

COPY

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION AUDIT AND APPROPRIATIONS COMMITTEE

January 29, 1987

1:30 p.m.

January 30, 1987

8:50 a.m.

Hotel Washington
Washington Room
515 15th Street, N.W.
Washington, D.C.

A P P E A R A N C E S

Pepe U. Mendez, Chairman
Hortencia Benavidez, Member
LeAnne Bernstein, Member
Paul Eaglin, Member
Michael B. Wallace, Member
W. Clark Durant, III, Ex Officio
Thomas F. Smegal, Member

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CHAIRMAN MENDEZ: For the record, let the record reflect that the Committee members, Hortencia Benavidez, LeaAnne Bernstein, Mike Wallace, Paul Eaglin and Tom Smegal are present, as well as Board member Lorain Miller.

We're here on the Audit and Appropriations Committee Meeting and I would, subject to the approval of the Committee, I would suggest that we adopt the agenda.

MR. WALLACE: So moved.

MRS. BENAVIDEZ: Second.

CHAIRMAN MENDEZ: It's been moved and seconded. All in favor?

(Chorus of Ayes.)

CHAIRMAN MENDEZ: The next on the matter on the agenda, obviously is the consideration of the minutes. Is there any discussion of the minutes.

MR. EAGLIN: Mr. Chairman, I was not present at the November 1st meeting, so I can't vote on this one. I'll abstain.

MR. WALLACE: Nor was I, Mr.

1 Chairman.

2 CHAIRMAN MENDEZ: Do I have a
3 motion to approve the minutes or do we have some
4 corrections?

5 MR. SMEGAL: I've got a
6 correction after you receive a motion to...

7 CHAIRMAN MENDEZ: All right.
8 Hortencia has something first.

9 MRS. BENAVIDEZ: I move
10 approval of the minutes.

11 CHAIRMAN MENDEZ: Okay.
12 Hortencia moves to approve them. What type of
13 corrections do you have, Tom?

14 MR. SMEGAL: I guess it speaks
15 to the minutes. Next to the last paragraph reads,
16 Mr. Smegal requested Mr. Coster prepare monthly
17 budget reports. Mr. Coster agreed. It's an
18 incomplete thought. What Mr. Coster agreed to, as I
19 recall, is the following.

20 Agreed to provide such monthly reports beginning
21 with July, 1986.

22 MR. COSTER: Yes. Haven't had
23 a chance to talk to you about that, yet.

1 MR. SMEGAL: Well, all I would
2 like at this point, is the minutes to be corrected to
3 reflect it.

4 CHAIRMAN MENDEZ: Is that
5 everybody else's recollection? And I think that's
6 Mr. Coster's recollection, too, in light of his
7 answer.

8 Without objection, we'll make that correction.

9 CHAIRMAN MENDEZ: Is there
10 any...Tom, do you have any other questions?

11 MR. SMEGAL: No.

12 CHAIRMAN MENDEZ: Is there any
13 other changes, corrections?

14 None appearing, all in favor of the minutes, as
15 corrected, please indicate Aye.

16 (Chorus of Ayes.)

17 CHAIRMAN MENDEZ: Opposed?

18 None appearing, the minutes are approved.

19 CHAIRMAN MENDEZ: Since you
20 raised the question, Tom, shall we get an answer
21 first?

22 MR. SMEGAL: Well, I'm always
23 prepared to have an answer, yes.

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CHAIRMAN MENDEZ: Mr. Coster?

MR. COSTER: Okay. The question is, what has the Comptroller's Office done in response to Mr. Smegal's request for monthly budget reports from July 1st, 1986, which would be the last quarter of 1986 forward.

We at first determined that as of the point that I returned from that meeting that we did not have our FY '86 general ledger open. We can't have the computer do those reports until it's done.

That turns it into a manual effort of going through the general ledger, 1,265 pages usually, for producing the budget report. They're not in order at this point and ready to present. I intend to talk to Miss Bergmark after the first break and get a little bit of background on it.

Now that we've got our '86 work done, we can go back and do those manually if necessary, and all of the work for '87 will be done by machine.

CHAIRMAN MENDEZ: All right, thank you.

MR. COSTER: The request for distribution to you, my recall was, not to all the

1 Board members is...

2 CHAIRMAN MENDEZ: Well, I
3 think that he requested to him and I requested all
4 Board members, if that's...if my recollection is
5 correct.

6 MR. COSTER: All right. We
7 can do that, as well.

8 CHAIRMAN MENDEZ: Tom?

9 MR. SMEGAL: Yes, thank you.

10 MR. COSTER: Thank you.

11 CHAIRMAN MENDEZ: Next, is the
12 presentation of the Corporation's annual audit report
13 and you should have before you...I don't know if they
14 sent it to everyone on the Board...is a document
15 called Draft Legal Services Corporation Funding,
16 which is taken September 30, '86 and '85 with
17 auditors report thereon.

18 If you don't have that, please let us know and
19 we'll see that you get it.

20 Mr. Coster, would you please introduce our two
21 guests.

22 MR. COSTER: On behalf of
23 everyone in my office and the balance of the

1 Corporation, I'm happy to have with us today, Mr.
2 Paul Lebeck, an auditor in the Audit Division of
3 Peat, Merwick & Mitchell in Washington, D.C. and Tom
4 Biederman who is a manager in that division.

5 Both of them have worked with the Corporation on
6 last year's audit and have extensive nonprofit
7 experience.

8 They have prepared these draft statements for
9 your perusal and adoption as final today. As to any
10 questions you might have, I would only add that we
11 again repeat an unqualified opinion on our audit and
12 there are a number of interesting things in the
13 financial statement, but just from an overall
14 standpoint, it was a successful audit with a clean
15 opinion on internal control and operation and things
16 along that line.

17 But, Mr. Lebeck can start a little summary and
18 I'll just take your questions.

19 CHAIRMAN MENDEZ: Thank you.

20 MR. LEOECK: I think the most
21 important page from the Board's perspective is the
22 one, essentially the page that would be marked
23 mutual. It's a two-page paragraph.

1 As Mike pointed out, it is an unqualified
2 opinion and what that says is we did a full scope
3 examination and included all the activities of LSC.

4 MRS. BERNSTEIN: I understand
5 that you are not carrying to the back of the room, so
6 maybe it's the mike...

7 MR. LEDECK: Just to repeat
8 again, it was an unqualified opinion, which means
9 there was a full scope examination that covered all
10 the activities of LSC. There were no votes or
11 records that weren't given to us. We had complete
12 cooperation from management, not only Mike, but other
13 people in the Corporation and individuals, primarily
14 in the finance area.

15 I think what we would like to do is take a few
16 minutes on the opening statement highlighting a few
17 things on the first page of the balance sheet and it
18 basically presents...it has in it the liabilities of
19 the Corporation.

20 I think that the big item that we see is the
21 fund balance. The decrease from approximately \$17.5
22 million last year to \$9.2 million and on the next
23 couple of pages we'll go over that, but that

1 basically means that you spent \$9 million more than
2 your federal appropriations in 1986. You spent your
3 accumulated fund balance down \$9 million dollars
4 during 1986.

5 If you turn to the next page, it's called the
6 Statement of Support, Revenue, Expenses, Changes and
7 Fund Balance. On this page under the Federal
8 Appropriation column, you can see where you took in
9 approximately \$292 million and how much you've spent
10 between program activities, supporting activities,
11 which was approximately \$301 million, which left you
12 a deficiency in the fund balance of \$8.9 million.

13 So basically, you spent in 1986, some of your
14 accumulated fund balance, net accumulated balance,
15 but not attributed to any one specific year, but just
16 to roll forward, if you will, to keep the
17 Corporation in existence, how much money you had yet
18 appropriated or spent through either program services
19 or whatever.

20 And it leaves you, at the end of the year,
21 approximately \$9.2 million of funds available of
22 which the Board has already, if you will, reserved a
23 portion of that, approximately \$2.3 million that was

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reserved for programs and approximately \$1.5 million has been reserved to law schools and an additional amount has been reserved for you by the federal government.

VOICE FROM AUDIENCE: Mr. Mendez, we don't have a copy of any of this material. Would it be possible for us to have a copy?

MR. COSTER: That will take just a second.

CHAIRMAN MENDEZ: Take as many as you want.

VOICE FROM AUDIENCE: Thank you, very much.

CHAIRMAN MENDEZ: Better make sure that your financial man right over there in the white shirt has got it.

All right. For everybody that has just received the documents, we're on the third page of it now. The section that's called Statement of Support Revenue, Expenses, Changes and Fund Balance. Okay.

MR. LEDECK: But, as you can see, on this page...just to repeat one more time...that your remaining fund balance is

1 approximately \$9 million which is being portioned as
2 the reserve.

3 In Footnote 4, if you turn to the footnotes, you
4 can see where we talk about the \$3.8 million that's
5 been reserved.

6 The last statement that you might want to see is
7 the statement on functional expenses and it's the
8 statement right before the first page of the
9 footnotes. And what this tries to point out, if you
10 will, is where the money was spent from management in
11 general and supporting service prospective.

12 And as you can see, that you had a very, very
13 small increase in that area this year, approximately
14 a couple hundred thousand dollars, so you basically
15 controlled your GMA expenses and the emphasis was in
16 the program area in 1986.

17 MR. COSTER: I have some
18 comments to make on that statement.

19 You may well recall about a year ago, we
20 discussed the adoption of a new statement of
21 functional expenses in keeping with the Corporation's
22 initiative in that area of the program...for field
23 programs, as well.

1 The Corporation, similar to field programs, did
2 not implement timekeeping...similar to most field
3 programs...did not implement timekeeping this year.
4 Therefore, we are falling back to the same statement
5 this year...

6 CHAIRMAN MENDEZ: When are you
7 going to implement it?

8 MR. COSTER: That would be a
9 decision for Mr. Bayly to consider.

10 CHAIRMAN MENDEZ: Well, it's
11 not considered. I think we've told you to do it.

12 MR. COSTER: That was not my
13 decision not to implement it.

14 CHAIRMAN MENDEZ: Well, John,
15 you're new on the job. I want, for this next year,
16 we previously had a decision that we were going to
17 implement functional accounting and I want to make
18 sure that that's done.

19 MR. BAYLY: I understand.
20 Sure.

21 CHAIRMAN MENDEZ: Do you have
22 any other comments?

23 MR. COSTER: So you see, in

1 the back of the statement, is less informative than
2 the one adopted by the Board ten or eleven months
3 ago, particularly the presentation of last year, and
4 I think we all concur on that.

5 MR. LEDECK: I don't
6 think...in particular, there is one footnote that's
7 different than last year other than, I believe, if we
8 turn to the last footnote, which is Footnote 7 on
9 contingencies and this is one of the items that we're
10 still in the process of wrapping up as finalization
11 on Monday of one or two legal cases and primarily
12 it's the Laquirkio case.

13 In a review with the General Counsel and Mike,
14 the current status with the change...we are trying to
15 get the statements out, determines what the
16 liabilities on the accounting standpoint there is on
17 the recent Laquirkio decision, on that case. As much
18 as anything, my understanding of the case, we're
19 going to have an opportunity with Mr. Bayly or his
20 delegate early next week so we can finish this
21 footnote and prepare the balances for distribution.

22 CHAIRMAN MENDEZ: Excuse me
23 just a minute. With respect to that footnote, where

1 does it go in? I don't see it here anywhere.
2 Footnote 7. Where would it be in the material to
3 which it is supposedly a footnote under?

4 MR. COSTER: That's Page 4.
5 Where is it in the material or where can you find it?

6 CHAIRMAN MENDEZ: Well, no, I
7 find Footnote 7, but I'm wondering where it will
8 relate back to. I don't see a Footnote 7 in here.

9 MR. COSTER: It will,
10 depending on the determination reached by the counsel
11 of the President, either effect the amount of
12 expenses here in the Office of the General Counsel or
13 alternatively, the amount of funds committed of the
14 fund balance by an amount of approximately \$200
15 million dollars.

16 CHAIRMAN SMEGAL: Well, the
17 issue thing, I think Tom, it will be on page...it's
18 the third page in under Statements of Support.

19 MR. SMEGAL: Yes.

20 CHAIRMAN MENDEZ: It should be
21 on Page 4, the Statements of Functional Expenses. I
22 think that's probably the place where we'll put it.

23 MR. WALLACE: Mr. Chairman. I

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don't understand audits, but I was prepared to ask a question about the carryover on the General Counsel's Office and it sounds like this is related to that?

CHAIRMAN MENDEZ: That's correct.

MR. WALLACE: All right. Now, I'm looking at the chart that was sent to us the other day called Allocation of FY 1986 Carryover Funds.

Now, should I be looking at this blue chart instead?

MR. COSTER: In that particular area there are no changes, so it would be best to work with the blue chart today.

MR. WALLACE: All right. So, under General Counsel, we've got other commitments \$235,000 and uncommitted, \$363,000.

Which of those numbers, if either, bears some relation to this Laquirkid judgment?

MR. COSTER: The \$235,000 figure does.

MR. WALLACE: That is a reserve against having to pay that judgment, is that

1 right?

2 MR. COSTER: Yes, sir.

3 MR. WALLACE: All right. I'll
4 have some more questions when we get to this, but I
5 appreciate that.

6 MR. COSTER: And what's left
7 from the result of an accounting standpoint after
8 Mike recently learned that the situation was not that
9 amount of money to be accrued on the '86 financial
10 statements under Financial Accounting Standard,
11 Number 5. That's the final amount left to resolve,
12 but it all ties in together.

13 CHAIRMAN MENDEZ: For the
14 Board, I've had a brief opportunity to discuss some
15 of the matters...I want to go to the document that's
16 captioned Statements of Support, Revenue, Expenses,
17 Changes and Fund Balances. The second line in, under
18 the section that's called Transfers, underneath that
19 Other, note, blank, we have \$873,000 under the
20 appropriations in '86. What is that?

21 MR. COSTER: We have to use
22 the administrative cost recovery from Howard
23 University from 1985...the calendar year 1984, I beg

1 your pardon...when they, Howard University,
2 surrendered that grant.

3 As you will recall, there was a balance of
4 approximately \$4.7 million on that grant. All of the
5 salaries were recovered in the past and this year we
6 are recovering the \$879,000 administrative portion
7 that was, as I recall from reading the record, a
8 critical part of the court's decision making on that
9 issue, the administrative...

10 CHAIRMAN MENDEZ: This, in
11 essence, you're telling us is the final...that you
12 will type the final draft for us, is that correct?

13 MR. LEDECK: That's correct.
14 We expect finalization of the report on Monday and
15 then mailing to the Board and the Audit Committee
16 final copies by the end of the week.

17 CHAIRMAN MENDEZ: All right.
18 Now Mike, would you make sure that PAG gets copies...

19 MR. COSTER: Absolutely.

20 MR. SMEGAL: There's going to
21 be another footnote, then?

22 MR. LEDECK: Yes, sir. Just
23 due to the finalization of the audit and the three

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days that, literally, Washington was closed down.

Mike and I think it's important in this case, the General Counsel, Mr. Bayly, agreed, that a footnote would be adequate and we'll then send out the statements.

CHAIRMAN MENDEZ: I want everybody on the Board to get a copy of that and with the understanding that if there's any difficulty with the final draft, I move that we accept the audit.

Do I hear a second?

MRS. BERNSTEIN: Second.

MR. WALLACE: That is subject to corrections in the final draft?

CHAIRMAN MENDEZ: That's correct. Subject to corrections.

MR. WALLACE: So, this will come back to the Committee again, next time?

CHAIRMAN MENDEZ: No, only if there is some objections or some difficulties with it. If anybody on the Committee or the Board has any difficulties with it, we'll bring it back up.

MR. LEDECK: We will be glad, you know, to meet any time.

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CHAIRMAN MENDEZ: Tom?

MR. SMEGAL: I have another question on that. The pages aren't numbered, but I guess if I count the cover sheet, I'm on Page 3 and under the title Balance Sheets we've got down under Fund Balances, Federal Appropriation I think the 9295 we talked about. That item down...and it's \$538,254.

I happen to know from other documents I have in front of me what that is, but I go to Note 4 and there isn't any possible way I would know what that is.

I believe you're going to have to indulge an old fool somewhat, but make it clear what that is.

MR. LEQECK: You'd like it disclosed what the \$500,000 represents in Note 4?

MR. SMEGAL: Well, I think if you're going to put a note in there you should..I know what it is, interest on invested income...

CHAIRMAN MENDEZ: Is there any other statements?

MR. SMEGAL: Excuse me, Pepe. You've got a Note 6 down there and you're going to fill that in somewhere? Are those numbers going

1 to...

2 MR. LEDECK: That's
3 commitments note reference?

4 MR. SMEGAL: Yes.

5 MR. LEDECK: That's going to
6 be referenced in the commitments and contingencies
7 Notes 6 and 7...the Laquirkio disclosure...will
8 represent both places. The commitments on all these
9 things and then contingencies...

10 MR. SMEGAL: All right then,
11 somehow or other your assets are going to change to
12 balance out against the liabilities? What are you
13 going to change up above?

14 MR. LEDECK: If we approve
15 something on the Laquirkio case?

16 MR. SMEGAL: Well, if you get
17 something in there after commitments, whether it's
18 one item or two items. Note 6 already has some
19 significant numbers in there, I think. There's over
20 a million dollars...

21 MR. LEDECK: That entry in
22 reference to the footnotes is not...there's no
23 numbers.

1 MR. SMEGAL: But there will be
2 some numbers, won't there?

3 MR. LEDECK: No. Commitments
4 basically tells the reader that there are some
5 additional liabilities that aren't reported. Those
6 commitments represent your lease commitment on your
7 office space that every year we expense one year's
8 worth of rent.

9 MR. SMEGAL: Do you carry it
10 above your totals and after the totals?

11 MR. LEDECK: Yes, that's the
12 format.

13 MR. SMEGAL: So, there are no
14 numbers that are going to go in...

15 MR. LEDECK: There are no
16 numbers for commitments. It basically tells the
17 reader before they get to the bottom that there are
18 commitments that exist and primarily they are the
19 lease space facilities of a million dollars a year.

20 CHAIRMAN MENDEZ: Tom,
21 anything else?

22 MR. SMEGAL: No. I'll look at
23 the final document. Thank you.

1 CHAIRMAN MENDEZ: A hand on
2 the floor. Why don't you come up?

3 VOICE FROM AUDIENCE: I just
4 have one quick question with respect to the
5 management letter.

6 Is there a draft of the management letter at
7 this point or will that be issued next Friday, as
8 well?

9 MR. LEDECK: We are in the
10 process of drafting the comments from an internal
11 standpoint and we will first review it with Mike and
12 we will issue that to Mike and to the Corporation and
13 Mike will then...we will prepare a response and he's
14 to distribute it as he so chooses.

15 I would say that would probably be ready in
16 about a week or so.

17 CHAIRMAN MENDEZ: At the time
18 that is presented to Mike, Mike prepare your comments
19 and your responses to it and forward a copy to the
20 Board, standard five copies to PAG.

21 MR. COSTER: Okay. It would
22 first be a written response to the management letter.
23 Absent an extremely unusual one in which...

1 CHAIRMAN MENDEZ: Well, if you
2 want to write a response, that's fine. If you don't
3 want to, do whatever you want to.

4 MR. COSTER: Okay. You know,
5 I've seen a good portion of what was in there. I
6 mean it's fairly conventional...

7 CHAIRMAN MENDEZ: If nothing
8 else, a memorandum saying here it is.

9 MR. COSTER: Okay with me.

10 CHAIRMAN MENDEZ: Okay. All
11 in favor to accept it with the understanding that if
12 there's any changes or corrections from any of the
13 Board members or if there are any other comments that
14 we'll bring this back up.

15 (Chorus of Ayes.)

16 CHAIRMAN MENDEZ: Opposed?

17 We will refer this to the Board.

18 Thank you, gentlemen.

19 Now, we're starting to come to the interesting
20 portion. FY '86 Final Budget Report. Mike?

21 MR. COSTER: With me is Barry
22 McHugh of my office, you may recall from last year.

23 If you have a Board Book with a green cover

1 dated January 29th, it is covered and bound, you have
2 the wrong document in front of you.

3 As Mr. Loeck explained, we have some changes in
4 the audit that, while anticipated on Wednesday or
5 Thursday of last week, were not made available
6 because it was felt...we got them yesterday morning,
7 so there are changes in two agenda items in the Board
8 Book and those items are Item 4, the final budget
9 review and Item 5, allocation of '86 carryover.

10 Those items naturally flow into each other.
11 Using the final figures from the audit, we just
12 haven't had a chance to review. We've got our
13 budget materials and from our budget materials we
14 determined how much carryover is available and where
15 it is going.

16 So, you should have...Tim Baker had three hole
17 punch copies of the blue statement that says on the
18 front cover, Replacement Pages for Agenda Items 4
19 and 5. There is about 50 copies in the back, as
20 well, but the Board should have that up front.

21 You're perfectly welcome to compare and contrast
22 it to...

23 CHAIRMAN MENDEZ: Do we have

1 any suggestions. Let's see if we can turn off that
2 microphone back there. When the technician comes in,
3 let's have him turn this one off and have him turn
4 the one back there off. If somebody else comes in
5 we'll move it and change it around.

6 MR. COSTER: Okay. It was in
7 the blue sheets...

8 CHAIRMAN MENDEZ: Can you not
9 hear in back?

10 Blue sheets, okay.

11 MR. COSTER: Right underneath
12 the front cover are the replacement sheets for the
13 agenda item entitled the Final Consolidated Operating
14 Budget for FY '86.

15 Prior to getting into the document I want to
16 point out that the last four meetings...and I'm
17 talking Appropriations Committee meeting...we had
18 talked with a number of Board members about changing
19 the method in which...the traditional method in which
20 the Corporation has been disclosing all of its
21 available resources, to include investment account
22 funds, to include carry...I'm sorry...refunds from
23 recoverage of program items in the nature of

1 requesting cost recovery or grant surrenders to keep
2 our budget up to speed with our total resources,
3 rather than just to budget.

4 Comparing the budget as the year went along with
5 the budget that was adopted at the beginning of the
6 year which, in my opinion and that of many Board
7 members, would have made it a less viable document,
8 less usable document, we have done that for all the
9 carryover work. You will also see that it appears in
10 a different fashion on Attachment C to this
11 statement.

12 Now, after we're done...not with this agenda
13 item, but with everything with this on the carryover,
14 I would suggest that this be adopted in final form to
15 be used.

16 The idea is to disclose all of the available
17 resources. As you may recall, the investment account
18 which is about \$538,000, does not appear generally in
19 our consolidated operating budget, only briefly in
20 the quarterly reviews and what have you and I think
21 given that that's a half million dollar amount, it's
22 certainly material and other Board members also
23 wanted to see that.

1 So, that's been done and after you've had a
2 chance to work with it today, we'll see if it needs
3 again to be modified or if it's in a form that is
4 satisfactory to the Board.

5 Now, the year end carryover comes to a \$3.55
6 million dollar amount. This is \$200,000 greater than
7 the forecast...

8 CHAIRMAN MENDEZ: So that
9 we're all on the same one Mike, you're on Attachment
10 B, Page 2, Line 5...

11 MR. COSTER: Column 5.

12 CHAIRMAN MENDEZ: I'm sorry.
13 I mean, Column 5 about halfway down...two-thirds of
14 the way down, \$3.544...is that it?

15 MR. COSTER: Yes, that is the
16 carryover from the consolidated operating budget as
17 it was last adopted by the Board, subject to interim
18 adjustments during the year.

19 If you follow that column down you will see the
20 inclusion of \$165,000 in audit adjustments and four
21 other lines which are part of the changes that were
22 proposed by the Board at the last meeting, wherein we
23 have included grant refunds and recoveries in a

1 summary chart, for which we have itemization by
2 grantees, \$189,000 in money that has been returned by
3 check to LSC since it took over the R. H. Smith
4 Fellowship Program on youth funds.

5 Then two lines including amounts recovered from
6 Howard University pursuant to their surrender of that
7 grant at the end of 1984. We have \$873,000 which was
8 first recovered from the University and the largest
9 portion of their forecast in administrative costs and
10 then we have just above that, \$290,000...almost
11 \$291,000...that was returned in 1986 in the form of
12 checks from the program after the final audit had
13 been completed, they returned the balance of the
14 unused grant funds to us.

15 Understand that the \$290,000 and the \$873,000
16 were not contemplated to be salary dollars or payment
17 so those were the portions retained by Howard
18 University under their grant...or originally given to
19 Howard University under their grant for the
20 administrative...for the administration of the
21 program.

22 CHAIRMAN MENDEZ: Where do you
23 show in here the investment income?

1 MR. COSTER: The investment
2 income appears on Attachment C. That's the
3 investment principal and the interest, \$538,000.

4 MR. WALLACE: Why isn't it
5 in B?

6 MR. COSTER: The reason that
7 number doesn't appear in Schedule B is for the
8 purposes of matching to our audit and the carryover
9 number.

10 MR. WALLACE: Are we going to
11 spend it?

12 CHAIRMAN MENDEZ We sure are.

13 MR. COSTER: That's one of the
14 things that on the agenda for discussion today, Mr.
15 Wallace.

16 MR. WALLACE: That comes in
17 carryover when we get farther back in this?

18 MR. COSTER: Yes.

19 MR. WALLACE: All right.

20 MR. COSTER: The \$5,398
21 million figure, the very bottom corner of Page 2 on
22 this sheet, matches the audit fund balance for the
23 federal appropriations account...I'm sorry...it is

1 incorrect. The \$9.295 amount for the commitments
2 matches the audited federal appropriation account
3 carryover.

4 The reason that the investment account is not
5 present, Mr. Wallace, is because on the audit it's
6 accounted for in a separate fund. We have three
7 funds. We have a property fund, the general
8 fund...which is actually our investment account and
9 very small, relatively small to the appropriations
10 account...and thirdly, the federal appropriations
11 account.

12 So, in order to keep these footed together, keep
13 them matching, the investment account is omitted from
14 Attachment B and contained on Attachment C.

15 Now, when we get to the first allocation of the
16 carryover you will see on the budget work sheet there
17 that it is, in fact disclosed, you know, in the
18 bottom of that page work sheet. So, we can refer
19 back, six pages back or one page.

20 MR. WALLACE: Let me ask a
21 couple of questions on this page.

22 Have you explained what an audit adjustment is?

23 MR. COSTER: Yes. \$165,000

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are the adjustments we received from the auditors on Tuesday and we have not yet had time to fit it into the COB. We received it from the auditors in our general ledger format, which refers to the cost efforts inside the Corporation and grantees by numbers.

MR. WALLACE: So, all of these audit adjustments really belong someplace farther up in the chart?

MR. COSTER: Yes. \$165,000 will appear...just under 50 percent of it will appear in the Management and Administration column...my recall is about 40 percent unallocated...and 60 percent of it will appear in this Grant column.

Anyway, it requires some translation because the audits...the books that are maintained are our financial management system in, you know, generally accepted accounting procedure format and are not budget work sheets.

That's why, you know, we've formally looked at the Corporation and the budget offered for the separate offices, the separate type of functions.

