

TRANSCRIPT OF PROCEEDINGS

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LEGAL SERVICES CORPORATION

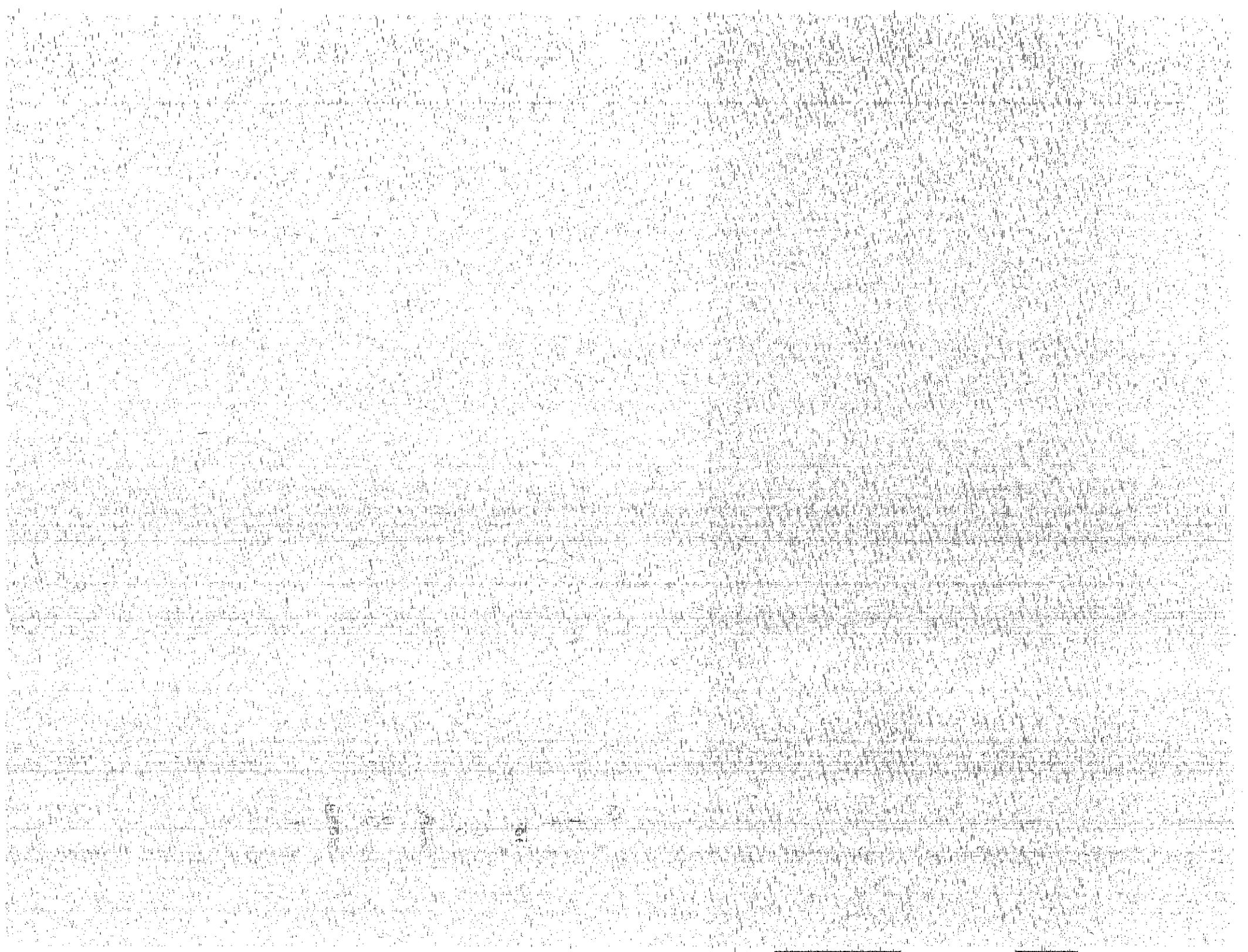
BOARD OF DIRECTORS

March 21, 1987

9:10 a.m. - 4:40 p.m.
(Morning Session)The Grove Park Inn
The Windsor Room
290 Macon Avenue
Asheville, North CarolinaA P P E A R A N C E SW. Clark Durant, III, Chairman
Robert A. Valois, Vice Chairman
Thomas F. Smegal, Member
Hortencia Benavidez, Member
LeaAnne Bernstein, Member
Lorain Miller, Member
Pepe J. Mendez, Member
Claude G. Swafford, Member
Paul L. Eaglin, Member
Michael B. Wallace, Member

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Richard Taylor
Lillian O'Briant
John Beard
Michael Coster
Christopher Rozek
Martha Bergmark
Charles Moses
Jack Curtain
Kenneth Schuller
Robert Warren
Vince Beckman
Chuck Eppinette
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P R O C E E D I N G S

1
2 CHAIRMAN DURANT: The Board of
3 Directors of the Legal Services Corporation scheduled
4 for Saturday, March 21st will commence at this time.
5 We will begin with an invocation by the Reverend
6 Robert Drake, Pastor of the Covenant Reform
7 Presbyterian Church, here in Asheville.

8 REVEREND DRAKE: I'd like to
9 lead us in a prayer this morning and I'd like our
10 thoughts to be based upon Psalm 47 as we pray. Let's
11 pray together.

12 Oh Lord, our God, you have revealed yourself as
13 the creator of heaven and earth and you have revealed
14 yourself as the helper of men and women. Our need
15 for help is great and only the Creator is able to
16 come to our aid.

17 We are aware of our weaknesses and our
18 frailties. We're aware of the disease and the decay
19 that infects our bones. We're also aware of the
20 decay that affects our moral lives in this world.

21 We confess our own sin against you and against
22 our fellow human beings. There is the disease of
23 oppression and poverty and weakness in this world.

1 Item on the agenda is the approval of the agenda. I
2 would entertain a motion to delete Items 3 and 4, as
3 I understand from Mr. Bayly that those reports are
4 not yet prepared, is that correct?

5 MR. BAYLY: That is correct.

6 CHAIRMAN DURANT: Is there
7 such a motion?

8 MRS. BERNSTEIN: So move.

9 MRS. BENAVIDEZ: I second it.

10 CHAIRMAN DURANT: Okay, any
11 discussion? All those in favor signify by saying
12 aye.

13 (Chorus of Ayes.)

14 CHAIRMAN DURANT: 3 and 4 will
15 be deleted.

16 There is on the agenda, before we approve it, a
17 need to have an Executive Session under 8 and 9. We
18 need to do that at lunch so we need two things. One
19 a motion to I guess have a rolling agenda here so
20 that 8 and 9 can be covered at lunch. Is there such
21 a motion?

22 MRS. MILLER: I make the
23 motion.

1 CHAIRMAN DURANT: Is there a
2 second?

3 MR. VALDIS: Second.

4 CHAIRMAN DURANT: Any
5 discussion?

6 MR. EAGLIN: I don't know,
7 what's to be covered? I'd like to know. I feel that
8 if we're going to have a vote on holding an Executive
9 Session, in order for my vote to be informed, I feel
10 that I need to have some idea of what the agenda is.

11 CHAIRMAN DURANT: Paul, I
12 don't disagree with you, but I would appreciate it,
13 we'll address that on the next motion which will go
14 to the whole question or whether it should be closed
15 or not.

16 Is there any objection then to moving those 8
17 and 9 so that they occur when we break for lunch?
18 All those in favor signify by saying aye.

19 (Chorus of Ayes.)

20 CHAIRMAN DURANT: Opposed?

21 MR. EAGLIN: No.

22 CHAIRMAN DURANT: Okay, motion
23 carries.

1 Now we will need a motion as to whether or not
2 it should be closed and at that time to address
3 Paul's question.

4 MRS. BERNSTEIN: I move that
5 we close the...we have a portion of the meeting
6 closed to discuss personnel, personal litigation
7 investigatory matters under the Government and the
8 Sunshine Act. The references printed in the public
9 program, I would ask the reporter to pick those up
10 afterward.

11 CHAIRMAN DURANT: Is there a
12 second?

13 MR. VALDIS: Second.

14 CHAIRMAN DURANT: Any
15 discussion? Mr. Bayly, what is the...in a way that
16 won't violate of the Sunshine Act, what items need to
17 be covered?

18 MR. BAYLY: Well, under the
19 heading of litigation and investigation matters,
20 there are a number of issues in both civil and
21 administrative litigation that have been concluded or
22 are about to be concluded about which the Board
23 should be informed. In some instances it has to do

1 with the terms and conditions of the disposition of
2 the litigation and I feel that's best covered in
3 Executive Session.

4 When it comes to personnel and personal matters,
5 there are a number of issues having to do with the
6 terms and conditions of employment, including
7 compensation of certain unclassified members of the
8 staff as well as a report on a proposed...some
9 proposed hirings of consultants that I think at this
10 stage are best covered in Executive Session.

11 Ultimately, of course, any further discussion
12 would be public and there's no reason why it
13 shouldn't be, but at this point, because it's
14 tentative, because we need direction from the Board
15 about how to proceed, I would recommended it be
16 covered in Executive Session.

17 CHAIRMAN DURANT: And, of
18 course, I guess any item Paul, that any Board member
19 wanted to bring up at that time.

20 MRS. BERNSTEIN: Under those
21 categories.

22 CHAIRMAN DURANT: Under those
23 categories would certainly be appropriate.

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MR. SMEGAL: And the two categories, Mr. Chairman, were litigation and staff matters, is that what I...

CHAIRMAN DURANT: Personnel and personal matters and litigation and investigation matters.

AUDIENCE: Clark, we're having trouble hearing back here. Could you turn the...

CHAIRMAN DURANT: Either that or I'll speak more directly into it, I'm sorry.

Is there any other discussion on the closing of the Executive Session?

MR. SMEGAL: Well Clark, I do, yes. I think there is some more discussion necessary here.

I spoke to Mr. Bayly over the last couple of weeks and I suggested to him that we formalize this even further than Mr. Eaglin has now suggested. I'd like to see an agenda that's available to the Board members at some point before we go into these Executive Sessions.

I was not at the last one and I am advised that several issues were covered for which there was no

1 pre-announced opportunity for others, other than
2 those who were aware they were coming up to be
3 prepared to discuss them.

4 Mr. Eaglin and I discussed that matter. He
5 expressed his concern to me after that meeting and I
6 expressed my concern to Mr. Bayly and I understand he
7 informed you of it and I think we need a more formal
8 procedure, Clark, and I'd like to see some mechanism
9 by which that happens.

10 CHAIRMAN DURANT: Okay and I
11 will meet with Mr. Bayly and try and develop such for
12 you.

13 MR. SMEGAL: Thank you.

14 CHAIRMAN DURANT: Any other
15 discussion? All those in favor of the motion signify
16 by saying aye?

17 (Chorus of Ayes.)

18 CHAIRMAN DURANT: Opposed?

19 MR. EAGLIN: No.

20 CHAIRMAN DURANT: Okay, motion
21 carries.

22 Yes, we do need a role call, I'm sorry.

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MRS. BENAVIDEZ: Yes.

CHAIRMAN DURANT: Lorain?

MRS. MILLER: Yes.

CHAIRMAN DURANT: Mrs.

Swafford?

MRS. SWAFFORD: Yes.

CHAIRMAN DURANT: Mr. Valois?

MR. VALOIS: Yes.

CHAIRMAN DURANT: Mr. Mendez?

MR. MENDEZ: Yes.

CHAIRMAN DURANT: Chairman

yes. Mr. Smegal?

MR. SMEGAL: Well, yes to the extent that the matters have been announced in this open session.

CHAIRMAN DURANT: Okay. Mr.

Wallace?

MR. WALLACE: Yes.

CHAIRMAN DURANT: Mrs.

Bernstein?

MRS. BERNSTEIN: Yes.

CHAIRMAN DURANT: Mr. Eaglin?

MR. EAGLIN: No.

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CHAIRMAN DURANT: With those adjustments, I'll entertain a motion to approve the agenda.

MR. MENDEZ: So moved.

CHAIRMAN DURANT: Is there a second?

MR. VALOIS: Second.

CHAIRMAN DURANT: Any discussion? All those in favor signify by saying aye.

(Chorus of Ayes.)

CHAIRMAN DURANT: Opposed. The agenda is approved. The next item...

MR. MENDEZ: Are you able to hear?

CHAIRMAN DURANT: Are you able to hear back there any better? Thank you.

The next item is the approval of the January 30th, 1987 minutes. Why don't we just take a minute to review them.

MR. MENDEZ: Mr. Chairman, I move that we approve the minutes as presented.

CHAIRMAN DURANT: Is there a

1 second?

2 MRS. BENAVIDEZ: Second.

3 MR. WALLACE: Mr. Chairman?

4 CHAIRMAN DURANT: Mr. Wallace?

5 MR. WALLACE: I don't really

6 have an addition or correction to the minutes, I

7 would like to be heard on a point of personal

8 privilege related to the minutes at this point?

9 CHAIRMAN DURANT: Now?

10 MR. WALLACE: Yes. The

11 exchange about which I am concerned actually took

12 place in Mr. Mendez's Committee meeting. Since I

13 don't know when his Committee is going to meet again,

14 I think this is the appropriate time to take it up.

15 Mr. Jonathan Ross of an organization which calls

16 itself Bar Leaders for the Preservation of Legal

17 Services for the Poor came before Mr. Mendez's

18 Committee purporting to represent 30 organizations.

19 Mr. Ross, under cross examination admitted to my

20 satisfaction that it is his position and the position

21 of his organization that this Board desires to

22 abolish legal services to the poor.

23 After our meeting, his organization denounced

1 your speech in New Orleans...and I told you I
2 disagree with a lot of what was in your speech...but
3 his allegation that your speech sought the abolition
4 of legal services is a lie and his contention that
5 you have breached your fiduciary duty is scurrilous.

6 I have asked my local bar, the Mississippi State
7 Bar, which he lists as one of the organizations
8 supporting his organization, to show me what
9 authorization, if any, they have to use the name of
10 our bar in their propaganda. I have received two
11 resolutions on the general subject of legal services
12 from our state bar.

13 One supports federal funding for legal services,
14 one more specifically says that the Congress ought to
15 appropriate more money for legal services.

16 Neither of these resolutions mentions Bar
17 Leaders for Preservation of the Poor, none of these
18 resolutions authorizes this organization to use the
19 name of the Mississippi Bar in promoting its attack
20 upon our good character generally and your discharge
21 of your fiduciary duties specifically.

22 I am going to ask that these resolutions be
23 placed into the record so that anybody who wants to

I am not sure if you have seen the report on the
 progress of the work in the last few weeks. I
 think it is very good. I am sure you will be
 pleased with the results. I have not had time
 to write you more often, but I will try to
 do so in the future.

I am sure you will be pleased with the results.
 I have not had time to write you more often,
 but I will try to do so in the future. I
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 I have not had time to write you more often,
 but I will try to do so in the future.

1 contest my view of the scope of the authorization may
2 have the opportunity to do so.

3 But I see nothing in here that supports the kind
4 of scurrilous charges that these people are making on
5 a regular basis and it seems to me that before they
6 come before us again, that the Chairman and the
7 President should call upon them to produce the
8 authorization from the 30 organizations which they
9 claim to represent that authorizes their conduct
10 because frankly, the only bar I have any connection
11 with has not authorized these charges and I want to
12 know if these people represent anybody but themselves
13 before I waste any more time on their testimony.

14 And with that, Mr. Chairman, I ask that the
15 resolutions be made a part of the record at this
16 point in the proceedings.

17 CHAIRMAN DURANT: I doubt that
18 there is any objection to that...

19 MR. SMEGAL: Mr. Chairman, I
20 think we're on the minutes. I don't know what this
21 has got to do with it and I certainly object.

22 I have listened to Mr. Wallace very carefully
23 here and I didn't hear him say anything that Mr. Ross

1 said to this Board or to a Subcommittee of this Board
2 on any prior visit.

3 I think this is entirely out of order and if you
4 want to bring this subject up now, under the guise of
5 the minutes, approval of the minutes, I'm willing to
6 do it. I'm prepared to have this whole subject come
7 up at some later point in this meeting, but if this
8 is the way we're going to bring it up, we'll bring it
9 up right now and spend the rest of the day on it.

10 CHAIRMAN WALLACE: Well, I'll
11 tell you what he said, Mr. Smegal. At a Committee
12 meeting, he said that he represented 30 organizations
13 and he said that his organization believes that we're
14 out to abolish legal services.

15 Now, I think that needs to be answered. I think
16 you are quite correct that the appropriate place to
17 do it is an attachment to the minutes of Pepe's
18 Committee, but I don't know when Pepe's Committee is
19 going to meet again.

20 And, I think this is something that needs to be
21 dealt with and that's why I offered it as a point of
22 personal privilege, rather than as an amendment to
23 these minutes. I recognize technically it does not

1 apply to these minutes, it applies to Pepe's minutes.
2 I don't know when we'll get to those.

3 MR. SMEGAL: Mr. Chairman, I
4 have a document here dated February 1, 1987, which is
5 characterized the Bar Leaders for Preservation of
6 Legal Services. On the back page, Page 8, they have
7 a black rimmed notification that 30 state and 43
8 other bars lead, quote, legal services preservation,
9 unquote, effort. The caption which precedes a
10 listing which includes, if I understand you, Mr.
11 Wallace, the Mississippi State Bar and the
12 Mississippi State Bar Young Lawyers Section.

13 The caption at the top says, "The listing below
14 includes all associations which by resolution"...and
15 there's an asterisk where those are to be listed and
16 each of the Mississippi associations has a
17 resolution..."or individual pledge of support by one
18 or more key officials are represented in the
19 forefront of Bar Leaders for the Preservation of
20 Legal Services for the Poor" with a date of December
21 31, 1986.

22 Now, Mr. Wallace because you have two
23 resolutions which none of us have had a chance to

1 read which apparently are silent with respect to this
2 organization, does not mean that either the
3 Mississippi State Bar or the Mississippi State Bar
4 Young Lawyers Section have not done what this
5 document reflects.

6 And I think that what we need, Mr. Wallace, is
7 possibly those resolutions that obviously the
8 Mississippi State Bar and the Mississippi State Bar
9 Young Lawyers have authored.

10 MR. WALLACE: The resolutions
11 don't exist, Mr. Smegal, but if Bar Leaders wants to
12 produce something other than what the State Bar
13 produced to me, they're perfectly welcome to do so.

14 CHAIRMAN DURANT: What I would
15 like to do is, is that our record is a fairly liberal
16 record in terms of what it contains and I don't see
17 any problem with simply having Mr. Wallace's two
18 resolutions from the Mississippi Bar a part of our
19 record.

20 I think if there is to be any discussion on this
21 particular thing it can be at another point in the
22 agenda or at another time in another meeting.

23 But in terms of it simply being a part of our

1 record, it certainly is a matter of personal
2 privilege. I don't see any problem with it.
3 Certainly, Mr. Smegal, if you have other things at a
4 later time or today that you'd like to have part of
5 the record, as I say, it's fairly liberal in terms of
6 our record.

7 If you would like to have that as a part of our
8 record, we can have that as a part of our record.

9 MR. SMEGAL: Yes. I'd like to
10 say Mr. Durant, I just read from this and I'm happy
11 to give it to you. It happens to have some yellow
12 highlighting on it, but we can make it part of the
13 record. It also includes Mr. Ross' comments...

14 CHAIRMAN DURANT: That way we
15 can identify it as yours.

16 MR. SMEGAL: Yes, thank you
17 very much. ...Mr. Ross' comments to our Audit and
18 Appropriations Committee on January 29, 1987. I
19 assume they are here in toto. Maybe they've been
20 edited, but in any event they appear to conform to
21 what's in our transcript.

22 CHAIRMAN DURANT: Have we
23 approved the minutes?

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MR. VALOIS: No.

CHAIRMAN DURANT: But we did have a motion and a second. Any other discussion on the minutes. I would like to note the unanimous vote of the Board in its work with Alan Houseman on the lobbying regulation, which I think belies the fact that we can't operate with unanimity at times.

Any other discussion on the minutes, specifically?

MR. SMEGAL: Mr. Durant, yes, two things. One, with respect to what you just said. I voted for the lobbying regulations, but I think the minutes clearly reflect my feelings on that matter, that they are unnecessary.

I voted for them because of Mr. Wallace's hard work and Mr. Houseman's hard work and the hard work of a lot of other people in reaching the compromise that was used, but I consider them to be unnecessary. I understand that both the Senate and the House have held them up again, Mr. Durant, so there certainly isn't unanimity among our constituency with respect to whether such regulations are even necessary.

With respect to approving the minutes, I again

MR. MOULTON: Yes.

THE BOARD DIRECTOR: All right.

...and in fact, I would like to see the Board ...
of the Board ...
...with the ...
...on the ...

...by

MR. MOULTON: Yes.

...with respect to what you ...
I voted for the ...
...of that ...
...necessity.

I voted for ...
...and the ...
...a lot of ...
...but I ...
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1 voice my concern that what Mr. Wallace has proposed
2 be included with the minutes, is inappropriate, has
3 nothing to do with those minutes and neither does the
4 document I presented.

