

RETURN TO CORPORATION  
SECRETARY ARCHIVES FILE

HEARING ON INDIGENT DEFENSE FUNDS

LEGAL SERVICES CORPORATION

COMMITTEE ON AUDIT AND APPROPRIATIONS

October 10, 1985

COMMITTEE ON AUDIT AND APPROPRIATIONS

Meeting held at the Mountain Air Lodge, Route 11A, Gilford, New Hampshire, 03246, on Thursday, October 10, 1985, commencing at 2:15 P.M. and ending at 5:50 P.M. and reconvening on Friday, October 11, 1985, commencing at 9:00 A.M. and ending at 10:00 A.M.

AUDIT AND APPROPRIATIONS COMMITTEE

Pepe J. Mendez, Chairman  
Hortencia Benavidez  
LeaAnne Bernstein  
Paul Eaglin  
Thomas Smegal  
Michael Wallace  
W. Clark Durant, III, ex-officio

BOARD OF DIRECTORS OF LEGAL SERVICES CORP.:

James H. Wentzel, President of Board  
Robert Valois  
Basile Uddo  
Lorain Miller  
Claude Swafford  
Paul Eaglin

- 1 MR. MENDEZ: The committee meeting will come to order. Let the  
2 record reflect that all members of the Audit and  
3 Appropriations Committee are present. The first  
4 matter to be considered is the agenda. And the  
5 Chairman would take the Chair's prerogative and  
6 after approval of the draft minutes, the Chair  
7 will hear from--The Committee will hear from Mr.  
8 Doug Hill and Mr. John Brooks.  
9 Who?
- 10 MR. MENDEZ: Doug Hill and John Brooks. And then if the Chair  
11 hears nothing further, the Chair would request  
12 that we follow the agenda as set forth in the--
- 13 MR. SABLE: Mr. Thimell had told us that you wouldn't be  
14 ready for Mr. Brooks until three and he said that  
15 he would arrive between two and three.
- 16 MR. MENDEZ: I understand. It's not--Yeah--
- 17 MR. SABLE: He's not here yet so--Oh, he is here. Oh, okay.  
18 Where?
- 19 MR. MENDEZ: Do I hear a motion to approve the agenda as I've  
20 requested the change?
- 21 MR. DURANT: I so move.
- 22 MS. BERNSTEIN: I second.
- 23 MR. MENDEZ: All in favor?  
24

1 Response: Aye.

2 MR. MENDEZ: Opposed?

3 (No response)

4 MR. MENDEZ: Our course matter is to review the draft minutes.  
5 Are there any amendments or changes by the staff?  
6 Shouldn't say by the staff - by the Committee?

7 MR. DURANT: I have none.

8 MR. SMEGAL: On page 5, the last paragraph on that page, it  
9 states fourth floor up from zero to twenty cents,  
10 is that right? There's no floor at the moment, is  
11 that the point?

12 MR. MENDEZ: There are several states that have no--

13 MR. SMEGAL: So that makes the floor zero.

14 MR. MENDEZ: That's right.

15 MR. SMEGAL: Maybe this should have come up under "agenda".  
16 I notice at the top of page nine the first sentence  
17 says "Joel is going to report at the October on  
18 the feasibility of a National Training Task Force--

19 MR. MENDEZ: That's--

20 MR. SMEGAL: I don't--Is that on the agenda here in some form  
21 that I don't--

22 MR. MENDEZ: That's--I consider that part of our minutes and  
23 the comments in the minutes clarifying those, as  
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1 we can ask them what the status is of that.

2 MR. SMEGAL: Okay. That would be fine.

3 MR. MENDEZ: In fact, I had that as one of the issues on the  
4 minutes and we can ask Joel right now. Please  
5 come forward, Joel.

6 MR. THIMELL: The staff has begun to do some very preliminary  
7 ground work for putting together a National Task  
8 Force on Training. I, Keith Osterhage, of the  
9 Program Development Substance Support Unit and  
10 Dan Nusbaum, Staff Coordinator for the Divisional  
11 Committee met with Dan Taubman in Washington at  
12 the time of the last meeting to get his ideas on  
13 training task force as this was an idea of his.  
14 We received those from him in a formal letter. We  
15 met with Cynthia Heine, National Training Coordina-  
16 tor to just to begin to sort of flush out some  
17 of those ideas. We're still trying to get a very  
18 concrete understanding of what the task force will  
19 be doing, precise purpose and membership. We hope  
20 to have some sort of preliminary kind of a memo  
21 on that in the next few weeks.

22 MR. SMEGAL: Thank you. That's fine. There's a couple of  
23 other matters like that, Pepe. On the top of  
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1 page ten, we have at the end of the paragraph there,  
2 it says, "The Committee decided to defer a  
3 decision on the State's support formula to the  
4 next meeting." Again, I don't see that on the  
5 agenda. Are we putting it off further? Is that  
6 what we're doing?

7 MR. MENDEZ: If you will review the '86 budget--

8 MR. SMEGAL: Okay. It's in there?

9 MR. MENDEZ: The staff recommends that we not take any action  
10 especially in view of the statement of the  
11 Honorable Neil Smith that's attached to that.

12 MR. SMEGAL: Okay. I guess I missed the tie in there. Well,  
13 then, I have just one other thing. "At last month's  
14 meeting we"--It's continued on page ten.

15 MR. MENDEZ: I'm sorry.

16 MR. SMEGAL: The next paragraph down "At last month's meeting"  
17 it reflects upon some time we spent working over  
18 the grant assurances form with John Mola and  
19 I see some correspondence from John since that  
20 time. Are we going to get to that issue?  
21 Apparently modifications were made.

22 MR. MENDEZ: I've asked--I've asked Jim Wentzel to respond to  
23 Mr. Mola's concerns.

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- 1 MR. SMEGAL: Okay. All right. So that will come under some  
2 part of the agenda we have here.
- 3 MR. MENDEZ: I've asked him to do it in writing and they're  
4 doing that because--
- 5 MR. SMEGAL: Oh, okay. All right.
- 6 MR. MENDEZ: --I think that's the most appropriate method to  
7 do that.
- 8 MR. SMEGAL: Thank you, Mr. Chairman?
- 9 MR. MENDEZ: Anything else? Tom?
- 10 MR. SMEGAL: No.
- 11 MR. MENDEZ: Paul, any--
- 12 MR. EAGLIN: About the minutes? No.
- 13 MR. MENDEZ: Hortencia?
- 14 MS. BENAVIDEZ: No, none.
- 15 MR. MENDEZ: Lea Anne? The Chairman has one addition on page  
16 five, second paragraph. There should be a comma,  
17 and it should reflect that I agreed, - that  
18 Chairman Mendez agreed --
- 19 MR. --- What was that? Say that again?
- 20 MR. MENDEZ: Second paragraph, very last, after Section 106(a) (?)  
21 that period should be a comma, and after that it  
22 should state "And Chairman Mendez agreed".
- 23 MS. BERNSTEIN: He's just pointing out the one time in the whole  
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1 meeting that he and I agreed on something.

2 MR. MENDEZ: Thank you. Are there any other comments, ques-  
3 tions? If not, do I hear a motion to approve  
4 the minutes as amended?

5 MS. BERNSTEIN: So moved.

6 MR. MENDEZ: Tom, do you second?

7 MR. SMEGAL: Yes.

8 MR. MENDEZ: All in favor?

9 Response: Aye.

10 MR. MENDEZ: Opposed?

11 (No response)

12 MR. MENDEZ: All right. We are now down to Mr. Hill. Please  
13 come forward. Panel, I think most of us--Tom,  
14 did you get a chance to--

15 MR. SMEGAL: No, I didn't.

16 MR. MENDEZ: And Paul, you didn't get a--

17 MR. HILL: I'm Doug Hill.

18 MR. MENDEZ: --to meet him.

19 MR. HILL: I'm the President of the Board of New Hampshire  
20 Legal Assistance and the Bar--New Hampshire  
21 Bar Association, appointee to that Board and  
22 I've been on the Board since 1978. I've also  
23 had some opportunity to work with various  
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1 members of the Corporation in the capacity  
2 of monitor and consultant off and on for the  
3 past four or five years. I would ask, I would  
4 like you to proceed, Mr. Chairman, I was asked  
5 to address your committee to talk about how  
6 our program in New Hampshire - letter from Joel  
7 was directed specifically to New Hampshire Legal  
8 Assistance but I think you'll find me talking a  
9 bit about New Hampshire Pro Bono Program  
10 which is the other grantee here in New Hampshire  
11 which is run by the New Hampshire Bar Association.  
12 I have to do that because there's no real way  
13 that you can separate the two operations. It  
14 really is one delivery system. And it's one that  
15 we are very, very proud of and we're very happy  
16 that you've come to New Hampshire. We hope that  
17 all the members of the Board have a chance to  
18 meet some of our staff members who may be around  
19 and hopefully to see some of our offices and see  
20 some of the things that are going on here. A  
21 couple of procedural things - perhaps the most  
22 important thing I have to say is I hope you'll  
23 all come to the reception this evening and that  
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you won't have to run too far after say five-  
thirty because once it gets dark, you won't  
be able to see the view. There are travel  
directions that have been provided upstairs  
for which I take full responsibility if you  
end up in Manchester, but when I leave here  
maybe we'll have a motorcade or something. It's  
only a couple of miles in a straight line from  
here to our house but it is not a straight line.  
There's nothing around here in a straight line.  
The first question that Joel asked me to look  
at was how does our program and the New Hampshire  
Legal Assistance set its priorities. We set  
our priorities in a joint fashion with the  
Pro Bono Program. To oversimplify it a bit, I'll  
just read you a paragraph from our most recent  
submission to LSC which is the June, '84, sub-  
mission and comment that the Board of Directors  
in New Hampshire Legal Assistance has just  
recently reaffirmed this priority statement.  
"To ensure that cases are handled efficiently  
and effectively, NHLA and Pro Bono attempt to  
handle those cases presenting the most serious

1 likelihood of harm to the client. These cases  
2 usually affect the very survival of the client  
3 and their family including potential (1) loss  
4 or deprivation of income, (2) loss or deprivation  
5 of food, clothing, shelter or utilities, denial  
6 of medical care, loss or deprivation of liberties,  
7 loss of children or other irreparable physical  
8 or emotional harm." That's the general statement.  
9 The specific priorities are (1) income maintenance  
10 problems, (2) housing, (3) utility and consumer -  
11 which is sort of a general category; consumer  
12 problems are really quite a significant portion  
13 of our practice particularly in the winter time  
14 as you may imagine in this climate, and domestic  
15 problems involving children. The two programs  
16 that make up our delivery system have obviously  
17 different capabilities and different response  
18 times. New Hampshire Legal Assistance is a  
19 staff attorney program of fifteen staff attorneys  
20 now. We had twenty in 1980 - is a traditional  
21 staff attorney, now we have five offices. We  
22 previously have had seven and actually at one  
23 point there were as many as ten offices in New  
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1 Hampshire, but it was around 1980 that we con-  
2 solidated from seven to five. Those offices  
3 handle as their highest priorities income  
4 maintenance, housing, and consumer utility  
5 cases. We feel as part of our joint system  
6 that it is appropriate for New Hampshire Legal  
7 Assistance as a staff attorney program to handle  
8 the kinds of cases which require specialized  
9 expertise and training, particularly welfare  
10 kinds of cases. On the other hand, I also  
11 mentioned that domestic cases are a high prior-  
12 ity. Those cases as part of our system are much  
13 more appropriate and are well handled using the  
14 private lawyers who make up the panel nearly  
15 forty-five percent of the practicing New Hampshire  
16 lawyers to the Pro Bono program and I think you'll  
17 find when you see the charts that I'm handing  
18 out that the largest case load element - and I  
19 have some of these if some people in the audience  
20 would like them - of the Pro Bono Program is, in  
21 fact, serious domestic cases. In addition to the  
22 establishment of these priorities, there are also  
23 mutual policies that are one of the key points to  
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1 making a system work and those mutual policies  
2 refer to issues such as cross referral of cases  
3 commented that New Hampshire Legal Assistance  
4 because it's a staff attorney program in some  
5 situations and in some places has a better  
6 response time, the Pro Bono Program paralegals  
7 in doing an intake may very well refer a  
8 specific case directly over to New Hampshire  
9 Legal Assistance because there's a hearing  
10 coming up or there's some other critical event  
11 coming. But turning now - if everyone has these  
12 sheets - take a look at all the cases and this  
13 is a combined figure, you'll see that those  
14 four categories that I mentioned as the most  
15 critical ones, income maintenance, housing,  
16 consumer and family comprise all but 14.5% of  
17 the total cases for 1984. Looking to the sheet  
18 that's labeled New Hampshire Legal Assistance,  
19 you'll note that approximately 75% of all the  
20 closed cases are in those three priority cate-  
21 gories of income maintenance, housing and  
22 consumer. But that the family category is smaller  
23 7.5%. That does not reflect the fact that for New  
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1 Hampshire Legal Assistance family cases are  
2 a low priority. Rather it reflects the fact  
3 if you look at the next sheet, with the Pro  
4 Bono referral system, 81% family cases. So as  
5 a combined priority, those five categories are  
6 handled.

7 MR. MENDEZ: Doug, can you tell me just to follow this up  
8 a little bit, approximately what your percentage  
9 of expenditure is in terms of handling housing  
10 or family or income maintenance?

11 MR. HILL: I can't give you any direct numbers on that.

12 MR. MENDEZ: Do you think that would be--

13 MR. HILL: It's linear. It's essentially linear. Again,  
14 our experience, but I can't give you some specific  
15 numbers now. We can probably work some figures  
16 up for you later on.

17 MR. MENDEZ: Do you think that would be helpful to help  
18 manage the budget to do that?

19 MR. HILL: I'm not sure. It might very well be.

20 MR. MENDEZ: You're obviously getting along well with the Bar  
21 if you have forty-five percent of the Bar parti-  
22 cipating in Pro Bono.

23 MR. HILL: Well, the Bar's participation is the key of makin  
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1 this whole thing work. The Pro Bono Program  
2 which started as one of the DSS pilot projects  
3 along with the program called Belknap Judicare  
4 which New Hampshire Legal Assistance, itself,  
5 ran - you happened to be in Belknap County and  
6 in cooperation with the lawyers in the Belknap  
7 County area, at the same time in '78, we operated  
8 a small pilot judicare which has long since been  
9 closed down. So we experimented with both  
10 types in New Hampshire. And we had a good  
11 response rate to the recruiting appeals for  
12 Pro Bono and it now really is the key to our  
13 system. I'd point out that Pro Bono Program  
14 and New Hampshire Legal Assistance are engaged  
15 in an LSC approved joint venture in regard to  
16 the sixteen, fourteen, twelve and a half require-  
17 ment. One of the reasons I'm talking about it  
18 on Pro Bono is that it is really the key to  
19 making this system work and those forty-five  
20 percent are local bar which we believe will  
21 increase in the future years is how we're able  
22 to get these cases out, particularly in light  
23 of the fact we don't have as many lawyers as we  
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1 had in 1980 on the staff.

2 MR. MENDEZ: Approximately how many cases does the local  
3 bar handle? We've got the percentages and we've  
4 got them split up but can you tell me--

5 MR. HILL: Well, I'll get that number in one second if you  
6 let me turn around.

7 MR. MENDEZ: Okav. Steve?

8 MR. STRUDDER: Currently we're making a five year course for  
9 eleven hundred referrals to private attorneys.  
10 For 1984, it was 935.

11 MR. MENDEZ: 935?

12 MR. HILL: He's Steve Strudder and he's the staff attorney  
13 and Director of the Pro Bono Program with the  
14 Bar Association.

15 MR. MENDEZ: And how many cases has New Hampshire Legal  
16 Assistance--How many did they have in the last  
17 year?

18 MR. HILL: Rather than trust my memory, let me find that.  
19 I bet there's someone here who could tell me  
20 that one pretty quickly, too. Here we go.  
21 Total closed cases is forty-eight ninety four.  
22 Did that sound like an echo? Total persons  
23 served in 1984 ten thousand six fifty six.  
24

1 MR. GROSS: I might add--

2 MR. HILL: That's Bob Gross and he wants to upstage me.

3 MR. GROSS: We report--Or we don't report on the statistical  
4 forms simple advice and referrals, for instance  
5 for instance cross referrals to Pro Bono or to  
6 any other agency or simply advice is not reflected  
7 in the cases closed in that number of forty-eight  
8 hundred, nor is the work of the Pro Bono Program  
9 similarly reported in the eleven hundred figure,  
10 so the persons served by the agencies is about  
11 fourteen thousand all tolled but it's at different  
12 levels.

13 MR. HILL: I should point out that we're very careful with  
14 our CSR data. We're making substantial efforts  
15 to make sure that there are not things being  
16 reported, advanced cases really aren't cases.

17 MR. MENDEZ: Doug, it's my recollection that New Hampshire  
18 had a five thousand dollar grant, is that right,  
19 Bob, for migrant studies and migrants? Can you  
20 you tell me, did you actually expend that and  
21 did you make any determinations on how you were  
22 going to spend those migrant funds?

23 MR. HILL: When was that? I don't--I don't know about that.

24

1 MR. MENDEZ: '84?

2 MR. HILL: I wasn't the President of the Board in '84,  
3 unfortunately, and I really don't know the  
4 answer to your question, but again we can  
5 certainly find an answer for you.

6 MR. DURANT: Do you know, Bob?

7 MR. GROSS: Sure. What was the question again, specifically?

8 MR. DURANT: The apparently approximately five thousand  
9 dollars that was allocated for migrant work.

10 MR. GROSS: Right.

11 MR. DURANT: What would that--What kind of migrant services  
12 were doing that?

13 MR. GROSS: It's a small grant and in the past that's been  
14 used to produce informational materials,  
15 educational program and handle cases. There is  
16 not a large population in New Hampshire that's  
17 ascertainable. We've worked with the Department  
18 of Education to see how we can most effectively  
19 have the State Department utilize those funds -  
20 a small amount.

21 MR. DURANT: Do you know if any clients were served with it,  
22 specifically?

23 MR. GROSS: We have not reported on the CSR as any direct  
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1 numbers. There are a lot of defintial issues  
2 which I'm sure you're aware of and we with those  
3 amount of funds have really not attempted to  
4 find a proper definition of families that work  
5 on farms that some might consider migrant, some  
6 might not. With that in all honesty--for the  
7 amount of money involved, we decided just to  
8 stick with the basic CSR approach.

9 MR. MENDEZ: Doug, you've indicated what your priorities were.  
10 Can you tell us a little bit about setting your  
11 priorities? And by the way, when was your last  
12 Board meeting?

13 MR. HILL: The last Board meeting was last week.

14 MR. MENDEZ: And when was the one before that?

15 MR. HILL: I believe it was July or August. We have about  
16 eight Board meetings a year.

17 MR. MENDEZ: How many members do you have?

18 MR. HILL: Our Board has just been reduced in size. We had  
19 twenty-one. We now have fifteen.

20 MR. MENDEZ: Why did you reduce it?

21 MR. HILL: Well, the principle reason for reducing it was  
22 that we wer formerly operating a criminal program  
23 as well under the same corporate structure. We  
24

1 have since separated the two functions. So the  
2 new Board now is a-civil board only. And at that  
3 time we decided that the twenty-one was an  
4 unmanageable size. That fifteen was a more  
5 appropriate size. The arithmetic under the  
6 60% one third rule comes out fairly conveniently  
7 to fifteen as well.

8 MR. MENDEZ: Tell me a little bit about how you went about  
9 setting your priorities?

10 MR. HILL: It was our perspective starting in 1978, we  
11 hired a private consultant who came to us and  
12 assisted us with a fairly complex priority setting  
13 process that took six months. We started with  
14 meetings around the state. There were twelve  
15 public meetings around the state. We drew our  
16 staff officers and drew those from organizations  
17 that were familiar with to beat the bushes to  
18 find clients. We used active clients, past  
19 clients, any known organizations. There were  
20 more than three hundred people involved in this.  
21 The meetings were held all around the state.  
22 Two of them were held in Manchester because they  
23 are really two rather separate communities there.

24

1 And we said "Tell us what you think the poor  
2 community needs?" At that time we were not  
3 attempting to rank these priorities. We were  
4 simply trying to get it out. Later on we had  
5 a conference that was held in Laconia, in fact,  
6 which was attended by the staff members, Board  
7 members, clients, various representatives of  
8 group organizations. There were elected officials  
9 All sorts of people, lawyers, bar, and as a result  
10 of discussion which took several days, we came  
11 up with the original version of the priority  
12 statement that I just read you, which is just  
13 sort of a beginning of a several page long docu-  
14 ment, priority document. That has been refined  
15 and reaffirmed since that time. It would take  
16 really quite a long time for me to go through all  
17 the details but since '77 and '78, we have held  
18 series of meetings, some public meetings, some  
19 internal meetings and of course, meetings with  
20 the Pro Bono Program because we continue to have  
21 this be a joint prioritizing process. It has to  
22 be because the way the two programs work  
23 together.  
24

1 MR. MENDEZ: Do you question clients, or do you have a form  
2 for the clients to fill out either when you  
3 open up, during the representation, or when  
4 you're closing out a case asking them about  
5 their priorities and what they think the most  
6 important priorities are?

7 MR. HILL: We do have some client satisfaction survey forms  
8 that are used and I frankly don't recall--I  
9 haven't seen those for a long time and I can't  
10 tell you what the priority questions are on  
11 those forms. You may have seen them more  
12 recently than I.

13 MR. DURANT: But there's nothing in terms - the satisfaction  
14 forms, I would assume, would be filled out after  
15 work had been done. What about in terms of  
16 things prior to it in terms of the priority  
17 setting?

18 MR. HILL: After the formal process in '78, I haven't seen  
19 those. There may very well be some as part of  
20 the staff's efforts in contacting clients.

21 MR. MENDEZ: One of the things that I'm concerned about is  
22 making sure that the priorities reflect current  
23 problems of the corporation. And that's the  
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MR. HILL:

reason I'm asking you those questions.  
Our efforts--We have made some efforts to update this. In July of '79 we held some meetings. August and September of 1980 we had client meetings around the state. Going into 1980 and as we all know, that was sort of the beginning of the substantial changes in the financial structure of LSC and the money that was flowing through to us. In fact, at that point our prioritizing took on a somewhat negative cast, in the sense the prioritizing was in order to continue to deal with these critical family issues in those categories, how can we keep the offices open. And we did not engage in another formal exercise like the 1978. Again, during that critical period, '81, '82, '83, we're now embarking upon new process which we have started talking about at our last Board meeting but which we to some extent are sort of hanging back to wait and see what the final priority regulation is going to look like. Because we don't want to do something that doesn't work right. But we are going to proceed regardless of what the time

1 table is on that regulation and we are going to  
2 go back to the community again. Between '82 and  
3 '85, the fall of '82 we had client meetings  
4 around the state. And again, those meetings  
5 were intended to bring representatives of low  
6 income organizations, clients past and present  
7 were invited to them and the present priority  
8 structure of essentially those five principle  
9 categories was discussed and it was reaffirmed  
10 by the Board and also by the staff at that time.  
11 In the spring of '84, we reviewed it but that  
12 was substantially an internal exercise with the  
13 Pro Bono Program. It did involve a refinement  
14 in the spring of '84 of the language of the  
15 priorities and a formal vote to accept them.

16 MR. MENDEZ: I appreciate your coming. I'm going to follow  
17 this up at the cocktail party. And I can tell  
18 you that we will adjourn by 5:30 so that I can  
19 finish this conversation. Does the Committee  
20 have any further questions of this young man  
21 that we can't resolve over cocktails?

22 MR. WALLACE: I won't touch that.

23 MR. MENDEZ: Okay, Doug, I appreciate your coming. We're  
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1 very interested in what each of the local pro-  
2 grams is doing, how they set their priorities,  
3 what they do and generally how effective they  
4 believe their groups are. And I can tell from  
5 your Pro Bono participation that you have very  
6 cordial relations with the Bar and all is going  
7 well between the two groups, it's going very  
8 well and if there's anything that we can do  
9 nationally or if there's any issues that you  
10 want to direct to any one individual, I'm sure  
11 that we will allocate enough time tonight so that  
12 you can direct them to us on a one on one basis.

