

LEGAL SERVICES CORPORATION
PROVISION FOR THE DELIVERY OF
LEGAL SERVICES COMMITTEE MEETING
March 24, 1988

The La Fonda Hotel
New Mexico Room
100 San Francisco
Santa Fe, New Mexico 87504

Present:

Robert Valois, Chairman
Hortencia Benavidez
LeaAnne Bernstein
Clark Durant
Lorain Miller
Pepe Mendez
Thomas Smegal
Claude Swafford

Staff:

John Bayly, President
Timothy Shea, General Counsel
Maureen Bozell, Secretary

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P R O C E E D I N G S

CHAIRMAN VALOIS: This is the Committee for the Provision for the Delivery of Legal Services. It is 5:00 o'clock. The agenda is published. The first item on the agenda is approval of the agenda.

MOTION

MS. BERNSTEIN: I move for approval of the agenda.

CHAIRMAN VALOIS: Is there a second?

MS. BENAVIDEZ: Second.

CHAIRMAN VALOIS: All of those in favor of approving the agenda, say aye.

(Chorus of ayes.)

CHAIRMAN VALOIS: The ayes have it.

The second item on the agenda is the old business, approval of Minutes of January 29, 1987. I was not at that meeting at the beginning. I read these minutes and I specifically recall coming in later.

Would someone else like to vouch for the occurrences of the first part of the minutes?

MS. BERNSTEIN: I did not see any problems with them. I have not read them for commas, but I did not have any problems with what happened.

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CHAIRMAN VALOIS: Is there a motion to approve these minutes?

MOTION

MS. BERNSTEIN: So moved.

MS. BENAVIDEZ: Second.

CHAIRMAN VALOIS: All of those in favor of approving the minutes of January 29, 1987, signify by saying aye.

(Chorus of ayes.)

CHAIRMAN VALOIS: Opposed?

(No response.)

CHAIRMAN VALOIS: The minutes are approved.

The third and final item on today's agenda is consideration of State Support Center Funding Status.

Just by way of background, this is the first committee meeting we have actually held on the subject. We prefer to try to get some of the groundwork done by correspondence. Those of you who are here in support or in opposition to or who want to comment on this particular matter -- may have received requests. If not, and you have something to contribute, we would certainly like.

Can I just ask for a show of hands just for purposes of figuring out time? How many people are here, if any, to

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comment on this subject of method or manner of funding of State Support Center? Is there any member of the public?

Appearing for the Corporation and at my request, Mr. Wayne Brough, who is an economist with the Corporation has been sort of helping us get this off the ground and not get too far astray.

Wayne, if you would just summarize what the Corporation has done so far with respect to this issue?

STATEMENT OF WAYNE BROUGH

MR. BROUGH: Okay fine. The first thing I want to say is that there are three states that are in question in this; Mississippi, Texas and Louisiana. The approach we have been taking will hopefully generalize into a larger approach which can be applied to the issue of state support funding in general.

What I have done so far and I will go through briefly, is a history of these centers as they stand right now and then go into a brief analysis of alternatives that we can use in addressing this question.

CHAIRMAN VALOIS: When it originally, I think sometime, perhaps in January, if my recollection is correct, we wrote each of those state support centers as well as Alan Rogers and asked them to give us a written response. We have received

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written responses on all four of those?

MR. BROUGH: That is correct, they have all responded.

The first center in question is the Texas Legal Services Center. Texas Legal Services Center or TLSC was originally established in 1978. Initially, TLSC was a cost center within the Legal Aid Society of Central Texas.

Funding from LSC totaled \$72,902 dollars in 1978, and was derived from an annualized special needs grant which was awarded to all Texas recipients. All grants were sent directly to the Legal Aid Society of Central Texas by LSC.

From 1979 to 1981 LSC made annualized state support grants to Legal Aid Society of Central Texas which then proceeded to pass through the funds to TLSC.

In 1982, TLSC moved to create its own Board of Directors. Pursuant to state support special grant conditions, TLSC was incorporated as a separate corporation. Through a successor-in-interest agreement Legal Aid Society of Central Texas sought to transfer the performance of all state support activities as well as all refunding rights to TLSC. However, from 1983 to 1987 Legal Aid Society of Central Texas continued to apply directly for state support funding which it then subgranted to TLSC.

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TLSC has requested that the LSC Board address the issue of state support funding in Texas, with the desired goal of direct funding for TLSC as soon as it makes the necessary regulatory changes to comply with the LSC Act and regulations.

TLSC provides support services to eleven basic field programs in Texas. Assistance takes the form of litigation support, publications and training. In particular, there is a focus on issues concerning individuals in institutions, individuals with utility problems, and individuals needing assistance under the new immigration law. Given the breadth and scope of state support activities, TLSC would be categorized under both Section 1006 (a) (1) (A) and Section 1006 (a) (3) of the LSC Act.

The second center in question is the LSC Mississippi Legal Services Center. State support is provided by the Mississippi Legal Services Coalition, or MLSC, which is located in Jackson. There are no branch offices; local work is conducted through the offices of the basic field programs in Mississippi.

Originally, South Mississippi Legal Services Corporation received a "special needs adjustment" grant of \$36,000 which was to be used to establish a statewide

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coordinating unit. South Mississippi Legal Services Corporation was to allocate \$7500 to cover the overhead expenses of the new unit. MLSC was created in 1978 as a joint venture agreement among the six basic field programs in Mississippi. An agreement formalizing the arrangement was executed in July 1979.

Under the formal agreement, each of the six basic field programs in Mississippi contributes 1.25 percent of their annual funding to MLSC. In 1981, South Mississippi Legal Services Corporation was given an annualized state support grant which it subgrants to MLSC.

In addition, Central Mississippi legal Services Corporation was given a one-time grant for state support which was also passed on to MLSC. This arrangement has continued, with South Mississippi Legal Services subgranting its annualized state support funds to MLSC and the field programs contributing a percentage of their basic field grants. In 1987, the percentage contributed by the field programs was reduced to 0.5 percent of their annualized funding, with 1987 state support set at \$229,214.

The original focus of MLSC was lobbying, both before legislative and administrative bodies. This has remained an important part of the services provided and has expanded to

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include coordination and organization of networks comprised of local staff, other support projects, advocates and advocate organizations representing the poor.

More recently the state support unit has provided library and resource development, training, communication, publications, and technical assistance for local staff. Litigation is also conducted by MLSC, especially in the areas of public benefits and utility issues. Given these activities, MLSC would be classified under both Section 1006 (a)(1)(A) and SECTION 1006 (a)(3) in the LSC Act.

The final state support center in question is the Louisiana Legal Consortium. The state support center in Louisiana is operated as a branch office of a basic field program, Southeast Louisiana Legal Services, SLLS. State support funding originally went to the New Orleans Legal Assistance Corporation in 1977. The focus of the unit was legislative advocacy. Funding was provided by LSC as well as local basic field programs. However, by 1980, local programs were displeased with services provided by the state support unit and the office was closed.

Subsequently, LSC awarded an annualized state support grant to SLLS. In turn, this was passed through to Louisiana

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Legal Services Association. By 1981 Louisiana Legal Services Association had reorganized as Louisiana Legal Consortium, but the funding relationship remained the same.

In 1983, the pass-through relationship was formalized and the annualized grant made by LSC to SLLS was subgranted to Louisiana Legal Consortium. Direct funding for state support has been an issue in Louisiana for some time. SLLS attempted to transfer responsibility for state support to another basic field program in 1984. This was to be the first transfer under a new state support policy which was to alternate funding for state support services every two years. At that time LSC denied the request, stating that it was seeking a more permanent source of state support for Louisiana.

In 1985, SLLS advised LSC that it would no longer subgrant the state support funds but would provide state support services through a branch office. Service is provided by former employees of Louisiana Legal Consortium. This arrangement has remained in effect to date.

Also in 1985, Louisiana Legal Consortium applied directly to LSC for a state support grant. LSC responded that a final decision could not be made until the Board of Directors completed its study of state support. Meanwhile, the 1986 grant

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was awarded to SLLS. However, in 1986 SLLS informed LSC that it did not want to receive the annualized state support grant; direct funding for the state support center was preferred.

To this end, Louisiana Legal Consortium applied for the 1987 Louisiana state support grant. The application was unsuccessful; LSC awarded the support grant to SLLS.

The services provided by Louisiana Legal Consortium are confined solely to training and technical assistance, functions which are classified only under Section 1006 (a)(3) of the LSC Act.

Those are the three centers in question. Now, I want to turn to an analysis of direct funding for state support from a policy perspective and what alternatives we do have.

