

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING.

Pages: 1 through 195

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1 LEGAL SERVICES CORPORATION

2 BOARD OF DIRECTORS MEETING

3 Columbia Room
4 Capitol Holiday Inn
5 550 C Street, Southwest
6 Washington, D.C.

7 Thursday,
8 December 20, 1984

9 APPEARANCES:10 BOARD OF DIRECTORS

11 Hortencia Benavidez

12 LeaAnne Bernstein

13 William Clark Durant, III (Chairman)

14 Paul Eaglin

15 Pepe Mendez

16 Lorain Miller

17 Thomas Smegal

18 Claude G. Swafford

19 Basile J. Uddo

20 Robert A. Valois

21 Michael Wallace

22 Donald P. Bogard, President,
23 Legal Services Corporation24 Corporation staff and members of the public
25

P R O C E E D I N G S

9:40 a.m.

1
2
3 CHAIRMAN DURANT: The December 20th meeting of
4 the Board of the Legal Services Corporation is now in
5 order. It is now 9:40.

6 I've never been on time for anything; I'll
7 probably be late for my funeral, so this is pretty good.

8 The first order of business will be the
9 approval of our agenda. Do I have a motion to approve the
10 agenda?

11 MR. SMEGAL: So moved.

12 MR. MENDEZ: Second.

13 CHAIRMAN DURANT: Any discussion? All in favor
14 say aye.

15 (Voice vote.)

16 CHAIRMAN DURANT: Opposed?

17 (No response.)

18 CHAIRMAN DURANT: On the approval of the
19 minutes of our December 5th meeting --

20 MR. VALOIS: I move that we approve the minutes
21 as drafted of the meeting of December 5, 1984.

22 CHAIRMAN DURANT: Is there a second?

23 MR. MENDEZ: Second.

24 CHAIRMAN DURANT: Any discussion?

25 MR. SMEGAL: Yes, I haven't had the chance to

1 read the minutes yet.

2 CHAIRMAN DURANT: Well, please do so.

3 MR. SMEGAL: I'm certainly in favor of the
4 motions, but with the understanding that maybe if it's any
5 type of --

6 CHAIRMAN DURANT: Well, why don't we --

7 MR. SNEGAL: Just give me a second.

8 CHAIRMAN DURANT: We'll postpone the full vote.

9 MR. WALLACE: There's a hand on the floor, Mr.
10 Chairman.

11 CHAIRMAN DURANT: Yes?

12 MR. EAGLIN: Well, if we're going to postpone
13 it then I can bring up later what I was going to. I have
14 some corrections I wanted to propose, but if we're going
15 to postpone it --

16 CHAIRMAN DURANT: Well, why don't you -- no, go
17 ahead and mention your corrections now. That may help in
18 the reading.

19 MR. EAGLIN: On page six, at about -- just past
20 half way where it indicates the question that I had put to
21 Mr. Bogard, it said that I asked whether it could
22 accommodate meetings or trials. Now, maybe I misquote
23 myself, but I thought that I was asking whether it could
24 accommodate meetings or public hearings such as this. And
25 I may have had trial on my mind, but I thought I said --

1 CHAIRMAN DURANT: You mitigators are all alike.

2 MR. EAGLIN: I thought I said meetings or
3 public hearings. And so I would like to ask for that
4 correction. And then on the last page --

5 CHAIRMAN DURANT: I want to do this.

6 MR. EAGLIN: All right.

7 CHAIRMAN DURANT: Do you want to move that we
8 make that change?

9 MR. EAGLIN: Yes, that's so that it would read
10 meetings or public hearings.

11 CHAIRMAN DURANT: Any second?

12 MS. BERNSTEIN: Second.

13 MR. EAGLIN: Meetings or public hearings at the
14 new headquarters.

15 MS. BERNSTEIN: The transcript says, "trials."

16 MR. EAGLIN: Does it?

17 MS. BERNSTEIN: But if that's what you meant I
18 have no objection to the correcting of what you meant.

19 CHAIRMAN DURANT: All right.

20 All of those in favor of that say I, please.

21 (Voice vote.)

22 CHAIRMAN DURANT: Opposed?

23 (No response.)

24 CHAIRMAN DURANT: Mr. Eaglin, any other
25 corrections?

1 MR. EAGLIN: Yes, on the last page there's just
2 a misspelling of Mr. Roche's name. It spells it like the
3 insect and I understand it's not spelled that way. It's
4 R-O-C-H-E, I believe.

