster say, make the statement about
8 computers?

9 MR. BAKER: Can't we just check --

10 MR. THIMELL: I am not sure but it seems to me that
11 he is repeating material that you will find on page 19, 20,
12 and 21 in the discussion of the Chairman and Mr. Coster laying
13 out the schedule of implementation.

14 Then John commented on computer software and made
15 some requests for certain reconstruction.

16 CHAIRMAN MENDEZ: I understand what John wants there,
17 and I agree with that. The only issue that I do not recall
18 on that as you reiterated here is the computer statement on
19 Mr. Coster.

20 MR. MOLA: About the delay because of the computer?

21 CHAIRMAN MENDEZ: The computer. I do not recall
22 that. I would accept his friendly amendment to these with
23 the exception of deleting that specific section on there.

24 I want you to submit that in writing and send us a
25 copy of your proposed paragraph.

1 MR. MOLA: Okay.

2 MR. THIMELL: Can we check the transcript on that
3 just to make sure we have that.

4 CHAIRMAN MENDEZ: I tell you what my recollection
5 on that is as specific is as that language is right there.
6 The specific thing that I do not recall and will not accept
7 is the computer statement of Mr. Coster. I do not recall that.

8 MR. MOLA: I will include that in brackets.

9 CHAIRMAN MENDEZ: No, you leave that out because
10 that will not be adopted.

11 MR. MOLA: On page 19.

12 CHAIRMAN MENDEZ: You can adopt that some place in
13 there at the appropriate level, but that it was specifically,
14 and there is a good reason for the dialog. The field wants
15 to have that protection in there.

16 I can understand it, and I have made that specific
17 colloquy with these gentlemen for that reason. 19?

18 MR. MOLA: On page 19, the last full paragraph start-
19 ing with the sentence, "Chairman Mendez called the Committee
20 to order." We would suggest an insert, a period after the
21 word order and an insert.

22 "Mr. Mendez stated", this is the insert. "Mr Mendez
23 stated his desire that the staff develop guidelines for
24 functional accounting by January 31, 1986, and that all
25 recipients be required to make a good faith effort to comply

1 with functional accounting during 1986.

2 "He then asked Mr. Coster to outline a schedule
3 for other events."

4 CHAIRMAN MENDEZ: I do not agree with that. There
5 is a statement before that we did on good faith, and I think
6 that is already in there. That is in your other paragraphs,
7 but this that you are stating, I do not recall that, John,
8 and I do not agree the substance of it.

9 MR. MOLA: Can we check the transcript on that?

10 CHAIRMAN MENDEZ: Joel, check the transcript on
11 this, on this specific portion.

12 MR. MOLA: Mr. Chairman, another point that can
13 also be checked is that the paragraphs, number (1), (2) through
14 (8) appear to be a rendition not of Mr. Coster's statement
15 at the time but rather a paraphrasing of the policy that was
16 read by you the next day.

17 There are a number of items, for example, Mr. Coster
18 indicating that he wanted --

19 CHAIRMAN MENDEZ: I will tell you what we will do.

20 MR. MOLA: Can we check the transcript on that?

21 CHAIRMAN MENDEZ: Yes, we will check the transcript
22 on that.

23 MR. MOLA: In particular, Mr. Coster's statements
24 about best results at best cost, issues of computer systems,
25 coordination with OIM, Mack, Controller, and the field, and

1 the possibility of putting functional accounting data in some
2 combination with CSR. Those are Mr. Coster's comments at
3 that point.

4 CHAIRMAN MENDEZ: Yes, I recall some of those,
5 not all of them, but those statements should be more accurately
6 stated. Anything else?

7 MR. MOLA: On page 21. In addition to the end of
8 the first full sentence which starts, "Chairman Mendez stated".
9 After the words first six months to include, but that recon-
10 structing records for the first six months would not be one
11 event.

12 This was another specific issue and point that we
13 discussed, Mr. Chairman, and is not included in the minutes.

14 CHAIRMAN MENDEZ: Check that. I do not recall that.
15 I do not exactly recall that.

16 MR. MOLA: In the next paragraph in the last sentence
17 starting, "Chairman Mendez replied", including after the words
18 good faith estimate this year, including in that a new phrase,
19 "No good faith estimate would be used to the detriment of a
20 program."

21 CHAIRMAN MENDEZ: That is right. That goes in right
22 now.

23 MR. MOLA: That was between you and I again.

24 CHAIRMAN MENDEZ: Yeah, and that no good faith.
25 Let's make sure we have got it. Hold on, John, we need to get

V
1 that.

2 MR. MOLA: I was going to repeat it.

3 CHAIRMAN MENDEZ: Yes, but I have to tell them where
4 it belongs. They are making some notes here. It is on the
5 second full paragraph, right after "year,". Please read it
6 back, John.

7 MR. MOLA: After the words "this year" include,
8 and that no good faith estimate would be used to the detriment
9 of a program.

10 CHAIRMAN MENDEZ: To the detriment of the program
11 this year. Put, add this year to that because next year --

12 MR. MOLA: This year being 1986?

13 CHAIRMAN MENDEZ: Yeah, in 1986. Change that from
14 this year to in 1986. Do you have that Tim?

15 MR. BAKER: Yes, I have that. Where does it go?

16 CHAIRMAN MENDEZ: Second full paragraph. Page 21,
17 second full paragraph.

18 MR. BAKER: Okay, got it.

19 MR. MOLA: That is all. Thank you.

20 CHAIRMAN MENDEZ: All right, with the exception
21 of the two specific provisions that we are going to put in
22 that John made comments on that I agreed to, and with the
23 exception of the questions raised, does the Committee approve
24 the minutes?

25 MR. EAGLIN: What is the second provision?

1 CHAIRMAN MENDEZ: The one that he read, that very
2 long three paragraphs.

3 MR. EAGLIN: That is going in?

4 CHAIRMAN MENDEZ: I have not had it written, but
5 that is going in.

6 MR. EAGLIN: All right.

7 CHAIRMAN MENDEZ: Any other comments, corrections?

8 (No response.)

9 CHAIRMAN MENDEZ: None appearing, all in favor?

10 (Chorus of ayes.)

11 CHAIRMAN MENDEZ: Opposed?

12 (No response.)

13 CHAIRMAN MENDEZ: None appearing, the minutes are
14 approved. Now, we are at the point of the guidelines, the
15 budget guidelines. The staff, I assume that this is your
16 proposals.

17 MR. GESSNER: Mr. Chairman, there are a few pages
18 that I would like to recommend on the attachments to the
19 draft. In sample A or attachment A sample I would like to
20 change --

21 CHAIRMAN MENDEZ: All right, so that everybody is
22 on the same wave length. We are on page 43.

23 MR. GESSNER: On page 47.

24 CHAIRMAN MENDEZ: That is the start of it, and you
25 are asking to have some changes made on what pages?

1 MR. GESSNER: On page 47.

2 CHAIRMAN MENDEZ: On page -- can you all hear this
3 in the back, 47?

4 MR. GESSNER: Can you hear now? I do not know what
5 mike it is on.

6 CHAIRMAN MENDEZ: Which is the mike for the back?
7 No, not that one. It is the one with the brown cord. Pull
8 it closer.

9 MR. GESSNER: On page 47 -- can you hear me?

10 CHAIRMAN MENDEZ: In the back can you hear him now?

11 VOICE: No.

12 MR. GESSNER: Is there a switch?

13 CHAIRMAN MENDEZ: Dave, sit over here.

14 MR. GESSNER: Can you hear me now?

15 CHAIRMAN MENDEZ: Well, let's go ahead. If you
16 cannot hear, stand up and holler.

17 MR. GESSNER: On page 47, the functional expense
18 report, I recommend changing Function 2, General Counsel,
19 to Litigation. The same for attachment 3, page 52, Function 2,
20 change General Counsel to Litigation.

21 MR. THIMELL: It is page 52.

22 MR. GESSNER: Attachment 3, page 2 of attachment 3,
23 The consolidated operating budget and the budget worksheet,
24 pages 49 to 51, apparently there is not page 50. The line
25 that say functional distribution on the report heading would

1 be removed.

2 CHAIRMAN MENDEZ: Where are you?

3 MR. GESSNER: Pages 49 and 51 of those two reports,
4 attachment 3 and attachment C.

5 MR. THIMELL: The very top.

6 MR. GESSNER: The Consolidated Operating Budget.

7 CHAIRMAN MENDEZ: Oh, right at the top.

8 MR. GESSNER: The third line would be removed. On
9 page 47 again on Attachment A, change functional distribution
10 of Corporation operations to statement of expenses by function.

11 MR. SMEGAL: Where was that again?

12 MR. GESSNER: On page 47.

13 CHAIRMAN MENDEZ: 47, the caption.

14 MR. GESSNER: The line over number 1 though 5.

15 CHAIRMAN MENDEZ: What is that statement of what?

16 MR. GESSNER: Statement of expenses by function,
17 in order to conform with the audit guide. This is more
18 representative of the IACPA wording statement as typed.

19 Those are all the changes from what you see in front
20 of you. I have given you the 1980 budget guidelines and
21 calendar. The revision and memorandum on page 27 states some
22 of the items I was attempting to cover in the revision.

23 I will not labor over all of the points, but I will
24 take any questions you may have.

25 CHAIRMAN MENDEZ: All right, we have worked a little

1 bit on this, David, I have. I did not know what to do on
2 page 43. On page 43 I talked to various members of the Board.
3 I did not select a particular, any one particular option.

4 I listed four options as to what we can do with
5 regard to paragraph 4. You see option 1, option 2, and
6 option 3 and option 4. What this is, is whether any members
7 of our Committee would go back and be present for a review.

8 One of the considerations that we have in these
9 options is the quorum problem of the Committee going back.
10 I will tell you what my general preference and have the Board
11 discuss it.

12 My general preferences do not have anyone invited
13 back for these reviews and have them presented to the Board.
14 That is my general preference on these things, leave out any
15 language on that.

16 The issue here is whether at the time they do this,
17 whether the Committee should have any formal position there,
18 any formal presence there. It really does not bother me
19 whether we are formally there or not because any time there
20 is any major activity taking place, they have to come before
21 our committee anyway.

22 We have shown no reticence in the past to change
23 their numbers, and we will probably change them again today.
24 So whatever the Committee's pleasure is, I am willing to
25 acquiesce in, but I just do not believe it is necessary.

1 Do you have any thoughts about that, Tom?

2 MR. SMEGAL: What happened this year? Didn't the
3 Committee attend?

4 CHAIRMAN MENDEZ: No.

5 MR. SMEGAL: I did not go back.

6 MR. DURANT: Do you have to have a specific policy
7 on this?

8 CHAIRMAN MENDEZ: I want to have a specific policy
9 on this. Let me tell you the reason I would like to readopt
10 this and what this is for. It is to give the field a better
11 feel -- I think the most important document here is the
12 first portion.

13 I think the most important document is Attachment
14 E on page 55 which is sort of a calendar of events. So that
15 the field can start planning, and so that I can start planning
16 and so that I can also stop having meetings every month.

17 What we are going to do is we are going to --
18 Mr. Roche is the only one that I see out there that acquieses
19 in this view.

20 But I want to have is, at this point I am going
21 to specifically ask Mr. Roche and Mr. Mola with regard to
22 the calendar if they have any comments they wish to make about
23 what we are doing and what we in general hope to accomplish
24 with that.

25 MR. EAGLIN: Do you want me to hold my questions?

1 CHAIRMAN MENDEZ: No, please.

2 MR. EAGLIN: Under the old policy was there ever --

3 CHAIRMAN MENDEZ: Can you hear in the back?

4 VOICES: No.

5 MR. EAGLIN: Under the old policy was there ever
6 an invitation extended to the ANA Committee to attend as
7 indicated on page 30, paragraph number 3 of the 1980 catalog?

8 MR. SMEGAL: I do not ever recall it.

9 CHAIRMAN MENDEZ: Well, we were not, no.

10 MR. EAGLIN: So we have not been doing it anyway,
11 right?

12 CHAIRMAN MENDEZ: No, we have not. I would just
13 as soon let -- you know what we have is we have a president
14 and we fiscal officers and they can come to us later.

15 MS. BERNSTEIN: I think it should be interpreted
16 that we should be able to attend if we wanted to.

17 CHAIRMAN MENDEZ: Well, yes, I think that it should
18 be interpreted that we are not going to attend even if we
19 want to.

20 MR. EAGLIN: Would you repeat that.

21 CHAIRMAN MENDEZ: All right, LeAnne's statement
22 was that it should not be interpreted that they could not
23 attend if they want to. My statement back to LeaAnne is,
24 yes, that is my interpretation. That even if you wanted to
25 go back that you cannot go at the setting because we always

1 have the question if we have five members of the Committee
2 to go back, we have a quorum question without notice, and
3 we are complying with the Sunshine Act.

4 MR. EAGLIN: The comment I had about the calendar,
5 I noticed that the proposed calendar does not carry forward
6 what the old calendar had under December and also partly
7 under November, the Committee reviewing financial statements
8 and actually receiving an audit in December. Maybe we should
9 have that on -- is there a reason that we do not want to have
10 it now?

11 CHAIRMAN MENDEZ: They cannot get it out that soon
12 I do not think.

13 MR. EAGLIN: All right.

14 MR. GESSNER: With the January 1986 wording, the
15 Committee will take action on the 1986 budget with the 1985
16 carryover. That implies that we will receive the audit
17 carryover --

18 CHAIRMAN MENDEZ: I sort of agree with you. Why
19 don't we just put a language in it.

20 MR. EAGLIN: I cannot remember, but the one that
21 I have now is dated December '84. I am pretty sure we did
22 not get a year ago. I do not remember when we did get it,
23 but shouldn't that be on the calendar?

24 MR. GESSNER: I believe it was January.

25 CHAIRMAN MENDEZ: All right, let's put it in. Do

1 you feel comfortable? Let me ask the staff. Do you feel
2 comfortable that we can get it by January?

3 MR. GESSNER: I think so.

4 CHAIRMAN MENDEZ: All right. In the second sentence
5 that starts with "Committee will be presented with the audit"--

6 MR. EAGLIN: Mr. Gessner, by the December meeting
7 are we going to have any useful information from the accounting
8 firm on their audit?

9 MR. GESSNER: January? Is there any reason?

10 MR. EAGLIN: No, the December meeting of each year,
11 specifically for this meeting I talked to Mr. Baker about
12 possibly having one here and he had mentioned that they were
13 there at the Corporation a couple of weeks ago, but I am not
14 sure that you have actually an audit now.

15 MR. GESSNER: No, we do not. We are very close.
16 Mike could probably --

17 MR. COSTER: The auditors are concluding their work
18 now. They will meet with the president and myself here in
19 the next week or so.

20 CHAIRMAN MENDEZ: Can't hear. Move that closer
21 in. Check that one out and see if that is wired.

22 MR. COSTER: The audit is being concluded at this
23 point, and I am comfortable that we will have their signed
24 statement by the end of January, at the end of the January
25 meeting.

1 In fact that has been as I understand the time
2 schedule for the last couple of years, but we can add that
3 language here.

4 CHAIRMAN MENDEZ: All right, to correct this we
5 are going to put the Committee -- we will receive the audit
6 and take action.

7 MR. EAGLIN: That is January?

8 MR. COSTER: January '86, this first column after
9 the language Committee will.

10 MR. EAGLIN: That is all?

11 MR. COSTER: Yes, that is what he just said.

12 CHAIRMAN MENDEZ: Well, let's just receive -- I tell
13 you what let's do. Take those mikes down. Just pull them
14 off and put them underneath.

15 MR. EAGLIN: Not just the Committee, but the Board?

16 MR. GESSNER: Well, this is the calendar reporting
17 committee.

18 MR. EAGLIN: All right.

19 MR. SMEGAL: Mr. Chairman, I am still back on the
20 other question I was asking. You indicated to me you did
21 not attend any of those budget review or quarterly meetings.
22 Did any of the Board attend? Did any of us attend, Dave?

23 CHAIRMAN MENDEZ: No, I do not --

24 MR. GESSNER: No.

25 MR. SMEGAL: It was all done with staff. So the

1 sentence in the old bylines --

2 CHAIRMAN MENDEZ: What page are you on?

3 MR. SMEGAL: The bylines of page 30, paragraph
4 number 3, buried in there it says members of the Appropriations
5 and Audit Committee will be invited to attend this meeting.
6 We are striking that and we are not going to replace that
7 with anything is your recommendation?

8 CHAIRMAN MENDEZ: That is right.

9 MR. DURANT: Can I ask -- if you are concerned about
10 quorum problems, it seems to me as long as there is no
11 violation of the Sunshine Act I do not see a problem. What
12 is the Board doing?

13 CHAIRMAN MENDEZ: Well, that is my preference.

14 MR. DURANT: All right.

15 CHAIRMAN MENDEZ: We are willing to acquiese as
16 I stated before.

17 MR. DURANT: But can't we just go with the language
18 as Mr. Smegal referenced it as what would be --

19 CHAIRMAN MENDEZ: You want to have formal invitations
20 becuase if a person can attend, then you are going to have
21 to issue formal invitations to every member of the Committee.
22 You are going to have to also notice that because every member
23 of the Committee could appear or a quorum could appear.

24 MR. GESSNER: Mr. Mendez, I should point out that
25 the quarterly budget review sometimes requires a period of

1 about two to three weeks, two one-hour day sessions, sometimes
2 all day sessions depending upon when members of the budget
3 group can get together and go over the work.

4 MR. DURANT: Why don't you make it so that the
5 Chairman of the Audit and Appropriations Committee can --

6 CHAIRMAN MENDEZ: Attend this?

7 MR. DURANT: Well, no, either attend them or
8 designate them so that you do have other people if they want
9 to be there able to be there as long as you do not have the
10 quorum problem and you are not taking --

11 MR. GESSNER: Which one of these?

12 MS. BERNSTEIN: Why not have just in order to attend
13 it, they don't have to be invited, and then people can go
14 when they want to go.

15 MR. COSTER: Yeah, the Committee is informed of
16 the results of the budget.

17 CHAIRMAN MENDEZ: See the more I think about this,
18 the more I disagree with this because based on what they are
19 telling us, if it goes for two weeks, they have to tell
20 everybody each time they are having a meeting. Those of us
21 that are sitting in Colorado are at a disadvantage to those
22 of you on the East Coast. I do not want to be at a disadvan-
23 tage to anybody on this board. I want to be equal with
24 everybody.

25 MR. EAGLIN: Mr. Chairman, it does not matter where

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1 you are sitting. On that kind of a notice and the way he
2 outlined it, it really does not matter where you are. It
3 would be very inconvenient to get there on what they are
4 outlining.

5 CHAIRMAN MENDEZ: Oh, I understand. That is the
6 reason I think that we have got to keep everybody on an equal--
7 I would like to have everybody on an equal footing with no
8 language.

9 MR. DURANT: Maybe that is the answer.

10 CHAIRMAN MENDEZ: But there is no language.

11 MR. DURANT: Joel, what were you going to say?

12 MR. THIMELL: Well, I was going to say that as
13 Dave pointed out it is a lengthy process. The feasible
14 participation right now is that the Committee would really
15 be at the end of the process to hear the final product which
16 in essence would be what you would get in the committee hearing.

17 You would receive our thought at that point.
18 Otherwise as he points out it would be a question of a clear
19 half a dozen sessions.

20 MR. DURANT: I think if you have it where you are
21 invited to attend the meeting from the Sunshine Act standpoint
22 I mean, and I don't think if it is an information meeting
23 as opposed to a meeting that --

24 CHAIRMAN MENDEZ: It goes to the budget meetings
25 or the decisional meetings. They are not informational meetings.

1 MR. DURANT: They make decisions, but it is not
2 our decisions at that point.

3 CHAIRMAN MENDEZ: Yeah, but if we have a quorum
4 there, it is a Board decision. It is a Committee decision.

5 MR. DURANT: No, not just to -- remember with the
6 Department of Education we had different meetings in which
7 they were informational. Even though you had members of the
8 Board present, it was not a violation of the Sunshine Act.

9 CHAIRMAN MENDEZ: What language do you want to have?
10 If we put the language in that the Board can come when they
11 want to, then implicit in that is that they have to give us
12 notice when they are doing it.

13 MR. DURANT: Pepe, you are right about that, and
14 doesn't this simply talk about at the end of the whole process?
15 They are not talking about anything during the process, isn't
16 that right?

17 CHAIRMAN MENDEZ: Yeah, but what they are talking
18 is that the whole process could take two weeks.

19 MR. DURANT: I understand that, but this language
20 in here is only talking about the end of the two weeks is
21 it not?

22 MR. GESSNER: The process is involved somewhat.
23 It is a lengthy informal review within a structured one or
24 two meeting process which I believe was the case several years
25 ago.

1 MR. EAGLIN: It was more formal before?

2 MR. GESSNER: I believe it was. I was a much
3 larger meeting.

4 CHAIRMAN MENDEZ: All right, I think I have an
5 expression of opinion. We have I think a fair discussion
6 on this group that we will omit options 1, 2, 3, and take
7 option 4 and not have any language within there. Does everyone
8 on the Committee agree with that? If not, speak up and we
9 will record a vote.

10 Now, Terry, do you have any comments about the
11 calendar or anything. Can you hear that from back there?

12 MR. ROCHE: Mr. Chairman, Terry Roche, executive
13 director of Legal Services of Southern Piedmont, Charlotte,
14 North Carolina, co-chair, funding criteria of the committee
15 of the project advisory group.

16 We have got some comments on both the scheduling
17 and a few other comments on the recommendations. If there
18 is a live mike up at the table, it would be easier for me
19 to spread it out and do it there.

20 CHAIRMAN MENDEZ: Now, which one of these is dead?
21 So that you understand in the back, they have had to turn
22 off some of the mikes because of the air conditioning. It
23 is giving us some feedback.

24 MR. ROCHE: Is this one carrying to the back?

25 CHAIRMAN MENDEZ: Yeah, it is.

1 MR. ROCHE: Let me take the timing issues first,
2 Mr. Chairman.

3 CHAIRMAN MENDEZ: We are talking about the calendar?

4 MR. ROCHE: Right.

5 CHAIRMAN MENDEZ: Okay.

6 MR. ROCHE: In recent years we have tended to slip
7 away from what was practiced in the past years both in terms
8 of adopting a COB for the coming fiscal year and in putting
9 together the presentation of the mark for the fiscal year
10 beyond where we are.

11 I would recommend that as to the COB that the Board
12 adopt a preliminary COB no longer than a September meeting
13 even if you don't know the authorization on it. That gives
14 you a sense and the feel of the sense of where all the money
15 is likely to go if we are all get what we are trying to get.

16 You loose nothing. You are doing much the same
17 thing you are doing this year except the fact you are doing
18 preliminary this month and final next month.

19 You can do a preliminary COB in September and a
20 final in November or December depending on what we know from
21 the Hill in between those times. You have got some months
22 to do a little consultation with us with others as among
23 yourselves.

24 That was the timing with which the Legal Services
25 Corporation Board was using in past years. Do you want David

1 and I to take the timing back and forth, or do you want me
2 to do the mark stuff?

3 CHAIRMAN MENDEZ: We ought to do the -- I will tell
4 you that my preference, the reason why it is set the way it
5 is, is that I want to know what Congress has given us before
6 the act.

7 MR. ROCHE: I think my memory --

8 CHAIRMAN MENDEZ: Because our budget mark is
9 essentially the same thing as what a preliminary COB is if
10 you do not have a mark from Congress.

11 MR. ROCHE: Well, by September you have usually
12 got a pretty good idea --

13 CHAIRMAN MENDEZ: This year we did not.

14 MR. ROCHE: -- of what is coming out of -- let's
15 not worry about next year. I mean that is a crap shoot in
16 the first order. You usually have a pretty good idea of what
17 is coming out of the Committee.

18 By and large in most years what has come out of
19 the Committee has ended up pretty close to what comes out
20 of the floor. For us in the field having the three-month
21 lead time to have a sense of how it is going to effect us
22 is very important particularly in terms of hiring decisions
23 and the like in coming years.

24 I think that if you do this that you are saying
25 clearly to people that this is the preliminary. That is what

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1 you are going to say later today, I assume. This is a
2 preliminary. This is not the final. It doesn't commit
3 you to anything. And you have a couple of months until
4 you do your final. But then you can do your final,
5 assuming that the appropriation comes out as it did this
6 year, in your December meeting and you are clean going into
7 the next year and there is no question. It seems to me that
8 is the most business-like way of doing the COB introduction.

9 MR. MENDEZ: Dave, you have to --

10 MR. GESSNER: We have covered what we would like
11 to do in paragraph two where it says the committee will
12 receive and review staff recommendations for COB at or
13 before the start of each fiscal year or soon thereafter
14 as appropriations are made by Congress.

15 Certainly we would like to have a preliminary
16 COD enacted before October 1st. In fact, last year we
17 did for FY-85. We can't be in a position to recommend the
18 COB to the committee until we know what our numbers are going
19 to be. As we say, anything short an appropriation or a
20 conference report would be remarkable.

21 MR. MENDEZ: I feel like like that we keep it
22 where it is and if I hear otherwise from the committee, I
23 will ---

24 MR. ROCHE: May I make one more

25 MR. MANDEZ: Yes.

1. MR. ROCHE: If you have got your preliminary
2 COB in September, if you are prepared to go with your final
3 COB in December and if you have received your audit report
4 in sufficient time to determine what kind of carry forward
5 funds are available, then you can go into the next fiscal
6 year without having to leave open questions as to what the
7 corporation is going to do.

8 MR. MENDEZ: I understand what you are saying.
9 Do you have any other comments, Terry?

10 MR. ROCHE: A couple more. The next one is on
11 mark. For many of the same reasons --

12 MR. MENDEZ: Are you talking about --

13 MR. ROCHE: Yes, that's all I have to say on the
14 COB.

15 MR. MENDEZ: Oh, okay.

16 MR. ROCHE: The next is scheduling of mark
17 decision.

18 MR. MENDEZ: Okay.

19 MR. ROCHE: On mark decision -- it used to be that
20 the mark presentation went up to OMB in October. It's
21 only recently in the last couple years that it slipped to
22 a December meeting, and two years ago, before you all were
23 around, it wasn't until January.

24 My sense is that backing up the -- all of the
25 various parts of that process so that this committee is

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1 having hearing in July and August about coming mark and can
2 then at the end of one fiscal year be ready to tell OMB
3 what it wants in the second coming fiscal year, again you
4 leave little to question. You satisfy the OMB requirement,
5 assuming that anybody is paying attention to that anymore.
6 And it's a neater way of doing business. I would just
7 recommend that you back it up in that fashion.

8 MR. MENDEZ: I understand, but if I do that
9 then I have more than five meetings a year.

10 MR. ROCHE: We could have a marathon at someplace
11 like Hawaii as you told me before lunch.

12 MR. GESSNER: We also have a problem with trying
13 to set a mark for a subsequent year before we have any
14 indication, any substantial indication of what our numbers
15 are going to be for the coming year, the first coming year.
16 That would be extremely impractical. We are building one
17 year on a subsequent appropriation.

18 MR. SMEGAL: I agree.

19 MR. MENDEZ: This is essentially -- I will tell
20 you this calendar is essentially the calendar that I
21 looked at and thought that was giving everybody plenty of
22 notice up front so that they know what's coming and can
23 make their scheduling. And the reason that I wanted to have
24 this was the problems that we had with the scheduling of the
25 PIA(ph) conference and the kicking over your presentations

1 from last month for this month.