5 I'm going to vote against the minutes being
6 approved the way they've been amended here this
7 morning.

8 MRS. BERNSTEIN: Could I get
9 clarification? As I understood Mr. Wallace's motion
10 or his request, I guess it's just a request that they
11 simply be made a part of the record, and I would
12 think that they would be more appropriate...I mean,
13 they would be referenced to our last meeting and the
14 concerns that we had, rather than specifically to
15 these minutes.

16 I see no problem in them being part of our
17 record.

18 CHAIRMAN DURANT: All those in
19 favor of the minutes signify by saying aye.

20 (Chorus of Ayes.)

21 CHAIRMAN DURANT: Opposed?

22 MR. SMEGAL: No.

23 CHAIRMAN DURANT: Motion

1 passes.

2 The next item on the agenda is a report on the
3 consolidated operating budget, but before we do that,
4 I would like, as a matter of the Chairman's privilege
5 that we have leaders of the New York...New
6 York...North Carolina, we might even have some from
7 New York...are here from the North Carolina Bar and,
8 Dick, if you would introduce them and...

9 MR. TAYLOR: Thank you, very
10 much.

11 I'm Dick Taylor, Executive Director of Legal
12 Services of North Carolina and this is the first time
13 that the Legal Services Corporation Board has met in
14 North Carolina and there appears to be a great deal
15 of interest in the activity of this Board and of
16 Legal Services.

17 We have three distinguished lawyers who wish to
18 make opening remarks before the Board this morning.
19 The first will be Roy Davis...

20 CHAIRMAN DURANT: Let me tell
21 you Dick, before we get into opening remarks or
22 whatever, which is fine, we are on a very tight
23 time...

1 MR. TAYLOR: We understand
2 that.

3 CHAIRMAN DURANT: ...because
4 Jack Curtain and others and myself included, have got
5 early afternoon planes and we've got a ton of
6 material that has to be covered.

7 MR. TAYLOR: We understand
8 that, believe it or not, and we have been informed
9 that there is a limited amount of time in which we
10 could make these remarks.

11 CHAIRMAN DURANT: Okay, but I
12 think it's important that the remarks be made.

13 MR. TAYLOR: The first person
14 who will be speaking will be Roy Davis who is the
15 immediate Past President of the North Carolina State
16 Bar, was a founding member of the Board of Directors
17 of Legal Services in North Carolina and is a native
18 of Asheville.

19 Then speaking will be Lillian O'Briant, the
20 President of Legal Services of North Carolina and a
21 member of the Board of Governors of the North
22 Carolina Bar Association and finally, will be John
23 Beard, the President of the North Carolina Bar

1 Association which is the parent organization of Legal
2 Services in North Carolina.

3 Mr. Davis.

4 CHAIRMAN DURANT: Thanks,
5 Dick.

6 MR. DAVIS: Mr. Chairman and
7 members of the Board, I assure you I'm not here to
8 make a speech, but I have to sit down.

9 CHAIRMAN DURANT: I'm afraid
10 you have to. Otherwise, we can't pick up these
11 pearls of wisdom, so...

12 MR. DAVIS: All right. Well,
13 I did want to...you've launched into some matters
14 quite seriously here and I don't want to suggest that
15 I want to approach them without that degree of
16 seriousness, but I would like to offer a word of
17 greeting on behalf of the two constituencies that I
18 represent.

19 One of them is the local community. You are in
20 Asheville here, now, but you're really in the North
21 Carolina mountains here atop the Blue Ridge and if
22 you care to view an authentic, genuine, rank
23 mountaineer, I offer myself modestly...

1 CHAIRMAN DURANT: We've never
2 had one testify before.

3 MR. DAVIS: Okay. Well, I'm
4 flattered. Also, let me give you a word...another
5 word about locality. You're at Asheville, but the
6 county in which you are situate is spelled
7 B-u-n-c-o-m-b-e. That's B-u-n-c-o-m-b-e pronounced
8 locally Buckham. So, on behalf of Buncombe County,
9 we may say we have quite a literary background, not
10 only was O. Henry buried here, not only was Thomas
11 Wolfe born here, but we've offerred our name to, if
12 not the English, at least to the American language.

13 I also have the privilege to be a Past President
14 of the State Bar and speak, I hope on behalf of
15 certainly the leadership of the State Bar and of the
16 organized bar in this state and with a certain
17 appreciation for all the lawyers of this state and I
18 think I can say that we are proud of and support the
19 State Legal Aid Association.

20 It certainly is a program that we think is a
21 cornerstone, a good program in this state in its
22 concern for the poor and the public.

23 We believe...at least I believe...there was some

1 discussion exactly how thorough is the representation
2 of bar leaders? At least from my own heart I can say
3 that I think they do a good job, that there's
4 moderate leadership and that they attempt to stay in
5 touch with all segments of the community.

6 With that, I sincerely am glad you're here. I
7 hope you enjoy your stay among us and could get out
8 and talk and mingle with some of us mountaineers in
9 the community that we have the privilege to live in
10 and we certainly are honored by the presence of this
11 group here today and I might close by saying that my
12 remarks of appreciation and gratitude are certainly
13 no bunk.

14 CHAIRMAN DURANT: Thank you,
15 Mr. Davis. Mrs. O'Briant?

16 MRS. O'BRIANT: I'd like to
17 welcome you to North Carolina on behalf of Legal
18 Services of North Carolina. We have a program that
19 we're very proud of. We have some people in the room
20 that I'd like just to ask stand. We have a number of
21 our state board members here and if those board
22 members would just stand, please.

23 We also have a number of our Legal Services

1 staff people and I'd like for anyone on the staff of
2 Legal Services of North Carolina to please stand.

3 CHAIRMAN DURANT: It's a good
4 turnout.

5 MRS. O'BRIANT: And then there
6 are two people I'd specifically like to mention.

7 Here in Buncombe County we have Piska Legal
8 Services and the Board Chair from that group is here,
9 Carrie Fieldman...Friedman...excuse me...and the
10 Project Director...

11 CHAIRMAN DURANT: We haven't
12 done this at some of the other meetings that we have
13 and I think that's a very good custom, because Martha
14 Bergmark mentioned at our last meeting when Linda
15 Bernard, who is the Executive Director of the Wayne
16 County program, where I'm from was here and talking
17 about some of the good things that she was doing and
18 recognizing her people, although in that case it was
19 by name than by presence.

20 I think that's a good custom and I'm glad you
21 encouraged your board members and staff members to
22 come.

23 MRS. O'BRIANT: Well thank

1 you. I think it shows how important you people are
2 that they're here.

3 I would like to very briefly address two issues
4 and I will make it very brief. They are concerns of
5 mine.

6 One is receiving reports from your Board about
7 our activities which you have investigated. We have
8 a long history of not receiving these reports.

9 We're very proud of our program and we want for
10 you to know how good our program is and when you do
11 come to visit us for either monitoring or
12 investigating a particular segment of our program it
13 would be very helpful to us to get feedback from you
14 so that if we are doing something wrong, we would
15 like to know what it is. There are just a number of
16 things that we've never received from you.

17 The second issue, very briefly because I know
18 this will be addressed later and I probably will not
19 have an opportunity. We have been told through the
20 news media and from our Congressman that we have a
21 problem with our Farm Workers Legal Services Program.

22 I have never been told directly by anyone
23 representing farmers, by farmers or anybody in their

1 organized groups that there is a problem. I've never
2 been told what the problem is and our central office
3 staff, our Director Dick Taylor has never been told
4 directly. We have been told indirectly. We have
5 been told indirectly when your Board as sent
6 investigators down to investigate what our farm
7 worker program is doing. We haven't been told by
8 you, that you've come down. We haven't received any
9 reports from you about that and we would just...we
10 feel like we've got a good farm workers program and
11 we have a very good record as far as when they do go
12 to court of winning and that the farmers pay when
13 they have broken the law.

14 Maybe the problem is that the farmers need to
15 know exactly what the law that they are breaking and
16 then there wouldn't be any need for the farm workers
17 program. And I know that there are a number of
18 farmers here and their representatives and they're
19 going to speak later and I may be assuming too much,
20 but I assume that they're going to complain about our
21 program and, frankly, I wish they would complain to
22 us first, because if we do have a problem, we're the
23 ones that can correct it. Thank you.

1 CHAIRMAN DURANT: Okay.

2 Thanks, Lillian. Mr. Beard?

3 MR. BEARD: Thank you, Mr.
4 Chairman and Members of the Board.

5 I don't come from Buncombe County, but because I
6 know there are a large number of farmers here, I want
7 them to know that I come from Harnett County and that
8 I know what sweet potato growing is.

9 Roy, I think, has very eloquently spoken to you
10 regarding the support of the North Carolina State Bar
11 Leadership for Legal Services of North Carolina as
12 the founding organization of Legal Services of North
13 Carolina. Let me reiterate the very strong support
14 which the North Carolina Bar Association has for LSNC
15 and all of its programs.

16 We urge the Board to consider in all of its
17 funding deliberations, the budgetary process,
18 increasing the amount of overall funding that is
19 allowed for legal services, not only in the State of
20 North Carolina, but throughout the country.

21 We're very proud of the partnership which we, as
22 the organized bar have with Legal Services of North
23 Carolina. As you may well know, we have a pro bono

1 breach of fiduciary duty as libelous or slanderous,
2 depending upon whether they were written, printed or
3 spoken, but I can tell you that having been at the
4 ABA meeting, those were the exact words that were
5 used by Chairman, President Thomas who expressed a
6 tremendous amount of concern about that particular
7 issue.

8 Within the next two weeks I am going to be
9 meeting with representative of the ABA along with
10 other representatives of southern bar states at their
11 meeting in Nashville.

12 This is one of the items which is to be on the
13 agenda, relating to what the response of the ABA
14 should be to that, as well as what the response of
15 local bars should be.

16 I will close by simply saying that I think that
17 in this year of the celebration of the bicentennial
18 of our Constitution, it is especially important that
19 this Board assume a leadership posture in making
20 certain that equal justice under law is available to
21 all.

22 Because of a commitment that I have made to
23 speak at the Wake Forest Law School this evening

1 about a constitutional topic for which I am totally
2 and completely unprepared, which is my typical way of
3 giving speeches, I'm going to have to leave the
4 meeting early this morning.

5 I do not want the Board members nor any of those
6 people present to feel that my vacating myself from
7 this meeting is any indication of a lack of concern
8 or interest in your deliberations, as well as what
9 might be brought before you today, but it is simply a
10 scheduling problem with me and I regret having to
11 leave and I appreciate your courtesy in hearing me.

12 Thank you.

13 CHAIRMAN DURANT: Thank you,
14 very much and I'm certainly not offended by anything
15 you said.

16 Thanks, Dick.

17 MR. TAYLOR: Thanks you, very
18 much.

19 CHAIRMAN DURANT: The next
20 item on our agenda is the FY '87 consolidated
21 operating budget and dealing with the unallocated
22 reserve. I think Mike Coster, Chris Rozek and I
23 don't know who else was on.

1 One other thing. You know at that
2 meeting...this will be extremely brief...but if you
3 were at the Board of Governors meeting, if you
4 recall, I think one of the statements that has not
5 been too widely published was Dean Robert McKay of
6 the NYU Law School...former Dean of the NYU Law
7 School...in which he pointed out, not only were they
8 the most stimulating remarks he had heard on the
9 subject, but that also there were questions that the
10 legal profession quite seriously had to address in a
11 thoughtful way and the debate will continue, but I
12 appreciate the things that you've said and I
13 appreciate the words that I said in that speech, that
14 Bar Associations have been doing all around the
15 country.

16 MR. SMEGAL: Mr. Chairman...

17 CHAIRMAN DURANT: On to the...

18 MR. SMEGAL: No, excuse me,
19 before we go on.

20 Mr. Chairman, I think maybe it's appropriate at
21 this point, now that the matter has been raised, not
22 only by Mr. Wallace, but by John and yourself that we
23 supplement our record with a copy of, what I

1 understand to have been your prepared remarks. I
2 have no idea what you delivered, but I do have a copy
3 of that and I'd like to make that a part of the
4 record along with what Senator Cranston said at
5 the...in the Congressional record of the United
6 States Senate calling for your resignation.

7 I also have a copy of Mr. Thomas' remarks with
8 respect to your speech to the mid winter meeting of
9 the ABA. I'd like to make that part of the record.

10 There's a Washington Post editorial, Who Needs
11 Lawyers, the final line of which is, Mr. Durant's
12 proposal to replace him with unskilled advisors in
13 the interest of saving money is condescending and
14 silly. I'd like that in the record.

15 There is a Washington Post article on Friday,
16 February 13th...Let unlicensed entrepreneurs advise
17 the poor, the ABA urges. A letter to you...

18 MR. VALOIS: Mr. Chairman, I
19 would request that Mr. Smegal be permitted to put
20 anything in the record that he wants, but don't
21 please take up our time in describing it ad
22 infinitum.

23 MR. SMEGAL: Thank you, Mr.

1 I'm sure you would like to address.

2 MR. SMEGAL: Mr. Durant, I've
3 changed my schedule several times to be here and I am
4 concerned that I'm now advised that there are planes
5 to catch this afternoon. I have...you have moved
6 this meeting on us three times. It is now Saturday.
7 We are in North Carolina. I have a plane at 6:00
8 o'clock and I intend to stay until 6:00 o'clock and
9 for you to tell me that you now have to leave to
10 catch a plane mid afternoon is offensive to me,
11 offensive, I'm sure, to other members of this Board
12 like Mr. Eaglin who have gone out of their way to be
13 here today to accommodate your schedule and under the
14 circumstances I'm going to continue to introduce the
15 materials that I have. I have three more items.

16 CHAIRMAN DURANT: Mr.
17 Smegal...

18 MR. SMEGAL: Another segment
19 of the Congressional Record by Congressman Frank, my
20 letter to you of March 13 and that does it. Thank
21 you, very much, Mr. Chairman.

22 MR. MENDEZ: Mr. Chairman, let
23 me just clarify on thing.

1 Valois.

2 MR. VALOIS: I would also
3 request that, you know, any other member of the Board
4 who wishes to put anything in the record do so at any
5 time in the future, but let's get on with our
6 meeting.

7 MR. SMEGAL: Thank you. I
8 have a few more items here. There is a letter to Mr.
9 Durant from...

10 CHAIRMAN DURANT: Well, Tom, I
11 think...Tom...

12 MR. SMEGAL: ...Senator Rudman
13 and I'll put that on the record.

14 CHAIRMAN DURANT: I think Mr.
15 Valois' suggestion is a good one...

16 MR. SMEGAL: That's right. I
17 want to identify them as I put them in and that's
18 what I'm doing.

19 CHAIRMAN DURANT: Well, please
20 feel free to add at any time anything that you would
21 like, but I promised Jack Curtain and other people
22 that we would move this meeting along so that planes
23 could be caught and we could get to the matter that

1 Unfortunately I had a trial that was taking
2 place yesterday and since most of these matters
3 surround financial aspects, I specifically requested
4 Mr. Bayly to change this date and for you to take the
5 blame for something I did...you have broad shoulders
6 and you have a lot to carry the blame for, but that's
7 mine.

8 CHAIRMAN DURANT: Thank you,
9 Mr. Mendez, but Mr. Smegal can make whatever comments
10 he likes. I appreciate your support.

11 Mr. Coster?

12 MR. COSTER: Good morning, Mr.
13 Chairman and Members of the Board.

14 On Page 17 of the Board Book you will find a
15 memo from President Bayly to you regarding your
16 request of last January that he report to you his
17 plans for \$685,200, 1987 unallocated reserve funds.

18 In the interim, Mr. Bayly has undertaken some
19 planning and investigation with regard to those funds
20 and in this memo has outlined his intent in two areas
21 that he's asked us to reiterate briefly to you today
22 and be prepared to answer your questions.

23 In the sequence of the memo, program development

1 appears first and Mr. Chris Rozek is here for the
2 Program Development Division to answer questions in
3 that area and has a few comments preliminarily to
4 make.

5 The second item on management and
6 administration, I will address in a moment or two.

7 CHAIRMAN DURANT: Mr. Rozek?

8 MR. ROZEK: Mr. Chairman, I
9 believe the Board has received a sheet we prepared
10 this morning, breaking down the program development
11 budget specifically and including the proposal for
12 \$300,000 additional funds from unallocated reserve
13 area.

14 CHAIRMAN DURANT: Are you
15 having trouble hearing?

16 MISS BERGMARK: We have not
17 seen that sheet and would like a chance to review it
18 since we do have comments on this portion of the
19 agenda.

20 MR. ROZEK: For those who do
21 not have a copy, let me briefly run through the
22 figures involved here.

23 We are budgeting \$1 million for continued law

1 school clinical project sites. There was \$578,000
2 approximately for funds already committed to projects
3 to which we are statutorily or by contract committed
4 to pay.

5 We are requesting a fund of \$150,000 for a
6 project which comes to us, not solicited by us, but
7 which after careful review may be considered
8 worthwhile and meritorious, which leaves in our
9 budget at this time, \$189,000, which we have
10 committed to a further tri-partite model study, such
11 as the kind we have going in San Antonio, Texas and
12 Orange County, California.

13 We would like to combine the \$189,000 with an
14 additional \$300,000 to enable us to fund two of these
15 projects in the coming year and to have contracts
16 signed by the end of this fiscal year, committing
17 those funds.

18 And that is the breakdown, Mr. Chairman.

19 MR. WALLACE: Can I ask a
20 question, Mr. Chairman?

21 CHAIRMAN DURANT: Mr. Wallace?

22 MR. WALLACE: I'm not on
23 provision for legal services and I know we've got

1 something going on in San Antonio and Orange County,
2 but that's about all I know. Can you tell me what a
3 tri-partite model study is?

4 MR. ROZEK: Yes, sir. Those
5 are studies in which...basically head-to-head studies
6 where a referral is made for Case A that comes in to
7 a staff attorney program and at the same locale for
8 Case B that comes in, it would be referred to a
9 private law firm under contract with LSC and for the
10 third case which would come in, it would go to a
11 voucher program which we are running. The fourth
12 case would go back to the staff attorney.

13 Both of these sites, Orange County and San
14 Antonio, are handling at this time exclusively,
15 domestic relations matters and the figures, which are
16 preliminary, from San Antonio, show that for both the
17 private law firm and the voucher, the cost per case
18 is competitive and less than the staff attorney.

19 We do not feel, however, that this is
20 statistically significant enough to draw any
21 conclusions from it. In light of the many sites we
22 put in place for other projects, before we make any
23 conclusions...to make any conclusions with two sites,

1 we feel it would be premature, whatever the results.

2 MR. WALLACE: Are you going to
3 branch into other areas of the law in these new
4 projects...

5 MR. ROZEK: Yes, sir.

6 MR. WALLACE: ...or are you
7 just doing the same thing someplace else?

8 MR. ROZEK: No, sir. Part of
9 the purpose is to branch into other areas to see if
10 the results are consistent or not.

11 We would also like to establish that if the
12 results come out in a certain way in both Orange
13 County and San Antonio that it's not due to
14 geographical quirks, but it's due to actual...to the
15 model itself.

16 And for that reason the two other sites would be
17 placed geographically...

18 MR. WALLACE: Some place where
19 it snows?

20 MR. ROZEK: Or some place
21 here...like here, I guess.

22 MR. WALLACE: It snows here,
23 too. Sometimes.

1 CHAIRMAN DURANT: Any other
2 questions of Mr. Rozek?

3 MR. ROZEK: If I may...

4 CHAIRMAN DURANT: Mr. Rozek?

5 MR. ROZEK: One other thing.

6 The delivery system study which was completed in 1980
7 of 38 projects, which were funded, multi-million
8 dollars involved, only one of those was a voucher and
9 it ran for less than a year. We have not studied
10 this at all. The last voucher that closed down was
11 ten years ago and that was the only one ever studied.

12 So, we feel this \$300,000 amount is both
13 reasonable and it's not exorbitant.

14 CHAIRMAN DURANT: Mr. Coster?

15 MR. COSTER: In the Paragraph
16 Number 2 in that memo, Mr. Bayly has outlined some
17 management and administration needs for \$385,000 of
18 this unallocated reserve. He has asked...we asked
19 that the \$385,000 be continued to be entitled to stay
20 in the account unallocated reserve pending his
21 judgment for their need in the following four areas.

22 One is improvements to our accounting system
23 based on recommendations made by our auditors and

1 made by me in the last six months.

2 Number two is an examination of the need of
3 improvements in our internal management and data
4 system. This is always an ongoing system in the
5 program. I had the honor of participating in an
6 internal review of that that concluded about a year
7 ago. A review of our computer operations and that
8 also involved our management of the incoming CSR
9 data, which of course, has had changes in direction
10 ongoing intermittently for the last year and a half.

11 His third item is the anticipated involvement of
12 the corporation in the Immigration Reform of Control
13 Act of 1986, which at this very moment, has a task
14 force involved in interchanging information, I
15 understand, with INF, with the American Bar
16 Association and other interested parties. Within the
17 confines we have in that area, Mr. Bayly is concerned
18 that we have funds to facilitate whatever involvement
19 may be proper and in fact, necessary.