5 MR. ROCHE: Thank you.

6 MR. EAGLIN: You're welcome.

7 It's in 2 places there on page 11.

8 CHAIRMAN DURANT: All right.

9 Do you want to move?

10 MR. EAGLIN: I move to correct the spelling of
11 his last name.

12 CHAIRMAN DURANT: All in favor?

13 (Voice vote.)

14 CHAIRMAN DURANT: Opposed?

15 (No response.)

16 CHAIRMAN DURANT: We'll postpone until later in
17 the meeting a full vote until Mr. Smegal and others have a
18 chance to review them.

19 At this time we'll have a report from our
20 corporation president, Don Bogard.

21 MR. BOGARD: Thank you, Mr. Chairman.

22 Following the meeting last December 5th the
23 Board went into executive session, pursuant to the notice
24 in the Federal Register. There was a discussion regarding
25 the motion, which had been made at the Board meeting, to

1 table implementation of five sets of regulations. And a
2 vote on that motion by roll-call vote, seven agreed to the
3 motion and four opposed the motion.

4 After that action there was a report on major
5 litigation by staff counsel and by outside counsel. Those
6 who presented the discussion included the acting deputy
7 general counsel, Dick Bagenstos, and Cliff Crook. Outside
8 counsel involved were Eric Brassman and Hal Coxson. With
9 extended discussion on several lawsuits and that, in fact,
10 took most of the executive session.

11 Following that there was discussion of one
12 particular lawsuit, Newman and Gilbert vs, Legal Services
13 Corporation, which included a motion to indemnify Mr.
14 Potack and myself for expenses incurred pursuant to the
15 bylaws. That motion was likewise carried.

16 Following that discussion I informed the Board
17 that we had had requests for indemnification for four
18 former employees for expenses that they had incurred
19 during various investigations. The Board requested that I
20 contact, or the staff contact, the counsel who had made
21 that request to get additional information. I have done
22 so, incidentally, and he has indicated that he would
23 supply more information to the Board for the January 25th
24 meeting, the annual meeting on the 25th.

25 We also had a discussion on the pending GAO

1 investigations by Mr. Streeter. And that was the
2 conclusion of the executive session.

3 The only other point that I have to address,
4 Mr. Chairman, is that the two-month extensions on the
5 grants are being processed this week. And checks will be
6 cut within the very few days.

7 CHAIRMAN DURANT: Any questions of Mr. Bogard?
8 Ms. Bernstein?

9 MS. BERSTEIN: The extensions on the grants,
10 could you explain the exact legal ramifications of those
11 as you understand them or maybe General Counsel could?
12 The two-month extensions of this year's grants or are they
13 new grants under -- you know, I just want to clarify what
14 you actually told us you did.

15 CHAIRMAN DURANT: Mr. Bogard?

16 MR. BOGARD: All right.

17 What we have done is, pursuant to a notice from
18 outside counsel that we are required to advertise or
19 publicly notice all grants which should be issued by the
20 corporation, we put notice in the Federal Register on
21 November 30th saying that we would be refunding the field
22 programs and the other grantees. We gave the notice also
23 to the governors and to the state bar associations.

24 We determined that since that period of comment
25 would run into early January, after we had evaluated all

1 of the comments, that it would not be possible to get the
2 grants out prior to the end of the year as has been the
3 custom of the Corporation. Therefore, we decided to give
4 two-month's interim funding pending the new grants for
5 January '85. Those two-month checks will be going out
6 under the same terms and conditions of the previous grant.

7 MS. BERNSTEIN: Okay.

8 And this is designated, as far as our books are
9 concerned, as interim funding not fiscal '85 grants?

10 MR. BOGARD: I believe -- Charles, maybe you
11 can answer this. That we are doing this at '84 levels.
12 Or are we doing it at '85 levels -- or Gene?

13 MR. POTACK: My understanding was that it
14 would -- I believe they're issuing them at the 1985
15 levels.

16 MR. BOGARD: And then the balance of the '85
17 grants will be 10 months --

18 MS. BERNSTEIN: Up to Board policy?

19 MR. BOGARD: Yes, whatever you do with it.

20 MS. BERNSTEIN: Could I ask, Gene, as far as
21 the two-month grants that are being issued are they --
22 they are under the same terms and conditions and under the
23 same sections of the Act? There's no changes in them
24 whatsoever except that their levels have been changed to
25 reflect the new appropriation?

1 MR. POTACK: That's right. We basically made
2 an extension on the 1984 grants for the purposes of the
3 terms and conditions. But we did increase the funding
4 levels based on the appropriations formula.