2 MR. ROCHE: For which we apologize. We were
3 operating on the last year's schedule.

4 MR. MENDEZ: Well, I understand, I understand,
5 but what I want to do is I want to make sure that we give
6 you guys as much notice as possible.

7 MR. ROCHE: Appreciate it.

8 MR. MENDEZ: And to me, it makes -- this made
9 good sense, and if you have got the notice of when it is,
10 we are giving you better than what you have had this year.

11 MR. ROCHE: Always look for improvements.
12 Which brings me to another point which is not on scheduling
13 but I have got three or four more points on the staff
14 recommendation if you are prepared to take them at this
15 time.

16 MR. MENDEZ: Sure, please.

17 MR. ROCHE: And that is the whole question of
18 consultation in the budget process. I know that you, in fact,
19 give us lots of opportunity to consult in the framework
20 of a formal committee or board meeting, and I am assuming
21 that that is also assumed within the scheduled process and
22 the procedure which is outlined.

23 MR. MENDEZ: That is what this is --

24 MR. ROCHE: However, let me suggest to you one
25 other thing, which again tracks earlier relationships and

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1 earlier procedures, because I think it could save you some
2 time.

3 If we had a consultation process between members
4 of the funding criteria committee and the staff at early
5 stages in the putting together of these things, we would be
6 able to figure out where we have common ground, we would leave
7 that out of having to put it in front of you at a formal
8 meeting, we could figure out where we have got differences.

9 The staff could come to you and say here is what
10 we all agree on, here is where we disagree, here is our
11 position -- is going to tell you something different.

12 MR. MENDEZ: Well, Terry, I am going to tell you
13 this. The staff is exactly what that says. They are staff,
14 and the agreements that they have or could make with you
15 guys doesn't count a hoot as far as I am concerned.

16 MR. ROCHE: Oh, from experience, I know that.

17 MR. MENDEZ: I want to have it all addressed to
18 us.

19 MR. ROCHE: I am just trying to get a little
20 more efficient.

21 MR. MENDEZ: I understand what you are saying
22 but it doesn't carry.

23 MR. ROCHE: Not a big deal. But, in fact, we
24 will continue the historic consultation process that we are
25 involved in right at this very moment.

1 MR. MENDEZ: That's correct.

2 MR. ROCHE: Good. A couple other points, one of
3 which David did some things about, a couple which weren't
4 mentioned. My sense on the whole question of functional
5 accounting at page 47 is that you are getting there but you
6 haven't got there yet.

7 I think that those categories, and I guess we
8 might as go out in the hallway and mud wrestle to see
9 if it's right, are more cost centering than functional.
10 It's getting close, but it's not quite there. Let me give
11 you a couple examples.

12 I propose to you the following functional
13 categories instead of those which you see on page 47, some
14 of which are very close, very close.

15 MR. DURANT: Are these in addition to or --

16 MR. ROCHE: Slight revisions of what you have got
17 there, one of them is identical; others are additions.

18 MR. MENDEZ: Okay.

19 MR. ROCHE: First would be grants management
20 by itself, just grants management. Second, monitoring and
21 review which you have got there already. Third, program
22 services, which you have got there already.

23 MR. MENDEZ: Just a second. Okay.

24 MR. ROCHE: Fourth, research and development.
25 It seems to me that whole area of functional is dropped

1 out of this altogether so far. Fifth, unallocated management
2 probably is a substitute for corporation direction and
3 management. Sixth, fund raising. Seventh, private
4 attorney involvement, and, eighth, legislative and
5 administrative advocacy. Those last four really,
6 particularly the fund raising I think is an AICBA kind of
7 thing anyway. But the last three track parallel the
8 kinds of things that I believe you are looking for within
9 the field and would ultimately give any person looking at
10 the total operations of the corporation, both as directed
11 out of headquarters and as carried on by the grantees, an
12 accurate sum total of what goes on throughout the legal
13 services community in those three categories.

14 MR. MENDEZ: Well, you understand this -- when you
15 are talking about this, you are only talking about the
16 corporation itself.

17 MR. ROCHE: I understand, and what I am saying
18 in those items it makes to me a certain conceptual sense
19 to have parallel entries in the corporation as for field
20 programs for the obvious reason that a person, a Congressman,
21 a Senator, looking to see what the entire corporation, i.e.,
22 the entire 305.5 or 385 budget went to produce. You know,
23 you might have it categorically on the left side corporation
24 direct and then grantee broken down by whatever else you
25 want to have. But you would have a consistent pattern

1 on those three items, which are all very important to us.

2 MR. MENDEZ: Why don't we have the mike --

3 (Pause to correct microphone difficulties.)

4 MR. MENDEZ: I would like some or all -- we only
5 have one like mike here. We are trying to see if we can
6 get more than one going so that we don't have to have
7 everybody moving around all the time.

8 (Pause.)

9 MR. COSTER: Mr. Chairman, we have had numerous
10 discussion and we have all learned a lot about functional
11 accounting over the last three and a half or four months.
12 What we want to keep sight of is the fact that this is a
13 management accounting report that is designed to be tailored
14 to meet the needs of the institution. All of Statement
15 Position 78 -- of the institutions so reported, all of
16 the comments of Position 7810 are suggested and, in fact,
17 mainstreamed more do fit in broad categories of topics
18 and many of those are applicable to Legal Services Corporation
19 and many of those are applicable to Legal Services Corporation
20 grantees.

21 As we have discussed, it went through substantial
22 modifications with this committee and with the board
23 for Legal Services Corporation a month ago. We adopted
24 many of the recommendations in 7810 and rejected others.
25 Some with some modifications were retained retained.

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1 What we are doing here, likewise, is tailoring
2 a statement that would fit in the corporation. So, a broad
3 sweeping statement that this does not look like a 7810
4 statement, or does not look exactly like our audit guides
5 require of our grantees is not a valid criticism.

6 On the other hand, this statement being also new
7 for us as it will be for our grantees as they start our
8 recipient programs, as they start working with it, it will
9 be getting tailored to the organization. And I know that
10 it has the appearance of being simply a cost center statement,
11 which it is not intended to be.

12 In looking at page 47, these are areas of
13 significant program activity within Legal Services Corporation
14 in Washington and its regional offices. I find at least two
15 of the additions proposed to be attractive or of interest.

16 One would be the grants management section.

17 MR. MENDEZ: An unallocated -- now, if you put
18 grants management in unallocated management, corporate
19 direction and management would be a -- that's --

20 MR. THIMELL: Grants management, not unallocated
21 management.

22 MR. COSTER: Right, the only one I think is
23 something that's not adequately detailed in the statement
24 presented on page 47 would be grants management.

25 MR. MENDEZ: I agree with that. I think that's

1 a good one.

2 MR. ROACH: Can I give just a sense -- I am
3 trying to talk loud for the back in the absence of a mike.
4 A sense of what it is we are up to and what the unallocated
5 management would cover.

6 For example, grants management is going to involve
7 the board, the executive office, the office of general
8 counsel, which is now dealt -- sort of slipped aside as a
9 result of the litigation substitution, the comptroller
10 certainly, and the office of field services, if it's still
11 around.

12 The monitoring and review is going to involve
13 MAC, office of field services, the board, the executive.
14 Research and development is going to involve policy
15 development, comptroller, OFS, executive, board.

16 But then you have things like human resources,
17 personnel and affirmative action that don't fit right
18 in there, but would go into the unallocated.

19 MR. COSTER: Those are extremely difficult
20 definitions to make to begin with, and then to track the
21 personnel time. Now, I understand exactly what --

22 MR. MENDEZ: Grants management I find very
23 attractive. Monitoring and review, program services is the
24 same; research and development I think is probably under
25 corporation direction and management. Fund raising, well,

1 I don't understand fund raising. It just seems to me that
2 that's such a small part of what we are doing.

3 MR. ROCHE: I hate to sound factitious but just
4 about a year ago, maybe January or February, I heard a
5 lot of conversation about outside funding, noncongressional
6 funding as being developed in the legal services community
7 nationally. I assume you still intend to try to do that.

8 MR. DURANT: Sure, we do, but the only question
9 is whether it requires a separate --

10 VOICE: Whether at this point --

11 MR. ROCHE: Well, that is more tailored to the
12 AICPA traditional categories.

13 While staff is consulting, let me just make one
14 final point, however, about -- and let Mike --

15 MR. MENDEZ: Let me ask you a couple of other
16 questions. PAI -- in PAI for the field, I can understand.
17 PAI for the corporation, I don't understand where there
18 would be dollars involved.

19 MR. ROCHE: Okay, and that -- and that certainly
20 is true of legislative and administrative advocacy, okay?
21 And Mike is right that there is no legislative direct
22 burden upon corporation management to demonstrate its
23 activities in those areas, but it seems to me that from a
24 public relations point of view, much less from a statement
25 of what the organization is doing, that it doesn't make

1 a whole lot of sense to say that in an important area of
2 private attorney involvement which Congress brought in
3 some years ago very, very clearly, in an important area like
4 legislative and administrative advocacy, which is of high
5 controversy no matter who is doing it, that the corporation,
6 as well as the field, whether or not you have got legislative
7 direction to do it, ought to do it.

8 MR. MENDEZ: I still don't see PAI. You went from
9 PAI over to legislative and administrative advocacy in one
10 sentence.

11 MR. ROCHE: I consider them the same sort of
12 thing. They are major kinds of concerns of both the
13 Congress and the public at large, which I think, though not
14 statutorily imposed upon corporation management, are
15 nevertheless concerns, and it makes sense to disclose what's
16 going on.

17 MR. COSTER: We are clearly putting form over
18 function if we put a PAI column in the corporation. It's
19 in the functional accounting statement. We don't have
20 any functions that involve private attorney involvement at
21 the corporate level.

22 MR. ROCHE: I'll leave it. I mean I --

23 MR. MENDEZ: Do you agree with that?

24 MR. ROCHE: I'm not sure I do, because again we
25 are, you know, my sense is that if we are going to do

jfb13

1 functional accounting in the field level on a somewhat try
2 it, you will like it basis, that some of those things
3 probably conceptually are equally applicable to all other
4 parts of the corporation.

5 MR. COSTER: I agree with that as an officer
6 of the corporation. I think the board has exhibited that
7 at its two past meetings. That's why we are creating these
8 statements and why we are seeking input from people such as
9 yourself, Terry.

10 But like I say, I see an interesting distinction
11 to be made here that we were fulfilling with the chairman
12 concerning grants management as opposed to technical
13 assistance and training and the other things that would have
14 been pooled into program services. That is a valuable
15 distinction possibly to be made on this statement.

16 But as far as PAI and these others, the question
17 is do they serve any purpose for a disclosure of six column
18 of zeros whatsoever.

19 MR. MENDEZ: All right, I'll tell you what. I
20 want you to add grants management to that and I also want
21 you to add a line item, or a functional item on fund
22 raising.

23 MR. ROCHE: No research and development.

24 MR. MENDEZ: No, I think that's covered in both
25 fund raising and under the corporation direction and

1 management?

2 MR. WALLACE: Mr. Chairman, can I ask a question?
3 I apologize for being in and out the last few minutes. I
4 have been trying to find out how long my trial schedule will
5 let me stay in town.

6 But are we going to use -- is the idea that we are
7 going to use this form for recipients as well as for ourselves?

8 MR. MENDEZ: No, just for ourselves.

9 MR. WALLACE: All right.

10 MR. MENDEZ: Just for ourselves.

11 MR. ROCHE: One other point on -- excuse me for
12 shouting at you. I am just trying to deal with the
13 absence of a microphone.

14 One other point on the format in 47, page 47.
15 What happens with sort of a sliding as between functional
16 and cost centering is that though we have general expenses
17 function, we have lost the cost centering. We lost the
18 office of general counsel, we have lost the office of
19 human resources, and I am assuming that somebody intends a
20 page that would reflect that data by the management and
21 administration sub cost centers.

22 MR. COSTER: Peat, Marwick & Mitchell have
23 to certify our statements like they do the balance of the
24 corporation grantees, and I think you are going to see the
25 same type of financial statements you have seen for the

jfb15

1 last half dozen years with significant accounting policy
2 changes as well as this functional expense report which
3 we have conformed the title to fit with that of the audit
4 guide --

5 MR. MENDEZ: All right. Is there anything lese?
6 This was only supposed to have taken 10 minutes. If this
7 is going to take all this time --

8 MR. ROCHE: I thought you were ready to stay
9 until 10:30.

10 MR. MENDEZ: I am.

11 MR. ROCHE: A few other fairly quick pieces --

12 MR. MENDEZ: -- stay until 10:30.

13 MR. ROCHE: I'll follow your lead, Mr. Chairman.

14 MR. MENDEZ: Please.

15 MR. ROCHE: On the hwole question of what
16 modifications the staff can make with out board or committee
17 approval, I have a little trouble with the recommendation
18 simply because, for example, within item 1(b), you might be
19 shifting without your review money from a voucher project
20 to a pro bono project to some other kind of project without
21 your having any sense of what has been accomplished by the
22 original contract that was let to do that project.

23 It seems to me that it's not a terribly -- not that
24 we don't necessarily trust staff to make good transfers.
25 It just doesn't seem to me to be a real exercise of your

1 fiduciary duty on experimentation to let them do that without
2 some review by the board.

3 MR. MENDEZ: Now, Terry, that was always -- that
4 is the same language as in the past.

5 MR. ROCHE: We fought it before; just trying again.
6 Second --

7 MR. WALLACE: Let me ask you what affect that
8 has because maybe I have missed some of the votes we have
9 had here, but I don't recall in the past that we voted on
10 every experimental contract that has gone out to begin with.
11 I mean, we don't authorize them to let the contract in the
12 first place. I am not sure I see why we need to authorize
13 them when they cancel one contract and let it to somebody
14 else.

15 MR. ROCHE: But that's the problem, Mike. I mean
16 basically a lot of stuff is going out without you all
17 knowing what has happened similarly in the past, what has
18 been the value of similar kinds of uses of money in the past.
19 Various sorts of things kind of sneak their way into --

20 MR. WALLACE: But, Terry, why --

21 MR. ROCHE: -- budgets like, like the 2.5 in the
22 '86 mark.

23 MR. WALLACE: Why is program development any
24 different from any other contract? I mean they don't tell
25 me when they renew your contract or when they don't.

jfb17

1 MR. ROCHE: But we -- reports every year, every
2 18 months. There is no information out for you all to make
3 decisions about --

4 MR. WALLACE: I think that's a good point and
5 we ought to know what results we are getting from the
6 contracts. I am not sure it's a budget question.

7 MR. ROCHE: 2(b), you are talking about making
8 shifts between other support kinds of items that are
9 very dissimilar. National support to state support to
10 CALR to clearinghouse, wherever. It seems to me those are
11 things which the board ought to be having some review of
12 before shifting.

13 MR. COSTER: I think that the corporation staff
14 maintains very open lines of communication, if not conduit
15 of communication with the interested board members. And
16 that is, any board member that's interested. I know I
17 had fairly communications in my short tenure. From what
18 I have seen, there is ample reporting on changes of the nature
19 you are talking about above. Perhaps we should institute
20 whatever would be the model the board institutes. But we
21 are talking about a lot of alternatives to develop
22 communications in between board meetings where there is
23 discussion which involves board members, and we have never
24 really gone of the handle on any given direction that I have
25 seen, not in the last two years.

1 MR. ROCHE: Well, I mean, you know --

2 MR. MENDEZ: Terry, I understand.

3 MR. ROCHE: Let me put it to that way. If we don't
4 get a bunch of really nice guys like this bunch and you get
5 a real bad bunch in, what's the board going to do?

6 MR. MENDEZ: Change the rules.

7 (Laughter.)

8 MR. WALLACE: We'll change the rules, that's what
9 we will do.

10 MR. ROCHE: Final comment, Mr. Chairman.
11 Committed and uncommitted carryover. I would like to see
12 a written definition of what the staff and the board considers
13 committed carryover and uncommitted carryover so that I will
14 have something to argue with you about at every meeting.
15 But I think that is a statement you ought to have in the
16 procedures.

17 Thank you, Mr. Chairman.

18 MR. MENDEZ: Thank you.

19 Any other comments from the board?

20 MR. EAGLIN: I have a question. Looking at the
21 memo to all of this, in a couple of places you mention that
22 as the staff is going through its process if any member --
23 it says on No. 5 on page 44. Any committee member may
24 call in and question any reallocation. What do you have in
25 mind by the process of calling in your question? What

jfb19

1 would that be? If I were just to call you by phone and
2 say -- and start asking you questions about a particular
3 activity, would you consider that as having called into
4 question your action?

5 MR. MENDEZ: Why don't we put a clarification in
6 there that -- let's put in a little statement that says
7 that the committee member has to send a letter to all
8 members of the corporation along with the comptroller so that
9 everybody knows that it's called into question. So that
10 every member of the board would know that they have called
11 that question.

12 MR. EAGLIN: How would I even know that -- until
13 these quarterly meetings, the budget review meetings, how
14 would I even know that they have done this, right? Because --

15 MR. MENDEZ: No, it's --

16 MR. EAGLIN: -- I haven't been to these meetings,
17 I wouldn't know until that -- until that opportunity, at
18 which time we would all vote on it anyway, or we could vote
19 on it.

20 MR. COSTER: The sort of reallocation we are
21 talking about in the paragraph doesn't just involve a few
22 members of the corporate staff. It involves a significant
23 number of the senior staff in the corporation. So, I think
24 the protection to the board is very high there. You
25 would typically find out at the quarterly budget report or

1 the status report on that or a related issue. And, yes, in
2 fact, it would be after the fact. But we do need to manage
3 and we are institution of changes, and sometimes, you know,
4 those require intelligent staff decision.

5 MR. MENDEZ: Well, not only that, one of the
6 things that we have is that they are to give us the
7 monthly expense --

8 MR. ROCHE: The budget column in the monthly
9 report --

10 MR. EAGLIN: I was trying to understand that
11 if we have the quarterly meetings at which time we would
12 learn about the realities that you have done within line,
13 we can act on it at that time. I am trying to understand
14 how is it prior to a meeting such as that would I have an
15 opportunity to --

16 MR. GESSNER: The monthly reports that go out
17 have the budget and any changes made to the budget as of the
18 end of that -- that column is kept current. The quarterly
19 changes only as the board -- so you would know --

20 MR. EAGLIN: So the process is then that we would
21 then send a letter to ---

22 MR. MENDEZ: To Gessner and Coster, and you have
23 to send a copy to all members of the board so everybody
24 knows it's been called into question.

25 MR. EAGLIN: Or send it to the secretary and

jfb21

1 let the secretary distribute it as he does to everybody, right?
2 Isn't that a part of his responsibility to get it out to
3 everybody?

4 MR. MENDEZ: Yes, but --

5 MR. EAGLIN: You would prefer it go directly to
6 each member?

7 MR. MENDEZ: I would prefer that it go directly
8 to each member.

9 MR. EAGLIN: Okay.

10 MR. MENDEZ: Because you are telling everybody
11 that it's --

12 VOICE: We will try to help you clarify that.

13 MR. MENDEZ: Put a phrase in there that says
14 that's the way that we are calling it to everybody's
15 attention.

16 Okay, any other questions? Tom?

17 MR. COSTER: Would that change then be to add
18 after, in the middle of the paragraph, "...program funds,"
19 before the comma put "by written to the comptroller and
20 director of the budget --

21 MR. MENDEZ: With copies to the board.

22 MR. COSTER: To the board or to me?

23 MR. MENDEZ: To the board. If you are calling
24 it in question, I think you should call it to everybody's
25 attention.

1 Tom.

2 MR. SMEGAL: I would like to comment Mr.
3 Gessner on adding paragraph 9. I think that's excellent.
4 That information is very helpful and I would like to see
5 some way we might even get it before we get here.

6 MR. MENDEZ: That was mine, by the way.

7 MR. GESSNER: -- if we can get it off the
8 accounting system.

9 MR. SMEGAL: No reason -- if you can get it before
10 a meeting, I would assuming you --

11 MR. GESSNER: You would get it as soon as we
12 can produce it.

13 MR. SMEGAL: And I assume we will get it in the
14 absence that Mr. Grant has discussed the possibility of
15 not meeting monthly as we have gotten so used to doing. I
16 read this as being monthly in any event.

17 MR. GESSNER: That's correct, yes.

18 MR. MENDEZ: Yes, that's what I set it up for.

19 MR. GESSNER: I should point out we don't produce
20 monthly general ledgers for October, November and December.
21 We combine --

22 MR. EAGLIN: That was going to be my next
23 question because I was just going to ask you, the last one
24 I have is August.

25 MR. GESSNER: The September one is being completed

fb23

1 right now. And the next one will be October, November and
2 December. With the closing out -- there is physically
3 no way to produce one of these reports --

4 MR. MENDEZ: Okay, anything further from the board?

5 MR. EAGLIN: You are saying that would be each
6 year, not just for the closing of '85.

7 MR. GESSNER: Each year, right. Unless, of
8 course, we get a new system.

9 MR. MENDEZ: All right, nothing further appearing,
10 all in favor -- I move that we adopt the --

11 MR. SMEGAL: Excuse me one second. What did you do
12 with that attachment A, you added a couple of functional
13 columns. Grants management.

14 MR. EAGLIN: Grants management --

15 MR. MENDEZ: Grants management and fund raising.

16 MR. EAGLIN: The other five are still there.

17 MR. MENDEZ: Yes, the five plus we changed the
18 litigation that the staff has requested.

19 MR. EAGLIN: So we will now have seven plus the
20 total, is that correct?

21 MR. COSTER: And those functions of grants
22 management and fund raising would be stripped out of the
23 column where they might have otherwise been allocated.

24 MR. EAGLIN: Okay.

25 MR. MENDEZ: Everything that the staff suggested

1 before is mostly technical-type things. We have the new
2 language that we just adopted.

3 MR. EAGLIN: Concerning the audit. Oh, I'm sorry,
4 yes, in the memo, covering memo.

5 MR. MENDEZ: Covering the memo.

6 MR. EAGLIN: Then in the schedule, we are going
7 to put audit --

8 MR. MENDEZ: What schedule?

9 MR. EAGLIN: -- in January? January, in the
10 schedule.

11 MR. MENDEZ: Yes, I put audit -- well, I put the
12 language the committee will receive the audit and take
13 action on 1986 budget with 1985 carryover.

14 MR. EAGLIN: Okay, for the month of January.

15 MR. MENDEZ: Month of January, as a general
16 calendar type thing. That's included in there.

17 With those correction, the chair moves the
18 adoption of this. Do I hear a second.

19 MS. BENAVIDOZ: Second it.

20 MR. MENDEZ: Let the record reflect that Hortencia
21 seconded the motion. All in favor, say aye.

22 (Chorus of ayes.)

23 MR. MENDEZ: Opposed.

24 (No response.)

25 MR. MENDEZ: Finally. Now, what I would

1 to have is the Native American group come forward.

2 MR. THIMELL: I have been asked to make an
3 introduction of the persons that will be addressing the
4 committee. We have here today the tribal chairman of the
5 Kikapoo tribe, James Wahpepah, and their attorney, Kurt
6 Bluedog from Madison, Wisconsin. This committee has
7 previously been interested in the legal work done on
8 behalf of the terminated and unrecognized Indian tribes.
9 The presentation today is intended to give the committee
10 one example of a tribe which has been granted federal
11 recognize along the Texas-Mexican border.

12 Kurt Bluedog, who is on the far right, is a
13 private attorney from Madison, Wisconsin, and he spent
14 seven years with the Native American Rights Fund, and he
15 is a member of the Sisotone(ph) Sioux tribe of South
16 Dakota.

17 (Continued on next page.)

end #1

end jfb

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1 CHAIRMAN MENDEZ: What I would like to have is the
2 Native American Group come forward.

3 MR. THIMELL: I have been asked to make an introduc-
4 tion of a few persons that will be addressing the Committee.
5 We have here today the tribal chairman of the Kickapooch Tribe,
6 James Wahpepah, and their attorney Kurt Bluedog from Madison,
7 Wisconsin.

8 This Committee has previously been interested in
9 the legal work done on behalf of the terminated unrecognized
10 Indian tribes. The presentation today is intended to give
11 the Committee a case history of one example of a tribe that
12 has been granted federal recognition along the Texas/Mexican
13 border.

14 Kurt Bluedog who is on the far right is a private
15 attorney from Madison, Wisconsin. He spent seven years with
16 the Native American Rights Fund, and he has been role member
17 of the Sisiton Sioux Tribe of South Dakota. James Wahpepah is
18 the elected chairman of the business committee of the Kickapooch
19 Ribe for the past 18 years. He lives in Oklahoma.

20 CHAIRMAN MENDEZ: Can you please spell the name?
21 Joel, do you know the spelling or should we ask the gentleman?

22 MR. THIMELL: Well, it has been written here, correct
23 on the paper. W-A-H-P-E-P-A-H, Wahpepah.

24 CHAIRMAN MENDEZ: Kurt?

25 MR. THIMELL: Kurt, K-U-R-T, Bluedog.

1 CHAIRMAN MENDEZ: Bluedog, okay. The center one
2 is live. That one, the one that you have you hand on.

3 MR. BLUEDOG: Mr. Chairman --

4 CHAIRMAN MENDEZ: Can you hear in the back? Okay

5 MR. BLUEDOG: I have got a sore throat and I just
6 came from Wisconsin, and that zero degree temperature has
7 gotten to it.

8 Mr. Chairman and members of the Committee, my name
9 is Kurt Bluedog as was just mentioned. I am legal counsel
10 to the Kickapoo Tribe of Oklahoma as well as to the Texas
11 Kickapoo.

12 We were invited here, myself and Chairman James
13 Wahpepah to give the Committee to look at an instance of where
14 Legal Services Corporation funding has gone in a direction to
15 help Indian people who have used the funding of the Legal
16 Services Corporation to assist them to become federally
17 recognized.

18 The Texas ban of Kickapoo has its origins in the
19 Wisconsin, Michigan and Illinois geographical area. They
20 first signed treaties with the United States in the 1700s, the
21 late 1700s. In the treaty of 1832 they relinquished 12
22 million acres of land in present day Wisconsin.

23 In exchange for a piece of land in Kansas which
24 they never got they moved down to Missouri. A reservation
25 was scheduled to be set aside by congressional action. It

1 never was.

2 They kept moving South down through Kansas, Oklahoma,
3 Texas and Mexico. One element of the Tribe remained in Kansas
4 and is in Kansas to this day. The rest of the Tribe settled
5 in Oklahoma and Texas.

6 A reservation was set aside again in Oklahoma in
7 1890. However, most of that land was taken from them. Because
8 of this a large faction of the Oklahoma Kickapoo people
9 moved on South down towards present day Texas and into
10 Mexico.

11 When we were approached I was a staff attorney
12 for the Native American Rights Fund I guess approximately
13 seven years ago. The Native American Rights Fund is the
14 national nonprofit Indian nations law firm, and I think it
15 functions as one of the backup centers for the Legal Services
16 Corporation.

17 We were contacted by the Texas Kickapoo Indians,
18 and I think about something like 1979, they invited us to
19 come to Texas, to Eagle Pass, Texas, to talk to them, to speak
20 with them, and see if there is any way we could assist them.

21 I was appointed among the staff attorneys at NARF
22 to go to Texas and to inspect this situation. I did so. What
23 I found was a group of Indian people, clearly Indian people
24 acknowledged by the State of Texas as Indian people and by
25 everyone else as Indian people, but they were a people sort

1 lost in the middle of a miroid of lost in the United States.

2 They were squatters on a piece of land right under
3 the International Bridge at Eagle Pass, Texas, living in
4 cardboard houses.