It has been suggested that direct funding for state support would provide means for ensuring the state support centers comply with the LSC Act and regulations. It is true that as subgrantees, the statutory definition of a "recipient" does not apply to state support centers.

Nevertheless, many of LSC's organizational and operational strictures are passed through to subgrantees by operation of regulation 45 C.F.R. Section 1627 and the subgrant agreement itself. In fact, the governance structure does

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exist, and the current structure may be more effective than any alternative structure available under a system of direct funding.

Presently, the basic field program which acts as a grantor to the state support unit also serves as a guarantor for the actions of the state support center. This principal-agent relationship ensures LSC control over the activities conducted by the state support centers. Should these centers engage in behavior which may not be in agreement with LSC policy, it is possible to seek redress through the basic field program, or programs, which made the grant to the state support unit.

As with any principal-agent relationship, a divergence in interests between the parties requires that the principal monitor the behavior of the agent to guarantee the desired outcome. An efficient governance structure may be defined as that which minimizes the costs of monitoring the behavior of the agent.

When entering a contractual relationship, individuals act rationally, but only to a limited degree. Uncertainty and future contingencies necessarily confine the degree of rationality possessed by the actors; hence, rationality is

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intended but, at the same time, constrained.

LSC's relationship with the state support centers is clearly marked by bounded rationality. Given the distance between the field programs and LSC, it is impossible for the Corporation to have an intimate knowledge of all of the activities of each basic field program. The particular knowledge of time and place is too costly to obtain from such a great distance. LSC can only establish state support priorities through secondhand information or through costly monitoring visits.

State support units were established to effectively service the basic field programs within a state. In general, such field programs can more accurately assess the needs of their staff attorneys and forward this information to the support center. Hence, it appears the more efficient method is to have basic field programs establish the contracts for the provision of support. Inserting the LSC into the arrangement merely increases the transaction costs of monitoring state support.

Likewise, when state support centers are responsible directly to LSC rather than the basic field programs within the state, it become more difficult to effectively determine the

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needs of the basic field program. In this respect, the state support center would be rationally ignorant to such needs given the fact that refunding is based not upon the basic field evaluation but on satisfying requirements which would be imposed by LSC.

The fact that it is impossible to include all future contingencies in a contractual agreement implies that there are going to be areas where opportunistic behavior is possible. The issue, then, is which governance structure will be able to adapt most readily to such unforeseen contingencies?

Currently, basic field programs acting as subgrantors are liable for the actions of the support center; with a change to direct funding this is no longer true. LSC would no longer be able to seek redress through basic field programs. The shift to direct funding would also create changes in the legal status of support centers as well, and these may generate increased opportunities for opportunistic behavior.

If a state support center is funded directly, presumptive refunding will ensure that the program receives an annualized grant; in this case, it would be much more difficult for LSC to take an adverse action, such as defunding, against a direct recipient for ineffective or poorly managed state support

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centers rather than the field program taking action against one of its own subgrantees.

Furthermore, it is not evident that a shift to direct funding will subject state support centers to increased coverage by LSC statutes and regulations. Should the grantee provide only training and technical assistance it would be classified under Section 1006 (a)(3) of the LSC Act, as is the state support center in Louisiana, and would therefore not be considered a recipient. Regulations which govern the behavior of recipients cannot be applied to such an entity.

In conclusion, the issue may best be analyzed in a principal-agent framework. Using this analysis, it appears that there is little to gain from altering the funding techniques while there are specific cost increases associated with any changes in the contractual arrangement.

While direct funding may not enhance LSC's position, the Board may choose to examine the subgrant clause in order to more effectively ensure that subgrantees comply with LSC statutes and regulations. Specifically, Clause III (A) of the Subgrant Agreement Form could be amended to specifically enumerate the LSC statutes and regulations applicable to subgrantees. It should be made clear that support centers are

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subject to all pertinent regulations.

In addition, many support centers are small entities, and the administrative costs imposed on LSC through direct funding may far outweigh any benefits to be gained from direct funding.

The present funding system appears to conform with the Board's position that control over funding should be as localized as possible. While control over funding is not at the local level, at least the local programs have direct recourse should the state support centers not provide the services required.

Shifts in funding may also lead to periods of discontinuity in services, given the procedures which must be followed in any transfer of funds. Furthermore, it is not necessarily true that the state support groups which are requesting direct funding will actually be the group which is funded after the regime change.

The new, directly supported state support programs would have to be bid for competitively, and it is possible that another service provider may actually win the bid. Again, this process adds to the discontinuity in service due to changes in funding procedures.

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Now, as a final note, competitive bidding for funding provided by basic field programs may, in fact, be the most efficient process by which to allocate funding for state support. Field programs would be able to assess their needs for support services and allocate resources directly to providers. The competitive forces imparted through the bidding process would provide a mechanism to monitor the transaction.

The ability to recontract and the existence of alternative suppliers would ensure that the services provided satisfied the demands of the local field programs.

CHAIRMAN VALOIS: Thank you. I notice that southeast Louisiana Legal Service Corporation has responded by its letter of February 15th. One of the things they say, which I assume is still true today, is they have two employees.

MR. BROUGH: That is correct.

CHAIRMAN VALOIS: If they were to become an independent unit of LSC, presumably they would continue to have two employees. How many board members would they have?

MR. BROUGH: I am not exactly sure how that would work, the number of board members. I would assume at least six, but I have not really addressed that issue.

CHAIRMAN VALOIS: Do we know precisely what southeast

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Louisiana does other than training? It seems to me, based upon their response --

MR. BROUGH: Louisiana is the only support center which strictly uses training and technical assistance. It provides no other services.

CHAIRMAN VALOIS: Has that ever been put out, to your knowledge, for competitive bidding?

MR. BROUGH: Not that I know of, no, but I think that is one instance where the size of the support center does not warrant the increased administrative costs and the burden which would be imposed on the Corporation as a whole, just to keep up with the two employees of the support center.

CHAIRMAN VALOIS: Do you know the size of the Mississippi Legal Service Coalition? The number of employees, for instance?

MR. BROUGH: I believe they have eleven members -- no five.

CHAIRMAN VALOIS: Five?

MR. BROUGH: Five, that is correct, five members.

CHAIRMAN VALOIS: They do tell us that they have an advisory board made up of nine people. If I read this correctly; three private attorneys and six eligible clients.

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MS. SWAFFORD: Is that Mississippi?

CHAIRMAN VALOIS: Yes. Does that sound right?

Again, Mr. Armstrong's letter of March 9, 1988, says they provide the following things: support, through individual service work -- I do not know quite what that means -- library and resource materials development, training in communication, development of manual technical assistance, and development of strategies for use by local programs.

It says it does some litigation particularly in the area of public benefits and energy, serves as co-counsel, does legislative advocacy. It says it coordinates and establishes networks with local program staff and others who are advocates of the poor.

Again, that is, I take it, a fairly small operation. What I think I hear you saying is that there is at least one more alternative to direct funding and indirect funding and that is bidding.

MR. BROUGH: That is an alternative which is viable. I did not look into that at any great length. I just listed it, but I do not see anything inherent in services provided by a support center that make it so specialized that it would not withstand a competitive bidding process. In fact, there may be

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efficiencies which can be gained from it.

CHAIRMAN VALOIS: I do not know the size of the Texas operation -- yes it do. It has a director, a training coordinator, a conference coordinator, a business manager, a newsletter editor, a litigation coordination coordinator, a vacancy for a staff attorney, an executive secretary, a secretary and staff attorney for the immigration project which is IOLTA funded, and two part-time law clerks and a part-time office assistant. I do not know what that adds up to.

MR. BROUGH: Approximately ten.

A PARTICIPANT: Thirteen.

CHAIRMAN VALOIS: Thirteen, including some part-timers.

Do any members of the committee or the board have any questions for Mr. Brough? Mr. Mendez?

MR. MENDEZ: First, all of these three want to have direct funding; is that correct?

MR. BROUGH: That is correct.

MR. MENDEZ: All of the -- is it also correct that all of the basic field programs in each of these areas want to have these state organizations to have direct funding?

MR. BROUGH: I am not exactly positive on that point,

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what exactly the state basic field programs would like to see.

MR. MENDEZ: With regard to these three programs, is all funding done by LSC or do we have private funding?

MR. BROUGH: To my knowledge, I am not sure what level of outside funding or -- but obviously they do have some because in that one instance there is IOLTA funding involved.

CHAIRMAN VALOIS: At least one of the responses indicates IOLTA funding.

MR. MENDEZ: I hate to disagree with you, but I do not agree with any of your analysis. If your analysis was correct, most of this direct funding of legal services programs should be done away with. It should be given to basic field programs, based on your analysis -- not directly on these three, but if your analysis is correct on these three, it should hold up for the other -- state support of the others.