13 MR. HILL: I think Ms. Bernstein was trying to ask a  
14 question.

15 MS. BERNSTEIN: No, I was just thanking you for coming and giving  
16 all that information. I'm interested in several  
17 things that I won't take the Committee's time  
18 for but will be pleased to explore with you  
19 later.

20 MR. HILL: Well, you know what I'm going to tell you what  
21 we need. I figure it will take about a hundred  
22 and fifty thousand to get us back to where we  
23 were in 1980. Thank you very much.

24

1 MR. MENDEZ: I also understand that you're receiving  
2 IOLTA , now.

3 MR. HILL: We are. We're very proud of that. I happen  
4 to be a member of the IOLTA grants committee.  
5 And we are working extremely hard and the Bar,  
6 our Bar is just doing a fabulous job in terms of  
7 increasing IOLTA participation as well as  
8 in the Pro Bono Program. I should say that we  
9 are as frightened as everyone else is of the  
10 Florida suit. And if that were to be a problem,  
11 we are really going to get creamed.

12 MR. MENDEZ: Thank you very much. At this time, John--

13 MR. SABLE: Mr. Chairman, members of the Committee, I'd  
14 like to introduce John Brooks. Mr. Brooks is a  
15 partner in a Boston lawfirm of Peabody and  
16 Arnold. He's the former President of the Boston  
17 Bar Association, former President of the Boston  
18 Bar Foundation, he's the former Chair of the  
19 Board of Bar Overseers which is the Massachusetts  
20 disciplinary body for lawyers. He has been a  
21 Board member since 1955 of Greater Boston Legal  
22 Services and its predecessors and has been a for-  
23 mer President of the two corporate bodies that

24

1 serve local clients in the Boston area, former  
2 President of the National Legal Aid and Defender  
3 Association. He's received numerous awards. I  
4 will only mention the most recent in which he  
5 received the American Bar Association Pro Bono  
6 Award for outstanding public service. I'm proud  
7 to say that he's been a member of our Board since  
8 1983 and is the Chairman of our Audit Committee.  
9 MR. MENDEZ: Thank you for coming. We appreciate your time.  
10 MR. BROOKS: Thank you for inviting me. I appreciate this  
11 opportunity to respond to the questions that  
12 were asked in the letter that was addressed to  
13 Tony Ching, Chairman of the National Consumer  
14 Law Center. He, as you may know, resides in  
15 Phoenix. He was here in Boston for a Board meet-  
16 ing last week and begged off and asked me to  
17 substitute for him which I trust will be satis-  
18 factory to the Committee. You asked some specific  
19 questions. I think I'd like to just lead up to  
20 the answers to those questions, if I may, with a  
21 little general material which I think may put the  
22 answers to question in better focus. The National  
23 Consumer Law Center has been providing support  
24

1 for field programs in consumer energy law since  
2 1969. And as Bob Sable mentioned, I've been on  
3 the Board since 1983. And in my short term on  
4 the Board, I've been very impressed with the  
5 range, the quantity, the high quality of services  
6 that is provided by the Center to the field  
7 attorneys and their clients. And of course,  
8 you realize this being a support center, it's  
9 mostly service to a field attorney. I can't  
10 within the time we have catalog completely all  
11 the Center does. But you should be aware that  
12 the Center answers more than a thousand requests  
13 for individual service every year. It has pro-  
14 duced a monumental ten volume consumer practice  
15 manual and updates nearly all those volumes every  
16 year. It produced a twice monthly newsletter,  
17 engages in substantial training efforts and still  
18 manages to provide more intensive assistance in  
19 a number of critical areas. It does so with  
20 an extraordinarily well qualified staff. The  
21 attorneys on the staff range in experience from  
22 ten to nineteen years. And nearly all have prior  
23 experience in field of legal services programs.

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1 Bob Hobbs, for instance, who among other things  
2 wrote our collection manual has been in legal  
3 services for sixteen years, three with a New  
4 Orleans legal services program, and fifteen  
5 with the Senate. And our most recently hired  
6 staff member, Kathleen Keest comes to us from  
7 an Iowa legal services program. So there's good  
8 founding in the field before they come to the  
9 specialized Consumer Law Center that we operate.  
10 Kathleen had been in the services for that pro-  
11 gram for ten of eleven years she's been in prac-  
12 tice. And the result of all this talent and  
13 hard work are many but they all point to one  
14 end. Through the work of the Center, we are  
15 able to increase both the quantity and quality  
16 of the services the field attorneys and private  
17 attorneys are able to provide for low income  
18 clients. With that background, I'll turn to the  
19 specific questions. Question #1, How does our  
20 program set it's priorities? The Senator has a  
21 detailed system of setting priorities which  
22 ensures that we have an effective work plan with  
23 appropriate controls by Board and staff in com-  
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1                   pliance with the LSC rights. But before dis-  
2                   cussing them you should understand that as a  
3                   support center, the work is primarily responsive.  
4                   Our goal is to serve field attorneys and private  
5                   lawyers representing LSC clients and do for them  
6                   what they believe would be for their best  
7                   interest. The priorities are set through a  
8                   formal procedure annually. Each year the staff  
9                   presents to the Board a work program with  
10                  possible alternative uses of resources. The  
11                  Board considers this program along with the  
12                  results of a National Priority Survey we sent  
13                  out and in light of our experience of the pre-  
14                  vious year and the factors set out in the  
15                  Corporation priority setting regulation. This  
16                  presentation is made to the Board with commen-  
17                  tary by staff and is indispersed with many  
18                  questions and discussions by the Board members  
19                  before decisions are made. And that is done in  
20                  considerable detail both as to substance and  
21                  time to be allocated to them. And once they're  
22                  adopted, the priorities give staff a guide to  
23                  the resources to be allocated to the major  
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1 areas of concern. And along with the priorities  
2 we adopt a more detailed work program which sets  
3 our proposed staff years for each project so that  
4 we, the Board, and the staff can have a more  
5 precise guide to track progress during the year.  
6 This year's overall priorities, for example,  
7 determine that we are devoting seventy-five percent  
8 of our Corporation funds to general support in  
9 the field through service requests, manuals,  
10 training and so on. We also have to pay attention  
11 to our budget. And ordinarily we adopt the budget  
12 the work program and the priorities at the same  
13 time, so that we're sure that the budget reflects  
14 the priorities that we've established. The  
15 production of manuals, for example, is a major  
16 priority. We have substantial sums set aside for  
17 printing and distribution costs. Similarly we  
18 have a large telephone budget to permit us to call  
19 field programs around the country in response  
20 to service requests. I might make two general  
21 points about this priority setting process. First  
22 our staff has a sense of priorities primarily  
23 from their daily contact with hundreds of field  
24

1 lawyers throughout the country. These lawyers  
2 write and call the Center about consumer energy  
3 problems their clients have encountered and about  
4 the type of help needed. And this daily contact  
5 is reinforced by more intensive contact, training  
6 sessions and that's the basic means by which  
7 the staff determines what we're supposed to be  
8 doing. We supplement that by the experience of  
9 the various Board members and we have a great  
10 variety of experience and talent on the Board  
11 from Tony Ching who is Solicitor General of  
12 Arizona, we have a former chairman of the New  
13 York Public Utilities Commission, we have field  
14 program directors and some people who don't  
15 know anything about the nuts and bolts of legal  
16 services cases, but have an overall view of the  
17 field, and clients. And the clients contribute  
18 a very valuable perspective on particularly  
19 priority setting. And in fact the work program  
20 really doesn't change substantially from year  
21 to year. The response to service requests have  
22 always been a high priority. And since the Board  
23 in the nineteen seventies constructed the staff  
24

1 and produced the original consumer law manuals,  
2 they have continued to play a major role. The  
3 second question was how to review performance  
4 in meeting the priorities. At each Board meeting  
5 and we have four Board meetings a year which are  
6 very well attended even though the Board members  
7 come from all over the country, at each meeting  
8 we receive a work program report from the staff  
9 which covers the resources allocated to the  
10 various work projects to be sure we're putting  
11 in the time we allocated according to the plan.  
12 and the progress towards the program goals, -  
13 Are we getting the manuals out on time, for  
14 example. The Board reviews the report to determine  
15 the progress and makes any changes that we could  
16 make. And we also review the LSC semi-annual  
17 reports and often have presentations by individual  
18 members of the staff on their work. The  
19 next question - how do we adopt our budget. I  
20 alluded to that somewhat. Each year as close  
21 to the beginning of the year as possible the  
22 Board adopts a project annual expense and income  
23 budget. The staff prepares a proposed budget  
24

1 based on recommended staff patterns, salary scales  
2 projected fixed expenses and special program  
3 expenses such as publication expense. Many items  
4 in the budget, of course, are fixed from year to  
5 year. Others have some changes and attorney  
6 compensation must be especially considered each  
7 year. The budget is then adopted as a directive  
8 to the staff on expenditure levels. Thereafter  
9 at every Board meeting, we receive a detailed  
10 financial report showing budgeted versus actual  
11 expense for the completed quarters, projected  
12 versus budgeted expense by expense category and  
13 projected variance with the budget. And the Board  
14 reviews and determines the reasons for any signifi-  
15 cant changes. And at the end of the year, we  
16 meet with our auditors to review the auditors  
17 financial statement. And that gives us an oppor-  
18 tunity to review and explore any discrepancies,  
19 if there are any, between the figures we were  
20 given from the staff during the year and the  
21 audited results. I'm happy to say that there  
22 haven't been any such discrepancies yet to my  
23 knowledge. The fourth question - how does the  
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program review the performance of the director and the staff? Our director, Bob Sable, was chosen in 1979 after a nationwide search. Our best view of his performance comes at our quarterly meetings where we assess his work through presentations on the various aspects of the work program. Our audit committee of which I'm the Chairman currently meets with the auditor annually without staff present and receives their opinion on the fiscal management of the program and compliance with LSC regulations. And, of course, we review all LSC evaluations very carefully. At our annual budget meeting we pass on the director's salary and that gives us a formal opportunity to meet in his absence and consider his performance. I might say that no one on the Board is loathe to express his opinion. We have very free discussions, very fruitful discussions on all these issues that I've passed over rather casually. The staff performance except for personal grievances which I'm happy to say we haven't had are left to the executive director. That is everyone other than

1 the executive director's, his responsibility.  
2 And staff performance is evaluated through a  
3 program of work goals and peer review, the latter  
4 of which receives special commendation in our  
5 most recent Corporation valuation. Question  
6 number five - How do we assure that we are  
7 meeting the needs of our client group? This is  
8 sort of a hard question to ask because the client  
9 group is in one sense all the poor people in the  
10 country, and in another sense it's the field  
11 programs for whom we provide material to help  
12 them do the job that they're doing in terms of  
13 the client. But what we've tried to meet really  
14 are the needs of the field attorneys in that  
15 sense and the private attorneys also who are  
16 involved such as the ones in New Hampshire who  
17 represent eligible clients. We determine that  
18 we're meeting those needs through the priorities,  
19 work plans and review processes as explained.  
20 Now, in conclusion, I just can't help commenting  
21 on the grave concern that we have as a Board  
22 on the ten percent proposed cut or whatever the  
23 percentage is in the funding of national consumer  
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1 law centers and other national support services.  
2 At our latest Board meeting last week, we reviewed  
3 the latest monitoring and evaluation report on  
4 our Center which we received from the Corporation  
5 in May of this year. We were pleased but not  
6 surprised at its conclusion which said among  
7 other things that the Center is well managed,  
8 comprised of a dedicated and competent staff,  
9 and employs attorneys who are experts in the  
10 substantive areas of consumer law. The report  
11 went on to say that in the areas reviewed by the  
12 team, the Center had taken steps to comply with  
13 the LSC statutes and regulations and that the  
14 Center wants to cooperate with the Corporation.  
15 Parenthetically I might add that the few sugges-  
16 tions for improvement that were contained in that  
17 evaluation report have been carefully noted by  
18 the Board and by the staff and are under active  
19 consideration to respond to. We see no problems  
20 in the suggestions that have been made such as  
21 making sure that the clients on the board are  
22 eligible. We know they are but we can't show  
23 you that on paper so we've fixed that.  
24

1 MR. MENDEZ: Mr. Brooks, maybe I can--One of my prime concerns  
2 is you know we have several national support  
3 centers.  
4 MR. BROOKS: Yes.  
5 MR. MENDEZ: And we are very concerned about which ones are the  
6 good ones and which ones are not quite on the  
7 same par as others. Do you have any suggestions  
8 on how we can go about measuring which ones  
9 would be the best and which ones would be less  
10 so and which ones - if we are given, let's say,  
11 a big pie of five million dollars to distribute  
12 among all of the national support groups which  
13 ones ought to get most of the pie and which ones  
14 should get relatively less.  
15 MR. BROOKS: Well, obviously I can't comment on what the result  
16 would be, which ones get more or less. No, I'm  
17 speaking for myself because we have no--I think  
18 we've discussed this as a Board. But my own  
19 feeling is that a best measure of performance and  
20 quality and response to the need is to be obtained  
21 from the field programs toward whom most of our  
22 efforts are directed.  
23 MR. MENDEZ: In terms of that, would your people - and I'm  
24

1 asking you personally, I'm not asking you to  
2 commit your Board or commit the program - do  
3 you think it would be appropriate to ask all  
4 of the various field programs which ones they  
5 believe, because we only have a finite fund -  
6 we don't have an unlimited total. Do you think  
7 it would be appropriate for us to ask the various  
8 field programs which ones are the best and which  
9 ones we should give more money to?

10 MR. BROOKS:

My top of the head reaction to that is that  
11 question could elicit rather misleading responses  
12 inasmuch as some field programs deal with some  
13 support centers far more or maybe with some none  
14 at all. And there's a narrow line of distinction  
15 between a popularity contest and a real evalua-  
16 tion, meaningful evaluation, so it could work--

17 MR. MENDEZ:

How--If you were sitting in our shoes and you  
18 have five million dollars to distribute among  
19 the seventeen national support groups, how would  
20 you go about making the determination?

21 MR. BROOKS:

Well, I think I'd ask the field programs and have  
22 that as one component of the criteria. I think  
23 there are good evaluations, if I may say so, and  
24

1 not so good evaluations on behalf of the Corpora-  
2 tion. And a good evaluation by the Corporation,  
3 appointed evaluators could give a great deal of  
4 help on that. And I won't get into the current  
5 evaluation procedures, but I think that could be  
6 a good--

7 MR. MENDEZ: Now, how many Board members do you have?

8 MR. BROOKS: Twelve.

9 MR. MENDEZ: Twelve? And they represent various parts of the  
10 country, is that a correct statement?

11 MR. BROOKS: Yes.

12 MR. MENDEZ: And are they compensated?

13 MR. BROOKS: No.

14 MR. MENDEZ: You do pay them for their flight expenses--

15 MR. BROOKS: Yes.

16 MR. MENDEZ: Does anyone else have any questions?

17 MS. BERNSTEIN: I have a question. You mentioned that you have  
18 several members of your Board who are staff  
19 attorneys?

20 MR. BROOKS: Directors, program directors.

21 MR. SABLE: Nixon and Osgood are staff attorneys.

22 MR. BROOKS: Oh, are they? I'm sorry. They are staff  
23 attorneys.  
24

- 1 MS. BERNSTEIN: Okay. What programs are they with?
- 2 MR. BROOKS: One is with Cleveland and one is in--is it  
3 Memphis?
- 4 MR. SABLE: Some program in Tennessee and I'd say--It's not  
5 Memphis, it's not Nashville and it's not Chata-  
6 nooga.
- 7 MS. SWAFFORD: I've talked with a number of the project directors  
8 in Tennessee and I was not aware that we had a  
9 Board member--
- 10 MR. SABLE: No. It's Brian Paddock. He's a staff member,  
11 he's not a Board member. I mean--Excuse me.  
12 He's a staff member of one of the Tennessee  
13 programs. He's not a project director of the  
14 Tennessee program.
- 15 MS. SWAFFORD: I'll make it a point to meet him, though.
- 16 MR. SABLE: Good.
- 17 MR. MENDEZ: I thought that Mr. Durant would ask you at least  
18 one question.
- 19 MR. DURANT: I already asked him--I already asked him. I  
20 want to say also for the record that when I was  
21 in Boston visiting a number of the programs that  
22 Mr. Brooks was very gracious not only in terms of  
23 his comments but in terms of the time that he spen  
24

1 We've a number of chances to chat and it's been  
2 very helpful to me and I'm always appreciative  
3 of that.

4 MR. BROOKS: Thank you.

5 MR. DURANT: Thank you very much.

6 MR. MENDEZ: Thank you very much. Joel, next is this.

7 MR. GESSNER: Since this is going to be very brief to take  
8 care of this, the Congress said no, it has not  
9 yet adopted an appropriation for the Corporation  
10 for the fiscal year, 1986. The staff is rec-  
11 ommending that the Board not take any action  
12 with regard to a preliminary COB4FY 1986 until  
13 such time as an appropriation is passed. In  
14 Mr. Thimell's memo to the Board there is an  
15 attached speech of Rep. Smith in which he states  
16 on page 17 of the Board book that we advise for  
17 Congress to proceed with the regular appropria-  
18 tions bill for fiscal year 1986 as fast as possi-  
19 ble and that LSC take no action - this is with  
20 regard to the budget until Congress has had  
21 time to deal with authorizations and appropriation  
22 in some definitive manner.

23 MR. WALLACE: May I ask a question? I think it is reasonable  
24

1 to assume that the President is not going to sign  
2 our appropriation before the 7th of November  
3 when we next gather in California. So assuming  
4 we are not able to pass a budget until the first  
5 week of December, is that going to give the staff  
6 or whoever has to operate on our resolution enough  
7 time to get the job done? I'm not saying we go  
8 ahead here. We haven't got anything to act on,  
9 but do we need a meeting - we need to call a  
10 meeting after the President acts?

11 MR. GESSNER: I think the Committee could authorize the staff  
12 by its directive to continue operations at the  
13 level not to exceed the current level of operations  
14 and when we do have the appropriation whether it  
15 is the November meeting or the December meeting  
16 or the January meeting we'll present the COB for  
17 adoption.

18 MR. WALLACE: Fine.

19 MR. MENDEZ: In that regard, I would move that we instruct the  
20 staff to continue to spend on management and  
21 administration at the current level and act  
22 in all respects with regard to Congressman Smith's  
23 September 20th speech wherein - and we won't take  
24

1 any action on this - it's the last two lines  
2 essentially of the center column, first two  
3 lines in the right hand column.

4 MR. WALLACE: Now wait a minute. I'm not sure I understand  
5 what you're doing.

6 MR. MENDEZ: Well, at least temporary--at least until the  
7 next meeting that we ask the staff to continue  
8 to spend in the same manner as we have done in  
9 the past.

10 MR. WALLACE: On management and appropriation? Or on  
11 everything?

12 MR. MENDEZ: On management and appropriation.

13 MR. WALLACE: Is there anything else that we're-- The manage-  
14 ment and administration, I'm sorry. Why are  
15 we limiting it to management and administration?  
16 Are we not doing anything else right now?

17 MR. MENDEZ: It's under last year's budget.

18 MR. WALLACE: It's under last year's budget.

19 MR. GESSNER: The grant year begins in January.

20 MR. WALLACE: Right.

21 MR. GESSNER: There are a few items that are left over from  
22 last year that either can be deferred or taken  
23 up.

24

1 MR. WALLACE: Well, now wait a minute. I'm confused. The  
2 grants--The field-grants that began in January,  
3 last year's money, and they're going to continue  
4 to the end of the year regardless.  
5 MR. GESSNER: The end of this calendar year.  
6 MR. WALLACE: And management and administration--  
7 MR. GESSNER: Is on an October through September fiscal year.  
8 MR. WALLACE: Okay. And that's next year's money which we  
9 haven't gotten yet.  
10 MR. GESSNER: That's correct.  
11 MR. WALLACE: I mean we're operating on it continually.  
12 MR. GESSNER: We have enough cash to operate.  
13 MR. WALLACE: So we are authorizing you to operate out of cash  
14 on hand and whatever we receive under the con-  
15 tinuing resolution at the same rate--  
16 MR. GESSNER: Yes.  
17 MR. WALLACE: --that you've been operating for.  
18 MR. GESSNER: That's correct.  
19 MR. WALLACE: Okay. And we're not sending anything out of the  
20 continuing resolution funds to the field because  
21 it isn't time to do that anyway.  
22 MR. GESSNER: Not until you've approved an '86 budget for  
23 categories one and two.  
24

1 MR. WALLACE: All right.

2 MR. GESSNER: As well as category--

3 MR. WALLACE: I appreciate the explanation because I didn't  
4 fully understand why we were limiting our scope  
5 to that, but I do now.

6 MR. SMEGAL: I've got a motion apart from this one when you  
7 get to the end of it. I believe you want to  
8 take a vote on it.

9 MR. WALLACE: Have you got a second yet?

10 MR. MENDEZ: I haven't got a second yet.

11 MR. WALLACE: Oh, I'll give you one.

12 MS. BERNSTEIN: You got one from me.

13 MR. MENDEZ: Yes, I have. Hold on just a minute.

14 MR. SMEGAL: I've got enough problems of my own but I can  
15 come second Pepe's motion.

16 MR. MENDEZ: Is there any other discussion on this?

17 MR. EAGLIN: Yes, Mr. Chairman. Mr. Chairman, I think a  
18 couple of weeks ago I sent a letter to Mr.  
19 Baker, also to Mr. Wentzel asking for information  
20 The forms which I attached were forms that I  
21 received from Mr. Roche, Terry Roche who wants  
22 to make certain points to me concerning the  
23 budget. I asked for the information because I  
24

1 think it's necessary for me to be informed  
2 properly and I think it relates--I'm sure it  
3 relates to what's before us now. I haven't  
4 received a response from that. Earlier this  
5 week or maybe it was the end of last Mr. Baker  
6 said he had the material for me, offered to send  
7 it. I asked him to hold it for me. He says that  
8 he told me that he had it and I have since been  
9 told that and that it's in someone else's  
10 possession.

11 MR. MENDEZ: I think Clark Durant has that.

12 MR. EAGLIN: All right. And I'd like some explanation for  
13 why that sequence of events has occurred which  
14 has occurred.

15 MR. MENDEZ: I think right now is an appropriate time for the  
16 Chair to declare a five minute recess and ask  
17 Mr. Durant about that.

18 MR. EAGLIN: Okay. I think it does relate to this, though.

19 MR. MENDEZ: I don't believe it does but I think it's an  
20 appropriate time for a five minute recess.

21 MR. EAGLIN: Okay. We're talking about the--All right.

22 (Off the record)

23 MR. MENDEZ: We are now back in session. I hope that you've  
24

1 gotten your issues resolved with Mr. Durant, Paul.

2 MR. EAGLIN: Yes.

3 MR. MENDEZ: And we presently have a motion before us as  
4 clearly explained by Mr. Wallace--

5 MR. WALLACE: Penetrating questioning of the witness.

6 MR. GESSNER: I would have said eloquent clarification--

7 MR. MENDEZ: The motion as it stands is that the Board author-  
8 ize the staff to continue to spend for management  
9 and administration at the current level. It's  
10 been moved and seconded. Is there any further  
11 discussion? None appearing, all in favor?

12 Response: Aye.

13 MR. MENDEZ: Opposed?

14 (No response)

15 MR. MENDEZ: None appearing, that passes. Mr. Smegal has  
16 asked me for a brief moment.

17 MR. SMEGAL: Thank you. We have not only Congressman Smith's  
18 congressional record that we've been referring  
19 to, but we also have as of this morning in front  
20 of us a letter of October 8th of Mr. Durant with  
21 some enclosures, the enclosures being the present  
22 version of HR2965 and a portion of Senate Report  
23 99-150 authored by Mr. Rudman for Mr. Laxalt.