5 The State of Texas, Department of Housing had done
6 a survey to help conditions and concluded that there was a
7 very high incidence of tuberculosis, hypertension, a high
8 range of respiratory illness, and basically an epidemic
9 condition was at hand at Eagle Pass.

10 MR. WALLACE: How many people are you talking about?

11 MR. BLUEDOG: We are talking about approximately
12 600 people I think. Additionally, even though they were right
13 on the International border, they spent their summers working
14 in the summer as migrant workers.

15 Their status in terms of citizenship was never
16 clarified. Most of the families carried a treaty, a mutually
17 agreed to treaty which was signed by the United States Army
18 which guaranteed them safe passage.

19 They also carried and were required to carry a paper
20 from the Immigration Service which stated that they were
21 parolees. For those of you who are familiar with the
22 Immigration Service, parolee is a special status that allows
23 people to come across the border.

24 This was misinterpreted by law enforcement officials.
25 Back in Colorado where various families were working, they

1 were jailed because the law enforcement officials thought
2 they were just out of jail or basically could not understand
3 the situation.

4 So that was the second problem that we saw there,
5 a housing problem, and number two a status problem. Number
6 three, we could not get any help for them. We would go to
7 the state agencies. The state would try to help at that time.

8 In fact the state passed a resolution declaring
9 them to be citizens of Texas and citizens of the United States.

10 Well, for the attorneys to hear that, that exercise is one
11 that is clearly outside of their authority. The Attorney
12 General in Texas ruled in 1937, in fact Governor Marquette
13 was then attorney general, ruled that the State of Texas had
14 no legal authority to assist the Kickapooch.

15 Only the Federal Government could do that. We went
16 to the county. We went to everybody. We struck out in getting
17 help for the Kickapooch Indians. We looked for people to
18 sue. We could not find any satisfaction there.

19 We finally came to the realization that the only
20 way to find a solution for this situation was legislation.
21 The other situation on their status was that they were not
22 acknowledged by Mexico or the United States to be citizens.

23 Newsweek wrote an article about them calling them
24 people without a country. That was very true. So from the
25 Native Indians Rights Fund we concluded, and we went through

1 Texas rural legal aid office in Del Rio, we talked to the
2 Kickapoos and asked them what was needed to assist them to
3 help straighten the situation out.

4 Based on a series of meetings with them, we developed
5 some legislation that would number one, provide a land base
6 for them, number two, clarify their status as U. S. citizens
7 if they wanted that, and number three clarify their eligibility
8 or clarify them to be United States American Indians and
9 therefore eligible for federal services.

10 These seem like simple measures but it was a very
11 complicated trial. We wrote the legislation. We approached
12 our congressmen in Texas. Congressman Chick Casen who was
13 just terrific, he introduced the legislation as we had drafted
14 it. He moved it along in the Congress.

15 In 1981 and 1982 we held hearings. This series
16 of pictures here is a series of photographs taken of the
17 hearings. The church, primarily the Presbyterian Church helped
18 us to get the Indians to Washington, D. C.

19 One unique thing -- there is a lot of unique things
20 about the Texas Kickapoo. One of them is that they are
21 probably one of the most culturally traditional and religious
22 of all groups of Indians in the United States. So much so
23 that they speak very little English to this day.

24 So we took their leadership from Texas and we took
25 the business committee from Oklahoma, Chairman James Wahpepah

1 and the rest of the officers from the Tribe. The Texas ban
2 members have always been the enrolled members of the Kickapooch
3 Tribe of Oklahoma.

4 We took them to Washington, D. C., and those pictures
5 depict the hearings. Our Kickapoos from Texas could not
6 speak English so we had them alternate with the Kickapoos
7 from Oklahoma to interpret their testimony for the Committees
8 in the Congress, in the House of Representatives.

9 So to make a long story short or shorten it somewhat
10 -- I know we are rushed for time -- we got the legislation
11 passed, just bearly, under the wire about this time I think
12 in 1982. President Reagan signed the bill on January 9th
13 was it, 1983.

14 So we have got some federal legislation here,
15 except --

16 MR. WALLACE: To do what?

17 MR. BLUEDOG: Well, the legislation, what we did,
18 we wrote the legislation to address the three primary problems.
19 Number one, they did not have a home or a piece of land. They
20 were squatters. The City of Eagle Pass, probably the fastest
21 growing city in southwest Texas, the Kickapoos had squatted
22 on that area under the rights for all decades, maybe up to
23 100 years, and without objection, but because the city was
24 growing, they needed that land.

25 So the Kickapoos were sitting there and basically

1 the city felt they were growing, and basically they wanted
2 to move them out. It was not their land. It was the city's
3 land.

4 So in the legislation we initially wrote the first
5 draft, we were asking the government to buy a piece of land
6 in Maverick Couty, not necessarily in town. In fact it would
7 be better if it were out of the town of Eagle Pass.

8 Congress refused to do that. The Administration
9 stated flat out if it introduced this legislation and we have
10 to take a position on it, which we have to do, we are going
11 to oppose the legislation, and it is not going to pass. They
12 promised us that, and we believed them.

13 So we amended our legislation such that the Government
14 would not buy land for the Kickapoo, but it would take land
15 in trust. In other words hold land such that other Indian
16 reservations are held so long as we bought it ourselves. That
17 was the first thing the legislation did.

18 Secondly, we wrote the -- what we wrote in to address
19 the status situation we used an old treaty which they were
20 signatories to in 1794 up on the Canadian border, the Jay
21 Treaty which grants tribes up on that border the right to
22 freely cross and recross the border.

23 Because the Kickapoo Indians were signatories to
24 that treay, we applied that provision to their border crossing
25 rights with the Mexican Government. We went to Mexico City.

1 We brought the two governments together.

2 We brought our government and the Mexican government
3 together in a series of agreements to allow the Texas ban
4 of Kickapoo Indians status such that they could freely pass
5 and repass and essentially hold all the rights of citizen
6 except the right to vote office. Now, that is a given.

7 We wrote in the option for those of them that wanted
8 to be clarified, to be United States citizens to have such
9 a status automatically upon application. That was the second
10 thing our legislation did.

11 Thirdly, we essentially said these are American
12 Indians. We acknowledge them to be Indians. We clarify that,
13 and as such they are eligible for federal services which meant
14 a lot.

15 Which meant we could bring some health services
16 in. Which meant we could bring some social services in, I
17 mean a whole of things in that third element. That is what
18 our legislation was designed to do, and that is the way it
19 was passed.

20 Now, I am sure some of you are probably thinking,
21 well, that probably solved all their problems. They got a
22 federal law, Public Law 97429. It is codified at 25 United
23 States Code 1300, Subsection B, Subsection 1.

24 We found in 1983, in January, the hard part had
25 just begun. The hard part was to implement that law. We

1 had to go raise the money ourselves. We set out fundraising,
2 and we did that.

3 We bought a chunk of land in Maverick County, a 2125
4 acre piece of land. We have that. Right now we are trying
5 to develop that land starting from scratch. We are putting
6 roads in. We are putting water lines in. We are putting
7 septic tanks in. We are trying to put up a community center.
8 We are trying to get some housing.

9 So what we found is it took us probably three to
10 four years on paper to get a clarification and in effect
11 straighten out the problem of federal law. Mostly being
12 lawyers you will know that a federal law by itself will not
13 do you any good unless there is a way to get it implemented.

14 That is what we are working on right now, and that
15 is our example of where the Legal Services Corporation has
16 helped us out and has helped the Kickapoo Tribe out. I think
17 Chairman Wahpepah has a few comments to make.

18 MR. WAHPEPAH: Some the later developments that
19 came out in this legislation was about three weeks ago we
20 attended the ceremony where there were 140 Kickapoo declared
21 U. S. citizens and given documents to prove this fact.

22 There was 209 applications at the outset. They
23 are beginning to apply almost daily. The result of this effort
24 has not only made the Committee aware that these people were
25 there, they were in need. Their citizenship status had to

1 be clarified, and their obtaining resources such as social
2 security. They are going to register to vote in that county.

3 I think that in time they will become a political
4 force. The children at last count there were 22 children
5 that have enrolled in the Eagle Pass school system. We intend
6 to develop other programs, training programs, vocational
7 training.

8 We talked with the Texas people, the governor's
9 office aide there yesterday. He is receptive to working with
10 the independent school district of Eagle Pass to develop a
11 special curriculum to meet these needs.

12 There needs to be a lot more legal work addressed
13 to the religious aspect of this tribe. Being a spokesperson
14 and interpretor for this group for many, many years, they
15 are traditional in that they are very, very religious and
16 they want to remain that way.

17 Now, there may be legal questions within the
18 legislation that says they are to be under the laws of Texas.
19 There may be a conflict in their concepts about religious
20 practices that may not apply in the State of Texas, like
21 burial ceremonies or death certificates if you will, or even
22 the right to hold services.

23 One prime example that I have experienced is the
24 right to hunt and train our young people to be religious
25 leaders. We are denied that right in Oklahoma. We cannot

1 hunt when our religion tells us to. We are not allowed to
2 go and harvest deer and things like that.

3 Clearly there is additional legal work once the
4 legislation passes, and a tribe becomes recognized, that is
5 only the beginning. There are other legal matters that need
6 to be addressed.

7 I am proud of the fact that there is a program in
8 the Eagle Pass area that the Texas Rural Legal Aid Program
9 that is officed in Del Rio provides a paralegal person to
10 address the day to day needs, legal needs and concerns of
11 that group. I really appreciate that. So I will turn it
12 back to Kurt.

13 CHAIRMAN MENDEZ: I have got a couple of questions
14 for one or the other of you gentlemen. I do not know which
15 one is appropriate. First, I think I would like to ask Kurt,
16 it was about a three-year period of time that this took to
17 accomplish. Did you have regular contacts with BIA during
18 this time?

19 MR. BLUEDOG: Mr. Chairman, we always had contact
20 with them, but at that time their position was that they had
21 no responsibility to help the Texas ban. There was one catch
22 there. They said you are recognized as American Indians through
23 the Kickapoo Tribe of Oklahoma.

24 If you get to Oklahoma, if you can come to McCloud,
25 Oklahoma, we will help you there, but McCloud, Oklahoma was

1 We appreciate your time.

2 MR. BLUEDOG: Okay, thank you.

3 CHAIRMAN MENDEZ: Have a good trip home.

4 MR. DURANT: Do you have a copy of the Newsweek
5 article?

6 MR. BLUEDOG: I have not got it with me, but I can
7 certainly send it to you.

8 MR. DURANT: I would like you to do that, would
9 you?

10 MR. BLUEDOG: Okay.

11 CHAIRMAN MENDEZ: Do we want to take a break or
12 do we want to pitch right in?

13 MR. DURANT: It is up to you. I can do either.
14 You had better check with the others.

15 CHAIRMAN MENDEZ: Five-minute break and we will
16 come back in. This appears to be an appropriate time.

17 (Whereupon, a short break was taken.)

18 CHAIRMAN MENDEZ: Could I have everyone's attention
19 please? If you have conversation, please go outside in the
20 hall.

21 The next matter on the agenda is the 1986
22 Preliminary Consolidated Operating Budget. I would ask the
23 staff to make their presentations about what they wish to
24 do with COB, and then we will ask for public comment.

25 Okay, who is going to make the presentation? Okay,

1 Mr. Gessner.

2 MR. GESSNER: Mr. Chairman, the President has now
3 signed I am told the appropriations act for state, justice
4 and commerce. In the conference bill there were several
5 items that were mandated.

6 If you turn to attachment 3 of my memorandam I will
7 go through each one real quickly. Basic field programs and
8 let me point out that there was an ambiguity in the conference
9 report. In cases where there was ambiguity, the lines were
10 funded in this proposal at a higher level.

11 The basic field was mandated at 4.2 percent. The
12 Native Americans, a 1.8 percentage groups or \$7,023,000, the
13 migrant programs were level funded in 1985. Going down to
14 line 1C.3, the conference mandated a supplemental field programs
15 be funded at the 1985 level.

16 Down at 2A.4, the regional training centers be
17 funded at 1985. That also applies for both national and state
18 support and CALR.

19 The conference report provided that the balance
20 of the appropriations, 305.5 was left at the discretion of
21 the Corporation. That meant for the reserve program develop-
22 ment, summer internship, training of technical assistants,
23 clearinghouse and corporation management and administration,
24 the staff had allocated approximately \$13 million, just under
25 \$13 million.

1 What you have in front of you is a preliminary
2 recommendation for allocation of that \$13 million and 305.5.

3 MR. SMEGAL: A preliminary question, Dave?

4 MR. GESSNER: Yes.

5 MR. SMEGAL: On 2B.5, you have a number entirely
6 inconsistent with what I agreed on the explanatory statement
7 which said 530,000, the fact that in column 5 you listed
8 676,848.

9 MR. GESSNER: On the first page of that report the
10 conference talks of refunding, allocating not less than what
11 was allocated in 1985. The original 1985 allocations was
12 676,848.

13 CHAIRMAN MENDEZ: Well, was that before our
14 agreement?

15 MR. GESSNER: That was before the agreement. We
16 anticipate that if the Board approves --

17 CHAIRMAN MENDEZ: Do we have some people from the
18 CALR groups here?

19 MR. CRAVEN: Yes.

20 CHAIRMAN MENDEZ: Is it your understanding that
21 the 678 or is it the 530 that we agreed to?

22 MR. CRAVEN: It was 536.

23 CHAIRMAN MENDEZ: Right, that was my impression
24 that we agree to that.

25 MR. CRAVEN: The '84 level actually was if you

1 take away the Oregon program, it actually leaves about 550.

2 CHAIRMAN MENDEZ: That is right. Well, let me just
3 make sure.

4 MR. CRAVEN: The '85 level for this year is in the
5 530 range.

6 CHAIRMAN MENDEZ: Let me make sure that we are on
7 the same wave length, you and I. If we say 530 whatever,
8 536, that is your understanding of what the conference report
9 meant because that is what they said in their line item?

10 MR. CRAVEN: I think that is right.

11 CHAIRMAN MENDEZ: All right.

12 MR. VALOIS: Mr. Chairman, for the benefit of the
13 court reporter, the gentleman speaking is Thorns Craven.

14 CHAIRMAN MENDEZ: All right, we will get to you
15 in a few minutes, but I just want to make sure we are on the
16 same wave length.

17 MR. GESSNER: Mr. Chairman, the thinking behind
18 allocation of the 676 in this preliminary COB was one that
19 we wanted to take the most conservative approach for allocation
20 of these numbers. There was ambiguity.

21 We took that issue into consideration and thought
22 at some future time if an amount less than 676 was in fact
23 all that was required, we would propose to the board a
24 reallocation. This is as I say a preliminary number.

25 CHAIRMAN MENDEZ: One of the things I wanted for

1 somebody from the staff to do is to go up and talk to
2 both sides and make sure that it is -- my understanding and
3 my thought was that we had an agreement with all these CALR
4 groups at 530 and that that would be what it would mean.

5 We might as well clear that up with Congress and
6 clear that up with the CALR groups too.

7 MR. WALLACE: May I ask a preliminary question
8 before we get into some of the details? How many of these
9 lines do we send to Congress in our budget request. Do we
10 send them the roman numerals, the letters or the digits?

11 MR. GESSNER: We send them the roman numerals and
12 the capital letters. That is part of our request. Last year
13 however, there was a request for the staff of the Senate
14 committee for detail, and in fact when you do pass a mark
15 that detail is adopted.

16 MR. WALLACE: What are we required to send to the
17 Senate by statute?

18 MR. GESSNER: We send to them traditionally -- I
19 do not know if it is by statute, the capital letters. You
20 do not get into the individual digits.

21 MR. WALLACE: All right.

22 MR. COSTER: Mr. Chairman, do you want to finish
23 stating your requests for the staff to evaluate --

24 CHAIRMAN MENDEZ: I want the staff to speak to all
25 of the CALR groups, and I want the staff to contact both the

1 House and Senate side conferees, and advise them that we
2 think 530 is the appropriate number, but that we have a couple
3 of numbers floating around, and we don't want to have any
4 problems with anybody as to the understanding.

5 MR. SMEGAL: I have got a couple of questions over
6 here. We have had discussions through the year about those
7 three one-time backup centers funded in '85. Is that here
8 somewhere that I do not see?

9 CHAIRMAN MENDEZ: Can we hold off on that for a
10 few minutes?

11 MR. GESSNER: Mr. Smegal, those were one-time plans.
12 I do not know if any plans, if they would be funded out this
13 305.5.

14 MR. WALLACE: But on these line items there is no
15 commitment that anything is going to be funded out of a parti-
16 cular line item.

17 MR. GESSNER: Absolutely correct.

18 MR. WALLACE: That is right.

19 MR. GESSNER: We are not at that level of detail
20 here.

21 MR. WALLACE: I mean you can fund 17 national support
22 centers. You can fund 35. You can fund one.

23 MR. GESSNER: That is correct.

24 MR. WALLACE: This is how much is going to be spent
25 on the whole shabang.

1 MR. GESSNER: That is right as long as those with
2 refunding are --

3 MR. WALLACE: Yeah, I realize what you have got
4 to go through , but this is the total pot.

5 MR. GESSNER: That is correct.

6 MR. SMEGAL: I have one other question. The
7 Clearinghouse is zero budgeted here. You have got it here under
8 column 5 as conference bill zero budget. I do not know that
9 I agree with that.

10 It is not specifically set out in the conference
11 bill. It is not zeroed out. That is the staff recommendation
12 isn't it?

13 MR. GESSNER: Right. That is what it says. That
14 is explained on attachment 3.

15 CHAIRMAN MENDEZ: The conference bill--

16 MR. SMEGAL: But you have got it zeroed under
17 column 5 though too.

18 MR. GESSNER: Right.

19 MR. SMEGAL: You have got it as if Congress
20 conference --

21 CHAIRMAN MENDEZ: Congress did not specifically
22 state it.

23 MR. SMEGAL: That is right, but they did not say
24 zero.

25 CHAIRMAN MENDEZ: No.

1 MR. GESSNER: No, this is our recommendation based
2 on the conference bill under the particular item.

3 MR. SMEGAL: All right, the column 5 is a little
4 misleading then in that it -- you have got some other numbers
5 up there that reflect the conference committee did.

6 MR. GESSNER: If you refer to attachment 3, I have
7 indicated the source of each number in parenthesis stating
8 staff or conference, the body making that recommendation.

9 MR. SMEGAL: Yet, I note that there are three items
10 that the staff is recommending zero budgeting. That some
11 are internships, Clearinghouse and well, you have got a differ-
12 ent number for item number III.

13 CHAIRMAN MENDEZ: Okay. I am sorry, two? You did
14 not give a three. Which one?

15 MR. SMEGAL: The bottom of the page, they have got
16 staff recommendations on it, corporate management, grants.

17 CHAIRMAN MENDEZ: Yeah.

18 MR. SMEGAL: Above what we budgeted.

19 CHAIRMAN MENDEZ: Okay.

20 MR. GESSNER: Is there a question that we have not
21 answered?

22 CHAIRMAN MENDEZ: Does anybody have any specific
23 questions?

24 MR. SMEGAL: Well, I assume you are going to tell
25 us why we are eliminating or why you are recommending the

1 elimination of the Clearinghouse. It is going to come along
2 at some point here?

3 MR. GESSNER: That is correct.

4 MR. SMEGAL: Well, I do not want to get ahead of
5 the script.

6 MR. THIMELL: Basically we have less than \$13
7 million to fund all of these activities. We have already
8 significantly reduced the other line items in our budget
9 request, and the fact that it represents actual cuts from
10 all these other categories such as management's program
11 development, training and technical assistance.

12 It is not felt to reduce those further and have
13 an effective management of the corporation to in fact
14 maintain the program development whatsoever at the levels
15 that have been indicated desirable.

16 This 11.1 is an actual decrease of the budget last
17 year, and it represents a continued decline from 1980. In
18 1980 the Corporation's overall budget was \$300. Corporation
19 management at that time was spending \$13.7 million of that
20 total.

21 We have taken on numerous new projects in the past
22 year. There are numerous new projects coming down for this
23 year that we simply cannot do with less money than this is
24 asking for right here. That in fact is a very low figure
25 that is going to make very difficult our task.

1 Bascially it is simply a question of priorities,
2 and allocation of resources. We are going to have to have
3 either ineffective management, ineffective training of the
4 technical assistance that represents the money that was
5 budgeted for deficiencies. It is just a question of which
6 pocket you put it in.

7 MR. SMEGAL: Well, part of the philosophy on that,
8 the reason we can live with less is that corporate management
9 grant administration if I recall correctly was the
10 consolidation of the regional offices. We saved a lot of
11 money there.

12 This board I think took that into consideration
13 so that is one thing. Also I notice although I assume it
14 is not binding, on page 49, I thought it was kind of interesting
15 that your attachment B which showed a sample of the consolidated
16 operating budget dated October 1, 1985, shows some carryovers
17 that are rather significant including \$2 million in corporate
18 management grant administration.

19 MR. GESSNER: Where is that?

20 MR. SMEGAL: Page 49 of the board book.

21 MR. GESSNER: Those are illustrative numbers only.

22 MR. SMEGAL: Well, I like them. I think they are
23 good numbers.

24 MR. GESSNER: Well, they are totally --

25 MR. SMEGAL: I think they reflect carryovers.

1 MR. GESSNER: In fact that is probably very close.

2 MR. SMEGAL: I do not think you made them up, Dave.

3 I think they are probably real numbers. So what I am suggest-
4 ing to you is that you are cutting your program completely
5 for the purpose of getting what I understand Joel to be saying
6 sufficient funds for administration and management.

7 I do not have any quarrel with that, but I think
8 we have got some carryover funds right out of that column,
9 right out of that line.

10 MR. GESSNER: I would suggest that you recall that
11 the board had made some substantial long-term commitments
12 in management administration. They carried over into 1986.

13 MR. SMEGAL: Well, with those substantial commitments
14 are ongoing functions, auditing, monitoring, whatever. They
15 are going on all the time.

16 MR. GESSNER: The case of the monitoring, it is
17 an enhancement of what was ongoing. It is a very significant
18 enhancement of what was ongoing.

19 MR. THIMELL: I would agree with you, but except
20 more than 11.1 in appropriated funds to carry out our function.
21 That is in fact true.

22 MR. COSTER: By virtue of the fact we are depleting
23 that carryover fund on board directives such as --

24 MR. SMEGAL: Well, the last time we actually had
25 some numbers to look at that certainly was not consistent

1 with what was happening then although I admit it has been
2 three months since I have seen the document.

3 At that point we were seeing in spite of what I was
4 hearing, we were seeing ongoing month-to-month expenditures
5 which were not significantly different than they had been,
6 and they were going to result in large carryovers. I see
7 those large carryovers on page 49.

8 MR. GESSNER: If there is in fact \$2 million carry-
9 over on that line, it will, if not all of it, virtually all
10 of it be committed to programs that the board authorized
11 during 1985.

12 CHAIRMAN MENDEZ: Yes, we have already allocated
13 it. It is already committed by board act, 1.5 million of
14 that.

15 MR. SMEGAL: Yeah, but there are only so many
16 functions we have to deal with, administration and management.
17 Those functions are ongoing from year to year. We are talking
18 about money that is allocated, and I agree with you, it is
19 allocated.

20 It is allocated for those functions. They are
21 well defined functions. They continue from year to year.
22 We do those every year. We are just carrying, we are carrying
23 the function over into the next year, and we are going to
24 do for fiscal year '86.

25 MR. GESSNER: Mr. Smegal, I think what we have in

1 1986 is a case where between the appropriate amount and the
2 carryover amount, we will bearly be able to operate as you
3 have directed us to operate.

4 In 1987 we are not anticipating any 1986 carryover,
5 and we will be seeking a very soluable increase. I know you
6 have been concerned with the Corporation having enough money
7 to operate, but not having too much. I think what we have
8 is bearly enough right now.

9 CHAIRMAN MENDEZ: All right, do you have any other
10 comments that you wish to direct to us?

11 MR. THIMELL: We have an administrative problem
12 as well. Given the latest of the congressional action and
13 this particular meeting, it is not in fact going to be
14 administratively possible for us to complete the processing
15 of the new grants and contracts and getting checks mailed
16 out to everyone on January 1st.

17 It is not the first time this has happened unfor-
18 tunately. The action was similarly delayed in 1983 when we
19 did not get an action until December 22nd. What was necessary
20 was to in fact extend everybody's grants and contracts for
21 a three-month period to allow continuation while the grant
22 renewal process was completed.

23 We also have a problem in that while we have been
24 reviewing the initial submission of November 15th, we have
25 found that approximately half the programs have not supplied

1 adequate information in parts of their applications, or it
2 has been incomplete or vague. So we are sending out a request
3 for additional information to those programs and allowing
4 them an additional two months to in fact supply that with
5 the rest of their submissions.

6 Therefore, at this time we feel that it is going
7 to be necessary to extend the grants and contracts for a three-
8 month period given the shortness of time and the administrative
9 difficulties.

10 MR. SMEGAL: Let me comment. I can certainly
11 understand in view of the change in circumstances, in view
12 of the change in the grant application procedures and probably
13 the lateness of those applications going out. It makes good
14 sense to give the field programs the opportunity to correct
15 any deficiencies.

16 If that is what the purpose of the three months
17 would be, I would certainly be in favor of it. I assume at
18 the end of that three months we will have given them that
19 opportunity.

20 As I understand in years past where they have had
21 regional offices to practice this on, they have had an
22 opportunity to present their grant applications, get them
23 reviewed, get them back with the indication of where they
24 should add information.

25 That have not got that available to them this year.

1 They are coming directly to headquarters. So I think if that
2 is the purpose here, I am certainly in favor of it unless
3 I can hear something to the contrary.

4 MR. COSTER: It is worthy to note that the applica-
5 tion itself is notably different. It was reported to me by
6 the grants task force people that over 50 percent of the
7 application require either telephone or written followup

8 It is not anything glaring but in many cases it
9 is amplification of they did not follow up properly with
10 information we are receiving. So there is a legitimate
11 delay of the proper processing of these grant applications.

12 MR. SMEGAL: One of the things that Mr. Mendez and
13 I were concerned about a couple of months ago was whether
14 they would have the opportunity to get their board together
15 and approve the application. Are you finding that that is
16 a deficiency, that they have not had an opportunity to get
17 their board president signed on?

18 MR. THIMELL: Approximately 40 percent were unable
19 to have a board meeting before the November submission, and
20 they had until the 15th to in fact get that done. I do believe
21 that most of them in fact bought it by the 15th.

22 MR. SMEGAL: So that is not a problem?

23 MR. THIMELL: That is not really the problem here,
24 but there is simply a shortness of time that it takes the
25 grants officing a certain amount of physical time simply to

1 run these things through the office once they have received
2 authorization. It takes a certain amount of time for the
3 controller's office to process the checks.

4 There simply is not enough time in addition to the
5 other concerns to in fact do that. We think it would be
6 a so much wiser course, more orderly course of business to
7 grant them an extension as we have done in the past and
8 complete this in a very careful way.

9 CHAIRMAN MENDEZ: Do you have any other comments?

10 MR. EAGLIN: Well, I will wait for their comments
11 before I ask my question.

12 CHAIRMAN MENDEZ: Do you have any other statements?

13 I will get to you in a couple of minutes, Terry -- excuse
14 me, John. I want to get to the board first and then I will
15 get to you.

16 MR. EAGLIN: Mr. Chairman, my comments relate to
17 the August statement which is the last that we received. I
18 would like to ask you based on your meeting with the
19 accountants whenever it was, a couple of weeks ago, is there
20 any clarification that you could give to us now about the
21 figures that we had back in August.