And, you know, getting these reproduced at 11:00

1 o'clock last night, we did not reconcile the
2 \$165,000.

3 MR. WALLACE: Down on the
4 bottom, on Other Sources of Funds. I assume we're
5 going to spend those and this is really a General
6 Counsel question more than a Comptroller question,
7 but do we know what statutory restrictions, if any,
8 exist on those funds?

9 MR. BAYLY: Well, I guess I
10 can be heard in some respect there.

11 For the most part I think we do. When it comes
12 to grant refunds and recoveries, I'm not entirely
13 sure because I don't know how that's broken down.

14 CHAIRMAN MENDEZ: Mike, it's
15 my belief that we have to reprogram everything with
16 regard to every aspect.

17 MR. WALLACE: I agree we ought
18 to reprogram, but reprogramming is a way of being
19 polite to the committee report. My concern is, is
20 there a statutory restriction telling us how much we
21 can spend and what we can spend things for and
22 reprogramming notice don't take you out of the law,
23 last I looked.

1 CHAIRMAN MENDEZ: Let's see if
2 we can nail this down.

3 Under the statutory restrictions now, do we have
4 a limit on MA, management and administration, in
5 terms of carryover and...

6 MR. COSTER: We have \$3.3
7 million of shift allowed to the management and
8 administration budget, I'm informed...

9 MR. WALLACE: No, no, no, no.
10 That's committee report language, isn't it? I mean,
11 is that in the statutes somewhere?

12 MR. COSTER: That's not the
13 decision that I can make, Mr. Wallace.

14 MR. WALLACE: It's a fact.
15 It's not a decision.

16 CHAIRMAN MENDEZ: It's in the
17 report.

18 MR. WALLACE: All right.
19 That's what I wanted to know.

20 MR. COSTER: As to the legal
21 effect of that, that's what...

22 MR. WALLACE: Well, that's a
23 fact, too. The legal effect of it is zilch. Okay,

1 go on ahead. I'm just trying to get the facts
2 straight.

3 MR. COSTER: Okay. I didn't
4 understand your initial question which was statutory
5 restrictions on all of those funds. The practice of
6 the Corporation has been to associate refunds and
7 recoveries with the line out of which they came.

8 For example, if \$22,000 was returned by a Native
9 American Program for some reason, then it would be
10 subject to reprogramming...what other treatment we
11 would put under reprogramming out of that line. And
12 my understanding is...that is also my understanding.
13 I approve of that as a tradition and that's why I...

14 MR. WALLACE: I understand.
15 But is there a law that says, we got it back from
16 Native Americans, we have to give it to Native
17 Americans or can we put it someplace else? That's
18 what I'm trying to figure out before we allocate
19 money in places it shouldn't be.

20 MR. COSTER: I feel safer in
21 telling you that's not my decision, but I know for
22 certain that all of our money is subject to requests
23 to reprogram. Absent reprogramming, that's not my

1 decision.

2 MR. BAYLY: I don't think
3 there is.

4 MR. WALLACE: All right,
5 thanks.

6 CHAIRMAN MENDEZ: Please
7 continue.

8 MR. COSTER: To continue,
9 would start a line by line analysis that may not be
10 necessary. Perhaps it would be best to request
11 questions from the Board and questions from other
12 interested parties.

13 We've talked generally about how it's prepared
14 and what the summary figures are in the new structure
15 of the statement.

16 CHAIRMAN MENDEZ: Let's
17 go...if you'll indulge the Chair...the way I would
18 like to do this is, under Page 2 of your Attachment
19 B, we have \$9.295 million dollars, is that correct?

20 MR. COSTER: Yes.

21 CHAIRMAN MENDEZ: In
22 carryover. We have certain amounts that are
23 allocated previously. That we have allocated or

1 Congress has told us how to use the funds, is that a
2 fair statement?

3 MR. MCHUGH: That's correct.

4 CHAIRMAN MENDEZ: All right,
5 let's go through the numbers so we can come down to
6 unreserved portion. How would you feel most
7 comfortable in taking the \$9.2 and coming up to the
8 portion which we could actually have something that
9 we can do with?

10 MR. COSTER: That would not be
11 something that we would typically undertake during
12 the budget review, Mr. Mendez. That would be
13 discussion of the sources of carryover, next agenda.

14 It's detailed in that memo and I would prefer to
15 do it there.

16 CHAIRMAN MENDEZ: I understand
17 that.

18 MR. WALLACE: Can I ask a couple
19 pure budget questions before we get onto carryover.
20 Page 1 of Attachment B, Line C1.

21 On what I got last week we had \$433,000 for law
22 school clinics under funds available, this week it's
23 under unexpended budget.

1 Where does it belong and what is it?

2 MR. COSTER: Can you point me to
3 it, again, sir?

4 MR. WALLACE: Sure. Oh, I'm sorry,
5 unexpended budget and commitments. That's where it
6 jumped back and forth from. I'm sorry.

7 It is on Page 1 of Attachment B. It is under
8 Supplement Service Provision and it's Sub 1, Law
9 School Clinics and Recruitment. Now, the document I
10 got before has that under Column 5, Funds Available.
11 The document I got this afternoon has it under Column
12 3, Unexpended Budget.

13 MR. COSTER: Well, you can
14 see...

15 MR. SMEGAL: It has it both
16 places, Mike.

17 MR. WALLACE: I'm sorry...I
18 keep saying Funds Available...

19 MR. SMEGAL: That's where it
20 is.

21 MR. WALLACE: Okay.
22 Unexpended budget. I see. You've got six columns on
23 what we got before and five columns on what we got

1 today and that's what's throwing me off.

2 MR. SMEGAL: Well, in the
3 sixth column is percentages. Why did you remove
4 that? There wasn't any room on the paper or what?

5 MR. COSTER: I didn't feel it
6 was helpful...

7 MR. WALLACE: It was helpful
8 to me.

9 MR. COSTER: Okay. It will be
10 there. I like it myself, but when the column...when
11 you have six column statements it gets distracting
12 and I guess we did it more for cosmetics. You know,
13 the copy I have has expenditures on it.

14 MR. WALLACE: Well now, let me
15 ask, is this the money that we appropriated at the
16 May meeting?

17 MR. COSTER: The \$572,000 is
18 in C1, yes, sir.

19 MR. WALLACE: And we've got
20 \$433,000 of it left?

21 MR. COSTER: No, sir. I have
22 to re-answer your question.

23 The \$572,000 is not. When you appropriated the

1 money, if I recall, to be about \$700,000 plus or
2 minus, that was reprogrammed and pursuant to a denial
3 of reprogramming from Senator Rudman, Chairman of
4 that committee...paraphrasing his language, Mr.
5 Wallace, it said, we do not want to interfere with
6 your ability to continue to fund the law schools.
7 However, we deny in reprogramming, your shifting of
8 the funds into a separate line of law school clinics
9 and recruitment.

10 MR. WALLACE: So you didn't do
11 what you asked the Board to let you do, is that
12 right?

13 MR. COSTER: I was instructed
14 not to.

15 MR. WALLACE: Okay.

16 MR. COSTER: I prepared
17 statements in keeping with the Board and I was told
18 later to shift it back.

19 MR. WALLACE: Okay. I'm
20 trying to understand.

21 MR. SMEGAL: Mr. Mendez, I'd
22 like to go back to that Attachment A.

23 Mike, there are a couple of differences and I

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assume, in particular, on the blue Attachment A versus the Attachment A I had received earlier and it depends on what I'm looking at.

There are two differences to get to the \$3,544 as opposed to what you had before, which is \$3.8 and the differences are a reduction in funds available under Corporation Management and Grant Administration of roughly \$295,000 and an increase in what's available in the Delivery of Legal Assistance of \$37,000, the difference being what creates the difference in the totals.

What happened? What did you find?

MR. McHUGH: In the management administration we set aside commitments on the Laquirkio case in large part.

MR. SMEGAL: Well, that's 235?

MR. McHUGH: 235.

MR. COSTER: Actually, that was an additional \$126,000 roughly of that. That was the biggest single piece of it. There were also adjustments to depreciation in our property account. These figures were summary documents and represent a number of things. In the...

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MR. SMEGAL: Let me stop you before you go any further than that.

The 235 is already in there as committed, so that isn't where you got the 295, I don't think. 235 was on my old sheet.

Expenses went up. Column 2 went up by \$295,000. What did you find?

MR. McHUGH: What happened and what the auditors talked about while they were here was an adjustment on rent incentive from the move to the new building, was written off on our books in one year. They reclassified that over the life of our lease, which is ten years, thereby increasing our expenses by that amount.

MR. COSTER: Our current landlord offered us a significant...or offered the Corporation back then...a significant accommodation in that they said that they would pay the balance of the rent remaining on our lease on 15th Street through, I believe it was April 30th, net of course of our sublease rent from Clean Water Action Project and I believe someone else was there, in order to keep our rent as low as possible.

1 Now, that accommodation totaled, I think,
2 \$640,000, Tom, and since...no, it's not that
3 figure...it's \$300,000 to \$400,000, my recall...it
4 was seven months rent, roughly at our usual rent at
5 the new building.

6 Now, rather than recognize those savings all in
7 the first year, the proper accounting theory is to
8 say that is benefits that you're receiving. We're
9 taking on a ten year commitment, so the benefit is
10 spread out over the ten years, meaning our expenses
11 for this year increased on that particular item. The
12 reason being that rather than having all of that rent
13 savings all this year, it is divided out over the ten
14 years. Therefore, the savings were one-tenth this
15 year what they were and originally recognized at on a
16 cash basis.

17 MR. SMEGAL: And that
18 difference was \$294,000?

19 MR. COSTER: Pardon me?

20 MR. SMEGAL: No, that
21 difference alone was.

22 MR. COSTER: Our recall,
23 that's the sole difference. I know that that was the

1 most significant difference, Mr. Smegal. Barry's
2 recall is that that was the sole difference.

3 MR. SMEGAL: The accounting
4 procedure you used during the fiscal year you were
5 talking about that closed September 30 would have had
6 us expending \$295,000 less in rent for the new
7 facility, than the auditors said should have been
8 proportioned through whatever part of the year we
9 were in that facility?

10 MR. COSTER: Right.

11 MR. SMEGAL: Line 1, what
12 happened? We've got a plus \$37,000 over the white
13 sheet versus the blue sheet and I see it in Field
14 Programs. Where did you get \$37,000?

15 MR. COSTER: In Field or in
16 Supplemental Field?

17 MR. SMEGAL: I see it under
18 1A. \$536,948 on the white sheet, \$573,633 on the
19 blue sheet, comes out...

20 MR. McHUGH: There was one
21 adjustment to write off. A payable which existed on
22 our books to a service provider that now is...no
23 longer exists. Part of the adjustment was to write

1 off that expense. It was the old Monterey County
2 provider.

3 MR. SMEGAL: Okay.

4 CHAIRMAN MENDEZ: Well, let's
5 talk a little bit about the carryover from the field
6 programs.

7 Effective January 1, lots of these things have
8 since been expended, is that correct?

9 MR. COSTER: Pardon me, Mr.
10 Mendez?

11 CHAIRMAN MENDEZ: Under the
12 field programs, under Funds Available, how much of
13 that \$573,000 is now in existence or have you
14 distributed that to the field programs?

15 MR. COSTER: While I don't
16 have the December 31 general ledger, all but
17 approximately \$25,000 should be spent. Most of that
18 money is month to month programs which was...was
19 basically field programs receiving month to month
20 funds and that money was paid out in two increments
21 on November and December.

22 There are undoubtedly...and I don't recall who
23 they are or how much they are...there are undoubtedly

1 one or two other things that are being held back for
2 reasons of noncompliance with documents that have to
3 be sent in or something like that, that may total as
4 high as \$25,000.

5 Again, this is part of the carryover, not part
6 of the COB in our traditional approach.

7 MR. WALLACE: Well, I've got
8 another question about the COB...I think it's about
9 the COB.

10 Page...if somebody has asked this already, I
11 apologize. I'm a bit confused by the numbers.

12 On Page 2 of the Attachment B on Management and
13 Administration, under Monitoring, Auditing and
14 Compliance, we have an unexpended budget of \$228,000.
15 Is that correct?

16 MR. COSTER: Yes, sir.

17 MR. WALLACE: Now, does that
18 include the extra million dollars that we
19 appropriated for catching up on monitoring?

20 MR. COSTER: Yes, sir, it
21 does.

22 MR. WALLACE: That money is
23 gone?

1 MR. COSTER: Yes...well,
2 three-quarters of a million of it is, yes, sir.

3 MR. WALLACE: All right. I
4 mean, out of the whole budget for the year, we've got
5 4.5 percent of the budget left?

6 MR. COSTER: Yes, sir.

7 MR. WALLACE: All right.
8 Have we caught up on monitoring?

9 MR. COSTER: I'd be happy to
10 find that out for you, sir.

11 MR. WALLACE: On monitoring.
12 We appropriated money, it's gone, are we caught up?

13 MR. COSTER: I know we paid
14 all their bills.

15 MR. WALLACE: Is there anybody
16 here that knows?

17 MR. BAYLY: I could respond
18 that to the best of my knowledge we are caught up on
19 monitoring. If you're wondering about whether
20 Monitoring Audit and Compliance Division has
21 approached the regularity of the cycle it expects to,
22 the answer to that is, no. They're still working in
23 trying to speed up the release of the report.

1 MR. WALLACE: Now, which cycle
2 are we talking about? The 18 month cycle or the
3 cycle for getting the reports out after monitoring?

4 MR. BAYLY: I'm speaking about
5 the cycle for having reports released after the
6 monitoring. The cycle for monitoring, itself, has
7 been achieved, substantially.

8 MR. WALLACE: So, I mean,
9 we're pretty close to the 18 month monitoring cycle
10 that we set out to do when we appropriated that
11 million bucks?

12 MR. BAYLY: That is correct,
13 but I must add that when it comes to having the
14 reports prepared and released, we haven't achieved
15 that same occurrence or that same up-to-datedness
16 that we have in the cycle of monitoring, itself.

17 MR. WALLACE: Okay.
18 Appreciate that, thank you.

19 MR. SMEGAL: On that same page
20 that Mr. Wallace was just referring to, I have now
21 found that \$295,000 under Management Services. Is
22 that what rent comes under?

23 MR. COSTER: Yes, sir.

1 MR. SMEGAL: Thank you.

2 CHAIRMAN MENDEZ: Any other
3 questions? Any questions from the field on this
4 particular item?

5 MS. BERGMARK: It is my
6 understanding we are not really dealing with a
7 carryover, is that correct? We're moving on to
8 carryover?

9 CHAIRMAN MENDEZ: That's what
10 we're going to do.

11 MR. COSTER: May I remind the
12 Chairman that the field only needs to be adopted
13 since at this point it is 100 percent historical
14 document. There's no modification.

15 CHAIRMAN MENDEZ: I
16 understand. Just wanted to make sure that everybody
17 understands what the COB is and what the various
18 lines are.

19 Given the lack of questions from the Board, I
20 would suggest that we adopt the COB and turn our
21 attention to the carryover management.

22 MR. WALLACE: Let me ask about
23 adopting the COB. I mean, as I understand it, we

1 haven't got a COB here, we've got to redistribute
2 that \$165,000 to where it belongs. Is that correct?

3 MR. MCHUGH: Yes, sir.

4 MR. COSTER: I don't know
5 that...the auditors don't consider that's material.
6 That's why they allowed us to go ahead and prepare
7 this off the statements today. I don't either and,
8 you know...

9 MR. WALLACE: In Mississippi,
10 \$165,000 is material.

11 MR. COSTER: \$165,000 out of
12 \$309 is, in their opinion, not. When it's
13 distributed, I'd be glad to distribute that to the
14 Board, if you want to postpone approval of it, we can
15 do that.

16 CHAIRMAN MENDEZ Well, I think
17 that we can adopt the COB with the understanding that
18 you will advise us all on this.

19 If there is no objections? Without objection we
20 will adopt the COB as presented.

21 Okay. Now, Martha, we're to the area that you
22 were interested in.

23 The Chairman had an opportunity, because of the

1 change that we had with the administration, the
2 Chairman felt it was probably best if he met with Mr.
3 Coster, at least on the phone, and made some
4 suggestions about where he believes the most
5 appropriate direction for our funds would go and as a
6 result...although I don't adopt all of the language
7 and all of the suggestions word for word in the memo
8 on the allocation of carryover funds, because I
9 didn't get a chance to read it until I was on the
10 plane...but those are the general parameters wherein
11 I worked. What I believe, generally.

12 I would invite everyone's attention to the
13 memorandum on carryover funds. Now is that a
14 corrected memorandum?

15 MR. COSTER: That's it on the
16 blue sheet, sir.

17 CHAIRMAN MENDEZ: I'm sorry?

18 MR. COSTER: On the blue
19 package you have are the corrected sheets. All blue
20 pages. Dated January 28th as opposed to the earlier
21 version.

22 CHAIRMAN MENDEZ: Okay.
23 January 28th, okay.

1 MR. COSTER: The front cover
2 is dated January 28th, some of the secondary pages
3 didn't get changed.

4 CHAIRMAN MENDEZ: I just want
5 to make sure that we're talking apples and oranges,
6 et cetera.

7 The \$2.26 million includes the investment fund?

8 MR. COSTER: Yes, sir, it
9 does. \$2.226 million.

10 CHAIRMAN MENDEZ: Okay.

11 MR. SMEGAL: Excuse me just a
12 minute. Mr. Mendez, I think Mr. Wallace asked this,
13 but I'm confused again.

14 On the investment account, \$538,252 does not
15 show up in B...Attachment B, is that right?

16 MR. COSTER: No, it does not.
17 It's on Attachment...

18 MR. SMEGAL: Did you explain
19 why it isn't in B?

20 MR. MCHUGH: In the audited
21 statements, what we do is we go back to match the COB
22 carryover to the column under Federal Appropriations.
23 Because we have a fund balance statement in our audit

1 there is a separate column for the investment
2 account. Therefore, on COB Attachments A and B, the
3 investment account is not included.

4 Now, for further reference, in '87 the COB will
5 include the investment account if there is any money
6 in there so that the Board can fully consider all the
7 funds that are available.

8 MR. SMEGAL: Okay, so purposes
9 of...so in the accounting procedure the carryover is
10 9...299583, but in reality is, what you have on the
11 memorandum dated January 28th, which is 983487?

12 MR. McHUGH: That's correct.

13 MR. SMEGAL: All right. Mr.
14 Mendez, may I ask another question?

15 CHAIRMAN MENDEZ: Sure.

16 MR. SMEGAL: The January 22
17 white paper that I reviewed on the way in on that
18 different airplane than Mr. Mendez, as contrasted
19 with the blue January 28th, is the only difference
20 these numbers?

21 MR. COSTER: There is one
22 change to the wording because in the recommended
23 allocation section that is wholly my work product, I

1 had a chance to talk to Mr. Mendez, but I had...it
2 was my innovation of yesterday, after I was unable to
3 reach him.

4 MR. SMEGAL: Could you tell me
5 where that is?

6 MR. COSTER: Yes, I would be
7 glad to. That appears...there's two. There is one
8 deletion, sir. That's if you compare the Page 3's
9 between the two documents. On the white version it
10 says National Support \$68,922 remains available for
11 month to month funded programs. Right?

12 MR. SMEGAL: Where? Where are
13 you?

14 MR. COSTER: Page 3 of the
15 white version.

16 MR. SMEGAL: All right.

17 MR. COSTER: The third full
18 paragraph down. In National Support.

19 MR. SMEGAL: That's gone.

20 MR. COSTER: That paragraph
21 has been deleted entirely from Page 3. That's
22 pursuant to audit adjustments. We were holding a
23 reserve for funds that actually were paid on the last

1 day of the working year and it was an adjustment of
2 \$68,922.

3 CHAIRMAN MENDEZ: All right.
4 You have another change to show.

5 MR. COSTER: There is another
6 slight change. If you continue on that same page
7 down both sheets, Mr. Smegal. Beyond the heading
8 Carryover Funds, dash, Other Commitments to the
9 fourth full paragraph thereafter in Supplemental
10 Field you will notice that the old inaccurate version
11 has in that category \$69,650 and the new blue version
12 shows \$34,825.

13 The reason for that adjustment was a court
14 ordered payment to Antioch Law School which was
15 ordered by court order to be made before the end of
16 the year and was, again, made on the last day of the
17 year and we had shown that it was paid the first day
18 of the following year...or actually a couple days
19 into the following year...so we adjusted that to show
20 that it actually had been paid prior to the end of
21 the year.

22 Those are, you know, slight accounting
23 adjustments. The principal difference...

1 CHAIRMAN MENDEZ: Let's make
2 sure...I think you've misused court order. It's not
3 a court order, it was a settlement agreement with
4 Antioch. It was a contractual agreement between the
5 parties, it wasn't ordered by the courts.

6 MR. COSTER: Now, the material
7 change in the one I mentioned having done last night
8 appears on Page 4 of the blue version only.

9 Under the heading of Uncommitted Funds and
10 Recommended Allocations we have, among other things,
11 allocated money to the basic field program
12 recommended in this allocation of \$1,532,411. After
13 making these modifications yesterday, there was a
14 \$91,000...actually \$90,833 shortfall in funds
15 available to put into one of the sources of...one of
16 the destinations of that carryover. Whether it be,
17 if you read down, Basic Field, Native American,
18 Program Development, et cetera.

19 So, without editorial decision on this, just in
20 the first program, we suggested that \$91,000
21 shortfall be made up from a relief or an
22 undoing...partial undoing of the Board's earlier
23 commitment of CSR funds in the amount of \$91,000.

1 You will find those funds in the Training and
2 Technical Assistance line and I've explained in the
3 text where that money would come from and how I think
4 we would make it up.

5 That's the only thing approaching a material
6 change, I think, in the text, Mr. Smegal.

7 MR. WALLACE: Let me ask about
8 that. Tell me about the training and technical
9 assistance. What is this \$468,000? That's to teach
10 people how to use the computers we bought?

11 MR. COSTER: On the first
12 financial statement behind this memorandum entitled
13 Source of Carryover Funds, Page 1 of 1, you'll see in
14 the first column...first numbered column...entitled
15 Committed by Board, under 2A1, Training and
16 Development of Technical Assistance, the amount of
17 \$468,658. Right? Those are the funds we're speaking
18 of.

19 That is currently calculated as committed to
20 carryover. By virtue of Board action, I think taking
21 place both in January and February of last year, that
22 money is intended to be preserved for the CSR
23 Program, plus I think \$90,000 or \$100,000 was added

1 for the functional reporting initiative.

2 MR. WALLACE: So, this isn't
3 computer training or is it?

4 MR. COSTER: No. It is CSR
5 amount, itself...the CSR Program includes \$190,000 or
6 \$230,000 actually for on site training or regional
7 training for the programs to use the computers and
8 use the new CSR system. As you may recall, that was
9 scheduled some time ago and then postponed.

10 MR. WALLACE: Why was it
11 postponed?

12 MR. COSTER: I didn't postpone
13 it.

14 MR WALLACE: I understand
15 that, but I mean, we're about to appropriate a bunch
16 of money and I'm trying to figure out why we haven't
17 spent what's in this budget.

18 Now, what, I mean, is this one of the things
19 that we got a letter from Congressmen on?

20 MR. COSTER: In general terms,
21 yes. That was postponed because we received, I
22 believe it would be called the denial of
23 reprogramming from Senator Rudman on this initiative

1 requesting, as I recall, in fairly strong language
2 that no additional funds be spent pending further
3 consultation with Congress. That consultation has
4 now manifested itself in the form of a GAO inquiry or
5 study into the timekeeping requirement, how much it
6 will cost, anticipated benefits thereof, et cetera.

7 MR. WALLACE: Wait a minute...

8 MR. COSTER: So, nothing has
9 happened since then, on that money.

10 MR. WALLACE: We got CSR's,
11 we've got functional accounting and we've got
12 timekeeping. Now, I know we got a GAO report out
13 there on timekeeping. Is this money for timekeeping
14 and CSR's and functional accounting?

15 MR. COSTER The money is
16 principally for CSR and also for the timekeeping,
17 slash, functional reporting initiative.

18 However, since timekeeping was perceived to be
19 such an integral part of the CSR and, in fact, the
20 computer program as it's now written requires time
21 data to be input to the computer, the decision passed
22 on to me was not to sever out timekeeping and allow
23 the CSR without timekeeping to go on by itself if, in

1 fact, that in itself would be permissible because I
2 believe Congress addressed all of these funds being
3 on hold because of their concern about timekeeping
4 and the costs and benefits, et cetera.

5 MR. WALLACE Now, we can't
6 spend this money until we get timekeeping
7 straightened out and on that we're waiting for the
8 GAO. Is that the resolution of this?

9 MR. COSTER: That's my
10 understanding.

11 MR. WALLACE: All right. Now,
12 if we take this \$90,000 out of here on your Page 4,
13 is there going to be enough money left to do what was
14 originally intended to be done with this money?

15 MR. COSTER Yes, sir, there
16 will be because you will note, if you'll flip back
17 two pages on a memo entitled...or headed...I'm
18 sorry...financial statement headed Allocation of FY
19 1986 Carryover, dash, FY '87 budget, January 21, '87,
20 also Page 1 of 1 in the same position, you will see
21 in Column 1 that we have a current FY 1987 funding
22 base of \$376,000 and...that's \$76,036.

23 Now, I advocate the movement of that \$91,000 on

1 the basis that when this initiative moves forward,
2 should the required budget still be precisely...well,
3 should be approximately \$468,000, the additional
4 funds which would be missing at that point of \$91,000
5 could be drawn from the existing '87 appropriations
6 which...

7 MR. WALLACE: What you're
8 saying is we don't need this money because we're
9 getting a big appropriation in this line next year?

10 MR. COSTER: No, sir. I'm
11 saying we have a moderate appropriation in that line
12 this year.

13 MR. WALLACE: Okay, but I
14 guess what's confusing me is we originally
15 appropriated \$468,000 to do this job and as I look
16 over at allocation of carryover, adding it on to FY
17 1987, we're going to have \$753,000 to do this job or
18 is there another job in there, too?

19 MR. COSTER: You would have
20 at least \$753, but you would have more if you didn't
21 transfer this \$91,000.

22 CHAIRMAN MENDEZ: That's not
23 the question he asked.

1 MR. WALLACE: My question is,
2 why do we need the \$753 if we originally said we
3 could do it for \$468?

4 MR. COSTER: Because there are
5 other things that fall into the training, development
6 and technical assistance line. Now, the
7 principal...the largest lump sum is the CSR mandatory
8 commitment made by the Board before.

9 We have \$376,000 there now, which includes, to
10 my understanding in a large part, the implementation
11 of the goals of the National Training Task Force, if
12 and when any of the recommendations are adopted by
13 the Board. Alternatives in training, there is of
14 course, a large amount of research going on in that
15 area and when that comes to fruition and the Board
16 makes some decisions on that, then that money is
17 available for that.

18 MR. WALLACE: So, the
19 recommendation here is essentially to take \$91,000
20 out of the National Training Task Force and send it
21 out to the field and we'll still have \$468,000 to
22 spend on computer training?