24

1 And with respect to those materials, I'd like to  
2 make the following motion. In the event that  
3 fiscal year '86 Congressional payments to Legal  
4 Services Corporation exceed fiscal year '86  
5 budget estimate, approved by this Board of Direc-  
6 tors on December 20, 1984, as revised on March  
7 8, 1985, and to the extent possible from such  
8 additional funding Legal Service recipient funding  
9 policies for '86 will conform to Congressional  
10 intent such as is presently reflected in Report  
11 99-150 of the Senate Committee on Appropriations  
12 prepared to accompany HR-2965 as amended or as  
13 further articulated by Congressional enactment.  
14 And if I have a second, I'd like to speak to that.

15 MR. EAGLIN: I'll second it.

16 MR. SMEGAL: We've sent out refunding--I understand we've  
17 sent out refunding applications that require  
18 the recipients to respond by November 15. To the  
19 extent that a number of our grant recipients are  
20 presently the subject of reductions in their  
21 grant--in the monies available for their grants,  
22 those applications have to be back by November 15,  
23 about the time this Board meets again. And it

24

1 seems to me that with respect to migrants, for  
2 example, migrant programs which are scheduled  
3 for twenty-one, twenty-six cut, the National  
4 Support Centers ten percent, and some other pro-  
5 grams, I think this Board should go on record  
6 that if we do get money in excess of three hundred  
7 and five million, three hundred and five million  
8 being what we asked for as a result of asking  
9 for that, we'd have to indicate programs are being  
10 cut to accommodate an increase in funding for the  
11 basic field programs that to the extent we get  
12 additional funding which Congress indicates is to  
13 be for the purpose of restoring those cuts to  
14 various programs that are presently indicated to  
15 be the subject of cuts that we should be on record  
16 so that our funding recipients can know that when  
17 they submit their budget application to us pursuant  
18 to our instructions by November 15 at a level  
19 consistent with our March 8th, 1985, revised  
20 budget mark that should we get more money they  
21 will be entitled to an appropriate portion of that  
22 as it is Congress's intent to restore those cuts  
23 to the extent that it is Congress's intent to  
24

1 restore those cuts.

2 MR. WALLACE: Mr. Chairman?

3 MR. MENDEZ: Mr. Wallace?

4 MR. WALLACE: I think it's premature to try to interpret  
5 legislation, to interpret a bill that is not yet  
6 law. I so felt when I read Mr. Fritz's letter,  
7 and I move to table.

8 MR. MENDEZ: Second?

9 MS. BERNSTEIN: Do you need a second on table? I'll second it.

10 MR. MENDEZ: I take precedence. Tom, on the motion to table?

11 MR. SMEGAL: No.

12 MR. MENDEZ: Chair votes to table.

13 Response: Aye, aye, aye, aye, no.

14 MR. MENDEZ: The Aye's have it. It's tabled. The next matter  
15 before us is the modification of budget guidelines.

16 MR. GESSNER: During 1980 the staff of the Corporation was  
17 directed by the Board to formalize budget policy  
18 how money was to be moved around and allocate  
19 it and appropriate it. Since that time there have  
20 been a number of changes in the structure of the  
21 Corporation, the formats that we use for the bud-  
22 get, and some additional requirements like notifi-  
23 cation to Congress of the programs. You all have  
24

1 received a copy of the 1980 budget guidelines.  
2 What I plan to do is go through paragraph by  
3 paragraph and make some comments on some issues  
4 that I think need to be addressed and to rewrite,  
5 try and incorporate any direction I get from you  
6 to a draft.

7 MR. MENDEZ: Let me see if we can perhaps expedite this. Does  
8 any member of the Board--of the Committee have  
9 any specific items that they wish to have addressed  
10 in this guideline?

11 MS. BERNSTEIN: Well, I mean, I can go through about several items  
12 but I don't know to what extent they'd be duplicate  
13 of things that we've talked to Dave at various  
14 times in the past before in terms of budget pro-  
15 cedures, so I--my concerns are in terms of  
16 definitions of committed and in terms of time--how  
17 many times we look at this and the calendar for  
18 adopting it. Those are the three substantive  
19 areas--

20 MR. MENDEZ: I've addressed--And those are similar--

21 MS. BERNSTEIN: That's what I thought we'd--You know. So without  
22 knowing what you're suggestions are, I can't--

23 MR. MENDEZ: All right. Let's just go through Dave's first and  
24

1 then just do them in fairly summary form because  
2 I'll tell you the procedure that we're going to  
3 do is that we're going to review this now, we'll  
4 prepare a proposed draft, have it back to us next  
5 month and re-examine that to determine and take  
6 comments on the draft next month, and hopefully  
7 in December we'll have a finalized version that  
8 will be acceptable that we can report to the  
9 Board.

10 MR. GESSNER: Let me go through very briefly. In paragraph one  
11 there's no indication of the delay appropriations  
12 and what procedures should be followed in a case  
13 such as what we have right now. The guidelines  
14 don't indicate the COB lines that would be used  
15 in the budget presented to the Board. Last year  
16 the Corporation adopted new COB format and maybe  
17 we should incorporate that format into the guide-  
18 lines. The COB worksheet should be flexible  
19 enough to allow the staff to submit the worksheet  
20 in subactivities that are existing in that partic-  
21 ular fiscal year. The way we're presenting the  
22 budget to you has been changed somewhat. We're  
23 presenting an COB to you now with the appropriation  
24

1 and committed and uncommitted carry over and any  
2 other funds. Look at the examples in the old  
3 guidelines. It's somewhat a different concept.  
4 Paragraph two is fine as it is. Paragraph  
5 three - the procedure for review is with a  
6 Budget Management Group Incorporation which is  
7 a smaller group than the Budget Review Committee,  
8 but the composition of that group changes over  
9 time.

10 MR. MENDEZ: To change it and prepare all of these items in  
11 accordance with that, your suggested changes.

12 MR. GESSNER: I'm sorry?

13 MR. MENDEZ: Well, with regard to everything that you stated  
14 in paragraph one, I want you to give us a proposal  
15 on all of those. With paragraph two, whatever  
16 the--I want to know what the present budget  
17 review committee is, who is it composed of--

18 MR. GESSNER: The budget management group now consists of  
19 the comptroller--

20 MR. MENDEZ: Well, I don't particularly care who it is now.  
21 I just want to know what it is. I want to  
22 have it done and I want to have that done in  
23 consultation with the President to make sure that  
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we have a formal budget group.

MR. GESSNER: Going through paragraph three, it's been some time since members of the Appropriation and Audit Committee have been invited to attend meetings of the Budget Review Committee. I don't know if you all want to be invited. It's a--The budget review is a more informal process than which I believe existed five years ago. Paragraph four I believe needs a general statement concerning the timing of the reviews so that there will be quarterly reviews. A statement on the format of the reports that I submitted to you. Some provision allowing for ad hoc or other regular reports such as the monthly reports that you see here. Paragraph five - we need to cover the requirement for Congressional notice under the reprogramming provisions. Paragraph six does not allow any movement by staff between COB lines. I assume that's something the Board wants to keep the way it is. Again something about reprogramming. Paragraph seven - there is clarification needed on where the unallocated reserve is. We've established an unallocated reserve within management and

1 administration. The unallocated reserve that  
2 existed five years ago was somewhere else and  
3 we use the unallocated reserve as something  
4 where we move excess management and administration  
5 funds. Paragraph eight I don't believe is  
6 necessary. Paragraph nine is perfectly adequate.  
7 Some other items that I think we should include  
8 are --

9 MR. MENDEZ: Well, why don't you continue with paragraph eight  
10 in absence of any good reason. I think that that'  
11 clearly structured item and that we can use  
12 paragraph eight in combination of the monthly  
13 reports and use it in that form. Make specific  
14 reference to the monthly reports in paragraph  
15 eight.

16 MR. GESSNER: I think that we need to add something about the  
17 montly expenditure reports that the Board receives  
18 As Mrs. Bernstein mentioned statement that funds  
19 are committed when adopted. Clarification in the  
20 guidelines - I'm not sure exactly where - that  
21 the Corporation has an internal process that  
22 deals with the management administion funding  
23 on a quarterly basis and this is done independentl  
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1 of the presentation to the Board although the  
2 Board certainly can move money within that  
3 category and from that category. That's a very  
4 brief summary of--

5 MR. MENDEZ: The one issue that you've raised here in para-  
6 graph three, I want to have a couple of different  
7 proposed languages concerning whether the members  
8 of the Appropriations and Audit Committee will  
9 be invited to attend the meeting. I want to  
10 examine various alternatives in that so give us  
11 a couple of alternative language, one to keeping  
12 it in and another to taking it out and some  
13 modification of language that's in there, because  
14 I think we ought to be invited to that. I don't  
15 think it should be a requirement that we got,  
16 but I think that it's courteous and it's well  
17 to invite us to that and you may want to structure  
18 some sort of formalized quarterly meeting--

19 MR. WALLACE: Mr.Chairman?

20 MR. MENDEZ: I wouldn't say that you ought to check with the  
21 General Council's office about the Sunshine Act  
22 duplications - I don't know what's going to happen  
23 at these budget review meetings, but if we got a  
24

- 1 quorum of this Committee there, it may make--  
2 there may be some sunshine.
- 3 MR. MENDEZ: That's--When you give us the alternatives, I  
4 want you to examine those various issues.
- 5 MS. BERNSTEIN: I would like for another issue to be examined.  
6 You don't have to give me an answer to this  
7 today, but it's always amazed me and it's been  
8 given the discussion this morning again as far  
9 as the allocation of PAI to national and state  
10 support, they're listed under provision of legal  
11 assistance rather than support for the provision  
12 of legal assistance. And I would like to know -  
13 you know, you don't have to do it now, but I  
14 would like to be ready when we come back to this  
15 as to why we should not be dealing with support  
16 monies under support.
- 17 MR. GESSNER: Well, we are.
- 18 MR. MENDEZ: This is why your--
- 19 MR. GESSNER: When we changed the budget last year, we set up  
20 delivery of legal assistance--
- 21 MS. BERNSTEIN: Well, we should have it--
- 22 MR. GESSNER: --work for the delivery of legal assistance--
- 23 MR. MENDEZ: This is the old--  
24

1 MS. BERNSTEIN: Okay. This is an example.

2 MR. MENDEZ: That's the old format that we're presently  
3 operating under.

4 MS. BERNSTEIN: Okay.

5 MR. MENDEZ: And I want you to bring in a new schedule of  
6 exhibits and that sort of thing with these  
7 modifications. Are there any other comments  
8 from the Committee about the corrections or  
9 additions? I noticed the man who was directly  
10 responsible--Yes, he's sitting right behind you.

11 MR. SINGSEN: The tool of your predecessor.

12 MR. MENDEZ: Is there any comments that you would like to  
13 address about what we should do to update and  
14 bring this into a more current position?

15 MR. SINGSEN: Basically what I think has been laid out here  
16 makes sense. You obviously need to keep your  
17 rules consistent with your practices. And I  
18 frankly think the attendance at the Budget Review  
19 I don't know the name of the new committee, I  
20 don't remember it - process by a member of the  
21 Committee is useful because it gives an insight  
22 to how money is moved and what's happening in the  
23 organization. It's not possible at this level.

24

1                   There's a lot more information available. Beyond  
2                   that I'm looking forward to seeing the draft. I'd  
3                   be glad to give thought to it.

4   MR. MENDEZ:       When you think about that I hope you'll be back  
5                   and would invite your comments, but please tell  
6                   us how we can deal with the issue that Mr. Wallace  
7                   just brought up - the sunshine.

8   MR. SINGSEN:     We never had more than one person there. And it  
9                   was not a decisional role. It was an information  
10                  role.

11   MR. MENDEZ:      One of the issues that we have to direct also and  
12                   we'll be addressing at the next meeting is the  
13                   role of compensation to Board members and Committee  
14                   members to attend meetings such as this. We haven  
15                   under our new guidelines addressed that yet and we  
16                   will have to do that.

17   MR. SINGSEN:     I will mention one other thing. Some time subse-  
18                   quent to the adoption of these procedures there  
19                   were also prepared - and I will be glad to provide  
20                   it today - but a schedule of the events for the  
21                   year that dealt with appropriation, allocation and  
22                   review.

23   MR. MENDEZ:      That would be well worth our time to attach to the  
24

1 back of that as an exhibit so that we can look  
2 at that and make any changes that we want to do  
3 to that.

4 MR. GESSNER: I provided you about last December an update of  
5 that.

6 MR. MENDEZ: I recall that but it would be good to place that  
7 along in this program so that we have it all in  
8 one place and we can use that more effectively.  
9 Are there any other comments concerning this?  
10 None appearing, we will leave that issue. The  
11 next matter - revision of the audit and accounting  
12 guide. At this time I would call Mr. Donlon to  
13 come forward. Mr. Donlon, please state your name,  
14 and your occupation and a little bit of your  
15 background.

16 MR. DONLON: My name is Joseph Donlon. I'm a principal in the  
17 consulting group with Arthur Young and Company,  
18 CPA and consultant firm in Washington. My back-  
19 ground is that I am an accountant with and MBA,  
20 a speciality in Management Information Systems.  
21 My work experience is that I have been with the  
22 Arthur Young since early in 1984. Prior to that  
23 I worked for twenty years with a general accounting  
24

1 office, the United State General Accounting Office  
2 in Washington, D.C. My experience with the General  
3 Accounting Office was in the area of governmental  
4 accounting, auditing, writing and publishing  
5 government wide accounting and auditing policy,  
6 particularly a lot of emphasis on accounting  
7 systems, payroll systems and the procedures that  
8 deal with them, design new accounting systems,  
9 review of all federal agencies compliance not  
10 only with the federal standards but with generally  
11 accepted accounting principles; that is, the  
12 private sector accounting policy by the AICPA and  
13 a financial accounting standards board and its  
14 predecessors. I have worked with virtually every  
15 agency in the federal government on their account-  
16 ing and payroll systems, had a heavy interface with  
17 ONB and Treasury requirements. My final GAO task  
18 was to serve as one of the developers and designers  
19 of a report commission to try and come up with an  
20 improved and new federal financial management  
21 system that would integrate budgeting, accounting  
22 and financial reporting. It requires this report  
23 that I worked on the inclusion of functional  
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1 reporting of expenses for the federal government  
2 which is the topic I'm going to talk about today.  
3 My brief experience with Arthur Young has been  
4 along the same lines working with federal con--  
5 Excuse me, I'm contracting with federal agencies.  
6 Primarily on conrols, accounting policy, account-  
7 ing system design, federal financial management  
8 reporting and instructing in these lines.

9 MR. MENDEZ: Very good. Have you -- I noticed that you prepared  
10 a document for us, is that correct?

11 MR. DONLON: Yes, isr.

12 MR. MENDEZ: And would you please briefly explain to us what  
13 that document is?

14 MR. DONLON: Certainly. I was requested to do a little research  
15 and bring together my knowledge and the knowledge  
16 of some other experts in the field on the func-  
17 tional classification of expenses by recipients  
18 of financial systems for the Legal Services  
19 Corporation. And to do that, I used my prior  
20 knowledge and the knowledge of other members of  
21 my firm and background of a few other folks to  
22 come up with the basic requirement for this and  
23 then some research into who does and who does not

24

1 and what the requirements, advantages, disadvan-  
2 tages in policy. Just going briefly through my  
3 paper, what I have done on page one is to intro-  
4 duce the subject of American Institute of  
5 Certified Public Accountants publication called  
6 Statement of Position Number 78-10 which was  
7 issued on December 31, 1978 and then included in  
8 an AICPA publication called Audits of Certain  
9 Nonprofit Organizations. This document would  
10 be and serve as a very commanding bible for  
11 anybody in the CPA profession to comply with its  
12 requirements. It is used very loyaly by my com-  
13 patriots in Arthur Young and other public account-  
14 ing firms that I'm aware of. I'm not aware of  
15 all of them, but they follow it closely. Any  
16 auditor in Arthur who is working with nonprofit  
17 corporations would carry this document with them  
18 on a day to day basis and use it and pull from it.  
19 So it is a very standard published by the AICPA.  
20 Currently - and I'll cover this in a second - the  
21 Legal Services Corporation requires the reporting  
22 of expenses and its financial statements only on  
23 an object class; that is, natural expenses such  
24

1 as salaries, fringe benefits, travel, training.  
2 But this reference audit manual recommends that  
3 nonprofit organizations report these expenses on  
4 a functional basis or continual reporting statement  
5 on an object class basis and add in a statement of  
6 expenses by function. I want to underline that  
7 word 'recommends'. I'll discuss it in just a  
8 bit later. It is a lot more meaningful than  
9 recommend. I did not want--I didn't mean to  
10 change any words of the AICPA. They say recommends  
11 in effect, it means they require that and I'll  
12 explain that in just a minute. Next on the page,  
13 I have provided the AICPA discussion of what  
14 functional classification expenses would mean and  
15 it simply is that a classification of expenses that  
16 accumulate, all expenses of an organization accord-  
17 ing to the purposes for which the costs are incurred.  
18 The primary functional classifications are program  
19 and supporting services - to pick some examples  
20 from my brief involvement here with the Legal  
21 Services Corporation, you might have programs that  
22 provides support for criminal problems, civil,  
23 juvenile, domestic, or disability, and then that

24

1 would be your programs or functions that you carry  
2 out. Support would cover such subjects as train-  
3 ing, fund raises and general administration. And  
4 basically the requirement is that these expenses  
5 be reported under those type of functional cate-  
6 gories. Page two is some details by the AICPA on  
7 what they mean by functional classification of  
8 expenses. The second line of paragraph 85 at the  
9 top says 'should', that in effect means 'you  
10 must'. I want to carry that down just a little  
11 bit further. In that first paragraph 85 it says  
12 -If expenses are not reported on a functional basis  
13 the notes to the financial statements - I'm  
14 paraphrasing - should contain a description of the  
15 basic programs of the organization and I'll discuss  
16 that also in more detail but what they are in effect  
17 telling the auditor is if you're not reporting on  
18 a functional basis you must acknowledge and present  
19 this and tell us a little bit about it in your  
20 statement before you sign off on it. I will not  
21 discuss that page any more. I would point out one  
22 point that 88 does say as it starts on page 2 and  
23 goes to page 3 that an organization may also

24

1 present as supplementary information a schedule  
2 of functional expenses by object class and that  
3 is basically what you do today and all of my  
4 work with federal government and other reporting  
5 classification efforts we've always said do not  
6 take away the object class, add the functional  
7 type of expense information because you need  
8 object class information also. I refer you now  
9 to page 3. What is an AICPA Audit Guide? There  
10 is quite a strong statement in there but basic-  
11 ally what it says is that this is the appropriate  
12 accounting and reporting principles, this one here  
13 on nonprofit organizations that should be followed  
14 by the accountants who do the accounting and the  
15 auditors who do the auditing of the financial  
16 statements of a nonprofit organization. A CPA who  
17 deviates from these procedures and principles  
18 may very well be forced to justify such departures  
19 by the AICPA of question. Effectively then, the  
20 Guide constitutes an authoritative pronouncement  
21 on appropriate accounting and reporting principles  
22 We at AY, Arthur Young, follow this faithfully.  
23 I am aware from looking at financial statements  
24

1 audited by other CPA firms that they also require  
2 this. As I mentioned before, the CPA must enclose  
3 in his opinion statement on a conclusion of an  
4 audit that expenses are not being reported on a  
5 functional basis and what the major programs are.  
6 I have also offered several exhibits to this  
7 document. Exhibit 1 is a copy of your current  
8 financial statement on an object class basis.  
9 Exhibit 2 is a proposed one that would call for  
10 and array the expenses on both object class and  
11 a functional expense categories. This is a propo-  
12 sal that is before us. The advantages of func-  
13 tional reporting of expenses - basically it  
14 provides more information to the users, to the  
15 grantors and the public. But most importantly in  
16 my mind is the amount of management and information  
17 and control assistance that is given to the  
18 manager at the level where the funds are being  
19 spent and also at the review level. It just pro-  
20 vides more information. I think the best example  
21 that I can offer is that there is information on  
22 travel and other items of expense and object class  
23 presentation, but if you array that as in Exhibit  
24

1 2 where you list travel and then by program you  
2 can figure out where the travel is going on, it  
3 tells the manager more. In some cases the manager  
4 or reviewers may not want to know this, but it is  
5 good information to help control operations and  
6 is necessary, in my opinion, in a government  
7 environment. Okay. There are additional costs  
8 of putting in functional reporting in any  
9 program or system or organization that does not  
10 have it. It does take time, it does take some  
11 effort. It is not an impossible task. In many  
12 cases if the system is set up properly, it can  
13 be done with a minimum of difficulty. My overall  
14 opinion not having discussed this or been down  
15 with any of the recipients - I've only looked at  
16 one financial statement prepared by one of your  
17 recipients and they were reporting on a functional  
18 basis, I would say that many of them probably  
19 have the capability to do it easily. Others it  
20 would take some effort, but in any case, the cost  
21 that I have not identified because I just couldn't  
22 at this time, I do not believe would be prohibitive  
23 I do not believe that they would be anywhere near  
24

1 the element of impossible. I do think it would  
2 take some effort and some concentration. Any  
3 well managed program that exists that is under  
4 the control of audited statements by a CPA on a  
5 year end basis which all of yours are should be  
6 in reasonable shape. I also want to make the  
7 point that in many circumstances like we're talk-  
8 ing about here today, the CPA that has been  
9 engaged to review and sign off on the financial  
10 statements at the end of the year even today  
11 prepares these financial statements so a CPA could  
12 certainly go ahead if the information is provided  
13 by the agency and prepare statements on a func-  
14 tional basis without hardly any difficulty if the  
15 information is there. I believe the opportunity  
16 for changing is good in the Legal Services Corpora-  
17 tion because of this requirement that you have  
18 audited statements every year. You should have--  
19 Your recipients have access to a CPA throughout  
20 the year and should be able to get some guidance  
21 or get a little additional guidance of how to do  
22 this and how to apply it in your environment.  
23 I have offered as Exhibits 3 through 12 examples of  
24

1 other government nonprofit organizations that  
2 are reporting on a functional basis. Exhibits  
3 3 through 7 are some nonprofit organizations  
4 that we at Arthur Young have audited over the  
5 past few years. I offer several examples. You  
6 will note in the titles that I have taken off the  
7 official title and put something like Alcohol  
8 Treatment Center, or a church organization,  
9 national trade council, only because in the  
10 short time I was not sure that those clients would  
11 be satisfied to pass their financial statements  
12 around so I did it that way but information  
13 would be available. I have also offered on  
14 Exhibit 8 a copy of a functional expense statement  
15 that also was on an object class basis for the  
16 federal government. This is a proposed reporting  
17 format that is being pushed throughout the federal  
18 government now and is the type of report that I  
19 mentioned to you I worked on in my last job in  
20 federal government. I also point out to you in  
21 Exhibit 9 the federal government today prepares  
22 overall financial statements that are on a  
23 functional expense basis. You can see them in  
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Exhibit 9. Exhibit 10 is a very interesting statement. It's a proposed financial statement for the Department of Commerce's U.S. Patent and Trademark Office. This functional expense type statement was prepared by the Department of Commerce's Patent and Trademark Office as a result of private citizens or private associations that deal with the Patent and Trademark Office's insistence that they wanted to know more about how their money was being spent. I've also offered a functional expense statement for state and local government. Quite a few of them do it. A recent study in December, 1984, disclosed that at least fifty percent of them did it. I offered one exhibit there as Exhibit 11. I was asked to find out some information about how law firms did this. Basically - although I don't believe that lawfirms as they operate in their normal environment are the same as a public service like the Legal Service Corporation in their regular business, but I did find out that the American Bar Association's standard instructions do not require functional reporting of

1 expenses. However, like a CPA firm, many law  
2 firms are partnerships that are not required to  
3 report a lot of their financial information  
4 publicly but I can assure you that we in Arthur  
5 Young have a lot of functional expense type  
6 statements that we pass around with in house so  
7 we all know how much we're spending and where  
8 things are going. I would assume that lawfirms  
9 do something similar. I really don't know. The  
10 Legal Aid Society of New York City is a large  
11 nonprofit organization that receives funding from  
12 a variety of sources, one of them being the LSC.  
13 In talking to folks for our firm and the Arthur  
14 Young office in New York, they found out very  
15 early in the game that they couldn't control fundi  
16 from a lot of sources and all the reporting  
17 requirements unless they did it on a functional  
18 expense basis. They have been reporting on that  
19 for a number of years. Some of their financial  
20 reports, selected ones, are in Exhibit 12. I have  
21 a statement on allocation of functional expenses.  
22 I won't go into it in any great detail except to  
23 say that if you read through that, there are  
24

1 numerous ways to allocate these expenses because  
2 allocation is required of salaries and overhead  
3 like that. It is not intended in the audited  
4 accounting guide that this be an impossible time  
5 consuming circumstance. A CPA properly trained  
6 can do the allocation or help in the allocation  
7 and also can apply the test of reasonableness  
8 where in many cases particularly in small operation  
9 it would take no more than a quick check and test  
10 of what your usage is and where your staff time  
11 is going. The accounting and auditing guide  
12 provides requirements that time records be kept  
13 and other means so I believe that they're capa-  
14 bility is there. That concludes my statement.