22 For example, the notes pointed to grant contractual
23 commitments and program development. Has anything changed
24 there where we might be able to find resources for Clearing-
25 house. I could remind you that Clearinghouse at this time

1 had already drawn, in fact overdrawn, and we still had funds
2 in other categories.

3 CHAIRMAN MENDEZ: Paul, if we continue this for
4 three months and keep funding everyone for three months at
5 last year's level, I think that by the end of the three-month
6 period we would have all of the data in and be able to
7 discover that,

8 In fact, on that specific question, have that by
9 the January meeting.

10 MR. THIMELL: If we do not have the funds to do
11 it that way, we are going to be back in the box in April.

12 CHAIRMAN MENDEZ: Well, we may be in the box in
13 April.

14 MR. THIMELL: We will have spent several thousand
15 dollars we don't have.

16 MR. DURANT: How will that happen?

17 CHAIRMAN MENDEZ: Well, the Clearinghouse gets
18 one quarter of \$865,00 for example.

19 MR. DURANT: All right.

20 MR. SMEGAL: Are we still talking about Clearinghouse?

21 CHAIRMAN MENDEZ: Yeah.

22 MR. SMEGAL: It seems to me -- my recollection does
23 not come easy as I get older, but it seems to me that during
24 the course of the year we had some kind of understanding that
25 they were going to take a 10 percent cut and that was it.

1 To cut them 100 percent is pretty dramatic.

2 I do not see on a staff recommendation how we are
3 going to do that. That is inconceivable to me. What basis
4 is there for cutting out a program completely at this point
5 because we have to shuffle some money around.

6 MR. COSTER: I think the staff had concentrated
7 on services and functions being provided rather than entities
8 being supported. Clearly we need more information on what
9 we are going to do to replace the skeletal function of the
10 National Clearinghouse, but there is significant evidence
11 of staff sentiment and staff experience with the Clearinghouse.

12 In fact they are not performing the function in
13 an effective, efficient businesslike fashion. We need to
14 find an alternative vehicle. Now, in addition I am telling
15 you we do not have an alternative vehicle designed yet for
16 the best recommendation of what we are going to do.

17 We do not intend to delete that function from
18 Legal Services Corporation but rather to find another way
19 to perform the basic functions that Clearinghouse served.

20 We are not talking strictly on finding three quarters
21 of a million dollars or more by throwing away a function that
22 the Corporation was provided.

23 MR. THIMELL: Either inherent or implicit of what
24 you just said, Mike, is that you have some information that
25 I do not have which is some report on the Clearinghouse. You

1 have my report?

2 MR. COSTER: I came into this. I do not know where
3 it all came from. I just know that there is information that
4 you and I do not have that partly brought this about.

5 MR. WALLACE: Who has it?

6 MR. THIMELL: Well, during the course of the year
7 we heard from them. There was somebody here from the
8 Clearinghouse. They testified. We listend to them. We
9 changed 21.6 percent reduction to 10 percent. They are not
10 here today are they?

11 MR. COSTER: Yes, I believe they are. I think
12 we stated very clearly it is not our first budget. It is
13 not our most favorite budget. We submitted that in April.
14 We were comfortable with that one.

15 The bottomline is that it was less than \$13 million
16 that we had any real pressure with.

17 MR. WALLACE: That depends on your view of
18 lesgislation.

19 MR. THIMELL: That is correct, but short of taking
20 a substantial additional cut in management and perhaps cutting
21 out the CSR project which has already been -- we have already
22 bought the hardware for it. Short of cutting program develop-
23 ment which has already been cut by 20 some percent, there
24 just is not any dollars available in this budget.

25 MR. COSTER: Well, we had a little discussion a

1 few minutes ago about it was 150,000 here and we got that
2 back already. Do you think the CALR grants applied here,
3 we got some money back. It seems to me --

4 MR. WALLACE: Well, now that is the way to do it.
5 That is where your three months can come from. That will
6 get you through three months anyway while we are figuring
7 out what we are doing.

8 MR. THIMELL: Not quite.

9 MR. WALLACE: Yeah, but it is close, close enough
10 for government work.

11 MR. COSTER: It is just a decimal point.

12 CHAIRMAN MENDEZ: All right, I have a -- unfortunatel
13 you were not here so I could not consult with you, but I have
14 consulted with various members of my committee. I think the
15 committee is really inclined to fund the Clearinghouse at
16 365 -- excuse me the 865 rate but proportionately for three
17 months like we will do with the field programs. At the end
18 of three months we review it again.

19 Now, last year it was at 9 something but we are
20 going --

21 MR. EAGLIN: 961.

22 CHAIRMAN MENDEZ: 961, but we will do it at the
23 865 which we proposed originally. When we come back in 90
24 days re-examine that. It is my expression here as well that
25 the Corporation will draw down its budget at the same rate

1 for the 90 days as it did last time.

2 MR. DURANT: Can you legally do that? Are you
3 changing the terms and conditions of the grant?

4 CHAIRMAN MENDEZ: We are continuing the grant.

5 MR. DURANT: But to continue it is at 961 isn't
6 it?

7 MR. THIMELL: Well, last winter or the last three
8 months?

9 MR. WALLACE: Yeah, you can -- we have not entered
10 into any contracts now.

11 CHAIRMAN MENDEZ: We have not entered into any
12 contracts. With the other ones, we are going to continue.
13 This one we will enter into a contract at 865 for three months.
14 Do we have somebody from the Clearinghouse here?

15 MR. MOLA: Mr. Mendez, I would like to speak and
16 I am sure Mike would like to speak if you are going to make
17 a decision about restoration of Clearinghouse money and funding
18 for the first three months of 1986.

19 CHAIRMAN MENDEZ: Let's let these gentlemen -- we
20 will get to you before we take a vote. Okay.

21 MR. GESSNER: Am I to assume that you are directing
22 us to --

23 CHAIRMAN MENDEZ: Well, you are not going to assume
24 anything until these gentlemen get done.

25 MR. GESSNER: All right. Are we then to --

1 CHAIRMAN MENDEZ: I think the best thing to do is
2 hear from the public and then we will make our final decision.

3 MR. MOLA: Mr. Chairman, let me start out with a
4 very honest and frank statement that Mr. Thimell's comments
5 about the calendar catching up with him is absolutely
6 outrageous.

7 We have reached agreement back in September on what
8 this calendar was going to look out for the balance of 1985.
9 We agreed to a very, very tight deadline on the refunding
10 applications for field programs. Everyone of those programs
11 or nearly everyone of those programs had adhered to our part
12 of the bargain, to get the refunding applications in on time
13 with the board vote included. Part of --

14 CHAIRMAN MENDEZ: Let me ask this question. They
15 told us that around half of them have not given us adequate
16 information.

17 MR. MOLA: That is my next point, Mr. Mendez. If
18 you recall that meeting, you required them to make telephone
19 calls immediately upon the finding of either incomplete or
20 omitted information. I do not know of any program in this
21 country that has gotten a call from that staff.

22 Now, that is used as a reason why we are not going
23 to get the money that is due to us the week of 12/30. I think
24 it is outrageous.

25 CHAIRMAN MENDEZ: If you have got 150 programs that

1 are asked --

2 MR. MOLA: That is their problem. That was our
3 agreement in September. They did not even make a good faith
4 effort to try to do it, and now you are holding their mal-
5 feasance or nonfeasance to our detriment. Absolutely
6 outrageous.

7 MR. THIMELL: That is simply not correct.

8 MR. MOLA: How many people have you called?

9 MR. THIMELL: First of all, the level of adequacy,
10 the problem with most of these funding applications is not
11 simply a blank space or failed signatures or something like
12 that. Programs that clearly omitted information, that would
13 have resulted in a denial of their funding until it was
14 granted, were in fact called immediately.

15 As soon as we went through a checklist to verify
16 whether or not very minimal standards were adhered to, the
17 problem lay primarily with the substance and the quality
18 as it where of the narratives. Most of them are cited for
19 being very vague and they are simply not addressing all the
20 issues.

21 It is not possible in the time frame that you are
22 talking about to contact each and every one of these programs
23 by phone and discuss with them precisely how it was vague,
24 where it was vague and what have you. Those letters are in
25 fact in the mail now.

1 That has been ongoing, but it was a very painstaking
2 process to qualitative assess 340 some applications. It is
3 not something that you just pick up the phone and then it
4 was obviously there. You had to be able to go through it.
5 It was a long review. It involved a number of people who
6 reviewed these things.

7 We compared their notes and came up with some
8 qualitative assessment of what was wrong.

9 MR. DURANT: What was the September agreement?

10 MR. THIMELL: The September agreement as I recall
11 was that if there was anything missing from a refunding
12 application that would have caused the program to not be
13 refunded, they would be called as soon as that was known.
14 That has in fact happened.

15 Frankly, in the past what happened to these kind
16 of problems, we would have said fine. We will just ignore
17 the fact that the programs are not responsive. We will give
18 them their money.

19 MR. WALLACE: How many programs? I mean you say
20 you have called the people who would have got zeroed out
21 automatically when you looked at that.

22 MR. THIMELL: I do not have an actual figure on
23 that. I suspect it is on the order of between 10 and 20.

24 MR. WALLACE: Okay.

25 CHAIRMAN MENDEZ: Were there actual phone calls?

1 MR. THIMELL: That is my understanding. I did not
2 place those phone calls.

3 MR. WALLACE: You say that there is another 100
4 programs that have serious problems, and they have been
5 written letters?

6 MR. THIMELL: That is correct.

7 MR. WALLACE: And those letters went out when?

8 MR. THIMELL: My understanding is that they were
9 going out the beginning of the week.

10 MR. DURANT: You mean the beginning of this week?

11 MR. THIMELL: Yes.

12 MR. COSTER: Some of the minor problems have been
13 contacted by telephone for additional detail or different
14 numbers, not fatal flaws, in the case of 10 or 20. Others
15 were just additional information needed to be collected by
16 phone.

17 There have been flaws that have required intervention
18 that were backing up the paperwork by the grants task force
19 which I am not a member in over 50 percent of the applications.
20 We are screening these applications. We are not buying what
21 we are being told. We are being tested and evaluated by some
22 people who have been asked to be on that task force because
23 they understand what the Corporation is doing.

24 I do not know if refunding applications have ever
25 received the scrutiny that we are getting now. The grantees

1 were asked to prepare an application the likes of which has
2 never been put on them before. The staff that does those
3 things I guess -- I do not even know where most of them come
4 from, are asked to screen those applications on the application
5 blank they have never had.

6 So it is new, and no one is pleased and unfairly
7 new -- no one is pleased with the timing situation on it,
8 but we are attempting to make a cooperative effort..

9 MR. MOLA: It is nothing that we did not know or
10 anticipated. We went through this detail by detail. We knew
11 we were going to have these problems. We tried to reach a
12 scheduling agreement that was not going to have this work
13 to the detriment of the field.

14 They did not do their jobs. We did our jobs for
15 good reason or for not for good reason, and now we are going
16 to be held to the detriment of their nonfeasance. I mean
17 it is not fair.

18 MR. COSTER: I am not convinced that you as represen-
19 ting all the programs that did that.

20 MR. MOLA: They knew that we were going to be review-
21 ing these for the first time in-house.

22 MR. THIMELL: I do not see it as any detriment being
23 held here. What we are saying is in fact everyone will be
24 extended for a three-month period, will continue to get the
25 same funding that they got and are getting currently, on their

1 exact same terms and conditions as they are currently receiving
2 those funds, to maintain the same level of operation. Nothing
3 is being cut back one iota to anyone.

4 MR. MOLA: Joel, we have a conference report that
5 says that we are to get funding at a specified level and for
6 basic field programs that was not continuing at any '85 levels.
7 It is with 4.2 percent increase, and that is what we want.

8 MR. THIMELL: Adjustments will be made as soon as
9 that is possible with the grants to reflect --

10 MR. WALLACE: Let me say this right now. As far
11 as I am concerned maybe it will cut off a lot of unnecessary
12 argument about what is legislative history and what is not,
13 but anybody that listened to my confirmation hearings and
14 anybody that has been sitting in my opts and regs hearings
15 for the last year -- I may not have said it in board meetings,
16 and I may not have said it in appropriations committee meetings,
17 knows what I think of legislative history.

18 I have said it before. If Congress wants to send
19 me a message, there is only one way to do that. That is to
20 put it in the statutes at large. Statutes at large remove
21 all restrictions on our grant making authority, and the report
22 says something different.

23 The statutes at large have control over the
24 Congressional Record. So you have not got -- Congress has
25 not told us to do anything. Now, I am ready to wait 90 days,

1 and if Congress wants to tell me to do something, then I will
2 do it. Right now I have not been told anything except to
3 run this corporation according to the underlying Act.

4 MR. SUMMER: May I make a comment?

5 CHAIRMAN MENDEZ: You have to come to the microphone.

6 MR. SUMMER: I just have a question.

7 MR. WALLACE: State your name.

8 MR. SUMMER: My name is Errol Summer. I am with
9 Costaban Legal Services. I just have a question that if we
10 are being paid at three months on the basis of the Corporation's
11 inability to review these applications you know as kindly
12 as we, you know burning the midnight oil did in submitting
13 them to the Corporation by the November 15th deadline, we
14 have got a February 3rd deadline coming up too.

15 We are supposed to be preparing our 1986 budgets
16 right now. Do we prepare them on the basis of you know the
17 figures, the 1985 level, and then are we supposed to amend
18 them and submit them to the Corporation after another three,
19 four months after the February 3rd deadline?

20 MR. WALLACE: Which February 3rd deadline? I am
21 not familiar with it.

22 MR. SUMMER: February 3rd deadline is the other
23 half of the refunding application which includes the functional
24 accounting reigamarole, the budget marks for 1986. My boards
25 meet next month, and we are going to have to submit that by

1 February 3rd.

2 If we are going to have this kind of a deadline
3 mixup from the Corporation now with just the first half, are
4 we going to have the same kind of mixup you know coming
5 June or July, and April when you all meet again after this
6 three-month funding is over? Are we going to get the same
7 kind of thing saying there are 150 programs who have something
8 wrong with their February 3rd submission and as a result we
9 are going to continue to process to route all of '86?

10 MR. WALLACE: Well, if there are 150 programs that
11 really have something wrong, I would think that is possible.
12 I mean I know you burned the midnight oil. What the staff
13 is telling us is that they did not get the information they
14 need to make the decision.

15 It is not a question of whether we are physically
16 capable of monitoring 300 proper applications. Apparently
17 we did not get 300 proper applications. We got 150 goods
18 ones and 150 bad ones.

19 I do not know whether that is fact or whether it
20 is not because I have not looked at 300 applications. That
21 is what the staff says is the problem, and I cannot jump on
22 the staff if they are getting bad information from the field.
23 They may be right. They may be wrong.

24 MR. SUMMER: My only response is that you know we
25 did not even get the refunding applications themselves until

1 the latter part of October. We were asked to have the
2 November 15th deadline. You know there was only an extension
3 with regard to the board vote.

4 You know why can't the Corporation work tenaciously
5 too to get these letters out. We have been told that they
6 have gone out this week, I mean this Wednesday to date. I
7 do not know for sure that my program is one of those that
8 has received it.

9 I have not gotten any calls. I have not spoken
10 to anyone that has gotten any calls. I just do not understand
11 why they cannot operate under the same deadlines as we on
12 that.

13 MR. WALLACE: I will tell you why. You all have
14 been set up in your operations for quite a few years. This
15 is a whole new ball game at the Corporation. It is a new
16 board. It is new people, and if they tell me they have got
17 a problem in the data they are getting, I am not going to
18 commit my money for 12 months until I know whether or not
19 they have got good data or bad data.

20 When I know the answer to that question, then we
21 will commit the money. The one thing that I learned in this
22 year is running this thing by remote control by a board
23 of directors is a crazy way to run this railroad. We cannot
24 know what is going on, but they tell us that have not got
25 the data.

1 They tell us the field has not done a good job,
2 and until I know the answer to that factual dispute, I am
3 not going to commit money for 12 months. I just cannot do
4 it.

5 MR. SMEGAL: Mr. Chair, in hearing all this it seems
6 like we have got two different situations here. You have got
7 the programs who apparently need to provide more information
8 to be in compliance.

9 You have got a whole bunch of other programs like
10 a couple of hundred if my math is correct who apparently are
11 in compliance. I see no reason why we should be delaying
12 their grants. That are a couple hundred of them right now.

13 The maximum problem as I understand it is the 100,
14 possible 10 or 20 more and I do not know whether it is an
15 inclusive 10 or 20 in addition to, but even if it is 10 or
16 20 out of a 120 programs versus 300 and how many grants. It
17 is considerable over 200 programs that have done, that have
18 filed an appropriate grant application. It is in order, and
19 there is no reason to hold up their funding for three months.

20 MR. THIMELL: The problem is larger than just this
21 part of the refunding application. As I prefaced the whole
22 situation there is a very shortness of time that is left to
23 in fact finish processing the paperwork that is necessary
24 to actually issue grants and cut checks.

25 There just is not enough time even if you are talking

1 about 150 programs as opposed 350 programs. Even the programs
2 that have in fact received, submitted all the information
3 would not be asked to submit all the information, may in fact
4 be given new special grant conditions on their funding.

5 Others have to be determined. There is a whole
6 series of additional steps that goes with renewing or making
7 a new grant as opposed to simply extending it at this time.
8 Even an extension is going to be very hard pressed to in fact
9 get money out before January 1st simply to continue their
10 level of operation.

11 MR. MOLA: I tell you this is an embarrassment.
12 It is an absolute embarrassment. There is work to be done
13 that was known about four months ago, and they did not do
14 it. We have to move forward again on a deadline --

15 CHAIRMAN MENDEZ: John?

16 MR. MOLA: Excuse me.

17 CHAIRMAN MENDEZ: Tell me when your appropriation
18 came through and tell me when we knew about the riders.

19 MR. MOLA: The appropriation has nothing to do with
20 it. Coster said he could have cut the checks for the 23rd.
21 He just found out what the funding level was. That is not
22 the problem.

23 This is not the problem. They did not do the work
24 on the refunding applications. They did not get their grant
25 documents together. I can image what the review is going

1 to show. Any time they had a question about any application,
2 they should have called us and given us immediate notice and
3 rectified it weeks ago. It has been months since we submitted
4 those things. It is an absolute embarrassment.

5 (Applause.)

6 MS. EISENBERG: Eleanor Eisenberg, Chairman of the
7 Smith Regional Project Association. I would like to come
8 back to Mr. Wallace's point. I have been and I think the
9 field has been under the impression, and hopefully you will
10 correct me if I am wrong that there was some dialogue between
11 the Corporation and Congress.

12 There was communication by the Corporation that
13 it would abide by the Congress language. If that is not the
14 case, I would like to know that. If that is the case and
15 if what you are saying is that you are not going to abide
16 by the Congress language, I would like that assurance.

17 MR. WALLACE: I missed the beginning of your state-
18 ment because I thought it was for Terry, but if it is in
19 response to what I said, let me try to answer it.

20 I do not speak for the board. I do not speak for
21 the Corporation. I have been speaking only for myself quite
22 plainly all year long. You know I spoke for myself when I
23 got confirmed. The '86 budget mark was before them at the
24 time. They knew what I was going to do.

25 I told everybody usually with regard to regulations

1 because that is what I do most of the time on my committee
2 is that I believe Congress speaks only through the statutes
3 at large. I was reading the National Law Journal on the way
4 out here, and Judge Spaletta under the D.C. Circuit wrote
5 the opinion the other day that says, you ought to read
6 statutes and not committee reports.

7 I believe that, and I have always said that. I
8 do not know what comments went back and forth between other
9 people during this process, but I have a fiduciary duty to
10 abide by the LSC Act until it is superseded by something else.

11 The Act tells me to use my best judgment as to how
12 the money is to be distributed. That is what I am going to
13 do until somebody relieves me of that statutory duty. That
14 has not happened.

15 MS. EISENBERG: Perhaps somebody else can answer
16 that question that has the dialogue of Congress, that has the
17 appropriation language itself to abide by.

18 MR. DURANT: Eleanor, there have been a number of
19 conversations with Congress and with all the appropriate people
20 involved in any understandings and agreements that were placed
21 during those conversations will be honored.

22 MS. EISENBERG: Can we get some information now
23 about what those commitments and agreements are?

24 MR. DURANT: Not at this point.

25 MR. MOLA: Mr. Chairman, one last point if I may.

1 This is nonprecedented situation. In 1983 the staff also
2 could not get the paperwork done in time. People were given
3 their new level of funding, and there was a little notice
4 that went out after we fought about getting the checks out
5 on time. It said you endorse these checks. You accept the
6 grant commitments.

7 The same thing can be done this year. You can give
8 us our grant checks the week of the December 23rd at '86 levels
9 with a notice that says that we are going to endorse the grant
10 assurances that we have already signed in the refunding
11 applications.

12 MR. THIMELL: That is not quite what happened in
13 '83. In '83 the funding levels were precisely the same as
14 it was in '82. So there were not any funding levels to be
15 discussed. They were not any changes in terms and conditions
16 because Congress said there were not going to be any changes
17 in terms and conditions.

18 So it was simply a rollover and it did not matter
19 what you called it. We are in a completely different
20 circumstance where there are in fact changes in the terms
21 and conditions being enacted by the board.

22 In fact there are different funding levels. Therefore
23 there is not a parallel situation here.

24 MR. VALOIS: Mr. Chairman, I know you want to go
25 to 10:30, but it seems to me that you have taken up an

1 unordinary amount of time on this. I do not frankly see what
2 why it is such a big deal. All due respect to John who speaks
3 plainly and clearly, we are not talking about not giving
4 people money.

5 We are talking about continuing to give people money.
6 It seems to me that if the staff is at fault, the field is
7 equally at fault by not filling out forms properly. I frankly
8 do not want the staff to be giving money out until people
9 have complied with simple instructions.

10 If this comes to a vote before the board, I am
11 certainly going to agree to give the staff the extensions
12 which sounds reasonable to me.

13 CHAIRMAN MENDEZ: John -- Terry, excuse me?

14 MR. ROCHE: May I speak partially in response to
15 Mr. Valois. In terms of what is at stake, there are budgets
16 that have been adopted by local boards. There are union
17 contracts under negotiation. There are plans being made
18 for expenditures in the first quarter at the 1986 level.

19 My sense is that those things ought to be obvious.
20 You are hearing from staff vague references about some kinds
21 of noncompliance, but nobody has told you anything specific.

22 Before you permit this particular action to occur,
23 you can tomorrow morning or late tonight, very quickly call
24 Washington, get specific numbers as to what kinds, what
25 programs have made what kinds of mistakes. When did the

1 letters go out. You can get very specific information which
2 at least you owe to the field of the Legal Services community
3 before you permit simply extensions of funding whenever at
4 1985 levels in the face of what may not be necessarily
5 legislatively compelling but is certainly an agreement between
6 somebody on this board and the Senator that runs the
7 appropriations committee.

8 I think you owe us that specific information, and
9 you have got staff back there that can give it to you before
10 the board meets tomorrow.

11 (Applause.)

12 MR. EAGLIN: Mr. Coster, are you indicating that
13 you can do that?

14 MR. COSTER: Supply that information over the
15 phone?

16 MR. DURANT: Let me ask you this, Michael, why was
17 the decision made from a staff standpoint to go with '85 levels
18 as opposed to '86 levels? I mean if it is an application
19 problem.

20 MR. THIMELL: It is not an extension then. You
21 are entering then into a new grant, a new contract. Therefore
22 it renders moot the whole problem which is in fact processing
23 the new grant or contract and assuring that you have refunded
24 them appropriately whether it be with the proper terms and
25 conditions, whether you have certified for your own satisfaction

1 that they are in fact in compliance with all the relevant
2 areas at issue, and then whether in fact you know we should
3 appropriately enter into a grant and contract. That is really
4 what is at issue here, is the staff's ability to state
5 affirmatively in each of these instances that these programs
6 are in compliance. That they have sufficient information
7 about what they are doing. They did provide what was
8 necessary, and that we can attach the appropriate terms and
9 conditions to the appropriate grants.

10 That is just not possible given the time that is
11 left to us, and given the fact that so many of these refunding
12 applications simply lack that kind of material.

13 Some of the things for example are on board
14 composition, and there are numerous applications as indicated
15 with excessive vacancies or they are out of compliance with
16 the number of attorneys that are on the board, these sorts
17 of things.

18 We simply would have to deny those applications.
19 We would just simply say, I am sorry. You are not in compli-
20 ance with 1607. We cannot refund you at this time.

21 This allows those programs three months to get in
22 compliance. A substantial number of these programs we would
23 have to recommend denials at this time. Not all of the 150.
24 There may not even be 10 percent, but there are certain programs
25 under the current circumstances that we would recommend

1 denials.

2 We feel that this is a much better way to allow
3 everybody a chance to make good on their applications.

4 MR. DURANT: Joel, are you also saying that there
5 are roughly 200 programs who are in compliance?

6 MR. THIMELL: I think the number I used was closer
7 to half.

8 MR. DURANT: Well, whatever.

9 MR. THIMELL: That met an adequate level of dis-
10 closure that we could based on that then go to -- we have
11 the information that we could then go through and begin the
12 process, catching whatever terms and conditions that are
13 necessary and proceeding with entering into new grants or
14 contracts with them.

15 That process however takes times. It is not simply
16 a question of putting a stamp on a piece of paper. You still
17 have to with each individual program evaluate what are the
18 appropriate situations.

19 We are not in a situation of making a blanket
20 refunding at this time. We are attempting to evaluate each
21 of the programs individually.

22 MR. SMEGAL: Are there terms and conditions that
23 are not in the grant applications?

24 MR. THIMELL: The special grant conditions could
25 and are quite likely to be attached to the --

1 MR. SMEGAL: For example what are the special
2 grant conditions?

3 MR. THIMELL: The special grant conditions in this
4 instance might have been a request for certain information
5 that has been requested. It may be a certain program is not
6 allowed funding until they are in compliance.

7 MR. SMEGAL: But are you talking about those 100
8 though? You are not talking about 326.

9 MR. THIMELL: Some of the programs we may have
10 decided submitted enough information. There may be other
11 deficiencies in their operation which we wish to address whether
12 it is information attributing to their monitoring reports
13 which is just a weakness in some of their activities or some
14 other such.

15 MR. SMEGAL: Are these monitoring reports you have
16 in hand?

17 MR. SMEGAL: They would be monitoring reports in
18 hand if the decision was made on that basis.

19 MR. COSTER: We are not holding off on any decision
20 awaiting any monitoring reports if that is the question.

21 MR. SMEGAL: So then do I understand then that any
22 refunding decisions that will result from a three-month
23 delay after the board goes forth, will not result from
24 monitoring reports that were developed or initiated between
25 now and April 1, 1986. Is that correct?

1 MR. COSTER: No.

2 MR. THIMELL: There is not anything contemplated
3 yet. Any and all information will be used when refunding
4 is in fact contemplated. If we have new information in the
5 next three months, it will be used of course, but the point
6 is, is that we are not holding back because that is contempla-
7 ted.

8 It is simply that we have to take the information
9 we in fact have to make --

10 MR. COSTER: It would be careless to ignore any
11 new information that becomes available.

12 CHAIRMAN MENDEZ: Now, we have hammered this to
13 death with you gentlemen. I want to hear from the field.
14 You have made your comments, John.

15 MR. MOLA: I have other comments on the '86 COB.
16 I will reserve those.

17 CHAIRMAN MENDEZ: I would like to hear from various
18 other people first, and then we will come back to you.

19 MR. MOLA: Thank you.

20 CHAIRMAN MENDEZ: Why don't one or two of you move
21 off the podium. This gentleman is first. Then you can go
22 second.