20 And fourth, Mr. Bayly has noted after preparing
21 this year's financial work with last year's and
22 preceding years, that there is no reserve for special
23 adjustments in the field program line, which is line

1 1A-4.

2 Upon inquiring what that had been used for in
3 the past, Mr. Bayly has indicated his willingness to
4 make some of these funds available instead of those
5 funds for program emergency needs such as fire losses
6 that we had last year. One program required a
7 \$12,000 payment for uninsured fire losses, things
8 along that line. That would be the fourth category
9 for the portion that Mr. Bayly requests are made in
10 management and administration.

11 MR. MENDEZ: John, we ask you
12 to make the presentation. You have your staff. Are
13 we to assume that this is your position and that your
14 position has not changed since you signed your name
15 to this memo?

16 MR. BAYLY: Yes, Mr. Mendez,
17 that is correct. I thought it might be clear if Mr.
18 Rozek and Mr. Coster presented it today in tandem for
19 you.

20 MR. MENDEZ: That being the
21 case, Mr. Chairman, I move that we allocate the
22 \$300,000 to program development and the \$385,000 to
23 management and administration within the unallocated

1 portion of management and administration.

2 CHAIRMAN DURANT: Is there a
3 second to that?

4 MRS. BENAVIDEZ: I second
5 that.

6 CHAIRMAN DURANT: All right.
7 I promised Martha Bergmark that she have an
8 opportunity to respond to that. Is there any
9 discussion amongst the Board before I ask Martha to
10 speak?

11 MR. SMEGAL: Yes, Clark. I
12 would like to...the memo I have here and the Board
13 look at 17 and 18. As I understood Subsection 2 with
14 respect to the \$385,200, talks primarily of the audit
15 problems we've recently had and mechanisms that Mr.
16 Bayly had used to improve upon those.

17 I heard other comments being made reference to
18 the Immigration Act and I understood from Mr. Coster
19 there were four matters. Now, I see one here. Would
20 you please, again, state what the other three are?

21 MR. COSTER: Okay. I could
22 name four...

23 MR. SMEGAL: I'm sorry.

1 Maybe I misunderstood. What else is there that we
2 would use this money for?

3 MR. COSTER: One, accounting
4 system.

5 MR. SMEGAL: All right.
6 That's here.

7 MR. COSTER: It says
8 accounting...it says audit procedures and systems in
9 the memo...

10 MR. SMEGAL: Right.

11 MR. COSTER: It will probably
12 refer to it as accounting systems. Two, internal
13 management and data system, which involves our
14 computer center, the management of the cashbook, CSR,
15 the incoming financial reports, the audit reports, et
16 cetera.

17 Item three is IRCA, Immigration Reform and
18 Control Act and item four is emergency assistance,
19 i.e. fire funds, et cetera.

20 I noted an example for the fire fund. There
21 have been other examples in the past.

22 MR. SMEGAL: With respect to
23 IRCA, what I understood you to say is there's some

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task force and I would like to know what the expenses are that are going to be involved in that? Why do we need money for that? Why isn't this a staff function that is being handled by staff who are full-time employees? What is the expense?

MR. COSTER: I am only slightly aware of what that task force is doing. I understand that it may run the gamut from informational brochures to programs to hand-outs to their otherwise eligible clients regarding the provision of assistance under that Act. In fact, Mr. Bayly could answer that more direct, I think.

MR. BAYLY: Maybe it's better if I speak to Mr. Smegal myself. At the present time, the corporation is undertaking to corroborate as best it can with the American Bar Association as well as with the Immigration and Naturalization Service in seeing what we can do to assist the Country during what I guess can be described as a small national emergency.

This one year of amnesty that begins on May 5th during which illegal aliens of various categories and various description have the opportunity to

1 regularize their status. This is an important issue,
2 but it's a difficult issue because there's such a
3 thicket of statutory and regulatory constraints on
4 what the Corporation does.

5 It's also a rather complex and complicated law,
6 at least in my eye. And at the present time,
7 although we're proceeding in a speedy fashion, I'm
8 not quite sure what we can do. We are willing to
9 help, but of course we've got to stay within the
10 boundaries of what's permitted to us.

11 As soon as we're able to determine with some
12 assurance that we're not going to be in violation of
13 statute or law, I would like to make our services
14 available, be it direct to programs, to communities,
15 to the Bar or to the INS to assist in this emergency,
16 as I call it.

17 But quite frankly, at the present time, I'm not
18 certain just what it is we are permitted to do. If
19 I'm not certain about that, I can't make a firm or
20 direct or a specific recommendation. That's why this
21 recommendation is purposely loose or even ambiguous.

22 The money, however, is not being put aside to
23 finance the work of the task force itself. That

1 meets in-house. That's done on a day-to-day basis.
2 It's being put to one side to implement any
3 recommendations or proposals that should come out of
4 the task force's meetings.

5 MR. SMEGAL: Well, Mr. Bayly,
6 let me respond to that. As you know, I was in
7 Washington last week for several days as a result of
8 this meeting being moved around a little bit and I
9 met with several people. Not only the ABA people,
10 but I met with Senator Alan Simpson and I met with
11 Commissioner Alan Nelson, who heads up this
12 Immigration and Naturalization Service and during
13 those discussions it occurred to me, in listening to
14 what they had to say, that there are several areas
15 where we might be of some help to...in this matter.

16 In particular, Senator Simpson seemed to be
17 receptive to our...using some of our community
18 education money, which we have, I believe, in a line
19 item that I don't see here, but I understand it's
20 there, Mr. Bayly from our discussions and assisting
21 in the public education of the three or four million
22 aliens who are allegedly illegally in this country
23 and would be eligible for this program that starts

1 May 5.

2 There are no funds that have been asked for,
3 there are no supplemental appropriations by INS to
4 accomplish that particular task.

5 The other thing I discussed with Mr. Nelson was
6 the concept of several of the large Bar Associations
7 in the major cities where the illegal aliens reside,
8 Los Angeles, New York, Chicago, Miami, possibly San
9 Francisco, that those cities with very active Bar
10 Associations, very active pro bono programs be given
11 an opportunity through some insignificant funding by
12 this corporation to provide for administrators in
13 those cities and allow those lawyers and those
14 volunteer lawyers that have developed over the years,
15 as President Thomas of the ABA said last week or the
16 week before, there are over 80,000 of them. That's a
17 large concentration of them in those major cities.

18 It seems to me we have a unique opportunity to
19 aide the organized Bar in getting those pro bono
20 lawyers directed towards assisting in this incredible
21 project that will start on May 5 and one of the
22 things your task force might look at is the
23 possibility of utilizing some of these funds as seed

1 money, as administrative cost money to accomplish
2 some of that.

3 You may also be aware of the \$185 fee that's
4 going to be charged by the INS. There's about \$15
5 that will be given to the organization that will
6 assist in preparing the applications. There are a
7 lot of church groups. There are other organizations
8 that have come forward.

9 The concern is they're going to charge the poor,
10 these aliens, an additional \$75 on top of that and it
11 seems to me there's an opportunity here to cooperate
12 with the organized bar who have lawyers who are
13 willing to work pro bono, who are the panels, who
14 could be put on panels and if we can stimulate that
15 activity through some nominal funding, such as we're
16 looking at here, this \$385,000 by getting that
17 program started, cooperating with local bar
18 associations in these major cities, then maybe we can
19 make a contribution that will be constructive.

20 MR. BAYLY: Thank you.

21 CHAIRMAN DURANT: I think
22 that's a good idea, John. Why don't you take look at
23 it.

1 MR. BAYLY: Thank you, I will.

2 CHAIRMAN DURANT: Martha?

3 MISS BERGMARK: Good morning.

4 I'm Martha Bergmark for the record. I'm here in my
5 capacity as Co-Chair of the Funding Criteria
6 Committee of the Project Advisory Group and we have
7 comments on the proposal that's before you for
8 allocation of the unallocated reserve.

9 At your November the 1st meeting, five months
10 ago, you instructed the corporation staff to provide
11 monthly budget reports to you beginning with the
12 July, 1986 month. And this was in conformity with
13 the written budget guidelines of the Corporation.

14 As of the January 30th Board meeting, no such
15 monthly reports had been forthcoming and the
16 explanation we received at that time was that the
17 corporation staff had been involved with the audit
18 and that those monthly reports would be forthcoming.

19 We are now six months into fiscal 1987 and we,
20 at least, have not received any monthly budget
21 reports, nor have we received even a quarterly report
22 for the first quarter of '87 which ended in December.
23 At the end of December, 1986.

1 this is it.

2 MR. COSTER: I understand.

3 MR. WALLACE: I take it, Mr.

4 Mendez, you'll support more money for audit
5 procedures and systems and internal management
6 systems?

7 MR. MENDEZ: That's correct
8 because I want to have this stuff done and I want to
9 have it done promptly and I want to have it out to
10 everybody. And you can send a copy out to Martha as
11 the leader...Martha and her Co-Chair as leader for
12 PAG, but I want that stuff out. I'm tired of this.

13 CHAIRMAN DURANT: Mr. Bayly?

14 MR. BAYLY: Well, thank you,
15 Mr. Mendez. Your criticism is well taken and it will
16 be a helpful spur to getting things up-to-date. You
17 do recognize that some of this money I ask for is so
18 that we can...it is a sound criticism and I accept it
19 and I think Michael Coster does the same.

20 It's not through any indolence on our part or
21 indifference. It's the press of business, but I
22 accept the criticism and we'll try to reform things.

23 MR. MENDEZ: John, let me just

1 point out to you that the press of...that the Board
2 signs everyone's checks and in the press of business,
3 the Board first.

4 MR. BAYLY: I understand that.

5 MISS BERGMARK: Well, we would
6 submit that what's before you today is a request for
7 allocation of two-thirds of a million dollars that is
8 being requested in the context of a complete void of
9 information about what has gone on so far in 1987.

10 With respect specifically to the two requested
11 allocations, we're hearing that an additional
12 \$300,000 is sought for program development. This is
13 an interesting proposal in that at the last meeting
14 \$460,000 was sought for program development. It was
15 taken out of that, put into allocated...unallocated
16 reserves and now we see a proposal to put two-thirds
17 of that money back into program development.

18 We would submit that the \$340,000 that has
19 already been allocated out of '87 money for program
20 development has not been spent. It doesn't appear to
21 have been allocated. Mr. Rozek just told you that
22 what he's hoping for is that contracts would be
23 signed by the end of this fiscal year.

1 Martha. Mrs. Bernstein.

2 MRS. BERNSTEIN: I'll keep
3 this short, but you know, we can't have it both ways.
4 If we're going to proceed in a judicious fashion,
5 looking at situations and finding out where the money
6 will...the very scarce research and experimentation
7 money that we have access to, where it will be best
8 spent so that we will get delivery as well as the
9 experiment out of it, we have to do the research to
10 develop the proposals first.

11 We cannot go through that process until we have
12 a commitment that we will have something to spend,
13 because there simply will be nothing to encourage
14 people to take the proposal very seriously.

15 I think that Mr. Rozek pointed out very clearly
16 the very, kind of laid back approach that we have
17 taken in terms of going...in terms of jumping to any
18 conclusions on these matters.

19 It's a matter of trying to continue to explore
20 these alternatives without an excessive expenditure.
21 When you call them fund balances, realize that these
22 monies aren't drawn down from the Treasury of the
23 United States until they are necessary to be

1 expended. But we do need to have the commitment of
2 the Board.

3 And I'm sure you understand that from your local
4 Board level that there are times when you may need to
5 make a commitment to the Telephone Company for a new
6 telephone system and you need to know that that money
7 is in your budget, segregated for that item before
8 you can explore this and set up your relationship
9 with the company that you're going to contract with.

10 These are much larger problems than simply
11 saying, well, this is a carryover. I think that's a
12 misnomer and, to some extent, I really think that you
13 really are above that, Martha. I think that you
14 understand that you do have to have this kind of
15 planning, that it really isn't carryover. That it's
16 a matter of commitment for these kind of research
17 projects.

18 We want to do the best that we can. This is not
19 the same thing as taking money, putting it in a bank
20 account somewhere and not having it available for
21 something else.

22 Now, you say well, why not wait until next
23 year's allocation for it? For the same reason that

1 you can't wait from budget to budget about this. You
2 have to set the money aside.

3 You know, the school board that I work with, you
4 know, we have money that comes in. You can't plan to
5 add, you know, 20 computers for your classroom unless
6 you know that the money is going to be there and you
7 can't get anybody to talk seriously with you about
8 providing it at a definite cost until you know the
9 money is there. That's what this Board has to do, is
10 commit it to that project and at that point go
11 forward.

12 I feel that this is a very modest, almost
13 embarrassing modest approach to trying to see what is
14 the best way to deliver legal services.

15 MISS BERGMARK: I'm only
16 suggesting, Mrs. Bernstein...

17 MR. MENDEZ: Martha, I have
18 the same concerns, and if you recall the discussion
19 at the last meeting was that this money had to be
20 expended in this fiscal year and Mr. Bayly, will you
21 state on the record that that is your understanding
22 that these contracts are to be let and that
23 everything is to be committed this fiscal year?

1 MR. BAYLY: That is my
2 understanding and my intention.

3 MR. MENDEZ: All right. If
4 it's not within the next month or so, I want an
5 update each month...

6 CHAIRMAN DURANT: We may have
7 to have more allocation.

8 MISS BERGMARK: I believe we
9 heard at the January meeting from Charlie Moses who
10 said that he hoped that he would be able to report
11 tentative site selections by the end of March. We
12 are now at the end of March. We have not heard
13 anything about tentative site selections.

14 I'm only suggesting that there is \$340,000
15 already in this line item out of '87 funds and that
16 to double that amount at this point without any
17 firmer proposals than we've heard so far is not
18 warranted in the face of the possibility of
19 allocating this directly to service delivery.

20 My only point, Mrs. Bernstein is that we have
21 \$340,000 for that. We don't yet know anything about
22 how even that money is to be spent and that this
23 \$300,000 out of carryover would be much better put

1 directly into service now.

2 MR. ROZEK: If I may make a
3 statement, Mr. Chairman?

4 CHAIRMAN DURANT: Mr. Rozek.

5 MR. ROZEK It's inaccurate
6 what Miss Bergmark is saying in several respects. I
7 refer her to the minutes of the January meeting which
8 stated that these funds were to be used at the
9 discretion of the President with approval of the
10 Board, of course, after study of them and that
11 program development was to be able to have those
12 funds, if it was approved.

13 There's nothing wrong with us making this
14 proposal as she's implying.

15 MISS BERGMARK: No,
16 I'm not suggesting there's anything wrong with the
17 proposal. I'm questioning the substance of...

18 MR. ROZEK: Again, we are not
19 doubling the amount for vouchers. We're talking bout
20 \$489,000 and she cites a figure of \$340,000. The
21 \$150,000 for new projects, which has not come from
22 us, but from the field in large measure, reflects the
23 proposal we received last year.

1 We funded approximately 70,000 in unsolicited
2 proposals and rejected 970,000, because we didn't
3 have the funds. We would like to use these funds for
4 worthwhile proposals which are received.

5 If we use them for this, we cannot use them for
6 the voucher. So we're talking about \$489,000 for the
7 vouchers, not double.

8 CHAIRMAN DURANT: Okay. Any
9 other discussion amongst the Board members?

10 MR. SMEGAL: Yes, Mr.
11 Chairman.

12 CHAIRMAN DURANT: Mr. Smegal.

13 MR. SMEGAL: If I understood
14 what Mr. Rozek said earlier, we have two ongoing
15 study programs. I recall being in Santa Anna and
16 handing out \$350,000 checks for the one there. We
17 have one in El Paso. We have no...San Antonio...we
18 have no information. Both of those projects are
19 ongoing. We have no information that I've been able
20 to get. I've asked Mr. Bayly for it several times
21 now, as to how those programs are going and yet,
22 before we even know whether they make any sense,
23 we're not authorizing more money to do some more

1 study.

2 It makes no sense. Martha Bergman's point is
3 well taken. Let's finish the projects we're on. See
4 if they make sense to expand upon or continue and
5 then go about allocating money for it.

6 In the meantime, let's use the money for the
7 purposes for which it was intended. Let's deliver
8 some legal services to the poor.

9 MR. MENDEZ: Mr. Chairman?

10 CHAIRMAN DURANT: Mr. Mendez?

11 MR. MENDEZ: I seem to recall
12 seeing a television program put on by the American
13 Bar Association concerning the San Antonio project.

14 Mr. Rozek, I want you to contact the American
15 Bar Association and ask them, for the next meeting, I
16 want to see that TV program that they've put on on
17 the San Antonio project. I want to present it to our
18 Board.

19 CHAIRMAN DURANT: Any other
20 comments amongst the Board?

21 MISS BERGMARK: I do have
22 comments on the \$385,000 unallocated reserve.

23 CHAIRMAN DURANT: Go ahead

1 quickly.

2 MISS BERGMARK: Okay. The
3 proposal calls for the remainder of this unallocated
4 reserve which is \$385,200, I guess...\$385,000 going
5 again into unallocated reserves.

6 I would simply point out that at its last
7 meeting this Board already allocated an additional
8 one-half million dollars out of carryover funds to
9 supplement it's \$10.7 million dollar Management and
10 Administration budget. That's an increase of 5
11 percent. That was done at the last meeting.

12 This additional money will increase the
13 Management and Administration budget by an additional
14 6 percent. The total of it, the \$685,000, thus
15 allocating to Management and Administration an 11
16 percent increase out of more...an increase over what
17 Congress had contemplated would be needed for
18 Management and Administration, that is \$10.7 million
19 dollars.

20 This figure, this 11 percent figure compares
21 with one-half of one percent that has been allocated
22 to direct service delivery. The approximately \$1.7
23 million that you allocated in January to direct

1 service delivery. One-half of one percent going to
2 direct service.

3 We suggest that that is simply a disparity and a
4 discrepancy that is not warranted. That this money
5 needs to go into direct service delivery, that the
6 proposals that are before you are very soft, indeed,
7 that there is already money in your budget sufficient
8 to cover those amounts and that for the Corporation
9 to come in today, the staff to come in and ask...last
10 month...or in January they came in and asked for
11 \$225,000 to go to unallocated reserve. Today they're
12 asking you for \$385,000, so they're asking for even
13 more unallocated reserve today than they were two
14 months ago.

15 We suggest to you that there simply is no basis
16 in their 21 lines of attention to a proposal for this
17 to warrant that kind of an allocation and we would
18 submit strongly that you consider allocating this
19 money for service to clients.

20 CHAIRMAN DURANT: Martha, you
21 can't have it both ways and if the reports that you
22 request aren't being delivered and part of it is as
23 Mr. Bayly said and part because of the necessity of

1 certain kind of staff and equipment and whatever,
2 then obviously, as Mr. Coster has indicated, it's
3 necessary for those kinds of things. So it seems to
4 me that he's perfectly justified. If it turns out
5 that it isn't later on, than obviously other shifts
6 can be made.

7 At least when you were saying, you know, that we
8 shift money around, we certainly do it out in the
9 open and we don't do it through secret accounts. So
10 that...

11 MISS BERGMARK: Good.

12 CHAIRMAN DURANT: The question
13 has been called. All those in favor of the...

14 MR. SMEGAL: Mr. Durant, I
15 have a further comment.

16 In response to what you've just said, I would
17 like to know from either Mr. Coster or Mr. Bayly how
18 many of the staff physicians that are authorized in
19 the...whatever your organization is called at the
20 Comptroller's office...how many staff positions are
21 actually filled at the present time?

22 MR. COSTER: Including my
23 position there are seven filled positions and I have

1 one college student working in my office two days a
2 week.

3 MR. SMEGAL: Out of how many
4 positions?

5 MR. COSTER: I don't know what
6 my total authorized strength is...

7 MR. SMEGAL: Is it more than
8 that?

9 MR. COSTER: Yes, it is.

10 MR. SMEGAL: How many of those
11 seven have you hired since the first of the year?

12 MR. COSTER: None.

13 MR. SMEGAL: How many have you
14 hired since...the last report was when, July? How
15 many have been hired since July, Mike?

16 MR. COSTER: I've hired, I
17 think two since then. One was a payroll clerk who
18 was working part-time for us and came on full time.
19 The Accounting Supervisor came on and the college
20 student came on, so two and a half since then and I
21 have lost one or two...at least one since then.

22 MR. SMEGAL: Isn't part of
23 your problem, Mike, that you've been understaffed?

1 That you don't have the people or the resources to do
2 this job?

3 MR. COSTER: That's something
4 we're working on.

5 MR. SMEGAL: But I mean, if
6 you had a full...if you were fully staffed with the
7 people you are authorized to have, would Martha have
8 her reports?

9 MR. COSTER: Yes.

10 MR. SMEGAL: So, the funding
11 that we already provide you for Administration and
12 Management in your line, adequately provides for this
13 particular service and all services that you're
14 supposed to be performing. The problem is you don't
15 have the people to do the job.