15 MR. MENDEZ: Do we have any questions? Lea Anne? I just have  
16 a few then. Let's assume that we wanted to do  
17 accounting and put in functional accounting, how  
18 soon can it be done?

19 MR. DONLON: Based on my review of the accounting and auditing  
20 guide and some of the thought that's gone into  
21 it already, I think the instructions could be  
22 prepared in a minimum amount of time, I would say  
23 six to eight weeks to be prepared, reviewed and  
24

1 discussed and could be issued to the field for  
2 implementation into the recipient's hands.

3 MR. MENDEZ: And do you think, based on that, you're telling  
4 me that for calendar year '86 that we could have  
5 functional accounting in place virtually the  
6 entire year, then.

7 MR. DONLON: Yes, yes. It would take effort--a greater effort  
8 in some places than others, and I have not been  
9 to any of the field offices, but absolutely, it  
10 could be implemented in most of them.

11 MR. MENDEZ: Now typically--John, can you tell me this? How  
12 soon do you get your engagement letter out to the  
13 auditors?

14 MR. MOHLER: Our auditor?

15 MR. MENDEZ: Yeah.

16 MR. MOHLER: We're using the same one for I think the whole  
17 life of the organization which is about sixteen,  
18 seventeen years now. The engagement is in the  
19 last quarter of the preceeding year, usually about  
20 a month or so.

21 MR. MENDEZ: Terry, what's yours?

22 MR. ROCHE: About the same situation John has. In fact, we're  
23 just bidding an audit. The engagement letter  
24

1                   itself is very quick. The engagement letter itself  
2                   is very quick - a month turnaround or less. But  
3                   that's not really the problem I see and I'd like  
4                   to comment on it that I also know that Mr. Singesen  
5                   who has taken a look at the Arthur Young proposal  
6                   earlier today has a few suggestions also. I'd  
7                   like to comment--  
8   MR. MENDEZ:     Yeah, that's fine. I just wanted to know. Is that  
9                   typical to have engagement letters that close before  
10                  the audit is done?  
11   MR. DONLON:    They vary. I am not an expert in that area. I  
12                  have not negotiated engagement letters. I know  
13                  that of course they have to be settled on before  
14                  the period of the audit. I think normally if  
15                  they're done in the quarter before the year that  
16                  we're talking about would be a very reasonable  
17                  time, particularly with funding and like that.  
18                  But I'm not an expert in that area.  
19   MR. ROCHE:     We do it before the end of the fiscal year.  
20   MR. DONLON:    Yeah.  
21   MR. ROCHE:     So it will typically happen three or four months  
22                  before the audit actually gets done.  
23   MR. DONLON:    Get started, you mean, for the next year?  
24

- 1 MR. MENDEZ: Terry, are you saying that you--the engagement  
2 is for the ensuing--Let's say that we want to do  
3 the audit for FY--I mean for calendar year '86,  
4 not 85, '86, fifteen months close-out from now.  
5 When do you put your engagement letter out?
- 6 MR. ROCHE: We would typically do the auditor choice that  
7 were planned--auditor choice and engagement letter  
8 in the last quarter of our fiscal year, closer  
9 probably to December than to October.
- 10 MR. MENDEZ: So it's only about a month.
- 11 MR. ROCHE: Actually, to be honest with you, given--the  
12 biggest problem of course is the fact that our  
13 audits all have to be done in the busiest season  
14 for CPA's. And the earlier lead time we can give  
15 them, the better, so that they can do their  
16 scheduling. So we try to do it in October or  
17 November. No later than the early part of  
18 November.
- 19 MS. BERNSTEIN: You're talking October or November of 1986 for  
20 the audit that would take care of calendar year  
21 1986.
- 22 MR. ROCHE: Right.
- 23 MR. MENDEZ: But there's nothing to prohibit the engagement  
24

1 in January or February of '86 for the audit in the  
2 fall and putting some conditions on the engagement  
3 letter that they would have to work with the  
4 programs to help convert to--

5 MR. SABLE: Well, you wouldn't want to do that because in  
6 that January, they haven't done your '85 audit  
7 yet and you want your audit committee to look at  
8 the results of the audit and one of the questions  
9 the audit committee wants to ask itself is did they  
10 do a good job --I'm sorry. My name is Robert  
11 Sable. Excuse me. You want your audit committee  
12 to ask - did they do a good job or should we put  
13 this out for bid or whatever. So you wouldn't  
14 want--In effect, you'd be giving them a free ride  
15 if you--

16 MR. MENDEZ: Well, I agree, but I just was asking a hypothetical  
17 hoping that I would get some answers to some  
18 questions that you were giving me. What would  
19 be an appropriate time?

20 MR. SABLE: I beg your pardon?

21 MR. MENDEZ: What would be an appropriate time?

22 MR. SABLE: Well, we're on the same system that--

23 MR. MENDEZ: Well, for you. I'm not asking them. I'm asking you  
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now, Bob.

MR. SABLE:

Well, we've done it--When we're going to continue the same auditor that we do it the way they do it. That is in October, November. When we're starting a bid procedure, we start the bid procedure in the summer and try to pin it down by the early fall although the formal engagement letter might, in fact, since that is more of a formality be at the very end. And then typically in our case the auditor comes in often before the fiscal year is closed to do--they do a series of sort of verification checks which aren't tied in directly to the year end financial statement to get that out of the way during their slack time so that they only have to do what's absolutely necessary at the busy time.

MR. MENDEZ:

Bob, how often do you see the auditor during the year?

MR. SABLE:

Oh, it depends. There are many years in which we don't see them at all except for the formal times when they've come in; that is, in December when they're doing the audit, when they come in to do the--with the audit committee and give the reports

1 on the audit. At other times questions come  
2 up during the year about how we should book  
3 different things or look at the letter from the  
4 Corporation that requires some response and we'll  
5 check with them, so it varies from year to year.

6 MR. MENDEZ: John, how often does your group see the auditor?

7 MR. MOLA: Depending on the year. They normally come in  
8 during the course of the year and do some work.  
9 For example, after six months they do a lot of the  
10 office work that he needs to do. He will also come  
11 in to meet with finance committee or executive  
12 committee of the board. He will also come in  
13 if there are particular issues that we need  
14 consultations on. So I would say on an average  
15 that he's in probably about four times, five times  
16 a year.

17 MR. MENDEZ: Terry, how often does yours come in?

18 MR. ROCHE: Experience is the same as Bob's and John's. And  
19 then addition every time Legal Services Corpora-  
20 tion Board changes a regulation that has something  
21 to do with funding, we have to go see him again.

22 MR. MENDEZ: That's fine.

23 MR. GROSS: That's true. In the last few years, we've had to  
24

1 have our auditor in a lot more often than in the  
2 past.

3 MR. MENDEZ: How often do you generally see him?

4 MR. GROSS: He comes in in June and December and then does  
5 the audit work at the end of the year. And  
6 probably one other time he's in the office  
7 physically, about four times a year.

8 MR. MENDEZ: Does anyone else on the Committee have any  
9 questions?

10 MS. BERNSTEIN: Well, I just want to clarify something. As I'm  
11 understanding the witness, he's basically telling  
12 us that if - since we are dealing with nonprofit  
13 organizations, all of our grantees virtually are  
14 nonprofit organizations, that if they are not--  
15 if the CPA's that are auditing them are not  
16 reporting a functional accounting, then they  
17 really out to be just to be in conformance with  
18 generally accepted accounting principles. And  
19 if we should approach functional accounting as  
20 a requirement that this would be actually an aid  
21 to not only the programs but to the CPA's who are  
22 required to give a statement at the end of their  
23 auditing process. Is that--I just want to clarify

24

1 that that's what you said.

2 MR. DONLON: That is correct. The only point I would make  
3 as a CPA, he may sign off a statement and for  
4 nonprofit that is not on a functional basis if  
5 properly explains that in his letter and says--  
6 you know--and he may have a good reason - There's  
7 not enough dollars there or he doesn't feel it  
8 necessary. He'd have to sign off and in other  
9 words put a disclaimer in his opinion statement.  
10 And a disclaimer means that's something that  
11 everybody should look at carefully and see what  
12 it is and see what the problem is.

13 MR. SABLE: Our auditor is Touche Ross which is one of the  
14 major accounting firms. We have fund accounting  
15 but we do not have functional accounting. We  
16 have never had a qualifying statement in any audit  
17 that we've ever had.

18 MR. WALLACE: I see a lot of heads shaking in the room. Has  
19 anybody ever had a qualifying statement in his  
20 audit?

21 Response: No, (several no's)

22 MR. SINGSEN: I may be able to help a little bit why nobody's  
23 getting qualified statements and I'd like to add

24

1 a little bit more information about functional  
2 accounting. I'm Gerry Singen, that's G-e-r-r-y  
3 S--i-n-g-s-e-n. The first point that I want to  
4 make deals with the issue that was just being  
5 discussed. 78-10 was proposed at the end of  
6 1978. It is, in fact, not a requirement that  
7 legal services type programs report on a functional  
8 basis for a couple of reasons. First, what  
9 happened after 78-10 was proposed is that the  
10 Financial Accounting Standards Board decided to  
11 go into a searching inquiry regarding the basic  
12 conceptual premises on which financial statements  
13 should be prepared for nonprofit organizations.  
14 That's why this proposed standard has never become  
15 a firm applicable standard. Instead the FASB is  
16 just now finishing--just published its final piece  
17 of the conceptual bases and the AICPA is putting  
18 some task forces together to work with the FASB -  
19 the anticipation from one person involved in that  
20 process that I heard today is that it will be about  
21 two more years before we have a final set of  
22 standards. Second, the requirements in 78-10  
23 would only--

24

- 1 MR. MENDEZ: Gerry, but the requirement is going to be  
2 functional accounting.
- 3 MR. SINGSEN: I have not seen--
- 4 MR. MENDEZ: No, but when you talked to them today, they  
5 told you that that's what the requirement is  
6 going to be.
- 7 MR. SINGSEN: It is not clear to me that that's what the person  
8 was saying. So far, all they have is a series  
9 of conceptual statements. And let me say the  
10 second part of that 78-10 which may help in  
11 understanding why I can't be clear about that.  
12 78-10 says that for organizations with substan-  
13 tial amounts of public contributions, functional  
14 accounting is required. And it's required so that  
15 people in the general public who are making the  
16 contributions get a full look at what they are  
17 giving money to, where the money is going. Legal  
18 services programs receiving basically tax dollars  
19 are not perceived to be in the public contribu-  
20 tion realm. And as a result--
- 21 MR. WALLACE: Perceived by whom?
- 22 MS. BERNSTEIN: Yeah.
- 23 MR. SINGSEN: By the accounting industry.
- 24

1 MR. WALLACE: I appreciate--

2 MR. SINGSEN: Oh, I think so too. Let me say now because we'll  
3 need to say this later. I don't think that some  
4 kinds of functional accounting - and I'd like to  
5 say what I think is sensible - are out of the  
6 question at all. But what 78-10 says is that  
7 for organizations not heavily involved in public  
8 contribution, there is encouragement to move  
9 the functional account. I think that's why the  
10 Corporation has taken the position in the past  
11 that it is not a standard that's required of our  
12 programs now.

13 MR. MENDEZ: But we have been considering this for--

14 MR. SINGSEN: And I think you should consider it. I'm not  
15 disagreeing with that. I'm just saying I think  
16 the reason you're hearing this in terms of what  
17 is in accounting statement now, financial state-  
18 ments from programs, is that the rigor of 78-10  
19 and its application is slightly less than perhaps  
20 Mr. Donlon has been suggesting, not to say it's  
21 a bad set of rules. Just that it's not--it's  
22 neither finished in the formal processes of the  
23 accounting industry nor clearly applicable in

24

LEGAL DEPOSITION SERVICE

SHEILA SANTAS CASSAVAUGH

4 HAMPTON STREET

CONCORD, NEW HAMPSHIRE 03301

(603) 224-2460

1 legal services programs. Now, what I really want  
2 to talk about is a little bit what's in this  
3 memorandum which I got a chance to look at a couple  
4 of hours ago while we were all here after lunch.  
5 The basic categories in functional accounting are  
6 generally described in 78-10 as program services,  
7 administration in general and fund raising. Then  
8 the question is whether you need to break out  
9 program services in some way because it's too large  
10 a category or it doesn't adequately represent the  
11 organization. In legal services contact, the progra  
12 service is representing clients. And indeed in the  
13 sample audit financial reports in the new proposed  
14 audit guide in Appendix 1, statement 1-A is a  
15 statement that the principle programmatic activity  
16 of legal services programs is representing clients.  
17 So there is a programmatic statement in fact in  
18 each of the audit reports, financial reports that  
19 you're getting now. Now for the understanding of  
20 what we might mean by significant components of  
21 program services, you might, for example, distinguis  
22 generalized research by some organization from  
23 direct service of the clients. That would be the

24

1 kind of distinction that might be made. Hospitals  
2 for example often might show public education,  
3 community service, research and patient certs.  
4 They won't show cardiac care as opposed to  
5 pulmonary care as opposed to orthopaedics on a  
6 financial statement. They will say patient care.  
7 And in a legal services context you might have  
8 precisely the same kind of distinction. If there's  
9 a generalized research function, you might list  
10 that separately. It would be unlikely in a legal  
11 context to list each case type as a separate pro-  
12 gram service. That is, however, what is at least  
13 in one of the draft documents that we have both  
14 in this report in the audit guide. Now, when you  
15 look at the appendices, and I urge you to do it,--  
16 MR. MENDEZ: What's wrong with requiring that by program?  
17 MR. SINGSEN: I'll come to that in just a second if you'll--if  
18 that's all right. The problem is--  
19 MR. MENDEZ: Gerry--  
20 MR. SINGSEN: All right. I'll answer your question.  
21 MR. MENDEZ: --when I was in law school, you could tell me--  
22 when the judge asked you the question, don't tell  
23 him that I'm going to come to that in a minute.  
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Answer the question.

MR. SINGSEN: The problems are cost, capacity and benefit.

If we had asked Mr. Donlon how long it would take to implement and had told him -- he hasn't been to any programs -- that ninety percent of the programs have no time records other than the PAI distinctions, he might have said it would take a little longer than six to eight weeks to implement a system.

MS. BERNSTEIN: That's not what he said. As I understood it--

MR. SINGSEN: He said it would take six to eight weeks to get instructions out and that you could have functional accounting--

MS. BERNSTEIN: Yeah.

MR. SINGSEN: --in place in 1986 for the whole year.

MS. BERNSTEIN: That's more like it.

MR. SINGSEN: What I'm saying that in programs that lack any time records, that's going to be extremely difficult, particularly in programs that are relatively large to cover large areas. I think implementation is going to take quite awhile and it's going to be expensive. That's not to say that you ultimately shouldn't do it. Just to say that it's going to be

1 expensive and it's going to take longer than  
2 perhaps they've suggested. Now the second problem  
3 is that implementation, if you want to have case  
4 type distinctions, becomes very difficult when you  
5 have a law practice that is a general law practice  
6 If you have a law practice with a housing unit over  
7 here and a family unit over here, it's not that  
8 hard. But if you've got lawyers handling different  
9 types of cases, then what you're dealing with is  
10 very subtle distinctions of time, frequently in  
11 cases where a client has more than one case type  
12 of problem. So you're going to have a large  
13 learning problem and a record keeping problem  
14 that's going to be difficult. When you look at  
15 the appendices in this report from Arthur Young,  
16 what you'll see is for the most part what I would  
17 call cost center reports. That is, you have a  
18 large organizational subunit, either by geography  
19 or by function and everybody works there full time  
20 and you capture the information about their  
21 salaries, their space, their support costs, their  
22 travel costs and so forth. Those are what you're  
23 seeing in what are being described as functional  
24

1 accounting statements for the most part. There  
2 is one church organization there which appears  
3 to be much more a true functional statement that  
4 resembles the case type statement that's being  
5 proposed for programs. The difficulty is that  
6 if you want to make those distinctions down much  
7 lower than the geographic units or the integrated  
8 operation, you know, the housing unit or the  
9 family unit, again, you're getting into much more  
10 complicated manners of allocation and much more  
11 expensive processes. The benefits issue is obvi-  
12 ous. We need to take a look at whether the cost  
13 and time and effort lost services the clients is  
14 worth it in terms of what we learn. I think that's  
15 a good question. I don't know the answer to it.  
16 One of the things that I would suggest is that if  
17 you want to go to that kind of functional system  
18 by case type, we ought to step back a second and  
19 look at the few programs that have time records  
20 to make it possible, we ought to examine what  
21 kind of costs were involved for them, and see  
22 what kind of reports they're able to develop.  
23 Maybe we won't make it January 1, '86, but maybe  
24

1 when we do something, it will be more effective.  
2 The other thing that I want to suggest to you is  
3 that most programs do in fact now have cost center  
4 accounting. That is, they can tell you the cost  
5 by office. They can tell you the cost by the  
6 unit if they have one because they have been  
7 required for some time to use that for internal  
8 management purposes. Consequently you could get  
9 a much higher level of detail if that's the objec-  
10 tive by breaking it up by cost center. And you  
11 would not have the same level of cost of imple-  
12 mentation that would be involved in going to a  
13 case type system. Imagine for a moment, a case  
14 type system being applied in a twenty office  
15 program where what you're accumulating is the  
16 housing cases being handled by generalist lawyers  
17 in the twenty different offices. You're dealing  
18 with a fairly complex process.

19 MR. MENDEZ: Let me just--I have a question here. You have  
20 a twenty office program, would you do each office  
21 separately? What would be ideal? Or would you do  
22 them all together?

23 MR. DONLON: I find that a little hard to answer without knowing  
24

1 a little bit about, you know, the twenty offices  
2 and how different they are but I would say very  
3 definitely if I had twenty offices operating under  
4 the same recipient, I'd want them to be doing  
5 things or reporting things in the same way as the  
6 analysing, that we'd have some idea even if it's  
7 different functions that I know that they're using  
8 a consistent system so I could roll up my data and  
9 know what's going on.

10 MR. WALLACE: Here's the thing that astonishes me. We do that,  
11 of course, by each location, each of the twenty  
12 locations will have an object class report for  
13 it's entire operation.

14 MR. DONLON: Then I'd want to know the functional costs for that  
15 one, too. That's what I'd be asking for and then  
16 you'd accumulate that.

17 MR. WALLACE: I understand there are costs, there are transi-  
18 tional problems, and I haven't been on the Board  
19 of a local program, but I went through this with  
20 the priority regulations and my operations and  
21 regulations committee, trying to figure out how  
22 people set priorities and decide whether their  
23 priorities are met. And it seems to me that - and

24

1 I have the feeling the whole time that I was  
2 groping in a vacuum. If accounting is done this  
3 way, a local board has-- and it can be done this  
4 way, - I'm not an accountant; I don't know whether  
5 these numbers bear any resemblance in the real  
6 world or whether they don't - but if it can be  
7 done this way - and I've been on a local Board  
8 for the last ten or twelve years setting priorities  
9 and having no way of knowing of how those were  
10 kept, whether we were meeting those priorities -  
11 I'd wonder whether or not I was just wasting my  
12 time. Because I've been here for about a year  
13 now, and we've been hearing about what cases are,  
14 what our priorities are to be, where our money  
15 ought to go, and we have nothing concrete to get  
16 onto, and people who have actually run programs  
17 for fifteen and twenty years, how can they do it  
18 if they haven't got this stuff?

19 MR. SINGSEN: Well, part of the answer to that is in the infor-  
20 mation you actually do know about it, the case  
21 load information. Part of it is sitting every  
22 month and hearing reports on the case activity  
23 in the program, knowing the kinds of work that's  
24

1 being done, knowing the clients who are being  
2 represented, having a very clear idea of the  
3 product of the program. It goes back to some  
4 degree to our case service reports discussion.  
5 Each program is quite unique. The pieces have  
6 to be put together by looking at each program.  
7 MR. MENDEZ: Well, that's what we're saying. Put the functional  
8 accounting together by program. Have each program  
9 select their priorities. Let the program report  
10 functionally on them. And it works two ways.  
11 One is it helps you set financial goal, but the  
12 financial goals also help you set the priorities.  
13 And it helps you reexamine them.  
14 MR. SINGSEN: I think if we're talking about case type by case  
15 type functional accounting, that the costs are go-  
16 ing to be too high for the real benefit to a local  
17 program in increased management capability. If  
18 we're talking cost centers, I feel a different way.  
19 MS. BERNSTEIN: But--  
20 MR. SINGSEN: Let me make one other point if I could. And that  
21 is, if you consider the Corporation's own opera-  
22 tions - and I notice that there's an accidental  
23 typo on page one of the memo which talks about  
24

1 the Corporation being on a functional basis as  
2 opposed to the programs being on a functional  
3 basis - probably put this idea into their head -  
4 what are the functional activities of the Cor-  
5 poration. Well, they might be things like prom-  
6 ulgating regulation which involves people from  
7 all divisions of the Corporation. They might be  
8 monitoring. They might be grant making. Or  
9 research. Or training, or litigation or lobbying  
10 the Congress for funds or public affairs or  
11 compliance or publications, Board of Directors--  
12 MR. MENDEZ: I'll tell you what. You've made a good point.  
13 The Corporation will do it?  
14 MS. BERNSTEIN: What will it do?  
15 MR. MENDEZ: And we'll do it and I think it's Charles body.  
16 MR. WALLACE: Oh, is it? Well, he's the comptroller. I'm--  
17 I don't understand all the numbers--  
18 MR. MENDEZ: We'll do it.  
19 MR. SINGSEN: I'll be interested in what you decide it costs  
20 you and whether you've got enough out of it so  
21 it was worth it.  
22 MS. BERNSTEIN: I just want two different things. First, during  
23 the period which you--Gerry, you were talking about  
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the business two years away from--

MR. SINGSEN: Yes.

MS. BERNSTEIN: --actual standards and so forth. I just wondered if there was a response to that and then the other thing is that even given the fact that we are two years away from standards, it seems to me that that mitigates very strongly toward our making the adoption and going through this process now, so that two years down the line, we will be fully in compliance. And is there a response as far as that timing, is what Gerry is telling you correct?

MR. DONLON: A couple comments there. Number one, FASBY may be doing some study on that. I honestly don't know that. I do know unless my information is incorrect and I read this wrong, that this statement of position applies to all nonprofit organizations not covered by the AICPA industry audit guides listed in paragraph one above. And the ones above are hospitals, colleges and universities voluntary health and welfare organizations, state and local government units. So it applies in my interpretation and this guide is in effect now.

1 FASBY may very well be looking at it and there  
2 very well may be changes. Just one other comment  
3 that my co--We talked with the AICPA this morning  
4 and asked them if this was in effect. And they  
5 said yes.