23 MR. COSTER Well, you would

1 still have \$753,000 for CSR...

2 MR. WALLACE: To split up any
3 way we wanted.

4 MR. COSTER: ...and
5 timekeeping and National Training Task Force.

6 MR. WALLACE: All right. Just
7 so all of us understand what we're doing.

8 MR. COSTER: That was the
9 intent of that money.

10 Again, referring back to Page 4 of the memo, in
11 parentheses, it says the existing training and
12 technical assistance commitment totaling \$468,658, is
13 intended by the Board for the CSR and timekeeping
14 initiative.

15 Funding of these initiatives is available from
16 the balance of the committed funds...meaning what
17 would remain after you remove \$91,000...and a portion
18 of the FY '87 funding base...the other funds that
19 have been added to that line by virtue of the 1987
20 appropriation.

21 Now, Mr. Mendez can in no way claim...or should
22 in no way claim responsibility for that shift. I
23 just followed what I think would be a desirable

1 course, solomente, yesterday evening for the missing
2 \$91,000 due to the audit adjustments.

3 Now, that would not be necessary if today the
4 Board decides to allocate less than the original
5 amount that had been discussed in this memo.

6 That's just a source for the \$91,000 if you want
7 to adhere to the original allocations proposed in
8 both of the memos.

9 MR. WALLACE: Why was the \$1.5
10 million picked originally?

11 MR. COSTER: I think...all of
12 those numbers were picked in kind of a balancing act,
13 looking at the amount of money that was available,
14 trying to prioritize some needs, what have you.

15 CHAIRMAN MENDEZ: May I?

16 MR. WALLACE: Sure.

17 CHAIRMAN MENDEZ: I looked at
18 various things and tried to determine what I, at
19 least in my own mind, what I felt was the most
20 pressing areas and I would not agree to the \$91,000
21 change.

22 MR. WALLACE: Okay.

23 CHAIRMAN MENDEZ: That not my

1 conclusions and if he had come to me, I would have
2 told him no.

3 MR. WALLACE: Okay.

4 CHAIRMAN MENDEZ: I would
5 allocate less...but he did that and there's an option
6 there before the Board members. But I tried to look
7 at the areas where I thought you most needed to bear
8 these facts.

9 One area that I would specifically invite your
10 attention to is on Page 4 of the memo, Paragraph
11 Number 2...and at my direction I said that we
12 couldn't give the Vice President and Secretary,
13 Comptroller, General Counsel and certain other senior
14 managers raises, but I think we have...if I'm not
15 mistaken...seven that fit in that category.

16 MR. BAYLY: At least seven,
17 yes.

18 CHAIRMAN MENDEZ: Seven
19 officials and we may want to consider that, but I
20 just didn't think that the officers should be
21 considered in the same category as the rest of the
22 staff. But I wanted to leave that up to the Board to
23 make its determination, but I thought the rest of the

1 staff since they hadn't had any determination
2 or...excuse me...had any increases for several years,
3 that that would be appropriate.

4 MR. WALLACE: Let me ask a
5 question about that Page 5 and Page 4...and this has
6 to do with management administration. On Page 4 you
7 say that \$3.3 million of this appropriation...of this
8 amount has been earmarked for the Corporation's
9 management and administration. Now, how has it been
10 earmarked for management and administration?

11 MR. COSTER: It was earmarked
12 in conference report language on our appropriations
13 and it was, likewise, for that earmark was
14 acknowledged and reacted to by this Committee at its
15 meeting of...its last meeting wherein we were
16 directed to prepare our management and administration
17 budget and it amounted to \$10.7 million which
18 included \$7.4 in appropriations and a \$3.3 million
19 anticipated shift carryover fund.

20 MR. WALLACE: All right. And
21 so in addition to that \$3.3, what you're doing on
22 Page 5 is to toss another \$494,000 into management
23 and administration.

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MR. COSTER: Yes, sir.

MR. WALLACE: And we can do more than that or less than that if we want to.

MR. COSTER: Yes.

MR. WALLACE: Okay.

CHAIRMAN MENDEZ Speaking to that, I'd have to look it. I can't recall what page it's on, but we had about \$11.2 million that we spent last year on management and administration.

MR. COSTER: It's \$11.6. The auditing statement shows \$11.2 because they don't include certain things that we paid for that are classified as program expenses such as, you know, software acquisition and things along that line.

That property that we bought was not included in the \$11.1, although that was relatively small...well, relatively small, last year at about \$246,000, \$250,000.

So actually, what we spent last year on management and administration was \$11.6 not the \$11.1 that shows up in the report.

CHAIRMAN MENDEZ: And this would make the...yes, Tom?

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MR. SMEGAL: I'll wait. I want to go on to something else.

CHAIRMAN MENDEZ: Go ahead, sir.

MR. SMEGAL: I'm still trying to sort out the blue and the white.

You've got a small error, Mike, on Page 2 of the blue, beginning of the first full paragraph there's some number there of \$3,239,691 that appears to be created out of whole cloth because if you add up the following numbers you get \$2,226,539, which is consistent with the number you have over on the first page. In the third line of the first page, \$2,226,539.

So, my arithmetic total of that gets the same number you got on Page 1, but the number on Page 2 has nothing to do with the numbers you add up together.

MR. COSTER: You reached the...

MR. SMEGAL: \$3,239,691 at the beginning of this Paragraph 1 of Page 2 should not be that, but it should be the number you have on Page 1,

1 which \$2,236,539, unless you tell me there's \$165,000
2 somewhere that I don't see.

3 MR. COSTER: The \$165,000 is
4 the audit adjustment.

5 MR. SMEGAL: Well, all I ask
6 is you have the same number in both places and
7 explain to me so I can read it where it is. Now, I
8 get two different numbers. \$2,236,539. The other
9 adjustment is the carryover.

10 Somewhere you've got to add something to this
11 darn...to make it consistent on Page 1 and Page 3.

12 CHAIRMAN MENDEZ: Mike, I
13 think what he's telling you is that you add an audit
14 adjustment in twice.

15 MR. SMEGAL: No, you may have
16 added it in once, but you just didn't indicate it was
17 in there the first time. That's right, Mike. The
18 other time you didn't add it in at all.

19 MR. COSTER: We did. That's
20 correct. It's included in the second figure. It's
21 not included in the first.

22 MR. SMEGAL: Okay. The total
23 remains the same, I guess, \$9,834,087.

1 Okay. I have one other question then. Going
2 back to C of the prior set of documents, there was a
3 Fiscal Year '85 carryover of \$228,555. Why have you
4 not included that in these funds that we are
5 attempting to reallocate here. What were you going
6 to do with that?

7 MR. COSTER: Okay, are you
8 looking at Attachment 2?

9 MR. SMEGAL: Yes. Why don't
10 we add in \$228,555 to this \$9,834,087, rather than
11 just leaving that sit?

12 MR. COSTER: That appears...it
13 may be easier to account from the back...on the third
14 to the last page which could have been carryover from
15 FY '86.

16 MR. SMEGAL: I'm sorry, where
17 are you now?

18 MR. WALLACE: Are you on
19 Attachment B?

20 MR. SMEGAL: Are you back on B
21 or...

22 MR. COSTER: This is at the
23 very end of the book. Allocation of FY '86

1 carryover.

2 MR. SMEGAL: Okay, this is the
3 blue packet I have here, Mike?

4 MR. COSTER: Yes.

5 MR. SMEGAL: The January 28th
6 memo covering it and then there are several
7 pages...how many pages from the back? Three?

8 MR. COSTER: Let me start
9 again. In the very back of this packet, if you still
10 have it in sequence, three pages back there is a
11 statement entitled...there were some carryover funds
12 occurring September, 1986. The carryover summary
13 page is 1 and 2.

14 MR. SMEGAL: Okay, I've got
15 it, Mike. I've got this in front of me now. Where
16 do I find that?

17 MR. COSTER: If you look at
18 the second page...I don't know the number of the
19 page...it's 202, right?

20 MR. SMEGAL: It's summary Page
21 2, slash, 2. Got it.

22 MR. COSTER: About the middle
23 of that page you'll find a word in the left margin,

1 undistributed.

2 MR. SMEGAL: Oh.

3 MR. COSTER: And along that
4 line, \$228,555 and that, you will see, was added into
5 the total budgeted carryover fund and is included in
6 the total carryover, also.

7 This statement is titled, Source of Carryover
8 Funds, has everything, every dollar that's related to
9 the Corporation, except for the employees Coke fund
10 in it and that's what makes this different, that's
11 the Cocoa Cola Fund, and that's what makes this
12 different from the previous display.

13 MR. SMEGAL: Okay Mike, let me
14 make a suggestion. I think my confusion would have
15 been eliminated had B2, which is a two-page addendum
16 to B, and on that one I see that number now, \$228,555
17 and it's described as undistributed.

18 If you add it to that...do you have Page 202 of
19 B?

20 MR. COSTER: Yes, I do.

21 MR. SMEGAL: Okay. You've got
22 the number in the middle of the page.

23 MR. COSTER: Yes, sir.

1 MR. SMEGAL: If you added
2 undistributed, dash, Fiscal Year 1985 carryover, I
3 think then my confusion would have gone away. If you
4 just add a little more information.

5 The undistributed is actually undistributed
6 Fiscal '85 funds, so undistributed, dash, Fiscal Year
7 1985 carryover. Would that do it? That's the
8 number, isn't it, \$228,555?

9 MR. COSTER: It's the same
10 number. It's not the same money. You know, money is
11 an expungable thing to account. So it's not
12 necessarily the same money.

13 MR. WALLACE: Not to Congress
14 it isn't.

15 MR. COSTER: In the display I
16 would be glad to show that...

17 MR. SMEGAL: Well, maybe
18 footnote it or something because I get to C and I see
19 a number there that I don't see any Fiscal Year '85
20 carryover on B, but then I see it on C. I didn't see
21 investment account on B, but I see it on C.

22 MR. COSTER Well, the reason
23 for the difference in the text, Mr. Smegal is, as of

1 the beginning of this year, we still had a letter of
2 credit dated 1985 with the United States Treasury.
3 We no longer have that letter of credit, that money
4 being spent.

5 So, it's not...in the eyes of the Treasury
6 it's...the amount has been disturbed, but we had...

7 MR. SMEGAL: Yes, I think you
8 just clarified B and C, because the same number
9 appears on both those documents and they're not
10 identified.

11 MR. COSTER: Well, this is the
12 last time you will see Attachment C, as I promised
13 you at the last meeting. Attachment C is extremely
14 difficult...

15 MR. SMEGAL: All right.

16 CHAIRMAN MENDEZ: Do we have
17 any other questions about carryover, et cetera?

18 MR. WALLACE: I've got one
19 legal question.

20 I understand that the General Counsel,
21 President, I understand that there's some language
22 somewhere about how much money we're supposed to
23 spend on monitoring next year.

1 Now, did I make that up, or does that language
2 exist.

3 MR. BAYLY: As I recall, we
4 have to hold them modestly to the amount of \$4
5 million it seems to me. I don't have the exact
6 amount...maybe I do.

7 MR. COSTER: Mr. Wallace,
8 there's language that says we have to allocate for
9 expenditure an amount not less than the actual
10 expenditure in FY '86 and that amount was \$4,731,000.

11 MR. WALLACE: Okay. Let me
12 ask a question or two. When you say allocate. That
13 doesn't have to be out of the '87 appropriations. We
14 allocate it from anyplace we can get it, is that
15 right?

16 MR. COSTER: I don't have the
17 language in front of me. I think what the intent
18 of...my safest response would be to allocate that out
19 of Fiscal '87 and put your '86 carryover elsewhere or
20 to communicate with the Hill and see what their
21 intent is on that and, of course, determine whether
22 the course is effective.

23 CHAIRMAN MENDEZ: I would feel

1 most comfortable if we allocated it out of the '87
2 funds.

3 MR. WALLACE: All right now,
4 my next question...not so much where it comes from,
5 and if the law says we've got to do it, we've got to
6 do it...my next question is do we need it because we
7 actually spent \$4.7 in 1986, but that included the
8 extra one million dollars which was catch-up money
9 and we were told when we appropriated that money that
10 once we spent it, we could go back to a lower
11 appropriation. We've been told we've caught up.
12 We're not going back.

13 Now, I understand Congress may have told us to
14 spend the money and if the law says it, that's what
15 the law says, but my question is, do we need \$4.7
16 million in 1987 to get up-to-date, stay up-to-date
17 and do the job on monitoring?

18 MR. COSTER: That's a very
19 good question and I'd be pleased to direct it to the
20 Monitoring Office in July.

21 MR. WALLACE: I'd like to have
22 an answer tomorrow.

23 MR. COSTER: Okay. I can say

1 from my office that with this as background, with
2 that language as background, the budget request
3 submitted by the Monitoring, Audit and Compliance
4 Office and its subsidiary units was, you know,
5 certainly met that requirement and, in fact, it
6 exceeded it a little. That's the tendency for good
7 aggressive budgeting and it was reduced to that
8 level.

9 Now, whether...

10 CHAIRMAN MENDEZ: How much did
11 it exceed it? Approximately.

12 MR. COSTER: Approximately a
13 quarter of a million dollars, \$200,000, something
14 like that. You will find that in my office.

15 MR. WALLACE When you ask
16 Monitoring a question, tell them not to get me wrong,
17 if they need that extra quarter of a million dollars,
18 I'm happy to give it to them, but if they don't need
19 the \$4.7, I'm happy to give it to somebody else, too,
20 if we can. I want to know what they need.

21 MR. COSTER Well, giving them
22 more than the \$4.7 is in the discretion of the
23 President upon the advice of the Budget Committee,

1 which, you know, how members from two of the
2 different four offices and the Comptroller's Office,
3 et cetera. So, we get a pretty good feel for what
4 the needs are that way.

5 And then, this year's operating budget was
6 approved by Mr. Wentzel and by Mr. Bayly...it was
7 approved tentatively by Mr. Wentzel, pending a re-
8 view by the incoming President...and so, there's
9 certainly no force...there's no apparent need to go
10 higher than that at this point.

11 Of course, we do quarterly budget reviews and
12 what have you.

13 MR. WALLACE: Okay, thank you.

14 CHAIRMAN MENDEZ: Now, I don't
15 know how we want to proceed on this. Do I want to
16 throw my recommendations out for a butchering or do
17 we want to have some other considerations. I'm open
18 for discussion.

19 MR. WALLACE: I would propose,
20 Mr. Chairman, since you're more intimately familiar
21 with this than any of us, that you let us hear your
22 recommendations and we'll then, thereupon, pick you
23 to pieces.

1 CHAIRMAN MENDEZ: You have the
2 memo and I will generally adopt the position of the
3 memo. I will not adopt all of the language. The
4 only thing that I specifically will not adopt is the
5 \$91,000. I would reduce that out of the field and
6 leave it where it belongs.

7 Now, I will advise you that for the last two
8 years we've had an essentially...between \$11.1, \$11.2
9 emanating to \$11.6 and under this we could have about
10 an \$11.2, which wouldn't increase it much. So,
11 that's one thing that I would like the Committee to
12 be aware of.

13 And we do have...it's my belief, after reading
14 the language and reviewing it...that we have the
15 obligation to keep the...and I'm glad that we have
16 the number on \$4.731 million. That has to be
17 allocated and it has to be allocated in the '87 mark.

18 You would want to make sure that wherever we
19 allocate it, that you set...in fact, if I don't have
20 any objection from the remainder of the Committee, I
21 would direct Mr. Coster to set that...specifically
22 ticket that. Make sure that some sort of method for
23 accounting that is set aside so that we don't cross

1 into the \$4.7 million for monitoring and compliance.

2 MR. WALLACE: Now, let me ask
3 about that line on the second page, the allocation
4 for carryover, '87 budget, because as I understand
5 it, we've got basically \$3.3 for monitoring out of
6 the '87 appropriation and \$1.4 for monitoring out of
7 carryover.

8 Now, is that the way we're supposed to do it?
9 Should it all come out of '87 funds and put the
10 carryover someplace else or does anybody really know.

11 CHAIRMAN MENDEZ: Mike, I
12 would feel comfortable in the way that is, because we
13 have the specific designations.

14 MR. WALLACE: Okay.

15 CHAIRMAN MENDEZ: And we
16 specifically previously said that we were going to
17 modify that \$3.3.

18 MR. WALLACE: Well, we're
19 adding more than the...oh, \$3.3, you're talking about
20 out of '87 funds for monitoring. Is that the \$3.3
21 you're talking about?

22 CHAIRMAN MENDEZ: No, I'm
23 talking about carryover...is it \$3.3 or \$2.3?

1 MR. WALLACE: We're actually
2 carrying over \$3.8 or thereabouts, because...

3 CHAIRMAN MENDEZ: That's
4 right. That's correct.

5 Mike, how would you feel most comfortable?
6 Would you feel more comfortable allocating it all out
7 of '87 funds without the carryover to monitoring?

8 I would feel most comfortable doing it that way
9 and allocating the carryover...the \$3.3 or whatever
10 carryover that we allocate to the Corporation to the
11 other areas.

12 MR. COSTER: Well, that sounds
13 like a good idea.

14 That's a bookkeeping entry, as you can tell. We
15 can swap that nearly \$1.5 million of mandatory
16 commitments existing by the Board for new money.

17 CHAIRMAN MENDEZ: You have my
18 proposal before you. If you have any changes or
19 corrections, please have at it.

20 MR. WALLACE: Let me second
21 it and then I want to ask a question. I'll let Mr.
22 Smegal go first.

23 MR. SMEGAL: I'm still

1 confused as to what you're suggesting we do, Mr.
2 Mendez. What are we doing? I've now got the right
3 page, I guess, which is something called Carryover
4 Allocation, Page 2/2 and I guess what I'm looking at
5 there is, in Column 3, Fiscal Year 1986 Mandatory
6 Commitments.

7 Now, are we discussing that \$1,468,796? Is that
8 what we're talking about?

9 Mr. Wallace has referred to the first column,
10 which is roughly \$3.3 million and that column is \$1.5
11 and is Mr. Wallace raising the question of whether
12 we're obligated to do anything? Weren't all of his
13 questions directed at whether we needed \$4.8 million
14 for Monitoring, Audit and Compliance or whether we've
15 caught up now and only need \$3.3?

16 MR. COSTER: No, no. The \$3.3
17 is a separate issue altogether.

18 The question that was addressed to me, as I
19 understood it was whether in meeting this target of
20 approximately \$4.7 million for our Monitoring, Audit
21 and Compliance efforts, as that language went on to
22 say, did we have to use strictly 1987 money to do
23 that or was the language indifferent as to whether it

1 was '87 money plus carryover.

2 Now, the language was not specific, but Mr.
3 Mendez pointed out that it seems prudent to use 1987
4 money to meet that target and asked me to allocate
5 from anywhere else on the M and A budget, \$1.468796
6 million dollars of new '87 money into that line and
7 give that line that it came from that mandatory
8 commitment.

9 In other words, shifting this year's money for
10 old year's money so that we could better comply or
11 more fully comply, should our current compliance not
12 be sufficient with that language requiring level
13 funding for the monitoring effort.

14 MR. SMEGAL: That's in
15 committee report language, is that what we're talking
16 about? Where is the \$4.7 million coming from?

17 MR. COSTER: The numbers are
18 absent. The language...and I've forgotten exactly
19 where it appears now...it says that we shall allocate
20 no money...no less money this year to our Monitoring,
21 Audit and Compliance efforts than we actually
22 expended in 1986.

23 So, the number, itself, is derived from our 1986

1 budget report.

2 MR. WALLACE: I am happy to
3 spend \$4.7 million and I don't know what bag you pull
4 it out of and I don't care, as long as you've got it
5 squared away with the statute so, somebody look it
6 up.

7 CHAIRMAN MENDEZ: I've asked
8 Mr. Bayly to make sure that we have the language here
9 for tomorrow when we do this at the Board level.

10 MR. WALLACE: I have got some
11 questions on 1B, Program Development.

12 You show, under Column 3 of Program Development,
13 that we are mandatorily committed to spend \$578,000
14 of the carryover into Program Development.

15 What's that for and how is it mandated, please?

16 MR. MCHUGH: Approximately
17 \$550,000 of that consists of commitments in the
18 private law firm contracts. The remaining \$28,000,
19 approximately, consists of one more payment on the
20 AE...American Enterprise Institute contract.

21 MR. WALLACE: And when you say
22 in the memo that that's obligated, that means we've
23 got contracts and somebody's going to sue us if

1 they're not paid?

2 MR. COSTER: Precisely.

3 Couldn't have put it better.

4 MR. WALLACE: Now, Number 4,
5 \$460,200 for discretionary commitments to Program
6 Development. What's that for?

7 MR. McHUGH: That is for
8 funding for projects, including the voucher project
9 and law school funding, training and education,
10 unsolicited grants that may come in during the year
11 that we haven't anticipated. Approximately \$80,000.

12 MR. WALLACE: Don't we have a
13 line item in the '87 budget to cover all of that
14 stuff? We've got in the '87 funding base \$1.3
15 million?

16 MR. McHUGH: Yes, sir.

17 MR. WALLACE: Isn't everything
18 you just said covered in the \$1.3 million?

19 MR. COSTER: No, sir, it's
20 not included in the '87 funding base. Some of those
21 items are partly funded out of the '87 funding base,
22 but these are separate requests, you know, for
23 additional funding, either adding to those lines or

1 new lines.

2 Now, we've got the detail on that budget here.
3 I'll let Mr. McHugh do that.

4 MR. McHUGH: Out of the \$1.3
5 million they have budgeted \$1 million for law schools
6 and \$300,000 for the voucher project. Out of the
7 additional funds of \$460,200, they have budgeted an
8 additional \$200,000 for the voucher projects,
9 bringing it to a total of \$500,000.

10 In addition to that, unsolicited grants reserve
11 of \$150,000 and emergency reserve of \$70,000 and then
12 approximately \$80,000 for conferences and training,
13 partially coming out of the \$460,000, the remainder
14 coming out of the...funding is \$1.339800. So part of
15 the conference and training money comes out of
16 carryover and part out of the '87 appropriations.

17 MR. WALLACE: Let me go back
18 to the '86 budget that we voted on...

19 CHAIRMAN MENDEZ: It's now
20 3:15...

21 MR. WALLACE: Let me ask one
22 more question on this line and then we'll let it go.

23 I'm trying to figure out where some money went.

1 From the '86 budget we just approved, we had \$433,000
2 left over from law schools that we didn't spend.

3 Now, is that...are we just not going to spend
4 that money? Instead of spending it out of '86 money,
5 we've got \$1 million dollars of '87 money that we're
6 going to spend for law schools, is that right?

7 MR. McHUGH: Correct.

8 MR. WALLACE: All right. So
9 we appropriated \$400,000 last year, we didn't spend
10 it last year and we're going to spend \$1 million out
11 of '87 money, is that right?

12 CHAIRMAN MENDEZ: That's
13 correct, because that's when Senator Rudman told us
14 not to do it.

15 MR. WALLACE: But he's told us
16 we can do it this year?

17 CHAIRMAN MENDEZ: He said that
18 once we had the...my recollection was, once we had
19 the final reports in on the clinics...which were
20 received this morning...that they would reconsider.

21 MR. WALLACE: All right. I
22 think I understand. If you want to take your break,
23 that's fine. That completes my questions.

1 CHAIRMAN MENDEZ: Let's take a
2 five minute break because I know it will stretch to
3 ten. So, five minutes.

4 (WHEREUPON, a brief recess was taken.)

5 CHAIRMAN MENDEZ: We're
6 reconvening and at this time I'm going to take some
7 comments from the field. I think that's the best way
8 for us to proceed.

9 I've invited Martha to come up and make a
10 statement.

11 MS. BERGMARK: Thank you, Mr.
12 Mendez.

13 My name is Martha Bergmark. I'm the Director of
14 Southeast Mississippi Legal Services in Hennesburg,
15 Mississippi and Bob Clyde and I are Co-Chairs of the
16 Project Advisory Group Funding Criteria Committee.

17 With respect to your carryover allocation
18 proposal by the staff, we have a two-part comment
19 here today.

20 The first part goes to amounts of money
21 to...categories of money that we feel should be added
22 to the carryover that's deemed available for
23 allocation by the Board at this time and then,

1 secondly, the second part of our comments will be
2 addressed to the allocation of those funds.

3 With respect to the first part, I have
4 references both to the Committee Book that was
5 distributed yesterday and to the blue sheets that
6 were distributed today.

7 On Page 24 of the Audit and Appropriations
8 Committee Book, which is Page 4 of the Allocation of
9 Carryover Funds Memorandum on the blue pages, it
10 appears on the blue sheets that the staff is putting
11 forward the figure of \$2,636,271 as subject to
12 allocation by the Board.

13 We would suggest to you that there are two
14 additional sums of money that should be added to
15 that. First goes to some of what Mr. Wallace's line
16 of questioning was, with reference to training and
17 technical assistance money, that appears as a
18 mandatory commitment on what was Page 28 of the
19 Committee Book and is now Page 1 of 2 on the
20 Carryover Allocation...Carryover Summary Budget
21 Sheet, as Item Roman Numeral II, A1, Column 3. And
22 that's an amount of...

23 CHAIRMAN MENDEZ: \$468,000.

1 MS. BERGMARK: \$468,000...yes,
2 sir...\$658. This is the amount of money that Mr.
3 Coster was taking \$91,000 of to move to basic field.

4 I'd like to call your attention to a letter that
5 Mr. Coster wrote to John Hansen of GAO on January the
6 5th, 1987 concerning the cost that would be necessary
7 for the purpose that this money is said to be for.

8 This money is said to be necessary for the
9 implementation of new CSR projects and functional and
10 time record purposes. In this letter with
11 attachments to Mr. Hansen, Mr. Coster is making an
12 estimate of what the timekeeping and functional
13 accounting will cost. And his total figures are for
14 both LSC costs and costs to the field.

15 When these numbers are broken down to ascertain
16 what costs LSC is going to assume, in his report to
17 the GAO, that figure comes to \$146,519. This is the
18 figure that's reported to GAO as what will be
19 necessary to implement timekeeping and functional
20 accounting.

21 CHAIRMAN MENDEZ: Do you have
22 a copy of that letter?

23 MR. COSTER: I don't have a

1 copy of my letter. If I can see it, I can more
2 specifically address, but I can address it generally
3 without it.

4 Do you have a copy of my letter?

5 MS. BERGMARK: I don't have an
6 extra copy with me. I have a copy here that
7 indicates in your Column 2 the expenses of regional
8 training, you're proposing...

9 MR. COSTER: The budgeted
10 amount for the training is either \$185,000 or
11 \$205,000. That was for the actual training that was
12 put on hold to be held in Houston and Chicago.

13 The costs in our estimates there are \$146,000.
14 Now, while I don't recall...I wasn't there when they
15 put together the \$180,000 budget. That's not
16 tremendously out of line for a budget and then an
17 aftereffect estimate of...or a better educated, much
18 later made estimate to GAO of \$146,000, which as you
19 can see, is pretty...or if you've seen the letter,
20 you can see it was put down pretty much in detail.