16 MR. COSTER: I don't quite
17 understand that statement.

18 MR. SMEGAL: If you had a full
19 staff, Martha's request in July would have been
20 fulfilled every month, isn't that correct? If you
21 had people to do the job that you're authorized to
22 have?

23 MR. COSTER: Well, it's safe

1 to say our budget operation is substantially
2 handicapped now, since we used to have three people
3 in the budget office and we have zero now.

4 MR. SMEGAL: You're authorized
5 three and you have none?

6 MR. COSTER: We had three.

7 MR. MENDEZ: Mr. Smegal, under
8 our budget appropriations listing of staff positions
9 intended for the Comptroller, it's intended that they
10 have 14 positions.

11 MR. SMEGAL: And they have
12 seven actual people?

13 MR. COSTER: And a half.

14 MR. SMEGAL: Seven and a half.

15 MR. WALLACE: Well, why don't
16 we just hire the six and a half? Is there money for
17 them in the budget already or is this a dream chart?

18 MR. BAYLY: Well, Mr. Wallace,
19 there is money in the budget for additional staff in
20 the Comptroller's office. Some of those positions
21 are presently being considered. I mean, personnel
22 action is currently pending at the present time, but
23 you do understand, I'm sure, that the recommendation

1 that I make about the unallocated money isn't for the
2 purpose necessarily of filling those positions or
3 expanding those positions. It's for the purpose of
4 implementing certain reforms and actually of studying
5 the relationship between the Comptroller's function,
6 the budget function and the collection of data
7 function that we have.

8 It seems to me that there's a lot of interplay
9 and a lot of overlap that up to this date really
10 hasn't been looked at. So, in part, that's what I
11 have in mind when I make this recommendation.

12 MR. COSTER: Perhaps I can
13 help, Mr. Bayly. There are 14 authorized positions.
14 It's been a number of years since there have been 14.
15 I don't believe that is...that exceeds even a
16 luxurious staffing level.

17 The necessary staffing level, Mr. Bayly
18 understand and agree is more than the cost of...

19 MR. BAYLY: Well...

20 MR. COSTER: ...and we've had
21 a chance in the last few weeks to meet on that and
22 will, in fact, again this week, hopefully reach some
23 conclusions on what the necessary staffing level are.

1 There are no funds that have been discussed
2 today necessary to bring my office up to...I mean,
3 none of the funds you're asking us to consider today
4 involve funds for those positions. Those funds are
5 currently in my budget.

6 MR. WALLACE: Now, wait a
7 minute. We authorize revision of audit procedures
8 and systems and improved internal management systems.
9 I would think that would have something to do with
10 your money.

11 Maybe it's not your personnel, but what does it
12 have to do with?

13 MR. COSTER: In part it does.
14 It has to do in part with the computer software that
15 we're using, which is very out of date. It's not due
16 to any of our budgeting force.

17 It has a greater deal to do with our position of
18 information systems, which is the computer center.
19 It's located near me, but it is not actually involved
20 with me at this point and Mr. Bayly's concerns are,
21 in a day when we're pushing computer usage, we're
22 looking for the efficiency that can be had through
23 them, should we be getting these two offices together

1 or intermingling their information a little bit
2 better. Things like that.

3 The money that's being talked about here for
4 information systems, is to...for an independent
5 review for an organization that, quite frankly, is
6 full of lawyers and not full of computer technicians
7 and we've got lots of computers, but I think it's
8 pretty much unanimous among the senior managers that
9 they're not implemented to the extent that they could
10 be and Mr. Bayly's has put a great fire under getting
11 that done, so that we can get information handled
12 better and faster.

13 MR. WALLACE: Mr. Chairman,
14 let me ask one other question.

15 What, if any, is the relationship between
16 authorization and reality. I mean, you have an
17 authorized strength of twice what you have and I
18 don't know what the rest of the departments in the
19 Corporation look like, but if everybody was hired up
20 to their authorized strength, have we got money in
21 the budget to pay for that?

22 MR. COSTER: No.

23 MR. WALLACE: All right. So

1 it...

2 MR. COSTER: It's not...the
3 Corporation is not operating at half of its
4 authorized...

5 MR. WALLACE: I understand. I
6 mean, I'm sure it's different in other departments.
7 What does authorization mean, then. I mean, is this
8 somebody's dream chart of where we are?

9 MRS. BERNSTEIN: Yes. What it
10 means is that at some point...from having worked at
11 the Corporation and gone...unless it's changed in the
12 last couple of years dramatically, what it means is
13 that some...a personnel office looked at somebody's
14 idea of what a possible, full operation would look
15 like and that authorization was made years ago and,
16 frankly, the staffing of the Corporation has never
17 been up to that authorization level since before the
18 first Reagan Board came on.

19 There were rifts and the authorized positions
20 were never completely...never filled in any way, even
21 though budget increases generally...and I don't mean
22 just for the management budget...but even though
23 there was an increase in the budget for the entire

1 corporation.

2 That's my understanding of the difference
3 between the authorization and what the individual
4 departments put in for their budgets each year.

5 MR. COSTER: Budgeted
6 strength, you know, budgeted levels...

7 MR. SMEGAL: Mr. Chairman...

8 CHAIRMAN DURANT: Mike...Tom,
9 do you have anything else?

10 MR. SMEGAL: Yes, I do.

11 CHAIRMAN DURANT: All right,
12 go ahead.

13 MR. SMEGAL: I have one
14 further question.

15 I notice on Page 24 of the Board Book there is a
16 number under Fiscal Year 1988 request for Corporation
17 management, grant administration of \$12,200,000.

18 Mr. Coster, in coming up with that number...now,
19 someone obviously has come up with that number...how
20 many people in your section is that based upon? How
21 do we get \$12 million, two?

22 MR. COSTER: That number was
23 not developed with a, as I recall, with a section by

1 section or division by division review of staffing
2 needs, but rather, you know, more...a broader view.

3 That would bring my office at least to the 10 or
4 11 people that are necessary to do the job on an
5 ongoing basis.

6 MR. SMEGAL: I don't
7 understand what a broader view is. Does that mean
8 you throw a dart at a board or what?

9 MR. COSTER: No, we don't do
10 unit by unit staffing levels a year and a half in
11 advance. I think we look at what the existing levels
12 are in each office and then any changes that might be
13 necessary that we're aware of a year and a half in
14 advance.

15 With the \$11.8 million we have now, we have
16 authorized strength...I don't know exactly how to
17 answer your question. What...

18 MR. SMEGAL: Well, let me tell
19 you, Mr. Coster, I...

20 CHAIRMAN DURANT: Michael,
21 I...

22 MR. SMEGAL: Let me just make
23 one comment, Mr. Chairman. I serve on the Board of

1 Directors of the State Bar of California and we have
2 a \$23 million dollar budget, which I guess would
3 compare to this part of our budget here and I know
4 every person they want to add to that budget. I know
5 every individual the State Bar of California intends
6 to hire. When they come to the Board they tell us
7 exactly what they're asking for.

8 Now, for you to tell me this \$12 million, two is
9 some number somebody picked out of the sky and you
10 have no idea how many people are involved...

11 MR. COSTER: That's not what I
12 said.

13 MR. SMEGAL: ...whether you're
14 adding people, whether it's to fund the 14 you say
15 you're supposed to have or some 10 you've now
16 mentioned or the seven that are there? I mean, I
17 don't understand that.

18 MR. COSTER: No, that's not
19 what I said.

20 MRS. MILLER: Mr. Chairman,
21 could we continue on with the agenda and discuss...

22 MR. SMEGAL: Well, this is the
23 agenda. We're trying to decide what to do with this

1 money and whether we should put \$385,000...I'm
2 sorry...\$300,000...\$385,000 in to this item where
3 we've got \$12 million, two. That's the question.

4 MR. COSTER: In a sentence,
5 Mr. Smegal, I think...

6 CHAIRMAN DURANT: And keep it
7 to a sentence.

8 MR. COSTER: My understanding
9 from President Bayly, the \$385,000 in management and
10 administration is directed towards more efficient and
11 expeditious...efficient and effective use of existing
12 staffing levels, rather than the mere addition of 8,
13 10 or 12 people.

14 That is why in the short term we have not
15 outlined, you know, positions that we want to add.
16 This is money for review, analysis, implementation of
17 a better system. Not merely the hiring of more
18 people.

19 I think that's extremely well advised and hope
20 you support him in that effort.

21 MR. SMEGAL: So this is a
22 study?

23 CHAIRMAN DURANT: Mike, if you

1 would meet with Tom, you know, at his convenience,
2 either during this meeting or later on to address the
3 particular concerns that he's got.

4 MR. COSTER: As that
5 information becomes available, I'd be most happy to.

6 CHAIRMAN DURANT: Please do,
7 sir.

8 MR. SMEGAL: Mr. Durant, I
9 would like to point out, these are not just my
10 issues. Mr. Wallace has raised the same question.
11 We've been through it now. We're trying to find out
12 why you can't do this with your existing staff. You
13 have acknowledged that you're understaffed. And the
14 question is, when you get to full staff, don't you
15 have the resources right there to do this? Why do
16 you need more money to do something you're already
17 budgeted to do if you've got the people?

18 I'm not criticizing you. I'm suggesting you
19 can't do it unless you have the people, Mike.

20 CHAIRMAN DURANT: Mrs.
21 Bernstein?

22 MRS. BERNSTEIN: I guess maybe
23 this is a simplistic view of it which you may not

1 agree with Tom, but if you've got a software program
2 that doesn't encompass the kind of information that,
3 one, the Board wants, and two, Congress wants and you
4 have to keep making revisions and doing the things
5 manually that you may be able to do if you get an
6 integrated...an updated software program, it would
7 promote efficiencies in the long run.

8 That, as I understand it is what we're talking
9 about and the software program is not the total part
10 of this, but it's the idea of looking at the
11 information system that deals with accounting and
12 auditing that we need to be able to respond to
13 Congress, to our program and to ourselves and we
14 simply don't have the machinery to do it right now.

15 CHAIRMAN DURANT: All right, I
16 think there has been sufficient debate. All those in
17 favor of Mr. Mendez's motion, signify by saying aye?

18 (Chorus of Ayes.)

19 CHAIRMAN DURANT: Opposed?

20 MR. SMEGAL: No.

21 MR. EAGLIN: No.

22 CHAIRMAN DURANT: Motion
23 carries. Next item on the agenda is the

1 consideration of amendments to the FY 1988 budget
2 request beginning with Law School Civil Clinical
3 Project.

4 MR. MENDEZ: Mr. Chairman, at
5 this time with regard to the Law School Clinical
6 Project, I move that we move the \$1 million dollars
7 from where it's presently located under Program
8 Development to a separate line item under Law School
9 Clinics and, as grounds for that motion...if I have a
10 second, I'll...

11 CHAIRMAN DURANT: Can we get a
12 second on it?

13 MRS. MILLER: Second it.

14 MR. MENDEZ: As grounds for
15 that motion, Mr. Chairman, I would advise you that
16 when I set this...the budget previously and when we
17 set the budget up, we had just received the final
18 reports and I've had an opportunity to review all of
19 the reports and am now convinced that that should be
20 a line item and that we can go to Congress and tell
21 them that that is the...the law school clinics have
22 been an unqualified success with regard to the four
23 aspects that have been set forth previously on

1 numerous occasions.

2 And that is the reason why I'm doing that. That
3 we ought to indicate to the field and to the public
4 that we think law schools are an excellent way to
5 deliver legal services to the poor. As well as
6 educate teacher/lawyers.

7 CHAIRMAN DURANT: Okay. And
8 we have a brief report.

9 MR. MOSES: Yes. My name is
10 Charles Moses for the record. At the last meeting of
11 the Corporation's Committee for provision of Legal
12 Services, we presented a report based on the study
13 that we've been conducting for the past two years of
14 14 various law schools across the country.

15 At that time, the report made three
16 recommendations that I will reiterate for the Board.
17 The first recommendation was continuation of the
18 program of direct grant assistance with minor
19 modifications based essentially...those modifications
20 based essentially on things that we've learned
21 through the first 22 months of operation of the
22 report.

23 The second recommendation was an examination by

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1 the Corporation, not necessarily to do this, but an
2 examination as to whether or not the Corporation
3 should amend it's PAI regulation to allow local
4 programs control so that the local program, if they
5 wanted to, could count indirect assistance to law
6 school clinics as a portion of their PAI.

7 And the third recommendation was the
8 continuation of the study of clinical education with
9 specific emphasis on finalization of a longitudinal
10 study of certain attitudes over a three to five year
11 period.

12 At that time the report was made public for
13 comment and since the January meeting, we have
14 distributed over 100 copies of the report for my
15 office alone. We have requested that comments be
16 made to my office and as of the time of the
17 submission of the Board Book, one comment had been
18 made, which was included in your Board Book at Page
19 33.

20 That comment was from William Pinkas. Mr.
21 Pinkas was the first recipient of the ABA Robert
22 Tutak award for contributions to clinical education.
23 He also was a former member of the ABA Counsel on

1 Legal Education and had admissions to the Bar for
2 seven years and was a member for seven years on the
3 ABA Joint Committee on Continuing Professional
4 Education.

5 His comment could generally be summarized in
6 that first, he thought it was essential for both
7 participating students as well as non-participating
8 students and faculty to become aware on a continuing
9 basis of the needs that exist in the justice system
10 for the poor.

11 Second, he thought that law school was the
12 easiest place to educate these future lawyers to
13 these needs and clinical education was a way to do it
14 and third, he felt that it was fortunate that Legal
15 Services goals fit so well together with the needed
16 participation of young people through clinical
17 education, which could not help but benefit both
18 systems in the administration of justice.

19 Since the time of the submission of the Board
20 Book, we have received two additional comments, which
21 I will summarize for the Board.

22 The first was from Paula Galwith who is a
23 Professor of Law at New York University. Basically,

1 Mrs. Galwith commented that she had preliminarily
2 examined the LSC study, but had not had time to
3 examine it in depth and she, therefore, requested
4 that the Board postpone discussion from its March
5 meeting. Further, she personally did not feel that
6 law school clinics should be analyzed at this time.

7 Since that time we have also received a second
8 comment from a clinic director at Vermont Law School.
9 That comment, in addition to making one or two minor
10 technical errata modifications to the study,
11 basically wanted to make it known that the litigated
12 case closure rate actually demonstrated not that
13 there was a pedological sense of forcing cases into
14 litigation when that was not in the client's best
15 interest.

16 In fact, what had been the experience at her
17 school and what she assumed was the experience
18 throughout clinical education, was that there was a
19 selection of cases that would automatically, in
20 servicing the client's best interests, lead to
21 litigated case closure rate.

22 Those have been the only comments that we've
23 received to date in my office and that was what I was

1 going to report back to the Board.

2 MR. VALOIS: Thank you, Chris.

3 Did you have anything to add to...

4 MR. EAGLIN: Excuse me, Mr.

5 Valois.

6 MR. VALOIS: Yes.

7 MR. EAGLIN: Should you also

8 note the letter...at least I received a copy of the

9 letter to you from Mr. Milkus of Pennsylvania.

10 MR. VALOIS: Be glad to put

11 that in the record, if you would like.

12 MR. EAGLIN: Containing...

13 well, he's just trying to outline the nature of the

14 comments that have come in in this respect. You

15 might want to point that one out, concerning the...

16 MRS. BERNSTEIN: Did you get a

17 copy of that?

18 MR. MOSES: No, I did not.

19 MR. EAGLIN: I guess we all

20 did. I received a copy. It was addressed to Mr.

21 Valois, though.

22 MR. VALOIS: I do remember

23 receiving a letter from Mr. Milkus. Paul, was there

1 something you wanted to say about the letter?

2 MR. EAGLIN: No. I just
3 wanted to point that out.

4 MR. VALOIS: Chris, did you
5 have anything you wanted to say?

6 MR. ROZEK: No, sir.

7 MR. VALOIS: If there are no
8 questions or if there are questions from members of
9 the Board, we'll entertain those now. Otherwise, I
10 will recognize Mr. Jack Curtain of the Boston Bar,
11 who has asked to speak on the subject.

12 Mr. Curtain?

13 MR. MENDEZ: We'll clear a
14 large area for you.

15 MR. VALOIS: By way of
16 introduction, for those of you who do not know Mr.
17 Curtain, he is the Chairman of SCLAID, the Standing
18 Committee on Legal Aid and Indigent Defendants and I
19 have just received a copy, this moment, of a report
20 dated January 19th, which I presume relates to Mr.
21 Curtain's remarks.

22 MR. CURTAIN: Thank you, Mr.
23 Chairman and I'd like to thank the Board for inviting

1 me to speak.

2 A number of the members of the Board have come
3 to meetings of the Standing Committee and we have
4 found the discussions very helpful to us and I want
5 to thank them for their contributions and invite any
6 member of the Board who has not yet come and those
7 who have come in the past to join us at our meetings.
8 The staff knows what our meeting dates are and we
9 would welcome you. I thought it was about time for
10 me to return the favor, so I'm here.

11 Let me explain a little bit the timing of that
12 report. I'm sorry that it is late, but the problem
13 was we had hoped to consider the report of your
14 consultants at the full SCLAID meeting which was at
15 the New Orleans meeting.

16 The report didn't come out until the 29th of
17 January and it was impossible for our people to
18 evaluate it. So we worked out a procedure with
19 Professor Uddo and with John Bayly whereby we had a
20 series of questions which we discussed at the meeting
21 and put them in writing and I must thank the staff
22 because they provided the answers to those questions
23 and where there are references in the report, they

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1 So it is very difficult to factor out any
2 increase that has occurred because of your program
3 and, therefore, to evaluate it properly.

4 Now, let me walk you through a little bit of our
5 concerns more specifically. The problem that we see
6 is perhaps illustrated most effectively by the case
7 closure number. That's an important starting point
8 for the evaluation of a clinical program.

9 Law school clinics are stated to have closed
10 7,116 cases, many of which were closed by time
11 consuming, complex litigation. Now, that number,
12 7,116 is a number which is attributable to all cases
13 closed by any program which has within it an element
14 funded by the LSC grants.

15 If you'll look at Page 5 of your report, one
16 illustration of how this works is McGeorge. Now,
17 McGeorge created a unit within its clinical program
18 devoted solely to housing law. All of the McGeorge
19 students who are in the clinical program rotated
20 through that unit.

21 So they had a total of 624 clinical students and
22 only 107 of those students were attributed directly
23 to the LSC funding. The total number of cases that

1 were closed by the unit was 2,656 and of that entire
2 number, only 17 percent was attributed solely to the
3 LSC funding.

4 Now, obviously if only the funded percentage of
5 students had been used, the number of cases closed
6 would have been reduced by a very substantial number,
7 from 2,656 to 455.5. Now an argument has been made
8 that you should leverage that because but for the
9 funding there wouldn't be a unit of that nature.

10 Well, the funding by the LSC was \$65,000.
11 McGeorge contributed \$71,000. Even if you have a
12 proportional amount allocated to that, that is
13 related to \$65,000, the increase in the percentage is
14 still only 47.7 percent or 1,266 cases.

15 That totally skews the case closure number and
16 that McGeorge number represents almost 40 percent of
17 the total cases closed by all of the 14 law schools
18 participating in the program.

19 MR. VALOIS: So, let me ask
20 you just a preliminary question.

21 MR. CURTAIN: Surely.

22 MR. VALOIS: Why did you
23 choose McGeorge?

1 MR. CURTAIN: Because when we
2 asked the question, that was the illustration given
3 us. We asked the Corporation and they used that as a
4 specific illustration in the exhibits and so that's
5 the one we picked in particular.

6 But it also is important because it is such a
7 major factor in the work done by the group, by the
8 LSC clinics.

9 The second problem is the cost effectiveness
10 problem. We suggest to you that the report
11 overstates cost effectiveness because the law school
12 contributions to the clinic in this category are
13 ignored. Now you'll note not only are they
14 considered in the case closure aspect of the
15 evaluation, but even if there is no law school
16 contribution that could be considered
17 proportionately, everything else that is attributable
18 to the program is considered.

19 Here, however, the same approach is not used.
20 Law school contributions to the clinics are ignored
21 and in our view, using the number of cases closed,
22 really gives a very high measure of results because
23 cases closed by client withdrawal, that is, the

1 client just withdraws from the case are counted on
2 the same basis as if you were to count cases closed
3 by lengthy negotiation or by lengthy litigation.

4 MR. MENDEZ: Mr. Curtain?

5 MR. CURTAIN: Yes?

6 MR. MENDEZ: How would you
7 suggest to determine cost effectiveness?

8 MR. CURTAIN: Well, this is a
9 very hard question and we recognize that that's a
10 difficult question. But I think if you are to go
11 forward you should try to get some baseline data
12 first of all, and then compare the baseline data that
13 you have with what the instrumental efforts are.
14 Then I suggest to you that if you're going to use
15 these numbers, you focus on what the LSC grant money
16 actually did so that when you go back...