6 MR. WALLACE: I don't know whether it's in effect or isn't in  
7 effect. My main concern is if it's not in  
8 effect, we ought to put it in effect because I  
9 want to know this information and I want to know  
10 what the costs for what the transitional benefits  
11 are.

12 MS. BERNSTEIN: Yeah, to tell you the truth, though, I think that  
13 we--this is another situation where we end up--  
14 Many time we because we need to get pieces of  
15 information at various times, as a Board of Direc-  
16 tors, in order to do our job right, and we ask about  
17 whenever we're criticized for not doing enough  
18 training, we ask for the programs to give us  
19 information on how much are you spending on train-  
20 ing. And then we're told - Well, that's going to  
21 take nine work days to get the information on  
22 training and don't make us spend time away from our  
23 clients to get this information on training. I

24

1 think that the more appropriate approach for us  
2 to take as fiduciary is to say - Keep appropriate  
3 records so that questions that we have to answer  
4 either for ourselves in order to answer our own  
5 fiduciary responsibilities or because Congress  
6 wants to answer a question - and they do from  
7 time to time. We will not have to send out  
8 another survey to the programs to find out this  
9 information. It will be being kept. And it will  
10 be in the long run a much cheaper situation. I  
11 think it's somewhat disingenuous to say it's very  
12 expensive, because obviously any time you set up  
13 something that's going to be detailed and you do  
14 it right, you suffer that first fixed cost, but  
15 thereafter the savings over a long run and I think  
16 we're all in this - you know, we are all under the  
17 assumption that legal services and legal services  
18 programs are going to be here for more than one  
19 or two years, so counting on that one fixed cost  
20 is not the way to approach it.

21 MR. SINGSEN:

I don't actually disagree very much with that.  
22 I'd say that the problem is we don't know enough  
23 about the cost. There are certainly ongoing costs  
24

1 as well as initial costs. We ought to find out  
2 a little bit more.- We ought to examine where it's  
3 being done. I give you just one example, Exhibit  
4 12 here, which is the Legal Aid Society of New  
5 York City organization, some knowledge of, which  
6 is set forth as a functionally accounting organi-  
7 zation. But what you'll see is two statements.  
8 A statement that separates criminal division,  
9 civil division, juvenile rights and volunteer  
10 division, each of which is both geographically  
11 and functionally completely separate in the  
12 Legal Aid Society so it's a cost center report  
13 as I was describing. And then on the second  
14 page, the criminal division, civil division,  
15 etcetera again plus administrative and fund  
16 raising, a member of the three categories that  
17 we talked about before, those would be two  
18 appropriate ones and certainly moving to a better  
19 capture on those would be a part of whatever we  
20 do. And then a third statement which is actually  
21 a fund statement. That is sources of different  
22 funds coming in the Legal Aid Society. What I  
23 think you won't find in the Legal Aid Society  
24

1 even though it's got a more sophisticated statement  
2 here than most programs is any attempt to tell you  
3 how many cases are felonies and what they spend  
4 on them, how many cases are murders as opposed to  
5 burglaries. Because that level of detail I don't  
6 think is supportive in the literature, I don't  
7 think it's supported in practices in any other  
8 nonprofit. It would be extremely expensive and  
9 it wouldn't produce much product. So in conclu-  
10 sion, what I would recommend is that if you want  
11 to move ahead that there are certainly folks who  
12 are in the field who would be glad to cooperate  
13 and work with you in some form of study committee,  
14 task force, or whatever to try to come up with  
15 these answers in a system that won't be so des-  
16 tructive that it's not worth having.

17 MR. WALLACE: Let me ask you this. The thing that has astonished  
18 me ever since I came here is what you said to begin  
19 with. That ninety percent of our programs don't  
20 keep time records. If our programs kept time  
21 records, how difficult would it be to take those  
22 time records and break them down into case types?  
23 I mean you have to break things down into case  
24

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1 types for CSRs anyway. You have to know what  
2 your people are working on. How hard can it be  
3 to match the time records up against the case  
4 types and factor out a--you know, what do you pay  
5 the lawyer and what percentages this or this  
6 costs. I mean, I'm not an accountant. I couldn't  
7 do it. But I do keep time records. And you keep  
8 case records. The CSRs require it. So--  
9 MR. SINGSEN: They don't require keeping time records--  
10 MR. WALLACE: I know they don't. I know they don't require  
11 keeping time records. I still don't understand  
12 why we don't but if we did, what are the rest of  
13 the problems remaining? I mean, maybe that's a  
14 burden to keep time records, but most lawyers do  
15 it and if we did it, how hard would the rest of  
16 the problem be?  
17 MR. SINGSEN: All right--  
18 MR. WALLACE: Is that--Do you have an answer or do you know?  
19 MR. SINGSEN: Well, I mean, I can give you a partial answer and  
20 it's not complete. It's obviously not impossible.  
21 MR. WALLACE: Okay. I understand.  
22 MR. SINGSEN: It obviously could be done. There are programs  
23 that do it. And what I'm only suggesting is that  
24

1 we go take a look at a couple of them and find  
2 out the costs of their system and the benefits  
3 of their system so that we know what we're doing  
4 if we're going to make a national requirement  
5 on 330 programs. That we not do it because--  
6 I mean, I've got the same reaction you have. That  
7 is, how come? Okay. I know some of the answers  
8 that people give. The answers of transition  
9 costs, it's the answers of on going costs, and if  
10 it's the answer that we won't get enough benefit  
11 in terms of management.

12 MR. WALLACE: I think I've brought my time sheets with me. They  
13 should be in my brief case. You know, I'll pass  
14 them out.

15 MR. SINGSEN: How much time do you spend on your time sheets?

16 MR. WALLACE: How much time do I spend on my time sheets. I'd  
17 probably say fifteen, twenty minutes a day on my  
18 time sheets.

19 MR. SINGSEN: That's an hour and a half a week.

20 MR. WALLACE: Yeah.

21 MR. SENGSEN: Seventy five hours a year.

22 MR. WALLACE: Um hum.

23 MR. SINGSEN: That's two weeks of work--

24

1 MR. WALLACE: Right.

2 MR. SINGSEN: --that the client's-don't get to do time sheets.

3 MR. WALLACE: You get--

4 MS. BERNSTEIN: No--

5 MR. SINGSEN: Is it worth it?

6 MR. WALLACE: Yeah.

7 MS. BERNSTEIN: Yeah.

8 MR. MENDEZ: Ladies and gentlemen, I'm just going to take  
9 one comment from Terry. Let me explain to you  
10 that I've suffered a back injury and I've got a  
11 lot of pain and we're going to move this thing  
12 over and we're going to get out of here by about  
13 five or five-fifteen because I'm afraid that I  
14 won't be able to last much longer than that. I'll  
15 take one comment from Terry and then we'll move  
16 on the next matter and then we will take public  
17 comments later and some of the other individuals  
18 can carry on this--hold the fort down but I just  
19 won't be able to last, I don't think, much passed  
20 five.

21 MR. ROCHE: I'll try to make it very fast. I haven't identifie  
22 myself previously for the reporter. I'm Terry  
23 Roche, Executive Director of Legal Services of  
24

1 Southern Piedmont, Co-Chair of PAG's Criteria  
2 Committee and stand in Greek chorus to this  
3 Board. Without meaning to be personally  
4 insulting to anybody in the room, I'm getting  
5 real tired of coming to these Board meetings  
6 and I won't come next time, Mike. I'm getting  
7 real tired of coming to these Board meetings  
8 and hearing somebody from Arthur Anderson say -  
9 Well, with just a little bit of cost -- and  
10 somebody from OIM saying - Just a few hundred  
11 thousand dollars over here for computers. Look.  
12 We've given you some figures on what it costs  
13 for a purpose. To get money from Congress.  
14 Figures that Congress has accepted. You chose  
15 to ignore those. You chose not to go get us any  
16 more money. Now, I as a project director would  
17 be interested in some of these things. I would  
18 be interested in having more management tools.  
19 I'd be interested in having more computers, our  
20 running gang. But if you want us to do things,  
21 if you want to bring us into the modern age,  
22 bring our funding into the modern age. Bring it  
23 back to the 1981 levels at least. Bring it back  
24

1 beyond that. We'll do the things you want. We'll  
2 give you the information you want. But there's no  
3 free lunch. And as advocates for poor people and  
4 for these programs, you have a duty to try to get  
5 us more money.

6 MS. BERNSTEIN: Excuse me. Just as a brief response to that, the  
7 other side of that story is we will feel better  
8 about asking for more money when we know what  
9 it's being spent for.

10 MR. ROCHE: All right. I feel real good about asking for it  
11 right now. And I'll continue doing it. But I'd  
12 like to see some response please.

13 MR. MENDEZ: Now, at this time I want to have Mike Koster,  
14 Fred Williams and Joel Thimell please come forward.  
15 All right. For the record, please, go down and  
16 then introduce yourself.

17 MR. THIMELL: Joel Thimell, Acting Staff Coordinator, Audit and  
18 Appropriations Committee.

19 MR. WILLIAMS: Fred Williams, Director of the Office of Monitoring  
20 Audit and Compliance.

21 MR. KOSTER: My name is Michael Koster. I'm an attorney in  
22 private practice from Fairfax, Virginia, and  
23 also a licensed CPA. My involvement is for  
24

1 purposes of contractor, I've been doing monitoring  
2 on and off for two years.

3 MR. MENDEZ: All right. Fred, welcome aboard. I haven't had  
4 you testify in front of me before. Would you  
5 please give us a summary of your background?

6 MR. WILLIAMS: I trained first as an economist and spent several  
7 years practicing that profession. Then I went  
8 to law school and have spent six years with the  
9 Department of HEW/HHS in regulation drafting,  
10 regulation writing, grant administration, white  
11 collar crime investigation, that general sort  
12 of thing. I've spent three and a half years as  
13 Deputy Assistant Director for general litigation  
14 at the Federal Trade Commission and have been  
15 with this Corporation for approximately seven  
16 weeks. I'm losing track of the time.

17 MR. MENDEZ: In your prior career did you handle and work with  
18 grants and that type of thing?

19 MR. WILLIAMS: I administered a grant to State Attorneys General  
20 and other entities that funded attorneys, investi-  
21 gators and auditors in approximately thirty states  
22 at that time which was over thirty million  
23 dollars that we expended.

24

1 MR. MENDEZ: All right. Now I invite your attention to the  
2 audit and accounting guide and there have been  
3 some variety of changes in the audit and account-  
4 ing guide since originally published in January  
5 and would ask one or the other of you to summarize  
6 what the comments were and responses are and the  
7 major changes.

8 MR. WILLIAMS: As I understand it, and this happened before I  
9 came, the audit and accounting guide was dis-  
10 tributed very broadly for comment to all the  
11 grantees and other interested members of the  
12 public in January of '85. Everyone was given  
13 until May 20th to provide comment. And seventy-  
14 three comments, in total, were received. Most of  
15 them from people related to programs one way or  
16 another. All the comments have been very care-  
17 fully reviewed and we have proposed a final  
18 audit guide based upon the analysis of those  
19 comments and staff experience, and the implimen-  
20 tation of audits of the various recipients.

21 MR. MENDEZ: I would like you to touch base on what the various  
22 changes are.

23 MR. WILLIAMS: Certainly. One group of comments related to  
24

1 confusion in the definition of recipient and  
2 subrecipient. We agreed that it was desirable  
3 to have these definitions consistent with the  
4 regulation and we have essentially replaced the  
5 proposed audit guide definition with the regula-  
6 tory definitions. These fairly extensive list  
7 of things. I can skip to the more important ones  
8 or go through them one by one, depending on--

9 MR. MENDEZ: Why don't you go to the key ones that you perceive  
10 and we'll take comment with regard to the other  
11 ones and you can respond to what was commented,  
12 if they find ones that you have not touched on  
13 important to it.

14 MR. WILLIAMS: In Section 1.6 and various implementing places,  
15 there was reference to LSC as a third party  
16 beneficiary of the audit contract. We agreed that  
17 that might be confusing and simply clarified the  
18 language to state that the contract should state  
19 that the auditor has authority to communicate  
20 with LSC and that should be in the contract.  
21 There was comment that we should not have access  
22 to the auditor's working papers relating to non-  
23 audit work, management service work or other  
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special services. We believe that that--whatever work the auditor does, we should have the same sort of access as the recipient's Board and other management people have that work product. We have a similar fiduciary responsibility as the Board of Directors for that sort of information. There were a lot of comments regarding the interrelated organizations section. We have completely rewritten that section for clarity and conformity with other areas of laws such as corporate laws, area where control is fairly well understood. And I think the proposed final language meets the criticisms of the comments for lack of clarity and ambiguity as to circumstances. GAL of course has just issued this report which suggests we need more oversight in that area. It seems an essential area to require greater disclosure. We made several conforming changes to that one, for instance in Section 1.2, Funds delegated to sub-recipients, simply cross reference it back to that, that the same standard for control should be used there. That's a question of facts to be determined in all the circumstances. In Section 1.9 there were comments

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relating to whether we should require approval of Corporation for fiscal year end changes. That does not seem to be--It is a current practice, as we understand it, that every time that a recipient does change their year end, they ask our approval of the interim relationship, whether a short period transition or a long period. It does not seem unreasonable to put write a current practice in the audit guide. We've just had a fairly extensive discussion of functional accounting. In Section 2-1.4 recording functional classification of expenses and then Appendix 6, we propose that the prior recommendations that this be established, strengthened as a recommendation in a final audit guide now, and that it be set out for a thirty day comment period during which we would receive the views of recipients and others and discuss any problems that may be in terms of cost benefit analysis and the sort of problems that have been raised, and after that comment period is over we would expect to make a recommendation as to whether it should be a full requirement and if so the exact details of

1 it. There were several comments on Section 2-1.8  
2 on donated services. And we have largely  
3 adopted typical accounting standards and we do  
4 have one section that got bongled in typing.  
5 We'd like to suggest on page 15 that we revise  
6 that to read 2-1.8, sub 4, to read "The services  
7 within an organization are not intended for the  
8 benefit of members, employees or officers of the  
9 donating organization". That was very unclear  
10 the way it got typed and I apologize for the  
11 problem.

12 MR. KOSTER: The next significant change was in Chapter 2,  
13 2-1.9, Recognition of Grant and Contract, para-  
14 graph two of that section addresses cost of  
15 reimbursement grant and contract. It discusses  
16 the appropriate handling under the guide of debts  
17 and balances and cost reimbursible grants and  
18 contracts. The language that is proposed now  
19 states that if recipients would desire to transfer  
20 funds from the basic field money over to their  
21 deficit in cost reimbursible monies that they  
22 would do that only with LSC approval and that  
23 that approval would be grounded in an analysis of  
24

1                   whether it would adversely impact the recipient's  
2                   basic program. That seems to address in large  
3                   part the public comments and maintain what the  
4                   staff needs to do, significant needs.

5   MR.MENDEZ:       Just a moment. Doug, are you leaving now?

6   MR. HILL:        Yes, Mr. Chairman. I'm leaving now with your--

7   MR. MENDEZ:     Why don't you issue the invitation yourself.

8   MR. HILL:        I'm not sure how the announcement or the invitation  
9                   of the reception that the Bar Association and New  
10                  Hampshire Legal Assistance is hosting at my house  
11                  starting at six o'clock was made, but everyone in  
12                  the room is invited, policy staff, Board members  
13                  of course, and everyone else that's here. That's  
14                  all.

15   MR. MENDEZ:     Thank you, Doug. I just wanted to thank you again  
16                  publicly for inviting us all.

17   MR. WILLIAMS:   Try to skip to those areas where we have not  
18                  simply adopted the in a large part the comments,  
19                  the public comments.

20   MR. MENDEZ:     One of the areas that I would specifically like  
21                  you to address is the question cost. Why don't  
22                  we just turn to that now.

23   MR. WILLIAMS:   In Chapter 4, it starts on page 63, we proposed a  
24

1 rewrite of the ineligible costs chapter to clarify  
2 what is allowed and to retain substantially the  
3 material on those things that are not allowed.  
4 And in 4.3 to continue the parameters but consult  
5 eligibility substantially as they've been adopted  
6 but in consideration of various issues raised in  
7 public comments and discussion not only in the  
8 context of the audit guide but in the context of  
9 the proposed regulation and question costs,  
10 adopted an additional sentence relating to con-  
11 sultant services in matters in which LSC is  
12 opposing party and our recommendation is that  
13 such costs should not be charged to LSC funds.  
14 The Chapter ends with a notice that LSC is con-  
15 sidering adoption of regulations which may super-  
16 cede this Chapter.

17 MR. MENDEZ: Let me ask a question. Under your proposed cri-  
18 teria of ineligible costs, is the presumption  
19 that the costs are eligible or is it a presumption  
20 once questioned they they're ineligible?

21 MR. WILLIAMS: The presumption is similar to that in the  
22 general grant regulations. It is adopted by  
23 OMB and all departments that I'm aware of.  
24

1 The recipient or the grantee is responsible for  
2 demonstrating that the cost was incurred, that  
3 it was released when necessary for the performance  
4 of the specific purpose of the grant and that  
5 it falls into all categories necessary for making  
6 allowable cost.

7 MR. MENDEZ: Now that is considerably different than what  
8 the present proposed reg. states, is  
9 that correct.

10 MR. WILLIAMS: I am not completely familiar with--I've seen  
11 at least five or six versions of the question  
12 cost regulation and I was unable to attend the  
13 session this morning completely. So I--

14 MR. WALLACE: We didn't handle it this morning. It is my  
15 understanding that we're going to the same place  
16 from opposite directions. The key is who has the  
17 burden of proof. I don't see whether it makes  
18 any difference which point you start from but  
19 whether you start with a presumption that it's  
20 eligible or start with a presumption that it's  
21 ineligible, the question is who has the burden  
22 of proof on the issue you're trying to resolve.  
23 Now what our regulation says is once a cost is

24

1 questioned, it shall be declared ineligible if  
2 it does all of these things. And the burden  
3 of proof is on, according to the staff draft,  
4 is on the program to show that it is not an  
5 ineligible cost. Now I don't see how that  
6 differs from here except you're starting--they've  
7 got the burden of proving in the first instance  
8 that it's eligible. Well, we don't really get  
9 into dealing with that until it's questioned  
10 but presumably the auditor is going--or we when  
11 we see the audits are going to question anything  
12 that looks fishy. And as soon as the process  
13 of investigation starts, then these things are  
14 absolutely identical, that the burden of proof  
15 rests on the program to show that it's an  
16 eligible cost. It may make a difference to  
17 somebody else which end you start from. To me,  
18 the key is the burden of proof and the burden of  
19 proof is on the program under the regs and under  
20 this test, under this book.

21 MR. MENDEZ: Do you have any comments about Mike's analysis?

22 MR. WILLIAM: I substantially agree with his analysis that the  
23 burden of proof is once one is in litigation a  
24

1 very critical and perhaps the most important  
2 issue. I have a preference for the kind of  
3 simplicity in terms of definition of what is  
4 eligible. And to only deal with specific problem  
5 issues to the extent that that's necessary if  
6 those are recurring problems, the standard grant  
7 regulations have a series of typical problems,  
8 if you will, and they have clear-cut criteria  
9 as to how to solve those problems, some of which  
10 are never eligible, some of which are always  
11 eligible, and a rather long list is eligible with  
12 specific approval which implies that the granting  
13 agency will work out those circumstances of which  
14 it is allowable.

15 MR. WALLACE:

16 It sounds to me from what you're saying - and I  
17 haven't looked at the standard grant regulations,  
18 but the proposal in our Board book does all of  
19 those things. It may not do them in precisely  
20 the same order that the standard grant regulations  
21 do them. It may not do them here. But there are  
22 procedures for approval, the absence of approval,  
23 things are ineligible. Once they're questioned  
24 the program has the burden of proof. There may be

1 some practical difference in setting it up one  
2 way or another, but I haven't found out what  
3 it is yet.' That's--I mean, what I've said to you  
4 before on the telephone in private and I'll say  
5 it in public - if every other agency does it the  
6 way you're saying it, and I can't find any dif-  
7 ference, any practical difference between what  
8 you're saying and what we've got in this Board  
9 book, I'm happy to do it from the perspective  
10 that every other agency does it because presumably  
11 those have been through court and people under-  
12 stand them. But being an nonauditor and non-  
13 experienced in federal grants, I can't see any  
14 difference between what you're talking about and  
15 what we've got in the Board book, question costs.  
16 That's the way it looks to me. But I'm prepared  
17 to be educated as to the practice of other  
18 agencies.

19 MR. MENDEZ: Any other comments, specific comments, about any  
20 matters that are significantly changed?

21 MR. WALLACE: I've got one question. I realize this is a  
22 revised audit and accounting guide. In our  
23 previous publications that people have seen on  
24

1 this parameters for consultant eligibility, how  
2 much of this stuff has been on the floor before?  
3 I mean, something--You know, when we first got  
4 here, we published an accounting guide for  
5 people to comment. How much of this was in it?  
6 MR. WILLIAMS: Most of it was there. The major thing that I--  
7 As a matter of fact, Section 4.2 is almost  
8 identical--  
9 MR. WALLACE: Well, I'm looking at 4.3. Parameters for  
10 consultant's eligibility.  
11 MR. WILLIAMS: I'm sorry.  
12 MR. WALLACE: Yeah, 4.3 is the one I'm concerned with.  
13 MR. WILLIAMS: That one also is - except for the first sentence  
14 of .1--  
15 MR. WALLACE: All right. The first--The sentence I was  
16 interested in--  
17 MR. WILLIAMS: --is very close to what went out in January.  
18 MR. WALLACE: Okay.  
19 MR. HOUSEMAN: It's what?  
20 MR. WALLACE: Except for that first sentence, it's very close  
21 to what went out in January and that is my  
22 question, - whether that sentence has been  
23 around the block once or twice.  
24

1 MR. MENDEZ: Let's just have a little quick discussion here  
2 about that. Does anybody have any strong feeling  
3 upon where another one was?  
4 MR. WALLACE: I'm--I mean I have not been--  
5 MR. MENDEZ: You haven't thought--  
6 MR. WALLACE: No, I've thought about what I want to do on these  
7 things. I have not done legal research to know  
8 whether I can do them in an accounting guide.  
9 I mean, it looks to me like telling people you  
10 can't spend the money on something is not an  
11 accounting matter; that's a regulatory matter.  
12 I'm not trying to protect my turf. If somebody  
13 tells me we can do in an accounting guide, then  
14 that's fine. But it looks to me like there's a  
15 lot more than accounting going on in the first  
16 sentence of 4-3.1.  
17 MS. BERNSTEIN: Well, that's no different than the purchase of  
18 real property or a lot of the other things that  
19 you cannot spend your money on. And I think that  
20 you're in a position in which you make some  
21 designations regarding what is not going to be  
22 kind of automatically within the parameters of  
23 reasonable expenditure. Now, the first sentence -  
24

1 I don't know if everybody has even got it.  
2 Consultant services secured in a manner which LSC  
3 is an opposing party or has an opposing interest  
4 shall not be charged to LSC funds. That the  
5 question here is not whether or not attorneys  
6 in the program can be involved and the money in  
7 the program can be spent to oppose the Corporation.  
8 It's a question as to whether or not consultants  
9 can be hired to oppose the Corporation with the  
10 money--As I'm reading it, - correct me if I'm  
11 reading this wrong - but that that is one exception  
12 to the question of programs used in judgement  
13 in order to get consultants that the other con-  
14 sultants are subject to monitoring office  
15 approval anyway and I think that this is a laudator  
16 exception from the standpoint that I don't believe  
17 that the Corporation can be in a position of giving  
18 approval for consultants who would be on the other  
19 side of a lawsuit. And in fact I think that  
20 sentence is necessary to keep us out of conflict  
21 of interest situations because we don't want to be  
22 in a position of giving approval for consultants  
23 in that kind of situation. In these other situa-  
24

1 tions, we can without it being in an opposition  
2 situation.