21 Are we going...are you concerned about the
22 difference between the 146 and the...

23 CHAIRMAN MENDEZ: 168.

1 MR. COSTER: Okay, there's
2 other money in there. That CSR project includes
3 program modifications, you know, additional
4 computers, possibly. There are a handful of programs
5 that are asking for computers, because although they
6 didn't fall into the...although they didn't fall
7 through the...they did fall through the screen of who
8 would get new computers and who wouldn't, out of the
9 computers bought in 1986, there are still programs
10 that have a need. A half dozen that have said, you
11 know, we may have a computer, but it's completely
12 loaded with our own accounting system or something
13 like that. We need additional hardware or we need a
14 completely separate computer.

15 That's all the amount of money that's left over
16 from the, as I recall, the \$906,000 or \$904,000 that
17 the Board put into the CSR initiative and then later
18 added a hundred or a hundred and a quarter for
19 timekeeping.

20 Like I said, it was done at the September
21 meeting in Rosalyn...September of '85, before I was
22 even the consultant here and then the money for
23 timekeeping was added after I was an employee in

1 January or February of 1986.

2 So, that's what totals up to 468. It's not
3 simply the training costs. That represents a large
4 portion of it.

5 MS. BERGMARK: We're talking a
6 discrepancy here of \$322,000 and the memo and letter
7 that Mr. Coster has provided the GAO is an estimate
8 of the timekeeping costs. The cost for implementing
9 a timekeeping and functional accounting system and it
10 somehow excludes this \$323,000.

11 In addition to that, I'd like to know...

12 MR. COSTER: It doesn't.
13 Those are apples and oranges.

14 CHAIRMAN MENDEZ: Well, let
15 Martha finish with the presentation.

16 MS. BERGMARK: All right. In
17 addition to that, there is \$376,000 already allocated
18 out of the '87 funding base to training, development
19 and technical assistance.

20 Mr. Coster has said here this afternoon that
21 there is enough leeway in that budget to allow for a
22 \$91,000 reallocation to field out of this total
23 amount of 700 some odd thousand dollars.

1 So, our recommendation to you would be that at
2 the very minimum, this \$322,000 should be added to
3 the total carryover amount, ready for allocation
4 today, of \$2.6 million. That that pot of money
5 should go to be added to the carryover that's ready
6 to be allocated.

7 MR. COSTER: Just a point of
8 information, Mr. Chairman?

9 That \$91,000 shift is made as a forecast...

10 CHAIRMAN MENDEZ: Well, I
11 don't worry about the \$91,000 because that's not my
12 position.

13 MR. COSTER: I didn't say we
14 don't need it. You know, given that we've got a...

15 CHAIRMAN MENDEZ I understand.
16 Let's not discuss the \$91,000. I want to hear what
17 Martha has to say. Let her finish.

18 MS. BERGMARK: Okay. Our
19 point of view would be that either this \$322,000
20 needs to be reported as a cost of implementing
21 functional accounting and timekeeping or it's just a
22 soft figure that's added in here to inflate that
23 number to the 468 and that, in any event, that

1 \$322,000, unless shown otherwise and unless reported
2 to GAO, should be placed in the pool of money that's
3 for reallocation.

4 CHAIRMAN MENDEZ: Is there any
5 other money that should be placed in the pool?

6 MS. BERGMARK: Yes, sir.
7 Under the Program Development line item, which is
8 Column 1B...no, line item 1B, on the Carryover
9 Allocation Page 1 out of 2, there is now a figure of
10 \$578,144.

11 Our position on this allocation is, that in the
12 continuing resolution the allocation for program
13 development and law school clinics was to be the
14 \$1.339 million...essentially \$1.34 million that
15 Congress deemed to be necessary and appropriate for
16 funding programs in that category.

17 Our position on that is that any other money
18 allocated to that is inappropriately done. When
19 Congress set the budget they set the budget at the
20 \$1.34 million and that the remainder of the carryover
21 should go to direct service delivery.

22 CHAIRMAN MENDEZ: Now, hold
23 it. Congress in this sentence gave us a budget for

1 '87. Congress didn't tell us what to do with the
2 carryover, except to say that they wanted us to
3 allocate a certain percentage of the carryover for
4 management and administration. Is that correct?

5 MS. BERGMARK: That's correct.

6 CHAIRMAN MENDEZ: Then how can
7 you make the statement that you're making?

8 MS. BERGMARK: It seems to me
9 that when Congress made its recommendation it took
10 into account what LSC was reporting to it would be
11 available in carryover. That figure was reported to
12 be about \$3.3 million.

13 They determined their budget...or they
14 determined the budget then for LSC...the allocations
15 for LSC based on that estimate.

16 If a different estimate had been given...if an
17 estimate of the \$3.3 million plus the now additional
18 \$2.6 million had been given to them, it's our
19 contention they might have done something different
20 with it. They didn't have a \$5.5 million or \$5.7
21 million estimate. They had a \$3.3 million estimate.

22 They said that should be used for management and
23 administration and made the other allocations

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accordingly and left that money for service delivery.

CHAIRMAN MENDEZ: How much do you think we ought to have in carryover each year? Zero?

MS. BERGMARK: I think our position on this is that the carryover, once it's determined then should be allocated.

CHAIRMAN MENDEZ: Well, I understand that, but let's say should we have a zero carryover ideally each year?

MS. BERGMARK: Ideally, as much money as possible should go to direct service delivery and the history in program development and in management and administration has been that there has been an enormous carryover.

Even this year there is a 9.9 percent carryover in management and administration and every year that's been the case.

So, our contention is we should be...we would urge you to budget in a fashion that aims for full expenditure of those funds and that when we allocate \$468,000 in training, development and assistance, for example and \$578,000 in program development, when in

1 both of these categories that money simply has not
2 been spent in years past, deprives the direct service
3 delivery and components of money that they are
4 literally starving for.

5 So those, in essence, are the two categories of
6 money that we would urge should be added to the \$2.6
7 million figure that appears on Page 1 of the...excuse
8 me...Page 4 of the Carryover Memorandum.

9 So, I'll move now to the second piece of our
10 commentary today, which is how should that money be
11 allocated. That's now a figure of some \$3.5 million.

12 That allocation, we would suggest should be
13 altered from the recommendation of staff as
14 follows...

15 CHAIRMAN MENDEZ: It's not a
16 recommendation of staff, it's my recommendation.

17 MS. BERGMARK: Excuse me. The
18 recommendation of Mr. Mendez.

19 First of all, with respect to the \$494,000 that
20 is proposed to be allocated to management and
21 administration.

22 When this Board met on November the 1st, it was
23 my understanding that the staff was directed to come

1 up with a budget totaling \$10.7 million for
2 management and administration.

3 This proposal would have the effect of giving
4 the management and administration category an
5 additional half million dollars, \$494,000 which, in
6 our judgment is totally unwarranted.

7 CHAIRMAN MENDEZ: How can you
8 say that, if they spent \$11.6 million last year?

9 MS. BERGMARK: What I observe
10 about the allocations here is that what's proposed in
11 the breakdown is essentially to give that money to
12 the General Counsel's Office.

13 The General Counsel's Office is slated with the
14 use of this money for \$1.2 million. They've never
15 spent that much money. They were allocated, I think,
16 \$1.3 million last year and came up with \$500,000 in
17 carryover.

18 So, our feeling is...we'd like some explanation
19 for why the General Counsel is deemed to need that
20 amount of money this year when it didn't need it last
21 year and that's not counting the \$235,000 judgment
22 contingency...the \$500,000 carryover.

23 So we would suggest there needs to be some

1 explanation of that.

2 CHAIRMAN MENDEZ: Let me
3 explain something to you. There may well be an
4 explanation, but I will sure tell you that that would
5 be very poor policy on behalf of the Board to explain
6 to people or parties on the other side who we're
7 allocating it for and against, et cetera.

8 MS. BERGMARK: Well, I hope
9 that in some sense we're all on the same side...

10 CHAIRMAN MENDEZ: Well, no,
11 I'm talking about the lawsuits that we're in.

12 MS. BERGMAN: No, sir, I'm not
13 talking about the judgment contingency at all. I'm
14 talking about...

15 CHAIRMAN MENDEZ: I
16 understand, but there is...let me explain to you.
17 There is a judgment contingency specifically
18 allocated to one case. However, there are several
19 other cases that we have pending that we need to
20 allocate money for the defense of or we have to make
21 a determination whether we're going to win or lose
22 them and we better allocate that money.

23 MS. BERGMARK: But, is it the

1 judgment of the General Counsel's Office whereas
2 about \$700,000 was spent last year, we're going to
3 jump that by half a million this year?

4 CHAIRMAN MENDEZ Martha, let
5 me just tell you that it's the best estimate of the
6 General Counsel's Office and that's the reason for
7 it. We won't go any further into that in open
8 session.

9 MS. BERGMARK: The other
10 point, I think to be made about the management and
11 administration allocation is, that that \$225,000 of
12 it...this is on Page 2 of 2 of the carryover
13 allocation, Item 3A9...

14 CHAIRMAN MENDEZ: I'm sorry?
15 Page 2 of the carryover, 3A9?

16 MS. BERGMARK: 3A9, yes, sir.
17 Column 4 is slated for unallocated reserve.

18 This number appears to correspond to the
19 \$225,000 that is recommended for filling positions
20 and yet our feeling about that is that if a
21 recommendation can't be put forward that's a little
22 more specific than this, that tells us where this
23 money is needed specifically, but seems to be going

1 into what amounts to a little reserve fund...

2 CHAIRMAN MENDEZ: Well, I will
3 tell you that this Board was very interested,
4 including this Chairman and including the Chairman of
5 the other Committees, were very interested in having
6 various people work directly for them and that's part
7 of it.

8 MS. BERGMARK: Well, \$225,000
9 is a substantial sum of money. It's a substantial
10 percentage of a total \$10.7 million management and
11 administration fund category and our feeling is that
12 an additional half million, this \$494,000 should not
13 be allocated to management and administration.

14 CHAIRMAN MENDEZ: Now, let me
15 ask you a question.

16 Do you think that our staff ought to have the 3
17 percent Cola increase?

18 MRS. BERGMARK: I think if a
19 judgment is made that a Cola increase should be
20 granted, it should be accommodated in the \$10.7
21 million that Congress recommended and that,
22 essentially, this Board in November instructed the
23 staff to come up with.

1 CHAIRMAN MENDEZ: But, do you think
2 it's appropriate to do that?

3 MS. BERGMARK: I don't have any
4 idea what the Corporation employees make. I know
5 nothing about their pay scale or their history of pay
6 raises. I'm not able to comment on that.

7 The second category of money that we feel ought
8 to not be allocated where it's currently recommended
9 to be allocated is program development.

10 Again, this was part of Mr. Wallace's line of
11 questioning and the \$1.34 million that appears in the
12 continuing resolution is, in our judgment, what
13 should be allocated for this purpose.

14 Again, under program development, this is one of
15 those line items that repeatedly over the last couple
16 of years there has been a large carryover balance
17 in...

18 CHAIRMAN MENDEZ: And I find
19 that...well, I really talked to them and I have hopes
20 that this has been straightened out.

21 MS. BERGMARK: Okay. On
22 behalf of PAG, I think we urge you to put it where we
23 know it can be spent and spent effectively and

1 efficiently on delivery of legal services for poor
2 people.

3 CHAIRMAN MENDEZ: Do you
4 agree, though, that law school clinics is an
5 effective method?

6 MS. BERGMARK: I think
7 that...we're talking about allocation of scarce
8 resources here and that we're in a period of time
9 when the resources are extremely limited, when the
10 programs that are already in operation and delivering
11 legal services are squeezed badly by what,
12 essentially amounts to flat funding in the last few
13 years and that in that kind of an environment to be
14 reserving \$460,000 extra dollars...a half million
15 extra dollars when \$1.34 million is already
16 appropriated is not the conclusion that we would
17 reach about how that money should be allocated.

18 CHAIRMAN MENDEZ: What would
19 your conclusion be? Would you zero out all funding
20 for law school clinics? What is PAG's position it?

21 MS. BERGMARK: Well, PAG's
22 position is that the continuing resolution doesn't
23 call for that. The continuing resolution calls for

1 \$1.34 million...

2 CHAIRMAN MENDEZ: Well, I
3 don't care what the continuing...

4 MS. BERGMARK: All right, in
5 our '88 mark we have allocated an amount of money for
6 program development and...

7 CHAIRMAN MENDEZ: No, I want
8 to know specifically about law school clinics. What
9 is your position on law school clinics?

10 MS. BERGMARK: Let me speak
11 for myself on that, rather than trying to speak for
12 the whole field on it.

13 Certainly there are different ways to deliver
14 legal services to poor people and law school clinics
15 is one of them. In fact, we talked about this a
16 little bit at the November 1st meeting.

17 It seems to me that within that category of
18 money, if the reports are showing, you know, that
19 this is an effective way to use some money, then
20 fine. That's what that money is there for. PAG has
21 not opposed that. PAG, in its budget mark for 1988,
22 incorporates money for program development. And some
23 thought and initiative should go into looking at new

1 ways to do it and new things to do.

2 So, we're not opposed to that, you know, as a
3 principal, but in the current environment of scarce
4 resources and the need to allocate those resources,
5 that the maximum amount possible should go to service
6 delivery mechanisms that are in place and that have
7 demonstrated themselves to be effective and efficient
8 providers of service.

9 CHAIRMAN MENDEZ: So you don't
10 think the law school system...

11 MS. BERGMARK: I haven't had a
12 chance to read the report and I'm not...in our area
13 there is not a law school clinic and can't be a law
14 school clinic because there is not a law school in
15 our area.

16 So, I think when I commented to you in November,
17 I talked about my experience when I was a law
18 student, but I have no experience with law school
19 clinics in our service area.

20 All right. So our judgment then, with reference
21 to the allocation of the money that exists in
22 carryover, that it should go to direct service
23 delivery provisions and we would have a three part

1 allocation formula for that.

2 First, that the amounts of carryover that appear
3 in the Native American and Migrant line items should
4 stay where they are and be reallocated into those
5 line items.

6 Part two is that the remaining amount of money
7 should be calculated as a percentage of the '86
8 budget for all service delivery components and that
9 that percentage increase, whatever it might be...and
10 we've talked around so many numbers here today that I
11 can't give you that exact number...whatever that
12 percentage turns out to be should be allocated to the
13 non-census based components, to support other non-
14 census based components.

15 That the remaining amount of money should be put
16 with the total allocation. The total '87 allocation
17 to basic field and then should be allocated according
18 to the Congressional formula. That those should be
19 totaled back in and that the Congressional formula
20 should be used for allocation of that money which
21 will be somewhere around \$3 million...a little less
22 than \$3 million after deduction of the first two
23 parts of the allocation formula that I've suggested.

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CHAIRMAN MENDEZ: Does your partner want to say...

MS. BERGMARK: I do have one question about the program development money.

As I understand what Mr. Coster and Mr. McHugh reported to Mr. Wallace when he asked this question, there was \$500,000 to be allocated to a voucher program which, it's our understanding, doesn't currently exist at all and we'd like to know what that's about? It's a rather large sum of money slated for expenditure in one year, starting from scratch.

MR. COSTER: Yes. There's more to that than I am aware. I know that Charlie Jarvis and Rick Valentine and other...and I think Professor Uddo have all been involved with the ABA in that project and that it's in a...you know, it's been through...it's close to...

CHAIRMAN MENDEZ: Well, who should we ask here?

MR. COSTER: I think Charlie Jarvis, because he went over those amounts with me and told me about what was going to happen.

1 CHAIRMAN MENDEZ: All right,
2 will you find Charlie some place in the back there?

3 MR. WALLACE: Let me ask a
4 question. Don't we have a voucher project going
5 someplace?

6 MS. BERGMARK: It's my
7 understanding that in San Antonio it's over.

8 MR. WALLACE: It's over?

9 MS. BERGMARK: That there is a
10 small amount of money that's slated for completion of
11 that project, but that's it over.

12 MR. WALLACE: Then this is a
13 new voucher project, to the best of everybody's
14 understanding?

15 MS. BERGMARK: That's right.

16 CHAIRMAN MENDEZ: If public TV
17 is to be believed in a program on pro bono put out by
18 the American Bar Association, the voucher project was
19 a great success.

20 MR. WALLACE: The ABA likes
21 something we did?

22 CHAIRMAN MENDEZ: Yes.

23 MR. WALLACE: Did we give them

1 the money?

2 CHAIRMAN MENDEZ: We gave them
3 the credit.

4 MR. WALLACE: Oh, okay.

5 CHAIRMAN MENDEZ: Are there
6 any other comments, Martha?

7 We're trying to get Charlie to come up, but if
8 there's anything...

9 MS. BERGMARK: I believe that
10 concludes our remarks on...

11 CHAIRMAN MENDEZ: I'm sorry?

12 MS. BERGMARK: That concludes
13 our remarks on the carryover allocations.

14 MR. BAYLY: I do know that
15 some of that money is slated, as I understand it, for
16 the completion of the project, as well as the
17 compilation of the data as a result of the report.

18 And that might speak for all of it, but I do
19 know that...

20 CHAIRMAN MENDEZ: Why don't we
21 just touch on some...is there any other public
22 comments about the carryover? Come up to the table.

23 MR. BAYLY: Mr. Chairman,

1 Charlie Moses is here and perhaps he can give us some
2 information that would assist you in exploring the
3 issue.

4 CHAIRMAN MENDEZ: Why don't we
5 take Eric first, since he's up here.

6 Charlie, after Eric gets done, we'll address
7 that.

8 MR. DAHLSTROM: My name is
9 Eric Dahlstrom. I'm with Four Rivers Indian Legal
10 Services from Sacatone, Arizona on the ~~Neah~~ ^{DILA} ~~Indian~~ River
11 Indian Reservation and I'm here speaking on behalf of
12 the Native American programs and components.

13 I guess I had two comments on the carryover and
14 the first has to do with the source of the carryover
15 on the Native American line.

16 As I understand the documents, there is
17 approximately \$140,000 of '86 carryover money which
18 has its source in the Native American line. And that
19 basically comes from two items.

20 One is a grant for services to a reservation in
21 Arizona of about ninety some thousand dollars and
22 another is \$40,000 from the revolving fund for
23 serving unserved tribes.

1 What our problem is, is that we believe that
2 those funds, especially the revolving fund money
3 should be treated as previously committed, rather
4 than discretionary money, as well as the unspent
5 money for the White Mountain Apache Tribe.

6 What you've done here is carry...or what's
7 suggested here is that those carryover monies of
8 about \$140,000 be reallocated among the other Native
9 American Programs with an additional \$70,000 of other
10 money.

11 So, even though the documents appear that you're
12 giving the Native American line a 3 percent increase
13 from carryover, you're really giving a 1 percent
14 increase of new money and you've got 2 percent...that
15 were...2 percent of money that was Native American
16 carryover and we would urge you to continue the
17 tradition of maintaining any carryover funds from the
18 Native American line, keep them in the Native
19 American line for their designated purpose.

20 MR. WALLACE: Let me ask you,
21 because I'm not sure I understand.

22 We are keeping all the Native American carryover
23 in the Native American line.

1 MR. DAHLSTROM: Correct.

2 MR. WALLACE: Now, what you're
3 saying is, there's \$140,000 that was carried over
4 from specific assignments and we are getting rid of
5 that money and disbursing it generally, is that
6 correct?

7 MR. DAHLSTROM: Well, that's not
8 clear...

9 MR. WALLACE: That's not clear?

10 MR. DAHLSTROM: It's not clear, but
11 what is...let me just say what's said in the report
12 is that you are giving a 3 percent increase to Native
13 American Programs and Components.

14 Now, that would imply that it would be an across
15 the board increase. In order to do that under this
16 budget, under these numbers, what you have to do is
17 discontinue the...you have to reprogram the '86
18 revolving fund money and the \$97,000 from White River
19 and disburse it across the programs.

20 MR. COSTER: I'm going to have
21 to rely on Eric's expertise in this area.

22 I had a chance to talk to Kirk Kickingbird about
23 this, both in person...well, actually while he was in

1 town, on the phone and then again while he's out this
2 week on a monitoring trip.

3 These two sums...there's four items contained in
4 the carryover, overall...a small amount with the
5 month to month program, that's now spent. A larger
6 sum of \$25,000 is considered as other commitments to
7 the White Mountain Apache Tribe, but there are, in
8 fact, almost precisely \$140,000 in two places, one
9 called the revolving expansion pool, the other...is
10 that White Mountain Indian Tribe...okay, the other
11 \$93,000 for White Mountain Indian Tribe.

12 Now, we have listed them as uncommitted based on
13 language we got from the Grants and Budgets Unit from
14 Gil Francis in a memo and that went through the
15 Executive Office.

16 Now, I know that these were Board transactions
17 of some time ago, but other than that, I don't know
18 particularly whether they were Board...you know,
19 should they be considered as Board commitments or
20 what. Do you know when they took place?

21 MR. DAHLSTROM: Well, I guess
22 the revolving fund money has been in place since
23 1979. There's been about \$40,000 plus or minus each

1 year.

2 CHAIRMAN MENDEZ: And we've
3 had some...

4 MR. DAHLSTROM: And we've had
5 a lot of trouble spending the money, is what we seem
6 to have trouble with. It backed up for three years
7 and it was spent in '86. '82...I can't subtract
8 three from six...'82...'83, '4 and '5 were spent in
9 1986. Unfortunately they didn't spend the '86 in
10 '86, so we've got that \$40,000 hanging...but the
11 point is that what you're doing is adding \$70,000 to
12 the Native American line here and not...which is a
13 1 percent increase, if it's anything, is the way I
14 view it.

15 That's really the comment that I have to make
16 about it.

17 MR. COSTER: Well, my
18 understanding is that the previous Native American...
19 the previous revolving pool amounts have been equaled
20 through the appropriations language, itself and this
21 year's revolving expansion pool of...which could have
22 been continued at 47, but is not the way it sits
23 now...would remain in the Native American Program and

1 Component line, but would be distributed to the
2 existing programs.

3 Now, perhaps, you know, the people I consulted
4 in this aren't familiar enough with the destination
5 of that money or the need for that particular pool.

6 MR. WALLACE: Mr. Chairman, I
7 would just say that putting \$210,000 in the line
8 doesn't say how it's going to be spent and I would
9 not think that our adoption of this allocation would
10 renege on any previous commitments made by this Board
11 or our predecessors, whatever they are.

12 And I'm ready to vote for \$210,000 and if we and
13 when the staff gets to looking at it, if they need to
14 keep these programs going, then let's do it.

15 I don't understand in voting \$210,000, but I'm
16 saying how to allocate that money.

17 CHAIRMAN MENDEZ: That's
18 correct.

19 MR. DAHLSTROM: I guess the
20 point would be, then, that as we see the budget the
21 recommendation is to give a one...you either have to
22 give only a 1 percent increase to the Native American
23 Programs or you have to deprive existing programs of

1 their money in order to accomplish that.

2 I guess that the other point we would...as a
3 result of that I feel a little bit...I'm commenting
4 on a situation where you're, in some sense, robbing
5 Peter to pay Paul and I represent Mike and, you know,
6 the problem is that the attempt to take your
7 unallocated money and spread it across direct
8 delivery is one that we appreciate, but we'd like to
9 see it spread across all those that deliver services
10 and not just those that service Native Americans.

11 Pardon me?

12 CHAIRMAN MENDEZ: Do you want
13 us to take some of that away from the Indian
14 programs, then?

15 MR. DAHLSTROM: Take what?
16 The point...what I'm saying is that your use of your
17 carryover money to provide services to people, ought
18 to include services to migrants, services to Native
19 Americans and services to the basic field and support
20 and not simply to the basic field programs. Spread
21 it across the board.

22 And this document appears...this includes...it's
23 only \$70,000 in the Native American line of really

1 new money, which is a 1 percent.

2 CHAIRMAN MENDEZ: Could we
3 have a comment from Charlie Moses now on the...Eric
4 could you yield to Charlie?

5 MR. MOSES: As I understand
6 it, there were some questions as to exactly what type
7 of voucher project we were undertaking for this year.

8 CHAIRMAN MENDEZ: That's
9 correct. We have approximately \$500,000 allocated
10 for that and we want to know if there's been some
11 monies...how the monies was...how we came up with the
12 \$500,000 and what they were to be expended for.

13 MR. MOSES: All right.
14 Essentially in this year, as this Committee is aware,
15 in the past we have been participating in a variety
16 of voucher projects, one of which is with the ABA,
17 one of which we're running independently and as a
18 continuation of that project we are doing a variation
19 on the voucher project this year which we
20 have...which we're discussing now. It's still in the
21 planning stages to be implemented in four to five
22 sites.

23 The budget estimates were based on the budget

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expenses for the other various voucher projects.

CHAIRMAN MENDEZ: And when would those projects go into effect and...

MR. MOSES: Well, we are looking for them to go into effect during this fiscal year, which is why the budget allocation was done for this year.

MR. WALLACE: Can you spend the whole half million this year? Would it be smart to spend the whole half million this year?

MR. MOSES: I think that we could spend the whole half million. We requested it. We looked very carefully at it.

MR. WALLACE: Would it be smart to spend the whole half million this year?

MR. MOSES: Well, I think that if you look at other program development decisions in the past, if we did not feel we could spend money smartly, we refuse to do it and so I think...

MR. WALLACE: And you've got a carryover.

MR. MOSES: Well, that's what had created a carryover, but I think that it would be

1 smart and that we could spend it this year. We are
2 certainly planning on it if everything falls into
3 place.

4 CHAIRMAN MENDEZ: Would you
5 know within three months?

6 MR. MOSES: We probably would
7 have a better idea of implementation dates, yes.

8 CHAIRMAN MENDEZ: And you
9 could come in with some hard numbers?

10 MR. MOSES: We could come in
11 probably with some harder numbers. I don't know if
12 you want us to have all of the commitments made in
13 three months. I can't commit to that.

14 MS. BERGMARK: Mr. Mendez...

15 MR. BAYLY: If I may just
16 engage in a colloquy here with Charlie Moses.

17 Have you selected sites for this project?

18 MR. MOSES: We have
19 tentatively selected a couple. We're negotiating for
20 several.

21 MR. BAYLY: Have you dedicated
22 in a sense any corporate personnel to developing the
23 program?

1 MR. MOSES: Yes, we have.

2 MR. BAYLY: Have you been
3 thinking about the program for some time prior to
4 today?

5 MR. MOSES: Yes, for almost a
6 year.

7 MR. BAYLY: Do you have an
8 idea of how long the project is expected to last?

9 MR. MOSES: It should last
10 roughly about a year, which is what the other voucher
11 project ran.

12 MR. BAYLY: Do you foresee it
13 will be followed by any sort of report?

14 MR. MOSES: Yes, it would.

15 MR. BAYLY: Who is it who
16 arrived at a tentative figure of \$500,000 or so?

17 MR. MOSES: That was the
18 figure that was arrived at by the Manager of Program
19 Development and myself.

20 MR. BAYLY: And what was the
21 process that led you to coming to that figure?

22 MR. MOSES: Essentially the
23 process was, we looked at the expenditures for other

1 similar projects that we had already had and we
2 looked at the number of sites that we were interested
3 in trying to implement the project in and came out
4 with the \$500,000 figure.