23 MR. THIMELL: If I could make one last point. This
24 seems to be material about the levels involved. The programs
25 are still going to get two months funding up front, and then

1 that additional grant check through this period. So in fact
2 they will have received more than one-fourth of their funding
3 during this period.

4 MR. SMEGAL: They will get a third.

5 MR. THIMELL: It would be in fact more than whatever
6 adjusted level. They will actually have it in hand, but the
7 issue of course they will not be able to bank it until
8 December, but the cash is going to be there. So the budgets
9 are not going to bust.

10 MR. SMEGAL: Well be that as it may, that is cer-
11 tainly what has happened every year. So that is nothing new.
12 We are not doing them a favor by doing that. That has
13 happened every year for at least 10 years.

14 CHAIRMAN MENDEZ: But at least they are protected.

15 MR. SMEGAL: Well, yeah, but the circumstances are
16 that we want to continue to follow up on is that we have
17 got a number of programs which did everything that they were
18 supposed to do by November 15th. They are now in total
19 compliance. We voted early in the year for a 4.2 increase
20 for those programs.

21 Congress in its joint explanatory statement puts
22 that in paragraph one under Amendment 112, and now we are
23 suggesting that we are not going to do that. Somehow we are
24 not going to do what we said we are going to do or what Congress
25 suggests we might want to do. We are going to prolong that

1 decision for another --

2 CHAIRMAN MENDEZ: Well, we later said that we were
3 going to take the 4.2 percent, one portion of it and use --
4 we would cut it back somewhat after our initial presentation
5 to Congress.

6 MR. WALLACE: What did we cut it back to, 4.0 or
7 something?

8 CHAIRMAN MENDEZ: An odd percentage.

9 MR. WALLACE: Okay.

10 CHAIRMAN MENDEZ: I want to make sure we get you
11 to the right microphone. If you are sitting over there, you
12 are not going to be on the right microphone. You are okay.
13 I was talking about John. Please?

14 MR. LEONARD: Thank you. My name is Michael
15 Leonard. I am the director of the National Clearinghouse
16 of Legal Services in Chicago. I would like to talk to you
17 about the proposal by the staff to eliminate funding for the
18 Clearinghouse for 1986.

19 First I should say I was invited by Joel Thimell
20 in November of this year to speak at this board meeting about
21 the 1987 budget mark for the Clearinghouse, not the 1986
22 budget.

23 Secondly, on December 3rd, in the morning, the board
24 members of the Clearinghouse and I met with three Legal Services
25 Corporation staff members, Charles Jarvis, Vice President,

1 Joshua Brooks, Acting Director of Field Services, and Clifford
2 Cook, Chief of Staff for Mr. Watson.

3 We discussed the upcoming 1986 contract for the
4 Clearinghouse. I asked if the Corporation had any concerns
5 that they would like to speak about, and they had none. They
6 deferred action. I was advised by Mr. Brooks that he would
7 get back to me in about two weeks.

8 The December 13th staff proposed budget recommending
9 zero funding is the first I have heard from the Legal Services
10 Corporation. I was advised of the proposal to cutting our
11 funding to zero by John Mola.

12 I was not advised by any member of the Legal Services
13 Corporation staff. I have received no phone calls and no
14 letter from anyone from the Corporation about this.

15 CHAIRMAN MENDEZ: Let me ask you a question. You
16 understand that we proposed the 10 percent cut?

17 MR. LEONARD: That is correct.

18 CHAIRMAN MENDEZ: Now, are you willing to accept
19 the 10 percent cut?

20 MR. LEONARD: Correct. The Clearinghouse, I
21 understand --

[EndT-2] 22 CHAIRMAN MENDEZ: Just a minute.

23

24

25

DOM-1 1 MR. SMEGAL: Of course, the problem, Mr. Chairman,
12-18-85 2 is the same one that they were articulating earlier with
3 respect to all the programs.

4 If we give them a funding level different, then,
5 they have-- probably, in effect, will have a new contract
6 with them.

7 We might get a private contract too.

8 MR. MENDEZ: They're on a contract, and we can
9 write it for three months.

10 No, they are not a field program; you are not
11 a grantee; you are under contract.

12 MR. LEONARD: We have a contract funded under
13 section 10683 under your contract.

14 MR. MENDEZ: I don't know -- can I --

15 MR. WALLACE: We're cutting off on 1987. I mean,
16 what you're saying involves '86, and we still want to talk
17 in some point about '87.

18 MR. MENDEZ: '87 is another issue, but we're
19 not addressing that right now. You may want to address
20 yourself on '87 later.

21 Hold on one second. Are we in pretty much of
22 in agreement, at least for three months, whatever we do --
23 I'm going to cut you off, because I think you are going
24 to get your money.

25 MR. WALLACE: I would like to say a couple of

MOOM-2

1 things for the record.

2 MR. MENDEZ: All right.

3 MR. WALLACE: We have attributed to members of
4 the Board two letters, one of July 6, 1982, letter from
5 Robert Stokes, Executive Assistant, Attorney General, State
6 of Georgia, at the time was on the LSC Board, and which,
7 in part, says:

8 "When I was teaching, I found coverage of recent
9 issues in the Clearing House, that is to be extremely
10 valuable to me in the preparation of my course material. I
11 am sure that through the years, practitioners in the areas,
12 covered by the Review have been equally benefited.

13 On the reverse side of that page, the July 7
14 letter from William Harvey, at the time, Chairman of
15 the LSC Board, which, in part, says, after I had sent him
16 some Clearing House materials, and he had read them and
17 found them to be very informative.

18 The second thing that I had attributed to the
19 members of the Board were sample comments from a reader's
20 survey at the Clearinghouse conducted in October, and con-
21 tinuing to conduct, there were approximately 60 comments
22 covering eight pages of -- and they include, for example,
23 if the Legal Services' attorney had only one publication,
24 the Clearinghouse would be it -- one Galbreath from Toledo.

25 MR. MENDEZ: Can I stop you right there?

OM-3

1 MR. WALLACE: Yes.

2 MR. MENDEZ: When we do decide what we're going to
3 do with you until 1987, that's exactly the question I
4 want answered, because Legal Services attorneys don't
5 have only one publication; they have lots of publications,
6 and I read Clearinghouse, and there are some good things
7 in there; they do a fine job.

8 I'm not sure there is something in Clearinghouse
9 that we can't get in all the other publications that we've
10 all got.

11 We don't have just one publication, and there
12 is something that you're doing that can't be gotten anyplace
13 else.

14 MR. WALLACE: Correct.

15 MR. MENDEZ: That's going to be the controlling
16 question.

17 MR. LEONARD: We are the only journal in the
18 country that covers poverty law in the law -- poor people
19 in the law; the only journal that does that exclusivey.

20 MR. MENDEZ: All right, for the record, I want his
21 letters and his survey comments attached to the record.

22 MR. LEONARD: If I could indulge you for just
23 a few more minutes. I understand that Representative Neal
24 Smith has contacted Mr. Wentzel, or has tried to contact
25 Mr. Wentzel to say that the staff proposal to fund the

MOOM-4

1 Clearinghouse is contrary to the intent of Congress, and
2 I would suggest that you ask your staff, as you did with the
3 CAR (ph) issue, to contact members of the Senate and House
4 about the Congressional intent.

5 MR. WALLACE: We're going to have one here tomorrow
6 and I'll bet he won't say the same thing as Chairman Smith.
7 (Chuckling).

8 MR. MENDEZ: Do you have any other comments?

9 MR. LEONARD: Well, I have plenty of comments.

10 I would also say, Mr. Coster referred to some
11 reports or something that indicates the Clearinghouse is
12 not doing a good job.

13 The Clearinghouse was last monitored by LSC in
14 March of 1980. I was advised in the summer of this year
15 by -- a staff person that we could expect a monitoring
16 visit in the fall. That has not occurred.

17 The Clearinghouse -- commissioned an evaluation
18 of our activities in January and February of this year;
19 a report was prepared in April, which was a favorable
20 report, a very favorable report, and I have provided a copy
21 of that to the LSC staff; and I would like Mr. Coster, if
22 you don't mind, to come back tomorrow, or give me today,
23 a list of these reports that purport to say that we are
24 not doing a good job; and I would like that opportunity
25 to have copies of it.

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MR. MOLA: Mr. Chairman, if I may, a couple of --
just a couple of points in the '86 C.O.B.

MR. MENDEZ: Just to make sure. You can hear
John in the back?

MR. MOLA: The first one is to wholeheartedly
on behalf of the field support Mike's presentation
in terms of Clearinghouse. And again, to be honest with
you to express simple amazement, that the staff would
recommend the zeroing of funding for this extremely important
component of the delivery system based on what I heard
Mr. Coster to say, staff failings about their inadequate
performance.

Well, let me tell you, from the field perspective,
that Clearinghouse is a pre-eminent publication. It is
probably the best research tool that we have in our office,
and we would like to see it continue, not for three months
in '86, but as with all of us, for the entire year. It
gives information to us in a timely fashion, it is
accurate and it is exactly what we need because it is
the only publication in the country on poverty law, and we
are after all poverty law specialists.

But to me, I mean, it's outrageous for me to
have a staff with a national corporation recommend that
Clearinghouse be defunded or their refunding denied based
on some staff feelings and some vague rumors about

1 inappropriate administration of their area of responsibility,
2 absolutely unbelievable.

3 I would also request that if the staff is going
4 to recommend continuation of the one-time contracts for
5 those three back-up centers, that they put the refunding
6 application to even 50 percent of the scrutiny they say
7 they're putting ours through, and that they go over and
8 take a look at the garbage or the absolute absence of any
9 work product coming out from those three bogus national
10 support centers.

11 I think the field also would strongly recommend
12 that whether that money for those three centers is hidden
13 in the budget lines or not, that they not be given another
14 penny in 1986, when we see vital components like
15 Clearinghouse scheduled for elimination, absolutely absurd.

16 The last thing is that along with the ground
17 works hopefully we will get for 1986, am I correct in my
18 understanding that the allocation formulas used for non-
19 census based recipient programs to be funded in 1986 will
20 be funded in 1986 at the same level as they were funded
21 in Fiscal Year 1985? And that the Native American increase
22 in Fiscal Year '86 will be distributed across the board
23 to all Native American recipient programs?

24 MR. MENDEZ: John, I don't remember on the
25 Native American, what Congress told us, or if they told us

1 anything about how it was to be.

2 MR. MOLA: As I recall, Mr. Mendez, it was your
3 agreement .

4 Eric is here and -- Eric Dahlstrom is here, but
5 I think they were looking for some dollars for replacement
6 of reggies that that money was included into the budget
7 line.

8 MR. MENDEZ: I know but I was outvoted on that
9 little issue.

10 MR. MOLA: And that there is approximately 1.8
11 percent increase in their budget line, and it was also
12 our understanding that that would go out pro rata to all
13 the field of the Native American programs.

14 MR. MENDEZ: That's correct.

15 Well, I'll tell you what, I'm not going to let
16 you speak for them; I'm going to have them speak for
17 themselves.

18 MR. MOLA: Is that a correct representation of
19 it?

20 MR. DAHLSTROM: We had discussions with the --
21 excuse me?

22 MR. MENDEZ: I'd rather have Eric speak for
23 himself.

24 MR. DAHLSTROM: Eric Dahlstrom, representing
25 Legal Services. We discussed with Mr. Valois, the author

1 of the amendment, whether that was consistent with his
2 opinion, -- and I won't speak for Mr. Valois -- but I
3 believe he agreed to an across-the-board expenditure of the
4 Native American money was not inconsistent with his
5 motion.

6 We had discussed it with the Staff, and it
7 was our understanding it was the Staff's recommendation
8 that that was the way --

9 MR. MENDEZ: What, when you say "across the
10 board," what do you mean?

11 MR. DAHLSTROM: All grantees would receive a
12 1.8 percent increase. There's 1.8 percent for --

13 MR. MENDEZ: All right, I see what you're saying.

14 You want to have an increase per program; you don't
15 want to have a per capita. You want each of the programs --

16 MR. MOLA: That's correct; that's right.

17 MR. MENDEZ: That's fine. I wanted to make sure
18 I didn't know; I wanted to make sure what we were talking
19 about; We're not talking about per capita; we're talking
20 about program grants.

21 MR. DAHLSTROM: If you had \$100,000 program, it
22 they would get \$1,080? or \$1800.

23 MR. MENDEZ: \$1800. I just wanted to make sure
24 we're on the same wavelength.

25 MR. MOLA: So that takes care of Native Americans.

1 MR. MENDEZ: All right, now, let me make sure
2 the Staff has that understanding.

3 MR. THIMELL: That's fine with us. Our position
4 has always been that they could allocate that increase
5 as they thought best, whether they preferred to do it across
6 the board or simply to replace reggie bodies in individual
7 programs, and if they prefer it this way, we think it's
8 equitable.

9 MR. MENDEZ: That's -- I've -- you've talked
10 to most of them, I hope, Eric?

11 MR. DAHLSTROM: Yes, we've had I would have to
12 say general agreement that that's the easiest way to spend
13 the \$112,000.

14 MR. MENDEZ: That's fine.

15 MR. MOLA: Mr. Chairman, as to the other non-
16 census based programs, am I correct that all of the current
17 non-census based recipient programs will be funded in 1986
18 at the same level as they were funded in 1985?

19 MR. WALLACE: Is this for three months or all
20 year, we're talking about?

21 MR. THIMELL: I don't want to think you're addressing
22 that issue here, given the complication with a three-month
23 extension versus actual line items. You're going to very
24 muddy the waters I think here.

25 MR. MOLA: Well, there's a finite universe of

1 people who have been getting money in 1985 that are non-
2 census based programs. Are they going to be getting --

3 MR. MENDEZ: John, let me just say -- this man
4 has been courteously waiting about through four speakers.

5 MR. MOLA: And if he would yield, I'd just like to
6 resolve this point, because it's my last point.

7 Will the gentleman from Texas yield?

8 MR. CLARK: I yield.

9 MR. MOLA: Thank you, Mr. Chairman.

10 MR. WALLACE: What do you include within non-
11 census based?

12 MR. MOLA: Migrant programs, national support,
13 state support, supplemental field programs.

14 MR. WALLACE: Okay. I'm willing to freeze all
15 of those people for 90 days where they were in 1985.
16 If we've got to figure out what they're going to be for
17 the whole year, then that opens up a tremendous can of
18 worms.

19 MR. MENDEZ: I understand your thought processes.
20 Now, that's your last comment and I understand
21 that, and there's obviously going to be some discussion and
22 debate about that, John. I want to get some other
23 testimony. That is not going to go away and hide by any
24 means.

25 MR. CLARK: If I may, Mr. Chairman?

1 My name is Patrick Clark. I'm the Director of
2 the Heart of Texas Legal Services Corporation in Waco,
3 Texas. We're one of the smaller programs in the State,
4 and in the nation. We have about a \$400,000 budget.

5 What we've done and what I've come this afternoon
6 really to listen and to make up my own mind on a lot of
7 issues. And I am really disturbed at the way the Staff
8 is treating this refunding application. Because, as far
9 as I was concerned, that was the easy part of the application.
10 Because it was basically historical document, the data.
11 To say today, you know, that the Board that we didn't apply,
12 or some programs might not have complied with Board
13 composition statements.

14 The corporation, prior to the mailing out of the
15 grant application, sent out a separate mail out in August
16 or September asking all programs to submit the composition
17 of their boards. If there were any Boards that didn't
18 respond to that memo, or if there were any Boards that
19 were not in compliance at that time, I think the Corporation
20 could have worked -- the Staff of the Corporation could
21 have worked on that.

22 Putting us to these deadlines, you know, I'm --
23 we have a four-attorney one-paralegal program, and we're
24 trying to service people, and I find myself more and more
25 getting out of the legal work and more and more responding

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1 to these administrative statements and snafus.

2 If you think that the Staff at Legal Services
3 Corporation thinks that the first part of the application
4 was bad, wait until the second part comes in. Really.
5 Because I think that's where we're not dealing with
6 historical data; that's where we're going to be dealing
7 for the first time with a lot of the new ideas coming up.
8 As for not hurting a program by not giving us what we feel
9 we're entitled to because the Congress of the United States
10 funded it that way and we just happened to be under the
11 conception that, you know, we should be funded because the
12 Congress of the United States says so, and we would like
13 you know, this Board and the Corporation to at least
14 comply.

15 But, you say it's not going to hurt programs;
16 it's going to hurt very much, because I've got to start
17 making decisions now on how I'm going to spend my money
18 next year. My Board has already looked at what has come
19 down, what we perceived to be our funding allocation for
20 next year, and now I've got to go back and tell my Board
21 again wait a minute; you've got another change.

22 You know, you want private bar involvement on
23 our local boards; well, I'll tell you, the private attorneys
24 on my Board are the ones that are giving me the most problems
25 now because of all these new dates and stuff that they have

1 to come in. My program was started by the Bar Association;
2 was funded by the Law School at Baylor University initially,
3 and now is servicing a whole area.

4 We have a good private bar program. We have two
5 contracts that are supposed to go into effect on January 1,
6 based on what we perceived to be our funding that we are
7 now being told we're not going to be getting until April,
8 and now, I have to go back and work and talk to those Bar
9 Presidents and say, hey, remember the deal we were going
10 to start in Corsicana and Hillsboro on January 1st? Well,
11 we've got to put that on hold until April because or maybe
12 some program somewhere left off a board member or whatever,
13 we don't know.

14 And I think that's why this Board should require
15 the Staff to submit what were the problems, number one.

16 And number two, there's a very simple solution.
17 And it's very fortunate that we're meeting here in the
18 State of Texas, because the Texas Department of Aging found
19 itself with the same problem, okay, on this grant situation.
20 And all they did was issue the grant monies on time with
21 the one stipulation: this is subject to the conditions
22 that you will submit or comply with whatever needs to be
23 complied with. It's a very simple solution and I think
24 somebody on the Staff could come up with the wording of that
25 stipulation that I'm sure the programs would be glad to sign

1 and get the funding, so we can get about the business that
2 this Corporation was established to do: service people.

3 Thank you very much.

4 (Applause.)

5 MR. FOSTER: I'm Stan Foster with Legal Aid of
6 Western Oklahoma, and I would like to briefly express my
7 dismay at the Corporation's proposed elimination of the
8 Clearinghouse for Legal Services. I think that perhaps
9 no other organization's work speaks of the high quality
10 of the Legal Services work that's happening throughout the
11 United States than the Clearinghouse publications.

12 Clearinghouse, in my view, as a former Staff
13 Attorney and now Project Director, is a publication that
14 provides a vital linkage of local programs and state and
15 national support centers. Viewed from Altus, Oklahoma,
16 where we have an office with one Staff attorney in it,
17 it removes the isolation that attorney practices in and
18 provides him with a valuable resource.

19 By focusing on poverty law, it fills a unique role
20 in our library and our training. A part of our initial
21 orientation for any new staff attorney or paralegal is
22 an explanation of the role of the Clearinghouse as a key
23 publication in learning developments in poverty law. One
24 thing that's expected of any staff attorney or paralegal
25 doing their job, is that they review each month's

1 Clearinghouse Review.

2 As a reporter, the Clearinghouse provides a
3 research tool and pleading brief bank that is duplicated
4 nowhere else. It saves many hours of staff time in
5 research, and reduces library costs by providing a unique
6 resource that accesses materials throughout the legal
7 services community.

8 I might comment too that the Clearinghouse
9 is a largely unmined tool --

10 MR. MENDEZ: Move that other microphone a couple
11 of feet away.

12 MR. FOSTER: Okay. -- tool, in private attorney
13 involvement efforts. We see it as a valuable tool in not
14 only recruiting but training private attorneys in areas
15 of the law that they're not used to practicing and providing
16 back-up support to them when they are working in those areas.

17 Our private attorney involvement for 1986 included
18 specifically a major recruiting effort and support effort
19 highlighting the Clearinghouse, and not only highlighting
20 the Clearinghouse itself, but highlighting our ability
21 to provide Clearinghouse documents with a microfiche system
22 out of our central office in Oklahoma City.

23 In my view, the Clearinghouse wraps up, in one
24 resource, research materials over a wide range of subjective
25 areas. A brief pleading and material bank that's not

1 duplicated anywhere else, a cost-effective way of supporting
2 a beleaguered Legal Services Staff throughout the United
3 States and its territories, a valuable tool in the recruit-
4 ment of attorneys for staff programs, as well as a valuable
5 tool for recruitment of private attorneys that are doing
6 pro bono work and adjudicare modeling.

7 Finally, it's a tool that provides us with
8 access to information on Federal legislative and regulative
9 developments and management issues that again are nowhere
10 else provided on a regular and routine basis.

11 I would like to add a comment on an issue un-
12 related to this, and that is merely to second the previous
13 speaker's views that the appropriate approach to our
14 problems with some LSC grant applications is not to provide
15 some sort of a punishment to the field for their failure
16 the failure of a few programs, perhaps, not to write all
17 the information provided, but rather to provide the Corpora-
18 tion 90 days in which to instruct these programs what needs
19 to be done, and go forward with the 1986 funding as originally
20 proposed.

21 Thank you.

22 MR. MENDEZ: Now, we've got the -- Bill Whitehurst
23 is going to speak next. I promised him that he would --

24 MR. WHITEHURST: I'm here from the Union and
25 whatever I've got to do, I prefer to do it I suppose for the staff

1 when Mr. Dourant and the other Board members would be here
2 And I'll interpret these.

3 MR. MENDEZ: We will get Mr. Dourant and the
4 other board members in here so -- Mike Wallace is present
5 but not Mr. Dourant.

6 MS. MEYERS: My name is Karen Meyers. I'm the
7 Executive Director of the Legal Aid Society of Albuquerque,
8 and I'd like to comment on the issue of the refunding
9 applications.

10 This is the second chance I've had to attend
11 an LSC Board Meeting. And a few of you may remember that
12 at the September meeting when you were addressing the
13 refunding application process, I asked a question at the
14 end of that discussion, which went to what technical
15 assistance would be provided to make sure that the situation
16 that we are now facing did not happen, so that program
17 directors who were charged with the responsibility of
18 answering the other forms, would do it in a proper fashion.

19 And I was met with what I would consider a fair
20 amount of hostility and was told that none would be given.
21 That we were all adults, and if I had any questions, I
22 should call. Well, I answered that matter in good faith.
23 I gave all the information I thought that was asked. I
24 read the instructions numerous times. I called other project
25 directors to make sure that my interpretations were

1 reasonable.

2 And now I am being told that the intention that
3 is being perhaps given to people who in good faith answered
4 those is that maybe we did it on purpose. Now, I find
5 that very upsetting. I also find it very upsetting that
6 we are now faced with this situation, when in good faith,
7 we came to the Board and we said, this is new; there are
8 changes being made, and the statement was made by a Board
9 Member that, well, we have to understand that the Staff of
10 the Legal Services Corporation is a new staff, and maybe
11 it's going to take them a little longer to figure things
12 out and get on board and get things done.

13 Yet, the same consideration's not given to field
14 people when they're new in their position. And they don't
15 make any attempt to give us any leeway or to give us any
16 technical assistance, and I just want you to know that from
17 the field perspective, that is equally upsetting, and
18 equally of concern to us.

19 MR. MENDEZ: I can understand that.

20 I have one question for you -- or a couple.

21 Did you call the Corporation with your questions?

22 MS. MEYERS: I ended up thinking I understood what
23 they were asking. I didn't have any specific questions, and
24 I haven't heard from them, so it will be interesting to
25 see whether I get a letter.

1 MR. MENDEZ: Any other comments?

2 MR. SHORE: My name is Ken Shore and I'm the
3 Director of North Central Texas Legal Services in Dallas.
4 There are a couple of issues I wanted to speak to, briefly.
5 Briefly. First, with the Clearinghouse, I understood the
6 Staff comment to be that the Clearinghouse was not an
7 effective and efficient instrument of delivering a service
8 field programs.

9 In my 2.5 years as a program director, and my
10 prior four years as a litigation director, I've used the
11 Clearinghouse many, many times, and I've found it to be
12 an extremely effective tool. And if we had more time,
13 I would tell you specific stories about specific cases
14 that I think we provided better representation for our
15 clients on because of the way in which we were able to use
16 the Clearinghouse.

17 As a director I found it extremely useful,
18 especially as mentioned earlier in areas such as PAI, or
19 if the Corporation promulgated a regulation and provided
20 no technical support, and much of the support that we
21 have gotten in complying with the PAI regulation has
22 come through articles in the Clearinghouse

23 But I'm especially disturbed with the notion
24 that the Staff would make a recommendation based on LSC
25 Staff's feeling that it was not effective without consulting

1 the field, and I am unaware of any consultation by LSC
2 Staff on that issue or at least no such consultation reached
3 us, and if it had reached us, I can tell you that me and
4 the staff in my program would have responded with the comments
5 that the Clearinghouse is an extremely effective tool for us.

6 I'd also like to comment briefly about the
7 recommendation that the reggie program be discontinued.
8 My community and our service area is about 40 percent
9 minority. Our service area includes Dallas County and
10 five surrounding counties. The only law school in our service
11 area, Southern Methodist University, is about two percent
12 minority, and it's been very important for us to recruit
13 minorities and we've been very successful in doing that,
14 I think.

15 Our Staff of 20, 19 lawyers, includes nine minority
16 lawyers, of whom two are our current Reggies; one is a former
17 reggie who stayed as a staff attorney after the expiration
18 of reggie contract, and one was a reggie in southern
19 Louisiana before he switched to our program.

20 Without the reggie program, I think we would find
21 it very difficult to recruit the appropriate number of
22 minorities to provide representation that in some way reflects
23 character of client community based on the local law
24 schools. The two percent figure for Southern Methodist is
25 not outlined for most of the other law schools in Texas.

1 The third comment I'd like to make is about
2 the refunding application. We were particularly hard on
3 the refunding application because I feey strongly that
4 our program needs some stability; we need a year of funding
5 in order to be able to reassure our staff that we will not
6 have further adjustments that have been necessary in the
7 past few years because of changes in funding.

8 So we were very hard on it; we got it in early;
9 we got it in in great detail. Our funding narrative runs
10 40 single-spaced pages. We went through several revisions
11 that included circulation of the PAI section to all the
12 local bar associations; it got great attention by our
13 Board of Directors. It was filed on time; the second part
14 of the refunding application was filed on time.

15 In order to accomplish that, we had to reschedule
16 Board Meetings to meet the deadlines. If we're now
17 requiring to make an adjustment in the application
18 it will require the holding of another special board meeting
19 which we don't have a board meeting for January. I'm very
20 concerned that my Board, particularly the lawyers on my
21 Board are developing -- appointed pursuant to 1607 by
22 the Texas Bar, the Dallas Bar Association, which are not
23 left wing organizations. I assure you, are developing a
24 very high level of hostility toward the corporation,
25 to the point where their level of hostility almost exceeds

1 mine.

2 The funding application was extremely vague; there
3 were no specific instructions; the narrative portion mentions
4 the topics which we were to address with very little
5 specific instruction, and the notion that on the basis
6 of narrative comments, that the refunding application might
7 be rejected and may be required to be rewritten, based on the
8 way the refunding application was written, I think, is
9 going to antagonize my board a great deal more.

10 I mean, I'm paid to do this job, and I will rewrite
11 it if they ask me to rewrite it, but my Board, and
12 particularly the lawyers on my Board, are going to be very
13 annoyed.