3 MR. WALLACE: I think I agree with you on the merits. That's  
4 why it's in the draft in the Board book and I'm  
5 probably going to vote for it as a regulation  
6 when we vote on the regulation. But a lot, now  
7 that you've mentioned it, of what's in this  
8 Chapter 4, maybe even including purchases of  
9 real property is the kind of substantive restric-  
10 tion that may not belong in the accounting guide.  
11 I don't know if--

12 MR. MENDEZ: Well, that's the reason we were proposing--

13 MR. WALLACE: --not to put it there. Okay.

14 MR. MENDEZ: --Put it in the regulation--

15 MR. WALLACE: All right.

16 MR. MENDEZ: But until that regulation goes into effect, we  
17 have to continue with this.

18 MR. WILLIAMS: May I respond that the existing audit guide has  
19 been in effect since '81. And as I recall the  
20 one that was in effect in '77 has essentially the  
21 same chapter with the addition we're talking about  
22 This is the way that these were placed, the  
23 Corporation had traditionally opposed these  
24

1 restrictions, and has required all grantees--

2 MR. WALLACE: Okay.

3 MR. WILLIAMS: --routine grant assurances to comply.

4 MR. WALLACE: Who's got '81? I'd like to see it. Thank you.

5 MR. SINGSEN: You want '77, too?

6 MR. WALLACE: No. One chapter in history is enough.

7 MR. WILLIAMS: That is what is in effect now.

8 MR. WALLACE: There are no regulations as of now backing these

9 up. This has strictly been an accounting matter

10 historically - leases, single purchases--

11 MS. BERNSTEIN: And as a practical matter, these have been pub-

12 lished for a long period--

13 MR. WILLIAMS: We've followed the same--

14 MS. BERNSTEIN: --whatever you want to call it, whether it's a

15 guideline, whether it's an audit guide, whether

16 it's instruction, whatever - they've been pub-

17 lished in the Federal Register exceeding--

18 MR. HOUSEMAN: They have not been published in the Federal

19 Register. I think the 8/1 issue was published

20 in the Federal Register, it may have been. The

21 draft guide was not published in the Federal

22 Register for comment--

23 MR. MENDEZ: But, let's make it clear that that draft guide was

24

1 sent to all of the programs.

2 MR. HOUSEMAN: Yes, that's true. .

3 MR. MENDEZ: In fact, Alan, since this language that we're  
4 talking about directly affects your ability to--  
5 a good living, I would like to have you speak to  
6 it.

7 MR. HOUSEMAN: Well, I've got several problems. First of all,  
8 we've been operating under a question cost reg  
9 that's been out for comment and we've been trying  
10 to work out on some of these issues. And I assume  
11 that the question cost reg process would go  
12 forward and that virtually all the issues that  
13 we started to talk about here, which we haven't  
14 talked about in committee and which Mike and I  
15 have been talking about in some way to try to  
16 reach a compromise with some of the new issues  
17 that have arisen and this is a brand new issue.  
18 It was not in the comments. It wasn't in the  
19 pre--It wasn't in the guide that was sent out in  
20 May. It wasn't in the draft that was published  
21 in the Federal Register in August and is a new  
22 issue, I think I have--

23 MR. MENDEZ: Do you understand what the--

24

1 MR. HOUSEMAN: --I'm ready to respond to it. Mike and I have  
2 been debating this and talking about it. And  
3 we will respond to it. And by the way I cannot  
4 charge attorney's fees so I do not earn my living  
5 this way. But I don't understand the process  
6 we're going through. It seems to me the easiest  
7 way to deal with this chapter is to let the regs  
8 committee to forward with the question cost.  
9 Because all of this is there, plus the instructio  
10 83-8 which is the process instruction is being  
11 dealt with by question cost. And a number of  
12 these issues--A number of these issues, like the  
13 purchase of real property, that is a brand new  
14 requirement that has not been on in the previous  
15 audit guide and a number of these are new require  
16 ments that creates substantive rights. And I  
17 really think the way you should deal with this -  
18 we've gone down the question cost route - a lot  
19 of time and energy has been expended in it. We  
20 should work the question cost reg, get it over  
21 with, get through it and pull it out of this and  
22 just leave all these issues--

23 MR. MENDEZ: Let's--I think we should leave this here and have  
24

1 it in effect because we can't--if we pull it out  
2 now - We are not under this reg, anyway, right  
3 now. We're under the old one.

4 MR. WALLACE: We're under the--We're under what we've had since  
5 1981.

6 MR. MENDEZ: Yeah, '81. Let's just republish the '81 material  
7 with this and leave it with Mike to make modifi-  
8 cations.

9 MR. WALLACE: I'm happy to handle it, but it seems to me this  
10 is regulatory matter and not accounting stuff.  
11 That's not--That is a curbstone legal opinion of  
12 the worst sort but that's sort of the way it  
13 looks to me.

14 MR. MENDEZ: We'll republish the '81 and let Mike get to it.  
15 We won't make any final decisions on that--

16 MR. WALLACE: My committee will meet tomorrow morning at nine  
17 o'clock and decide when and how it wants to  
18 proceed with this, but--

19 MR. MENDEZ: Okay.

20 MR. WALLACE: That's why we left it so we could have this  
21 discussion in your committee. It's what you  
22 wanted to do.

23 MR. MENDEZ: That's fine. We've worked out the issue. Is  
24

1                   there any other particular--Let me just ask you--  
2                   Can you in summary form give me your recommenda-  
3                   tions about what activities you want us to under-  
4                   take and what you would like us to do with regard  
5                   to the audit guide at the present time?

6           MR. WILLIAMS:   I think the audit guide has gone through an  
7                   adequate due process for issuance in final based  
8                   upon whether a policy guide--whatever decision  
9                   you make today. If you decide to pull this  
10                  Chapter 4 and replace it with the '81 Chapter  
11                  4 or make any other amendments to this draft,  
12                  and the Committee and Board are willing to issue  
13                  it on that basis, that it can be done so. What  
14                  I would recommend about the functional accounting  
15                  is if we notice that in this Federal Register and  
16                  if we notice it by giving each grantee a notice  
17                  a thirty day comment period, we'd review those  
18                  comments and make a recommendation to the Board  
19                  in a future meeting for whether or not that should  
20                  be a full requirement and if a full requirement  
21                  the details that should be opposed and the impli-  
22                  mentation date.

23           MR. WALLACE:   Mr. Chairman.

24

1 MR. MENDEZ: Yes.

2 MR. WALLACE: I have heard the recommendations and I would  
3 move that the audit and accounting guide for  
4 recipients and auditors, revised October, 1985,  
5 be adopted with the exception that Chapter 4  
6 of this document be deleted and be replaced  
7 with Chapter 4 of the presently operative 1981  
8 accounting guide with the addition that at what-  
9 ever number that leaves us, we ought to leave  
10 this bottom line notice whether that be 4-3 or  
11 4-4, LSC is considering adoption of regulations  
12 which may supercede this Chapter in whole or in  
13 part. So delete all of Chapter 4 above 4.4, add  
14 the 1981 Chapter 4, renumber this notice appro-  
15 priately. Adopt everything else. That's my  
16 motion.

17 MS. BERNSTEIN: Could we add the adoption of accounting that we--  
18 that we go forward--or do you want--

19 MR. WALLACE: I think that's a separate motion because we are--  
20 I mean, the main motion here is to adopt the  
21 book. And then what we want to do about revising  
22 the book is a separate motion and I'll make it  
23 after we've gone through this.

24

1 MS. BERNSTEIN: I'll second.

2 MR. MENDEZ: Any further discussion?

3 MR. SINGSEN: Mr. Chairman.

4 MR. MENDEZ: Yes.

5 MR. SINGSEN: I'd like the opportunity to be heard on behalf  
6 of ----- before you vote on this motion. This  
7 is a process that we've been involved in all  
8 year. We provided a--

9 MR. MENDEZ: Gerry, come up. I've got to tell you, my legs  
10 are killing me and I will allow you to have your  
11 discussion. I'm sorry. But I'm not the most  
12 courteous individual in the place.

13 MR. SINGSEN: Well, as another person with back problems, I  
14 understand the difficulties. But this may be  
15 a situation where we'd be wise not to jump quite  
16 so quickly--

17 MR. MENDEZ: Oh, I thought I was--you were going to say that  
18 we were giving you some.

19 MR. SINGSEN: No, sir. Not problems in my back. I will try  
20 to make several comments very quickly. And I'd  
21 like Alan Houseman to make one of them in just  
22 a moment. The first is a process comment. I  
23 have been asking for a revised draft of this  
24

1 document - Mr. Wallace, this is to what I  
2 referred before - since I wrote and drafted the  
3 comments that got revised and ultimately became  
4 the fifty page field comments on the original  
5 draft regulation. I talked with Mr. Nusbaum  
6 it a number of times. I was unable to obtain  
7 a copy of this document until yesterday at ten-  
8 thirty when I got here. They were not available  
9 to the Corporation even on Monday. They only  
10 became available on Wednesday. As a result this  
11 122 page document has only been able to be looked  
12 at in very quick scrutiny. I understand you had  
13 more success in obtaining a copy. Now I'm sorry  
14 that my request wasn't responded to. Second, we  
15 did provide very extensive comments last time and  
16 many of them have resulted in changes in the  
17 document. I want to say clearly this document is  
18 much better. There are some provisions in this  
19 document with which we still have disagreement  
20 and then there are others that are complicated.  
21 They need to be looked at. For example many of  
22 the appendices have been redone. They contain  
23 some material particularly now that they're going  
24

1 to be required as guidelines for how financial  
2 statements are to be done. They need to be  
3 looked at carefully. I haven't had time to do  
4 that. The provision under related organizations  
5 is much improved. The first one didn't make  
6 sense. Now it makes sense. The question is  
7 is it really a good idea, and we want an oppor-  
8 tunity to just think about it. And to discuss  
9 it with you. If there is any way to do it,  
10 if there is not a reason to rush to judgement  
11 on this, I would propose that we have the oppor-  
12 tunity for some form of consultation, perhaps  
13 with the staff, perhaps with the committee. I  
14 am sure that you want to get this into effect  
15 before the new fiscal year, but if we did this  
16 next month, there would be time to do that. And  
17 I think it's a mistake with a document as long  
18 and complicated as this one to go with virtually  
19 no opportunity for participatory comment after  
20 a lot of participation this day on the document  
21 that's been drafted. Now I have a list of minor  
22 ten or eleven provisions that I have been able to  
23 look at quickly and see problems with. And I can  
24

1 go through it in about five minutes. And the  
2 one other issue that I want to raise is the  
3 issue of whether or not this needs to be published  
4 as a regulation because it still contains, even  
5 without Chapter 4, a number of provisions that  
6 have substantive impact.

7 MR. WALLACE: Is that a major change from the previous audit and  
8 accounting guide? I mean, are we doing things  
9 qualitatively different than that in the guide  
10 that what's been done in the past with audit  
11 and accounting guides?

12 MR. SINGSEN: I think the provision on interrelated organizations  
13 is substantially different. I think the provision  
14 with the power to appoint the auditor which also  
15 appears in the grant assurances is substantially  
16 different than either the power to preclude a  
17 particular auditor or to do your own audit, both  
18 of which clearly have the authority to do, there  
19 is much more technical issue about FIFO accounting,  
20 first in, first out accounting which will have  
21 substantial program effect. Consequently on at  
22 least those three that I can think of quickly,  
23 I think we have to have a discussion, at least,  
24

1 about whether they belong in a regulatory format  
2 if they're going to be effective. Now Alan can  
3 discuss the law of what needs to be published  
4 and what the guide--I'm not a big expert on those  
5 issues. I think I've used my five minutes and  
6 I apologize for not being able to even begin to  
7 discuss the substance, but if there is any way  
8 that we can have a realistic opportunity to review  
9 this document, I hope you'll find a way to give  
10 it to us.

11 MR. HOUSEMAN: Well, let me just do it from here.

12 MR. WALLACE: Can she hear you from there?

13 MR. HOUSEMAN: Given the points that Gerry made, which I think  
14 are substantive changes, given the fact that the  
15 guide, itself, says that the requirements in this  
16 guide are enforceable with which recipients must  
17 comply, and these are mandatory procedures that  
18 go all the way through the guide, I think this  
19 is in the classic sense of the term a rule. It  
20 fits within the APA definition of rule, it fits  
21 within the definition of rule that is generally  
22 accepted as the definition of rule. It's a  
23 statement of general particular capability. It  
24

1 sets forth program restrictions and requirements.  
2 It has future effect. It is designed and intended  
3 to implement a policy or prescribed law of policy  
4 and it announces important policies. I think is  
5 of consequence under Section E of the act to the  
6 extent we are talking about requirements that are  
7 these kind of substantive changes that Gerry  
8 outlined that you should go through the regulatory  
9 process.

10 MR. WALLACE: But how is this different from previous accounting  
11 guides? Did they say they're not enforceable?  
12 I mean, this is--this is the thing that gets me.  
13 That these things have been out for a long time  
14 and it's never been done by regulation--

15 MS. BERNSTEIN: No, I didn't do it that way. We've got a clean  
16 hands problems here.

17 MR. WALLACE: Yeah, but clean hands may not help us in federal  
18 court.

19 MR. MENDEZ: Never accused us of clean hands.

20 MR. WALLACE: That's the truest statement I've heard all day.

21 MR. HOUSEMAN: Several things. There is no doubt as a matter  
22 of fact that what I consider to be substantive  
23 policies that were contained in the earlier audit  
24

1 guides. So that's right. There's no way to--  
2 Nobody is suggesting--I mean, I'm the last one  
3 to suggest that that wasn't an earlier problem.  
4 I think, however, whatever the earlier practice -  
5 personally I feel it was wrong and wrong then,  
6 I personally felt it was wrong then and I felt  
7 it was wrong now--

8 MR. MENDEZ: You didn't say it before though. My minutes that  
9 I've read don't say that you did.

10 MS. BERNSTEIN: No, you didn't.

11 MR. WALLACE: Well, I mean--

12 MR. HOUSEMAN: Well, I don't want to get into that but I  
13 guarantee there's a letter from me to Tom  
14 Erlege that says the guide should go through the  
15 regulatory process. So for whatever worth it is,  
16 I said it personally before and it's completely  
17 irrelevant to this issue. But I think you're  
18 talking about in the typical language of rules  
19 some regulatory language in here and that you  
20 should go through that regulatory process. That's  
21 all I'm saying. I don't think that has to be  
22 before Mike's committee--Maybe, you know. So  
23 that's the--I think there is a problem in the way

24

1 this is now moving, to adopt it now, that you're  
2 creating for yourselves. I urge you not to do  
3 it. That's the legal point. I can't speak  
4 any--I'm not an expert in the substance of this.  
5 I have participated. Gerry, others, John --  
6 actively involved in trying to work this out.  
7 I'll concede to the substance of it.

8 MR. WALLACE: All right. We've got a lot of talking going  
9 on there--

10 MR. MENDEZ: Let me just see if we can follow your comments  
11 up, Gerry. If we enact this respectively as of  
12 February 1, is that binding on the programs for  
13 the entire year?

14 MR. SINGSEN: It's certainly binding from February 1 on.

15 MR. MENDEZ: Terry, do you consider it binding from February  
16 1 on? Would you say that the programs would have  
17 to adhere to it?

18 MR. ROCHE: Frankly, I'd call my lawyer.

19 MR. MENDEZ: No,--

20 MR. ROCHE: I don't consider myself the expert on this. Yes,  
21 I do believe it is binding.

22 MR. MENDEZ: All right.

23 MR. ROCHE: I don't think my opinion is the--  
24

1 MR. MENDEZ: And Alan you believe that?  
2 MR. HOUSEMAN: I believe that it is--  
3 MR. MENDEZ: All right.  
4 MR. HOUSEMAN: --respectively binding.  
5 MR. MENDEZ: Would you hold that out to be the position of  
6 your clients?  
7 MR. HOUSEMAN: I'd have to talk to my clients.  
8 MR. MENDEZ: All right.  
9 MR. WALLACE: My question is 16-06.3 of the regs.  
10 MR. HOUSEMAN: Yes. That--I do not think--Let me be clear--that  
11 as your current 16-06.3 is written, you asked if  
12 it was binding. The answer to that is yes.  
13 I think under 16-06.3 you could not defund--I  
14 mean--sorry--terminate a program if it did not  
15 comply with this new guide. You, of course,  
16 could deny refunding under 16-25 with the denial  
17 of funding came along. That's the bind that  
18 16-06.3--whatever it is--puts this in. I agree  
19 with that.  
20 MR. WALLACE: If this is a regulation my, again, curbstone  
21 opinion is that he's right about it. If you  
22 want it to have substantive effect and you want  
23 it to be enforceable through potential terminatio  
24

1 then it's got to be on the books by January 1st.  
2 If you don't care about termination, if you're  
3 satisfied to defund bad actors at the end of  
4 1986 and just not refund them, then you can put  
5 this in effect in February and they've got to  
6 comply with it for the rest of the year. But you  
7 can't defund somebody--You can't terminate some-  
8 body who doesn't.

9 MS. BERNSTEIN: Did the question ever get answered - I'm asking  
10 this of the rest of the Committee and anybody  
11 else who wants to answer as to whether or not  
12 the entire -- because this is something that  
13 has been asked since 1982 when the Harvey Olsen  
14 Boards first started considering the audit and  
15 accounting guide whether the entire audit and  
16 accounting guide has to be published in the  
17 Federal Register or whether a notice that we are  
18 reconsidering it, actual delivery of the guide  
19 to the programs, and availability of the guide  
20 to anyone who wants it serves as sufficient  
21 notice so that it has, indeed, been published  
22 whether we called it a guide regulation, whatever,  
23 it was published and we had comments for ninety  
24

1 days. As I understood the process we went through  
2 it was that because of the cost - I think it was  
3 something like fifty thousand dollars to get it  
4 printed in the Federal Register that we would  
5 publish the notice, we would see that every program  
6 got one, that we would make available to anyone  
7 who wanted one the text to the guide itself. My  
8 understanding was that that procedure--  
9 is required under our act but ninety days time.  
10 And it has been out for years.

11 MR. WALLACE: Let me ask a question, Mr. Williams.

12 MS. BERNSTEIN: No, it's been discussed for a year.

13 MR. WALLACE: I want to get one broader question. Agency  
14 practice is of some relevance in deciding what  
15 you ought to be able to do. It's been the practice  
16 of the Legal Services Corporation not to consider  
17 this to be a regulation and not to publish it.  
18 Agencies of the federal government, I assume there  
19 are auditing and accounting guides in departments  
20 to find out where their money goes. Do most  
21 federal departments consider their audit and  
22 accounting guides to be regulations, if you know?

23 MR. WILLIAMS: I'm not sure what the technical definition of  
24

1 regulation that you're using--

2 MR. WALLACE: Published verbatim--

3 MR. MENDEZ: Mr. Donlon, would you please tell us what in your  
4 experience with GAO?

5 MR. DONLON: My experience #1 in particularly accounting guides  
6 are not published in any Federal Register because  
7 they are just a carrying out of established laws,  
8 regulations and higher policies, so they are not  
9 published. Audit guides - I have not seen a  
10 combination of audit and accounting guide together  
11 audit guides are the same way because they  
12 implement, establish laws and policies that are  
13 there, so there's no need to put them in the  
14 Federal Register.

15 MR. MENDEZ: Okay.

16 MR. HOUSEMAN: But our statute--

17 MR. MENDEZ: All right.

18 MR. HOUSEMAN: --APA which is what applies to other federal  
19 agencies.

20 MR. MENDEZ: Let me--Let me just take the prerogative of the  
21 Chair. I'm feeling miserable. We're going to--  
22 I'm going to declare a recess in two minutes till  
23 eight-thirty tomorrow morning. I mean, we'll wrap  
24

1 this thing up tomorrow morning. Not only that,  
2 I promised Mr. Hill that I would again reiterate  
3 that you're invited to his home. There is a map  
4 out front. Now my last duty and I appreciate this  
5 Mr. MacIver, would you please come forward?  
6 This gentleman is one of the very first to write  
7 me and say that he wanted to come in and testify.  
8 He did it ahead of time and I really appreciate  
9 that and I told him that we would give him three  
10 minutes of our undivided attention plus he could  
11 distribute his materials.

12 MR. MACIVER: My name is Ken MacIver and I'm the Director of  
13 the Northeast Regional Training Center in Boston.  
14 We're also part of Massachusetts Law Reform  
15 Institute and it's true that I wrote Chairman  
16 Mendez and requested to testify briefly before this  
17 Committee. The document that you have before  
18 you is a brief position paper on training that  
19 we urge you - I'm speaking here in behalf of all  
20 the regional training directors - to consider  
21 before you make your final funding decisions  
22 for the next fiscal year. My goal here to ask you  
23 to join us in a collaborative process to work  
24

1 together with us to deliver the effective  
2 professional development of staff and legal  
3 services and to help educate our clients  
4 community effectively. Presently the Board has  
5 slated the regional training centers for a  
6 21.6% cut for next year. That action was taken  
7 at a time when we were locked in litigation  
8 which was created by your predecessor Board  
9 with the intent to defund us. Subsequently  
10 this summer you settled that case with us and  
11 we took that as a signal for cooperation in the  
12 future. Further evidence of that was when we  
13 assisted you in delivering the Reginald Hebert Sr  
14 in September which I think was a successful  
15 joint venture. We have thought and hoped that  
16 more of that could happen and particularly when  
17 Mr. Mendez decided and approved the creation  
18 of the National Training Plan Committee which  
19 we both support and look forward to working on.  
20 It seems to me that at the same time the Board  
21 is showing evidence of support for effective  
22 professional development of staff and the  
23 education of our clients, has shown a willingness  
24

1 to examine the methods of delivering of training  
2 and to cut back one of those methods, in fact,  
3 the prime one that acts as the central coordinator  
4 to training in this country is an act that's not  
5 going to lead us to cooperation and collaboration  
6 It's an act, that on the other hand, that could  
7 and probably will lead us to become once again,  
8 locked in litigation. I don't think you want  
9 that. I know we don't want that. We'd like to  
10 talk with you more about it. We'd be willing  
11 to meet with a committee of the staff, the  
12 committee of the Board. If you have concerns,  
13 for example, if the Corporation has training that  
14 it would like to see delivered during 1986 for  
15 all attorneys in legal service such as, for  
16 example, basic lawyer's skills training, we'd  
17 be more than happy to accept a mandate from you  
18 to do something like that. The funding is there.  
19 And it even doesn't have to come--I understand  
20 that theoretically you're shifting our funding  
21 in support of arrays to the field. However, I  
22 believe that you also have other discretionary  
23 funds available with which you could use to both  
24

1 fund us and let us deliver your training at a  
2 substantially reduced cost from anything I think  
3 you're going to be able to deliver. And I'll  
4 close briefly by saying that as an example the  
5 Reginald Hebert Smith Training while a success  
6 did cost you \$253,000. That is almost a hundred  
7 thousand more than my present budget for the  
8 entire year, for one training event. You could  
9 have given us the one hundred forty-two thousand -  
10 you cut the regional training centers - give us  
11 the additional hundred and ten thousand dollars  
12 and asked us to deliver that training, we could  
13 have done it. That's all we're asking for in  
14 '86 is another chance for that. And I thank you.  
15 I'll also answer any questions that you might  
16 have.

17 MR. MENDEZ: Any questions?

18 MR. WALLACE: I've got a lot. They're not educated. I don't  
19 know enough about what you do really to ask  
20 intelligent questions but I've got--

21 MR. MENDEZ: In that case, Mike, let's recess until tomorrow  
22 morning.

23 MR. WALLACE: I'm going to ask one. How is what you do  
24



1 generally costs nothing for a lawyer to go to.  
2 That is, we don't charge the program. There  
3 may be a day minimum fee.

4 MR. WALLACE: It doesn't cost nothing or you wouldn't be here  
5 asking for more money.

6 MR. MACIVER: That is absolutely correct. The way this train-  
7 ing works for us, #1 we deliver it locally or  
8 regionally so we can cut down travel costs a  
9 lot. #2, virtually every trainer that I use  
10 in my training event does not get a consultant  
11 fee. They do it for free. They do it for their  
12 expenses. I pay their travel expenses and their  
13 room and board. I don't pay consulting fees.  
14 Very, very rarely do I pay a consulting fee and  
15 almost never in a trial advocacy skills training.  
16 So we have very very miniscule consulting fees.