5 MR. BAYLY: Were your thoughts
6 in this area inspired by some observations of the
7 Board members, in particular, Mrs. Miller?

8 MR. MOSES: Yes. This is an
9 outgrowth of a variation which Mrs. Miller had
10 suggested earlier with client co-payment.

11 MR. BAYLY: Thank you, very
12 much.

13 MR. WALLACE: All I can say,
14 Mr. Chairman, is we've lost a superb General Counsel.

15 CHAIRMAN MENDEZ: It's
16 enjoyable to watch an expert at work.

17 MS. BERGMARK: Mr. Mendez, it
18 seems to me what we've heard is that perhaps when
19 half of the fiscal year is gone, in another three
20 months, we will have some harder numbers than we have
21 now, that we'll have a better idea about an
22 implementation date and that we'll perhaps have some
23 less tentative site selections and that \$500,000 is a

1 very significant sum of money that could be allocated
2 and should be allocated today to direct delivery of
3 service.

4 CHAIRMAN MENDEZ: Thank you for
5 your comments. Do we have any other...please step
6 forward.

7 MR. ROSENTHAL: I'm Roger
8 Rosenthal from the Migrant Legal Action Program and
9 I'm here today representing the Migrant Field
10 Programs.

11 I had a similar kind of issue with respect to
12 the migrant field, as Eric was just discussing with
13 you and I just wanted to get a clarification on the
14 disposition of a sum of money that's listed on these
15 papers.

16 There were four programs, apparently, in Fiscal
17 '86 which...migrant field programs...which turned
18 money back to the Corporation. And historically that
19 money has remained in the migrant line. In fact,
20 this Board with respect to some of this money in the
21 preceding year, had reallocated that back to the
22 remaining migrant field programs.

23 And I was appearing today to request a

1 clarification as to what the intentions were with
2 respect to that money that had been turned back from
3 the migrant line and to urge you to redistribute that
4 back to the migrant fields, both based on the fact
5 that that has been the historical practice, that
6 migrant field money has retained it's migrant
7 character, as well as the fact that...recognizing
8 that the migrant field has been literally flat funded
9 over the last several years.

10 MR. WALLACE: It's been flat
11 funded for a reason. We've been going around on that
12 for two years. It would be a lot less than flat
13 funded if this Board had its way.

14 CHAIRMAN MENDEZ: We will take
15 your thoughts into consideration.

16 MR. ROSENTHAL: Well, thank
17 you. I hope you'll also take the history of your own
18 actions, the precedents you've set in the past, as
19 well as the precedents that your predecessors have
20 set.

21 CHAIRMAN MENDEZ: I will tell
22 you now, that a lot of our actions hence forward with
23 regard to migrants will be governed by the study that

1 has been prepared.

2 MR. ROSENTHAL: Except, sir,
3 that this is money that we're dealing with, with
4 respect to carryover from '86 and in the current
5 fiscal year, so...

6 CHAIRMAN MENDEZ: I recognize
7 that, but I feel very strongly that we will follow
8 the percentage allocations based in the new report,
9 as to where the migrants are and will act under the
10 new study, which is obviously much more valid than
11 the Lillesand Study was.

12 MR. ROSENTHAL: So, am I
13 understanding correctly that you're not intending to
14 return this money back to the migrant line. It's
15 going to be taken out of the migrant line?

16 CHAIRMAN MENDEZ: You've read
17 my report and, if my recommendations are adopted, you
18 understand correctly.

19 Are there any other comments from the field...or
20 the audience. I shouldn't say the field.

21 Is there any discussion or proposals about doing
22 something differently.

23 MR. WALLACE: I have an

1 amendment to propose, Mr. Chairman, if I can get a
2 second I'll explain it.

3 My amendment is to take the \$460,200 for Program
4 Development in Column 4, take that out of Program
5 Development and move it to Management and
6 Administration unallocated reserve with instructions
7 to the President to present to us at the next meeting
8 a proposal for allocating all of the unallocated
9 reserve this year.

10 CHAIRMAN MENDEZ: I will
11 second that for purposes of discussion.

12 MR. WALLACE: Now, let me...if
13 I may explain. I do listen to the presentations
14 here.

15 A year ago, Mr. Mola, on behalf of PAG made the
16 same argument that has been made today. That we have
17 a tremendous overrunning program development every
18 year. I asked the staff to give me the numbers over
19 the last four or five years. I saw the numbers. Mr.
20 Mola was right and I don't see any reason to put more
21 money into Program Development that we can't possibly
22 spend this year.

23 We have \$578,000 that we have to allocate

1 because we'll get sued if we don't. We have \$1.3
2 million for law schools, which we support and \$300,00
3 for this voucher program. And, as I understand Mr.
4 Moses' testimony, we can't get this thing geared up
5 until halfway through the year and that's about all
6 we can spend this year anyway.

7 If the ultimate cost is \$200,000, we'll put
8 \$200,000 into next year's budget and finish it up.
9 I'm not against the voucher program, but I think
10 that's all the money we can spend this year.

11 Now, I do not want to redistribute that to the
12 field because I'm satisfied that we need it in
13 Management and Administration. And I can't put my
14 finger on why, but I know this Board presently has no
15 staff answerable to the Board. I know that we've
16 just been told that even though we're monitoring
17 programs every 18 months, we can't get the reports
18 out and I'm not sure how much good a monitoring does
19 us if we can't get a report out on it.

20 I have the sense that there are a lot of...that
21 we are very shorthanded up there on a lot of
22 important projects. I think...as we look at the '88
23 budget, they requested \$12.2 million for 1988. If

1 they need it in '88, it's hard for me to see why we
2 don't need something approaching that in 1987.

3 Now, I'm ready to have the President come back
4 to me in another month or two months and tell me we
5 really don't need \$880,000 of unallocated reserve in
6 Management and Administration and we can safely put
7 it someplace else. And based on that report, I'll
8 certainly give our new President's judgment the merit
9 it deserves.

10 But I don't think we need the money in Program
11 Development. I think we do need the money in
12 Management and Administration and, if we're told a
13 month from now we don't need it there, then we can
14 move it someplace else.

15 That's why I've made my motion.

16 CHAIRMAN MENDEZ: Mr. Bayly?
17 Assuming that I would acquiesce and agree to Mr.
18 Wallace's motion, could you, whether we meet or not
19 within a month, come up with a statement about what
20 you would use the money for and when you would need
21 it and fully comply with Mr. Wallace?

22 MR. BAYLY: Yes, Mr. Mendez. I
23 think that could be done within a month.

1 MR. WALLACE: Mr. Eaglin has
2 asked me to clarify what I meant and what I meant is
3 anywhere, not just in Management and Administration.
4 If you don't need it in Management and
5 Administration, let's put it someplace else.

6 But, my sense, I can think of a couple of things
7 we need to get done in Management and Administration
8 and I stated them and there may be a lot more.

9 So, do what you need to do to run this place
10 right and what's left over, allocate it where the
11 need exists.

12 MR. BAYLY: Well, I'd be happy
13 to provide a report of that sort within four weeks
14 time.

15 CHAIRMAN MENDEZ: Okay. Is
16 there any substitute motions. I assume that we
17 should have some substitute motions or some other
18 matters before we go on to voting on Mr. Wallace's?

19 Tom?

20 MR. SMEGAL: Would you indulge
21 me the benefit of hearing what Mr. Wallace's motion
22 is?

23 MR. WALLACE: Okay. I'll say

1 it again. I have moved that we take from the Program
2 Development line, which is Line 1B, out of Column 4,
3 take that \$460,200 in discretionary commitments, zero
4 that out and move the \$460,000 to Item 3A9, which is
5 Unallocated Reserve in Management and Administration,
6 with the President instructed to report back to the
7 Board within four weeks as to the best disposition of
8 that total amount. That's \$880,000.

9 And it's not only to go to Management and
10 Administration. If he's got someplace else we need
11 to spend it, let's hear it. But I don't think we
12 need it in Program Development.

13 CHAIRMAN MENDEZ: And the
14 understanding, Tom...

15 MR. EAGLIN: We've already got
16 225 there.

17 MR. WALLACE: Or 680, I'm
18 sorry.

19 MR. EAGLIN: 680, right.

20 MR. SMEGAL: 464 or 680?

21 MR. WALLACE: 680.

22 MR. SMEGAL: That's taking the
23 460 and putting it over in 3A9 along with the 225

1 that's there?

2 MR. WALLACE: That's right.

3 MR. SMEGAL: So it would be
4 685.

5 MR. WALLACE: It would be 685.
6 I can't add, but I know what I want to do.

7 CHAIRMAN MENDEZ: And the
8 understanding, Tom, also is, is that whether or not
9 we have a meeting, that Mr. Bayly will have a report
10 to us in writing in four weeks if we don't have a
11 meeting. If we do have a meeting, we will make that
12 presentation, but if not, he will get it to us.

13 MR. SMEGAL: Well, and the
14 purpose...actually, it seems to me that Mr. Wallace's
15 motion could be taken in two bites. The first bite
16 of which would be to take it out of Line 1B. The
17 second would be a determination of where to put it
18 and, if I understand correctly, we can't vote on that
19 today because Mr. Bayly is coming back in a month and
20 telling us whether he needs it or not.

21 Is that right?

22 MR. WALLACE: Well, my motion
23 today is to put it into Unallocated Reserves and it

1 would be allocated later. I think it would be in
2 order to divide my motion. Vote first on zeroing out
3 Program Development and second on putting it into
4 Unallocated Reserves. And, if that fails, you know,
5 it would be open for a motion on someplace else to
6 put it.

7 CHAIRMAN MENDEZ: Do you have
8 any other questions, Tom?

9 MR. SMEGAL: No. All right,
10 I'm willing to divide it, yes, if you consider that
11 to be in order. Divide the issue of whether we take
12 it out of...

13 CHAIRMAN MENDEZ: Do you
14 acquiesce in that?

15 MR. WALLACE: Oh yes,
16 absolutely. If the rest of the Committee does, that
17 makes good sense. Let's take two votes.

18 CHAIRMAN MENDEZ: All right.
19 The motion has been divided. First on whether or not
20 to take \$460,200 from Discretionary Commitments and
21 Program Development and move it someplace, put it
22 that way.

23 MR. SMEGAL: Remove it from

1 there.

2 CHAIRMAN MENDEZ: Yes, remove
3 it from there.

4 All in favor say, Aye.

5 (Chorus of Ayes.)

6 CHAIRMAN MENDEZ: Opposed?

7 Now, the second half of the motion is to put it
8 in Unallocated Reserves under the Corporation and
9 have Mr. Bayly come in in four weeks and that's been
10 moved and seconded by Mr. Wallace and myself and I
11 have a hunch that we'll have some disagreement here,
12 so we better...Hortencia, are you in favor of that?

13 MRS. BENAVIDEZ: Yes, I am.

14 MRS. MILLER: Yes.

15 CHAIRMAN MENDEZ: The Chair is
16 in favor.

17 MR. WALLACE: Aye.

18 MR. SMEGAL: No.

19 MR. EAGLIN: I'm in favor of
20 it.

21 MR. SMEGAL: Switching it?

22 MR. WALLACE: This vote is to
23 put it in Unallocated Reserve.

1 MR. SMEGAL: Oh, okay. I'd
2 have zeroed it out.

3 MR. WALLACE: We've already
4 zeroed it out.

5 MR. SMEGAL: My only question
6 is whether we put it here or just keep it in...I'll
7 move it. Yes.

8 CHAIRMAN MENDEZ: Okay. The
9 motion passes.

10 Now, Mr. Bayly, you understand the directives?

11 MR. BAYLY: I believe I do, at
12 least in the thrust. If I need any more direction, I
13 hope I can come to you, Mr. Mendez.

14 CHAIRMAN MENDEZ: Well, you
15 can come to me and I'll refer you to Mr. Wallace.

16 MR. BAYLY: Mr. Wallace.

17 CHAIRMAN MENDEZ: All right.
18 Now, we are back, in essence, to what we are going to
19 do with the funds, the carryover and we're back to my
20 primary motion of the carryover funds.

21 Now, are there any amendments to the motion.
22 You understand that I do not accept the \$91,000 from
23 Training and Technical Assistance. What we're doing

1 is, we're going to reduce the basic field program by
2 \$91,000, we're not going to move it in.

3 MR. WALLACE: So, your basic
4 field would be something on the order of
5 1441...basically \$1.4 million, instead of \$1.5
6 million?

7 CHAIRMAN MENDEZ: That's
8 correct.

9 MR. WALLACE: Okay.

10 CHAIRMAN MENDEZ: Mr. Coster,
11 are you getting these corrections?

12 MR. COSTER: Yes, sir.

13 MR. EAGLIN: Say that again,
14 please?

15 CHAIRMAN MENDEZ: Under the
16 third paragraph on Page 4 of the Allocation of FY '86
17 Carryover Funds.

18 MR. EAGLIN: Okay.

19 CHAIRMAN MENDEZ: Mr. Coster
20 suggested taking the \$91,000 from Training and
21 Technical Assistance. I don't agree with that. I
22 think it should remain in there and I would reduce
23 the funding to the field by that \$91,000.

1 MR. WALLACE: As I understand
2 it, the main motion on the floor, Mr. Chairman...

3 CHAIRMAN MENDEZ: Is the
4 adoption of this litany of where I believe all of
5 this should go.

6 MR. WALLACE: And that is
7 shown on the blue sheet with the two amendments we've
8 made.

9 One was the Program Development amendment and
10 the other is you're dropping basic field to \$1.4 and
11 not deleting \$91,000.

12 CHAIRMAN MENDEZ: That's
13 correct.

14 MR. WALLACE: Everything else
15 on this sheet is your motion?

16 CHAIRMAN MENDEZ: That's
17 correct.

18 MR. WALLACE: Mr. Chairman, I
19 don't hear any more amendments, I guess I'll call the
20 question.

21 CHAIRMAN MENDEZ: All in favor
22 say Aye?

23 (Chorus of Ayes)

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CHAIRMAN MENDEZ: Opposed?

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MR. SMEGAL: No.

3

MR. EAGLIN: No.

4

MRS. BENAVIDEZ: No.

5

CHAIRMAN MENDEZ: What?

6

MR. SMEGAL: Three no's.

7

That's three no's.

8

MRS. BENAVIDEZ: I got lost in

9

that.

10

CHAIRMAN MENDEZ: Okay. She

11

got lost in the discussion.

12

MR. EAGLIN: All right. So

13

it's not a vote at all, is that it?

14

CHAIRMAN MENDEZ: So, it's not

15

a vote at all.

16

MR. SMEGAL: Are we going to

17

do it again?

18

CHAIRMAN MENDEZ: Let's go

19

back through here, Hortencia. Over at....

20

The Chair will...Hortencia, do you understand

21

the motion now?

22

MRS. BENAVIDEZ: Yes, I do.

23

CHAIRMAN MENDEZ: Do you agree

1 or disagree with the motion?

2 I'm going to call the...

3 MR. SMEGAL: Yes, but I'd like
4 to speak to it now.

5 CHAIRMAN MENDEZ: Okay.

6 MR. SMEGAL: It seems to
7 me...I read the material that was handed to me this
8 morning and I am persuaded by the staff's position,
9 which is that we've got excess money here.

10 Now, I understand you disagree, Mr. Mendez, but
11 I think the position of the staff is very clearly set
12 out on Page 4 that this \$91,000 can easily come from
13 available fund balances of committed funds and a
14 portion of the Disciplinary Commitment funding base
15 and I'm voting no because I believe that the \$91,000
16 is there and we should distribute the \$91,000 to the
17 field programs for direct delivery of legal services.

18 CHAIRMAN MENDEZ: Let me ask
19 you, would you support this motion if we leave the
20 \$91,000, in all other respects?

21 MR. SMEGAL: With respect to
22 the \$2,637,000 that we're talking about, yes.

23 MR. MENDEZ: Well, I

1 personally believe that we need to lay some monies in
2 there, because I think the training task force ought
3 to have a good deal of funding there and it probably
4 is more money than what is there, because it's my
5 understanding that the task force will be coming in
6 with a series of good recommendations and I don't
7 want to expend those funds.

8 MR. WALLACE: Well, Mr.
9 Chairman, since the debate is reopened, I will
10 withdraw my call of the question and if Mr. Smegal
11 wants to amend the main motion on the floor to do
12 what he just said, then we ought to take a vote on
13 it.

14 MR. SMEGAL: All right, I'll
15 do that. I move that the \$91,000 as recommended by
16 Mr. Coster, remain where it is on the Reallocation of
17 Fiscal Year '86 Carryovers.

18 MR. EAGLIN: I'll second it for
19 you.

20 CHAIRMAN MENDEZ: It's been
21 moved and seconded. Is there any other discussion on
22 it?

23 All in favor say Aye.

(Chorus of Ayes.)

CHAIRMAN MENDEZ: Opposed?

No. Ayes have it, I believe. Did you vote for it?

MR. SMEGAL: Both times.

CHAIRMAN MENDEZ: It's 3 to 2.

Now, to the main motion. All in favor of the main motion...

MR. SMEGAL: Which is the reallocation of the \$3,636,000? Is that part of it, that is in Mr. Coster's memo under Subsection...

CHAIRMAN MENDEZ: That's correct.

MR. SMEGAL: Okay. That's the only part we're voting on?

CHAIRMAN MENDEZ: That's what we're voting on right now.

All in favor of the...in essence, the entire memo plus the comments...there's not an easy way for us to discuss this.

The allocation of FY '86 carryover to FY '87, that's it.

MR. SMEGAL: With the change

1 that Mr. Wallace proposed?

2 CHAIRMAN MENDEZ: Well, yes.
3 It's as reflected in there. I was changing it.
4 You've got it status quo.

5 All in favor?

6 (Chorus of Ayes.)

7 CHAIRMAN MENDEZ: Opposed?

8 Now we are at the...is there any other...

9 MR. WALLACE: I have one
10 request to make, Mr. Chairman.

11 I would request now that we know what we did or,
12 at least after the Board does what it does on the
13 carryover, that we get a written opinion as to
14 whether or not what we're doing is legal, because
15 there are a lot of strings on various appropriations
16 bills that this is coming from and let's make sure we
17 can do this and let's get it in writing that we can
18 do this.

19 CHAIRMAN MENDEZ: Not only
20 that, as soon as we get that opinion that we can do
21 it, I want a reprogramming notice sent up to Congress
22 exactly on this issue. On all of these funds.

23 Nothing further occurring on the carryover, we

1 will turn our attention now to FY '88.

2 What we're trying to figure out is how much
3 later we want to go this evening and we'll take a few
4 minute recess to figure out if we're going to
5 continue until late this evening or if we're going to
6 start bright and early tomorrow morning.

7 (WHEREUPON, a brief recess was taken.)

8 CHAIRMAN MENDEZ: We are going
9 to take additional comments from the field on the '88
10 mark, additional comments from the public on the '88
11 mark and where they wish the '88 mark...the level
12 they want it to be to the allocation, where they wish
13 the allocations to come from and then we will adjourn
14 until 8:30 tomorrow morning.

15 And, at 8:30 tomorrow morning all of the motions
16 with the Committee will be resolved and the
17 recommendations to the Board will be done at that
18 time.

19 Now, Martha, do you any additional statements?

20 MS. BERGMARK: We will have
21 response to your proposed mark tomorrow, yes, sir.

22 CHAIRMAN MENDEZ: That's the
23 proposed mark in front of you and do you have a

1 response?

2 MR. CLYDE: Mr. Chairman, I
3 made the presentation at the November 1st meeting in
4 support of the PAG appropriations mark for 1988.

5 I'm Bob Clyde again, for the record, Co-Chair of
6 PAG.

7 I'd like to introduce and bring forward for
8 comment on the Corporation's proposed FY '88 mark,
9 John Ross.

10 CHAIRMAN MENDEZ: I was going
11 to bring John.

12 MR. WALLACE: Is staff going
13 to explain this first or did I miss this at the last
14 Committee meeting?

15 CHAIRMAN MENDEZ: Well, let's
16 have John Ross come first.

17 MR. WALLACE: All right, fine.
18 I'll do it any way you want.

19 MR. ROSS: Mr. Chairman,
20 members of the Committee and Board of Directors of
21 LSC. My name is Jonathan Ross. I'm from Manchester,
22 New Hampshire.

23 I appreciate the opportunity to appear before

1 you with respect to your Fiscal Year '88 Budget
2 Request to Congress and particularly appreciate your
3 courtesy in permitting me to go forward tonight since
4 I have a plane to catch shortly to go back to my
5 Bar's midwinter meeting.

6 I am a private lawyer. I'm the Immediate Past
7 President of the New Hampshire Bar Association. I am
8 a Director of the New England Bar and I'm co-founder
9 of Bar Leaders for the Preservation of Legal Services
10 for the Poor.

11 My acute interest in the activities of this
12 Corporation and in the activities of this Board of
13 Directors stems from my first appearance before you
14 in Gilford, New Hampshire, in October of 1985.

15 Things have not changed much since that time.
16 This Board is still at odds with those who actually
17 deliver legal service to the poor. There has been no
18 progress toward meaningful cooperative effort. We
19 still believe that your attitude is hostile and that
20 the controversy you seek is generated only here.

21 From a bar leader's prospective and from the
22 prospective of the lawyer in private practice, the
23 only thing that remains controversial about legal

1 services to the poor is the manner in which this
2 Board discharges its fiduciary duty to the people it
3 serves.

4 Your field programs, the people who work in
5 national and state support centers and those who
6 provide direct support and service to the poor people
7 of this country are not controversial. They are a
8 part of the best legal system in the world...ours.
9 And they are well respected and are doing a credible
10 job.

11 The activities of your Board are controversial.
12 Your actions or inactions gave birth to the bar
13 leader's effort that I'm involved in.
14 Representatives from more than 30 states have joined
15 us without any direct personal solicitation. Each
16 time a bar leader becomes familiar with the approach
17 to the delivery of legal services that this Board
18 takes, bar leaders join our group.

19 The latest example is a resolution adopted by
20 the New England Bar Association just two weeks ago
21 and the adoption of a position paper by all states
22 belonging to the New England Bar, which I will
23 deliver to you on behalf of the New England Bar

1 President, Michael Greco.

2 Your Board is not willing to accept that the
3 private bar supports fully the field delivery system,
4 including state and national support centers that is
5 in place. We want it improved, not attacked,
6 dismantled or harassed.

7 You are still engaged in adversarial processes
8 with the people you are supposed to serve. The set
9 of, what I would call interrogatories, to the PAG
10 Funding Criteria Committee is, to me, a simple
11 demonstration of that. I'd like to see this Budget
12 Committee, in detail, answer the same questions about
13 your budget recommendation to your Board. Now is the
14 time to stop the internal attacks and I hope
15 President Bayly can do that.

16 During the debate in Congress, I noted in the
17 National Press articles by William Buckley and
18 others, highly critical of the programs that you
19 supervise. The articles were basically diatribes on
20 anecdotes. They sought to diminish the efforts of
21 thousands of people by highlighting some obscure
22 stories in a manner that was derogatory.

23 I would have expected that this Board would have

1 come forward in the National Press to counter such
2 articles and to point out the very good things that
3 the majority of the people that you serve do for the
4 poor people in the American judicial system.

5 And I would have expected you to come forward to
6 tell this country that the purpose of the Legal
7 Service Corporation is in the finest traditions of
8 this country and should not be denigrated in such a
9 manner. You, however, were silent. You are still
10 silent and I wonder whether you will ever speak up in
11 those tones.

12 I see little sign that this Board is willing to
13 accept the significant responsibility that is there
14 for it to take. While we appreciate Professor
15 Uddo's willingness to take the time to meet with bar
16 leaders, he stands alone in the cold and without much
17 credibility when he represents a Board that refuses
18 to deal on a policy basis with the continuing abuses
19 of monitoring and that is prepared again to deal with
20 lobbying regulations and in your budget mark with
21 national and state support centers in manners that
22 Congress seems to me to have specifically rejected.

23 I'm here to urge you to set a budget mark that

1 meets minimum access to justice for poor people in
2 this country. The PAG proposals to reach minimum
3 access in three years seemed to make some political
4 sense. But whether it takes one year or four, it is
5 a minimum commitment that this Board should make now.

6 Your budget requests should reflect to Congress
7 your commitment to return to that minimum standard
8 funding level so that you can use that as a platform
9 to begin to develop a budgetary figure for delivery
10 of legal service that will provide equal access to
11 justice, not just the bare minimum.

12 You should do no less than \$391 million as a
13 budget mark for Fiscal '88 and you should be planning
14 now to do considerably more in the future.

15 I would like to deliver for Mr. Greco, a letter,
16 a resolution and a position paper that he has
17 addressed to Chairman Durant and, if I may, Mr.
18 Mendez, should I give that to you or to Tim Baker?

19 CHAIRMAN MENDEZ: Why don't
20 you give it to Mr. Coster...or Mr. Baker is right
21 behind you. Why don't you do that.

22 MR. ROSS: Thank you.

23 MR. WALLACE: Can I see that,

1 Mr. Secretary?

2 MR. ROSS: I have copies for
3 all of the Board, sir.

4 MR. SMEGAL: Mr. Ross, five of
5 the Board members were not here to hear your remarks
6 and I'm wondering if they are in some form where we
7 might be able to share them with the five people
8 tomorrow morning while we discuss a budget mark.

9 MR. ROSS: I have copies of
10 what I've said, sir and I'd be happy to leave it.

11 MR. SMEGAL: Thank you.

12 MR. ROSS: Again, Mr. Chairman,
13 if there are no questions, I appreciate your
14 willingness to allow me to...

15 CHAIRMAN MENDEZ: I appreciate
16 your coming and taking the time and have a good trip
17 home.

18 MR. WALLACE: I've got a few
19 questions.

20 Mr. Ross, I appreciate your coming here. We got
21 a letter from you not too long ago and I've seen some
22 of your publications and I appreciate your coming to
23 tell us what you've been telling other people.

1 You sent Mr. Durant a letter on December 19th,
2 1986 and we received copies of that, asking that this
3 Board cease its unwarranted attack on those who
4 deliver legal service in this country.

5 I would appreciate it if you tell me what you
6 mean by that.

7 MR. ROSS: I think I've seen a
8 demonstration of it today, Mr. Wallace.

9 I don't see a commitment by this Board in its
10 publications, in its budget effort or in the manner
11 in which it treats the staff, at least as I saw it,
12 certainly in New Hampshire, that reflects a
13 commitment to equal access to justice in this country
14 and I think that your proposal today to do away again
15 with national and state support centers is a
16 demonstration of that.

17 MR. WALLACE: Now, the way we
18 treat our staff demonstrates an attack on the poor?

19 MR. ROSS: I mean the people
20 that you are supposed to serve, sir. I mean the
21 monitoring that goes on, the...

22 MR. WALLACE: No, no, you said
23 you saw it today and I'd like to hear what you saw

1 today about the way we treat our staff. I'm not sure
2 I understand what you mean by that.