17 MR. MENDEZ: I understand what
18 you're saying. I was just interested to know
19 whether...would you agree, though, that if we did
20 these various things to correct the alleged errors,
21 that the cost effectiveness could be determined by
22 case closures?

23 MR. CURTAIN: Well, we would

1 hope that you would do that and some other things.
2 If you look at our conclusion, Mr. Mendez, we don't
3 oppose further research at all. I, as a personal
4 matter, I should say that I have a son who is right
5 now engaged in a law school clinic program and as a
6 matter of his own personal growth, I think that's
7 important. But that isn't the issue here.

8 The issue here is whether you want to make that
9 permanent on the basis of the report that you have
10 before you.

11 MR. VALOIS: Will there always
12 be a need for personal growth among law students in
13 this area?

14 MR. CURTAIN: Oh, I'm sure
15 there will be. I'm sure there will be. But what
16 should you use of LSC funds to do it in this area and
17 the question is whether your reports substantiates
18 those conclusions.

19 MR. VALOIS: What I hear you
20 saying, Mr. Curtain, to use your words, premature,
21 you're not in disagreement with the program or its
22 use and so forth. You're simply...you're arguing
23 about whether or not its time to make a permanent

1 fixture in a budget line, which can be removed next
2 year for that matter, but...

3 MR. CURTAIN: What I'm saying
4 to you is that you set out some criteria. You want
5 to determine whether it would make sense to use this
6 program.

7 There are law school clinical programs that are
8 funded by a whole variety of sources, including by
9 this Board, other than this experimental program.

10 I assume that what you're trying to do is see,
11 if in fact, this program meets your criteria and
12 whether it does what it is you want it to do, which
13 includes your sensitization for future contributors
14 of pro bono services in other matters.

15 It's very clear that you're not going to be able to
16 tell about the sensitization issue until you have a
17 very much more extended study, a longitudinal study
18 as it's called here.

19 What I'm saying to you is that the report that
20 is the basis of the support for making this
21 permanent, simply doesn't support that and it affects
22 the credibility from what you're trying to do. You
23 should go back and have whatever criteria you choose

1 to use, but which meets some of these problems.

2 There are other problems here. For example,
3 there is, throughout the report, several references
4 to the fact that law school clinics handle no
5 complicated cases. And it's not clear to me the
6 entire purpose of that assertion, but there is a
7 conclusion that the same quality of services are
8 available here as in any other program funded by a
9 Legal Services Corporation fund.

10 Now, if that is a basis upon what you want to
11 fund these programs on a permanent basis, that
12 assertion should be examined. The basis of the
13 assertion is that there are 31 hours for litigated
14 cases suspended on the average to close these cases.

15 I have some knowledge of complicated litigation.
16 That's what I do and I have been a teacher for over
17 20 years in trial practice programs and I supervise
18 60 trial lawyers and I can tell you that 31 hours
19 does not a complex case make.

20 Maybe by comparison with non-litigated matters
21 and the numbers are skewed a little bit because if
22 you take Virginia, for example...

23 MR. VALOIS: But on an average

1 of 31 hours is...may or may not be.

2 MR. CURTAIN: Well, that's one
3 of the points because if you take the Virginia
4 effort, you'll notice that they had a litigated
5 adoption that required 135 hours, but the average
6 hours of the other categories of cases varied between
7 eight and 19 hours.

8 Now, the individual student who worked on that
9 case, that adoption case, got a taste of some complex
10 litigation, but there are differences from that that
11 all of the students who are involved in all of the
12 clinical programs are capable of handling complex
13 cases and has used this. But it simply isn't
14 warranted by that kind of information.

15 As someone who is supervising a lot of young
16 lawyers, who are presumably supposed to be in the top
17 level of their classes, I can tell you that young
18 lawyers take longer to handle even routine matters
19 than more experienced lawyers. And law students have
20 the same problem.

21 So, it may very well be that students take
22 simply a longer time and so that conclusion simply
23 doesn't flow. If you're going forward, Mr. Mendez,

1 with your further evaluation, we received some
2 comments from the Association of American Law Schools
3 and it's a general concern that they have.

4 I am part of task force with another hat on in
5 the litigation section. I'm studying trial advocacy.

6 MR. MENDEZ: Could I ask you
7 just a question?

8 MR. CURTAIN: Sure.

9 MR. MENDEZ: I'm very
10 conscious of what you're saying. How could we go...I
11 understand essentially what you're telling us today
12 is, don't make this a line item.

13 MR. CURTAIN: Yes.

14 MR. MENDEZ: If we do not make
15 it a line item today, I assume that you're willing to
16 continue working to...in the future if the numbers,
17 the final numbers come up and we do another period of
18 time of study...that you will come in and if the
19 numbers support it that you will support the line
20 item?

21 MR. CURTAIN: Well, what I...
22 I'll do more than that, Mr. Mendez. What I suggest
23 to you is that Joanne Garvey, who has been chairing

1 our subcommittee on this would be happy to work with
2 your people to continue the study.

3 MR. MENDEZ: Yes, but I want
4 to get some other commitment, too. If the numbers
5 are supportive, will you, in fact, support a regular
6 line item...

7 MR. CURTAIN: Well, I don't
8 want to make a premature judgment on that until I see
9 whatever the report is. I will make a judgment on
10 that when the data is available. But I tell you now
11 that we have not decided in any way that the program
12 should not be permanently funded. We have only done
13 what we have done.

14 MR. VALOIS: Isn't that a
15 judgment that we have to entertain? Whether or not
16 you make out a convincing case? If you don't make
17 out a convincing case or SCLAID does about the
18 criticism of the report or whether it is premature or
19 not, isn't the bigger question whether or not LSC
20 ought to be making a permanent commitment to continue
21 to develop clinical programs? Isn't that really the
22 question we ought to be addressing with respect to
23 this...

1 MR. CURTAIN: I would
2 certainly think that that's the question you should
3 address and I would hope that you would address it by
4 doing a reasoned approach to the question and doing
5 whatever studies are necessary in order to evaluate
6 whether it makes sense. You've got all sorts of
7 priorities. That's one of the other problems here.

8 The final report uses the typical method of
9 evaluating programs in Legal Services which is
10 anecdotal in nature. They rely heavily on decisions
11 of judges, peers at the bar, et cetera.

12 Obviously, that only affects litigated cases and
13 it's not clear at all what kind of evaluation is
14 being done on the quality of work that's out there in
15 all these legal programs, apart from litigating
16 cases, and that negotiated matter is the majority of
17 all matters handled and it is not at all clear
18 whether the quality control measures are appropriate
19 for the law students, as distinguished from programs
20 of prior.

21 So, you have to get into your question of
22 whether your whole method of evaluating the quality
23 of these matters is the right method.

1 More than that, you've got a priority question.
2 One of your criteria was, are we augmenting services
3 to the poor and that's stressed, but there's no
4 indication whatsoever in this report of whether
5 there's any coordination between the Legal Services
6 Clinics that you're funding to determine whether or
7 not they are augmenting and the local boards.

8 You know, you stress, the ABA stresses local
9 control, local problems dealing with local issues.
10 There's no...any indication at all as to how these
11 clinical programs fit into local priorities and
12 obviously the units, themselves, are set up by the
13 law schools with educational concerns in mind and
14 with a wide variety of other concerns.

15 So, my whole point to you is that yes, your
16 question is the right question, but you need some
17 data before you can make that judgment and I don't
18 think it's something you can vote on up and down
19 priori, without having that particular data.

20 One suggestion I would make, as I started to
21 make it on the Association of the American Law
22 School's input. We've run into this in the teaching
23 of trial advocacy and they have requested, and it

1 made sense to us, we had a bunch of trial lawyers who
2 were trying to decide what's the best way to teach
3 trial advocacy. And somebody said to us, well, why
4 don't you have a legal clinician on your committee.
5 You don't have a legal clinician on your group that's
6 evaluating them.

7 It made sense to us. We went out and appointed
8 a legal clinician through our committee, so we could
9 evaluate what makes sense in terms of teaching trial
10 advocacy.

11 If there's an educational component to this, it
12 makes sense to you to have someone who is in the
13 business and not someone...as an educational
14 clinician as part of this group and it would help
15 your credibility issue.

16 I think that it's unfortunate that the report
17 with the somewhat far reaching and unsupported
18 assertion raises questions about what you're trying
19 to do. So, if you want to go forward, my
20 constructive suggestion would be to add a clinician.

21 MRS. BERNSTEIN: I just have
22 two quick comments.

23 One, the concept of legal clinics wasn't started

1 by this Board. Tom Ehrlich was very interested in it
2 as early as 1976 and pushed for it very hard. Summer
3 intern programs was a line item on the LSC budget for
4 many years with no sort of criteria whatsoever as to
5 what those two would actually be doing. We could
6 find nothing in the record that substantiated the
7 continued funding of those programs. There were no
8 evaluations, whether they didn't keep records of how
9 much time it took to do cases, they didn't take
10 records of how many cases were done. The money was
11 just sent out.

12 I think we have taken a very studied approach to
13 this. There are going to be controversies regarding
14 whether or not we have answered every single question
15 before we continue with the longitudinal aspect of
16 the study.

17 I am firmly in favor of putting this forward
18 because I think that the non-concrete aspects of
19 this...the parts that cannot be measured completely,
20 such as attitudes of students and exposure to the
21 problems of poor people, increasing the access for
22 clients to a greater number of lawyers, is more
23 important in some ways than the specific statistics

1 that anyone is able to develop.

2 I'm not completely convinced by the statistics
3 either, but I am convinced by what is the
4 longstanding feeling by people on both sides of the
5 aisle of...lots of people in Congress feel very
6 strongly about this, from the standpoint that this is
7 widening the base, it's broadening the base for the
8 delivery of legal services for the future.

9 I just wanted to ask you a question in terms of
10 this cost effectiveness.

11 Do you agree that it is appropriate for us to
12 want to know how many hours it takes for the
13 attorneys to get those...to finish a case?

14 MR. CURTAIN: Well, if you're
15 going to try and...I'm not saying this generally
16 across the board...you're trying to get a handle on
17 something, I think, different. You're the...the
18 number of hours was used because I think there was a
19 recognition that it was very difficult to get a
20 handle on cost effectiveness and the questions that
21 were asked with respect to number of hours, for
22 example, came out with billable hour answers.

23 They include some, as anyone who has ever done

1 any of this stuff knows, some difficult evaluations,
2 particularly by people or law students who don't know
3 sometimes...who have not had that kind of experience.

4 I think that getting together the number of
5 hours only goes to the issue of handling complex
6 litigation, which apparently is being used to make a
7 judgment as to whether or not these programs can
8 provide the same quality of services that are
9 available everywhere.

10 I don't think it goes to the question of cost
11 effectiveness, but I have to say to you that I think
12 finding the cost effectiveness of any program is
13 very difficult, but using the numbers that you had,
14 you could have focused on the LSC funding and made
15 comparisons.

16 MRS. BERNSTEIN: Listen, I
17 don't...you know, of course I just got your report
18 today and I don't know why...maybe I missed it in
19 your comments as to why it has a January date and we
20 just got it, but I am...

21 MR. CURTAIN: No, it doesn't
22 have a January date, LeaAnne. It's simply your
23 report has a January date. On the Law School

1 Clinical Research Project Fund Report of January 29.

2 MRS. BERNSTEIN: I'm sorry.

3 I'm sorry.

4 MR. VALOIS: I read it the
5 same way she did. That's two different sentences.

6 MR. CURTAIN: We didn't get it
7 until, obviously, in early February.

8 MRS. BERNSTEIN: Okay and I
9 have not had a chance to look at, you know, these
10 things in comparison with the report, obviously,
11 either. I am as concerned about comparing apples and
12 apples, just as you are. And I am also, though,
13 concerned because I am hearing criticism about why we
14 are not measuring cost effectiveness and you are
15 basically telling me that you don't think ours is a
16 good way to do it and you don't think case closures
17 are a good way to do it.

18 I would appreciate, not necessarily at this
19 meeting, you don't have to do it right now, but I
20 would appreciate your giving this Board in writing or
21 from the SCLAID Committee, the way in which you think
22 cost effectiveness can be measured for the Law School
23 Clinical Programs.

1 I would like to have a concrete proposal of how
2 you think it should be measured and then as we go
3 along in this experimentation, whether it's
4 permanetized or not, we would have access to that
5 constructive criticism, rather than just saying,
6 well, the way you did it wasn't complete.

7 MR. CURTAIN: Well, we have
8 suggested to you and I've suggested in the answer to
9 some of the questions, that if you focus on the LSC
10 funding and the case closures, that you can correct
11 your own data. The numbers are not going to be very
12 good, but that doesn't mean that you can't do it.
13 You can do it on your own data. You just have to go
14 back and change the numbers.

15 MRS. BERNSTEIN: But you think
16 that timekeeping and...

17 MR. CURTAIN: You don't need
18 it on timekeeping. You can do it on the basis of
19 case closures, but you have to focus on what the
20 funds are that you are expending in order to
21 determine how cost effective it is.

22 MRS. BERNSTEIN: Well, how are
23 you measuring anything if you just see whether a case

1 is closed. You mentioned, yourself that a case can
2 be closed with a client withdrawing and a case can be
3 closed with a hundred hours of...

4 MR. CURTAIN: Then you have to
5 take out the number of cases that are closed by a
6 client withdrawing in order to properly evaluate the
7 numbers.

8 MRS. BERNSTEIN: What other
9 cases do you take out? Do you take out the cases
10 where it's closed with advice that took ten minutes?
11 Do you take those out, too?

12 MR. CURTAIN: You may have to
13 have different categories of case...

14 MRS. BERNSTEIN: But without
15 measuring on an hourly basis, how do you actually get
16 some sort of cost effectiveness?

17 MR. CURTAIN: On that
18 question, I think your suggestion is perfectly
19 appropriate and I would be happy to have Joanne
20 discuss it in detail, because obviously, this is not
21 something you do off the top of your head. If you
22 want to hire a consultant who spent a whole 18
23 months...

1 MRS. BERNSTEIN: Listen, I
2 don't want to disagree with you on the apples and
3 apples situation and, as I say, I don't expect
4 Charlie, because you just got the report, too, I
5 don't expect him to reply today to these things, but
6 I will tell you that I am committed at this point to
7 going forward for many of the reasons that Tom
8 Ehrlick put forward, although I disagree with the man
9 on a lot of issues.

10 I feel that the whole concept goes beyond the
11 statistics.

12 MRS. VALOIS: Mrs. Bernstein,
13 I would like to recognize...Mrs. Swafford would like
14 to ask a question.

15 MRS. SWAFFORD: Yes, just a
16 minute. It was something that you said, Mr. Curtain,
17 with regard to, you know, the concern about local
18 programs and their needs and because of that I wanted
19 to direct a question to Mr. Moses and you may not
20 really have this, but it has to do with the amount of
21 interaction that the legal clinics have with local
22 programs. Do you have any data on that?

23 MR. MOSES: Well, it varied

1 from program to program. I would say about 80
2 percent, 75 to 80 percent were frequently in and out
3 of the offices. They, in almost all cases, had
4 referrals. Cross referrals from the local program to
5 the clinic.

6 In several instances there had already been some
7 type of relationship, some small amount of grant
8 assistance from the local program to the clinic,
9 prior to our grant program. Frequently they would
10 operate out of the same offices.

11 For example, the clinic in Indiana operated many
12 of its students out of the local Indiana Legal Aid
13 Legal Services office.

14 The clinic at St. Mary's operated, the majority
15 of the time, out of the local Bayhar County office
16 and then had an on site, on school site office, also.

17 It varied from site to site, but there was, for
18 the most part, a large degree of interaction.

19 MR. MENDEZ:: Mr. Moses...

20 MRS. SWAFFORD: I thought Mr.
21 Curtain had some response to that.

22 MR. CURTAIN: I was just
23 simply going to...obviously if you have a

1 pre-existing view that makes no difference whether or
2 not the program is an effective way of delivering
3 legal services in comparison with other priorities
4 that may be in the local area and in comparison with
5 other ways of delivering those services, then you can
6 vote that up and down now.

7 It seems to me that the reason for your criteria
8 was to find that out and that's why I thought...I
9 thought a careful effort was being made...

10 MR. VALOIS: I don't...I think
11 you're...

12 MRS. BERNSTEIN: I think
13 you're misstating what I said.

14 MR. VALOIS: I think you
15 misstate the issue if you say that we should only
16 continue to support...we should continue to support
17 law school clinical programs only if it can be shown
18 that they effectively and exactly compete with other
19 forms of delivery.

20 I think there's more to it...well now, that's...

21 MR. CURTAIN: I don't say
22 that. All I say is that those...you've got a limited
23 group of people out there and you're trying to

1 deliver services to them in an effective way. You
2 should at least take into consideration what is the
3 most effective way of doing that and, I thought your
4 criteria was pretty good.

5 You needed a clearly described and effective
6 management plan. Qualifications and number of staff
7 necessary to guarantee effective student supervision.
8 Remember, you're dealing with students and I teach
9 them, so I know a little bit about it.

10 The extent to which a cooperative effort was
11 shown between an area's legal services provider and
12 the law school clinic, provision of high quality
13 training and education in those areas of law most
14 frequently affected, affecting the Legal Services
15 eligible legal client population. Extent of
16 increased attorneys and student supervision.

17 There's an objective and quantifiable method of
18 evaluating the proposed project which also responded
19 to the identified needs. The evidence of the law
20 school's efforts at a minimum to continue current
21 funding level beyond the grant area. By the way,
22 that is not evaluated in this, as far as I can tell.
23 The reasonableness of budget.

1 All those were done because you thought it
2 through and I suggest to you that you ought to follow
3 those criteria and see whether your report answers
4 the questions.

5 MR. MENDEZ: Mr. Moses, how
6 much time would you need to prepare a response to the
7 ABA's...a written response to the ABA's statements
8 and correct any errors that you perceive as a result
9 of the issues that they've raised here?

10 MR. MOSES: Not having read it
11 yet, I have taken...

12 MR. MENDEZ: If we would table
13 this until next meeting could you have a written
14 response to us by that meeting?

15 MR. MOSES: Yes, certainly.

16 MR. WALLACE: Before that
17 meeting. I mean, that's...

18 MR. SMEGAL: When is that
19 meeting?

20 MR. VALOIS: I will call and
21 insist upon...

22 CHAIRMAN DURANT: Depends upon
23 when you're not available.

1 MR. SMEGAL: That's right,
2 Clark.

3 MR. VALOIS: I will call and
4 insist upon this matter being voted on at our next
5 meeting. I think that 11 years funding buyouts, at
6 least based on what LeaAnne says, ought to be some
7 evidence of it's enduring quality, I hope and the
8 measurable thing I invite you to...Mr. Rathbun will
9 provide you with a copy of the letter from Mr. Pinkus
10 who talks and one thing...used the word sensitizing,
11 which I have always thought was of substantial value
12 added by our support of this program.

13 MR. CURTAIN: Well, your
14 report indicates that there's no way of measuring
15 that without having a longitudinal study. And you
16 have to remember there are...these law school...my
17 son is in a law school clinic now that isn't funded
18 by this grant and so there are other ways of doing
19 it. The question is, do you want to do it this way.

20 But I thank you. You have been most kind in
21 giving me so much time. I apologize for the lateness
22 of our report, but I must say that it was occasioned
23 because we didn't get the report...the original

1 report until late and we went back and forth with the
2 staff with questions to be sure that we weren't
3 simply making a mistake in our assumptions.

4 So, I thank you for your further courtesy.

5 MR. VALOIS: We thank you very
6 much, Mr. Curtain. We appreciate your comments and
7 your good analysis.

8 MR. MENDEZ: In your teaching,
9 is it your experience as they go through these
10 clinics, that it does sensitize them? Just
11 anecdotal.

12 MR. CURTAIN: I think that
13 people who have been involved in giving legal
14 services to the poor in a clinic have, because part
15 of their interest in that, retain that same interest
16 and try to do what they can later on.

17 In pure anecdotal terms, I agree with that, but
18 it's very hard to quantify that. The people I would
19 run into are naturally the kind of people who are
20 doing that kind of work. In a sense I'm going in a
21 circular argument because those are the very people I
22 run into. The people who are doing that work.

23 So, what I don't know are the people who do it

1 and then don't do it ever again. And that's what you
2 want to study. If you're involved in the business
3 yourself, the people you run into are people who are
4 involved in the business. You can't...you really
5 can't use that as a logical basis, but I'm certainly
6 not advocating the abolishment of law school clinics.
7 That's for sure.

8 CHAIRMAN DURANT: Neither are
9 we. Are you asking for their replacement as opposed
10 to the abolition? Never mind.

11 MR. CURTAIN: I think you
12 handle those sorts of things very well.

13 CHAIRMAN DURANT: Thanks,
14 Jack, very much.

15 MR. CURTAIN: There was one
16 other thing, as long as I'm here and if I may have
17 your indulgence for just one second.