MR. BROUGH: What the analysis tends to stress is letting the state field programs make the decision and have the ability to have the subgrantor and the ability to impose strictures on the behavior of that subgrantor.

MR. MENDEZ: I know, but what I would like to know, with all of the direct funded ones are you telling us, based on your analysis, that the direct funded ones should become

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separate entities?

MR. BROUGH: I am simply trying to say that given the situation what would change if we did shift the funding regime, and I think there is not that many real gains to be had from making any changes. It may just be an effort in increasing the transaction's cost of actually dealing with these people.

If the support centers in the rest of the states are not going through these problems and have not made these requests, then they do not see the need for change. In this analysis, I do not really see an important need for change.

MR. MENDEZ: Well, now hold it. Before I can vote on this and before we can make that determination, you have got to tell me whether all the programs want it or do not want it. Part of our duty is to determine what the programs want and why they are able to support it.

MR. BROUGH: That is correct. As I said, this is trying to get some idea of alternatives for you to look at.

MR. MENDEZ: Yes, but I want to know. It seems to me that if we have direct funding, that these people can go outside and get funding. They can get other funding other than ours. If they are a subgrantee of the local program, in fact, they are much less likely to be able to go out and get any independent

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funding.

MR. BROUGH: That is not intuitively obvious to me. I simply --

MR. MENDEZ: Well, lets see if we can -- if you are south Mississippi Legal Services, south Mississippi Legal Services has an opportunity to give ten thousand dollars, and you are on the board of directors of south Mississippi Legal Services and you give then thousand dollars then.

Are you going to give that ten thousand dollars to south Mississippi Legal Services or are you going to give it to the subgrantee?

MR. BROUGH: Are you checking for state support purposes?

MR. MENDEZ: That is correct.

MR. BROUGH: If you are talking state support --

MR. MENDEZ: The grant that you are going to get is not going to have any ties. It is going to be ten thousand dollars, period.

MR. BROUGH: In that sense, I would not see -- if you are going to make a grant of ten thousand dollars to a unit, I think you usually would like to see what kind of services they would provide. There may be a list of things you would like to

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see and if you are looking for state support, you could include state support as one of the services you would like to see provided.

I think that is just an empirical question that you could look at to see if there would be changes in the ability of outside funds.

MR. MENDEZ: I know there are two of us on here who are most interested in -- I am one and Mike Wallace is the other. I am sorry that Mike is not here so he can express his view, but I am not satisfied. I think this needs some more work.

MR. BROUGH: In regards to the rest of the support centers or with reference to these three?

MR. MENDEZ: In regards to these three. Until I am satisfied that -- let me put it this way. If I am persuaded of the logic of your argument, then I would be persuaded that all of the support centers should become subgrantees.

MR. BROUGH: Not necessarily, because that would also impose discontinuities in the delivery of support services, which given the set-up right now, I do not know if there would be --

MR. MENDEZ: Leave aside the discontinuity in support

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services. Your argument is -- at least one of your arguments is -- that you can force, the basic field program can force the subgrantee to do things more easily than another way.

MR. BROUGH: Right. It would be more responsive to the state support center.

MR. MENDEZ: I am sorry, I do not see the logic of that argument.

MR. BROUGH: You do not see the subgrantor as having a contractual ability to --

MR. MENDEZ: I see that he has the contractual ability to tie it, but you are also when you do the independent state support, you do the same thing.

MR. BROUGH: Exactly, and the issue is would the change actually alter that or what are the gains for LSC to going through any change. I do not know one way or the other.

MR. MENDEZ: Let me see if we can paint a bigger picture. Let's assume that we decided to defund all state support. Now, if we decide to defund all state support, wouldn't it make it a lot easier for that state support center to go out and get direct funding and to get grants, if it was not a subgrantee, if it already had the organization set up?

MR. BROUGH: I think in either case the organization

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is there, it is just --

MR. MENDEZ: Now, hold it. If it is a subgrantee, it is not. You do not have a board of directors. You do not have the funding.

MR. BROUGH: Okay, but there is an entity there that does exist and does have some director providing some input as to --

MR. MENDEZ: I understand that, but you do not have the overall funding.

MR. BROUGH: Right, and the question is: Would you be able to facilitate the gaining of funds by changing to a direct funding system?

As I say, I am not sure. I do not know which way that would come out.

MR. MENDEZ: Let me ask you this question also. Wouldn't it make more sense and wouldn't you be able to sell your services easier if you were an independent entity rather than a subgrantee? That is assuming also that they are defunded.

MR. BROUGH: If they are defunded and they are a subgrantee, wouldn't it be the case that the subgrantors would still have the option to provide funds for them?

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MR. MENDEZ: No, it wouldn't be.

MR. BROUGH: They would not be able to contract out for --

MR. MENDEZ: They would not be able to. They may be able to contract. They would not have a direct -- they would have to purchase the services.

MR. BROUGH: Right, exactly.

MR. MENDEZ: They would not have the option to subgrant. They would have to purchase the services.

MR. BROUGH: So, it would be a new contractual agreement.

MR. MENDEZ: It would have to be a subgrantee option.

MR. BROUGH: Again, I am not sure which way that would come down.

CHAIRMAN VALOIS: It seems to me -- Pepe, I agree with you -- we need some more work on this issue. I think we have thrown Wayne a bit of a curve.

It looks to me like we need to identify -- at least some of the state support functions quite frankly, are subject to competitive bidding. It seems to me there is nothing so unique about training and that sort of thing that we could not create some sort of request for proposal for competitive bidding

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or something, at least on training and perhaps in other areas we ought to be able to identify what is subject to competitive bidding.

I think we would like to take a look at that.

MR. BROUGH: In that regard I think it might be prudent to actually look at the basic field programs within those states and try to ascertain which types of support services they feel they need most and which ones they use most heavily because that might offer some more insight into the role of state support and the most efficient way to obtain and satisfy the need of the basic field grantees.

CHAIRMAN VALOIS: I sort of shudder when I think about the example of southern Louisiana having two employees and we end up making them a -- at least one option is to make them a stand-alone unit and end up having nine, eight, seven, five or whatever it is, board members. We end up spending a couple of weeks of man hours doing monitoring.

I hope there is a better way.

MR. BROUGH: Well, I will take these suggestions into consideration. I will further the study along those lines.

CHAIRMAN VALOIS: I think I am still in the stage of this committee that we are trying to figure out where are going.

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Are there any more questions from any board members on this subject? Hortencia?

MS. BENAVIDEZ: Did I understand you correctly that in your opinion you think there is no need for this change?

MR. BROUGH: Excuse me?

MS. BENAVIDEZ: Did I understand you correctly that there --

MR. BROUGH: That there is no need for change?

MS. BENAVIDEZ: Yes.

MR. BROUGH: My opinion is there may not been any special benefits to change. The services and LSC's relationship may not be altered in that large of a way to outweigh the costs which are going to be involved given the new administrative processes and procedures that we have to follow, for instance, for a support center with two employees.

MS. BENAVIDEZ: Thank you.

CHAIRMAN VALOIS: When you are giving that opinion, though, it is the choice between direct and indirect funding; right? You have not taken any other choices into account?

MR. BROUGH: Exactly.

MS. BERNSTEIN: Just looking at these three?

MR. BROUGH: Right.

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MS. BERNSTEIN: I know I was at least two meetings where this question came up tangentially, but I am having a hard time focussing on exactly how the questioning got formulated in the way it did.

The way I understood the question generally was a much more broad-based question, not relating just to these three centers. Maybe I am wrong, but I thought part of the concern was whether or not -- and I am saying of concern for board members -- was whether or not the funding for state support needs to be made more uniform.

The fact that we have so many approaches to it is not a problem in itself. To tell you the truth, I do not know whether this goes beyond what is requested, but it if you are looking at more on this.

MR. MENDEZ: LeaAnne, may I?

I think there were a variety of comments and questions about it, but I think what happened was that at the last meeting the issue came up about why we were not direct funding these three programs. Mr. Wallace and I asked them to consider it.

I recognize that the questions that you raised and the issues that you just raised were discussed then, but they may well have just picked that issue of why they were not done.

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Because, for several years these issues have been floating around and Mr. Wallace and I were very interested in seeing why we just could not direct fund these people.

The issue that I want to have answered is: Do all of the -- the question I asked first, do all of the basic field programs want it?

MR. BROUGH: In an extension of this, that is an important issue. I will look at it.

MR. MENDEZ: I think that is the key thing, that they all want it, even though it may be less efficient, it may cost more, if they really want to have that, that is a real important consideration.