17 MR. WALLACE: I won't prevail on Mr. Mendez's back any further  
18 but when we do get around to making a substantive  
19 decision on this, that's the kind of information  
20 that you're going to need to have for me because  
21 my concern is why are we doing our own training  
22 on grants directly from us when there's a lot  
23 of training going on in the world. And if you  
24

1 can show that the important things are not being  
2 handled elsewhere in the world and there are  
3 important things that only you can do, or only  
4 somebody like you, that's going to be the sort  
5 of thing that makes up my mind.

6 MR. MACIVER: I'll tell you what. I will--We will get you  
7 such a document.

8 MR. WALLACE: All right.

9 MR. MACIVER: We will get it by the next Board meeting.

10 MR. WALLACE: Great. That's what I'm looking for.

11 MR. MENDEZ: Recess.  
12  
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1 MR. MENDEZ: The Chair will call the meeting to order and  
2 just a couple of brief matters. We  
3 took some public testimony yesterday  
4 and I wanted to get a couple comments  
5 from Mr. Williams, concerning the statements  
6 of the parties yesterday. Do you have  
7 any brief statements about what was  
8 stated subsequent to your presentation  
9 yesterday?

10 MR. WILLIAMS: Mr. Koster, a CPA, has some comments  
11 on some of the matters raised regarding  
12 special functional accounting if you'd  
13 like to hear those.

14 MR. MENDEZ: Please. Thank you, sir.

15 MR. KOSTER: I should mention that I've spent some  
16 time over the last two years monitoring  
17 different programs but that the comments  
18 as to yesterday's testimony address  
19 not the status and problems of some  
20 of some of the programs but the status  
21 of the 78-10 statement from the AICPA.  
22 I took note of some of Mr. Singen's  
23 comments that I'd very quickly like  
24

1 to address. The status of the AICPA  
2 versus the Financial Accounting Standards  
3 Board, referred to as FASB, is one that  
4 might be likened to the American Bar  
5 Association versus the State Bar in  
6 the given state. The AICPA is not a  
7 rule-making body. They design guidelines,  
8 proposals, something that could be construed  
9 to be stronger than model rules, that  
10 are generated by the AICPA. They have  
11 the ability to address on a nation-wide  
12 basis because there is a standardized  
13 test that is given in all states for  
14 the purpose of licensing and accountants  
15 have the ability to move from state  
16 to state in a different way than attorneys  
17 do. The AICPA has, by virtue of its  
18 statement of position 78-10, generated  
19 the strongest statement that it can  
20 make. That statement has then been  
21 referred to the Financial Accounting  
22 Standards Board, for the potential of  
23 making it an enforceable rule, but as  
24

1 it stands now, according to Mr. Jack  
2 Shohet, of the Technical Information  
3 Service of the AICPA, stands as a professional  
4 guideline, that they advise all accountants  
5 in writing and...I beg your pardon,  
6 all CPAs, in writing and on their telephone  
7 assistance program, to follow strictly.  
8 Their advice specifically is that although  
9 there is not an effective date, that  
10 should not be a governing factor. There  
11 was, apparently a dispute on the committee  
12 that brought this about as to whether  
13 it had been in effect prior to December  
14 31, 1978, but by all accounts, was in  
15 effect as of December 31, 1978. For  
16 that reason, there is no effective date.  
17 He did point out that that was unusual  
18 but that should not dissuade someone  
19 from...a CPA from following its guidelines.  
20 It is not, however, a rule under which  
21 someone can lose their license. Those  
22 rules come strictly from the Financial  
23 Accounting Standards Board or the Cost  
24

1 Accounting Standards Board or perhaps  
2 defense contract audit agency. They  
3 are separate. They carry more the capacity  
4 of the state Bar in that they can discipline  
5 accountants or provide sanctions for  
6 their discipline and that's not the  
7 case with the AICPA nor is it truly  
8 with the American Bar Association.  
9 I think, moving on to another topic,  
10 the applicability, which I think was  
11 adressed by Mr. Donlon yesterday, whether  
12 legal services fell within the perview  
13 of this guideline is addressed in 78-  
14 10, in the introduction on page five,  
15 where it says, 'The statement of position  
16 applies to all non-profit organizations  
17 not covered by...' and I add specific,  
18 AICPA industry audit guides listed in  
19 paragraph one, where it discusses hospitals,  
20 colleges, health and welfare organizations  
21 and state and local government units.  
22 I won't continue that paragraph. Daniel  
23 Nusbaum of the corporation has stated  
24

1 that it applies. Whatever effect it  
2 has, does apply to Legal Service Organizations  
3 and the corporation. Our expert of  
4 yesterday, stated the same thing. I  
5 think that the opposition, in fact,  
6 stated that this, that legal service  
7 organizations would fall within the  
8 purview but that the impact needed to  
9 be better defined. We discussed, yesterday,  
10 cost capacity and benefit, as I recall,  
11 of interpreting this and implementing  
12 this for Legal Service Organization.  
13 I urge this committee and the full board  
14 to consider the characteristics of private  
15 law firms, of which we've all been exposed  
16 to in different capacities. What statutory  
17 requirements we have placed upon it,  
18 the corporation has placed upon them  
19 by the act and the advice that we have  
20 from all parties, that perhaps the most  
21 difficult programs in which to start  
22 to implement this would be the programs  
23 that have the most faulty accounting  
24

1 systems as it is. I would suggest that  
2 the data we're getting from the programs  
3 with the poor accounting system, it's  
4 presumably very unreliable as it is  
5 and the programs with be better accounting  
6 systems installed and the more involved  
7 CPAs are the programs that would have  
8 less difficulty in implementing functional  
9 accounting. We've talked about time  
10 records. I understand that the Board's  
11 previously considered that and that  
12 that in itself is not an issue but I  
13 would proffer that the implementation  
14 of time records, would not be the most  
15 difficult part of installing functional  
16 accounting. Financial account...or  
17 functional accounting would involve  
18 additional time, additional bookkeeping,  
19 work, record-keeping at each and every  
20 program. Every private attorney I know  
21 keeps time records and, in fact, even  
22 though you may be able to total up twenty-  
23 four...what did we come up with yesterday,  
24

1 18 days per year, allocated towards  
2 time records, I would suggest that that  
3 is, in fact, a replacement or replaces  
4 other time that might be spent in organizing  
5 your work. I know in my private law  
6 practice that I spend the end of the  
7 day going through my time slips, organizing  
8 work for the next day and that I would  
9 spend that time, even if I wasn't filling  
10 out time slips. I really find it difficult  
11 to believe that I loose 40 to 80 billable  
12 hours or even 20 billable hours, that  
13 I could charge clients with over the  
14 course of a year, because I use time  
15 slips. There is reliance placed on  
16 the CSR data that's provided to the  
17 corporation, saying that, in fact, that  
18 provides us with the information, provides  
19 the corporation with the information  
20 it needs to monitor the priorities and  
21 the allocation of resources of the program.  
22 I suggest that it specifically does  
23 not and that, in a program, I've seen  
24

1 evidence that in a program where they  
2 choose to use a CSR data to mislead  
3 either their own program directors or  
4 the corporation as to whether resources  
5 are being allocated that that can be  
6 done readily. If you are accounting  
7 cases that are closed, it is very difficult  
8 to discern the big cases from the little  
9 cases, if you will. The cases that  
10 are consuming upwards...a particular  
11 case or line of cases in a program that  
12 could consume up to 20% of resources,  
13 may provide one CSR click, if you will,  
14 at the end of a two-year or even three-  
15 year period while another area that  
16 is purported to be a priority, may be  
17 counting up 300 CSR clicks all on brief  
18 service and advice or negotiated without  
19 litigation or something like that.  
20 That is clearly misleading when you  
21 start counting CSR. That's not where,  
22 in that scenario, where the resources  
23 of the program are being implemented.  
24

1 That, again, points back to the need  
2 for some form of time record-keeping,  
3 whether it be on a quarter of a day  
4 basis or an hourly basis or whatever  
5 the corporation might find to be necessary.  
6 I do suggest, though, that CSR data  
7 does not provide the raw data to run  
8 a functional accounting system. And  
9 finally, an interesting point addressed  
10 yesterday was, whether the documents  
11 provided to this committee were, in  
12 fact, cost enter accounting rather than  
13 truly functional accounting, and, in  
14 fact some of those statements are, they're  
15 intended to be modeled. Each and every  
16 implementation is somewhat different.  
17 I would suggest, however that we're  
18 not asking the programs to break down  
19 their felony murders from their more  
20 serious and less serious felonies and  
21 their three classifications of misdemeanors  
22 or anything, choosing the criminal perspective,  
23 which of course is not particularly  
24

1 on point, but we are asking for them  
2 to take their own designated priorities  
3 which is one group of CSR codes or even  
4 several groups of CSR codes. One priority  
5 could be family and housing issues,  
6 pooled together and to designate or  
7 to allocate resources as they're spent,  
8 in a rational manner that they can sell  
9 their accountant on, or that they use  
10 their accountant's guidelines on and  
11 that they apply on a consistent basis.  
12 This is not a novel idea as we know  
13 there are many programs in the field  
14 that use this as an internal management  
15 report, as it is. It's something that  
16 is useful for management and it's something  
17 that is very useful for third parties,  
18 which includes the corporation and if  
19 there are any questions along that line,  
20 I'd be glad to answer them, but I thank  
21 you for the opportunity to speak.

22 MR. MENDEZ:

23 Is there any other questions? All right,  
24 at this time the Chair would move that

1 functional accounting be the policy  
2 of the corporation effective for calendar  
3 year for all grantees, calendar year  
4 '86. And this is the policy of the  
5 corporation.

6 MS. BERNSTEIN: I second it.

7 MR. MENDEZ: Now, in my next point, the Chair has  
8 divided up its motions in various parts  
9 and I'll be happy to discuss that but  
10 I want to make sure that we're clear  
11 that this is going to be the policy  
12 in 1986. I want to have it specifically  
13 out front and everybody to understand  
14 that that is what we're doing. Now  
15 there's a variety of issues here that  
16 we have to engage in and discuss and  
17 determine. One is what, exactly how  
18 we're going to adopt the Audit and Accounting  
19 Guide. Two, the regulation procedures  
20 with regard to questioned costs and  
21 what order and what manner we will do  
22 those, but before we engage in all of  
23 these other policy determinations, I

24

1 want to make sure that we have it clear  
2 that the Chair is specifically interested  
3 in functional accounting and that it  
4 made effective January 1, 1986. All  
5 granted.

6 MR. WALLACE: Mr. Chairman.

7 MR. MENDEZ: Yes.

8 MR. WALLACE: I believe, when we left last night,  
9 there was a motion on the floor to adopt  
10 this book and I will be happy to move  
11 to table that motion so we deal with  
12 your motion at this time, but as a matter  
13 of procedure I think we've got to do  
14 something with what's before us, before  
15 we get in with the accounting.

16 MR. MENDEZ: I'm sorry, Mr. Wallace.

17 MR. WALLACE: I move to table the main motion pre-  
18 viously on the floor.

19 MR. DURANT: Do you need a second? I'll second it.

20 MR. WALLACE: I don't think you need a second on a  
21 table.

22 MR. MENDEZ: All in favor for the motion to table.

23 Members: Aye.

24

1 MR. MENDEZ: Opposed. Is there any comments concerning  
2 the motion.?

3 MR. SINGSEN: If I could be heard for just a moment.  
4 You've already heard from me on functional  
5 accounting and I just wanted to add  
6 a couple of points. First, let me just  
7 say as to the application...I'm sorry,  
8 this is Gerry Singesen, again...as to  
9 the application of 78-10, what seems  
10 to me in order is that I offered to  
11 provide to the Board something in writing  
12 that discusses this issue since I don't  
13 think that moving it about orally is  
14 going to be very helpful. Second, as  
15 to the motion on the floor for functional  
16 accounting, yesterday evening, we discussed  
17 briefly the costs of moving to functional  
18 accounting. I spent a few minutes with  
19 our discussion. What I want to suggest  
20 to you is that the cost of moving to  
21 functional accounting, at 15 minutes  
22 a day, to keep the records and I certainly  
23 differ with the idea that filling out  
24

1 the time forms is time taken away from  
2 organization as opposed to billable  
3 hours. It's clearly billable hours.  
4 Will cost, nationally, compared to  
5 the four thousand attorneys you have  
6 now, about 167 lawyer years. That is  
7 a decrease in service to clients of  
8 about four percent. Now that's an on-  
9 going cost. You'll have it every year.  
10 In addition, you will have the operational  
11 costs on-going, to process the information,  
12 so my estimate is that you'll run between  
13 four and a half percent and five percent  
14 of total program service, by going to  
15 functional accounting. That's an interesting  
16 figure in the context of a request to  
17 Congress and a 4.6% annualized increased  
18 field progress. What that means is  
19 that is if you move to functional accounting  
20 you are giving programs no additional  
21 service capacity. You are, instead,  
22 taking the increase and allocating it  
23 solely to an administrative cost and  
24

1 if the purpose of that administrative  
2 cost isn't going to produce enough benefits  
3 in understanding what's going on in  
4 programs, then you're wasting your money  
5 and taking it away from clients. One  
6 last point, in the private sector, people  
7 keep time records, but it's not true  
8 that it goes off into organizational  
9 time. The time filling out the time  
10 records, is billed and you're paid for  
11 that time. The problem in the non-profit  
12 sector is nobody's going to pay you  
13 for extra costs that you incur in the  
14 program for administration, so I would  
15 certainly urge that you at least do  
16 what I suggested yesterday, which is  
17 that since you don't have to vote this  
18 today, that you put it off for a month,  
19 that you examine the costs, that you  
20 go look at some programs; you find out  
21 what's happening on the non-profits  
22 whether it's cost center, which you  
23 can do or whether it's the kind of function  
24

1                   you're talking about here, where you're  
2                   going to spend the entire funding increase,  
3                   on an administrative cost.

4   MS. BERNSTEIN:           I heard you talking about a schedule  
5                   for when this could be adopted by the  
6                   Board, so it would be functional for  
7                   next year. Would you go over that for  
8                   us?

9   MR. SINGSEN:           Well, there are two different issues.  
10                   You could clearly pass this motion,  
11                   tell programs that they had to have  
12                   it as of January 1 and I think it would  
13                   be a mess and I don't know how well  
14                   it would really work. I think if you  
15                   did it sensibly, it would take longer  
16                   and that you'd probably be talking about  
17                   a developmental period, where you  
18                   looked, and then a draft set of rules,  
19                   for how it was going to be done, what  
20                   you really wanted programs to tell you  
21                   and whether that means you could put  
22                   it in effect in March or April or May,  
23                   I don't know, but that's your minimum

24

1 time period for really having an effective  
2 system that you can implement that programs  
3 will understand, that will produce data  
4 that's useful, to the degree that I  
5 think this would be useful.

6 MS. BERNSTEIN:

7 Would you agree that once we go to the  
8 policy and we start helping programs  
9 and getting it implemented, that 1986  
10 is going to be a transitional year,  
11 at any rate, and that therefore the  
12 sooner we do it the better, in terms  
13 of getting...if this is the policy of  
14 the Board, that we need this information,  
15 as I say, it's not just...when you're  
16 talking about cost, you talked about  
17 the...you know, and I disagree with  
18 your computation, by the way, but when  
19 you talk about costs, you're looking  
20 at this huge...you know, you tried to  
21 magnify the costs and yet the costs  
22 are coming up from attorney time, in  
23 lots of other ways as well. In other  
24 words, every time the corporation or

1 the Congress asks for some piece of  
2 information that we need, that also  
3 stops attorneys from working but that  
4 does not mean that we should abdicate  
5 our fiduciary responsibility or that  
6 the Oversight Committees of the Congress  
7 do not have a right to know how much  
8 is being spent on priorities and whether  
9 the priorities are, in fact, being met  
10 and that therefore, it's a matter of  
11 organizing this, in such a way that  
12 we can get this information on a regular  
13 basis and on a more accurate basis.  
14 It's a matter of, you know, pay now  
15 or pay later.

16 MR. SINGSEN: Well, I think that it would certainly  
17 be interesting to examine the paperwork  
18 costs of all the requests for information  
19 that have come from Congress and from  
20 the corporations. I think a document  
21 that identified how many millions of  
22 dollars went into gathering and producing  
23 that data would be a fascinating document.

24

1 I think in terms of fiduciary obligations,  
2 the nature of the fiduciary obligation  
3 we're talking about here, which is breaking  
4 up program services into the priority  
5 areas, can't be that high, since almost  
6 no non-profit in the country reports  
7 that way. Your fiduciary obligation...

8 MS. BERNSTEIN: We've got a law that says that programs  
9 have to set priorities and meet them.

10 MR. SINGSEN: I understand.

11 MS. BERNSTEIN: That's not any non-profit organization,  
12 Gerry.

13 MR. SINGSEN: In some ways non-profit organizations,  
14 which raise money from the public are  
15 held to just as high a standard, that  
16 is, they have to be honest in their  
17 statements to people who are giving  
18 them money about what's going to happen  
19 with the money. Nevertheless, the kinds  
20 of program service differentiations  
21 that you're discussing are not standard.  
22 They're unusual.

23 MS. BERNSTEIN: But if we don't ask people to make records ,  
24

1                   then no one can question whether they're  
2                   honest, is that correct?

3 MR. SINGSEN:       I think that you have to have people  
4                   making records. I think you have people  
5                   making records. Lots of them.

6 MS. BERNSTEIN:     But not accurate records.

7 MR. SINGSEN:       No, I think you've got accurate records.  
8                   What you don't have...

9 MS. BERNSTEIN:     Not in terms of time spent on cases.

10 MR. SINGSEN:       Absolutely right. What you do not have  
11                   is time records...

12 MS. BERNSTEIN:     Or cost records.

13 MR. SINGSEN:       ...broken out by priorities. No, you  
14                   have lots of cost records. You don't...

15 MS. BERNSTEIN:     Not cost related to cases for certain  
16                   priorities. It's not there, Gerry.

17 MR. SINGSEN:       I agree. You do not have a cost per  
18                   case type measure in place. Absolutely.

19 MS. BERNSTEIN:     Right.

20 MR. SINGSEN:       The question is: Is that the most effective,  
21                   efficient, economical way to get an  
22                   appropriate understanding of the  
23                   product of programs. There are lots  
24

1 of ways to access programs. You're  
2 spending millions of dollars on monitoring.  
3 That monitoring in the past has gone  
4 into quality of service. It has gone  
5 into extent of service. It has produced  
6 great reports that talked about what  
7 was being done, program by program.  
8 It cost a lot less than 5% of national  
9 funding to do that. Now, I think that  
10 was effective and efficient. So far,  
11 the monitoring reports that are being  
12 prepared now, aren't addressing those  
13 issues, primarily, but there's no reason  
14 they can't and there's a lot of reason  
15 to suggest that they should. In the  
16 legal industry, if you want to look  
17 at the quality of work, an important  
18 fiduciary obligation for this Board,  
19 the only standard that has any credibility  
20 is a peer review approach, where you  
21 go out and examine the work with other  
22 lawyers.

23 MS. BERNSTEIN: Well, I disagree with you on that point.

24

1 MR. MENDEZ: Excuse me, maam. Mr. Koster, you've  
2 monitored several programs, is that  
3 correct?

4 MR. KOSTER: Yes, sir.

5 MR. MENDEZ: And would functional accounting be of  
6 aid in determining the quality of programs  
7 and services of programs?

8 MR. KOSTER: I've monitored, I think 20 programs  
9 or better, over the last two years.  
10 Principally, the fiscal monitor also  
11 is the legal monitor. There is a large  
12 amount of information that you would  
13 need to properly conduct. For the monitoring  
14 process it's not there and this would  
15 fill in, this is one thing that would  
16 fill in the largest gap of that information.  
17 We talk about priorities, and as a monitor  
18 I can look through their priority process.  
19 That's very important, but there's very  
20 limited information to see if it's being  
21 confirmed and that's something that  
22 this would add. Moreover, it gives you  
23 an idea, it gives a program manager

24

1 an idea of how efficiently he's using  
2 his resources to serve what he, presumably  
3 wants to be his priorities. This isn't  
4 strictly a disclosure device for outside  
5 parties. This is a management tool.  
6 That's a perspective that everyone in  
7 the Corporation that's had the opportunity  
8 to work with on this, has taken. I  
9 know that some of the most, the better  
10 managed programs in the country have  
11 a perfect....I mean, say a model functional  
12 accounting program running, or similar  
13 internal management statements. I would  
14 like very much for the Committee to  
15 consider talking to one of those program  
16 directors and seeing how they've done  
17 it and what benefits they've received.

18 MR. DURANT: Mr. Koster, could you respond to Mr.  
19 Singsen's point, in terms of the administrative  
20 increase a bit more in detail.

21 MR. KOSTER: I think that 15 minutes a day is high.

22 MR. WALLACE: Again, if I may just be quasi...I didn't  
23 mean to start to whole....  
24

1 MR. VALOIS: I'd like to speak to that. The practice  
2 in my firm and probably Mr. Smegal's  
3 is that we divide our time into billable  
4 and non-billable time and I spend, in  
5 the non-billable category of time, here  
6 and time reading advance sheets, answering  
7 questions from associates that can't  
8 be really billed to anybody, answering  
9 inquiries that are from other lawyers,  
10 answering telephone inquiries from prospective  
11 clients or just somebody that wants  
12 some information about their problem  
13 and it goes on and on. I have some  
14 mechanical ability, so I end up getting  
15 called upon to fix the copying machine  
16 when it doesn't work and hang pictures  
17 and fix the refrigerator and whatever  
18 else, and I don't think that I spend  
19 fifteen minutes a day filling out my  
20 time sheet. I do it as I go along and  
21 it takes, I don't know what, a few seconds,  
22 maybe a minute per entry or some such  
23 thing as that. So I think this whole  
24

1 discussion about the calculation of  
2 time wasted is ridiculous and I think  
3 you're ignoring the reward. I mean,  
4 we have to know, in our firm, how many  
5 hours a day are we doing. How much  
6 of it is remunerative. How much of  
7 it is not. We need to know that at  
8 the end of the year, because we have  
9 to make choices and, you know, you all  
10 in the last year or two that I've been  
11 here have compared yourselves to law  
12 firms and I accept that because you  
13 are lawyers and you do the same thing  
14 that we in private practice do but this  
15 is a tool that's going to be very valuable  
16 to you in the long run. If somebody's  
17 spending three hours a day doing professional  
18 reading, somebody in the office needs  
19 to know about it because either he's a  
20 very slow reader or he's reading too  
21 much, so I think what I hear this discussion  
22 to be all about, in the long run, is  
23 going to be.. and in the short run,  
24

1 for that matter, is going to be worth  
2 whatever the cost is that I've heard,  
3 is extremely minimal.

4 MR. DURANT: Gerry, it seems to me...Mr. Singesen,  
5 it seems to me that...I, in a small  
6 firm...it's essentially my father and  
7 myself and two other lawyers and the  
8 time records are kept contemporaneously  
9 with the activity. I admit, and my  
10 senior will be the first to admit, that  
11 I do skip some things that I admonished  
12 about that every month that our...in  
13 our regular meeting, because it affects  
14 the payroll, mine. I don't see it being  
15 the kind of burden you're talking about.  
16 Why do you see that?

17 MR. SINGSEN: The response is real simple. It's the  
18 colloquy we had yesterday evening.  
19 A minute an entry. Thirty seconds an  
20 entry. It's a very small amount of  
21 time but if you do ten entries in a  
22 day and it happens each day, you actually  
23 end up with between 50 and 75 hours

24

1

a year that you've spent that way.

2

MR. VALOIS:

Yes, but Gerry, the time...I mean you're looking at it as though you have a limited amount of time. You're saying that maybe people in programs work six and a half hour days or something. I don't think so. I think...