18 Alice Richmond, who is the President of the
19 Massachusetts Bar Association wanted to be here to
20 speak in support of the continuation of the funding
21 levels for the national and state support centers and
22 she could not be here and I have been given a letter
23 which I would like to file and I hope that you will

1 have an opportunity to read and I would also say that
2 I know that Professor Uddo couldn't be here for very
3 good reasons and we sent him, on behalf of SCLAID, a
4 letter, because he had asked us to do that and I
5 would hope that...I don't see it in any of the
6 materials...I would hope that you have a chance to
7 look at that, also.

8 Our basic concern was that the program seemed to
9 be working and it's more than, if it ain't broke,
10 don't fix it. There should be some sort of principal
11 reason why the funding should go forward if any
12 effort is going to be made in that area and there
13 seems to be none. No reasons were being given,
14 except the theory of privatization and we felt that
15 if the program is working as well, and certainly its
16 working in areas that we are aware of, that there
17 should be something basis, something more, before you
18 create the chaos that will certainly occur if you
19 defund the state and national support centers.

20 I thank you very much for your attendance to my
21 remarks. It's been an interesting meeting, so far.

22 CHAIRMAN DURANT: Jack, nice
23 to see you.

1 MR. TAYLOR: Mr. Chairman?

2 CHAIRMAN DURANT: Mr. Taylor?

3 MR. TAYLOR: I would like for
4 Ken Schuller from Dallas and myself to be recognized
5 to make brief comments on this matter.

6 CHAIRMAN DURANT: On the law
7 school clinics?

8 MR. TAYLOR: Yes, sir.

9 CHAIRMAN DURANT: Can you hold
10 on just a second? I think we're going to table it,
11 Dick.

12 MR. WALLACE: Well, if they've
13 come here, I think...

14 CHAIRMAN DURANT: Do you have
15 a particular point?

16 MR. TAYLOR: We came for this
17 particular point and I did talk to Mr. Baker and Dan.

18 CHAIRMAN DURANT: All right.
19 Why don't you come on up and sit down.

20 MR. TAYLOR: With us is Allan
21 Rodgers from the Massachusetts Law Institute.

22 CHAIRMAN DURANT: Okay, can we
23 keep it focused and limited? And if any written

1 material that you've got, we'll just simply make it a
2 part of the record, but we are very liberal about
3 that.

4 MR. SCHULLER: I did bring
5 copies of the presentation and I'd like to present
6 that.

7 Chairman Durant, thank you for making time for
8 us. My name is Kenneth Schuller. I'm the Director
9 of the LSC funded field program in Dallas, North
10 Central Texas Legal Services.

11 I want to start by saying I think law clinics
12 are a good idea. I took all the law clinics that the
13 University of Michigan offered when I was a student
14 and I advocated with the school to expand their
15 clinic.

16 My guest lecture was in the SMU Civil Clinic,
17 which is one of the experimental grantees, and note
18 faculty there.

19 MR. WALLACE: You get paid as
20 much as the football team?

21 MR. SCHULLER: Considerably
22 less.

23 I support the notion that law students should be

1 exposed to poverty law and toward that end, I am
2 Adjunct Professor at SMU Law School and I teach a
3 seminar in poverty law in which I expose as many
4 students to poverty law as the Civil Clinic.

5 I think the course and the clinic probably has
6 some marginal effect on students. It had some
7 marginal effect on me when I was a student, but I do
8 think that the people who go into the clinics, like
9 myself, are predisposed.

10 I think the SMU Civil Clinic provides a valuable
11 educational service to the students. It has
12 competent staff, most of whom have prior legal
13 services experience. The Civil Clinic Director was a
14 staff attorney at our program 12 years ago. The
15 Associate Director was a former Deputy Director of
16 our program and was my predecessor as Active Director
17 of the Legal Services Program.

18 It's my observation, which I have confirmed in
19 talking to the clinical faculty, that the primary
20 objective of their clinic is to provide an
21 educational experience for the students.

22 In an article, the Dean of the law school was
23 interviewed about the clinic and he said, our primary

1 mission is education. We train students in clinical
2 aspects as an outgrowth and it is only secondarily do
3 we provide the services.

4 Because the focus of this clinic is education
5 and not service, it seems to me that the primary
6 achievement of the clinic is education and not
7 service to clients.

8 SMU has had a clinical program since 1942, long
9 before the first federal funding of legal services.
10 The LSC grant funds some different activities, but
11 did not create the clinic.

12 Before the grant the clinic made a modest
13 contribution in the amount of free legal services
14 available and I suspect it will continue to make a
15 modest contribution long after LSC has moved onto
16 another project.

17 The LSC grant did not result in any additional
18 services being available at the clinic. That's the
19 conclusion of the side report based on LSC data. I
20 gave a copy of...

21 CHAIRMAN DURANT: Ken...Ken?

22 MR. SCHULLER: Yes?

23 CHAIRMAN DURANT: Essentially,

1 you're telling me what's in your written remarks,
2 which the Board will read and will be a part of the
3 record. Is there something in addition to the
4 written remarks that you want to add?

5 MR. SCHULLER: I have a couple
6 of comments, aside, within the...

7 CHAIRMAN DURANT: Why don't
8 you share those with us?

9 MR. SCHULLER: I do want to
10 point out that I've gone over most of the points of
11 these remarks with the Director of the Clinic and
12 that he agrees with them. It's their position that
13 they have an obligation to run a clinical program and
14 will take funding where they can get it.

15 Since I prepared this, I found out that they
16 will be competing with the STRIOLTA funding in Texas,
17 the first cycle for which is coming up. And so, we
18 find that although the additional funding they're
19 getting is changing the activities in the clinic,
20 it's not significantly increasing the amount of
21 services available in Dallas and it is competing with
22 us for funding.

23 On the priority issue...

1 CHAIRMAN DURANT: Does he
2 agree with you on that?

3 MR. SCHULLER: He agrees with
4 the basic conclusions that there are no additional
5 services being provided based on the LSC funding.

6 CHAIRMAN DURANT: What's his
7 name?

8 MR. SCHULLER: His name is
9 Professor Ward Reed, Clinical Director.

10 I looked briefly at the tables to the final
11 clinical report, which I only received a few days ago
12 and, in addition to the comments for priorities that
13 are in my written remarks, I point out that of the
14 204 cases that the clinic handled, 101 or 49.5
15 percent are miscellaneous. They don't fit into any
16 defined category within the LSC CSR structure.

17 With respect to this issue of baseline data, if
18 you look at the original SMU grant application which
19 talks about their prior funding, you can derive a
20 figure of something like \$1,200 per case closed in
21 the Civil Clinic prior to the LSC funding.

22 And although the mix of the cases is a little
23 bit different, the number of the cases hasn't changed

1 and so what the LSC grant has accomplished is not
2 producing \$400 cases as the report concludes, but has
3 changed a bunch of \$1,200 cases into \$1,600 cases.

4 Of those case...of those 204 cases, 14 were what
5 LSC called litigated. Administrative agency
6 decision, court decision, negotiated settlement with
7 litigation.

8 The other 190 were non-litigated cases. So for
9 \$1,600 you're getting under 7 percent of your cases
10 that involve significant representation by LSC's
11 definition.

12 CHAIRMAN DURANT: Ken, would
13 you do me a favor?

14 MR. SCHULLER: Yes.

15 CHAIRMAN DURANT: I think your
16 points...I'm not disputing your points at all. I
17 would appreciate it if you would put them in a memo
18 to Charlie Moses and let him evaluate them and also
19 your memo should be shared, as well, with the Board.
20 Can you do that? The particular points that you're
21 driving at?

22 MR. SCHULLER: I would be
23 happy to do that.

1 MR. SMEGAL: Well, we asked
2 him for supplemental points. He's giving us
3 supplemental points.

4 CHAIRMAN DURANT: Mr. Valois?

5 MR. VALOIS: Are the writings
6 of Rhonda Baker and the article attached to what you
7 have submitted to us accurate?

8 MR. SCHULLER: As far as I
9 know they are.

10 MR. VALOIS: Is it accurate
11 that the Wilman Trust of the grandmother wanting to
12 slide a European education for her granddaughter
13 referred to on Page 3, that that's the same daughter
14 whose mother was in prison?

15 MR. SCHULLER: Mr. Valois, I
16 don't know. I don't know anything about the cases,
17 other than...

18 MR. VALOIS: That's in her
19 report.

20 MR. SCHULLER: In response,
21 also, to something that Mrs. Swafford asked earlier,
22 I would point out, one of the points that I make in
23 the comments is that the clinic contacted us for a

1 letter of support under initial application, which we
2 gave them.

3 The second contact we got from them was 18
4 months later asking for a letter of report on the new
5 referral. There has been no contact of any kind by
6 the clinic with the Legal Services provider
7 concerning how to coordinate with us.

8 I understand from the report that LSC did a site
9 visit. Nobody from LSC has ever contacted our
10 program concerning anything to do with the clinic.
11 So, the conclusion of the report that there is
12 cooperation in 80 percent of the cases, I assume is
13 based entirely on the statements of the clinical
14 staff and, at least in Dallas, does not reflect in
15 any way any inquiry with the staff program.

16 We have not been contacted by either the staff
17 program or LSC in Dallas in terms of the project.

18 CHAIRMAN DURANT: That's an
19 important point and there should be that kind
20 of...and include that in that memo.

21 MR. TAYLOR: Mr. Durant, I'm
22 sensitive to the time constraints and I've already
23 been indulged in that regard and I will be brief, but

1 I wanted to speak on this subject because I have a
2 personal interest in and commitment to law school
3 clinical education.

4 I participated i founding the Civil Legal
5 Assistance Clinic at the University of North Carolina
6 in Chapel Hill. I worked with Charlie Moses and the
7 people at LSC as a member of the Selection Committee
8 in 1984 that made this round of grants and it is my
9 conclusion that, and I'm heartened and I feel better
10 by what seems to be the sentiment of the Board today,
11 but it's my feeling that the report, the final report
12 of January 29, should not be used as a basis for
13 deciding to allocate continued or permanent funding
14 to the project and that's for three reasons.

15 The first is that I think the purpose or
16 objective of the project needs to be clarified. I
17 think that the study has problems with
18 particular...particularly in that I don't think the
19 study supports the specific recommendations made. And
20 the third point is that as you are well aware, this
21 is a resource allocation question in a period where
22 the resources are scarce and in a budget in which, as
23 I read it, \$5 million dollars is to be taken from

1 basic field programs.

2 The first point, very briefly is that...and I
3 don't disagree with Mr. Valois...that cost
4 effectiveness and delivery alone is not the only
5 justification for running a law school clinical
6 program.

7 In fact, when we began this program in 1984, the
8 stated objective was really not that. It was to
9 augment field delivery and to achieve some of the
10 tangential benefits which has been talked about.

11 As a participant in the beginning of this study,
12 I'm concerned that it is a perception among law
13 school clinicians and among legal services people
14 that the purpose of this effort is to, in fact,
15 deliver services as its principal purpose and,
16 therefore, something which might be in lieu of
17 private attorney involvement, which we find is an
18 effective delivery mechanism in our staff programs.

19 We should clarify the specific purpose prior to
20 making continued or permanent funding to it and there
21 well may be sufficient reason to do that.

22 The second point I wanted to make about
23 the...was that the...with regard to the purpose is

1 there sufficient...well, let me speak about the
2 study, itself.

3 I think Mr. Curtain has dealt with the problems
4 that I saw with regard to the data and the criteria
5 of cost effectiveness. Of course, if the purpose is
6 delivery, then cost effectiveness and quality of
7 services are critical things which you must study.

8 If we clarify the purpose and that's not the
9 primary goal, then there are other things that need
10 to be studied.

11 But there's another problem with the study which
12 you need to be aware of and that is its
13 recommendations. There are three.

14 The first one is that the law school clinical
15 project be continued as it, quote, as it currently
16 exists. And yet, the study...or the report...doesn't
17 describe the project as it currently exists.

18 There are clinics which were funded during this
19 study period which are not currently funded. There
20 are clinics which sought money, did not meet the
21 criteria of the Selection Committee, were not chosen
22 and are now being funded under the system.

23 So, I don't know the information, but one thing

1 this Board should ask is, if we've got 28 or 30
2 clinics that we've funded, are we only studying 14?
3 What's happening with other programs?

4 CHAIRMAN DURANT: Dick and
5 Allan, I'm going to ask that if you've got any
6 comment to do it in writing. As a result of Jack's
7 comments and some others, we're simply going to table
8 this particular item and I just simply have got to
9 move on under the agenda. Allan has been involved in
10 this a long time and I'll see...

11 MR. TAYLOR: May I just make
12 one comment?

13 CHAIRMAN DURANT: One last
14 one.

15 MR. TAYLOR: I'm concerned
16 about the suggestion that invites depletion of a
17 successful private attorney involvement program in
18 favor of a delivery system whose proven effectiveness
19 is in question and you should be thinking of that.

20 CHAIRMAN DURANT: We're going
21 to be evaluating that. Thanks, Dick.

22 MR. VALOIS: We have to take a
23 vote on this motion to table.

1 MR SMEGAL: First we have to
2 have a motion

3 MR. VALOIS: Well, I have a
4 motion to table.

5 CHAIRMAN DURANT: Is there a
6 second?

7 MRS. BENAVIDEZ: Second it.

8 CHAIRMAN DURANT: All those in
9 favor of tabling...

10 MR. SMEGAL: Mr. Chairman, is
11 that to a time certain or is that...

12 CHAIRMAN DURANT: To next
13 meeting.

14 MR. SMEGAL: So the motion is
15 to table to a...

16 MR. VALOIS: Next meeting.

17 MR. SMEGAL: Well, a time
18 certain which is uncertain because we don't have a
19 next meeting at the moment.

20 MR. VALOIS: The next one.
21 The next meeting is an accurate description.

22 MISS BERGMARK: Could I
23 request a point of clarification on the last motion

1 you made. Does this mean that \$1,340,000 will remain
2 in the Program Development line item, rather than
3 separating it out into law schools? Is that...

4 MR. MENDEZ: It means that it
5 will stay where it is presently. It does mean,
6 however, that we can use that money for law school
7 clinics, but it will stay there. It will not be a
8 separate line item.

9 MISS BERGMARK: Thank you.

10 CHAIRMAN DURANT: At least at
11 this point.

12 So it will be to the next meeting, to answer
13 your question.

14 All those in favor of the tabling motion signify
15 by saying aye.

16 (Chorus of Ayes.)

17 CHAIRMAN DURANT: Opposed?

18 MR. SMEGAL: No.

19 CHAIRMAN DURANT: Better role
20 call this. Paul?

21 MR. EAGLIN: Aye.

22 CHAIRMAN DURANT: LeaAnne?

23 MRS. BERNSTEIN: No.

1 CHAIRMAN DURANT: Michael?

2 MR. WALLACE: Aye.

3 CHAIRMAN DURANT: Tom?

4 MR. SMEGAL: No.

5 CHAIRMAN DURANT: Aye.

6 MR. VALOIS: Aye.

7 MR. MENDEZ: Aye.

8 MRS. SWAFFORD: Aye.

9 MRS. MILLER: Aye.

10 MRS. BENAVIDEZ: Aye.

11 CHAIRMAN DURANT: Motion

12 carries.

13 MRS. BERNSTEIN: We better do
14 that over again, because Tom and I were on the same
15 side.

16 CHAIRMAN DURANT: I can't
17 believe it. They were the only two no votes.

18 MR. SMEGAL: We vote together
19 on the budget, too, Clark, if you haven't noticed?

20 CHAIRMAN DURANT: The next
21 item on the agenda is the migrant funding report.
22 Dan Rathbun and Philip Martin and Mario Gabroury.

23 MR. MENDEZ: Mr. Chairman?

1 CHAIRMAN DURANT: Mr. Mendez?

2 MR. MENDEZ: Mr. Chairman, I
3 was advised earlier that there are a group of
4 individuals who would like to make a presentation to
5 us about the migrant study and I would like to hear
6 that presentation before we hear from Mr. Martin, so
7 that he has a chance to respond to their comments.

8 CHAIRMAN DURANT: Who's the
9 group that wants to respond or comment on it? Mr.
10 Mendez?

11 State your name for the record.

12 MR. WARREN: Mr. Durant, my
13 name is Bob Warren. I'm with Pine Tree Legal
14 Assistance in Bangor, Maine, in the Farm Worker Unit.

15 We appear as a panel of four people and we had
16 arranged through Mr. Rathbun to have some time to
17 make some responses in terms of the draft report that
18 was submitted to the Provisions Committee in January.

19 We obviously are quite pleased to take whatever
20 time whenever it is given to us. The only thing I
21 would have to say is that it's my understanding that
22 there was a final report supposed to be presented
23 today. We have, over the course of the last couple

1 of weeks, attempted to present a lot of materials to
2 the Corporation in writing, some of it, I apologize,
3 did not get in until very late.

4 MR. VALOIS: Let me say, Bob,
5 that every...I think everybody who is interested in
6 this subject has sent to me copies of everything and
7 I've certainly received yours.

8 I provided all of those last night to Phil and
9 presumably he's read them and memorized them and
10 prepared a response and I think he indicated to me
11 last night, and he'll stand up and correct me if I'm
12 wrong, that the report that you have which everybody
13 apparently is treating as a draft report, in essence
14 with some corrections and retyping, is the final
15 report. Is that accurate?

16 MR. MARTIN: There will be
17 very few changes. Some more statistics added, but in
18 substance...

19 MR. VALOIS: Anyhow, what I'm
20 saying to you is I think it's all here today.

21 MR. WARREN: And that the
22 order you wish to proceed in is that you want us to
23 respond in terms of what we have presented with

1 regard to the draft report and then there will be a
2 presentation by Mr. Martin, is that...

3 MR. VALOIS: I would like to
4 do that.

5 CHAIRMAN DURANT: Yes, that's
6 fine. We also have...

7 MR. MENDEZ: I would like to
8 have him respond to your remarks.

9 CHAIRMAN DURANT: I understand
10 we also have other people who are here...I don't know
11 if it's necessarily to comment on this, that
12 particular study or whatever...but farmers from North
13 Carolina and I want to make sure that they have an
14 opportunity to be heard, too.

15 So, Bob, why don't you start with your panel,
16 because essentially that draft report, I gather, as
17 Mr. Valois said, is going to be essentially the final
18 report.

19 MR. WARREN: With the
20 indulgence of the Chair, one of the things...we all
21 have different topics that we are going to cover,
22 since there are many issues essentially raised in the
23 report.

1 My great responsibility is to discuss the so-
2 called preferred formula. It has been difficult for
3 me to understand it, as a lay person, and it's a lot
4 easier if I paint a picture and I have a hand drawn
5 formula and if I could put it up on the easel and
6 take a moment to do that, with your indulgence.

7 CHAIRMAN DURANT: All right.
8 I'm perfectly tolerant of that. Why doesn't the
9 panel introduce itself and maybe we can sort of...

10 MR. SAUCEDO: My name is
11 Valeriano Saucedo. I am the Migrant Unit Director
12 for California Rural Legal Assistance out of Fresno,
13 California.

14 MR. EPPINETTE: My name is
15 Chuck Eppinette. I'm the Director of Farm Workers
16 Legal Services here in North Carolina.

17 MR. BECKMAN: I'm Vince
18 Beckman and I'm the Director of Illinois Migrant
19 Legal Assistance Project.

20 MR. MENDEZ: Chuck, I didn't
21 get your last name.

22 MR. EPPINETTE: Eppinette.
23 It's E-p-p-i-n-e-t-t-e.

1 CHAIRMAN DURANT: Robert, what
2 order to you want to start in?

3 MR. WARREN: I go first, I
4 guess. That's what they told me.

5 MR. MENDEZ: Mr. Martin, could
6 you move to the other side so that you can see this.

7 MR. WARREN: What I've pictured
8 up there is the preferred formula as it was contained
9 in the draft report, I believe, in the executive
10 summary.

11 The first...let me, in the interest of time just
12 kind of jump right in. However, I do...we have
13 submitted live comments from the field that have come
14 into LSC. Comments from other migrant service
15 providers, other than Legal Services and some
16 comments from academics, if I can use that term, have
17 come into the Legal Services Corporation, as far as I
18 understand.

19 I urge the Board and I urge the staff,
20 obviously, involved with this issue to read those
21 comments and obviously to review them so that
22 decisions regarding what we have to say remain in a
23 rational and reasonable manner.

1 The first thing I want to talk about is when
2 you...as I understand it, the objective in terms of
3 the migrant report, the migrant study, as it was
4 called, I believe at the time you commissioned it
5 was, among other things, at least with regard to this
6 preferred formula for the migrant activity
7 distribution, essentially to determine the number and
8 distribution of the migrant farm workers across the
9 states and utilizing existing data of an ongoing
10 nature and in a methodology that was easily capable
11 of being updated.

12 To look at those objectives and look at the
13 formula, first of all, we need to understand that the
14 report, itself, in the formula says nothing about
15 numbers. What has not been reported to the Board is
16 the number of migrant farm workers in the states.

17 By implication, and essentially more or less in
18 the sense of a footnote, using unemployment data in
19 California and some other data, the report implies
20 that the number of migrants nationally is 996,000
21 plus, okay?