CHAIRMAN VALOIS: Actually, the issues are recorded in the December 17, 1987 and January 29, 1988 transcripts. I agree with you that the issues were slightly different at the time than they appear to be becoming. I will take it, it is the option of the Provisions Committee to try and shape them to the -- to our interests.

There are so many variations, apparently, of state support funding, including states that have none at all, that I think this is an important issue to look at, and particularly in my opinion with the notion of trimming down unnecessary paper

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shuffling and personnel and introducing the notion of competitive bidding where that makes sense. Let's find out what all that means.

Anything else from anybody else in the committee?

(No response.)

CHAIRMAN VALOIS: If not, we will take the public comment on this issue, such as it is at this point.

STATEMENT OF MARY BURDICK

MS. BURDICK: Good evening. I am Mary Burdick from the Western Center on Law and Poverty in California. I am here on behalf of the National Organization of State Support Units instead of Mr. Allen Rogers who could not come tonight.

Briefly the position of the National Organization of State Support Units, NOSSU, is that it is not appropriate or necessary to have one uniform mode of funding state support programs.

As Mr. Valois has pointed out, in some instances the state support program may not be large enough to be self-sufficient, and in other instances it may be so large that it is a burden on a small local program that would be given the job of passing the funds through.

So, we think you need to look at each of these

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situations, given the history, the size of the programs and particularly the desire of both the state support unit and the field program. When I am done speaking, there are people here from Louisiana and Texas to affirm that in those instances the field program does not wish to be pass through.

So, you can get some direct testimony on that. As a point of clarification, I believe Mr. Armstrong told me last week that Mississippi had never formally even requested to be a direct grantee. They had only asked what the procedures were. So, I think there needs to be more clarification on that before there is any action on a supposedly pending application for direct funding.

The notice of position is that if the local program no longer wishes to be the pass through because of administrative burden and does not see any value of accountability in remaining the pass through.

If the state support unit is ready to assume the administrative burdens of being independent, and is able to function independently, LSC should have no interest in preventing the transfer of direct funding to the state support unit.

CHAIRMAN VALOIS: Address, if you will, while you are

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on that point, the additional administrative burden, creation of additional governing board, the creation of additional monitoring expenses and duties, time consumption by LSC and how does that justify it, so to speak, by permitting -- and we will forget about mastering Louisiana -- and two or three-man state support units to be free standing, if they want to, as you put it.

MS. BURDICK: If you have two or three people who are working independently and already have an advisory board or even their own board that is ready to become an LSC governing board, and they have worked out with the field program a mechanism for transferring the administrative functions that neither the field program nor the support program feels it is going to be too costly a burden to them.

I think if they can work that out, then there is no independent reason for LSC to question whether it is too burdensome for the program to make the change. In terms of LSC monitoring, it does not take any more time to send a monitor out to talk to three state support workers who are part of a local program, than it takes to send them out to talk to three state support workers who are independent.

You need the same number of monitors and the same

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number of days to talk to the same number of people. In terms of whether training or any other function can be done with two people or three people, I think you have to look at the factual patterns and whether or not the support unit has made a case for its ability to function independently.

I think these situations historically arise where the support function, in fact, was dependent and becomes independent in everything except formal structure and has already proven its ability to operate independently before these requests ever come to you.

Mr. Brough's comments on the value of requiring the pass through seemed to break down into two categories. The first is insuring field program accountability and the other is insuring LSC control; if I understand his position.

I think it is important when you talk about field program accountability to question whether the field programs think they do not have control over state support.

In the instances -- the individual instances before you, the field programs obviously do not feel that they need to be a pass through in order to have adequate control, because they are here to ask you to alleviate that burden and not to have them be the pass through program.

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CHAIRMAN VALOIS: Comment, if you will, specifically on that. What is the real reason or reasons for the field programs not wanting to be a pass through? It sounds to me like there is more to that than I know about. What is the problem?

MS. BURDICK: There is someone here from each of the states who can discuss that problem. I do not have the information I think that you need in terms of why Louisiana and why Texas no longer wish to be pass through programs. I would like to defer that question to them.

I would like to remind you about the testimony that was taken at Mr. Uddo's committee in New Orleans. Where this identical issue was not on the table, but the issue of local program control over support was on the table.

You were discussing at that time whether all support money should go to field programs and then field programs could use that money as power to ensure that the support centers did what they wanted. The field programs uniformly, and in large numbers, came in and said that they did not need to control the money in order to control the services that the support centers provided them.

The other issue that Mr. Brough raised was the LSC control over the support centers. Frankly, I really do not

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understand his argument that LSC has better control over support if there is an intermediary field program.

I think if you have got a direct state support grantee, you have control through your regulations, you have control through your grant, through your monitoring, the same kind of control that you have over any field program.

In fact, it complicates your control if you have a field program pass through, because you cannot go directly to the state support grant. You have got to deal with the field program, which may be operating very well, except for some area of dissatisfaction with state support.

You cannot punish the whole field program because of some dissatisfaction with state support, not effectively or fairly. Unless you have some other comments for me on NOSSU's general position, I think it would be most useful for the states that made the request to speak to you about the factual patterns that have developed there.

CHAIRMAN VALOIS: You can comment on the issue that I raised, that I think is an issue that needs to be addressed about if we are able to identify certain areas of support or even certain support units, that would be -- make sense to put out the competitive bids, and quite frankly, strip a lot of the

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administrative burden, as I see it, to both the units and to the corporation.

Do you agree with me that there may be some that we can identify along those lines, some services?

MS. BURDICK: I think if you want to look at an analysis, did a study, went out to the field programs, you would probably find that the support services could not provided through competitive bidding on as cost effective a basis. Just taking training as an example in California, we provide needed type training at about half the cost of actual needed training.

The salaries that we pay are not high enough that the kind of people who want to go into competitive bidding want to bid for a contract that will reimburse them at the same rate as our attorneys earn by wages.

So, I just think there is a factual matter that competitive bidding is not going to work for most of the support functions.

CHAIRMAN VALOIS: Of course, there are plenty people in the training business with no support unit or any configuration of a support unit that has any particular monopoly on training lawyers to be lawyers or training paralegals, for that matter.

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MS. BURDICK: That is true, although we do have a monopoly, to some extent, on trainers who have a lot of experience in training on poverty law issues and on trainers who are willing to work for below market wages.

CHAIRMAN VALOIS: I do not know about the second part, but on the -- if there are many, many graduates of legal service programs, by now, and I think you will agree and I think there are plenty of people out there than can, for instance, train.

The bar association has got plenty of private organizations that train and there are plenty of people sending brochures past my desk all the time who are simply in the training business. Then, they call lawyers in specialized areas in various parts of the country to ask them to actually do the training.

MS. BURDICK: In 1985, the Western Center used its state support grant primarily to hire consultants, paid trainers to put on training events. We switched to a staff model the following year because the consultant's rate were higher than we wanted to pay, and then we would have to pay a staff person.

We are actually delivering more training now by going to a staff model and out of the consultant mode. Unfortunately, a number of our consultants were ex-Legal Services attorneys,

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but once they went into private practice, their consulting rate to us was just a little bit higher than we would have had to pay in wages.

CHAIRMAN VALOIS: How many trainers are there in the Western Center right now? How many people actually to train formally?

MS. BURDICK: A training director and a coordinator, assistant.

CHAIRMAN VALOIS: Two people?

MS. BURDICK: Yes.

CHAIRMAN VALOIS: Do they devote 100 percent of their time, their work year, to working on training?

MS. BURDICK: Our training director works, I think, 75 or 80 percent of full-time. All of her Western Center time is on training. Her assistant is a full-time employee, all on training.

CHAIRMAN VALOIS: She does something for somebody else, some other employer the other 25 percent of her time?

MS. BURDICK: She does independent contracting work on the other time.

CHAIRMAN VALOIS: Is that in the training business by any chance?

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MS. BURDICK: Yes.

CHAIRMAN VALOIS: It is?

MS. BURDICK: Yes.

CHAIRMAN VALOIS: The coordinator, I believe, is another title?

MS. BURDICK: That is correct. That is an assistant who helps with such things as getting the rooms ready, sending out the notices, getting the contracts out, keeping the mailing lists up to date.

CHAIRMAN VALOIS: Other than the becoming familiar with what is involved in training other people, include that function, I would think?

MS. BURDICK: Other people could do the secretarial coordination function, probably if we bought someone by the hour to do that it would be a little more expensive than paying wages, but someone else could do that.

MR. MENDEZ: I am sorry, I did not understand. Of these two people, the training director and the coordinator, how many are attorneys?

MS. BURDICK: One.

MR. MENDEZ: The director?

MS. BURDICK: Yes.

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MS. BERNSTEIN: The trainer actually does all of the work in terms of training attorneys in various substantive areas?