14 Thank you.

15 MR. BROWN: My name is Steve Brown, from the
16 Greater Upstate Law Practice in Rochester.

17 Just a footnote to this particular conversation
18 earlier about the problem with the processing of the
19 refund applications. It sounds like a major part of
20 the problem is the fact that these applications have
21 been subjected to a new strict scrutiny standard that
22 heretofore has not been applied. I'd only say that it
23 certainly would have been nice for folks in the field
24 to have been told, prior to the submission of the applica-
25 tion, that a new and higher level of scrutiny would now

1 be applicable to the process.

2 MS. IVY: My name is Sylvia Drew Ivy. I'm the
3 Director of the National Health Law Program in Los
4 Angeles.

5 I'd like to comment on the proposal with respect
6 to the parent counts review. I believe one of the motiva-
7 tions of the Staff for this proposal is the way of indirectly
8 silencing the National Support Center. And I would ask
9 you not to punish the field in the utilization of this
10 vital tool because of any beliefs that the Board or the
11 Staff hold about the National Support Centers.

12 I'd like to put that on the table in this
13 discussion.

14 Secondly, I'd like to say that the Clearinghouse
15 Review is a vital document to the National Support Centers,
16 not only for the articles that we publish in it, but in terms
17 of our priority setting. I know that you believe that we
18 know everything that is going on and there's a giant
19 conspiracy going on between the field and the back-up centers
20 but in point of fact, we don't know what cases are being
21 filed in our particular areas and one of the critical sources
22 of that information for us is the Clearinghouse Review.

23 In addition to that, we are specialists in the
24 National Support Centers and the year-end poverty review
25 allows us to keep up to date with developments in parallel

1 areas, which make our advocacy in our own areas much more
2 effective and efficient.

3 And I therefore ask you not to defund the
4 Clearinghouse this year or in '87.

5 Thank you.

6 MR. SUMMERLIN: Erol Summerlin with Coastal Bend
7 Legal Services, again.

8 Two points: the first is that with regard to
9 the 1985 versus 1986 dollars that may come out in a three-
10 month grant, there's -- I don't know, but my rough estimate
11 is that that's \$2.5 million that's being withheld from
12 the field for those three months, okay? Because the 4.2
13 percent increase translates to around \$10, \$11 million in
14 increases to the field.

15 So my hope is that on that \$2.5 million that's
16 being held for those three months, that my check will include
17 interest on that money. Okay.

18 (Applause)

19 Secondly, I also support the Clearinghouse, but
20 I'd like to make a comment about the reasons for phasing
21 it out were not only that it's inefficient in the Staff's
22 view, but also that the Administration would like to be at
23 its 1980 level of funding. They want to maintain \$13 million
24 to operate the program, but I don't believe there's one
25 project director here that wouldn't want the same level of

1 funding that they had in 1980.

2 That's all.

3 MR. MENDEZ: Any other comments?

4 (No response.)

5 MR. WHITEHURST: Where's your Committee?

6 MR. MENDEZ: Our Committee is not all present,
7 so I think we'll take a five-minute recess and I'll see if
8 I can find them. And we'll come in and take a vote on this
9 with motions.

10 (Brief recess taken.)

11 MR. MENDEZ: Because of the crowd, the size of
12 the people and the trouble that we're having with our
13 microphones, we are changing the location of the meeting
14 room tomorrow to the Holiday Inn. It's 113 West Missouri,
15 the Grand Ballroom. It'll be at 8:30 and it's about five
16 blocks from here.

17 And I will be repeating this several times
18 throughout the evening.

19 Yes, there will also be a notice on the board here,
20 and there will be a notice upstairs about that. Again, it's
21 the Holiday Inn, 113 West Missouri, Grand Ballroom, it's
22 about five blocks from here. And we should have -- we'll
23 try and get some maps or something to tell you exactly where
24 it is.

25 My Committee is entirely present, and before we ask

1 for any more speakers, let's take and take care of this one
2 little item that we have.

3 With regard to the CLB 86, I move to continue
4 -- I move that the Committee recommend to the Board, the
5 adoption of the -- I move that the Committee recommend to
6 the Board that we continue the '85 grant and contracts at
7 '85 levels for three months.

8 Do I hear a second?

9 (No response.)

10 Do I hear a second?

11 Okay, Mike?

12 MR. WALLACE: Let me ask a question about what all
13 is included in that. I mean, there are some things we
14 spend money on that aren't grants and contracts. Are all
15 of those going to be continued at 1985 levels, too?

16 MR. MENDEZ: Everything is to be continued at '85
17 levels. Yes, the Corporation, itself, will be limited to
18 '85 levels.

19 MR. WALLACE: Okay.

20 MR. SMEGAL: Well, I have an amendment, Mike,
21 which I think is appropriate, if I get a second.

22 "With a further proviso that there be an immediate
23 Fiscal Year 1986 annual grant funding to all programs whose
24 grant applications are presently in compliance." And with
25 that, I refer to the 150-250 programs that we've been talking

1 about.

2 MR. MENDEZ: Do I hear a second?

3 MR. EAGLIN: I second it.

4 MR. MENDEZ: Any discussion?

5 You people, everybody out there had a chance
6 to discuss it before. Now, we're discussing up here.

7 Is there any discussion on the Board? Do you have any
8 discussion about --

9 (Pause)

10 Now, we have an amendment to the motion. The
11 amendment is for the 250 grants. Now, does the Board
12 understand the motion? Mike, do you understand?

13 MR. WALLACE: I understand it.

14 MR. MENDEZ: Okay, let's do it by roll call.
15 Mike, with regard to Mr. Smegal's amendment?

16 MR. WALLACE: No.

17 MR. MENDEZ: Hortencia?

18 MS. BENAVIDEZ: No.

19 MR. MENDEZ: LeaAnne?

20 MS. BERNSTEIN: No.

21 MR. MENDEZ: LeaAnne says, no.

22 MR. MENDEZ: I, no.

23 MR. EAGLIN: Yes.

24 MR. SMEGAL: Yes.

25 MR. MENDEZ: That's defeated.

1 Now, is there any discussion on the Chair's main
2 motion?

3 MR. GOURANT: Yes, I'd like to make one point.
4 It's my under -- I've had a number of questions, both on
5 and off the record, as to whether or not this would in any
6 way be a violation of any understanding or agreement that
7 existed or does exist between the Board or the Chairman
8 and any other party and, for those who have asked me, it
9 is my judgment that it does not;

10 Second, given the Gramm-Rudman formula that is
11 going to be calculated and we will know more in January
12 as to what our final budget is in fact going to be, that
13 I think it would be fiduciarly prudent for us not to enter
14 into 12-month grants until we know exactly what that figure
15 is going to be.

16 MR. SMEGAL: Okay, now let me make a point of
17 inquiry. If I understand correctly, and correct me if I'm
18 wrong, don't the grant application forms that were sent
19 out reflect upon the possibility of adjustments being made
20 in the funding level, depending upon Congress Gramm-Rudman
21 and whoever.

22 MR. MENDEZ: Well, maybe I can respond to that,
23 because I have some real problems and real difficulties,
24 because if we enter into a grant, and Gramm Rudman is
25 across the board and does not specifically address the

1 grants, it could cut everything out of the Corporation's
2 budget and nothing out of anything else, and leave us with
3 a zero or \$2 million or some such budget to run this
4 organization on.

5 MR. ROCHE: Mr. Chairman?

6 MR. MENDEZ: The question's been called.

7 MR. ROCHE: May I just make one point on that
8 last comment?

9 MR. MENDEZ: Sure.

10 MR. ROCHE: You have adequate protection in the
11 assurances signed in the B-1 Forms against any reduction
12 by Gramm-Rudman or any other Congressional action, so you
13 don't have to do that simply for Gramm-Rudman.

14 MR. MENDEZ: Thank you.

15 The question has been called.

16 Again, by roll call vote. This is on my main
17 motion. Mike?

18 MR. WALLACE: Aye.

19 MR. MENDEZ: Hortencia?

20 MS. BENAVIDEZ: Aye.

21 MR. MENDEZ: LeaAnne?

22 MS. BERNSTEIN: Aye.

23 MR. MENDEZ: Let the record reflect that both
24 of you are soft-spoken, let the record reflect that both
25 of them said, aye. The Chairman says, aye.

1 MR. EAGLIN: Aye.

2 MR. SMEGAL: No.

3 MR. MENDEZ: Now, at this time, Bill?

4 Again, for the record, this is Bill Whitehurst,
5 President Elect of the State Bar of Texas.

6 MR. WHITEHURST: Thank you, Mr. Mendez. I
7 sincerely appreciate you all allowing me the opportunity
8 to speak today. I understand that you're taking me out
9 of turn, because I will not be able to join you tomorrow,
10 and I sincerely appreciate that.

11 I come here today on behalf of the State Bar
12 of Texas. I come here to welcome you on behalf of the
13 Supreme Court of this State, who manages our State Bar.
14 And the Board of Directors of our State Bar. And with
15 regret, our current President, Charley Smith, who was unable
16 to be here today because of previous commitments.

17 I would like to take just a little time to give
18 you some particular history of Legal Services in Texas.
19 I understand this is a fairly new Board, and it's a fairly
20 new Staff, and I don't mean to be presumptuous or impose
21 on your knowledge already, but I would like to give you some
22 background for purposes of my later remarks.

23 The State Bar of Texas has 44,600 active members.
24 We are the second largest unified State Bar Association in
25 the country, and have been in existence since 1939.

1 By "unified" of course I mean that all licensed
2 lawyers belong to the State Bar in Texas. Almost 25 years
3 ago, in 1961, the State Bar of Texas sponsored a survey of
4 existing legal aid facilities within the State, and published
5 its results in the May 1961 Texas Bar Journal.

6 The survey reflected Texan's attitudes towards
7 legal aid as well as a recent shift from a rural to an urban
8 population. By 1961, about 47 percent of the people in Texas
9 lived in 26 cities. And the time honored legal aid method
10 of uncompensated attorney help to individual needy clients
11 was no longer functional.

12 Social welfare workers unanimously agreed that the
13 average needy person did not know where to get legal advice.
14 Most of the lawyers surveyed were unaware of what services
15 were available, and to whom they were available. The lawyer
16 responsible for the survey characterized the need for legal
17 aid in Texas as acute.

18 The May 1961 Texas Bar Journal contained not only
19 the survey, but also statements by prominent attorneys
20 urging the Bar to provide effective and complete legal
21 services to the poor. This spurred new activity in Texas
22 so that five years later, there were 32 local legal aid
23 offices in operation. Nonetheless, it was not until the
24 Federal Office of Economic Opportunity began funding legal
25 services for the poor in 1965, that the supply started

1 approaching the demand.

2 Among the early OEO Grantees were the Houston Legal
3 Foundation, a program sponsored by the Private Bar. The
4 Travis County Legal Aid and Defendant Society sponsored jointly
5 by the Travis County Bar Association and the University
6 of Texas School of Law, and a program in Dallas sponsored
7 jointly by the SMU Law School, and the Dallas Bar.

8 Despite the emphasis on local control, and despite
9 strong support for the OEO program from both the ABA and
10 President Johnson, some private practitioners in Texas
11 remained suspicious of Federally-funded poverty law programs.
12 And continue today to be hostile to such programs.

13 These suspicions prompted the filing of law suits
14 to challenge the Houston program, and contributed to the
15 reluctance of many Texas communities to seek Federal funding
16 for legal aid. Because OEO funding had to be locally
17 initiated, many areas of Texas remained unserved due to
18 such attitudes. There were programs, however, in all of
19 the large cities. They shared the conviction that the
20 newly-available federal dollar allowed them to meet their
21 clients' needs better than at any time in the past.

22 Unfortunately, Federal dollars declined between
23 1972 and 1975, and the Office of Economic Opportunity was
24 dismantled under President Nixon, but the Texas programs
25 receiving OEO funds survived this turmoil and budget cuts,

1 and when OEO's sponsorship of poverty law programs ended
2 in 1974, legal aid efforts in this State began receiving
3 financial support from a new entity. This of course, was
4 the Legal Services Corporation, the management of which
5 has been entrusted to your stewardship.

6 One of LSC's major goals was to ensure that
7 quality legal services for the poor were distributed evenly
8 geographically. In Texas, this meant that existing programs
9 extended their service areas and new programs were created,
10 including programs to reach specific populations, such as
11 migrant farm workers.

12 Many of these programs, among them, Texas Rural
13 Legal Aid, East Texas Legal Services, and West Texas Legal
14 Services, are large programs covering enormous geographic
15 areas. Suffice it to say, Texas is a large State. Others,
16 like Bexar County Legal Aid, and El Paso Legal Aid, serve
17 only one county, but are by no means small programs. Funding
18 levels for these Texas programs increased in both 1979 and
19 1980, as LSC continued its campaign to achieve geographic
20 coverage.

21 By 1980, LSC-funded programs covered every county
22 in the State. Each of the LSC funded programs has continued
23 to be locally governed with Boards composed of lawyers and
24 law professors appointed by local bar associations, and
25 client representatives from the program service area.

1 In 1982, the reduction in Federal funding for
2 legal services resulted in a reduction of \$4.5 million in
3 Texas. In rare instances, local governments or united organ-
4 izations have made up a portion of the losses. All programs
5 had to decrease staff and cut back on the number of clients
6 served and the types of cases handled.

7 One result of the cutback in Federal funding has
8 been a renewed partnership between the private Bar and
9 legal services programs. Evidence of this partnership can
10 be found on all levels: national, state and local. One
11 example is the State Bar of Texas' efforts to establish
12 an IOLTA, Interest On Lawyers Trust Account program.

13 In 1984, the State Bar petitioned the Texas
14 Supreme Court to institute IOLTA, which they eventually did,
15 and they instituted it in Texas on a voluntary basis.

16 We are currently in the implementation stage and
17 I have said expansion of IOLTA is one of the goals of
18 my presidency. The Texas legal services programs and local
19 bar associations also have an initiated a wide range of
20 projects involving private attorneys, including pro bono
21 referral systems and contractual arrangements with individual
22 attorneys on a reduced fee basis.

23 Another offshoot of private attorney involvement
24 was the establishment of Texas Lawyers Care. Texas Lawyers
25 Care is a program sponsored jointly by the State Bar

1 of Texas, and the LSC funded programs in the State.
2 It is designed to assist local bar associations, legal
3 service programs, and individual attorneys, interested in
4 developing a pro bono or private bar involvement project.

5 With the exception of El Paso, who we're meeting
6 today, each of the communities implementing pro bono have
7 elected a voluntary program. The Bar and Bench of El Paso
8 chose to adopt a mandatory program. In the Spring of 1983,
9 the State Bar of Texas organized a statewide Bar Leaders
10 Conference. The purpose of the Conference was to provide
11 input to the Bar President regarding issues that would be
12 facing the State Bar of Texas.

13 One of the four major concerns targeted was the
14 delivery of legal services to low income clients. The
15 idea to conduct a statewide legal needs assessment came from
16 the Bar Leaders Conference.

17 The findings of the 1983 Legal Needs Assessment
18 showed that less than 10 percent of the indigent persons
19 in Texas needing legal assistance were receiving such
20 assistance. The majority of clients receiving legal
21 representation were Hispanic and had incomes below the
22 poverty line. The Needs Assessment calculated that of the
23 approximately 470,000 poor persons requiring legal assistance
24 in Texas, out of an estimated poverty population of
25 2,036,000, only 42,000 clients were served each year.

1 These numbers have changed slightly over the
2 past two years, yet the percentages are similar. It should
3 be noted that Texas has experienced the "newport" due to the
4 oil turndown, failing farm economy, and a depressed economy
5 along the Texas-Mexico border.

6 The need in Texas for civil legal services was
7 and is great. As an example of this need, I would point
8 to the plight of the Texas farm worker. According to a 1983
9 report published by the Joint Commission of the Texas
10 House and Senate on Farm Worker Insurance, there are
11 approximately 500,000 farm workers and dependents in Texas,
12 ninety-two percent of whom are Hispanic.

13 Three-quarters of the workers live in the Rio
14 Grande Valley, and are classified as migrant workers.
15 Of these workers and these families, 80 percent live below
16 the Federal poverty level. Less than ten percent of their
17 children graduate from high school, which is not surprising
18 given the fact that migrant children are not covered under
19 existing child labor laws.

20 Further, housing in the colonious, which are
21 unincorporated rural subdivisions, where migrant workers
22 and their families live, is grossly substandard with an
23 estimated one-half the units lacking treated water
24 or indoor toilet facilities. It is a credit to the Legal
25 Services Corporation that it recognized the difficulties in

1 serving this population, and devoted special funds to
2 protecting what rights migrant farm workers in Texas and
3 elsewhere do have.

4 I see from the proposal that you are considering
5 reducing these funds by over \$2 million, and I would urge
6 you not to do so, at least not in the absence of a careful
7 and thorough review of the issue. It is clear to me that
8 any reduction in funding would have a profound effect
9 on this most vulnerable of populations, the majority of
10 which exist in Texas.

11 If low-income Texans are to have access to
12 the justice system, then additional resources are desperately
13 needed in the form of both financial support and increased
14 representation by the Private Bar. The State Bar of
15 Texas through its IOLTA Program, and through the Texas
16 Law Lawyers Care is working to alleviate these needs.
17 Nevertheless, the primary source of legal assistance for
18 low income Texans has to be the statewide network of
19 LSC funded staff attorney programs. Indeed, they are the
20 backbone of our Texas effort, and provide the continuity which
21 is so critical to the task of this magnitude.

22 We in Texas are concerned. The lawyers in the
23 State Bar that the Legal Services Corporation Board not
24 exhibit a lack of commitment to the concept of equal justice,
25 by a failure to request increased funding for 1987.

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1 The approval of the Gramm-Rudman Deficit Reduction
2 Act makes your funding request to Congress even more signifi-
3 cant. The Gramm-Rudman Act will deal with the overall economy
4 when the formulas are applied to assist in reducing the deficit.
5 There is no question that all agencies must do their part
6 to assist in reducing the Federal deficit.

7 Such reductions, however, must be based on solid
8 figures and facts. You must submit a budget request which is
9 both accurate and adequate. To submit a budget far below the
10 needs of the poor, would be in contravention of your mandated
11 Board members to provide equal access to justice. To cut
12 the budget significantly prior to submission to Congress,
13 not only would reduce representation of the poor, but would
14 subject the Agency to double budget cuts when the Gramm-
15 Rudman formulas are applied.

16 The continued ability to serve the legal needs
17 of the poor depends on sufficient levels of LSC funding
18 for the direct service field programs. Texas will do
19 everything within its power to assist with an effort to
20 provide legal representation. However, the Federal government
21 must provide adequate funding to ensure the Constitutional
22 guarantee of equal access to justice.

23 Your agenda includes the establishment of a Fiscal
24 Year '87 budget mark. I urge you to recognize the enormous
25 unmet need for civil legal services that exists in Texas and

1 elsewhere, and establish a budget that at the least, restores
2 field programs to their pre-1982 funding levels.

3 I want to mention a few other things, if you
4 don't mind, that are not a part of my prepared text.
5 I've had the opportunity to sit here for a few hours and
6 observe the proceedings. This is the first time I've had
7 the opportunity to do so.

8 I understand, I think, and I appreciate your
9 frustrations that this is a task of great magnitude and
10 of great importance. Before I became a lawyer, I was
11 educated as a pharmacist. It always bothered me when I
12 was studying pharmacy that we were taught that the patient
13 was not to be told certain things.

14 We were taught to take the prescription from
15 the doctor, type it up with a number, we did not put the
16 name of the medication on the prescription on the label;
17 we gave the medication to the patient, and if the patient
18 were to ask the pharmacist what this is, what are the
19 side effects, we were taught to refer that patient to the
20 doctor, knowing that the doctor would only tell that patient
21 what he wanted her (him) to know.

22 The premises was that the public was not sophisti-
23 cated enough to understand medical vocabulary, understand
24 side effects. The Physician's Desk Reference was always
25 to be kept behind the pharmacy counter, and that's the way

1 we carried out our medical profession for a while.

2 We've seen a great change in that. We see now
3 that the emphasis is the other way: that the patient is
4 educated, that we take into consideration and recognize that
5 our society is more educated; they are able to understand
6 and able to deal with this information. And they have a right
7 to it.

8 We have seen that by doing so, we have a
9 healthier society, medicalwise in this country. And that's
10 well-documented.

11 The same thing applies to law, and I think that's
12 one thing that I have seen in Texas that I want to bring to
13 this Board's attention. That Legal Services have provided
14 to the poor. They have been an education to them. It is
15 our one way of educating these people of what the laws in
16 our society are. What they must comply with. That ignorance
17 of the law is not excuse.

18 It is not any longer something that we feel like
19 only lawyers should know uniquely. And I think that this
20 is something that goes unheralded about Legal Services.
21 The service that it indeed provides. I sincerely believe
22 that we will find that we have a healthier society legal-
23 wise, social-wise, as this education continues to be imparted.

24 The second thing I wanted to mention to you is that
25 we have a unique system in Texas that requires the one who

1 runs for the State Bar Presidency, there are two nominated,
2 and they are required to go throughout the State and it is
3 a Statewide election. They are required to go all over the
4 State and meet lawyers, talk with them, visit in their
5 offices.

6 And the theory is that by doing so, those candidates
7 one of which will be the President, will gain some insight
8 as to the law practice in this State, and will be better
9 able to lead and govern the State Bar of Texas.

10 I've had the opportunity to do that twice: once
11 as a candidate for President of the Texas Young Lawyers'
12 Association, which does likewise. That was in 1982.

13 And most recently in 1985, where I went around this
14 State. And it is a large State, and there's a great diversity
15 in the way law is practiced in this State. One of the
16 things that I had the opportunity to do was going into
17 the offices of the different Legal Services, the different
18 Legal Aid offices throughout this State. I had the opportu-
19 nity to meet and talk with these lawyers who are in the
20 trenches, who are dealing with people on a daily basis, who
21 are understaffed, who are overworked, who are underpaid,
22 who do not have the equipment that even comes up to the most
23 basic of law offices, as you and I know them, those of you
24 who are lawyers and those of you who practice the profession.
25 I'm a trial lawyer and I practice in the trenches, as well,

1 but I must say, on a much higher level financially.

2 And it disturbed me that it seemed that the theory
3 of poverty law was that you had to be a lawyer in poverty
4 in order to practice it. I do not feel like that that's
5 necessary. I feel like that the service is great; that
6 we have some truly truly dedicated people in the trenches.
7 I had the opportunity of serving on the Governor's Select
8 Committee on the Judiciary. Through that, it was necessary
9 for us to get certain information from Legal Aid entities
10 throughout this State.

11 Likewise, with the State Bar, it is necessary for
12 us to call upon these groups and these lawyers to provide
13 us with information and help us on certain projects and
14 things we need. I can't speak for the other States, but
15 I can tell you in Texas that we get good responses from
16 these people. They bend over backwards to help us. Any
17 information that this Governor's Committee needed was
18 provided immediately.

19 A simple phone call, or a simple letter resulted
20 in incredible cooperation, and I learned that a lot of the
21 concerns that were mentioned by Texas lawyers about legal
22 aid, and a lot that were mentioned on the Board, and in
23 the legislature about legal aid, were concerns that had no
24 basis in fact. That were concerns that did not come from
25 sitting down and talking with these people and visiting in

1 their offices. From understanding their problems and their
2 responsibilities and their obligations.

3 And I listen here today and I'm concerned about the
4 atmosphere that exists between you and the people out in the
5 field. And I'm concerned about a young Staff who I would
6 recommend to take the time to do what I did. And go out and
7 visit with your people and visit their offices, and visit
8 the day with them and go to the courthouse with them, and
9 sit down and talk with these people who have problems beyond
10 problems, and get an understanding of the difficulties that
11 they have doing their job.

12 Under financed and they will probably always be
13 under financed, but they deserve a little bit of support
14 and understanding. I know your job is frustrating and I
15 appreciate that. I understand a new Staff job is frustrating,
16 but I also know that it's frustrating to do what these
17 lawyers are doing out in the trenches. I've been there;
18 I've seen it, and I ask you to have some compassion and
19 understanding for that.

20 That they are involved in a business that must
21 run on a daily basis, that they must plan for, just like you
22 and I must plan for our firms, and they need help in that,
23 and they need some continuity, some solid foundation on
24 which they can go about their business from day to day.
25 I trust you'll take that into consideration when you make

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1 your budget, when you decide issues that affect these people.

2 I believe, and it's always served me well, that
3 communications is the key. Taking the time to understand,
4 as we say in Texas, the moccasins that someone else walks
5 in. And I ask you to do that on behalf of the poor people
6 in this State; I ask you to do that on behalf of the lawyers
7 that are serving in these difficult positions, and I ask
8 you to do it on behalf of the State Bar of Texas because
9 we need your leadership, we need your stewardship and
10 we need your commitment as our commitment, to the poor
11 who need legal services. And I think if we do that, we'll
12 find that we have a healthier and a better society to
13 live in.

14 Thank you very much for this opportunity.

15 (Applause)

16 MR. MENDEZ: We would like to have a copy of
17 your prepared remarks, prepared statement.

18 MR. WHITEHURST: I'll be glad to do that.

19 MR. MENDEZ: There's a couple things you made
20 reference to, the Needs Assessment, and that was in 1983?

21 MR. WHITEHURST: That's correct. I can provide
22 a copy of that for you, too.

23 MR. MENDEZ: I would like to see a copy of that
24 Needs Assessment. I would also like to see a copy of
25 the questionnaire that you used.

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1 MR. WHITEHURST: Okay, sure.

2 MR. MENDEZ: Now, there's a couple things, so
3 that we're talking apples and apples, when you used
4 the Migrants, what was your, what did you mean by that?
5 What was your definition of a "migrant"?

6 MR. WHITEHURST: Well, I used that. It really
7 came from the study that I talked about, the insurance
8 study, the farm workers -- it's a farm worker that goes
9 from -- you know, that follows the crops.

10 MR. MENDEZ: I understand but I'm asking for --
11 I'll tell you what I would like to have. The definition
12 they used of a migrant in their study.

13 MR. WHITEHURST: I will get that study for you.

14 MR. MENDEZ: Okay, I would appreciate that.

15 Now, what is approximately the percentage of
16 pro bono that you have?

17 MR. WHITEHURST: In Texas?

18 Jeralyn, can you give me that?

19 JERALYN: The number of lawyers or the percentage
20 of cases?

21 MR. MENDEZ: The number of lawyers?

22 JERALYN: The number of lawyers is probably
23 about 10 percent. So, about 7 to 10 percent.

24 MR. MENDEZ: That's civil?

25 MR. WHITEHURST: Maybe you can differentiate it

1 for us, from civil and criminal in Texas.

2 MR. MENDEZ: Do you have any special programs
3 to increase those levels?

4 MR. WHITEHURST: Oh, yes. We're working hard at
5 it. In El Paso, of course, they've gone to mandatory and
6 we may eventually have to do that. But let me tell you
7 the problem that we're getting into a little bit, that
8 concerns me somewhat. We're starting to see mandatory
9 programs in the criminal area. For example, I practice in
10 the Western District, Federal District. I'm also -- I
11 also work in the Southern District, the other Federal
12 District.

13 The Southern District's now instituted a require-
14 ment, a mandatory pro bono to belong to that Bar. The
15 Western District has the same thing. Of course I participate
16 in other programs. And then we have the different local
17 areas have different situations, such as El Paso had this
18 mandatory program on the local level, for civil, as well
19 as criminal.

20 We're getting to some degree into a problem of
21 innundation of certain lawyers in certain areas, and we're
22 having to work with that, but I feel like that there is a lot
23 more pro bono work that goes on that we can't account for.
24 I know there's a lot of pro bono work that I do that I
25 don't report to anybody, just by the very fact that I'm a

1 lawyer and that people come to my office. And I think that's
2 true of all of us.