22 Ironically, the only place it talks about the
23 national number, Lilliland Study, which it questions

1 regarding the validity of, have brought about the
2 Martin/Holt report. Even though the Lillisand Study
3 reported an aggregate number of migrants of 1.5
4 million and the Lillisand Study was criticized
5 heavily, at least in three places by Martin/Holt for
6 not counting or taking out the in-state mobility
7 factor of migrants, nevertheless when the Lillisand
8 Study went to the Corporation, it was adjusted for
9 in-state migration and that factor and the number that
10 migrant programs were funded on as a result of
11 Lillisand, was 996,000 plus migrants and dependents.

12 So that the number by implication in the
13 Martin/Holt report of 996,000 equals, ironically and
14 coincidentally more than anything else, I suspect,
15 the 996,000 that the migrant line is funded on, which
16 includes migrants and dependents.

17 If you factor in even the minimal number of
18 dependents to the Martin/Holt report number and
19 whatever you assume, even if it's one dependent
20 tacked on, you have 2 million as the number.

21 The conclusion that's reached by the Martin/Holt
22 report, therefore, is that the migrant line for LSC
23 is grossly underfunded by virtue of the fact that

1 Lillisand, indeed, undercounted the migrants.

2 MR. MENDEZ: Now, let's
3 discuss this briefly. I don't think that that's a
4 fair statement.

5 I think the fair statement is that there may be
6 more migrants, but there are less workers than what
7 Lillisand says.

8 MR. WARREN: Well, I'm not
9 sure that I understand that statement. One of the
10 things that...

11 MR. MENDEZ: Well, the
12 statement is that you may have a certain number of
13 migrants...that migrant dependents...the migrants are
14 counted under Martin/Holt if they have, indeed
15 worked. Migrant dependents under Martin/Holt are not
16 counted as migrant workers unless they have, in fact,
17 worked.

18 Under Lillisand, it did not distinguish between
19 workers and non-workers.

20 MR. WARREN: Lillisand counted
21 migrants and dependents.

22 CHAIRMAN DURANT: Bob, let me
23 tell you, because I think it will help in terms of

1 your comments and the other members of your panel.

2 We're not going to debate here the intricacies
3 of this report. Let me tell you, as Chairman, we're
4 past on this what I want to do, vis-a-vis this. We
5 won't take any specific action today.

6 Simply that the report in its briefest terms
7 will, obviously be, you know, will be accepted and
8 then it will simply then be referred to the President
9 of the Corporation to review it and your comments to
10 determine what action, if any, the Board ought to
11 take.

12 So, in the statements that you make, I don't
13 want you to feel that this is where you have to make
14 your brief one way or the other in terms of what
15 particular action.

16 The only thing I want you to focus on with the
17 report, in effect, being accepted and referred, as
18 well as your comments, to Bayly. Just briefly, what
19 specifically you, in a generic term, do you want him
20 to be sensitive to in evaluating it and obviously, if
21 you've got...I mean, I know there's been a lot of
22 written debate on this to try and focus and refine
23 the issues and that's good. That's what we're

1 supposed to be doing. But don't feel that, you know,
2 this is the last call, so to speak.

3 I mean, I've looked at the study. There are
4 certain kinds of questions that have to be reviewed
5 and whatever, so all I'm asking you here to do today
6 is simply, with it being referred to Mr. Bayly, what
7 generically do you want him to focus on.

8 He's going to make a list and if you want to
9 follow it up in a particular way, that's fine, but
10 this is not to be a debate about the rightness or
11 wrongness of the data or the...

12 MR. MENDEZ: Clark, I think
13 this has to be. I think it has to be a debate about
14 the rightness or wrongness of the data. I want to
15 have those issues addressed today.

16 MR. VALOIS: I think it is
17 fine for this all to be referred to Mr. Bayly, but
18 ultimately it's going to come back to us and if Mr.
19 Bayly is being instructed by implication or requested
20 by implication to come back and ask the Board to vote
21 on whatever 15 points, generically arise, that's
22 fine. But I agree with Member Mendez.

23 CHAIRMAN DURANT: Well, yes,

1 but I think there had been some concern, that at
2 least have been raised to me, that we were going to
3 take particular action today based on the report.

4 MR. VALOIS; No.

5 CHAIRMAN DURANT: And we won't
6 be doing that. Okay?

7 MR. WARREN: A wise move.

8 CHAIRMAN DURANT: So that
9 while the particular...when I say to make your
10 particular points, I'm really...the points that Bob
11 and Pepe make are not ones that I disagree with, but
12 that's how they should be focused, that's all.

13 MR. VALOIS: Well, let me just
14 add to that before we go any...

15 MR. WARREN: The point is well
16 taken.

17 MR. VALOIS: If we have to do
18 something financially to accomplish this, I think it
19 should be done, but within the last two or three days
20 before I left my office yesterday, I received
21 numerous comments and, as I said, I gave those to Dr.
22 Martin last night and while I'm sure he's a fast
23 reader, I'm not sure that he can faithfully and with

1 accuracy be able to evaluate all of that stuff with
2 respect to his own report.

3 So, I would like, frankly, for Dr. Martin to
4 have a chance to study this and tell us what they
5 say. Where they're right and where they're wrong.

6 MR. WARREN: I appreciate
7 those comments. They are obviously well taken and I
8 will move right along. And one thing is that we came
9 here and asked for the time today under a certain
10 understanding and we have comments prepared.

11 CHAIRMAN DURANT: That's fine.

12 MR. MENDEZ: And I want to
13 hear those.

14 MR. WARREN: Okay. And that's
15 right. I mean, everyone has traveled here to do
16 this...

17 CHAIRMAN DURANT: Okay, go
18 ahead.

19 MR. WARREN: To get right to
20 the heart in terms of the formula, which is the heart
21 of the report, that there are really two things that
22 seriously flaw the formula with regard to the
23 objective, particularly with regard to using ongoing

1 data that is easily updated.

2 Not in the preliminary report in any way...as a
3 matter of fact, the preliminary report used the
4 preferred formula and then there's an annualized
5 formula that uses this same data...but not reported
6 there is the fact that the reliance upon so-called
7 seasonal job's data in the Census of Agriculture from
8 1982. But the Census of Agriculture that's going to
9 be conducted this year in 1987 will not collect that
10 information. The survey forms have been printed and
11 that is off the form.

12 It's startling to me that that information is
13 not contained in the report and hasn't been provided
14 to the Board.

15 Secondly, the hired farm working force...so-
16 called hired farm working force...survey data that's
17 utilized in the last part of the formula with regard
18 to migrants, was reported in 1983...it's done every
19 two years...on a regional basis gave a number of
20 migrants.

21 We feel the hired farm working force is invalid,
22 and we'll get into that, but nevertheless the hired
23 farm working force survey that was done in 1985,

1 which report is coming out in July or the summer of
2 this year, will not report the migrant information on
3 a regional basis, that was relied upon in the
4 Martin/Holt report.

5 In fact, 1983 hired farm working force was the
6 year that did report it regionally. The prior year,
7 1981, did not and again in 1985 they are not.

8 Those two things, it seems to me, should cause a
9 serious pause, and I can appreciate that you are
10 already pausing, but the objective of using ongoing
11 data is out the window. Half of the formula,
12 seasonal jobs and hired farm working force cannot be
13 updated.

14 The other thing is with regard to...

15 MR. VALOIS: I know Bob, that
16 you prefaced what you're saying that you are
17 addressing us as a layman, but it seems to me you're
18 now attacking a statistical truth or non-truth, as it
19 may be,

20 MR. WARREN: No. I'm sorry,
21 go ahead.

22 MR. MENDEZ: Well, let me ask
23 a question. In order to update this next time, the

1 next survey, all we have to do is tell these various
2 survey places that we want to have those in there.

3 MR. WARREN: You and other
4 people. The United States Department of Agriculture
5 has made the decision that they're not going to
6 report the hired farm working force migrant data on a
7 regional basis this July on their survey from 1985.

8 Let me address Mr. Valois for a moment. What
9 I'm stating about this and what I'm stating about the
10 formula is essentially, to some extent, and it is in
11 the comments that have been received from the
12 academic people over this past week or several days
13 you, and I have read those. Obviously, I am not a
14 scientist and I'm here as a messenger. I certainly
15 hope you don't kill the messengers, but, in fact, I
16 mean, all you have to do is check.

17 I mean, the forms are printed on the census are
18 back for 1987 and they don't include that particular
19 item. And the hired farm working force is not going
20 to be reported regionally.

21 So it's not going to be there. It's not a
22 question of questioning the data. It's the
23 availability of the data in the agencies reporting.

1 I think if LSC...changing the Department of
2 Agriculture's position or the people that collect
3 this data, changing their position is going to take
4 quite a bit of doing.

5 Let me get to the hired farm working force and
6 I'm going to try to be very quick, also.

7 The hired farm working force data is
8 interesting in that what it comes from, for example
9 in 1983, is a survey that's attached. It's actually
10 a subsurvey or part of another survey.

11 In 1983 all the information in the hired farm
12 working force as regard to migrants, came from
13 essentially a little over a hundred households that
14 were surveyed in December of 1983, across the
15 country. The size of the sample is so small that
16 logic tells me two things. That as commentators have
17 always said, the people that do the hired farm
18 working force as a report, the United States
19 Department of Agriculture realized that the small
20 sample size is probably one of the reasons why they
21 can't report the stuff with any degree of accuracy on
22 a regional level

23 The other thing is that they, Martin and Holt in

1 their report recognize or state that the hired farm
2 working force survey produces statistics which are
3 comprehensive and reliable to national level, but not
4 reliable in small geographic areas.

5 Their own report, in terms of the numbers that
6 they generate in California from the URI data and the
7 numbers generated from their formula indicate that
8 national, the number in terms of the gross number of
9 migrants in the hired farm working force only
10 reported some 226,000 migrants, varied from their own
11 finding by an undercount factor basically 414
12 percent.

13 Secondly, if you look at the California figure
14 in terms of the number of migrants reported and
15 concluded with regards to the Martin/Holt report and
16 the numbers that it generated in the report with
17 regard to California as a result of the hired farm
18 working force data or report, that undercounted
19 migrants in California by 580 percent.

20 Now, if Martin/Holt's 414 percent undercount is
21 reliable and the 580 percent undercount is unreliable
22 the relative factors are not one that I'm necessarily
23 equipped to comprehend and I'm not necessarily...it

1 doesn't instill in me confidence in terms of funding
2 levels that may be generated out of this particular
3 formula that can vary that much.

4 Martin/Holt also say in their own report that
5 the hired farm working force data with regard to
6 regions, like the Northeast Region in 1983, was 11
7 states. It went from Maryland all the way up to
8 Maine. That the standard of error in the hired farm
9 working force data, for that reason was 95 percent.

10 The other thing is, if the hired farm working
11 force data in the formula was in 1983 only
12 reported...or for 1983 only reported down into
13 regions, and I cite for example, the Northeast Region
14 has 11 states. The Martin/Holt report spreads across
15 the region based on crop sales. And the receipts for
16 crops per state in proportion to the total receipts
17 for crops in the region were then factored to the
18 regional number of migrants in the hired farm working
19 force and from that get the state portion of the
20 migrants for the region.

21 The problem is that crop prices don't reflect
22 the labor component. Obviously we know that
23 commodity prices and crop prices vary all over the

1 place depending on factors that don't relate to
2 labor.

3 MR. VALOIS: Wait a minute
4 now. How does...I don't think you quite mean what
5 you said. That the price of a crop or a product does
6 not include the price of the labor to produce it, is
7 that...

8 MR. WARREN: It includes the
9 price of the labor, obviously, number one, but it
10 does not reflect in a direct proportion the
11 percentage of the labor factor.

12 And this is a problem that...

13 MR. VALOIS: Wait a minute,
14 now. Wait a minute, now.

15 MR WARREN: Okay.

16 MR. VALOIS: Let's...

17 MR. WARREN: Bob, let me give
18 you an example.

19 MR. VALOIS: Okay, give me an
20 example.

21 MR. WARREN: The example is
22 that if prices fluctuate based on...

23 MR. MENDEZ: Give us a specific

1 crop.

2 MR. WARREN: Let me give you a
3 specific example, okay?

4 MR. MENDEZ: A specific crop.

5 MR. WARREN: I don't know what
6 the prices are of a specific crop.

7 MR. MENDEZ: Give me...tell me
8 that it's not more expensive to cut grain than it is
9 to pick strawberries and asparagus.

10 MR. WARREN: I'm not talking
11 about the labor expense. I'm talking about...

12 MR. MENDEZ: Well, that's the
13 labor expense; it's more expensive to do it.

14 MR. WARREN: I'm talking about
15 the crop sale receipts that they used to spread the
16 hired farm worker force migrants across the states
17 and the region.

18 And if, for example, if you have a year when you
19 have a bumper crop that may require more labor to
20 harvest, the bumper crop may, in fact, depress the
21 price so that the lower price, obviously, will not
22 reflect...it would reflect just the opposite in terms
23 of the possible labor that was required to harvest

1 the crop.

2 So that they do not necessarily relate. The
3 problem with this formula is that if you take wages
4 of all farm workers and you basically mix in...and
5 I'm really being very broad in this...if you
6 basically say, there's a factor in that in the first
7 part of the formula that has migrants in it and
8 there's a factor that we contend has migrants out of
9 it. But nevertheless, migrants in this factor at
10 some percent.

11 The second part of the formula, seasonal
12 jobs...all farm jobs contain some migrant jobs and
13 exclude some migrant jobs. And the hired farm
14 working force data is spread across the state based
15 on sales, basically, or receipts for crop sales.

16 What you've done is you've traded a formula that
17 underlying that formula is an assumption that a
18 proportion of migrant labor in each of those
19 components in each state is the same. So that if
20 California has 25 percent of its farm labor is
21 migrant, the assumption underlying the whole formula
22 is that 25 percent of the farm worker population in
23 Rhode Island, for example, is also migrant.

1 Where you try to factor that out, is in the
2 hired farm working force migrant components. So,
3 what you've done is, you've backed in by spreading it
4 by crop sales, the same factor that assumes an equal
5 percentage of migrants within that statistic.

6 The problem with this is actually demonstrated.
7 At first when I read...and I'm almost about to
8 conclude, Mr. Durant...when I first read the three-
9 page blurb that went with the preliminary report to
10 the Provisions Committee in January, and they talked
11 about the weighting in the formula and that is,
12 obviously the formula has, if you figure it out, it's
13 50 percent on the first half and the last two
14 components are 25 and 25.

15 And what Martin and Holt and what...said, if you
16 change the weight, it's robust. It does not
17 appreciably change the distribution that comes out on
18 the other end.

19 And I scratched my head. What is robust? It
20 must be one of those scientific terms. Well, the
21 thing is that...let me show you.

22 It's robust because it doesn't change the
23 percentage that the underlying assumption is the

1 percentage is the same for each state. That's why it
2 doesn't necessarily change appreciably, as they say,
3 the share, okay?

4 If we use...and this is from the page of one of
5 the comments, okay?

6 MR. VALOIS: Tell me what
7 this...

8 MR. WARREN: Okay.

9 MR. VALOIS: Wait a minute,
10 wait a minute.

11 MR. WARREN: This is robust.

12 MR. VALOIS: Let me ask you
13 about that first label you've got up there.
14 Preferred. Which is the preferred formula that you
15 referred to?

16 MR. WARREN: The preferred
17 formula is this one, okay? This is the weighting
18 factor and...

19 MR. MENDEZ: Well, you're
20 surely not telling us that this formula is less
21 accurate than the Lillisand?

22 MR. WARREN: Actually, that's
23 what I first thought. Let me...

1 MR. MENDEZ: Are you telling
2 us that?

3 MR. WARREN: No.

4 MR. MENDEZ: Lillisand...

5 MR. WARREN: I'm saying
6 that...

7 MR. MENDEZ: Is Lillisand more
8 accurate or is Martin/Holt more accurate?

9 MR. WARREN: Lillisand is in
10 balance and...

11 MR. MENDEZ: Then Martin/Holt
12 must be more accurate?

13 MR. WARREN: No.

14 Lillisand...I'm sorry. Lillisand is not in balance.
15 Martin/Holt is in balance. Lillisand...the only
16 thing we have now from Lillisand is the funding base
17 of 992. You can criticize Lillisand, you can say
18 Lillisand Study was all wet. It was done wrong and
19 everything else. All you have left and all we know
20 and see that's inherited from Lillisand is the
21 funding base of 996,000.

22 MR. MENDEZ: That's not what
23 LSC has left. What LSC has from Lillisand is the

1 percentages and which states they go to and what
2 Martin/Holt does is...Martin/Holt gives us
3 percentages and there should...the migrant should
4 appropriately be, the funds should be appropriately
5 distributed.

6 MR. WARREN: Martin/Holt...

7 MR. MENDEZ: And Lillisand
8 does that and Lillisand is completely inaccurate.

9 MR. WARREN: Lillisand gives
10 you numbers in states of migrants and dependents.
11 Martin/Holt in the preferred formula for distribution
12 attempts, only by proxy, to give you a...

13 MR. MENDEZ: Lillisand doesn't
14 even give us a proxy.

15 MR. WARREN: Excuse me. A
16 migrant activity, okay? Let me finish. In terms of
17 the robust, this is where it's robust, it seems to
18 me. And that is, if you weighted instead of
19 50/25/25, and for these states, for example, these
20 are your distribution figures, if you equal the
21 weight, one-third, one-third, one-third, this is all
22 you get for a change.

23 Now, that is not an appreciable change in the

1 distribution, I agree, but when you figure the
2 percentage change from this to this, okay? Then you
3 come up with basically to these states, 16 percent to
4 the positive and 16 percent to the negative.

5 The problem with that is that if you look at it
6 in the funding sense and if you change the weights
7 and then you change the funding by positive 16
8 percent or decrease it by 16 percent, for me anyway,
9 a funding increase of 16 percent is, indeed, robust
10 and so is a decrease in funding of 16 percent.

11 Let me say finally, the reason these are not so
12 great, it seems to me, is that the underlying
13 assumption is that no matter how you weight them,
14 they are equal across the states. So all you've done
15 is taken the factoring terms of farm work activities,
16 put it across the states and then you have assumed
17 that the percentage of migrant farm workers in that
18 total number is the same for each state.

19 MR. VALOIS: Well, you know,
20 assuming you're right, it seems to me all you've told
21 us is that the maximum tolerance is 16 percent.

22 MR. WARREN: No. That's on
23 this particular thing. We're not saying...

1 MR. VALOIS: Well, this
2 particular thing is what we're talking about, is this
3 formula.

4 MR. WARREN: No, because the
5 tolerance...it talks about the...the tolerance
6 comes...25 percent of the hired farm working force.
7 If the hired farm working force is off, okay, by 100
8 percent, by 400 percent, by 500 percent, you plug
9 that into me in terms of funding and I end up, for
10 example with...and I don't have these figures off the
11 top of my head, I can give them to you...suppose I
12 get 50 percent funding cut...let me finish.

13 MR. VALOIS: No, no, no.
14 Address what you're trying to tell us up here. It
15 seems to me you're saying that it's subject to a 16
16 percent error, plus or minus.

17 MR. WARREN: No, what I'm
18 saying is that it's not subject to a 16 percent
19 error. What I'm saying is that if you change the
20 weight, the change in the distribution is 16 percent.

21 MR. VALOIS: Right.

22 MR. WARREN: So while this may
23 appear, the change is not significant, but the

1 percentage change, because if you talk about the
2 funding, you have to look at the percentage change,
3 not from 1.61 to 1.88, okay? In the percentage
4 change it would be 16 percent.

5 MR. VALOIS: Right.

6 MR. WARREN: So, if you talk
7 about it in funding terms, you're not talking about
8 an increase, but a decrease from 1.61 to 1.88, you're
9 talking this percent.

10 MR. VALOIS: I understand.

11 MR. WARREN: But the other
12 thing...what I'm trying to say about the formula as a
13 whole is, if for example, you cut a program based on
14 this formula by 25 percent, you're saying that you
15 get 25 percent cut, okay, based on a formula that has
16 25 percent of it subject to 100 percent error. That
17 seems to me that's not rational, if you're going to
18 use it for that purpose. Thank you.

19 MR. VALOIS: Thank you.

20 MR. BECKMAN: Ladies and
21 gentlemen, I just have a few short comments and I'll
22 try and be brief.

23 MRS. SWAFFORD: Could I ask

1 you to identify...I know you did introduce yourself,
2 but I...

3 MR. BECKMAN: Vince Beckman
4 from Illinois Migrant Program.

5 MRS. SWAFFORD: Thank you.

6 MR. BECKMAN: I wanted to
7 expand, just for a second on one thing that Bob
8 mentioned briefly on his opening statement and that
9 is the question of the overall numbers of farm
10 workers in the country.

11 As you know, what Martin and Holt did as part of
12 their study was look at the unemployment insurance
13 data for the State of California and come up with
14 some figures on the total number of farm workers in
15 the State of California and then determine the
16 percentage of migrant farm workers as a percentage
17 of the total number of farm workers in California
18 and then apply that pro rata across the country to
19 come up with a figure of 996,000 migrant workers.