MS. BURDICK: No, our training center does primarily -- of the training events we sponsor, they are primarily skills training, not the subject area training. So, for example, we do new lawyer training, which you think of basic skills training. We do needed NIDA-type training, management training, support staff training. Our full-time trainer does that work.

In addition, she provides technical assistance and support to help local programs in national support centers put on substance training, for example, in health/welfare.

MS. BERNSTEIN: Even if we go to just the skills training and so forth, are these repetitive kinds of programs where the same skill is taught to various people -- various different groups of attorneys and so forth? I am just wondering where she gets the time to get the experience to have the skills to keep up-to-date.

Because, with changing practice in various areas, that whole -- it is an amazement that those skills can be kept up to date at the same time she is spending full-time on training.

MS. BURDICK: Obviously there are a lot of other

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trainers at the training events. Many of them are volunteers from local programs, who assists in delivering the training because of the benefit to their new attorneys who go through it. She keeps up to date by being a trainer.

CHAIRMAN VALOIS: So the local -- some other program's executive director of chief attorney, whatever he is called, might be the one doing the actual training, as well as your employee?

MS. BURDICK: That is right. We have, for example, a needed type training and someone is playing the judge and you have got people in the jury box and then you have got people watching the training, people in the jury box would be volunteers, the judges will be volunteer judges.

You might have directors of litigation from three programs doing the critiqueing of the trainee's work. The training director is putting together all of these, making sure that all of the trainers are where they belong and that they are prepared for it, and then running some of the sessions.

CHAIRMAN VALOIS: I do not have anything further.

MR. MENDEZ: Assuming that we decided to give direct funding to Louisiana, Texas and Mississippi, would you agree that they would not be entitled to presumptive refunding? Would

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that be the position of your group?

MS. BURDICK: It would be the position of my group that if they were direct funded they would have the same refunding rights as any other support center has, whatever those refunding rights are from year to year as given by Congress in the act.

MR. MENDEZ: Assuming that we asked you to say that we will only do it if you say that they do not have presumptive refunding, would be the position of your group?

MS. BURDICK: The position of my group would be they should have the identical refunding rights the rest of us have?

MR. MENDEZ: That is not the question I asked you, ma'am. The question I asked you was if we say we will only give the direct funding if they do not have presumptive refunding rights, what would be the position of your group?

MS. BURDICK: Is that question premised on the assumption that other state support centers do not have presumptive refunding or do?

MR. MENDEZ: The other states do have them.

MS. BURDICK: I think it would be inappropriate to make that be a condition of going to direct funding.

MR. MENDEZ: Now assume that the other states do not.

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MS. BURDICK: If the other states did not, and the field programs did not, then it would be no reason that the new state support centers should.

MR. MENDEZ: Let's assume that the field programs do have presumptive refunding and the other states do not.

MS. BURDICK: You are asking me about a situation that does not exist and it has never been discussed within NOSSU, so I cannot state their position on it.

MR. MENDEZ: Can you tell me what the position of NOSSU is concerning whether or not all states should have one state support group or not?

MS. BURDICK: As far as I know, NOSSU does not have a position on whether every state should have one single recipient.

MR. MENDEZ: Do some states have more than one?

MS. BURDICK: Yes.

MR. MENDEZ: How many states have that?

MS. BURDICK: I do not know.

MR. MENDEZ: California does, though?

MS. BURDICK: It does.

MR. MENDEZ: How many does California have?

MS. BURDICK: I believe California has four recipients

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of small state support grants in addition to the primary grant to the Western Center.

MR. MENDEZ: How many of those other grantees have training coordinators or trainers?

MS. BURDICK: As far as I know, none have training coordinators who are made available to other programs. They may have some internally.

MR. MENDEZ: Now, what about -- are some of the grantees in California subgrantees, some state support units subgrantees?

MS. BURDICK: There are, I believe, and you probably know more than I do about this, but I think there are four field programs that receive state support grants. As far as I know, they do not pass those state support grants on to anyone else.

MR. MENDEZ: What is NOSSU's position concerning all state support, concerning whether or not it should be directed funded or not for all groups?

MS. BURDICK: NOSSU's position is that those groups that are not currently directly funded should be able to go to direct funding if both the field program and the support unit make the request jointly.

MR. MENDEZ: If we told them that everybody was direct

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funded what would NOSSU's position be?

MS. BURDICK: I believe that -- certainly my recommendation to NOSSU about what its position should be would be that we would need to get information about whether the local programs in all the states that receive support funding want that and whether the state support entities that receive the funding are ready capable and willing to be independent.

I believe some of the state support grants are probably too small to support an independent unit.

MR. MENDEZ: What would NOSSU's position be with regard to whether or not this board told them what activity state support should undertake, such as training, and give state support a list and order of priorities? What would NOSSU's position be concerning that?

MS. BURDICK: I can only speak for myself on that, because I do not remember that direct question being put to NOSSU. It is my opinion that state support by definition is a state function. The use of state support money should be determined in conjunction with the field programs in the state and not at a national level.

MR. MENDEZ: Just out of curiosity, does California, or do you think that the state support funds ought to be used to

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provide mileage between different groups to use state support for mileage expenditures?

MS. BURDICK: I do not understand the question.

MR. MENDEZ: Well, let's say that state support-- that California, the Western Center -- where is your office?

MS. BURDICK: Our main office is in Los Angeles.

MR. MENDEZ: Let's say that one Legal Aid attorney, I know that this is hypothetical and does not apply to California, but let's say that in Los Angeles that you were supposed to go to San Bernadino or you are supposed to go out and visit Mr. Smegal in San Francisco and do a case up there.

Should the monies we give you for state support to be used as transportation expense or mileage expense?

MS. BURDICK: If you are saying, for example, a Western Center attorney is going to --

MR. MENDEZ: One of you grantees, one of the basic field programs. Could they make application to you to obtain mileage?

MS. BURDICK: If you are saying if one of the field program attorneys wanted to go from Fresno to San Francisco to work on a case where we were not co-counsel with them?

MR. MENDEZ: That is right.

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MS. BURDICK: That situation has never come up. I certainly do not have funding for that. The factual pattern does not strike me as something that would come up.

MR. MENDEZ: In the Western Center how do you set your local priorities?

MS. BURDICK: Our order of priorities were originally set several years ago by a series of statewide meetings during the LSC state support priority setting process, which resulted in a list of both substantive and functional priorities that were the result of the desires of the field programs and the analysis of our board.

Since then we do the annual assessments where we send questionnaires to every field program and ask for their comments on whether either our substantive or our functional priorities should be changed. Those responses are tabulated, they are reviewed by the staff, a recommendation is made to the board and the board votes to either retain or make modifications in the priorities.

MR. MENDEZ: When is the last time you made any significant modifications in your priorities?

MS. BURDICK: It has probably been two years since we have made what I would think would be a significant

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modification. A year ago we made some minor modifications.

MR. MENDEZ: I have no further questions.

CHAIRMAN VALOIS: Are there any other questions for Ms. Burdick, otherwise we are going to hear from some other members of the public.

MS. SWAFFORD: I do have a question. It had to do with the comment about that you made about your NIDA type training. You said that you do NIDA type training?

MS. BURDICK: Yes.

MS. SWAFFORD: Is it cheaper for you to keep a program just for NIDA type training when you could contract for the NIDA training?

MS. BURDICK: It is cheaper for us to have a regular training staff, which is one of the four or five core events it does a year is NIDA training, than it is to contract with NIDA.

MS. SWAFFORD: What are other sorts of things do those people do who do the NIDA type?

MS. BURDICK: They do, for example, support staff training, they do management training for directors and litigation directors. They have done complex litigation training.

The do what we call the College of Advocacy, which is

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a week of training for new attorneys, which gives them both basic lawyering skills and introductory sessions to the poverty law areas that they will working in.

In addition, the training director does technical assistance to local programs that are clustering to do localized training and assists the national support centers in putting their trainings.

MS. SWAFFORD: Don't you have any -- do you not get any criticism from NIDA for copying their techniques?

MS. BURDICK: No. In fact, we have gotten some assistance from NIDA.

MS. SWAFFORD: Do they do it on a voluntary basis?

MS. BURDICK: They have supplied our training director with information and assistance on a volunteer basis. We have never had any criticisms from NIDA.

I think they recognize that if we had to send the field program attorneys from California to NIDA training we could not afford it, and so they would not go. So, we are not really competing with them.

CHAIRMAN VALOIS: Thank you. Other members of the public?

STATEMENT OF JOE OELKERS

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MR. OELKERS: Hello. I am Joe Oelkers. I am the director of the Katyanna (phonetic) Legal Services in Lafayette, Louisiana, basic field program.