3

4

5

6

7

8

MR. SINGSEN:

No, I'm not saying that at all. I'm talking a 1500 hour....

9

10

MR. VALOIS:

It's a greater portion than that.

11

MR. SINGSEN:

....billable year. Which is above the national average for law firms.

12

13

MR. VALOIS:

What was the number you used?

14

MR. SINGSEN:

The ABA just published this month, in the ABA journal, a study that showed billable hours in the small...in the medium-sized firms at around fourteen hundred and something hours. In the large firms...

15

16

17

18

19

20

MR. WALLACE:

I wish you'd tell that to my employers.

21

MR. SINGSEN:

In the large firm the billable hours go higher. Well, this is a survey and includes a lot of lawyers who are in

22

23

24

1 smaller practices who have trouble billing  
2 their hours, who have trouble getting  
3 as much work.

4 MR. VALOIS: The managing partner in my firm and  
5 probably Mr. Smegal's would be surprised...

6 MR. SINGSEN: I'm the managing partner.

7 MR. VALOIS: Well, as I say, would be surprised at  
8 1400 hours.

9 MR. SINGSEN: The larger the firm, the larger the  
10 level of billable hours, because you've  
11 got a more consistent case load and  
12 you've got more people who are working  
13 for other people on cases full time.

14 MR. VALOIS: And they keep up with their time. They're  
15 writing it down and they have computers.

16 MR. SINGSEN: And you're spending time on it. You're  
17 spending money on keeping those time  
18 records and you get paid for it and  
19 it's worth it. There's no question  
20 about it. In a non-profit, you've got  
21 a slightly different situation. I'm  
22 not saying time records can't be used.  
23 I've recommended to programs, time records.

24

1 I'm not saying that time records aren't  
2 a useful management tool. You haven't  
3 heard that from me at all. I'm saying,  
4 to build a national policy of functional  
5 accounting, which has to do with financial  
6 statements. It has to do with the recording  
7 of the information and the translation  
8 of that information into allocation  
9 of costs, at a cost which is real, not  
10 necessarily long, but you don't know  
11 yet...you need to find out, but at a  
12 cost which may be as much or more as  
13 the entire increase you're giving to  
14 field programs in January, is a mistake  
15 to jump into. That you ought to spend  
16 a little time with more than superficial  
17 comments at a Board meeting and a brief  
18 report and frustration, 'cause you want  
19 to know more about what's going on in  
20 programs and CSR doesn't tell you enough.  
21 That's what we talked about last month  
22 and you know my position on that. You've  
23 got to go look at the program. You've  
24

1 got to examine what it's doing, what  
2 its priorities are; how it's addressing  
3 those priorities, where people are actually  
4 functioning and the kind of quality  
5 of the work they're doing. It's cheaper  
6 to do that...

7 MR. MENDEZ: Gerry, we have a man that's been a monitor  
8 on 20 plus groups that has just told  
9 us, that's a CPA and a lawyer, that  
10 has just told us that this is a helpful  
11 tool.

12 MR. SINGSEN: I'm not for a moment saying that it  
13 wouldn't be helpful for some management  
14 objectives. I'm saying that it would  
15 cost too much or at least that that's  
16 a serious issue that you shouldn't jump  
17 to decide. You ought to go take a look.

18 MR. MENDEZ: Mr. Koster, do you believe it would  
19 cost too much?

20 MR. KOSTER: No, I don't. I think, as I said before,  
21 that the costs involved in functional  
22 accounting are not in the time-keeping  
23 area. The time-keeping area is readily

24

1 recouped in terms of overseeing your  
2 own work, the time that the program  
3 director no longer has to swing by your  
4 office to find out what's been done  
5 on your case recently, because he's  
6 got the books in front of him. The  
7 collection of information that once  
8 it gets to Washington requires probably  
9 hundreds of man-hours from Ms. Bernstein's  
10 comments in collecting reports for Congress.  
11 You start with a good source document  
12 and reporting is later very easily  
13 accomplished. If you start with no  
14 source documents, informal telephone  
15 calls, random letters and many, many  
16 requests to the field to collect information  
17 in a non-standard fashion, reporting  
18 is difficult and very expensive. For  
19 internal management and for external  
20 reporting. The corporation in Washington,  
21 they have the same problem. They need,  
22 for their own goals, to know what's  
23 going on and they also need to know,  
24

1 to report to Congress and other third  
2 parties and if you start with good source  
3 documents...anyway, my only point in  
4 that time-keeping is not the expensive  
5 part of functional accounting. There  
6 are set-up costs incurred, as there...as  
7 the corporation's certainly familiar,  
8 with any new grantee, new accounting  
9 system, sending computers out to a program,  
10 there is additional time wrapped up  
11 in it. But certainly the time keeping  
12 is not an expensive proposition.

13 MR. WALLACE:

14 Mr. Chairman, it seems to me that we  
15 ought to keep in mind what we're doing  
16 here. The motion is to go to functional  
17 accounting. We were told yesterday,  
18 that it would take six to eight weeks  
19 to try to set up some guidelines on  
20 how to do it. Those guidelines are  
21 not before us now. I don't know what  
22 those guidelines are going to look like.  
23 I don't know what burdens they're going  
24 to impose on the field and I do not

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1 know what transitional steps we may  
2 find necessary, to take to ease such  
3 burdens as there are. Those will come  
4 before us shortly. What we do know,  
5 what I think I know, is that you can't  
6 run a law office, without having the  
7 best possible idea of what's going on,  
8 as I've tried to do it and several others  
9 here have. You cannot run a Three Hundred  
10 Million Dollar a year corporation without  
11 knowing what's going on with the programs  
12 you're trying to administer, because  
13 we've been trying to do that for the  
14 last year. The information that you  
15 get from functional accounting, is the  
16 kind of information that we want to  
17 know and that the people we deal with  
18 on the hill, who are ultimately responsible  
19 to the voters for this, want to know  
20 and I think what we are doing today,  
21 is establishing a principle that we  
22 intend to get it, by the least intrusive  
23 means possible, the least expensive  
24

1 means possible with such phase-in time as may  
2 be necessary. But starting in 1986, we're getting  
3 on the road to functional accounting and in six  
4 or eight weeks, we're going to have some guide-  
5 lines on how to do it. That, and only that, it  
6 seems to me is what the Chairman's motion is.  
7 And that's why I support it.

8 MR. SINGSEN: Very brief--

9 MR. WALLACE: You've had your--

10 MR. SINGSEN: I'm sorry. He said one thing about--

11 MR. MENDEZ: You're out of order.

12 MR. MESAR: My name is Joe Mesar and I'm with the staff of  
13 the National Organization of Legal Services  
14 Workers. I've only recently joined this staff  
15 and my type of work experience has been as a  
16 staff attorney in the Pittsburg program from  
17 1978 to 1985. I would like to some extent give  
18 my perspective here. This seems like a quarrel  
19 amongst managers and accountants which really  
20 doesn't interest me, but I do want to speak to  
21 two aspects of the discussion. In Pennsylvania  
22 we received Title 20 money and we are required  
23 to do elaborate record keeping, not only on a

24

1 daily basis but on a monthly basis. Computer  
2 sheets are provided to each case handling staff  
3 person and the amount of time to fill that out  
4 is at least two weeks per year, at least. And  
5 that's at a time where for those of us in the  
6 Pittsburg area, the staff has been reduced  
7 drastically. I work in an office where there  
8 were formerly six attorneys and now there are  
9 three. We're dealing with emergency cases in a  
10 way that perhaps the traditional law office  
11 doesn't, and frankly, I don't know if the directors  
12 would want to admit this, but frankly if it comes  
13 between a situation where the staff was supposed  
14 to fill out records at the end of the day and  
15 stopping somebody's eviction, we stopped the  
16 eviction. And this imposed an incredible burden  
17 on us. The prior accounting methods and record  
18 keeping methods were basically done in the central  
19 office. There were some people in the accounting  
20 office who kept track of that and that--and there  
21 was no burden on the case handling staff. Now  
22 there's a maximum burden on the case handling staff  
23 and to multiply it perhaps have a conflicting  
24

1 record keeping requirements is going to do that.  
2 I'm not here to speak against functional account-  
3 ing or cost accounting or any other method of  
4 accounting, but I really would urge the Board  
5 in considering whatever you do to do it in the  
6 least intrusive manner possible to the case  
7 handling staff. That really does make an  
8 incredible difference in the work we do. Secondly  
9 I think that our management in LSC and our other  
10 funding sources are or could be well aware of  
11 how we're fulfilling our priorities without a  
12 lot of detailed and primarily statistical record  
13 keeping. Since 1981 the priorities in our pro-  
14 gram have changed in the sense that we are now  
15 doing, for example, a lot more mortgage fore-  
16 closures that we used to do because of the economic  
17 situation in the steel valley. And even--And we  
18 have statistics that document that, our hours  
19 are spent on that and monitoring has revealed that.  
20 It seems to me that that's available to our pro-  
21 gram management, our program Board, and LSC and  
22 our other funding sources without elaborate new  
23 requirements. Finally I pose a question. I hope  
24

1 Mr. Mendez's motion includes what was in the dis-  
2 cussion yesterday; that is, if you move in this  
3 direction that the Corporation, itself, is also  
4 committing itself to move in this direction so we  
5 can see how the Corporation is dividing its  
6 activities on a functional basis.

7 MR. WALLACE: I didn't hear that in the motion but if the  
8 Chairman would accept a friendly amendment, I'm  
9 willing to do that.

10 MS. BERNSTEIN: He says the policy of the Corporation. I--You  
11 know--We do.

12 MR. MENDEZ: Yeah, it's the policy. Mr. Mesar, thank you.

13 MR. ROCHE: One quick suggestion.

14 MR. MENDEZ: Terry Roche.

15 MR. ROCHE: Terry Roche. It would not be appropriate in your  
16 motion either as a definition of the term least  
17 intrusive or otherwise, add in that in going to  
18 this and in recognition of the costs that Mr.  
19 Singen has suggested, that it will also be the  
20 policy of this Board to go to Congress in the  
21 middle of 1986 once you have determined roughly  
22 what this cost will be for a sort of supplemental  
23 appropriation which you mention frequently last

24

1 December, January, simply to cover the costs of  
2 better information gathering. And that in 1987  
3 your mark will at least include the estimated  
4 cost of doing this kind of record gathering. It  
5 seems to be only fair. I think that as many of  
6 you know and Gerry has said, as project directors  
7 certainly that information will be useful. But it  
8 costs something and if you will recognize that,  
9 and ask for it, I think there would be a whole  
10 lot more appreciation and a whole lot better and  
11 more accurate timekeeping than you're going to get  
12 otherwise.

13 MR. WALLACE: Mr. Chairman, may I speak to that point?

14 MR. MENDEZ: Sure.

15 MR. WALLACE: Something that I mentioned to Mr. Roche last  
16 night and something I've said a couple of times  
17 before. One of the reasons that I want to do this  
18 is that I believe getting better management, better  
19 understanding of what's going on, is absolutely  
20 essential. After what the Senate did this week  
21 on their automatic deficit reduction program, I  
22 think it is reasonable to believe that this  
23 Corporation is more likely to have less money than

24

1 more money in the next few years. And if that's  
2 the case, then it is more important than ever  
3 that we know exactly what it is the money is  
4 going on, exactly what it is that we're getting  
5 for the money that Congress gives us. I'm not  
6 saying to Mr. Roche that that's an unreasonable  
7 request that he made and I'm not saying I won't  
8 back you up on it. I don't know how much it's  
9 going to cost. I don't know what we're going to  
10 need. That's what I hope somebody's going to  
11 tell me in the next little while. But whatever  
12 money this Corporation has it's going to have  
13 to be extremely well managed because the funds  
14 from Congress are not going up significantly  
15 any time soon. And we'll all have to learn to  
16 live with that. That's--

17 MR. ROCHE:

Excuse me, Mr. Chairman. You're making a state-  
18 ment of principle now. You're not doing any  
19 detail. Congress may or may not give you any  
20 money you ask for. They may, in fact, cut money.  
21 I'd like you to say to the field - We're asking  
22 you case handlers to do this because we need  
23 better information - maybe as Mr. Wallace says -  
24

1 to help justify what's going on and the funding  
2 that we're getting. But we're also going to  
3 seek the funding that's necessary to get it.  
4 That's all it is is another statement of principle.  
5 Part of the whole overall statement. That's all  
6 we're asking--

7 MR. MENDEZ: Terry, thank you for your input. Is there any  
8 other public comment? Mike, as soon as Mr.  
9 Singesen finishes, I'll let you respond. Very  
10 short.

11 MR. SINGSEN: Very short. Mike says timekeeping isn't the big  
12 cost. That means my estimates are low, because  
13 I'm just giving you the cost of timekeeping. Mike  
14 says he's evaluated twenty programs in the last  
15 two years. I managed them for ten and then worked  
16 with the Corporation for three managing the entire  
17 financial system. I have also designed and run  
18 evaluation systems around the country so I think  
19 I'm at least on a par with Mike in terms of dis-  
20 cussing about finding out about legal work in  
21 programs. Mike says you can recoup the costs.  
22 Difficult to recoup a cost in a nonprofit organi-  
23 zation where you can't bill it. Mike says--What

24

1 we're talking about here is developing policy and  
2 implementation of functional accounting. As we've  
3 suggested in the audit guide context, or it didn't  
4 work out quite right, I would hope that you would  
5 do that developmental policy in consultation with  
6 the field, involving the field in the development  
7 of the practices and that you would not spring  
8 it at the last minute without an opportunity for  
9 comment, the field help would be useful, and make  
10 it work. If it's going to happen, we all want it  
11 to be useful for management, not just you.  
12 Finally I think you have a tough role. You're  
13 a national board, most of you can't be and won't  
14 be able to see and touch which each of the pro-  
15 grams around the country does. That means you  
16 have to rely on derivative information. That  
17 means that your knowledge is hard to come by about  
18 what's going on program by program. That's got to  
19 make you uncomfortable about your level of ability  
20 to assess what's happening. The question here is  
21 the cost of giving in this case a much higher level  
22 of statistical detail, this level of review is  
23 high. There are other methods that are not as  
24

1 expensive to provide reasonably reliable infor-  
2 mation for your staff and through monitoring of  
3 what's going on in the field. In order for you  
4 to be absolutely confident about what's happening  
5 I hear you saying functional accounting is  
6 necessary. My question is is absolute comfort  
7 for you the critical test or something slightly  
8 less which is much less expensive the better  
9 exercise of fiduciary obligation in what I think  
10 is a very resource limited role.

11 MS. BERNSTEIN: I have just one question, Gerry. You were at the  
12 Corporation at the time that the mirror corpora-  
13 tions were established, is that not true?

14 MR. SINGSEN: a) I am not sure that I know what a mirror corpora-  
15 tion is.

16 MS. BERNSTEIN: Well, the general--

17 MR. SINGSEN: b) I was at the Corporation until July of 1982.

18 MS. BERNSTEIN: And they were--

19 MR. SINGSEN: And I understand that during that time at least  
20 three organizations did activities that have been  
21 referred to as mirror corporations.

22 MS. BERNSTEIN: What was your role--What was your title at the  
23 Corporation at that time?  
24

1 MR. SINGSEN: Vice president for finance and management.  
2 MS. BERNSTEIN: Vice president for finance and management.  
3 MR. SINGSEN: Right.  
4 MS. BERNSTEIN: And did you--were you aware that there were  
5 training sessions going on to teach programs how  
6 to set up mirror corporations to avoid the  
7 restrictions in the act?  
8 MR. SINGSEN: No, I was not.  
9 MR. MENDEZ: I rule both of this--all of this out of order.  
10 MS. BERNSTEIN: I think the credibility of the witness is  
11 important.  
12 MR. DURANT: Mr. Singesen, do you agree with Mr. Wallace that  
13 this is simply a statement of general principle  
14 that all particular concerns that you're raising  
15 in terms of implimentation and a variety of  
16 factors aren't all being addressed by this  
17 function; in other words, that that's--  
18 MR. SINGSEN: Yes, of course.  
19 MR. DURANT: And so the understanding of how that's to work  
20 the impact and that sort of stuff, is still to be  
21 looked at but looked at in that general parameter,  
22 isn't that--  
23 MR. SINGSEN: Absolutely, yeah. What I have been saying, I  
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think, is over and over, don't rush this into place. Sit down, work it out, figure it out, which is what I hear Mr. Wallace saying. And I agree with that entirely.

MR. HOUSEMAN: Just one comment. I think we should go through this. That you look at the definition of rule, we talked about, we ought to seriously consider going through rule making procedure as you define the parameters of this policy you're about probably to enact. I think, as you'll see if you look carefully in the rule making process, that doesn't mean it has to go to Mike's committee, I don't think. I don't want to get into the internal problems of the Corporation and I think you should go through a process of developing something, getting it out for comment, and getting comments back and working--try to work it out. That's all I'm saying.

MR. MENDEZ: Tom?

MR. SMEGAL: Bob reflected some of the circumstances that we have in private practice in keeping time and certainly everything he says is accurate and applies to my firm. One point that I think may

1 be, Gerry, that you haven't focused on and I  
2 think maybe we could talk about a little bit.  
3 One of the things that's happened through the  
4 course of my sitting on this Board for a year  
5 is we've had statistics brought to us that  
6 allegedly demonstrated how efficient private  
7 attorneys are in representing poor people and  
8 comparisons are continually being made between  
9 the staff programs and private attorneys which  
10 I think - and I've stated publicly - on each  
11 occasion are either based on inaccurate informa-  
12 tion or are difficult to compare. What I see  
13 here, though, is an opportunity, Gerry, to get  
14 some information from which we can make accurate  
15 comparisons and I think those comparisons will  
16 then demonstrate the efficiencies of the staff  
17 programs. I, for one, am going to vote for this  
18 because I feel the kind of information we get is  
19 worth the time it takes to get it and I think  
20 it's going to demonstrate the efficiencies of the  
21 three hundred and so staff programs that we have  
22 and how they handle cases and give a fair compari-  
23 son to the private bar fee costing programs that  
24

1 reflects on the work.

2 MR. MENDEZ: Any other comments? No further comments appear-

3 ing, all in favor of the motion to adopt func-

4 tional accounting as a policy of the Committee

5 to recommend functional accounting to the Board

6 as a whole, say aye.

7 Response: Aye.

8 MR. MENDEZ: Opposed?

9 (No response)

10 MR. MENDEZ: Okay. Now it's time to turn to the Audit and

11 Accounting Guide.

12 MR. WALLACE: Do you want to take my motion off the table or

13 do you want to leave it there, Mr. Chairman?

14 MR. MENDEZ: I think it's time to take it off the table and

15 discuss it more completely.

16 MR. WALLACE: So moved.

17 MR. MENDEZ: I have to recall the exact--

18 MR. WALLACE: The motion was adopt the guide, deleting Chapter

19 4, except for the notice provision and inserting

20 as Chapter 4 the 1981 version of Chapter 4.

21 That's the motion and tabled.

22 MR. MENDEZ: That was tabled last night.

23 MR. EAGLIN: Is the '81 version available?

24

1 MR. MENDEZ: I'm sorry?

2 MR. EAGLIN: Is the '81 version available that you're referring  
3 to?

4 MR. MENDEZ: Yes, it is. The '81 version is what we had when  
5 we were first came on.

6 MR. WALLACE: No, I haven't moved anything yet. My motion is  
7 out there. It has been tabled and I'm awaiting  
8 the pleasure of my Chair.

9 MR. DURANT: Mr. Mendez, I would like - I don't know if this  
10 is in order but in terms of Mr. Wallace's motion,  
11 that I would argue that we keep it on the table  
12 given Mr. Singesen's comments and Mr. Houseman's  
13 comments and others comments in terms of having  
14 an opportunity to respond to your next meeting  
15 whenever you should schedule that on some of  
16 the changes in the audit guide. If you have a  
17 date that you want to set, it seems to me that  
18 it ought to be in the reasonably near future  
19 but I would ask that we keep the motion tabled  
20 until there have been comments, more comments,  
21 submitted by Mr. Singesen or Mr. Houseman or  
22 anybody else.

23 MR. MENDEZ: Any further comments about whether we should  
24

1 take it off the table or--

2 MS. BERNSTEIN: Well, I just--I'm-agreeable to going along with  
3 what you're saying, but I will just mention  
4 again for the record that this guide has been  
5 out for many months and is one of the first  
6 documents that was handed to us when we became  
7 members of the Board. It was out for public  
8 comment for ninety days and there is no reason  
9 for us not to go forward with it now. There is  
10 not a lack of notice as far as the public is  
11 concerned, and just because there are changes  
12 and I think essentially about ten pages in the  
13 Audit and Accounting Guide, I don't--the concepts  
14 were all there for public comment. I see no  
15 reason for us not to go ahead with it now. If  
16 we are going to vote on it at the next meeting,  
17 then I'm agreeable to going along with what you  
18 say, but I see no legal impediment for going  
19 forward right now, or even moral impediment. I  
20 think the programs have had a chance. It was  
21 sent to them directly.

22 MR. MENDEZ: Mr. Durant, would you agree to a time October  
23 25th and place certain Washington, D.C.?  
24

1 MR. DURANT: Is that when your meeting is?

2 MR. WALLACE: My meeting--My committee meeting is in the  
3 Register for 9:30, October 25, at the Holiday  
4 Inn, Capital Holiday Inn in Washington.

5 MR. DURANT: Mr. Singesen, given our conversation last night,  
6 I think that's more than adequate time.

7 MR. SINGSEN: I think that we can certainly be prepared and  
8 we'll try to be--

9 MR. DURANT: Well, I mean, I'm not only asking--I'm not asking  
10 just to be prepared for that particular meeting -  
11 I know that Mr. Wentzel and his staff would be--  
12 Mr. Williams, in particular, would be more than  
13 willing to discuss with you any of your particu-  
14 lar things ahead of that, so that if we do--  
15 let me just see how many--yeah, so that we could  
16 try to come to some--possibly anyway, come to some  
17 sort of agreement on some of the particular  
18 items that the Board asks--

19 MR. SINGSEN: I don't feel it-- that's exactly what we should  
20 try to do and I'll talk to--

21 MR. WALLACE: Mr. Chairman, I have some requests to make of the  
22 staff with regard to regulations and I'll do--It's  
23 pertinent to this and I'll do it now or I'll do it

24

1 with my committee, it doesn't matter. But what  
2 I would appreciate--

3 MR. MENDEZ: Well, let's--Let me just clear this one matter  
4 up. The motion has been to leave it on the table  
5 to a time certain October 25th, committee. All  
6 in favor on the Committee, say aye.

7 Response: Aye..

8 MR. MENDEZ: Opposed?

9 (No Response)

10 MR. MENDEZ: The Chairman has one request of the staff, to look  
11 at the Audit and Accounting Guide and determine  
12 what portions, if any, are most appropriately  
13 regulations and which are normal accounting  
14 provisions and not regulations and be able to  
15 report to us on October 25th.

16 MR. WALLACE: I have a further request to make, and that is,  
17 that in the event our General Council's office  
18 should determine that some of these provisions  
19 are regulations and due notice must be given in  
20 the Federal Register, I want to see--somebody  
21 to tell me what the expedited provisions are  
22 under the APA for getting moving on this. I  
23 agree with Mrs. Bernstein that there's no fairness  
24

1 problem here. I think most of the people who are  
2 vitally interested in this document have known  
3 about it for a long time. Fairness ain't  
4 necessarily law, so if we've got to jump through  
5 the APA hoops, let's find out how fast we can do  
6 it. And I'll commit to keep my committee meeting  
7 so long as it takes to get the work done.

8 MR. DURANT: That may be a committee of one.

9 MR. WALLACE: It may very well be. If it's a committee of one,  
10 I'll do it in Arlington. You're all invited.

11 MR. MENDEZ: Okay. No further business appearing before the  
12 Committee, in the absence of further comment the  
13 Chair will declare the Committee meeting adjourned  
14 and turn over the table to Mr. Wallace, albeit  
15 somewhat late.

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