3 So my guess is that ten percent is something
4 that we can document, but that the numbers are far greater
5 than that. I believe without a doubt, and I think a lot
6 of younger lawyers are criticized because of their
7 concern for money, as opposed to service, but I will tell
8 you that as I go around this State, I find that the people
9 by in large who are practicing law are good people, and they
10 have a great concern for the poor, and they do help the poor.

11 It may not be on a formal basis, such as a large
12 law firm might have, that says each of our lawyers is going
13 to take one or two cases. But especially in the small
14 communities, and we have a lot of those in Texas, they are
15 engaged in day-to-day pro bono work, money that -- taking
16 care of clients that they'll never get paid for.

17 So I think the involvement is much greater than
18 we are able to document on a formal basis.

19 MR. WALLACE: A couple of questions, if I could.
20 What is this Federal Mandatory program, is that
21 civil or just criminal?

22 MR. WHITEHURST: It's criminal.

23 MR. WALLACE: It's criminal. And that's in two
24 of your Federal districts?

25 JERALYN: And Civil, Southern District only.

1 MR. WHITEHURST: And Civil, yeah, Southern District
2 is civil.

3 MR. WALLACE: How does that work? I mean, what
4 does the Clerk of the Court keep books on people, or how
5 does that go?

6 MR. WHITEHURST: You have to apply, of course,
7 to be admitted.

8 MR. WALLACE: Sure.

9 MR. WHITEHURST: And they do have a record of
10 it, and then they require I think it's now one -- it's
11 one in the Southern District, that you must do at least
12 one pro bono case to stay admitted to that Bar.

13 MR. WALLACE: But how's it work? That's one
14 per year?

15 MR. WHITEHURST: That's one per year.

16 MR. WALLACE: How about the El Paso? That's
17 a State Court?

18 MR. WHITEHURST: That's a State Court. That's
19 a mandated indention Bar.

20 JERALYN: It's two.

21 MR. WHITEHURST: It's two, two civil cases per
22 year.

23 MR. WALLACE: Two civil cases per year.

24 MR. WHITEHURST: That's correct.

25 MR. WALLACE: Okay.

1 MR. MENDEZ: Ms. Claude Swafford?

2 MS. SWAFFORD: Yes. I had a couple of comments
3 to make to Mr. Whitehurst.

4 Mr. Whitehurst, I certainly appreciate the
5 sincerity of your remarks. And I too share somewhat your
6 concern about the hostility that sometimes appears at
7 these meetings. But it seems that that's always to be
8 where there's money wanted and money to be granted.

9 MR. WHITEHURST: I hope not.

10 MS. SWAFFORD: Well, I don't know. It would seem
11 that way just from my observation.

12 One of the things I think I heard you say, that
13 you would like to see us return to the pre-level 1982
14 funding?

15 MR. WHITEHURST: Yes.

16 MS. SWAFFORD: And I was just looking at some
17 material that was furnished to us as part of our Board
18 material that had to do with the Texas programs, and I
19 just observed here that in 1985, that in fact, there is
20 a 4.51 percent increase from the funding that was in 1981.

21 MR. WHITEHURST: I was, that remark was aimed at
22 the overall budget for the national level.

23 MS. SWAFFORD: And then I just happened to notice
24 that the total funding per capita has also increased from
25 1981 to \$9.56 to \$10.25 for '85, and of course, obviously,

1 there is going to be an increase in '86, given the level of
2 funding that we hope to receive.

3 So, you know, you can be general about these things,
4 and that just occurred to me that I only speak for myself,
5 but I have real concerns about the poor, too.

6 MR. WHITEHURST: Sure.

7 MS. SWAFFORD: And it's not as though we have --
8 and there are a lot of things I want, but I don't get
9 everything I want.

10 MR. WHITEHURST: Let me tell you my concern.
11 Congress asked that this program have a goal, and that
12 was two lawyers for every 10,000 poor, which is a modest
13 goal. We do not have the funding to meet that; it concerns
14 me that this Board is going to Congress, and asking -- and
15 you're in the position of asking, you're not granting --
16 I understand that -- but it never hurts to ask.

17 MS. SWAFFORD: Yes, we do both.

18 MR. WHITEHURST: That's right. You do both, but
19 for the overall funding, it's an asking proposition. It
20 concerns me especially in light of the Gramm-Rudman amendment,
21 that this Board would go on behalf of their mandate and
22 ask for less money than would be required if fully funded
23 to carry out the mandates of Congress.

24 And I suppose if I had my druthers, I would ask
25 you to at least ask for the amount of money that it would take

1 to fulfill this moderate mandate. And if the Congress doesn't
2 give it to us, that's fine; that's okay. At least we've
3 asked, and they know that it's been sought.

4 My concern is if we go at much lower figures, which
5 I believe the \$305 million is, in fact, it doesn't even
6 allow for inflation over the last two or three years, it's
7 been 305 for the last two years, and I'm talking about the
8 '87 mark, that if we do that, and we're already underfunding,
9 that when they -- if it's necessary to apply the Gramm-
10 Rudman formula, that we'll be in effect receiving double
11 budget cuts.

12 And I think in the past, the problem has been
13 different. I think now with this Gramm-Rudman amendment,
14 it is important that we take another look at how we do this
15 and how we approach Congress. You know, when I settle a
16 case, I never give them my best dollar first. And I'm not
17 sure we ought to give Congress our best dollar first.
18 I think it's a process, and somewhere in the negotiations,
19 we come up with something reasonable and something that
20 will work.

21 MR. MENDEZ: LeeAnne's first and then we'll get
22 to Bob, and then Clark.

23 MS. BERNSTEIN: Mr. Whitehurst, I appreciate your
24 situation as far as wanting us to do the asking, but I
25 did some rough figuring and you are the President Elect of

1 the Bar that has 44,600 active members, you told me.

2 Well, I did some rough figuring, and I would suggest that
3 you ask each one of them to give \$500 toward legal services.
4 That will double the funding currently in the State of
5 Texas. So you are in a position to ask as well.

6 MR. WHITEHURST: I'll be glad to carry that
7 through. And let me say this, LeeAnne, and I understand
8 it's easy to say that with those numbers. It's always
9 bothered me somewhat that lawyers do a lot of things which
10 we're not paid for. You know, we have all kinds of programs
11 in Texas for indigent people for medical functions, yet we
12 pay lawyers sometimes it turns out to be \$8 and \$10 an hour
13 to represent criminal defendants.

14 \$35 an your is not an unusual figure. You know,
15 I pay my auto mechanic \$42 an hour. So it's not, you
16 know, I think lawyers do contribute. I really believe that,
17 that they really they do contribute in ways -- and I think
18 \$500 is a paltry sum. I can tell you myself, in my law
19 practice, I contribute -- and I'm not talking about hte
20 money that I give to these programs, Texas Lawyers Care,
21 which our firm just gave \$2500 to.

22 But I'm talking about the time that I give and it
23 is incredible; it's certainly worth more than \$500. I think
24 \$500, I would ask the lawyers of this State to give much more
25 than \$500 in their time and efforts, and I think to a large

1 extent, they do.

2 I wish, you know, maybe what I need to do is to try
3 to document that better, and I think you're entitled to know
4 that, but I think it would be wrong for you all to go away
5 feeling like that the lawyers of this State do not participate
6 in providing legal aid. Some of them don't do it formally,
7 I grant that, but my experience is that they do it on a
8 day to day basis in ways that we cannot document. I believe
9 it goes on; I'm convinced it goes on.

10 MR. MENDEZ: I would say that -- Bob's next --
11 but I agree with you. I think that happens all over the
12 country.

13 MR. WHITEHURST: I really do.

14 MR. MENDEZ: I don't think it's unique in Texas.

15 MR. WHITEHURST: I agree.

16 MR. MENDEZ: I know it's in Colorado, and it's
17 a pain when the Legal Services comes to me and says, fill
18 out this form, because you guys in Washington want to fill
19 this form out.

20 MR. VALOIS: Do you have an integrated bar or do
21 you have a mandatory State Bar.

22 MR. WHITEHURST: Okay, integrated bar means
23 mandatory. Unified, integrated, same thing.

24 MR. VALOIS: No separate State Bar association?

25 MR. WHITEHURST: That's correct.

1 MR. VALOIS: Do you think that the Texas State
2 Bar would accept the responsibility for administering
3 distributing legal services funds, instead of us?

4 MR. WHITEHURST: I don't know. I haven't thought
5 about that.

6 MR. VALOIS: And all the responsibility including
7 monitoring and auditing and all the rest of it?

8 MR. WHITEHURST: Well, I think, you mention
9 monitoring, and I think that's one thing that's obvious
10 to an outsider today, is that there certainly needs to be
11 some basic monitoring procedures that you all can rely on
12 instead of having your Staff do this on an instantaneous
13 basis, and I'm sure that's in the works. I understand that's
14 in the works.

15 If there's any way that the State Bar of Texas
16 can help in any of your monitoring efforts, you know, we'd
17 be more than glad to. I'd love to take that to the floor.
18 I'll do whatever -- and I want you to know, and I come
19 here sincerely telling you that the State Bar is very
20 interested and committed to legal aid for the poor, and
21 we're ready and willing to help you in any way that we can..

22 MR. VALOIS: If we gave you a special grant, and
23 told you to go service migrants, would you do that?

24 MR. WHITEHURST: Go service migrants?

25 MR. VALOIS: Yes?

1 MR. WHITEHURST: I'd like to look at what you'd
2 want us to do. I'm not sure the State Bar is set up --
3 now, we might have to create something to do that

4 My understanding is that we certainly have the
5 people in Texas that are qualified to do it.

6 MR. VALOIS: Yeah, 44,000.

7 MR. WHITEHURST: Well, you know, 44,000 doesn't mean
8 anything if you're not -- you know, this is a special area;
9 that's an expertise. There are special problems, and not
10 just every lawyer can do that. And I'm not sure I'd want
11 someone up in Austin who'd never seen a migrant worker --

12 MR. MENDEZ: I understand that, but do you think
13 you could find lawyers to do that?

14 MR. WHITEHURST: Yeah, I think the Texas Legal Aid
15 does that.

16 MR. MENDEZ: But if we went with private contractors,
17 do you think that you could find private lawyers in Texas?

18 MR. WHITEHURST: I would sincerely urge you not to
19 do that. I think that would be a disaster.

20 (Applause)

21 MR. WALLACE: Mr. Chairman, I wanted to say some-
22 thing about the \$10 per poor person, or two lawyers per
23 10,000 poor persons.

24 This gets back to our discussion on legislative
25 history. If Congress wants two lawyers per 10,000 people,

1 they don't need us to tell them how to do it. A calculator
2 can tell them how much money to appropriate. In fact,
3 what Congress wants us to do, as I think they've been showing
4 us for the last few years, is to manage what we've got in
5 a shrinking environment because when the doctors got on the
6 lifeboat, they got the exemption for Medicare and Medicaid
7 from Gramm-Rudman; we didn't.

8 The doctors got theirs up front; we're going to
9 work for \$10 and \$12 an hour and the doctors are going to
10 get every dime of what they asked for because they got off
11 of the boat, and we're on it, and it's sinking. And I think
12 what this Corporation has got to understand -- and I've
13 said this several times before -- is the Federal Budget
14 is sinking; we're on the part of it that's going under,
15 and what this Board really needs to do is recognize that fact
16 not scramble to be on the part of the boat that goes down
17 last, but to figure out how to get off the boat altogether
18 and find new ways of delivering services to the poor that
19 don't rely on a Federal budget which is heading for the
20 bottom of the ocean.

21 And that's what our Board Chairman has talked
22 about consistently; that's why we've been asking you about
23 your mandatory programs here in Texas, because we've got to
24 find some new ways, because this one is going down the tubes.

25 MR. WHITEHURST: Well, I guess I'm not sure I share

1 your dismal outlook. I think there are problems, and I
2 think that the Congress, through the Gramm-Rudman formula,
3 is attempting to deal with that. What concerns me is that
4 by virtue of that, now, for '86, even as it is and certainly
5 for '87, what we may be working ourselves into -- when I
6 say, we, I mean this Board -- is that we're going to end
7 up getting cut twice, because this Board's going to cut
8 the program in an effort you know to be diligent.

9 And I'm not arguing against that, but I'm just
10 saying I see that happening, and then we're going to get
11 cut again when the Gramm-Rudman formulas are applied, so
12 we're taking double budget cuts, and I think unnecessarily.
13 You know, I believe we at least ought to let the Gramm-Rudman
14 project work its way and let's see if it works; it may be
15 successful. Gramm is a Senator from the State of Texas,
16 and who knows? It may work. I don't know.

17 MR. MENDEZ: Mr. Whitehurst, how long has your
18 IOLTA program been in effect?

19 MR. WHITEHURST: It's brand new. We're just
20 getting it underway. This is our first year; it's a voluntary
21 program. We are -- it's not without problems. You know,
22 you've got to convince the banks to give up this money that
23 they've had free for many years, and it's difficult.

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1 WHITEHURST: (Continued.) And certainly for
2 '87, what we might be working ourselves into, and when I say
3 we, I mean this board, is that we are going to end up
4 getting cut twice, because this board is going to cut the
5 program in an effort, you know, to be deligent. And I am
6 not, I am not arguing against that, but I am just saying
7 that I see that happening. And then we are going to get cut
8 again when the Gramm-Rudman formulas are applied.

9 So, we are taking double budget cuts, and I think
10 unnecessarily. You know, I believe we at least all left the
11 Gramm-Rudman project work its way. Let's see if it works.
12 It may be successful. Gramm is a senator from the State
13 of Texas and who knows. It may work, I don't know.

14 MR. DURANT: Mr. Whitehurst, how long has your
15 IOLTA program been in effect?

16 MR. WHITEHURST: It's brand new. We are just
17 getting into a way -- this is our first year. It's a
18 voluntary program. We are it's not without problems. You
19 know, you have got to convince the banks to give up this money
20 that they have had free for many years and it's difficult.

21 MR. DURANT: Is the legal need study that you were
22 referring to the one in the blue volume?

23 MR. WHITEHURST: Yes.

24 MR. DURANT: Okay. Did that in any way take
25 into account in measuring need? Did it include, even in the

1 2 to 10,000 discussion a measure of the eligible clients
2 as we refer to it under the statute being served by legal
3 clinics, or by pro bono, or by a whole series of other
4 lawyers or not?

5 MR. WHITEHURST: I would have to review that to
6 be sure. My understanding is that it took into consideration
7 what was available at that time.

8 MR. DURANT: And then it determined it just simply
9 by counting -- taking poverty figures.

10 MR. WHITEHURST: Oh, the total amount, you are
11 absolutely right. We used the formulas that Congress --

12 MR. DURANT: It was by formula; it wasn't by
13 any -- other than that one brief survey instrument, it was
14 essentially taking the formulas as opposed to -- and not
15 actually figuring out how many, for example, eligible
16 clients were already being served by the --

17 MR. WHITEHURST: Well, we did that. You know, we
18 were able to compute and, you know, I don't stand behind all
19 the figures, but I guess it's done as best it can be done,
20 and you all have these same problems, I'm sure. But the
21 42,000 figure is the figure that you are asking about.
22 Yes, that was determined, how many were being served.

23 MR. DURANT: Okay. What is the policy in the
24 State Bar of Texas regarding legal advertising?

25 MR. WHITEHURST: Well, the --

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1 MR. DURANT: Do you have restrictions on that?

2 MR. WHITEHURST: The United States Supreme
3 Court has told us what to do on that. I will tell you that
4 the attitude is shifting at the state bar with regards to
5 that. I think we are being -- coming into the Twentieth
6 Century kicking and screaming. And some of these old
7 folks who feel like we shouldn't have advertising, understand-
8 ing that it's here. And now what we need to do is turn our
9 attention to helping in the advertising and making sure that
10 it is proper, it is professional and that it's getting the
11 information across to the public.

12 So, I think there is a new attitude that hopefully
13 will continue under my administration. And the only thing
14 that we have -- the major restriction we have in advertising
15 that's been a controversy here in Texas is that we do
16 require -- we do have a board certification procedure in
17 Texas.

18 In other words, you can be board certified in a
19 particular area of the law -- personal injury trial law,
20 civil trial law, family law.

21 They do require when you advertise that if you are
22 not board certified, you state that.

23 MR. DURANT: Truth in advertising.

24 MR. WHITEHURST: It's truth in advertising. And
25 that's where we are headed in Texas is that, you know, I

1 think the law is that advertising can only be restricted to
2 the extent that it is misleading, untruthful, deceptive.
3 And, so, I think that's where we are going and rightfully
4 so.

5 MR. DURANT: What are their requirements for
6 admission to the bar in Texas?

7 MR. WHITEHURST: After graduation from a law
8 school --

9 MR. DURANT: It requires graduation from a --

10 MR. WHITEHURST: Oh, yes, from a credited law
11 school.

12 MR. DURANT: And then?

13 MR. WHITEHURST: Then you take the bar exam, a very
14 strenuous bar exam.

15 MR. DURANT: To practice in any area of law in
16 Texas?

17 MR. WHITEHURST: That's correct. Just like an
18 M.D., you know, you -- and the same thing as a lawyer,
19 but you can specialize.

20 Let me mention another thing.

21 MR. MENDEZ: I am just sort of curious. Is the
22 specialization really working out?

23 MR. WHITEHURST: Yes. It is working. We have been
24 very pleased with our standards. I'm probably bragging
25 a little bit, but I think we have the finest specialization

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1 program in the United States and Texas. It is one that is
2 carefully monitored, that is done by examination and
3 requirement of the years of practice, the number of trials,
4 it is monitored carefully, and it's been a very successful
5 program in Texas.

6 We just passed, in fact, last Monday, we just got
7 the result of the referendum. And the lawyers of Texas
8 just put on themselves a mandatory minimum continuing legal
9 education requirement.

10 I notice that as part of your, or the staff
11 recommendation is that you would do away with state support.
12 It was cut to zero is the reason I say that. That concerns
13 me, especially in light of this MCLE referendum that just
14 passed.

15 We have 12, I think it's 12 different legal
16 service entities in Texas, and the great thing about our state
17 support system is that it kept each one of these from
18 reinventing the wheel. And it also is a way to provide
19 specialized education in the areas that they deal with.
20 With the requirement that all lawyers had a number of hours
21 of MCLE, it seems like this would be a logical group to
22 carry out that function, necessary function, and a big
23 responsibility for the number of lawyers who are involved.

24 I mention that because I hate to see that funding
25 at zero for the state of Texas.

1 MR. WALLACE: Of course, to follow up on Mr.
2 Valois' comment, if the Texas State Bar handled all of the
3 legal services in Texas, you could keep the wheel from being
4 reinvented that way. You could have your state support
5 if you wanted it, and you could not have your state support
6 if you didn't. You would have what you wanted.

7 MR. WHITEHURST: Well, I think we are in agreement.
8 You know, it's taken a long time to put into effect a
9 federally funded program. To transfer that all to the
10 state bar -- now, if you want to federally fund that --

11 MR. WALLACE: Okay, sure.

12 MR. WHITEHURST: -- state bar.

13 MR. WALLACE: We send you a check and you decide
14 how you want to spend it, from El Paso to Baumont.

15 MR. WHITEHURST: Well, if the check is big
16 enough.

17 (Laughter.)

18 MR. WHITEHURST: Just don't underfund me.

19 MR. VALOIS: I just have one question. The timing
20 is purely coincidental. Does either the Texas State
21 Legislature or any other Texas-wide agency provide any
22 funding for legal services of the type of funding that we
23 provide, those purposes?

24 MR. WHITEHURST: Okay. I have to distinguish
25 again here between civil and criminal. They fund greatly,

1 not enough.

2 MR. VALOIS: No.

3 MR. WHITEHURST: I have to mention that because
4 that is a funding of legal services to the poor from the
5 state's standpoint, and it's one that they are heavily
6 involved in that is costing more and more money.

7 MR. VALOIS: How about the civil?

8 MR. WHITEHURST: The civil, they do not provide
9 any, per se, other than that the state bar is a state
10 agency under the State Bar Act. And, so, we carry out their
11 function through our programs for civil, for civil programs.

12 MR. DURANT: The state of Texas gives no money
13 in the civil context for the lawyers?

14 MR. WHITEHURST: Well, it does from the -- well,
15 I suppose it doesn't in the way of legislative or general
16 appropriations. Someone can correct me on that if I am wrong,
17 but they give tremendously on a state - local for -- on a
18 criminal area. But not in the civil area.

19 Now, let me quick hasten to add that I go back
20 to -- that's not to say that the state of Texas and the
21 lawyers are not contributing greatly to the legal aid for
22 the poor. I think they are.

23 MR. MENDEZ: I am going to have to cut the board
24 off. We obviously really enjoyed having you come, and are
25 you going to be at the cocktail party later?

1 MR. WHITEHURST: I will if I can stay awake. I
2 understand you are all going to be late.

3 (Laughter.)

4 MR. WHITEHURST: No, I will be there gladly and
5 I think you --

6 MR. MENDEZ: Well, I have been trying to conduct
7 some negotiations on the side.

8 MR. WHITEHURST: Okay.

9 MR. MENDEZ: I'm trying to think if we can work
10 out something so --

11 MR. WHITEHURST: I'll be glad to.

12 MR. MENDEZ: I know that I would like to speak to
13 you more at the cocktail party, and I think various board
14 members would as well. And if you are going to be there,
15 we would appreciate some time.

16 MR. WHITEHURST: Any time and anywhere we will
17 be glad to visit with you, and we will come to your home.

18 Thank you very much.

19 MR. MENDEZ: We appreciate it very much. Thank
20 you.

21 (Applause.)

22 MR. MENDEZ: Now, I am taking the prerogative
23 of the Chair and calling some people out of order and some
24 other things. Dean James Douglas, he is from Texas
25 Southern University, and I would like to have him come

1 forward. After that we will take Gail Kenny from New
2 Hampshire.

3 MR. DURANT: Is Gail here?

4 MR. MENDEZ: Yes. Terry said that -- I didn't
5 see here.

6 Ladies and gentlemen, this is Dean James Douglas
7 from Southern Texas University.

8 MR. JAMES: Good evening, I ask you first to
9 excuse my voice. I would like to thank the chair and the
10 board for agreeing to listen to me this evening.

11 I understand and as was said earlier, this is my
12 first meeting of your board and I watched with interest
13 some of the earlier discussions. I understand from what
14 I learned in the last month to month and a half that maybe
15 I am beating a dead issue. And sometimes, I think in the
16 last week or so, probably feel like I'm in a position of
17 trying to revive a person who is being kept alive on a life
18 support system. And I am talking about now the Reggie
19 program.

20 I come to you knowing fairly well that most people
21 on the board and, in fact, a lot of people in the country
22 think that Reggie ought to be allowed to die a quiet and
23 peaceful death.

24 But I come to you with a different perspective
25 as to why I think the program ought to be continued. I

1 have never been a Legal Service lawyer. In fact, I have to
2 admit that the major portion of my professional career
3 has not been directly related to representing poor people.
4 In fact, I have spent all of my legal career as a law
5 student, as a legal educator.

6 So, I come to you from the side of legal education
7 which is where the Legal Service lawyers are supplied,
8 supply the system.

9 When I entered law school in 1967, I think most
10 of the people who entered with me and most of the people who
11 followed me soon thereafter went to law school because we
12 could make a difference. We thought we could change the
13 scale of justice in the sense where the scale would be
14 balanced equally for all, regardless of their status in
15 society, and definitely regardless of their wealth.

16 When I entered law teaching in 1970, things
17 started to change, and I think the change really started
18 I guess in a real sense in about '73 or '74. And I saw a
19 group of people not really committed to the same goals that
20 class in law school were committed to, but at least
21 understanding that the major portion of the people who
22 worked in legal education believe that equal access was
23 supported; that they felt a necessity to say it.

24 And, so, when I interviewed prospective law
25 students, they all said we like to go to law school because

1 we want to make a difference. We want to make society
2 equal for all, even though most of them admitted to me that
3 that was not their true commitment; that they felt a
4 necessity to have to say it.

5 One of the things which has amazed me in the
6 last four to five years is that no one says that anymore.
7 The people who are coming to law schools don't believe
8 that the representation of poor, the representation of those
9 people who are disenfranchised are nearly as important as
10 the group of people who attended law school.

11 Prior to my deanship, I was on the faculty at
12 Northeastern, and one of the things that the law school at
13 Northeastern was founded on was representation to the poor.
14 One of the things that really concerned the faculty in the
15 earlier years, and continues to concern the faculty is that
16 we were simply unable to attract people, students to law
17 school who had that same kind of commitment of representation
18 of the poor.

19 And as Bill Whitehurst indicated earlier, part of
20 it had to do with money.

21 I come to address Reggie more as a simple quality.
22 One of the things that I understood as a law faculty and
23 later as an administrator is that the students from whom
24 excellence was a mark in law school suddenly stood up and
25 took notice when Reggie was interviewing on campus. And

1 I know we talk about adequate representation. I think the
2 poor deserves something more than adequate representation.
3 I think that the Reggie program, being the symbol that it
4 was, that the program was very good not only to attract
5 minority law students of relatively large numbers, but it
6 was able to attract quality law students, quality minority
7 law students in even larger numbers.

8 I think we can all -- when we think about the
9 Statue of Liberty, I don't think anybody questions whether
10 the money was fitting to revive the Statue of Liberty is
11 worth the cost of the Statue, or whether even it would be
12 more cost effective to build some other symbol.

13 I think what we identify with the Statue is that
14 it is a symbol, and that because it is a symbol on which this
15 country is founded, money is not as important as it would
16 be but for that fact. And I think the same thing is true
17 for the Reggie program.

18 I know that maybe you can attract minority
19 students by resume -- I know that you might be able to run
20 a minority program at a cheaper cost than the present
21 Reggie program. But I guarantee you that you won't attract
22 the quality person to Legal Services that the Reggie
23 program presently attracts.

24 I am here not only to talk about the continuation
25 of the program, but one of the things I discovered in

the Reggie program, not only with board members, the other people in Legal Services, that that was started that there was no interest in the legal community that housed the Reggie program and the Reggie program.

As soon as I discovered that there it was possible the Reggie program might be eliminated, I got involved. I don't know if you are familiar with Texas

but Texas University has, at least since the time of the incident, has been very, very involved in representation through its clinical programs. We have a long involvement with the poor.

We presently have an elderly law clinic through grants.

We would be willing, assuming the board decided to keep this sick individual, we would be willing to support the program. I am not here asking that the board be allowed to walk tomorrow, because I know that there are some things that are already set in stone.

But that there is at least enough flexibility in the funding process to at least keep the patient alive and nurture the patient back to full health.

And, so, basically, I suppose, one, I am offering to the Service Corporation an adequate home for the program, and one that I will guarantee, not only as

1 not only as a law school dean, but the university is
2 committed to the proper administration of any program,
3 assuming the Legal Service Corporation decides to continue
4 it.

5 As I say, I think the program is a symbol, is an
6 important symbol, and I think that that should not be lost
7 by the Legal Service Corporation.

8 MR. MENDEZ: Thank you very much.

9 MR. DURANT: Dean, thank you.

10 (Applause.)

11 MR. MENDEZ: Can you tell me a little bit more
12 about -- I always hear something that may be sort of tweaks
13 my interest. Can you tell me about your law school clinic?