For the past several years I have served on the advisory council of the Louisiana Legal Consortium, which is a group of individuals involved in Legal Services programs in Louisiana, and clients providing advice on the activities of our state support program.

The state support program in Louisiana is a three staff program, there is one vacancy as I understand it now. For the past several years, the conduit program of the Southeast indicated to the programs in Louisiana and to the Legal Services Corporation that it was no longer interested in being the conduit.

I really cannot speak for the Southeast board as to why they took that position. I get the impression that they were uncomfortable being a small Legal Services program board directing activities of the state support program in Louisiana.

Their board indicated about two years ago to LSC that they were no longer interested in receiving the funding, and in response to that in, I believe the third quarter of 1986, LSC published in the Federal Register a notice of availability of

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state support funding for the State of Louisiana.

The Louisiana Legal Consortium, which was an independent entity at one time, applied for that funding. In response to that application, which I believe was the sole application received by LSC in response to the Federal Register notice, LSC advised us in Louisiana that they were taking it under consideration and that as soon as a decision was made we would be advised.

Along with that, the state support component of the funding that was going to Southeast was put on quarterly funding in 1987. The reason given was because the direct funding application was under consideration.

We were never advised of the disposition of the application that we submitted in late 1986 for direct funding in 1987. As I understand it now, the state support component and the funding to Southeast is on six month funding.

The programs, the basic field programs, in Louisiana took the position in late 1986 when we submitted the application for direct funding. That we thought direct funding was the way that state support should operate in Louisiana, and last week I contacted all of the programs again, the directors of all of the programs in Louisiana.

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Each project director reiterated their conviction that direct funding of state support was the way to go. We continued to endorse that and we are asking once again, as we have for two years now, for direct funding for our state support entity.

CHAIRMAN VALOIS: After hearing you say that and reading the correspondence in this, I do not understand, quite frankly, what you all are simply trying to get shed of this responsibility, or you are hoping it will die on the vine if it is independently funded? Or, are you hoping that it will be enhanced, a political problem here?

MR. OELKERS: I am not trying to get rid of the responsibility, because I am not with Southeast Louisiana Legal Services. As I say, I cannot speak for them. I get the impression that they are uncomfortable with directing the activities of the state support program from a board of directors that is directing and made up of attorneys and clients from a very small area in Southeast Louisiana.

They feel the very strong responsibility of controlling those activities since they are legally responsible in receiving the funds, but they feel that a broader based organization, this is my impression, a broader based statewide organization should have the responsibility.

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I know that is the feeling that I have, and that the basic field programs feel that it should be a statewide governing body directing the activities of the state support entity.

CHAIRMAN VALOIS: This, to me, gets back into what I have seen in government for as long as I have had anything to do with government, a little empire building. You start out with a little rather discreet function over here called technical training -- technical assistance and training.

It has got two people in it, now we are going to have a statewide organization of many people. It just goes on and on and on.

MR. OELKERS: I think the history is different, Mr. Valois. The history was that we had a statewide organization when the funding went through New Orleans.

CHAIRMAN VALOIS: Why do we need a statewide organization to provide a very discreet service to the field programs, in this case it is training? Why do we need a statewide organization? We talked about NIDA.

NIDA does not have a monopoly on anything but NIDA as far as I know. There are many, many, many programs doing "NIDA type" training. Everybody does that.

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MR. OELKERS: I think the answer that the basic field programs would give is because the function would be a statewide function serving the needs of rural programs in different areas of the state, urban programs in New Orleans and Baton Rouge, that there needs to be a statewide focus, and therefore, statewide input into the governance of the state support entity.

CHAIRMAN VALOIS: Couldn't you and I write that down on a piece of paper that we would like somebody to bid on doing rural type training and urban type training Louisiana, including the following subjects, and let somebody bid on it?

MR. OELKERS: I think we could agree to let someone bid on it. I do not think we would get the type of training that we are after in Louisiana in poverty law areas.

MS. BERNSTEIN: So you do not think the present recipient would bid?

MR. OELKERS: I am sorry, I did not hear you.

MS. BERNSTEIN: I just said you do not think the present recipient would bid?

MR. OELKERS: Southeast? No, they have indicated already that they will not bid. They have indicated to LSC that they are no longer interested in receiving the money, or administering statewide training.

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MS. BERNSTEIN: How about the consortium? I am trying to keep all the letters straight.

CHAIRMAN VALOIS: The two people who are in the office like that -- anyhow, anybody have any questions about that?

MR. MENDEZ: This is for Mr. Brough as well. When this comes back, one of the things I am very interested in, I would like to know from you, and I do not think that you could probably give me an answer, but if we were to give you a grant, would you accept the grant if we specifically said there was no presumptive refunding?

MR. OELKERS: I will take your advice and not give you an answer.

MR. MENDEZ: I want you to get us an answer. I am asking Mr. Brough to call you. How much time do you need to consult with everybody else on your board and take the vote? I want to know the answer to that.

If we make the grant specifically contingent on no presumptive refunding rights, would you take it? I want to know that answer and I know that you cannot speak for the group, and I want to know that from other groups as well.

CHAIRMAN VALOIS: From my perspective if it were a three-year contract renewable -- not renewable or -- at least

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for a fixed term.

Anybody else have any other questions of Mr. Oelkers?

(No response.)

MR. OELKERS: Thank you.

CHAIRMAN VALOIS: Thank you, sir.

STATEMENT OF REGINA ROGOFF

MS. ROGOFF: Once again, for the record, I am Regina Rogoff, executive director of the Legal Aid Society of Central Texas, which is the recipient of state support funds in Texas, but which are subgranted to, in toto, the Texas Legal Services Center.

First let me say I regret that we did not have an opportunity to review Mr. Brough's report prior to this meeting. Consequently, my comments are going to be somewhat disjointed because I have not had the opportunity to respond to the prepared testimony in an organized way. Please bear with me.

I would like to clarify one statement that was made about the historical relationship between the Texas Support Center and my program, which I will refer to as Legal Aid, although obviously there are many other programs known as Legal Aid.

It was correctly stated that in 1982, a state support

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grant -- an interest agreement was entered into between the two programs. What was omitted from that statement is the fact that the Legal Services Corporation also signed that agreement. That agreement was consummated and approved by all three parties.

We believe that that puts our situation somewhat-- makes our situation somewhat different.

CHAIRMAN VALOIS: Why is that different? Can one of the parties change its mind or do you think that is casting a stone somewhere?

MS. ROGOFF: We believe that that establishes a response to Mr. Mendez' question that presumptive refunding rights would follow, based on the successor and interest agreement.

CHAIRMAN VALOIS: Nothing is perpetual, is it?

MS. ROGOFF: No, you could obviously -- I am not going to say -- we would get then into a situation of contract law, which I am not really prepared to respond to today. I think we would then be in a legal situation which would have other parameters, not just the issue of funding, presumptive or otherwise.

MR. MENDEZ: Let's talk a little bit more about that. What would happen in the case if we said to you that the only

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way we will give it to you is on a private contract basis, and we will do it for a two year period of time?

MS. ROGOFF: If the only way you would give it to the Legal Aid program or to the state support program?

MR. MENDEZ: To the state support program. Which group are you speaking for now?

MS. ROGOFF: I am the director of the Legal Aid Society. I would defer that -- I am speaking for my group and I believe I speak, to some extent, on behalf of the other party directors. I know I speak on behalf of my board of directors. I would defer --

MR. MENDEZ: What about -- do we have an independent group --

MS. ROGOFF: The director of the state support center is present. I would defer that question to him.

MR. MENDEZ: Let me just ask you as project director for all these other ones that you are speaking for. Would you agree to have a two year contract, private contracts, issued to the state support group in Texas?

MR. ROGOFF: I would personally not think that that was as effective a mechanism as the current system of presumptive refunding.

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MR. MENDEZ: I am not giving you that alternative. I am not giving you that alternative in this hypothetical. I am asking you -- do you dislike this subgrant process so much that you would want to have a two year contract instead of having the contract yourself?

MS. ROGOFF: No, no. The answer is no.

MR. MENDEZ: So, you would rather have this contract stay with you, subcontract stay with you than have a two year contract. Is it also fair to say that you would rather have this contract, subcontract, stay with you rather than issue it out if there is no presumptive refunding?

MS. ROGOFF: Correct.

MR. MENDEZ: Okay.

MS. ROGOFF: My program, however, is one of eleven programs in the State of Texas. I think that goes to the accountability issue. This arrangement, to my understanding, and I am not privy to the original agreement, was a matter of convenience to the Corporation's staff to funnel money to the state support entity.