20 As you pointed out, Mr. Mendez, that figure from
21 Martin/Holt does not include dependents of migrant
22 farm workers. We are assuming and we certainly hope
23 that in any funding formula for migrants that

1 dependents are included. They have traditionally
2 always been included. We, up-to-date, have heard no
3 suggestion that they would be excluded. They
4 have...the dependents have a significant legal
5 problem, which we maybe sometimes tend to overlook.

6 MR. MENDEZ: Well, let me ask
7 you a question.

8 MR. BECKMAN: Sure.

9 MR. MENDEZ: Don't the
10 dependent's legal problems, aren't those the same as
11 the legal problems of the poor? The normal poor?
12 The specific legal problems for migrants that are
13 unique to migrants are with the workers themselves.
14 Fair statement?

15 MR. EPPINETTE: No, sir.

16 MR. MENDEZ: Why isn't it?

17 MR. BECKMAN: In the 1007H
18 study, that Legal Services submitted to Congress,
19 they set forth five, to be exact, areas to Legal
20 Services by farm workers that justify creation of
21 migrant programs. And those barriers were not work
22 related barriers. They consisted of potentially, the
23 language barrier that is among much of the migrant

1 population.

2 The mobility of the migrant population is a
3 special problem that comes in representing people who
4 aren't local.

5 The fact that migrant farm workers, and I will
6 add they're in this state and their dependents, are
7 in the migrant labor camps that are isolated from the
8 general community and who are not available to
9 receive Legal Services during normal working hours.

10 The fact that migrant farm workers, and I would
11 include their dependents, have been traditionally
12 reluctant to use the legal system to address their
13 problems is the fear of economic and discipline
14 retaliation and I think those are barriers that go
15 across the board.

16 MR. MENDEZ: Well, those are
17 not unique problems to migrants, though. They're
18 not.

19 MR. EPPINETTE: Well, they may
20 not be, but the migrant program was built upon
21 the...constant barriers...

22 MR. MENDEZ: Let me tell you
23 what I see, the specific problems of migrants...one

1 of the specific problem of the migrant worker is the
2 health problem. That's a specific problem to the
3 migrant worker that's unique.

4 MR. EPPINETTE: Maybe we're
5 not understanding each other. But if the dependents
6 of the migrant worker are with that migrant worker in
7 the labor camp many, if not most, of those same
8 health problems would, in effect, go to the
9 dependents.

10 MR. VALOIS: But isn't that
11 true generally of the poor?

12 MR. EPPINETTE: That may well
13 be...

14 MR. VALOIS: I mean the urban
15 poor with children are likely to have some of the
16 same problems as a migrant worker.

17 MR. EPPINETTE: Oh, that is...
18 what I'm saying is that the dependents would face the
19 same barriers that are set out in the 1007H report.
20 And it is those barriers, that is my understanding,
21 it might be correct or if this is not correct, which
22 were the basis for the creation of a special migrant
23 program.

1 MR. WALLACE: But what is it
2 you do for the dependents that's different from what
3 you do for the workers? I mean, is there anything
4 you do for the dependents that you don't also do for
5 the workers?

6 MR. EPPINETTE: They may
7 have...no. I mean, that's the situation. They would
8 both have the same faultings and that's the reason
9 they would be included...

10 MR. WALLACE: You're not out
11 there doing child support cases.

12 MR. EPPINETTE: No. If they
13 are among our potential clients.

14 MR. BECKMAN: All right. The
15 problems of the dependents are related to the
16 migrancy situation. Let's take the example of
17 health. There might be problems that the dependents
18 face that the workers themselves don't. But even so,
19 the health problems, pesticide exposure problems, are
20 problems faced by workers in the field. They are also
21 problems faced by children in the migrant labor camps
22 when there are pesticide containers that aren't...

23 MR. WALLACE: If you're

1 bringing a pesticide case on behalf of a worker, do
2 you have to bring additional pesticide cases on
3 behalf of that worker's dependents?

4 MR. BECKMAN: If they're
5 sprayed. If they've been injured. If they've been
6 sprayed, yes. We would and we have, as a matter of
7 fact.

8 MR. MENDEZ: Yes, but those
9 workers have been sprayed or those dependents have
10 also been working, isn't that correct?

11 MR. BECKMAN: Not always, no.
12 Frequently the spray is over the camp and you'll have
13 an entire camp that's sprayed with pesticides.
14 Women, children, men, everybody. Not at all
15 uncommon.

16 I just...in terms of the dependents, it's clear
17 that migrant dependents have serious problems. The
18 area of health, education, housing, et cetera. It's
19 inconceivable to me that the Corporation would even
20 consider funding just the migrant workers without
21 funding the dependents.

22 All of LSC funding is based on the population.
23 Total population and total family. So it seems to me

1 that you have to factor in the number of dependents
2 into the formula, into the number of total migrants.
3 And if you do that, even using the hired farm worker
4 force, now, their data...which we frankly do not
5 agree with, but it is cited...use their conservative
6 figures of 1.95 dependents per migrant household and
7 1.1 migrant workers per household, you come up with
8 about 900,000 households, about 1,800,000 dependents
9 and a total migrant population of 2,700,000
10 migrant farm workers and family members.

11 MR. VALOIS: Tell me again,
12 what was the basis for those numbers?

13 MR. BECKMAN: This is from
14 the...this is cited...a speaker cited it, actually.
15 They're from the Hired Farm Worker Force Analysis and
16 those are the figures. Frankly, we think they're
17 low. But even utilizing those figures, conservative
18 figures, there is a total 2,700,000 migrant farm
19 workers and family members in this country relying on
20 Martin/Holt.

21 MR. MENDEZ: Now, how many
22 migrant farm workers...how many migrants are there...

23 MR. BECKMAN: The current

1 funding, adjusted funding for them as I understand it
2 is 996,000.

3 MR. MENDEZ: So, what we're
4 saying...then what you're saying, let me see if I'm
5 correct in my analysis. What you're saying is that
6 Martin/Holt have in fact found another 1.7 million
7 people that are migrants.

8 MR. BECKMAN: That is exactly
9 correct.

10 MR. MENDEZ: And you're still
11 saying that that's a less accurate determination than
12 Lilliland had. Less accurate.

13 MR. BECKMAN: Let me just...

14 MR. MENDEZ: You're telling me
15 that...

16 MR. BECKMAN: There's the...

17 MR. MENDEZ: Are you telling
18 me that it's less accurate than Lilliland?

19 MR. BECKMAN: The study as a
20 whole, it is because Martin/Holt did two things...

21 MR. MENDEZ: You stated
22 there's yet more people, there are yet more migrants
23 than Martin/Holt have determined and that it's less

1 accurate when they say there's 2.7 and the other one
2 has a million?

3 MR. WARREN: Well, less
4 accurate does not necessarily imply to mean that
5 there are more. What we're saying is that the
6 report, number one, is invalid in terms of formula
7 and that it's just simply not accurate. But if any
8 of you say that it's not accurate, the implication is
9 that Lillisand, undercounted. Okay? We can't tell
10 you whether that's 1.765 million or what it is. What
11 we're saying is that it's seriously uncounted and
12 therefore the migrant is seriously underfunded.

13 MR. EPPINETTE: If possible,
14 in just a couple of minutes I would like to comment
15 on the impact of using the Distribution Form Law to
16 provide money to individual states and I, like
17 everyone here, I am in a particular hurry to end this
18 meeting because of certain activities we are taking
19 part in this afternoon.

20 MR. WALLACE: What time is the
21 game?

22 MR. EPPINETTE: 4:00.

23 MR. WALLACE: Thanks.

1 MR. EPPINETTE: And I want you
2 to know that I'm not addressing this from a selfish
3 position. Under the distribution form in Lilliland,
4 the funding for...the percentage of funding for North
5 Carolina would double. I would love to think that
6 this would be an effective way of delivering legal
7 services to migrants and keep my mouth shut and watch
8 my budget increase.

9 Unfortunately, for reasons we've already
10 mentioned, I think that the formula...distribution
11 formula is flawed, for reasons Bob went into and
12 comments you'll read.

13 But let's assume that it's not flawed. Let's
14 assume that the percentage distributions are
15 workable. To use those percentage distributions as
16 the sole means of dividing funds for migrant
17 programs, would adversely affect the delivery of
18 legal services to migrant farm workers and I think
19 that is for a number of reasons.

20 The touchstone of the distribution of funds
21 should always be what the most effective way to
22 deliver legal service to the migrant.

23 MR. MENDEZ: Let's talk about

1 percentage.

2 MR. EPPINETTE: Yes, sir.

3 MR. MENDEZ: Aren't the funds
4 presently being distributed strictly according to
5 formula under Lillisand?

6 MR. EPPINETTE: No. There are
7 some wages given for length of growing period and
8 recognition of certain factors played by other
9 states. Let's talk about base state, for instance.

10 Base states are faced with a unique problem.
11 They not only have to deal with the problem of people
12 who are migrants in that state, but they also often
13 have to receive the problems of the people who are
14 migrants in other states, but due to one of the
15 barriers listed in 1007H, which is the fear of
16 retaliation, they don't report those claims until
17 they get back to the base states.

18 And 1007H recognizes that is something that
19 happens to base states. There needs to be a way...

20 MR. MENDEZ: And I talked to
21 Bob earlier about this before, what if we took a
22 percentage and figured out a total percentage and
23 then have a pot of the differential and by merit and

1 by application, if a program was...reduce their
2 funding or if there was various other things that
3 happened to a program and they needed to have this
4 and could present a meritorious application, we would
5 give them the funds. But we would have a separate
6 pot available to them.

7 MR. EPPINETTE: I think that
8 it would have to be weighted into the original
9 formula report to do that. And I think the way to do
10 that is to look at the percentages in light of the
11 1007H. And also something that's troubling in a
12 report, and this is not an attack on Martin or Holt
13 because they weren't asked to do this, but if the
14 distributions are going to be used for funding
15 purposes, it would seem that one of the things that
16 should happen are long discussions with people who
17 are providers of services to migrant farm workers.
18 And that includes not only migrant Legal Services
19 programs, but migrant education and migrant health
20 programs. To talk about the various problems that
21 are in that status which will effect a funding
22 formula.

23 It is also my understanding, and this is third

1 hand once again, of some discussions that have taken
2 place is that funding for states with less than a
3 certain number of migrants might be eliminated. And
4 I think there's a danger of that, especially in
5 states where there has been ongoing...

6 MR. MENDEZ: But if we have
7 this reservation...for instance, there have been
8 several states that have had this in the past, these
9 fundings available that have not used them all or
10 have used them for other activities.

11 MR. EPPINETTE: If there
12 are...I mean, I don't know...what I would think would
13 be an exception, but if so, I think those should be
14 dealt with as exceptions.

15 I think there's also a need, and there has been
16 weighted in previous migrant funding, an attempt to
17 ensure regional coordination, especially in areas
18 where there are small programs. And I think that
19 that as well as special needs of base programs can
20 best be accomplished in trying to weight that in how
21 their money is distributed as opposed to distribute
22 by this distribution and then go through the process
23 of application.

1 MR. MENDEZ: There's got to be
2 some way for changing the formula from what it was
3 before. The formula before was inaccurate, to some
4 new way. And we need to have some way of protecting
5 the programs that would be hurt from before...of
6 getting the money distributed into the new areas. Do
7 you understand what the problem that I...

8 MR. EPPINETTE: I understand.

9 MR. MENDEZ: And one of the
10 things that we're looking at, in terms of protecting
11 the old programs and in terms of giving the money to
12 the new ones, is to put this pot in there where they
13 can apply for the meritorious type cases.

14 MR. VALOIS: I just want to
15 say while it's in my line, that if any member of this
16 panel or any other panel has a formula which they
17 want Dr. Martin or Holt to consider, please write it
18 down and mail it to them and send me a copy. If you
19 have some specific numbers, surveys, census surveys,
20 data, employment security statistics or any other
21 data, which you think he should have or you want him
22 to consider, please send him the original and send me
23 a copy of it. I'm anxious to see...you know, it's

1 one thing to sit here and say well, this report,
2 this, that and so forth, but if you all have got some
3 specific ideas, I sure want to get them on the table
4 and soon because we've been talking about this for
5 two or three years to my knowledge.

6 MR. WARREN: We agree.

7 MR. EPPINETTE: What I'm
8 talking about is more than a developmental process,
9 but let me also say I think there has developed a
10 real specialization among migrant programs both in
11 areas of law and in overcoming the barriers and I
12 think to do what would be such a radical cut, even if
13 these numbers are correct, and please understand that
14 we do not believe that they are, there needs to be
15 a...if there's going to be a change, a slow, calm
16 movement into that change and not a radical, with a
17 knife sudden cut. And one way of doing that is to
18 bring the funding level that people have now to the
19 base and for those programs to show an increase in
20 funding to add new money.

21 MR. VALOIS: Chuck, I disagree
22 with you about this long, slow gradual purpose. If,
23 as I understand this distribution which would be

1 accomplished by application of this formula, if by
2 that, North Carolina is underfunded and Texas is
3 overfunded, then I don't understand why you're going
4 to prolong the process of...you're talking about
5 phasing.

6 Secondly...I forgot what my second part was but
7 I'll come back...oh, yes. I would like for Bob or
8 Chuck, either one or whoever, just to very briefly
9 comment on something we have...Bob and I and other
10 people have talked about in the past and that's this
11 notion of double counting, is the way I remember the
12 catch phrase, which is that we count for general
13 Legal Service Corporation funding purposes. The
14 dependents and migrant to the extent that they're
15 available and that's probably going to be the first
16 thing you're going to say and then we count again or
17 we're now trying to ascertain some numerical formula
18 for distribution of migrant funding.

19 MR. WARREN: If I understand
20 what you're talking about...first of all, we don't
21 know of that fact. The other thing is...

22 MR. VALOIS: Well, is it true
23 that we do know that we count them...we count the

1 family of the migrants if we locate them in our
2 general funding, is that true?

3 MR. WARREN: No. Because the
4 whole thrust in terms of migrant funding and the
5 thrust in terms of Lilliland, the thrust in terms of
6 Martin/Holt report is that they are not counted in a
7 sense. They're not and the only thing that you can
8 talk about in terms of the double counting, if you
9 will, is when a migrant moves, for example, from out
10 of a base state in through the streams, you don't
11 know how many, okay? But it's hard enough just to
12 count them, let alone count who's...what...in a
13 particular place or point in time and how many
14 places.

15 But anyway, you don't know what the factor is.
16 You may have people that are in Texas and then they
17 are picked up in Michigan, okay? And then they might
18 go to Florida or something else. So, the thing is
19 that it's a fact of life. It was recognized that's
20 one of the problems is that they are moving around.
21 And you're sure you are going to get a double count
22 and it's going to be very expensive to provide
23 services to migrants, legal services to migrants.

1 The same as it's very expensive to provide
2 migrant education. It's very expensive to provide
3 migrant health and you get the same double count, you
4 get the same movement and they're all addressed to
5 that particular problem and it's basically a self-
6 fulfilling problem. And if you're going to try to
7 address the problem, you end up with that problem in
8 terms of spending a lot of money. But that's how you
9 have to deliver the service.

10 MR. VALOIS: Well, it looks
11 like I'm the Chair. Who's next? Mr. Saucedo.

12 MR. SAUCEDO: Good morning.
13 My name is Valeriano Saucedo. I am the Director of
14 the California Rural Legal Assistance Migrant Unit.
15 I want to talk to you about some points on the
16 characteristics of the migrants as identified by
17 Martin/Holt.

18 Before that, I need to tell you something that's
19 very important. That is, I'm a graduate of UC
20 Berkley and I'm also a graduate of Stanford Law
21 School. The way I got there is an interesting story
22 in and of itself. I was born in El Paso County in a
23 town that you must not have heard of. It's called

1 Dormeo. And from there I was born into a migrant
2 family.

3 We used to travel annually to California,
4 Oregon, Washington and Idaho. I've experienced the
5 migrant lifestyle. I still remember when the
6 mountain view in California was not Silicon Valley,
7 but rather it was pears and prunes.

8 I can also remember living in Amity, Oregon in
9 a labor camp that defies description. I can remember
10 white folk, that's right, white folk from
11 Macimville, Oregon, packing up their kids in station
12 wagons and coming into the labor camp so that they
13 could see how we lived. It was embarrassing to us as
14 human beings and I think it was embarrassing to them
15 as human beings for what they were doing. But I
16 forgive them.

17 So, bear with me if my remarks about the
18 characteristics are very personalized. In fact, at
19 this very moment, my father is working in a field in
20 California. My family are still migrants.

21 When I read the Martin/Holt report and it says
22 that based on the HFWF the Hired Farm Working Force,
23 that the national complexion of migrants is

1 predominantly white and male, that simply is not
2 true.

3 Mr. Martin, using California data, has found
4 that at least 90 percent of the farm working force in
5 California is Mexican and Mexican-American. He has
6 also referred to other local and state surveys that
7 have been done where he says that the minority
8 element of the farm working force is 70 to 90
9 percent. He has criticized the hired farm working
10 force as being able to identify students and
11 housewives. To me, it's curious that now it is a
12 definitive piece and it says that only 15 percent of
13 the national farm worker population is Hispanic.
14 That simply is not true.

15 MR. MENDEZ: Excuse me. Do
16 you have any statistics to...that you would care to
17 give us on a national basis that would dispute what
18 you're...dispute Mr. Martin's...

19 MR. SAUCEDO I think Mr.
20 Martin knows the reports that I'm referring to
21 because he has mentioned that in his own writing.

22 MR. VALOIS: I mean, he has
23 the report. You all just attribute different value

1 to it, is that...

2 MR. SAUCEDO: Well, he relied
3 on the hired farm worker report and he has criticized
4 that report in other writings. Not in this writing
5 alone where he disputes that percentage of racial and
6 ethnic minorities as reported in the hired farm
7 worker reports.

8 With respect to the question of income he relies
9 on the hired farm worker reports again and says that
10 that approximates the 24 percent of migrants to farm
11 workers that earn more than \$10,000.

12 He then uses California UI data to reinforce
13 that finding and he notes that the California UI data
14 says that 22.3 percent, if I remember correctly,
15 would earn more than \$10,000 and not be eligible for
16 legal services.

17 One of the things that needs to be identified
18 before any decisions get made about this question,
19 what is the standard measure of error? Because the
20 hired farm working force in it's own statistical
21 analysis identifies that there is a margin of error.
22 And we don't know what the margin of error is in the
23 California UI data. That is something that needs to

1 be looked at.

2 I guess the most troubling suggestion though,
3 when we start looking at questions of income is this
4 question that, can you generalize using California UI
5 data? I would submit that that's something that
6 needs to be looked at and at this point would say it
7 would be very difficult to generalize because by and
8 large I think California would show higher wages than
9 other regions or other states. That's something that
10 needs to be looked at.

11 There is one other suggestion in there that is
12 troublesome and that is that 24...or one out of four
13 migrant workers would not be eligible for legal
14 services assistance and that somehow that should be
15 adjusted into whatever the number is.

16 The problem with that is that legal services
17 eligibility questions are determined on a case by
18 case basis. I don't know if we can categorically say
19 that 24 percent or 25 percent would be ineligible,
20 without looking at those persons to see if they would
21 be or would not be.

22 Moreover, that's a local program prerogative.
23 We get to set what the income guidelines are going to

1 be, based on LSC regulations, of course. And it
2 seems to me that we cannot preemptively eliminate 25
3 percent of the people without looking at them on a
4 case by case basis to see if they would be income
5 eligible. That needs to be looked at, was well.

6 You raised earlier this question of what kinds
7 of things Mr. Bayly should be looking at to sensitize
8 himself to the issues that are raised in Martin/Holt.

9 I would ask him to look at this question of the
10 characteristics of migrants and I would submit that
11 he would be surprised.

12 To conclude, to me it's a question of justice.
13 I experienced it when I was a farm worker in the
14 fields and now I'm experiencing it professionally and
15 I think that it's very important on this bicentennial
16 year for this Board to make the right kind of
17 decision so that ten years from now when we look at
18 it again, or whenever it is, that we're sure that we
19 made the right kinds of decisions with respect to
20 funding levels and distribution. Thank you.

21 MR. VALOIS: Thank you, very
22 much.

23 We are going to recess now for lunch, which I'm

1 advised is being held.

2 If this panel wishes to return for a short time
3 after lunch, if you want to do that, Bob, if there
4 are any questions?

5 MR. WARREN: Certainly we will
6 return. If the Board has any questions we will be
7 here.

8 MR. VALDIS: All right. Why
9 don't we plan then on having the next panel, let us
10 say at 1:35 we'll resume.

11 MR. WARREN: Thank you.

12 (WHEREUPON, a luncheon recess was taken.)
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C A P T I O N

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The foregoing Proceedings came on in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the Proceedings be taken by the reporter and that same be reduced to typewritten form.

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 25th day of March, 1987.

My Commission Expires:

December 3, 1989

Sandra A. Moser
Notary Public