3 MR. ROSS: I think you've
4 taken two things that I've said and put them together
5 in a manner that I did not.

6 MR. WALLACE: Well, that's why
7 I'm asking you to explain it.

8 MR. ROSS: I can't explain
9 your mistakes, sir.

10 MR. WALLACE: Well, you
11 said...all right, what did you see today...I'll
12 forget what you said...what did you see today that
13 you believe justifies your conclusion that we're
14 engaged in an unwarranted attack on those who provide
15 legal service?

16 MR. ROSS: I observed an
17 attitude in the gentleman from the Native American
18 Program that, in my humble opinion, was less than
19 fair, that suggested ridicule to me, and that made it
20 very clear to me as I sat here in the audience that
21 his presentation to you was a waste of time and that
22 you had your mind made up, sir. I thought that was
23 rude.

1 MR. WALLACE: Well, I will
2 tell you that I listened to that gentleman and I ask
3 clarification from the Chairman of this Committee as
4 to whether or not voting to put \$210,000 into that
5 line was intended to gut the programs that he said
6 have carryover money, that he wants to preserve. The
7 Chairman of this Committee told us that the vote did
8 no such thing.

9 Now, if that was rude, I have a hard time
10 understanding what rude means to you, Mr. Ross.

11 MR. ROSS: I think I've
12 answered your question, Mr. Wallace.

13 MR. WALLACE: I don't think
14 you have, Mr. Ross.

15 Let me ask a couple of things. You said that
16 this is not a controversial program. Now, if this is
17 not a controversial program, why hasn't it been
18 reauthorized since 1978?

19 MR. ROSS: I think, sir, that
20 what I said was, that in my opinion, the delivery of
21 legal service through the field programs that you
22 have and the state and national support centers that
23 we have is not controversial and that this Board's

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treatment of those programs, its refusal to adopt, in my judgment, a positive attitude toward adequate funding for these things, makes your actions controversial, not the people in my state who deliver the service.

MR. WALLACE: I understand that you disagree with what this Board is doing, but if this is not a controversial program, why has it gone without reauthorization into its ninth year. This is obviously a controversial program, Mr. Ross.

The last time it came to the floor of the House, the Judicial Committee got its brains beaten out on the floor and they haven't brought a bill out since.

Now, I'm not telling you that everything that goes on in the field is good, bad or indifferent, but I think it's silly of you to come here and tell us that there's nothing controversial about what goes on in the field. If there wasn't, you'd have a reauthorization bill.

MR. ROSS: I think, Mr. Wallace, you are entitled to your opinion as I am to mine.

MR. WALLACE: All right. Now,

1 I want to ask you one simple question.

2 You call your organization Bar Leaders for the
3 Preservation of Legal Services for the Poor.

4 MR. ROSS: That is the name.

5 MR. WALLACE: Is it your
6 allegation that this Board wants to abolish legal
7 services for the poor?

8 MR. ROSS: I have not seen
9 evidence from you, sir, that you wish to do anything
10 that would augment the service that we have for this
11 country.

12 MR. WALLACE: All right.

13 MR. ROSS: And I do not see
14 any commitment from this Board to reach a level that
15 was set long ago in the Corporation, to reach minimum
16 access or to provide equal justice for the citizens
17 of this country.

18 MR. WALLACE: Let me ask this.
19 Do you know how the minimum access level was
20 determined?

21 MR. ROSS: No, sir. I can't
22 tell you the mechanics of it.

23 MR. WALLACE: All right.

1 MR. ROSS: I know, from
2 reading the PAG Funding Report and the answers to Mr.
3 Mendez and Mrs. Bernstein's questions, some of the
4 history of it which is before you in those documents,
5 but I was not part of that and I don't know,
6 personally, what happened.

7 MR. WALLACE: Mr. Ross, let me
8 tell you what my opinion is.

9 My opinion is that this Board and this member of
10 the Board does not want to abolish legal services for
11 the poor. I said that to Congress, I've said it
12 everyplace I've gone and I believe it.

13 Now, if the aim of your organization is to
14 augment legal services for the poor, to get more
15 money, then you ought to call it that. But you are
16 running around the country telling people that the
17 existence of legal services is in danger from this
18 Board.

19 I tell you, Mr. Ross, that is false. I am not
20 trying to abolish legal services. If you believe I
21 am, I appreciate that you have come here to call me a
22 liar to my face, but I am telling you I am not a
23 liar, I have been telling the truth. I think the

1 majority of this Board has been telling the truth.

2 We have no interest in abolishing legal services
3 and if you think there is hostility from this Board,
4 I better tell you, I feel a lot of hostility coming
5 from you and the fellows you run around the country
6 with calling us liars. I appreciate you coming here
7 to do it to my face.

8 MR. ROSS: You may
9 characterize my remarks, Mr. Wallace, in any way that
10 they strike you personally. My opinion is, and
11 remains, that the activities of this Board as a whole
12 are hostile to the system of delivery of legal
13 service to the poor in this country that has been
14 successful for years and I continue to maintain that
15 opinion.

16 MR. WALLACE: I'll make one
17 further comment. Before you go out any further and
18 tell people that we are not in favor of adequate
19 funding for the poor, I think you ought to find it
20 incumbent upon yourself to determine how this minimum
21 access formula was determined, whether or not it is
22 in accordance with reality as it presently exists,
23 rather than just adding an inflation factor to it for

1 ten years and once you have understood where that
2 number comes from, then it seems to me you may go
3 around the country and tell people that we are
4 willfully under funding this program.

5 But I consider it highly irresponsible for you
6 to run around the country without a basic knowledge
7 of the facts and tell people we're trying to destroy
8 legal services because I tell you flatly I am not.

9 MR. ROSS: I don't see, Mr.
10 Wallace, in any of the things that I've read or seen
11 today, any particular effort by this Board to create
12 equal access to justice for poor people in this
13 country. And that is what I think that you should be
14 doing. I think that's your charge.

15 MR. WALLACE: No. I think my
16 charge is to enforce the law the way Congress wrote
17 it. When you wrote us about the departure of Mr.
18 Wentzel you said we ought to get a President who
19 doesn't view his job as a watchdog, antagonist and
20 hatchet man.

21 Now, I don't know what you think a hatchet man
22 is. I'll tell you what I think a watchdog is. I
23 think a watchdog is somebody who looks out to see

1 whether or not the law is being violated.

2 We have extremely technical and extremely
3 extensive restrictions that have been placed on this
4 program and there are new restrictions practically
5 every year since this organization has come into
6 existence. And I consider it at least part of my job
7 to be a watchdog and I intend to carry that out.

8 I do not think it is my job simply to be a
9 lobbyist for more money, but it is my job to enforce
10 the law the way Congress wrote it. Now, that is what
11 I took an oath to do and it's what I continue to do
12 and if you think there's something wrong with that,
13 it seems to me you ought to tell Congress to take
14 those restrictions off so we won't enforce them any
15 more.

16 CHAIRMAN MENDEZ: Are there
17 any other comments?

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1 MR. SMEGAL: I think I'm
2 going to have to respond to Mike. Mike, we've discussed
3 this before. I don't read Mr. Ross' letter of December
4 19, nor do I read any of the other materials he's
5 provided to us, nor his testimony, as a personal
6 attack on me. I as you am here to serve on this
7 board of directors in a way that I deem appropriate;
8 you're here to serve in a way that you deem appropriate.
9 I think Mr. Ross and those of the organized bar that
10 have pointed out to us the shortcomings of this board
11 reflect a genuine concern from the organized bar.
12 The way we've conducted ourselves over the last couple
13 of years does not give me great comfort. We have had
14 two years on this board, and we are going into a
15 budget discussion now, today and tomorrow, for fiscal
16 year '88. We have no more information today than we
17 had two years ago as to what our budget mark should
18 be. We're going to go and apparently ask for \$305.5
19 million again, based on what? Where is the data,
20 where is the information from which we're going to
21 make a reasonable, rational judgment of what we should
22 be asking for. We're going to take \$305.5 million
23 and we're going to move it around inside a gunny sack.

1 We're going to move it around, and management and
2 administration gets another \$4.8 million. The field
3 programs get six million less, not ten million more,
4 six million less, because we're going to transfer to
5 them the responsibility of buying services from the
6 national states board centers, a \$16 million item in
7 fiscal year 1987. It will become a ten million dollar
8 item in fiscal year 1988, if that budget mark is
9 adopted by this board.

10 So we're cutting the field programs by six
11 million dollars, we're increasing management and
12 budget \$4.8 million, and the other million and some-
13 odd change goes to law school clinics and whatever. The
14 only possible rational way to conduct this program is
15 in a way that demonstrates that we have fiscal
16 responsibility. We cannot possibly go and ask for \$305.5
17 million for the fourth year in a row.

18 MR. WALLACE: I will agree
19 with a good bit of what you said, Mr. Smegal. As
20 you have seen lately, you and I agree more often than
21 you might think.

22 But the main thing I agree with is we don't know
23 much more than we knew when we got here. I will also

1 say this, that we don't know where the \$391 million
2 comes from, at least Mr. Ross can't explain what
3 minimum access is and where it comes from.

4 I consider any number we pick, based on the
5 information we've been able to collect over the two
6 years we essentially grabbed out of thin air. When
7 somebody wants to show us where that minimum access
8 figure comes from and why we ought to rely on it as
9 gospel, I'm ready to listen. But I've sat here two
10 years and I've had people tell me this is a swell
11 number and we agreed on it ten years ago and we ought
12 to just keep jerking it up for inflation.

13 That ain't good enough for me.

14 MR. SMEGAL: We've spent
15 two years and we haven't jerked anything up. We've
16 still got the same number we had two years ago.
17 We've had people come before this board for two years,
18 very competent, very eloquent lawyers, and explained
19 to us what the needs of the poor are, where those
20 needs are financially necessary. In two years we're
21 exactly where we were when we started, except inflation
22 has eaten away from the \$305.5 million, and our
23 management and administration budget has increased by

1 five or six million dollars.

2 We've had people to listen to. We haven't
3 listened to them for two years. Mr. Ross is here to
4 summarize what his view is, what the collective view
5 of the organized bar is. He's made it very plain.
6 He's got to listen, this board has got to listen.
7 We've been running around in a little circle for two
8 years. We're right where we started from on December 5,
9 1984.

10 We've made no progress in two years. We've
11 refused to listen. Mr. Ross is here again, as he was
12 in New Hampshire. He's saying what we should be
13 listening to. Others tell us what we should be
14 listening to, and we ignore them all. That's a
15 collective bar position. I think the letter is
16 appropriate. I think this letter is well based on
17 the actions of this board over the last two years. I
18 don't think they personally reflect on me. I don't
19 take them personally. But I think collectively they
20 accurately assess the effectiveness of this board
21 over the last two years.

22 MR. WALLACE: That's the
23 last word as far as I'm concerned, Mr. Chairman.

1 CHAIRMAN MENDEZ: Is there any
2 other comment? Mr. Ross, I'm glad that you made it
3 down. I hope you have a pleasant trip home. Similar
4 to Mr. Wallace and similar to Mr. Smegal, there is a
5 little bit of each in all of us, and all of us I
6 assume are somewhat right, and I assume all of us are
7 somewhat wrong. We will take your words, and I for
8 one will think on them. I appreciate the efforts
9 that you've made. We always are willing to extend a
10 hand, and I would encourage you to do a little bit
11 more work, and if we can come with a good number
12 where we think the numbers ought to be, if I felt
13 that I had a real strong number on the minimum access,
14 I would be the first in line to raise it. But I just
15 don't see it now.

16 MR. ROSS: I appreciate your
17 remarks, Mr. Mendez. I guess what I'd say to you is...

18 CHAIRMAN MENDEZ: I would really
19 encourage you to spend some of the bar's time and
20 your efforts, because if we have some good numbers we
21 will re-examine them.

22 MR. ROSS: If I hear you
23 saying that you think this board will commit its

1 purpose to find a way to get enough funding to provide
2 equal access to justice for citizens of this country,
3 then we've made a great step forward. I haven't
4 heard that, but I hope that that's what you mean.

5 CHAIRMAN MENDEZ: I will assure
6 you that we are interested in minimum access for the
7 poor, and that we will look at that. You haven't had the
8 opportunity over the period of two years to see what
9 we have seen, and that's one of the difficulties when
10 we receive a letter such as yours. Each of us has
11 some difficulties.

12 If I could encourage the bar to look at how you
13 arrive at minimum access and what we ought to do
14 towards achieving minimum access, pro bono, iolta,
15 all of the other things, including the numbers and
16 dollars, I would encourage you to do that. I would
17 encourage you and the other bar leaders to come forth
18 with your positions.

19 MR. ROSS: Thank you, sir.

20 CHAIRMAN MENDEZ: Thank you very
21 much, Mr. Ross.

22 MRS. BERGMARK: If I could,
23 I'd like to respond just...

1 CHAIRMAN MENDEZ: You're second
2 in line. Terry was standing up. Terry, that micro-
3 phone doesn't work.

4 MR. ROCHE: I apologize to
5 Martha. I am Terry Roach, executive director of Legal
6 Services for Southern Piedmont, Charlotte, North
7 Carolina, past co-chair of the PAG funding criteria
8 committee.

9 I would like to just simply state two things
10 essentially for the record. Shortly after I first
11 met with you at your first meeting in December, 1984,
12 I sent a short memorandum to this board, explaining
13 minimum access, explaining its historical roots,
14 explaining as briefly as I could, because I was asked
15 by the chairman to be brief, how that number was devised.
16 Thereafter...

17 CHAIRMAN MENDEZ: But I also
18 believe that most of the members on the board have looked
19 at the way that number was devised, and don't feel
20 that it was...

21 MR. ROCHE: I understand
22 that, but I'm just trying to get the complete thought
23 out. Subsequently, I provided you with several other,

1 lengthier memoranda on the subject. I believe Mr.
2 Singson has done the same.

3 So it is inaccurate for anybody to say that they
4 do not know where minimum access came from. They may
5 disagree with the calculations, but that's a different
6 statement. Moreover, you did ask PAG to respond to
7 some fairly detailed, and I think in many ways, quite
8 good questions. But as Mr. Ross pointed out, no one
9 is aware that at any time in the two years if in fact
10 this board has disagreed with the minimum access
11 concept, that it has asked any staff member to
12 investigate that process or to devise a different
13 funding formula or a different funding theory. You
14 have in fact asked us to do that. You have in fact
15 gotten virtually all of your information about funding
16 theories and concepts from the PAG funding criteria
17 committee. I know it, because I was doing it.

18 But you have not asked your staff to do it, and
19 that, I think, is the kind of responsibility that Mr.
20 Ross was referring to, because if in fact you have
21 not undertaken the responsibility, I would think that
22 he's correct.

23 CHAIRMAN MENDEZ: Thank you,

1 Terry.

2 MR. CLYDE: I'd just like
3 to add to that. As I came up and approached the
4 table, I indicated that we had made a presentation,
5 PAG had made a presentation on November 1 on relatively
6 short notice. I had only been chair or co-chair of
7 the funding criteria committee for less than a month.

8 The notice given to us by the Corporation of the
9 request to appear and make a presentation on behalf
10 of the FY 88 mark appropriation was received. We
11 appeared. We had not only an oral presentation that
12 followed a extensive written presentation, but we
13 engaged in the colloquy and answered a number of
14 questions about minimum access and a number of other
15 things that were addressed in that presentation.

16 Minimum access is not new. It has been, as Mr.
17 Roach as indicated, the basic funding concept that
18 has been given to this committee for a number of
19 years by PAG. It was fully detailed then. It was
20 detailed in the November 1 presentation, and it was
21 given even greater detail in the answers to the
22 questions that were submitted to the funding criteria
23 committee following that meeting.

1 I don't know, other than to repeat Terry's concerns
2 and PAG's previously expressed concern about the
3 failure of the Corporation to urge its staff, to
4 order and instruct its staff to develop whatever
5 other funding concepts there may be. Need has been
6 mentioned many times, legal needs. In fact, there
7 were funds appropriated, as I understand it, or
8 allocated sometime ago, for a legal needs assessment.
9 That has not been done. As far as I know, those
10 funds have not been spent.

11 Minimum access is the concept that was developed
12 by the Legal Services Corporation in the mid-1970s
13 when the Corporation was founded. It is not PAG's
14 creation; it is the historical funding concept for
15 field delivery of dollars, and has been for over ten
16 years.

17 MR. WALLACE: Mr. Chairman,
18 do you know the status of the needs study? Mr.
19 President, do you know the status of the needs study?

20 MR. BAYLY: I'm afraid I do
21 not. I do not know the status.

22 MR. WALLACE: Let me ask
23

1 whether PAG has made any effort to update its historical
2 data to take account of changing circumstances over the
3 last ten or twelve years. I'm not just talking about
4 the availability of IOLTA and pro bono programs. I
5 think law office management has changed substantially,
6 that the basic staff breakdown in a law office is
7 significantly different. The equipment breakdown in
8 a law office is different from what it was ten years
9 ago when I started practicing law.

10 Have you made any effort to see whether the
11 original numbers you started with and the original
12 theories that you based on ought to be modified in
13 light of modern law practice?

14 MR. CLYDE: You mean, to re-
15 examine the underlying \$70,000 for two attorneys or
16 \$35,000 cost of fielding an attorney. That was the
17 basis for the Corporation's original...

18 MR. WALLACE: There's two
19 things. One is that you need two lawyers for every
20 10,000 poor people. That's one assumption. Then the
21 next assumption is, how much it costs to provide
22 those lawyers. It's the second assumption that I'm
23 really asking about more than before, is, how much does

1 it cost to provide those lawyers, how much support
2 staff is there, how much equipment is available. I
3 think the makeup for a law office has changed a lot
4 in ten years. That's my concern with minimum access.
5 We've got a number that was derived ten or twelve
6 years ago. Whether or not it was accurate at the
7 time is subject to question; whether it's still
8 accurate I think is highly unlikely. It may be more,
9 it may be less, but I don't think you can just put
10 the Consumer Price Index to it and see what you come
11 up with.

12 MRS. BERGMARK: I think
13 you can look at the programs in Mississippi, Mike,
14 and you and I both have practiced there and know it.
15 There was an article in the most recent Mississippi
16 Lawyer about that, that since 1981 the attorney staff
17 in Mississippi is 40 percent smaller than it was in
18 1981. So if anything, we've regressed from any
19 possible definition of minimum access or equal access
20 or anything like that, just in the last four or five years.

21 It seems to me it's a little disingenuous, I
22 think, to say, I support the notion of maintaining
23 this program. No, we don't support cuts to it, and

1 no, we're not trying to eliminate it, but then to do
2 the things that Mr. Smegal just outlined that this
3 budget mark would do.

4 It's just further cuts. So that, whether or not
5 we can sit here and resolve this question of minimum
6 access is really...really doesn't speak to what's
7 before you today in this budget mark. You're not calling
8 for any increase whatsoever. You're calling for what
9 amounts to more cuts.

10 MR. WALLACE: I will go
11 back to where I agreed with Mr. Smegal. I believe
12 our information about what happens in the field is
13 not substantially greater than it was two years ago.

14 We came here two years ago with questions. I've
15 still got the questions. We have spent a lot of
16 money on monitoring. I don't know that I've learned
17 a lot yet from monitoring, about what's going on in
18 the field. I don't know whether that's our fault or
19 whether it's because there is resistance in the field
20 to telling us what we need to know.

21 But whether it comes to timekeeping, whether it
22 comes to CSR's, whether it comes to the other
23 innovations which this board has attempted to put

1 into place in order to get information on what's
2 going out in the field, we have been opposed at every
3 step by PAG and other people out in the field. You don't
4 want timekeeping, you don't want CSR's and you don't
5 want monitoring, at least the way we're doing it. So
6 it may be a little disingenuous on your part to come
7 here and say, we already know everything we need to
8 know, or we're not trying to find it out.

9 I think everything this board has done for two
10 years has been an effort to find out.

11 MRS. BERGMARK: Mr. Wallace,
12 I invite you to come to Hattiesburg any time you want
13 to, and I'll share with you our monitor reports, you
14 can talk to our staff, you can talk to our clients.
15 We're there. We're trying to provide a service. We
16 have six lawyers when we had ten five years ago. Our
17 case numbers have gone down. We are struggling to
18 try to provide service to a potential 53,000 poor
19 people with a total staff of 14 people.

20 MR. WALLACE: The question
21 isn't whether you've got all the money you need in
22 Hattiesburg, obviously you don't. Obviously...

23 MRS. BERGMARK: Let's stop there.

1 MR. WALLACE: No, let's not
2 stop there. Obviously, there is an unlimited demand
3 for legal services as long as you're giving them away.

4 Now, the question is, what's a reasonable amount
5 of demand mean? That's one question. The other
6 question is, are there places where we are spending
7 money, where we're not getting anything for it, that
8 we could better put into Hattiesburg. Now, that is
9 one question this board has tried to address with the
10 support center situation, and you've told us you'd
11 rather have the money than the support centers.

12 MRS. BERGMARK: That's
13 absolutely correct. Let's go back to...there's
14 obviously not enough money going into legal services
15 in Hattiesburg, Mississippi or the nine-county area
16 we serve.

17 If we can start with that premise, and the board
18 of this Corporation believes that as you do, and I'm
19 glad to hear you believe that, it doesn't seem to me
20 to make any sense to flat fund or to put proposals
21 before Congress that would flat fund this program
22 year after year after year, because you're not
23 satisfied with the level of perfection of the formula.

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It amounts to an attack on field services, as Mr. Ross points out, to do it that way. Let's come to some...what do you need to propose an additional amount of money to Congress? What do we need to provide you with that will allow you somehow to get past the barrier of saying, no, we're not going to ask for a penny more, not one penny more, without some further something.

MR. WALLACE: You need to get off of the lock step increase system, where every dollar we get is distributed by a formula out in the field, unless we can prove beyond a shadow of a doubt that a particular program doesn't deserve it. I believe on the basis of...frankly, I'm not satisfied that the support centers are following the law or doing a good job even if they are following the law. But if we ask for more money, we have to give them more money, too.

I think there are some basic field programs that are not following the law. But if we ask for more money, we have to give them more money unless we can prove beyond the shadow of a doubt through these Part 1625 regulations that they've seriously fouled up

1 someplace. If you want me to ask for more money,
2 give me a little discretion on how to spend it, so I
3 can send it to programs that I'm satisfied are doing
4 a good job without topping up the treasuries of programs
5 that I have severe doubts about.

6 That's the main thing I'd like to have.

7 CHAIRMAN MENDEZ: I'll just
8 follow up a little bit on national support. We
9 previously asked the programs, which ones were the
10 best. We wanted to see about reallocating funding
11 among the national support groups. We essentially
12 ran into a stone wall on that, as to which ones were
13 best so we could fund them. Those that we thought
14 were the best, and determine which ones ought to have
15 more funding and which ones ought not to have as much.

16 We got no answers. It was obviously not a good
17 response. So one of the ways we talked about is,
18 look, let's give the money to the field programs and
19 tell the field programs, look, here's the money.
20 Those are the national support programs. You decide
21 which one you want to spend your money in. Where do
22 you want to spend the money? If you want to spend
23 the money at national support center X, you ought to

1 have that right to spend it there. You shouldn't
2 have to be supporting all of them if you don't want
3 to do it. If you don't want to support the youth law
4 or the housing law, or if you want to support them,
5 you ought to have those rights.

6 We shouldn't be here dictating to you, saying
7 that you have to spend that much money. I recognize
8 that there's going to be some transition problems.
9 But I do think that if once that was started, if we
10 could once get it started, the national programs, the
11 national support and state support, and the field
12 programs would all agree that would probably be the
13 best way to go.

14 In transition into it, I can understand that
15 there's a problem. I can understand that nobody
16 knows exactly what it is. But, my gosh, you're the
17 ones that picked the west law in the lexus, and you
18 select where you're going to rent and you select all
19 of these other things. It seems to me that's really
20 appropriate for you to select whether you're going to
21 support these groups, and whether...if we can make
22 them more directly responsible to you, if we can make
23 them more responsible to the programs, I think you'd

1 get better research and better capability.

2 I'm concerned about the CALR. I want to see
3 computer-assisted research. I think that computers
4 is the wave of the future. I want to see what we do
5 about that. I want to improve that. I talked about
6 that all along. We want to see that. We want to see
7 these things improved better. Just the mere fact
8 that we want to see what we can do to improve it and
9 where we...we don't want to change things just to
10 change them. We do have the belief that it's a more
11 effective use of dollars, and the local programs
12 ought to have these rights to do things.

13 MRS. BERGMARK: Let's do it
14 then at a non-freeze level. As soon as you come
15 forward with a freeze level, then what you're saying
16 to us is, we want you to do it differently with less
17 money, is what it amounts to.

18 Let's move forward, let's go to Congress with a
19 budget mark that begins to approach making some needed
20 additions to service, propose it in a way that you
21 would allocate it. Mike, you're talking about, you
22 want to see some reallocation. Propose it that way.
23 But when you come in with a \$305 million, and then

1 propose to disrupt the service delivery system that's
2 in effect, essentially you put us in a position of
3 holding ironclad to the status quo.

4 MR. WALLACE: Let me tell
5 you the kind of reallocation I propose and see if you
6 can still live with it. Let's get down to cases.

7 MRS. BERGMARK: I'm not saying
8 we can live with it. I'm saying, in other words,
9 when the board is holding to a freeze level and we're
10 holding to status quo, we're not making any progress
11 on any of it.

12 MR. WALLACE: Let's get
13 down to cases, and this may foul us up something
14 awful, but I think it's worth talking about.

15 You say you don't have enough money in Hattiesburg.
16 You're right. I've been in Mississippi long enough,
17 I hear the things people say. I don't hear any
18 complaints about your program from anybody but the
19 power companies, and I think you've got a right to
20 file rate cases. I'm not going to lose any sleep
21 over that.

22 But I also hear a lot of complaints about north
23 Mississippi. When I first came home and when I was

1 first appointed to this board, a lot of people in
2 legal services in Mississippi, the first thing they
3 said to me is, I know you've heard all those things
4 about north Mississippi, but it's really not that bad
5 and it's getting a lot better. I hadn't heard anything
6 about north Mississippi when I came home, and I have
7 now. I do think they have had and still have some
8 serious problems in north Mississippi.

9 Now, I'm not trying to make a judgment on it.
10 But if I'm going to ask for more money, I want Mr.
11 Bayly to have the discretion to give that new money
12 to you and not give it to north Mississippi if, after
13 investigating the facts, he has decided they've got a
14 problem. As it is now, we've got to give money to
15 north Mississippi unless we can prove beyond a shadow
16 of a doubt that they've done something awful. That's
17 the way these defunding things are working out.

18 Now, if you'll give our staff that kind of
19 discretion, then I can go with more money, because there
20 are good programs that need it. But I don't want to
21 drag bad programs or problem programs along in lock
22 step with the good ones. If you give my staff that
23 kind of discretion and I'll vote for more money.

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MR. CLYDE: Mr. Chairman and Mr. Wallace, I'd like to respond to that, and Martha might want to add something to it.