I think there has been some confusion in the discussion so far today as to the difference between state support programs that are currently funded as a cost center or a

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component of a larger program that do not have a free-standing board of directors and state support programs such as those in Texas, the one in Texas, that has an entirely independent board of directors to which my board of directors subgrants and transfers funds, but is, under the current LSC regulation and current LSC practice, being asked to be accountable for the practice of a separate legal entity.

My board feels that we are being put into a difficult if not untenable position. We are asked to represent the interests of the entire state of which out of eleven we rank number six in total funding.

MR. MENDEZ: Now, hold it. You cannot say that is an untenable position if you are telling me that you are telling me that you find it unacceptable to do a contract.

I mean it is either untenable or it is not.

MS. ROGOFF: I am trying to tell you why --

MR. MENDEZ: What you are saying is you are putting conditions on. One time you say it is untenable. You just got done saying it is untenable -- a few minutes ago. You say you it is perfectly okay, you are going to keep doing it until you can have it the way that you want.

MS. ROGOFF: We would continue this arrangement even

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though it is not what we think is in the best interest of the programs in Texas or the clients in Texas.

MR. MENDEZ: All right, then don't use the word untenable because you are clearly able to and willing to and you clearly do not think it is untenable.

MS. ROGOFF: It may have been a poor choice of words, but from my board's perspective, they are being put into a difficult, if that would be more acceptable to you than untenable, posture of being asked to oversee the conduct of a separate corporate entity.

Historically, prior to the subgrant regulation, this was clearly a transfer of funds where we were a conduit where the money came to our program and it was transferred in toto. It is still transferred in toto.

There is no administrative charge. My programs reaps no greater benefit than any of the other eleven programs in Texas, but we have the additional responsibility of being held accountable by the Corporation for the delivery of state support.

There was a statement made in Mr. Brough's report regarding increasing transaction costs and I believe that Mr. Valois has explored that at some length about the additional

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costs of the board of directors or the additional costs to monitoring.

In fact, the additional transaction costs in Texas are created by this particular arrangement which is basically an artificial relationship, interjecting the Legal Aid Society of Central Texas between the Corporation and the state support program.

Monitoring does not come through the Legal Aid Society of Central Texas. It is set up directly between the Corporation and the state support unit. The monitors go directly to that site. Correspondence does not come to me as director and only by a fluke it comes to me and all of a sudden we have an all new cost factor interjected where I have to expend my program's resources and funds to attempt to respond to things I am not directly responsible for overseeing.

So, I become, in essence, a middle person, which increases the transaction costs rather than decreases the transaction costs.

CHAIRMAN VALOIS: We were talking about TLSC?

MS. ROGOFF: Correct.

CHAIRMAN VALOIS: Have they done something to embarrass your Legal Aid Society in some way?

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MS. ROGOFF: Sir, in 1982, this is when the first effort was made to treat this as a separate organization. In 1982, there was a state support grant condition that -- a special grant condition under which the successor in interest agreement was completed to which the Corporation acceded.

We have attempted to consummate this transfer of functions and responsibility for a number of years, six years. I would say that in current times, what has happened in the recent history that is prompting my board to have an interest in doing this is that up until very, very recently the Corporation's position was the same as ours.

This is a conduit, a matter of convenience. Monitoring was handled directly from the Corporation. Correspondence was handled directly from the Corporation to the state support program.

It is the LSC that has changed its expectations of this relationship and has come back and indicated to my board that a much higher level of responsibility is being expected of my board which is, again, one of eleven programs in the state.

My board is feeling the frustration of being told-- of having LSC change its position.

CHAIRMAN VALOIS: What is TLSC doing that your board

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does not approve of?

MS. ROGOFF: There is nothing that TLSC is doing that my board does not approve of. My board does not want LSC, however, saying -- LASCT, the Legal Aid Society of Central Texas -- has to oversee whatever it is that TLSC is doing.

CHAIRMAN VALOIS: But, wasn't that what the agreement was in 1987?

MS. ROGOFF: The agreement in 1987, I am not aware of. At that point it is my -- in 1987, at that point I believe it was a cost center arrangement and the collective judgment was that the board of one field program did not have the -- could not have the proper degree of accountability since the state support program serves the entire state.

It was through that process having already been a cost center that we moved to the next step of attempting to transfer the responsibilities to the separate entity and creating a separate board of directors which is representative of the entire state.

That was the rationale that the programs serves not just the central Texas region. It serves the panhandle. It serves the valley. It serves west Texas, east Texas and Texas is a very large and complicated state with multiple

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constituencies. I am sure Ms. Benavidez could confirm that.

To have one board of directors made up of lawyers appointed from bar associations only in central Texas, does not appropriately reflect the necessary degree of accountability to the entire state.

MS. BERNSTEIN: But, you agree that the same would be true for any of the component funding that is given to individual programs? They do not have separate boards of directors and that support function.

Despite the fact, like in California, we may have five chunks; a statewide program, the separate free-standing program of western center. I am not arguing one way or the other. I am just trying to make all the arguments consistent.

If each of four other programs in California, with their own local boards of directors have a responsibility for the component funding to serve the entire state, they are under exactly the same problem you are under.

MS. ROGOFF: I do not know the history of California and I do not know that what you have just stated is the correct description. There was a period of time where LSC made special-needs grants. Some of those special-needs grants became then continuing and presumptive.

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MS. BERNSTEIN: So, they are not really state support grants you are saying?

MS. ROGOFF: I cannot speak to that. I really I -- I have no idea. I know from what I have just heard testified to, is that there is one statewide entity and that the others appear to be special training grants to discrete programs not to have a function that is statewide, but to meet specific training needs of those programs.

Again, I think what this all points out is that you are dealing with a very diverse and complex system. There are programs that are statewide, like California Rural -- I believe I stated that correctly, correct me if I am wrong -- that may have independent training needs as opposed to small local programs that have one or two counties, that have distinct responsibilities for client populations. The obvious one is migrants and indians that may have discrete training needs that are not necessarily -- cannot be generalized to other Legal Services programs that would justify having a specific, targeted, training grant.

I think all that is pointing out -- there is somewhat of a hodgepodge out there in terms of how the funding is done. I am not going to try to defend the fact that some states have

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very small state support programs and some states have larger programs.

CHAIRMAN VALOIS: Some get along without any state support programs at all.

MS. ROGOFF: Some get along without any state support programs at all. We find it very valuable in Texas. I would say there is agenda already established for the year. My people are active in establishing in that. They participate actively in the training, both as trainers and as trainees.

I will also point out in response to some of the comments about competitive bidding, that when local training is done in our community by, say our local bar association, if there needs to be a component in that training that addresses the needs of the poor, the bar looks to us to provide that.

They do not have that knowledge within their own constituency and if there is a need -- we recently were involved in doing a training to recruit volunteer lawyers to do pro bono divorce cases.

Because of the implications in poverty law situations for impact on the AFDC grant or the Food Stamps or other aspects that are unique to the low income client population, I would not pretend to go out and draft a property settlement agreement that

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involved large trusts and great wealth.

I do feel confident that I can talk about the implications about child support for an AFDC recipient. I think the same would hold for members of the private bar not feeling comfortable talking about my areas of expertise.

I am a little concern that Mr. Brough's approach was a purely economic one. In fact, it seemed to be based in economic theory rather than in reality. It seems divorced from reality.

CHAIRMAN VALOIS: Competitive bidding for services, do you think that is theory or reality?

MS. ROGOFF: I am a little confused about understand what you are saying in terms of bidding for services. What I think I hear you saying is that there is going to be a cost efficiency, some administrative level of funding would be removed. I understand you to say local programs, such as mine-
- contracted through an RFP process --

CHAIRMAN VALOIS: Or some private law firm or some former legal services lawyer or two of them.

MS. ROGOFF: My program alone does not have sufficient resources to do that. Even if we were to receive a portion of the state support grant, it would not necessarily have

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sufficient resources.

In order to collectively accomplish that goal, what we would end up doing is creating state support programs. We would collectively come together and say, we want to maximize the resources that we each independently have. Let's pool those resources, create a collectivity that is called whatever -- in this case a state support program -- and say we all have some similar needs, some different needs, some trainings should be done state wide so that everybody benefits.

It does not make any sense for my program to contract in a bid process for the same training that the Houston program is contracting for or the Dallas program because we would all be duplicating those expenses.

It makes a lot more sense for us to say, we all have these similar needs, let's share -- do one training collectively and that is what state support accomplishes. Then you may have local needs that are distinct from that and state support also has the ability to come into the local program and assist in that tailored training that addresses the needs of the local program.

MS. BERNSTEIN: I understand that because you have not done this before that it seems foreign, but if you had, for

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instance, independent schools in a given state, may get together and decide that they want to put out a bid for health insurance, for all of the independent schools that are part of an association or part of a group. Or, they may decide they would like to bid for a janitorial service for all the independent schools.