14 MR. DOUGLAS: Presently in -- as I said, the
15 clinic has been in existence for as long as I can remember.
16 We presently have four faculty members, and one of the
17 good things about the clinic that we run is that we don't
18 have the same problems that other law schools have with
19 their clinical programs.

20 I have been involved in legal education in law
21 schools from the East Coast to the West Coast, and also
22 in the Midwest. So, I have spent time at about five
23 different law schools, and I know that one of the sticky
24 points that most of law faculty is how do we relate to the
25 clinical program.

jbl5

1 I can tell you that at Texas Southern, it isn't
2 just a clinical faculty which is concerned about the
3 clinical program and supports the clinical program, but it
4 is the entire faculty that has been involved in the clinical
5 program.

6 We have an in-house clinic in which we represent
7 the poor. As I indicated, we have an elderly law clinic.
8 We also have -- we do a lot of Social Security Administration
9 work, and we have a tax clinic. We use full-time four
10 faculty members in our clinic, and another faculty in the
11 tax clinic that does half-time clinical work in the other
12 program.

13 MR. MENDEZ: Do you have some sort of method that
14 you determine whether a client qualifies in terms of
15 financial?

16 MR. DOUGLAS: We do, we do. I don't know what
17 the cut off figures are, but, yes, we do.

18 MR. DURANT: Do you know how many clients you
19 serve? Any rough idea?

20 MR. DOUGLAS: God, I really wish -- but I really
21 don't.

22 MR. DURANT: Do you know how many students
23 participate? Do all, is it a requirement that all students
24 participate?

25 MR. DOUGLAS: No, it isn't a requirement that all

1 students participate. I would say right now we probably
2 have an average of 40 students per year participating in
3 one form or another in the program.

4 MR. DURANT: Out of how many?

5 MR. DOUGLAS: Out of right now about 350.

6 MR. WALLACE: Is that all classes; that's the
7 whole school?

8 MR. DOUGLAS: Yes, that's the whole school.

9 MR. WALLACE: Okay.

10 MR. MENDEZ: Does your clinic, is it mostly for
11 second and third year students, or is it for all?

12 MR. DOUGLAS: Presently the clinic is for third
13 year students, and this is the first year we run it only
14 as a third year option. Prior to this year it was an
15 option for second year students. But we have since gone
16 to a required second year curriculum, and so second year
17 students now don't have the option to take the clinic.

18 MR. WALLACE: So basically you have got 40 people
19 a year out of a third year class out of about 110, 120?

20 MR. WHITEHURST: Yes.

21 MR. WALLACE: Okay.

22 MR. DURANT: That's pretty good.

23 MR. MENDEZ: That's really good. That's
24 excellent participation.

25 MR. DOUGLAS: Well, one of the things I think

jbl7

1 that's important is that we get a lot of people coming to
2 our law school who really expect to practice law on a day
3 to day basis. And a lot of them -- we are one of four
4 predominantly minority law school in the country. So, a lot
5 of people come to our law school expecting that their
6 representation is going to be poor people, because that's
7 where a lot of them have come from. A lot of them are
8 expecting to go back to those communities.

9 MR. MENDEZ: Will you talk to this man with the
10 mustache and the blond hair sitting right there about
11 potential of getting a law school grant?

12 MR. DOUGLAS: Sure.

13 (Laughter.)

14 MR. DOUGLAS: Be happy to.

15 MR. MENDEZ: Twist his arm.

16 (Laughter.)

17 MR. MENDEZ: We appreciate your time. Thank you.

18 (Applause.)

19 MR. BIRD: Could I say a word?

20 MR. MENDEZ: It's got to be a short one, because
21 Gail, under our agreement, is going next.

22 MR. BIRD: Yes. I am Robert Bird and the
23 director of the program that serves Houston, Texas.
24 President Whitehurst mentioned that program a little earlier.
25 We are very proud of Texas Southern, and I am proud to

1 say that I was a Reggie in the class of 1970 through '73.
2 I do feel that some of the things I learned in those years
3 as a Reggie have helped me make legal services my career.
4 I feel very deeply about my reasons for it being my career.

5 I would also like to add that since there has been
6 some interest in exploring the notion of law schools, that
7 you should also know that but for this law school out of three
8 law schools in Houston, there would be no law school
9 clinical program. The most recent to close was the University
10 of Houston. Because as the dean there stated, there was
11 insufficient funds.

12 So, while we are looking at the possibility, we
13 might also explore reality. There are insufficient funds
14 for many of these law schools. It may be an alternative
15 in some case or a supplement as opposed to an alternative,
16 I really don't like that word because I don't think it's
17 particularly helpful, but in a lot of other cases the law
18 schools are having to back out of that area.

19 MR. DURANT: Is the lack of funds -- I mean is it
20 that the -- to bring on additional staff? I mean individual
21 faculty members? For example, the free university law
22 clinic at Wayne State, two or three rotates with the faculty
23 in terms of who is the supervisor, and they have substantial
24 participation on frankly a too low of a budget. I attended
25 a fundraiser for them recently, so I know their figures.

jbl9

1 I mean what is it in terms of -- why is that a fund
2 problem? I mean you have got the students, I assume, who
3 want to participate? And is it a -- what's the problem?

4 MR. BIRD: I think that the problem is that they
5 don't to do it on the side. They want to do a thorough
6 job of it. And if they are going to do a thorough job of
7 it, it means devoting enough time to it, and they don't
8 have that time. They have to educate those students, as well.
9 And what I am talking about is the professor's time.

10 So, the University of Houston as a resource, as
11 a referral, as a supplement to our program was lost in the
12 last three year period, and Texas Southern is the only one
13 that remains. I think that needs to be realized.

14 MR. MENDEZ: Thank you.

15 MR. BIRD: Thank you.

16 MR. MENDEZ: Gail.

17 (Pause.)

18 MR. MENDEZ: Let me just do another spiel here.
19 We have a cocktail party at 7:00 tonight that's scheduled,
20 and it's supposed to be in one of the rooms, fifth floor.
21 And I assume everyone is invited, I think that's a fair
22 statement. Is everyone invited? All of the --

23 VOICE: Yes.

24 MR. MENDEZ: All right, the El Paso Bar Association,
25 State Bar Committee on Legal Services to Indigents and the

1 El Paso Legal Assistance Society will be hosting a
2 reception in honor of the LSC board members Wednesday,
3 December 18, 1985, from 7 to 9 p.m. It's the El Capitan
4 Restaurant, fifth floor, here at the Sheraton Hotel.

5 And is somebody here from one of these groups?
6 Is everyone here invited?

7 VOICE: Yes.

8 MR. DURANT: If they aren't, they are now.

9 VOICE: (Not by microphone but inviting everyone
10 to attend cocktail party.)

11 MR. MENDEZ: I'm sure that they are going to be
12 hungry, so I am sure that they are going.

13 Now, you have all heard that 10-4. You are all
14 invited.

15 Then we have got another matter. Tomorrow's
16 meeting will, I will again state, will be at the Holiday
17 Inn, 113 West Missouri, The Grand Ballroom, and I am
18 negotiating right now about what hour.

19 MR. WALLACE: The sooner the better.

20 MR. MENDEZ: The sooner the better?

21 MR. WALLACE: The sooner the better.

22 (Pause.)

23 MR. WALLACE: I'm just saying I may be on a
24 10:00 plane in the morning. I would like to vote on this
25 committee business before I get on it. So, I will stay

1 here all night or I will come back at dawn, but I would
2 like to --

3 (Pause.)

4 MR. MENDEZ: We are trying to work out some --

5 MR. ROCHE: I just want to see what happens.

6 (Laughter.)

7 (Off the record discussion and simultaneous
8 conversation.)

9 MR. MENDEZ: What I am trying to do is get a
10 consensus here.

11 (Off the record discussion and simultaneous
12 conversation.)

13 MR. MENDEZ: We are trying to make sure that we
14 have got the room.

15 Okay, Gail, I'm sorry. We are going to take you
16 now.

17 MS. KINNEY: It's perfectly only.

18 I really appreciate your giving me the opportunity
19 to speak now in consideration of the fact that I won't
20 be here tomorrow. I am here specifically to talk about the
21 1987 budget, and then tomorrow I have to try to sell a 1987
22 budget to my own board of governors. So, I appreciate your
23 understanding.

24 Clark and Peppy, members of the committee, members
25 of the board, for the record my name is Gail Kinney. I

22
1 am the executive director of the New Hampshire Bar
2 Association. I appear before you on behalf of L. Jonathan
3 Ross, the President of the New Hampshire Bar Association,
4 and on behalf of the New Hampshire Bar's board of governors.

5 Actually, I feel as if I am among old friends
6 here and among colleagues. We have seen each other several
7 times now in several different contexts. And I believe
8 we began a dialogue in Gilford, New Hampshire, and with
9 some of you the dialogue began before that. I believe we
10 began a dialogue which was both productive and positive
11 and the fact that lawyers in New Hampshire believe in
12 maintaining and want very much to maintain that dialogue
13 is borne out by the fact that I am here today before you.

14 The New Hampshire Bar Association was very,
15 very grateful to get an invitation which was conveyed through
16 Joel Tommell(ph) to appear before you at Anaheim to
17 discuss the 1987 budget mark. We were even more grateful
18 to learn that you had postponed the budget mark discuss
19 until El Paso, because that new time frame allowed us and
20 allowed our board of governors time to discuss the mark
21 and the direction of the corporation in some depth before
22 your committee meeting today and tomorrow.

23 My board has sent me with a resolution which I
24 would like to present to you, and I will read it and then
25 I will pass out copies after I am done.

jb23

1 MR. DURANT: Is that the one you sent us?

2 MS. KINNEY: Yes.

3 MR. MENDEZ: Could you -- we brought it. I --

4 MR. DURANT: Let's make it a part of the record
5 though.

6 MR. MENDEZ: We will make it a part of the
7 record. Read it again, please.

8 MS. KINNEY: Okay, I will read it. It's very
9 brief, and I would like everybody to know what the New
10 Hampshire Bar has resolved.

11 The full board of governors resolved:

12 Whereas, the New Hampshire Bar Association is firmly
13 committed to the principle of equal justice under law
14 and whereas the New Hampshire Bar Association believes
15 that the nation's commitment to equal justice is best
16 carried out through a strong and independent legal services
17 program, and whereas federal funding for civil legal
18 services to the poor was cut by 25 percent in 1982 and
19 has not yet been restored even to the funding levels of
20 1981, now, therefore, be it resolved that the board of
21 governors of the New Hampshire Bar Association strongly
22 encourages the Legal Services Corporation to seek substantially
23 increased funding from the Congress so that it may provide
24 adequate funding for local Legal Services programs to
25 render adequate and quality legal assistance to the poor.

1 (Applause.)

b2
2 MS. KINNEY: While our board did not use the
3 budget figure but, rather, urged you to seek substantially
4 increased funding, I believe that were they to hear the
5 project advisory group's presentation, which you will hear
6 sometime. I'm not sure now whether you are going to hear
7 it in the middle of the night, or tomorrow morning, or
8 whenever. But I believe that were they to hear that
9 presentation, that my board probably would also unanimously
10 urge you to accept the project advisory group's recommendations
11 on a budget mark.

12 I understand that you will hear advocacy for a budget
13 mark of \$385 million. In fact, I believe we would think that
14 a budget mark of \$385 million for 1987 is probably a bare
15 minimum of the definition of substantially increased
16 funding.

17 But rather than focus on numbers, I am really
18 here before you primarily to convey our bar's and the
19 private bar, the organized bar, in general, the bar's
20 concern about the process that you use as a committee and
21 as a board to arrive at the budget mark, and the about
22 the underlying philosophy which motivates and guides your
23 decision-making.

24 We are deeply concerned about that process and
25 about that philosophy. We are concerned about what appears

jb25

1 to have been used in the past. We don't know what's
2 operative here today and tomorrow. However, we are hopeful
3 that you are ready to chart a different course than the
4 one you have chosen before.

5 Understand, I am here on behalf of one state
6 bar and it's a very cautious and conservative state bar
7 at that, but I believe perhaps it's also a very representative
8 state bar. And I am here to encourage you and to urge you
9 that it is time for a change. It is time for a new
10 direction. It is time to choose an entirely new corporation
11 path than the one you have been down before. And it's time
12 to choose it with the 1987 budget mark.

13 You, as a board, and when I speak of the board,
14 understand that I am also speaking of your predecessor
15 board, but you as a board have tried all kinds of stances
16 in your various approaches to the fields and to the mission
17 of the corporation. You have tried setting a mark to
18 incorporate deep funding cuts across the board. You have
19 tried the defunding of certain components and communities.
20 And for 1986, and it appears 1987, you are trying funding
21 freezes.

22 We wonder, however, if you really feel good about
23 what you have done. We wonder if you feel good about how
24 you have been received by Congress. We wonder if you feel
25 good about how you have been received by the private bar.

1 And we wonder if you feel good about how you have been
2 received by the legal services community. Or, we wonder
3 if you fee frustrated or perhaps occasionally, and you might
4 not want to admit it publicly, but perhaps occasionally
5 even embittered or angry about the reception that you have
6 gotten from the sectors.

7 And we understand that Robert Gagenstino(ph),
8 who has served as a corporation monitor and a consultant,
9 has gone so far as to put his own frustration in writing about
10 the reception that he has gotten from the private bar.
11 He talked about the failure of the Reagan Administration to
12 adequately articulate its reasons for its opposition to
13 at least certain elements of the legal services network.
14 And he wrote, ironically with apparent frustration that
15 most Legal Services programs are seen by the private bar
16 as a Republican establishment and serving a need and doing
17 it well.

18 And let me just step outside my prepared
19 remarks and say that I think it's a little scary that somebody
20 who has served as a corporation monitor takes offense at the
21 fact that the private bar regards the legal services
22 community as doing a good job.

23 And, interestingly, not even knowing about the
24 Gagenstino(ph) letter, that's exactly what John Ross told
25 you on October 11th in New Hampshire.

jfb27

1 He told you that New Hampshire Legal Assistance,
2 which is New Hampshire's basic field staff attorneys program,
3 is now one of the state's institutions, well respected and
4 well regarded, and the job that it is doing needs to be done.

5 So, if nothing more, you can rest assured that
6 Bob Gagenstino's(ph) intelligence report on what's going on
7 in the private bar, at least in terms of how the private
8 bar regards Legal Services, his reports are accurate.

9 Bob Gagenstino(ph) also warns that there will be
10 substantial opposition to the dismantling of the staff
11 attorney model. Substantial opposition, he says, not from
12 the leftist Legal Services leadership, but from those
13 pillars of the community who generally go Republican, and
14 that's his quote.

15 LSC monitor, LSC Gagenstino's(ph) solution, of
16 course, is to counsel your current LSC administration to
17 get down to the grass roots, to get down to the local level
18 and again I am quoting right from Gagenstino, and to try to
19 mix up Legal Services with the left.

20 Knowing that consultant Gagenstino(ph) or
21 monitor Gagenstino(ph) approach, one can't help but wonder --
22 I really can't help but wonder, after learning about
23 Bob Gagenstino(ph) and his orientation, if that's what --
24 if mixing up Legal Services with the left is what 17 member
25 monitoring teams who demand home phone numbers of all

1 program staff members who have served in the program for the
2 past five years, I wonder if that's what that's all about.

3 The private bar and the organized bar is why I am
4 here. We would counsel you to forget the Gagenstino(ph)
5 approach. At best, the Gagenstino(ph) approach is an
6 acronym. At worst, it is an outrage. It won't work.
7 It hasn't worked. It is truly time for a different
8 approach to the year.

9 Let me pause at this juncture just to reflect on
10 a conversation I had with Clark Durant in Charlotte, North
11 Carolina, in March of 1985 at the ABA's pro bono conference.
12 I asked Clark about his goals for the corporation as
13 chairman, and about your goals as a board, as you sought to
14 become the first confirmed LSC board in four years.

15 He outlined his and your goals as being, and
16 please understand that I am paraphrasing a little because
17 I couldn't remember word for word what Clark says, but
18 forgive me, Clark. But Clark told me that his goals were
19 to repair relations with Congress, I think you remember
20 saying that; to reach out to the organized bar and work
21 closely with it and, three, to explore innovative delivery
22 systems.

23 And let me just suggest that as you may have
24 perceived, maybe you have perceived this, that I don't
25 think your relations with Congress has been adequately

jb29

1 repaired. I know some of you must be terribly frustrated
2 by the most recent LSC appropriations process and by the
3 accompanying conference committee report, and whether you
4 like it or not, you are probably still frustrated by the
5 whole legislative history surrounding that process.

6 And let me also suggest to you that all is not
7 well between you and the private bar. I know you must be
8 frustrated, and some of the best of what I consider to be
9 the legal blue chip stock, so to speak, the mainstream of
10 the bar, and now remember, LSC consultant Gagenstino (ph)
11 calls them those pillars of the community who generally go
12 Republican, I know you must be frustrated as bar leaders
13 come before you the way did in New Hampshire, in Florida,
14 today in Texas, and everywhere else you have gone recently,
15 and as they gather in ABA committee meetings to embrace
16 the legal services community and to stand shoulder-to-shoulder
17 with the legal services community, and to try -- in trying
18 to ward off the hostility, the funding cuts or the increasingly
19 burdensome and cynical and nonsensical corporation
20 regulations that we have coming before us.

21 And let me suggest finally of Clark's three
22 goals, that the true innovation which is going on, which is
23 the innovation of the existing legal services community
24 as the best and brightest legal services minds in the
25 country, as they are trying to provide truth, justice,

30

1 dignity and hope for the poor while their efforts are being
2 thwarted and their energy drained by having to haggle over
3 funding and an excessive or inept monitoring or other
4 bureaucratic demands. That kind of innovation is being
5 thwarted by the current corporation.

6 Let me go on and say that the delivery system
7 study programs the DSS programs, and you now call them the
8 supplemental field program, and we in New Hampshire are a
9 part of that so we know well what's going on in DSS, we
10 know, as well, the DSS programs know as well as any in the
11 field how the energy that we really need for delivery
12 systems innovation, which is what we are all about, and
13 don't forget, you have funded the DSS programs with national
14 models, we know how that energy can be quickly zapped
15 as we are blind-sighted by a threatened LSC funding cutback
16 that we didn't know anything about.

17 So, I ask you, thinking back on your goals, thinking
18 back on the goals that Clark articulated to me and which were
19 very impressive and very lofty and laudible goals, have
20 you repaired relations with Congress in the last year,
21 have you improved your partnership with the private bar,
22 have you contributed to delivery systems innovation.

23 If you haven't, or if you haven't to the extent
24 that you hoped or dreamed that you would, please let me
25 suggest again, please let me really suggest to you today

1 and tomorrow, perhaps it's time to try a different approach
2 to doing that.

3 Now, I am sure you are wondering why in the world
4 I am here from New Hampshire. You know, why I would travel
5 all the way from New Hampshire to extend this message to you
6 to day. And I just wanted to dispel a few misconceptions
7 or maybe misunderstandings first.

8 I am not a long-time member of the legal services
9 community. I am not even a short-time member of the so-called
10 legal services community. John Ross isn't either. To
11 the extent that we know any of the people here in the room
12 today is because we met them in New Hampshire. We were
13 very privileged in New Hampshire to host you at our
14 October board meeting, and we were privileged to meet
15 some of these folks. But this is a little bit far in
16 territory to us, perhaps a lot more foreign than it is to
17 you.

18 John Ross is a state bar president. I am a state
19 bar executive. And, so, you must wonder why do we care, why
20 in the world do we care, why am I in Texas, why is it so
21 important to maintain dialogue with you, to try to reason
22 with you about the 1987 budget marks.

23 Well, I'll tell you why it's important. It's
24 important because of some little, very illusive concept
25 that we call justice. And I think that probably justice

1 is the one thing that LSC consultant Gagenstino(ph)
2 missed in his August 16th intelligence report of what bar
3 leaders are thinking in New Jersey and Pennsylvania and
4 Michigan. Justice is the tie that binds us. It's the tie
5 that binds me to everybody in the room who cares about
6 legal services.

7 Bar leaders, and be the pillars of the legal
8 community or be they newcomers to the legal profession,
9 overwhelmingly have an invested interest in the fair
10 administration of justice. And their vision of justice
11 overall can't be fulfilled without the individual legal
12 services staff attorney working diligently on the local
13 front. And it can't be fulfilled without a firm national
14 commitment to equal access to justice.

15 Interestingly, all we really ask of you at this
16 point is to endorse minimum access to justice. Minimum
17 access by no means adequate access, and it's disturbing to
18 see you play around with numbers and lose sight of the
19 fact that minimum doesn't mean adequate. Minimum access is
20 not even equal access. And for any of you that think
21 otherwise, you are sadly mistaken.

22 Minimum access is rock bottom minimum access.
23 And as John Ross says you have a sacred trust, and you have --
24 with it comes a heavy responsibility. And to the extent
25 that you decline even to endorse even minimum access, the

1 private bar, including the New Hampshire Bar, and that's
2 why I am here, will continue to be truly appalled and will
3 continue to be dismayed, and will be forced to act in
4 opposition to your fiscal recommendations.

5 We in New Hampshire, and I assure you of this,
6 we in New Hampshire are conservative, we are independent
7 and we are feisty. But we embrace justice. And, so, let
8 me just pause again and say I really want you to use this
9 as a model. You, too, can maintain your reputation of
10 being conservative, independent and feisty and you, too, can
11 embrace justice.

12 (Applause.)

13 MS. KINNEY: I am sure all of you have heard of
14 New Hampshire's first in the nation presidential primary,
15 and if you are national political watchers, you may also
16 have heard of Dixville Notch, New Hampshire. We are both
17 in the famous primary election and in every national
18 election, the 16 or so registered voters in Dixville Notch
19 gathered together on this little Canadian bordertown at
20 12:01 on election day, and they all simultaneously cast
21 their ballots, and then they are immediately counted as
22 national CBS, NBC and ABC television cameras roll.

23 And to my knowledge, Dixville Notch has always
24 gone with the national election winner, or with the primary
25 winner. And, so, as they say, as New Hampshire goes, so

1 goes the nation.

2 (Applause.)

3 MS. KINNEY: And I want to say again, we in New
4 Hampshire are conservative, independent and feisty, but we
5 believe in equal access to justice. We also can boast of
6 having the first organized statewide pro bono program in the
7 country. It's one of your DSS programs; you now call it
8 supplemental field, and you have played around with it
9 after you gave it a new name, but you still fund it, and
10 it is innovative, it is efficient, it has a unique and
11 admirable partnership with New Hampshire Legal Assistance.
12 It is truly a national model. And I tell you, as New
13 Hampshire goes, so goes the nation.

14 We are conservative, independent and feisty, but
15 we believe in equal access to justice. The whole state is
16 proud of the fact -- of John Ross, our state bar president,
17 who we believe spoke eloquently and forcefully to you in
18 October to try to convey to you the importance of the sacred
19 trust that you hold as LSC board members.

20 Perhaps John was one of the first to be so
21 forceful. But, as you well know, he was not the last
22 because you have heard from people like him since. And I
23 say again, as New Hampshire goes, so goes the nation.

24 The people we send to Congress are generally
25 conservative, independent and feisty. And, as you well

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1 know, Gramm-Rudman notwithstanding, our junior senator has
2 been the national leader in trying to insure that the
3 concept of equal access to justice for the poor is preserved
4 and not tampered with. He has been in the front and he
5 assures us that he will remain in the front of that fight,
6 and he has not been alone, and the group beside him and
7 the group behind him is growing for as New Hampshire goes,
8 so goes the nation.

9 I would like to tell you a lot more about our
10 pro bono program and about similar DSS programs. I would
11 like to tell you about poverty in New Hampshire. I would
12 like to tell you about how highly the New Hampshire Bar
13 regards and respects New Hampshire Legal Assistance, and I
14 would like to tell you how minimum access to justice through
15 a \$385 million budget mark is the very least that you should
16 endorse in carrying out your sacred duties as board members.

17 But in the interest of time and understanding that
18 everybody has now been invited to a cocktail party they are
19 anxious to get to, I will try to wrap up and I will close
20 simply by trying to convey to you one more time, and I really
21 hope that you will listen to me, that the vast majority of
22 the legal profession already has embraced minimum access to
23 justice. And we would really like you to become our
24 partners in embracing such minimum access for the 1987
25 budget mark and beyond.

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1 Senator Jacob Javits spoke at a recent national
2 gathering of legal services people and very, very movingly
3 he summoned all the strength that he could in his frail
4 and feeble body to tell those assembled that the quest for
5 justice is man's greatest calling. And so it is. It is the
6 reason that the New Hampshire Bar Association cares about
7 what you do.

8 If you can't figure out why your own efforts
9 aren't clicking, if you can't figure out why things just
10 aren't working the way you would like them to work today,
11 and if you can't figure out why there may be tension between
12 the board and its audiences and its observers, and if you
13 can't figure out why even the private bar is appalled at the
14 apparent staff antagonism towards the field, then perhaps
15 it's because you have failed adequately to factor in that
16 calling, that you have failed to factor in our belief
17 in the quest for justice.

18 One of our most dedicated pro bono attorneys
19 in New Hampshire, a man named David Copperthorn from a
20 small, two-person husband and wife law firm, and I'll tell
21 you, these are not wild-eyed radicals, but conservative,
22 cautious, established and struggling legal professions, these
23 two people. David Copperthorn wrote to us in January,
24 after he and his wife had received accolades from us for
25 their extraordinary pro bono work, and he wrote in his

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1 letter, "It has never been our perception that we were doing
2 anything out of the ordinary. We have always known that
3 the pro bono and kindred programs of the bar association
4 were among the finest achievements and reflected the highest
5 values of the legal system."

6 He then observed, this is a quote, "Most of the
7 time we are all simply practitioners in an ancient and
8 learned craft and that is great. Sometimes, however, we have
9 the opportunity to be genuine instruments of justice and that
10 is a calling."

11 Now, these are two men, one an aging and
12 distinguished former U.S. Senator from New York, and one
13 a struggling, small firm legal practitioner in small
14 towns, conservative New Hampshire, but both of them
15 understand the legal profession's calling, the quest for
16 justice.

17 And at this point I just want to really beseech
18 you, as well, try something new for 1986 and 1987. Join
19 us, please join us in this quest. For the first time
20 really try to become genuine instruments of justice.
21 As you grapple with the 1987 budget mark, and as you grapple
22 with all the other important work that you have before you,
23 I really will look forward to working with you and working
24 beside you on this quest, and I thank you for giving me
25 the time.

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(Applause.)

MR. MENDEZ: Thank you.

All right, pursuant to agreement, 7:30 tomorrow morning at the Holiday Inn, 113 West Missouri, Grand Ballroom. We will, unless I hear otherwise, adjourn until then.

VOICE: Recess.

MR. MENDEZ: Excuse me, recess.

MR. WALLACE: Until 7:30 tomorrow at the Holiday Inn.

MR. DURANT: That's correct.

(Whereupon, at 7:07 p.m., the meeting was recessed, to reconvene at 7:30 a.m. Thursday, December 198, 1985.)

jfb

REPORTER'S CERTIFICATE

1
2
3 DOCKET NUMBER:

4 CASE TITLE: COMMITTEE ON AUDIT AND APPROPRIATIONS

5 HEARING DATE: December 18, 1985

6 LOCATION: El Paso, Texas
7

8 I hereby certify that the proceedings and evidence
9 herein are contained fully and accurately on the tapes and
10 notes reported by me at the hearing in the above case before
11 the LEGAL SERVICES CORPORATION
12 and that this is a true and correct transcript of the case.
13

14 Date: January 7, 1986
15
16

17 Sunny Barker
18 Official Reporter
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21 Washington, D.C. 20005
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