The minimum access concept was designed by Congress in the 70s to develop a fair means to allocate short resources to get service throughout the country. All areas of the country were funded through a multi-year process I think by the year 1979 or 1980, using the minimum access concept.

There are a variety of means of delivering services. Not all programs are alike. Some programs deliver services very effectively, some programs may deliver it differently, less effectively. I don't know anything about southeast Mississippi versus northern Mississippi.

The answer, I don't think is to shift monies program to program, and take out of north Mississippi and give to southeast Mississippi, because you have...Congress has declared there is a need for delivery throughout the country, in all areas of the country. We haven't even come to minimum access, which was the 1974 goal, for that delivery to occur throughout all areas of the country. Just as we

1 cannot take from north Mississippi because they may
2 be an inadequate program in your opinion or somebody
3 else's opinion. Really, it is the Corporation that
4 has the monitoring responsibility and the evaluation
5 responsibility to look at programs.

6 As an aside, what I have been hearing about
7 monitoring and evaluation is, you're not finding that
8 many bad programs throughout the country. You're
9 finding in fact some pretty remarkably good programs
10 in this country.

11 That's I think the analysis that we hear about
12 on the independent monitors that have been hired by
13 the Corporation.

14 MR. WALLACE: I agree with
15 you, Mr. Clyde. I think we are finding a lot of good
16 programs in the country. I think we are also finding
17 some bad programs, but we ain't got locked tight
18 evidence on them.

19 It seems to me, if you're satisfied in your own
20 mind you've got a problem program, pouring more money
21 into it isn't going to increase minimum access, it's
22 just going to increase problems.

23 MRS. BERGMARK: Two points

1 on weak programs. One is that beyond that shadow of
2 a doubt I don't think is a standard of proof on taking
3 action against those programs.

4 MR. WALLACE: That's not
5 the way we wrote it, anyway.

6 MRS. BERGMARK: Secondly,
7 there is in addition to a monitoring or policing
8 function, you go back to the literature on monitoring
9 and so forth, there's a support function, there's a
10 technical assistance function that has been completely
11 dismantled in the last few years.

12 As you well know, programs don't look to the
13 Corporation for help and technical assistance for
14 management support. We have PAG, we have NLADA, and
15 we are forced essentially, because of the posture
16 that this Corporation has taken, to look to those
17 sources for help. Defunding is not the only option
18 for the Corporation. In the past, other techniques
19 have been used.

20 MR. WALLACE: That's exactly
21 my point. I don't want...there are a lot of places
22 where defunding can't be proved and wouldn't be
23 appropriate, anyway. But as long as everybody goes

1 up...but an increase in money may not be appropriate,
2 either, until these problems are solved.

3 With the lock-step formula we've had for the
4 last several years, that's what you get. You get an
5 increased funding which may be going to no good
6 purpose until we've solved the technical problems.

7 I would like this Corporation to be helpful.
8 I'm not trying to kill legal services. But I think
9 we've got to have some discretion. The staff has got
10 to have some authority, instead of just sending checks
11 out in a pre-determined formula to great programs,
12 mediocre programs and awful programs. That's what we've
13 got now.

14 MRS. BERGMARK: What of the
15 management and administration money has gone in the
16 past year to assist programs that you've identified
17 as weak programs?

18 MR. WALLACE: I don't know.
19 I wish it did.

20 MRS. BERGMARK: I would
21 suggest to you that none has gone for that purpose,
22 and that that might well be an appropriate function.
23 Unfortunately, the level of the relationship at this

1 point is so poor that...

2 CHAIRMAN MENDEZ: Now, I don't
3 think that's exactly right. Part of monitoring, and
4 I think that you will agree, the monitors prepare a
5 report. I think that most everyone will agree that
6 virtually all of the monitoring has been fairly
7 square. I haven't received anything...this is my
8 invitation to you. If there are problems with
9 monitoring, I want to know about them.

10 But from what I've heard, most of the monitors
11 have given reports to the local programs, have told
12 them the areas where there are difficulties, and the
13 monitors in the local programs have generally worked
14 them out, and most of them have not been very
15 significant, but that there have been very serious
16 problems and that they work them out. Is that fair?

17 MRS. BERGMARK: I really am
18 not up on the whole overview on monitoring, and can't
19 respond to that.

20 CHAIRMAN MENDEZ: The invitation
21 is there. If there's a problem, direct it to us.

22 MRS. BERGMARK: There's no
23 doubt that there have been problems.

1 CHAIRMAN MENDEZ: Just a ball
2 of assertions is not satisfactory.

3 MRS. BERGMARK: I would be
4 prepared to say that the whole history of monitoring
5 in the last year has not been one that in any way
6 enhances any function other than a policing function.
7 I don't think that...in my experience, the monitors
8 that have been to see us have not been very familiar
9 with legal services work at all. This most recent
10 monitoring, my feeling was they could have gotten
11 three people from the drug store and brought them
12 down. Basically all they established was that, yes,
13 we are there, we really have a staff and we really
14 come to work, and we really expend the funds.

15 Certainly, there was nothing as a result of that
16 monitoring experience that strengthened our program.

17 MR. ROCHE: Mr. Mendez, may
18 I just take you up on your invitation?

19 CHAIRMAN MENDEZ: Sure.

20 MR. ROCHE: With Mr. Bayly
21 right there, I would ask Mr. Bayly to give you the
22 monitoring report for legal services for Southern
23 Piedmont and my reply to it, and that's grantee #634010.

1 I wrote a letter which became discussed in a
2 recent conversation we all had together, complimenting
3 the monitoring team. They appeared to do a relatively
4 professional job. I was surprised, because I heard
5 horror stories.

6 Over eight months, about eight or nine months,
7 went by. No report. Finally got the report. On the
8 13th page of about a 90-page report, the monitor
9 accused the Mecklinburg county bar, the volunteer
10 lawyer program and Legal Services Southern Piedmont of
11 prohibiting the monitoring team from making a...I
12 believe I'm quoting this relatively correctly...unbiased,
13 independent and random evaluation of the volunteer
14 lawyer program. Because in fact the Mecklinburg county
15 bar, not Legal Services Southern Piedmont, had set up
16 the team with 45 separate interviews of volunteer
17 participants. Prohibited it.

18 CHAIRMAN MENDEZ: Sir, I want to
19 see the report, and I don't know if everybody else...

20 MR. ROCHE: With my reply,
21 please.

22 CHAIRMAN MENDEZ: Of course. I
23 told John that I wanted to see it.

1 MR. ROCHE: If I may just
2 pass to one thing since Mr. Wallace just got back in
3 the room, the question about good and bad programs.
4 We also had that conversation recently.

5 I think the great problem you're running into is
6 a lack of any sort of consensus as to what the
7 standards are to measure a good or bad program. In
8 fact, Legal Services Corporation in the old days,
9 together with the National Legal Aide Defender
10 Association, and most prominently the American Bar
11 Association's Legal Aid to Indigent Defendants, worked
12 for several years to come up with a set of standards
13 for the delivery of legal services to poor people.

14 Unless this Corporation has significant objection
15 to those standards, if you first would adopt them and
16 adopt them quickly, because they do represent hard
17 work by poverty lawyers, the American Bar Association
18 and state bar and individual bar members such as Mr.
19 Ross' group, to provide some good standards. You
20 have those standards, then you have a much easier
21 measure of what a good and bad program...and remarking
22 about Mr. Ross, I get back to the monitoring report.
23 I'm told, and Mr. Ross may or may not want to confirm

1 this, that at the meeting of the New England bar
2 presidents, somebody anonymously referred to my
3 monitoring experience in my report and the president
4 of the Maine state bar thought that that person was
5 referring to her report.

6 MR. WALLACE: May I ask a
7 question, Mr. Roach, before you sit down? On those
8 standards, my memory may fail me. When we first came
9 here two years ago, my recollection is that we tried
10 to set aside some money for performance-based standards.
11 The idea was, we were going to find out who was
12 performing well and give them the money.

13 It never got anywhere, and I can't tell you now
14 why it didn't.

15 CHAIRMAN MENDEZ: I'll tell you
16 why it didn't. It's because the field said that
17 numbers weren't satisfactory; it was subject to
18 subjective measures.

19 MR. WALLACE: Are you
20 telling us that the ABA already had standards at that
21 time, or are we talking about two different things?

22 MR. ROCHE: The American
23 Bar Association has now adopted...Mr. Bayly is familiar

1 with it because he was at some of the meetings and I
2 was there, too, a set of substantive standards. The
3 performance measured funding criteria that we discussed
4 was a numerically driven concept which ended up with
5 your best program one which had closed several hundred
6 private bar cases that remained open from an old
7 Title III program that nobody had bothered to close
8 when the Title III administrator left. They closed
9 those several hundred all in one year. They scored
10 high and won the prize and got the top score on that
11 measure. It was ludicrous.

12 MR. WALLACE: Now, my
13 recollection of the criticism, and it's vague, but
14 the criticism was not so much that this is a ludicrous
15 set of standards, but that a set of standards really
16 can't be devised.

17 MR. ROCHE: A set of
18 substantive standards has been devised, has been
19 adopted, I believe, by the House of Delegates, if
20 somebody here wants to correct me, for the provision
21 of a civil legal services department.

22 MR. WALLACE: That's within
23 the last year.

1 MR. ROCHE: That's within
2 the last year. The Corporation was at the standing
3 committee's debates on these subjects and had input
4 and discussed them.

5 CHAIRMAN MENDEZ: Terry? Let me
6 just make one comment. I thought that we were going
7 to see the last of you. Welcome back.

8 MR. BAYLY: I thought so,
9 too. This is a busman's holiday. Thank you. Forgotten
10 but not gone.

11 The only comment I was going to make is that the
12 display standards of course, valuable though they
13 are, aren't confined simply to grantees of the Legal
14 Services Corporation; they have a broader application.

15 MR. ROCHE: In response to
16 that, I would say that legal services to poor people
17 is as much the responsibility of private lawyers as
18 it is of the federally funded program, and that we
19 are in partnership in this thing together, we're
20 working together, and we are part of that profession.

21 Consequently, what is applicable to an ABA member
22 who is a private lawyer is applicable to me, too,
23 because I'm an ABA member.

1 CHAIRMAN MENDEZ: Thanks, Terry.

2 MRS. BERGMARK: We would
3 encourage you once more to vote on something tomorrow
4 that allows legal services to be preserved. I think
5 Bar Leaders for the Preservation is a name that speaks
6 to the situation, that the very preservation of legal
7 services is threatened by the situation like that
8 that exists in Mississippi today, with the staffing
9 patterns and the ability to serve the half million
10 poor people in Mississippi.

11 CHAIRMAN MENDEZ: Are there any
12 other comments? Yes.

13 MR. LEONARD: My name is
14 Michael Leonard. I'm the director of the National
15 Clearinghouse for Legal Services in Chicago, and will
16 be brief.

17 I learned approximately 48 hours ago of the
18 staff recommendation that the Clearinghouse be
19 defunded. This is the third time just in the last 13
20 months that the staff has recommended defunding of
21 the National Clearinghouse.

22 The board has not accepted that recommendation,
23 and I would urge you again to reject the staff

1 recommendation. Last March in Mississippi, our board
2 chairman, Gregory Delare and I made an extensive
3 presentation on the work that the Clearinghouse does.
4 We answered numerous questions, presented you with a
5 good number of materials. I will not repeat all of
6 that today, but I do wish to make just a few remarks
7 in support of continued funding of the Clearinghouse.

8 CHAIRMAN MENDEZ: Let me ask a
9 question. See, I happen to believe that if we turn
10 the funding over to the field programs, that your program
11 is successful and you would receive more funding if
12 it was through the field.

13 MR. LEONARD: Well, I think
14 that that may well be, but I have a couple of thoughts
15 on that.

16 One, first of all, I think that the Clearinghouse
17 is doing an excellent job for the legal services
18 program.

19 MR. MENDEZ: I don't
20 disagree. I don't disagree with that at all.

21 MR. LEONARD: For you and
22 for the clients around the country. I think that the
23 ...all of the evidence supports that. Our reader

1 survey that we did in 1985, the numerous letters and
2 telegrams that were sent to you and Mr. Grant last year...

3 CHAIRMAN MENDEZ: I agree.
4 You're talking to the choir.

5 MR. LEONARD: I know. The
6 national support survey that you did. The national
7 support survey that was done in 1983-84, I think,
8 speaks to the question of whether national and state
9 support services ought to be provided directly through
10 direct funding by the Legal Service Corporation, or
11 in some sort of indirect fashion, free market theory,
12 if you will.

13 I think that the survey demonstrated quite
14 clearly that people rely on the services of the
15 centers, and they need them. I think it also tends
16 to show that the ability to pay for it directly is
17 not there, that a lot of these services are like a
18 public library. The service is there for those who
19 need it when they need it, and it's difficult to
20 budget directly for that.

21 MR. WALLACE: Let me ask you
22 to do this for us by tomorrow. We went through this
23 in Mississippi. Where I came out at after that

1 debate, you satisfied me that you do a fairly decent
2 job, the staff satisfied me that you spend too much
3 money at it.

4 Aside from the question of whether or not we
5 ought to let the field buy your services, I consider
6 that a separate question, tell me what you think it
7 really ought to take to do your job. Based on the
8 carryover that I saw shown to me last March, I don't
9 think you need \$865,000 to do your job. On the other
10 hand, obviously you need more than zero. If you want
11 my vote, come in here tomorrow and show me a defensible
12 number between zero and \$865,000.

13 MR. LEONARD: I can tell
14 you now, Mr. Wallace, that for 1987 the Clearinghouse
15 board has budgeted approximately \$1.3 million. That
16 includes our CALR function, which as you may recall,
17 we have a grant for that and it's related to the
18 basic clearinghouse function.

19 So we're going to be spending quite a bit more
20 than the \$865,000 that the Congress has appropriated
21 for the Clearinghouse this year.

22 So that's my basic presentation. I would like
23 to say two other things. One is that last year in

1 Mississippi, Mr. Wallace, you indicated that you
2 wanted the monitoring report done at the Clearinghouse
3 before the Corporation would make any changes in its
4 funding of the Clearinghouse.

5 Well, we were monitored in June, seven months
6 ago, over seven months ago. I was promised a report
7 by September or October, and I have not seen it yet.

8 MR. WALLACE: Subject to
9 explanations I hear later, I agree with you. I can't
10 see how in the world the staff can recommend zero if they
11 can't tell us what's in the monitoring report. Now,
12 that's...again, that's subject to any explanation I
13 hear between now and the time I vote.

14 CHAIRMAN MENDEZ: To keep this
15 in line, they keep referring to this as staff
16 recommendation. But this is the chairman's recommendation
17 this year.

18 MR. WALLACE: All right, Mr.
19 Chairman, I understand.

20 CHAIRMAN MENDEZ: If they want
21 to cast stones, cast them at me.

22 MR. WALLACE: Mr. Chairman,
23 I understand your recommendation to be, move the

1 money up and let people buy the services. I'd like
2 to hear what the monitoring is. If we haven't got a
3 report I suppose we can't discuss it. But I would be
4 concerned about making radical changes in the absence
5 of a report, and I can't believe we haven't got one.

6 MR. LEONARD: The final
7 thing I have to say has nothing to do with the
8 Clearinghouse, but with the remarks of Terry Roach
9 and yourself and Mr. Ross. I'm pleased that there's
10 been a good discussion about looking at different
11 ways to fund legal services and how much is really
12 needed and for what.

13 I would commend the ABA standards to you. We
14 have mailed them to the main offices of programs, and
15 we are getting over 400 requests for additional copies
16 for consideration by program boards of directors, and
17 so the branch offices would have them. Again, I
18 would commend it to you.

19 CHAIRMAN MENDEZ: Is there anyone
20 else?

21 MRS. BERGMARK: I would
22 just suggest to you, too, that monitoring reports
23 have not come in on the national support centers or

1 to a large extent the state support centers. The
2 last I had heard, no national support center had received
3 a draft or other monitoring report at all, other than
4 unless it was involved in a defunding proceeding.
5 But none of the other national support centers had received
6 monitor reports. I know, because we were monitored the
7 same week that the Consumer Law Center was monitored, in
8 April of last year. So it will be coming up on a year
9 that that monitor report has not come out.

10 MR. WALLACE: You missed my
11 committee meeting earlier in the month when some of
12 the monitors explained some of the difficulties they
13 had in getting information from the support centers.
14 As I understand it, we have two monitoring reports
15 in, and it's resulted in two defunding recommendations.

16 Now, maybe we've got more than two monitoring
17 reports in on national support centers, I don't know.
18 But we have had a presentation to at least my committee
19 of the difficulties that the monitors have encountered
20 in getting through information. They may have been
21 telling the truth, they may not have been telling the
22 truth. But they sure sounded to me that they were
23 having trouble getting at the facts out there.

CHAIRMAN MENDEZ: Is there any
other comment? None appearing, we will adjourn until
8:30 tomorrow morning.

(WHEREUPON, the proceedings were continued to January 30, 1987.
COUNTY COURT REPORTERS, INC.

January 30, 1987

1 MR. MENDEZ: The Audit and
2 Appropriations Committee is reconvening. The sole
3 matter on the agenda this morning is the motion to
4 vote on what the the recommendation will be to go to
5 the board.

6 MR. SMEGAL: Excuse me?

7 MR. MENDEZ: The sole matter
8 is...there's not going to be public comments, nothing
9 other than motions, the various types of motions, and
10 the vote. Do we all understand that?

11 The Chair has previously put...there's a memorandum
12 out, January 22, pages 33, 34 and 35 of the board
13 book, and the Chair would move that budget proposal.

14 MRS. BERNSTEIN: I would
15 second it for the purposes of discussion.

16 MR. EAGLIN: Do you want
17 all of the motions right now, Mr. Chairman?

18 MR. MENDEZ: Sure.

19 MR. EAGLIN: Well, I'll
20 kind of use a shorthand motion as you did, and refer
21 to the October 31 Bob Clyde memo, the recommendation
22 concerning the budget mark with its supporting figures
23 and discussion. I believe there was also a paper.

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MR. MENDEZ: I've got the Clyde memo.

MR. EAGLIN: Right, I'm referring to that and the supporting figures at the end of that, and I move that proposed mark, Mr. Chairman.

MR. SMEGAL: Second.

MR. MENDEZ: Now, is there any discussion or comments? Why don't we take all...I think LeAnne has a motion to...

MRS. BERNSTEIN: I would move that the budget mark that we put forward to Congress for 1988 be \$280 million. After the discussions I will tell you what figures changed from the budget that's put forward would make that up.

MR. EAGLIN: I didn't quite hear your figure. Would you please say it again?

MRS. BERNSTEIN: \$280 million.

MR. MENDEZ: Thank you. I'll second that for purposes of discussion. Do we want to have any discussion or do we just want to vote on it?

MR. EAGLIN: The way I understood it, Mr. Chairman, is that we had our

1 discussion yesterday, and that this morning would be
2 pretty much reserved for LeAnne since she was on
3 here, is that right?

4 MR. MENDEZ: Yes, in essence.

5 MR. EAGLIN: To whatever
6 extent you wanted to have discussion for the proposal.

7 MRS. BERNSTEIN: Not to
8 belabor the meeting, because I am not confident that
9 there's a lot of sympathy for the position that I'm
10 putting forward.

11 Last year, in offering a budget mark of \$280
12 million, I gave as the reasons for that that, one,
13 state and national support have not proven themselves
14 over the years to have an efficacy, and I think that
15 because we're dealing with federal dollars, because
16 we're dealing with money that is scarce in the federal
17 budget, that we have a responsibility, not only to
18 our clients and to the taxpayers, but as fiduciaries
19 that we have a responsibility not only to our clients
20 and to the taxpayers, but as fiduciaries to the
21 Corporation, to start not from the presumption that
22 we allocate certain monies simply because it was
23 allocated last year.

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The tracking that we were able to do, although it is limited in the Corporation because we do not have timekeeping, the tracking that we are able to do at least shows some productivity from direct delivery. We have not been able at all to ascertain whether there is either a need or an effect from pouring money into a state and national support network.

The additional monies, and as I said, I won't belabor this because of the presumed lack of support, but I will...the additional monies that would make up the \$280 million figure would be taken from field programs that have a per capita funding. We have based most of our funding proposals to Congress on a myth of minimum access. Those programs that exceed the minimum access because of non-LSC funding and LSC funding can be decreased in terms of the LSC dollars that are going to those programs, and we would still have money to fund some of the lower ended programs and start equalizing that out that access.

Let me also mention that last year, the United States House of Representatives voted a budget of \$292 million for the program. The \$305 million that this board put forward was not seen by the Democratic

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House as being a necessary figure.

The other point that I would put forward is that this program has, no matter what the funding levels, produced 1.2 million cases closed each year, whether the funding level was \$241 million or \$321 million.

Therefore, I would suggest that if we want stability for the programs, if that is our actual goal, is to provide stability for the programs, then what we should do is provide the basic funding that allows the delivery programs to stay in business, but also give them the impetus to get outside funding which has increased phenomenally since federal dollars proportionately have gone down.

I think that it's important for us to try to get the federal budget in proportion to the donations to the support, that the private sector ought to be offering, and that private sector when asked and when it is made apparent to them do offer. It is important for us to be in that catalyst position rather than presuming that we are the only game in town.

There are lots of other reasons that I put forward in last year's proposal and in the dissent that I sent to Congress. I think that it would be the

1 most prudent course for us at this point, to send
2 forth a budget to Congress which takes into account
3 not only our responsibilities as fiduciaries, but
4 also the concerns that the Congress is going to be
5 facing in terms of the overall budget this year.

6 I don't believe that we can start from a
7 presumption that a figure is correct simply because
8 we had that much last year, and that either we should
9 ask for that much again, or we should ask for more.
10 No one else runs their household budget that way.
11 And I don't think that we can presume a different
12 approach. We should start from a concept of, what
13 exactly has been shown to be needed. I think that
14 the \$280 million would provide the kind of base that
15 would be necessary for program stability and our
16 responsibilities to our clients, at the same time
17 allowing us to go forward with the initiatives that
18 will in the long run provide support for those clients.

19 MR. MENDEZ: Thank you, LeAnne.
20 Subject to being overruled by the committee, the
21 Chair would propose taking the motions in the reverse
22 order and just voting each one of them by roll call vote.
23 I think that would be the easiest way.

1 The first motion is LeAnne's \$280 million budget.
2 Hortencia, are you for or against?

3 MRS. BENAVIDEZ: No.

4 MR. MENDEZ: No? I have to
5 make this clear. At this time, only members of my
6 committee can vote, and that will be Hortencia,
7 Clark, myself, LeAnne, Mike, Paul and Tom. So the
8 three of you cannot vote at this time. Hortencia
9 says no. Clark?

10 MR. DURANT: No.

11 MR. MENDEZ: Chairman, no.
12 LeAnne?

13 MRS. BERNSTEIN: Yes.

14 MR. MENDEZ: Mike?

15 MR. WALLACE: No.

16 MR. MENDEZ: Paul?

17 MR. EAGLIN: No.

18 MR. MENDEZ: Tom?

19 MR. SMEGAL: No.

20 MR. MENDEZ: The next one
21 is the motion by Paul Eaglin, and it's the mark that is
22 proposed by Bob Clyde on October 31. Just for
23 convenience, it's a \$391 million budget. Hortencia?

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MRS. BENAVIDEZ: Yes.

MR. MENDEZ: Clark?

MR. DURANT: No.

MR. MENDEZ: Chairman votes

no. LeAnne?

MRS. BERNSTEIN: No.

MR. MENDEZ: Mike?

MR. WALLACE: No.

MR. MENDEZ: Paul?

MR. EAGLIN: Yes.

MR. MENDEZ: Tom?

MR. SMEGAL: Yes.

MR. MENDEZ: The noes have it, four to three. The Mendez budget of \$305.5 as set forth in the January 22 memo...

MR. WALLACE: Mr. Chairman, is that open for further amendment at this time? That's the main motion on the table, the only motion on the table, and before we vote I've got some amendments I'd like to offer.

MR. MENDEZ: I thought I was going to get this through, Mike. But go ahead.

MR. WALLACE: Have you not

1 broken this down?

2 MR. MENDEZ: I'm sorry?

3 MR. WALLACE: Maybe I didn't
4 understand the motion. I thought your motion was...

5 MR. MENDEZ: It includes
6 everything.

7 MR. WALLACE: The motion is
8 proposed FY 88 budget requests over here.

9 MR. MENDEZ: That's correct.

10 MR. WALLACE: I haven't got
11 a calculator. It's the last page of what we've got.
12 I haven't got a calculator and this is a bookkeeping
13 motion more than anything else. But what I would
14 propose is that instead of zeroing out support, we
15 put the money back in there. Putting it in there for
16 support does not tell us who is going to get the
17 money. Subject to what we hear from the committee,
18 it is still my inclination that that support money
19 ought to go out to field programs instead of to so-
20 called support centers. That doesn't mean it's not
21 support money, but it means it's going someplace new.

22 I do not think by putting that money in the
23 support line we back away from what we said last year.

1 I do not think we tie our hands as to what the
2 committee is likely to recommend to us.

3 But it does seem to me that at this point...

4 MR. MENDEZ: Let me see if
5 I understand your motion.

6 MR. WALLACE: I understand
7 we're going to have a study on it. There's an asterisk
8 somewhere on here about support, isn't there?

9 MR. MENDEZ: There's no
10 asterisk on here about support.

11 MR. WALLACE: Maybe there
12 isn't, maybe we're not...

13 MR. MENDEZ: Let me just
14 see if I understand your motion, though, Mike.

15 MR. WALLACE: Mr. Chairman,
16 what are we going to do instead of supporting somebody?

17 MR. MENDEZ: Mike, before
18 we talk about that, let's look at...

19 MR. WALLACE: I think the
20 simplest thing to do, Mr. Chairman, what I'm proposing
21 is to substitute FY 87 for FY 88. Now, if we do that
22 we're going to have some other changes to make,
23 because I don't think we can live on \$7.4 million in

1 Corporation management and administration. My first
2 suggestion would be, let's get off of '88 and onto
3 '87.

4 MR. MENDEZ: Let me see if
5 maybe I can paraphrase this. Under Other Support,
6 under B, would it be acceptable if I phrased your
7 motion to say that we put \$16,746,528 in B?

8 MR. WALLACE: That's what
9 I'm suggesting we do, and that does not presuppose
10 who actually gets the checks.

11 MR. MENDEZ: Then it's my
12 understanding that you would take that out of 1A?

13 MR. WALLACE: I guess that's
14 where it's got to come from. I haven't got the
15 mathematics on that.

16 MR. MENDEZ: I thought you
17 might ask that, so I have the mathematics. They did
18 it for me, and I can't vouch for the numbers because
19 I got them about two minutes ago, and they're handwritten.

20 The way I have the numbers that I would have
21 under one, and this is for the board, you may want to
22 take some of these notes, under delivery of legal
23 assistance, the overall line would be \$275,863,416.

1 Under field programs, it would be \$272,773,416.
2 Under basic field programs, \$255,842,756. Under
3 Roman numeral two, it would change from the \$1,260,000
4 to \$17,496,584. Under other support, it would change
5 from \$16,510,000 to \$16,746,000.