They may get economies of scale doing that. It may not be useful for them to do certain things that way. I am simply saying that the volunteerism is not an argument against it from a standpoint of theory.

MS. ROGOFF: I have a very hard time talking in the abstract. If you are talking about one-time deals, that may be true. I mean, we have talked about doing things like a one-time needs assessment where the field programs will get together and cooperatively do something.

Every program has an ongoing need for training. We have turnover. We have new issues that develop. Staff reaches different stages of development. When you are talking about needs that you know to be ongoing, it doesn't make any sense to create a system that is suitable for one-time deals.

MS. BERNSTEIN: I don't think janitorial services for schools is a one-time deal. What I am saying is --

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MS. ROGOFF: Well, you set it in place and --

MS. BERNSTEIN: What I am saying is you have services, whatever those services are, whether they are going to be computer services, whether they are going to janitorial, telephone services. If there are economies of scale in terms of banning together to do it, then there is nothing to prevent independent organizations from banning together to do it.

By the same token, it may be that in a local, you can get specific help in an area that maybe the priorities of another program don't even need help in a divorce area.

MS. ROGOFF: I don't see those as mutually exclusive. Using your school district analogy. My experience in Texas where there are a lot of school districts. I will make another analogy that is closer to home in my case.

Human service providers have some shared interests, for example, if one can get lower insurance rates, in terms of trying to develop funding at the local level. The result of that is ultimately to create an association. Then, if that is an effective association, it becomes a funded, staffed association.

It is in essence, having a statewide support center that is representative of the entire state, that has a board

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that represents the entire state, that sets its priorities based on the needs of the entire state is that.

I mean, it is the vehicle -- basically LSC had the foresight to establish, in an institutionalized way, a vehicle to accomplish those mutual goals. It does not mean that there may not be other goals independent of that that local programs may choose to pursue.

I mean, I send my staff occasionally to programs not sponsored by TLSC. I think that TLSC tries to tailor its training package so that it does not compete with or recreate trainings that may be available from other sources more efficiently and economically.

For example, in Texas the biggie is the advanced family law program. There is no need for the TLSC staff to put on an advanced family law program, because that is handled on an annual basis through the state bar association.

My staff has a need for that, but that does not mean we do not need state support. The fact that we are able to get those other resources for our specific needs does not preclude the need for a funded state support entity.

From our perspective, it is most rational to have that entity be one that is accountable to the entire state and not

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just to our program. It also alleviates -- I like this term "increasing transaction costs." That is exactly how I feel every time LSC calls me up about the TLSC program, that is increasing the transaction cost. It is slowing down the response time. It is interjecting an inefficiency in the process.

It does not really benefit anyone because I do not speak for the entire state. I represent one program and only one program. Thank you.

CHAIRMAN VALOIS: Is there any other further public comment?

MS. ROGOFF: I would also like to point out that there is an issue here also that I think was touched on and it is relevant in Texas.

TLSC has funding other than the state support funding for which their board is also responsible. Their board administers both the LSC funds it receives as a subgrant from my program, but it also has responsibility for other funds identified here as the IOLTA funds as well as any other funds it receives.

My board is in an unenviable position. I apologize if I offended Mr. Mendez by my term earlier, but I do believe that

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is how my board feels because it is not accountable for those other funds and yet, when LSC comes in to monitor the state support unit, the monitoring covers everything.

Somehow my program by implication, is expected to be an interface to things that we -- my board has no oversight from our perspective, no oversight responsibility as to the non-LSC funds that are received.

Nevertheless, those may be subject to conditions that the LSC monitors feel are applicable. So, I think you can see that there are multiple levels of concern here and basically we think that the board here -- what I would do, if I were in your shoes, is ask Mr. Brough to go back to do is, give you a report on how these programs are funded in other parts of the country.

I think what you are trying to do is establish a policy that addresses local needs; what will be most effective in different states? Texas is a world apart from Rhode Island. I mean, Texas is -- we are dealing apples and oranges -- they are states, but the needs of the states, as large as Texas, are going to be very different from the needs of the state somewhere else in the country that may have entirely different population, entirely different local priorities than those that are prevalent in Texas.

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If it can work in other parts of the country where state support units are directly funded by LSC, I would urge this board to then consider where a state requests, where the grantee program and the subgrantee both request that it be replicated in that way, that this board grant that at its discretion; that you would be doing the rational thing.

CHAIRMAN VALOIS: The fact of the matter is that the word used, I think, is hodgepodge. That is what we got.

MS. ROGOFF: We have a hodgepodge of states. Every state is a little different than every other state.

CHAIRMAN VALOIS: I do not want to spend a lot of time talking about the extent to which the needs of the rural poor in Texas are different from the extent to which the needs of the rural poor in North Carolina, are in fact different.

MS. ROGOFF: There may be more similarity between the needs of the rural population from one state to the other, or the urban state, than there is between one state and another state.

Texas is going through tremendous economic downturn right now, as opposed to Massachusetts, which is on an upswing. So, the needs of a state that is experiencing economic growth may be very different from the needs of the population in Texas

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where my program can readjust, realign its program priorities when we sense, through our needs assessment process, that the economy was on a downturn.

We started seeing unemployment cases, we started seeing people coming in who had credit problems. We started to realize before it was generally known in Austin, that our economy was on the skids, and our board made adjustments so that we would be trying to meet the needs of that population, that was becoming newly poor.

I am hoping that this is a short term downturn and that Austin will moving up. We will readjust our priorities at that point, too. But, that is why it has to be done in a locally -- our priorities need to be locally determined and why state support should be accountable in the most effective and efficient way to the state that it is serving.

CHAIRMAN VALOIS: Thank you very much. Anything further to come before the committee?

STATEMENT OF MARTHA BERGMARK

MS. BERGMARK: My name is Martha Bergmark from the Project Advisory Group. I would simply like to convey to you a conversation I had with Lewis Armstrong earlier in the week.

He is the Director of the Mississippi Legal Services

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Coalition. I believe he has a letter either on its way to you or you have it. I wanted simply to clarify that there is no pending request from Mississippi for direct funding of the State Support Center. There is a pending inquiry as to what the procedure would be.

I am glad you have it already. Thank you.

CHAIRMAN VALOIS: Anything further to come before the committee?

MS. MILLER: Yes, I have a resolution I would like to read from the Region VI Chapter of the National Clients Council, just for the record. If possible, I would like an answer to it from the board. This is to the board.

There is a letter, "Enclosed please find a RESOLUTION that was drawn up to be presented to the Board of Directors of the Legal Services Corporation asking for a HEARING as to the current status of the SELF-SUFFICIENCY Training packet that was submitted to the Board for possible funding.

Region VI Chapter NCC is proud to continue in their efforts to bring to its client family in the ten Southeastern States knowledge and expertise on the matters and issues related to the concerns of low income communities through Training.

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An early reply will be appreciated."

The resolution is: "WHEREAS it is the duty of the Governing Body of Region VI Chapter of National Clients Council to set policy and make decisions for its total membership in matters that come before the board and affects the lives of clients throughout the ten states region AND

WHEREAS at its business meetings held in Atlanta, Georgia, on Sunday, February 28, 1988, the Governing Body did hear concerns brought to the body from state chapters regarding the current status of its Self-SUFFICIENCY Training Proposal that was submitted to Legal Service Corporation for funding in late 1987 AND

WHEREAS this proposal proposes to build self-sufficiency through Training for the Legal Services Client Community in the ten state Southeastern Region, this board feels the need of support from the Legal Services Corporation is warranted. With proper Training mechanisms in place that are geared to make the client community SELF-SUFFICIENT we can certainly look forward to the FUTURES program AND

THEREFORE BE IT RESOLVED that the Governing Body of Region VI Chapter NCC did unanimously vote to approve a motion asking the Legal Services Corporation for a HEARING on the

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current status of this funding request at an early date.

BY ORDER OF THE GOVERNING BODY OF REGION VI CHAPTER NATIONAL CLIENTS COUNCIL this 28th day of February 1988."

I would like to ask the board if we could get an answer for this. If there can be something set up for clients from the Region VI.

CHAIRMAN VALOIS: Thank you, Ms. Miller. I certainly refer it to Mr. Bayly who advises me that there already has been some action taken.

MS. MILLER: This was written to Mr. Bayly. He has a copy of this.

CHAIRMAN VALOIS: Right and he has advised me that he has taken some action on it. Thank you very much.

The only other business to come before the committee is the announcement that a reception follows immediately in the Coronado Room and everybody is invited.

There will be no further business, we are adjourned.

(Whereupon, at 6:45 p.m. the meeting was adjourned.)

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