6 Now, let me see if I understand. You want those
7 to be placed...national, state and clearinghouse? I
8 assume all three of them.

9 MR. WALLACE: That's right.

10 MR. MENDEZ: You want those
11 to...you want them in those lines. Let me see if I
12 understand. You also said something maybe I didn't
13 understand, I just want to make sure we're clear on
14 it. They're in the lines...do you want to have the
15 field programs to make the decisions?

16 MR. WALLACE: That is my
17 present inclination. It was my inclination a year
18 ago. I haven't seen anything since to change my mind
19 on that.

20 But it is my understanding that the chairman is
21 proposing that we investigate that further, and I
22 have an open mind on the subject. My present thought
23 is, we label that money for support, but we ought to

1 send it out to the field and let them distribute it
2 as they see fit. But I'm subject to persuasion on it.

3 If it's in support, I suppose it's earmarked.
4 As you know, people can make proposals to us on how
5 money ought to be spent, and we've got 45 days to
6 play games with it. But at this point, if it's in
7 the support line, it's earmarked for support. The
8 question is, who gets the checks? My view is, it
9 ought to be field programs, but I'm subject to persuasion.

10 MR. MENDEZ: Do you want to
11 put it there, leave it there, and be given to the
12 field programs for their determination. They have to
13 specifically use it for state and national support or
14 clearinghouse.

15 MR. WALLACE: If it is
16 earmarked for support, they would have to use it for
17 support.

18 MR. MENDEZ: Would they
19 have the right to obtain a waiver?

20 MR. WALLACE: Yes, you can
21 get all kinds of waivers on money we send out to the
22 field.

23 MR. DURANT: Just to put this

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on the table, I'm going to second your motion.

MRS. BERNSTEIN: Could I ask a question so I know what we're doing here? Mike, my understanding is, if we went with your motion that this magical number would have to be spent for support and maybe not with the current grantees of support. But it would have to be spent for support, even if a program decided on a local level that they didn't need the support and would rather use that to serve more clients?

MR. WALLACE: My thought would be, if they decided that, they would ask us for a waiver and say, we would like to spend this money on something else.

MRS. BERNSTEIN: I understand what you're saying, and I'm very sympathetic with what your words are saying. But I'm having a hard time understanding why you want to put it under the line item that earmarks it for support, then.

MR. WALLACE: Because we took it out of the line item that was earmarked for support last year and got our brains beat out.

MRS. BERNSTEIN: Could I ask

1 if it would be possible for us to put it into direct
2 deliveries, since that is the policy I hear you espousing?

3 MR. WALLACE: It would not be
4 possible, because we ain't got the votes on the Hill.

5 MRS. BERNSTEIN: Could I finish?

6 MR. WALLACE: Yes, ma'am.

7 MRS. BERNSTEIN: That we
8 put it in the line for direct delivery, since that is
9 the policy I hear you espousing, and that we...in order
10 to be consistent with the policy, but also recognize
11 the concerns that you are expressing politically,
12 that we so indicate in the Hill that this was money
13 that was brought for support, and that we are putting
14 in a reserve fund until we finish this study, and it is
15 our intention to determine whether or not the programs
16 should be allowed to use this for other than support
17 if that would better serve the clients.

18 MR. WALLACE: When we go to
19 the Hill and sell this, I want to have a side by side
20 chart. I want it to show support money for 1987, and
21 I want it to show support money for 1988. The
22 explanation of the difference between the two will be
23 there in writing if anybody wants to read it. But I

1 want our budget to show support money for 1988.

2 MRS. BERNSTEIN: Then I am
3 understanding that there is nothing that you have to
4 base that figure on, other than the fact that that
5 was what was given last year.

6 MR. WALLACE: Oh, absolutely.
7 This is the politics of the possible.

8 MRS. BERNSTEIN: Can I
9 please finish my...

10 MR. MENDEZ: Sure.

11 MRS. BERNSTEIN: The other
12 thing that I am understanding is that you would
13 decrease direct program grants because the figure
14 that we would end up with is \$272 million for direct
15 delivery, rather than \$278, which is the current
16 appropriation level in the field program. You would
17 be willing to make that kind of sacrifice, and add
18 more money to support, which has no basis in fact.

19 MR. WALLACE: That would be
20 the effect of this motion.

21 MRS. BERNSTEIN: Just so
22 long as we understand that this is strictly a political
23 move.

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MR. WALLACE: Oh, absolutely,

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and I'll have a second political move in a moment.

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MR. DURANT: Mr. Chairman,

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I have asked Basile Uddo to chair a committee that I

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have established to review this question of...as you

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know, the board last June voted to ship support money

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to the field for reasons that I think made a lot of

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sense then and make a lot of sense now, and I don't

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need to review all of my different reasons for

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supporting that.

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I have had a number of letters from people, both

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in support programs and in field, raising some I

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think important points and questions that need to be

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addressed. I have asked Professor Uddo to chair a

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committee that he and I will establish to review

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some of those letters and the points raised, and

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determine whether they make sense or whether they

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don't make sense, and to then revisit this question

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when Professor Uddo's committee is completed with its

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work.

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He has had an opportunity to review a number of

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those letters and comments that were made, and the

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record should also note that Mr. Uddo did not support

1 me on the vote last June. But I think I support Mr.
2 Wallace's motion because I think...my feeling is is
3 that the best choices are left up to the people who
4 are on the front lines delivering the direct delivery
5 or that characterizes delivery and direct delivery.

6 There is argument to be made that some perhaps
7 in the support centers are involved in direct delivery.
8 That's a matter that Mr. Uddo's committee can review.
9 If in fact a waiver is in order because a particular
10 program feels that support money should be spent
11 on...as we categorize it in our budgets, direct
12 delivery, then that waiver can easily be granted.

13 But I support Michael's motion, and I support
14 obviously because I'm setting it up, Mr. Uddo's
15 committee in reviewing the matter. We may or may not
16 agree on the final result, but I think it is certainly
17 worth examination.

18 MR. MENDEZ: During your
19 discourse we received a draft. Michael said to me
20 that he was interested in doing this, and we've had
21 several conversations. We tried to get this done
22 more quickly. We just got a draft in now.

23 If you look at the third line or the third column,

1 proposed FY 88 requests, I think that reflects Mike's
2 desires. I've asked for as many as possible. I
3 think we had 25 printed up.

4 MR. SMEGAL: Mr. Chairman,
5 is this...maybe I can ask the other chairman, Mr.
6 Durant. Is this going to be discussed again at the
7 full board this afternoon? How do you intend to
8 handle this?

9 MR. DURANT: I certainly
10 have no objection to having it discussed.

11 MR. WALLACE: We've got to
12 pass the budget.

13 MR. MENDEZ: Mike, you said
14 that you had another amendment. Is the next one
15 housekeeping?

16 MR. DURANT: Mr. Smegal,
17 was your question answered?

18 MR. SMEGAL: I don't want
19 to prolong this particular committee activity if
20 we're going to do this all again this afternoon. I
21 obviously have something to say, and I intend to say
22 it. I don't want to say it twice, if I can say it once.
23 It's already 13 minutes after nine. We didn't start

1 at 8:30. My understanding is Mr. Wallace has a full
2 agenda, we've got a lot of regulations we've been
3 fooling around with for quite a while. I've got a
4 lot to say about this and I don't want to say it
5 twice. Clarke, if you're going to have this come up
6 again I'll save my remarks for this afternoon where
7 they'll be more appropriate.

8 MR. DURANT: I will give you
9 the floor.

10 MR. SMEGAL: Thank you very
11 much.

12 MR. WALLACE: Mr. Chairman,
13 let me tell you what my other motion is going to be,
14 and you can tell me parliamentarily how you want to
15 handle it.

16 MR. MENDEZ: Why don't we
17 just vote on this one first? I would acquiesce in it
18 and would agree with it if it's a budget keeping
19 matter. All in favor.

20 (Chorus of Aye's.)

21 MRS. BERNSTEIN: Can we have
22 a roll call, please?

23 MR. MENDEZ: Opposed?

1 MRS. BERNSTEIN: Can we
2 have a roll call?

3 MR. SMEGAL: This is an
4 amendment to your motion. This is to move \$16,288,208,
5 is that right? Then we're going to vote on the main
6 motion after that?

7 MR. MENDEZ: Mike says he's
8 got another...

9 MR. SMEGAL: I'm sorry.
10 Are you treating Mr. Wallace's motion as a substitute
11 for yours?

12 MR. MENDEZ: That's what it
13 is.

14 MR. SMEGAL: It's a substitute?

15 MR. MENDEZ: That's correct.

16 MR. SMEGAL: I think it
17 would be appropriate then to amend the substitute
18 motion. I think that's in order.

19 MR. WALLACE: Parliamentarily
20 I think that's correct.

21 MR. SMEGAL: I would offer
22 the following amendment before we vote, which would
23 be to propose as a budget mark the budget mark that was

1 proposed about five years ago by a recessed board in
2 the amount of \$325 million. If I have a second, I'll
3 speak to it.

4 MR. EAGLIN: I'll second it.

5 MR. SMEGAL: We are talking
6 about roughly sixteen and a half million dollars.
7 We've got one sack of money. We've been playing with
8 this sack of money for two years now. The sack has
9 not increased. In fact, it's decreased because
10 management and administration have gone up considerably
11 in that period of time.

12 We sat in here 26 months ago, and were told that
13 we had no information from which to determine that
14 there should be some other budget money. So we went
15 with \$305.5 million over the objection of several of us.
16 We did that again last year, and we now come to this
17 table again this year, and again we have no information
18 from the staff. In fact, we have staff that didn't
19 exist two years ago. Everybody's new.

20 A recessed board five years ago had the foresight,
21 understood their functions and responsibilities
22 sufficiently to ask for \$325 million. We come in
23 here five years later with all the information we have,

1 having told the Senate we are going to support this
2 program as responsible members of this board, and we
3 are again asking for \$305.5 million.

4 Mr. Mendez' motion would reduce the funding to
5 the field by six million dollars, not increase it by
6 ten million dollars, because what Mr. Mendez would do
7 would be transfer \$16 million in financial activities
8 to the field and give them \$10 million in which to
9 perform it; a six million dollar cut.

10 We don't get to where we want to be asking for \$305.5
11 million. I think we should have the responsible
12 understanding of our reason for being here, and at
13 least do what a recessed board was able to do five
14 years ago.

15 MR. MENDEZ: Any further
16 comment?

17 MRS. BERNSTEIN: Let me
18 just say that I think support for the program and
19 support for our client can come in other ways other
20 than looking simply at the amount of federal dollars
21 that are poured into this program, especially when we
22 do not have indication that this program is the most
23 efficient way to deliver the services, and perhaps our

1 responsibilities as a board are more to make sure
2 that, one, the monies are spent efficiently and
3 second, to promote those things which eliminate the
4 barriers to access, to justice, and do those things
5 which would increase the representation of clients.
6 That does not equate with federal dollars.

7 MR. WALLACE: I have some
8 debate on the motion, Mr. Chairman. Mr. Smegal and I
9 have not discussed this previously, so I do not know
10 whether he will consider this a friendly suggestion
11 or not.

12 I will support the \$325 million budget mark, but
13 only on the following conditions, that the additional
14 \$19.5 million goes into a brand new line 1A-5, which
15 I would propose we call the meritorious service fund,
16 and that it be distributed among programs at the
17 discretion of our staff. We have completed a lot of
18 monitoring, there are a lot of programs out there
19 that are doing a fine job. There are several programs
20 out there that have serious problems.

21 I do not want to support lock-step increases
22 that builds up the bad along with the good. But I
23 will give our staff and our new president the discretion

1 to spend \$19 and a half million on programs that
2 because of monitoring we have decided have done a
3 good job. I want a formula, I want people to use
4 judgment. I want our staff to be able to run this
5 Corporation, or at least \$19.5 million dollars of it.
6 I'm willing to support \$19.5 million new dollars if
7 we spend them that way.

8 MR. MENDEZ: Just a second.

9 LeAnne...Bob, I'm going to take from committee members
10 first.

11 MRS. BERNSTEIN: Let me
12 just say about that again, Mike, that while the policy
13 is a rhetoric here you're talking about in terms of
14 discretion and merit and so forth, they sound attractive
15 and logical. Nothing that the Congress has done in
16 the last five years has given me any indication, one,
17 that they would allow us that kind of discretion and
18 second, if that is good for this \$19 or \$16 million,
19 whatever this line 1A-5 would be, then why is that
20 the approach that we would take with the entire amount
21 of direct delivery? Why is it good for part of it
22 and not for part of it? The answer that you will
23 give me for that is that Congress won't let us do it.

1 I will say to you that when that recessed board that
2 Mr. Smegal has talked about several years ago asked
3 for an increase in funds, it was with the explicit
4 understanding that \$20 million would go into a kind
5 of research line, not unlike this, and that we would
6 be able to provide services in new and alternative
7 ways and in competitive ways to be able to demonstrate
8 that the game in town that was set up in 1964 isn't
9 the only game in town.

10 Congress gave us the money, but didn't give us the
11 discretion. I am simply saying that what you are
12 proposing is a lock-step, and it is not to the service
13 of our clients.

14 MR. WALLACE: My sense of
15 the matter is that if we are not granted discretion
16 to run this program, that there is sufficient sentiment
17 on the floor of the House to cut this budget again,
18 like they did last year.

19 But I am willing to enter into good faith
20 negotiations with the committee and the other members
21 of Congress, to say that if you give us a certain
22 part of this program to control, then we'll show you
23 how we can control it. If they don't have that much

1 faith in us, then I'll do something else next year.

2 MR. MENDEZ: Bob?

3 MR. VALOIS: I guess I am
4 curious about whether or not any other board members
5 are aware of any other federal funded program or
6 agency whereby the administrators of the agency have
7 discretion as to how to spend \$20 million. I think
8 it's an idea that's a little bit new to me. I don't
9 know of any other agency where you have discretion
10 over \$20 million.

11 MR. DURANT: Bob, I know
12 that the Secretary of Transportation, and I suspect
13 others, have discretionary funds.

14 MR. MENDEZ: Ladies and
15 gentlemen, Mr. Wallace comments in the nature of a
16 friendly amendment. Let's get back to the matter at
17 hand. Mr. Smegal, is that acceptable?

18 MR. SMEGAL: First of all,
19 yes, I accept the friendly amendment, and I'd like to
20 make two comments with respect to what LeAnne said.

21 She commented we have no evidence that the way
22 our grantees are delivering legal services is efficient,
23 and I would suggest to her that there's no evidence to

1 the contrary. In fact, I'm still waiting for the
2 evidence that we should have created by now.

3 I recall being in Anaheim over a year ago, in
4 fact, it may have been a year and a half ago, and had
5 at the request of the Corporation provided Bob Colen
6 with three checks or maybe it was one check; the
7 total was \$450,000. The purpose of that \$450,000 was
8 for that program to run three separate delivery
9 systems, one, staff, two, private attorneys and three,
10 voucher or whatever it was.

11 It seems to me that maybe that information could
12 be made available to us one of these days. The other
13 comment I would make with respect to LeAnne's comment,
14 I think when we started this process at \$305.5 million,
15 I'm not sure what the federal budget was. But the
16 cost of doing business, LeAnne, has gone up. You may
17 think that it costs only as much as it did in 1981 or
18 1982 to run a law firm or to manage a corporation.
19 But I can assure you, it's changed. I can assure you
20 that when the President recently sent his budget to
21 Congress it passed, as I recall it, a trillion dollars
22 the first time, certainly up from the year before and
23 up from the year before that.

1 We're even suggesting a three percent COLA for
2 our staff, none of whom have been here two years,
3 none of whom were here in October 31, 1983 when the
4 staff apparently last got a raise.

5 In any event, the cost of doing business has
6 increased substantially. Mr. Wallace and I here are
7 talking about a modest increase, one that was proposed
8 in 1982, I guess, by a recessed board. Certainly
9 nowhere near the COLA increase in that same four or
10 five year period. Modest number that at least give
11 an indication to these groups that...I keep hearing
12 you say you want to genuinely demonstrate that you're
13 interested in what they're telling us. The organized
14 bar has been with us for two years, making helpful
15 suggestions, none of which have been accepted. The
16 programs are here. Congress has told us very clearly
17 what we're supposed to be doing, and we ignore them all.
18 We ignore them all.

19 The majority of this board may have a constituency,
20 but as I told you in a letter I wrote to Clarke
21 following our meeting in June when we voted to defund
22 the national state support centers, the constituency
23 is your own, certainly not the bar, certainly not the

1 Congress and certainly not the legal service lawyers.

2 MR. MENDEZ: Ladies and
3 gentlemen, let's make sure we understand where we're at.
4 My understanding of the motion with the friendly
5 amendment is, if we look at the draft of the proposed
6 1988 request, we will add a line five under 1A-5 of
7 \$19.5 million.

8 MR. WALLACE: The meritorious
9 service fund.

10 MR. MENDEZ: Meritorious
11 service fund, yes. We would change the overall
12 conclusion at the base to \$325, even.

13 Now, let's do a roll call.

14 MR. DURANT: Wait, I've got
15 a comment. Two things. One, Mr. Wallace, I'm
16 intrigued with the idea. Have you had any conversations
17 with either Senator Hollings on the majority or
18 Senator Rudman on the minority in the Senate?

19 MR. WALLACE: I have never
20 met either Senator Hollings or Senator Rudman.

21 MR. DURANT: To see whether
22 or not there would be any reception for this particular
23 idea.

1 I think, Tom, on your point, in terms of ignoring
2 Congress or whatever, as far as the budget mark is
3 concerned, I have read the testimony of those who
4 have testified regarding budget marks. Contrary to
5 previous board positions, as usual they are forceful
6 and eloquent. But Congress has still made the
7 determination that it is not persuaded that there
8 should be a greater budget than the \$305.

9 Congress has certainly demonstrated a keen
10 interest in the delivery of legal services, as they
11 should. Despite that very active and keen interest,
12 except for that one minor adjustment on the \$500,000
13 which was due to a totally unrelated matter, Congress
14 has not instructed us or indicated anything different
15 than having supported the \$305 number, despite I know
16 substantial discussions with a number of people that
17 Congress has had as a part of this process in a major
18 way.

19 MR. SMEGAL: Clark, you may
20 have forgotten, but I believe the House of Representatives
21 or at least Congressman's Smith's committee passed a
22 \$319.6 million, I believe, last year. So there was
23 certainly some interest in Congress for a higher number,

1 in spite of the fact that this board has gone under
2 now for...there is support for it, there was support
3 last year. There was a number that was higher than
4 \$305. It was \$319 and some-odd change. It passed
5 the committee. It passed the subcommittee. So there
6 was support.

7 MR. DURANT: But I think in
8 terms of ultimate direction, certainly the individual
9 feelings of individual Congressmen and women are
10 important and do carry weight. But ultimately the
11 law is what the law is as passed by Congress, and
12 that has always been at the \$305 level.

13 I am intrigued with Mr. Wallace's idea, because
14 of the idea of allowing merit and whatever. I do know,
15 so I'm told by a board member of the Wayne County
16 program, however, that they had approximately \$100,000
17 left over, which either is pending before their board
18 or has been passed by their board, to give special
19 pension benefits to staff and lawyers there.

20 So I don't know if that's a unique situation or
21 whatever, but I do know that Congress has not to this
22 moment anyway disagreed with the determination for a
23 variety of different reasons. Everybody can have their

1 interpretation of those reasons that a \$305 number is
2 not a number that is unreasonable or unwarranted. I
3 am going to vote against the amendment, but I am
4 interested in getting the feel from the respective chairmen
5 in the House and the Senate as to their feelings.

6 MR. MENDEZ: The Chair is
7 going to take its prerogative, and call the vote.

8 MRS. BERNSTEIN: Let's be
9 clear what we're voting on. We're voting now only on
10 the one...

11 MR. MENDEZ: I'm going to
12 repeat it. The motion as presently stated is to
13 increase the budget to \$325 and that the...where it
14 all comes is under the proposed draft, \$19.5 million
15 would be under the meritorious service fund on line A-5.
16 Do we understand the motion?

17 MRS. BERNSTEIN: It also
18 includes the lesser allocation to the field and the
19 increase...

20 MR. MENDEZ: That's not the
21 motion at the present time. We have to come to that.
22 That's an amendment to the motion. That will come next.

23 MR. SMEGAL: So we're voting

1 on the amendment.

2 MR. MENDEZ: We're only
3 voting on the amendment right now. We're not voting
4 on the overall budget which Mike had made the
5 suggestions previously. Let's go back and look at
6 the order of the motions as they came.

7 The basic motion was \$305. Was amended by you
8 to request the amendment to pull the monies out and
9 put them back in support.

10 MR. WALLACE: Right.

11 MR. MENDEZ: Amended again
12 by Tom with regard to the \$325. Amended by you to
13 put it into the line item. We have to take these motions
14 one at a time, going back up the ladder.

15 MR. WALLACE: My amendment
16 has already been friendly accepted, I think. So the
17 pending motion is Tom's substitute motion to have a
18 \$325 million budget which includes a line 5, \$19.5
19 meritorious service.

20 MR. MENDEZ: Tom, let me
21 ask you, do you acquiesce in Mike's statement?

22 MR. SMEGAL: Absolutely.

23 MR. MENDEZ: With regard to

1 regional and state support.

2 MR. SMEGAL: In fact, if
3 Mike will accept my amendment as a friendly amendment
4 to his substitute motion, I think we just have one
5 vote to take.

6 MR. MENDEZ: So that, what
7 we're talking about, let's make sure...

8 MR. SMEGAL: The first vote
9 is for increasing the fiscal year 88 budget mark to
10 \$325 by adding line 1A-5 on a \$19.5 million for a
11 merit service fund.

12 MR. MENDEZ: That's correct.

13 MR. SMEGAL: Mr. Wallace
14 and I have collaborated on that in the last...some people
15 refer to it as the Wallace Memorial Fund.

16 MR. MENDEZ: Hortencia, are
17 you in favor?

18 MRS. BENAVIDEZ: Yes.

19 MR. MENDEZ: Clark?

20 MR. DURANT: No.

21 MR. MENDEZ: Mendez, no.

22 Bernstein?

23 MRS. BERNSTEIN: No.

1 MR. MENDEZ: Wallace?

2 MR. WALLACE: Aye.

3 MR. MENDEZ: Paul?

4 MR. EAGLIN: Yes.

5 MR. MENDEZ: Tom?

6 MR. SMEGAL: Yes.

7 MR. MENDEZ: The Ayes have it.

8 Now we go to the next item which is the moving of the
9 funds back into line items on national support.

10 MR. WALLACE: That's already
11 been done. Mr. Chairman, parliamentarily, what is on
12 the floor for final passage is this draft...

13 MR. MENDEZ: I'm sorry,
14 you're right, I understand.

15 MR. WALLACE: Proposed 1988
16 request with a new line, \$19.5. That's the basic
17 vehicle on the floor. It's subject to amendment or
18 final passage at this time.

19 MR. MENDEZ: That's correct.
20 Is there any other motion? Are we ready?

21 MR. WALLACE: We've all got
22 the same scorecard.

23 MR. MENDEZ: Have we all got

1 the same scorecard now?

2 MR. WALLACE: Yes.

3 MR. MENDEZ: I assume we
4 would want to recommend this budget as proposed here
5 to the...I would like to make a couple of comments
6 about the various asterisks first.

7 There is an asterisk on the migrant programs, an
8 asterisk with regard to the law school clinics,
9 training development, regional training centers and
10 the CALR grants. We received several of these reports,
11 and it would be my intention that when we sent the
12 materials up to the Hill that we attach the reports
13 and say that the board is considering the reports
14 that we have and will take action shortly based on
15 those reports on these asterisked items, that we
16 haven't had an opportunity to fully digest the reports
17 at the present time.

18 MR. EAGLIN: Some of us
19 don't have them.

20 MR. MENDEZ: We don't have
21 the report on regional training centers and regional
22 development, but we have all of the others. But that
23 would be my intention.

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MR. WALLACE: Mr. Chairman,
I might say in light of Chairman Durant's remarks,
you might want to put asterisks by the rest of the
support lines.

MR. MENDEZ: That's correct,
that's correct. Understanding that with these
clarifications, I think the Chair can phrase it that
this will be the recommendation of the committee to
go to the board as a whole. Is that everybody's
understanding? At this time we'll adjourn the...

MR. WALLACE: We've got to vote.

MR. DURANT: We've got to
vote on that, and I have one other comment.

MR. MENDEZ: You want to
make a comment now?

MR. DURANT: If I could,
just relative to a very parochial matter. I mentioned
the money that was left over with the Wayne County
neighborhood legal services program. I think all
those who are familiar with legal services know that
the Wayne County program has been over a number of
years fractured by a number of board factions and
whatever and that it's had its difficulties in terms

1 of different aspects of its program. There are still
2 some differences within the board and whatever between
3 the clients and the attorneys.

4 But the program did set a record in terms of the
5 number of cases that it opened and closed under its
6 new executive director, Linda Bernhard. They opened
7 13,889 cases and closed 12,991, and it was a good
8 variety of cases. I have reviewed some of those.
9 They have operated and tried to operate much more
10 effectively and efficiently than they have in the
11 past. I think it's a credit to the program that they
12 had the money left over that they will use for benefits
13 for the staff and the lawyers there.

14 MR. MENDEZ: Any other
15 comments? None appearing, we'll do a roll call. The
16 motion as it is is to recommend this to the board as
17 the Wallace Memorial Fund.

18 MR. WALLACE: I ain't dead
19 yet, but I'm breathing.

20 MR. DURANT: Mike, if you're
21 ever up for confirmation again, you've got a memorial
22 right here.

23 MR. WALLACE: Don't hold your

1 breath on that, either.

2 MR. MENDEZ: The motion is
3 to recommend this to the board as a whole. Hortencia?

4 MRS. BENAVIDEZ: ~~No.~~ Yes

5 MR. MENDEZ: Clark?

6 MR. DURANT: No.

7 MR. MENDEZ: Mendez, no.

8 Bernstein?

9 MRS. BERNSTEIN: No.

10 MR. MENDEZ: Wallace.

11 MR. WALLACE: Aye.

12 MR. MENDEZ: Eaglin.

13 MR. EAGLIN: Yes.

14 MR. MENDEZ: Smegal.

15 MR. SMEGAL: Yes.

16 MR. MENDEZ: The Ayes have
17 it. This will be the recommendation of the Audit and
18 Appropriation Committee to the board. With that
19 item, unless I hear any objection we are adjourned,
20 and we will immediately turn this over to Mr. Wallace.

21 MR. WALLACE: Let's take
22 five minutes and regroup, and we'll reconvene shortly.
23 (WHEREUPON, the proceedings were concluded at 9:40.)

C E R T I F I C A T E

STATE OF VIRGINIA:

AT LARGE:

I, Sandra A. Moser, Notary Public for the State of Virginia At Large, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date and at the time and place set out on the title page hereof, and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

GIVEN under my hand and seal this 5th day of February 1987.

My Commission Expires:

December 3, 1989


Notary Public