5 MS. BERNSTEIN: And the comment period for the
6 notice and publication ended?

7 MR. BOGARD: I believe it ends December 30th.

8 MR. POTACK: December 30th.

9 MS. BERNSTEIN: So comments are still be
10 accepted and reviewed for all of these grants?

11 MR. POTACK: That's right.

12 MS. BERNSTEIN: Could you, or maybe General
13 Counsel can tell me, under the appropriations language is
14 it the case that we will have any ability to analyze those
15 comments in an objective way in order discern whether or
16 not these grants should be continued after the two months?

17 MR. BAGENSTOS: To the extent that -- you're
18 asking me the question of whether you can exercise
19 business judgment in this matter and the true answer is, I
20 think, no.

21 MS. BERNSTEIN: So we are prohibited as a board
22 of directors of an independent corporation from exercising
23 any independent business judgment?

24 MR. BAGENSTOS: Yes.

25 MS. BERNSTEIN: Okay.

Thanks.

MR. WALLACE: Mr. Chairman, I have a question.

CHAIRMAN DURANT: Mr. Wallace?

MR. WALLACE: I'm not sure I understood what Mr. Potack said about terms and conditions. And it's my impression that, as of the present moment, new regulations will be coming into effect on the first of the year. Do the new regulations apply to these two-month grants? Or do the new regulations not apply to those two-month grants?

CHAIRMAN DURANT: The only new regulation that I'm aware of that becomes effective the first of the year is one provision of the PAI Regulation applying to sports centers. All other regulations have been in effect for some time.

MR. WALLACE: All right.

So what is the view of the staff, whatever the appropriate member of the staff would be, as to whether or not that new regulation would be enforced under these two-month grants? I mean, depending on what we do later today, but as of now, what's the situation?

MR. BAGENSTOS: Our interpretation of that is that it would not be enforced by our present rule.

MR. WALLACE: It would not be enforced?

MR. BAGENSTOS: That's correct.

CHAIRMAN DURANT: Any other questions?

(No response.)

CHAIRMAN DURANT: At this time I'd like to take a vote on the approval of the minutes. You have reviewed them, Mr. Smegal?

MR. SMEGAL: (No audible response.)

CHAIRMAN DURANT: Do you have any corrections or changes?

MR. SMEGAL: No.

CHAIRMAN DURANT: All of those in favor say aye.

(Voice vote.)

CHAIRMAN DURANT: Opposed?

(No response.)

CHAIRMAN DURANT: Before we go on to the next item of business, the report from the Audit and Appropriations Committee, I would like to ask the -- we've had some requests regarding wanting to make comments during the meeting. What I'd like to know is, with some specificity, what areas and what points and what time limit do each of you think you may need. First I would like to ask Samuel, is it Milkes?

MR. MILKES: Milkes.

CHAIRMAN DURANT: Milkes.

MR. MILKES: Mr. Chairman, I believe there's

1 been some question as to whether we appropriate the time
2 after all business or after each item.

3 CHAIRMAN DURANT: I understand that, but before
4 I make any judgment regarding that I'd like to know what
5 specific items you want to focus on and make comment on.

6 MR. MILKES: My comment, I think, primarily
7 would be on the budget mark and the recommendation of the
8 Board. But I would like reserve the ability to comment on
9 matters as they arise and be able to respond to parts that
10 may come up.

11 CHAIRMAN DURANT: It is, as you know, the
12 policy of the Board to reserve comments until the end. I
13 am dealing on a very -- to exercise my prerogative as
14 Chair during the course of the meeting to let there be
15 limited focused comment. So I want to know what -- is the
16 budget mark the primary one that you are interested in?

17 MR. MILKES: Yes, it is.

18 CHAIRMAN DURANT: Okay.

19 Mr. R. Chapman? Mr. Chapman, how are you?

20 MR. CHAPMAN: I'm very good this morning.
21 Actually, I put this up a lot more simply as a
22 precaution. I don't have any prepared remarks, but in the
23 event that something does come up with respect to the
24 budget mark or the regulations, I reserve the right and
25 opportunity to make a comment, depending on how the

question is.

1 CHAIRMAN DURANT: Mr. Chapman, would you do me
2 a favor, please. I'm new to all of this. Who are you? I
3 mean, what group, or individual, or whatever do you
4 represent? Just so I know.

5 MR. CHAPMAN: My name is Randy Chapman. And
6 I'm with the state's courts program in Pennsylvania known
7 as The Law Court Management Center.

8 CHAIRMAN DURANT: Okay.

9 Thank you.

10 MR. CHAPMAN: Thank you.

11 CHAIRMAN DURANT: John Kopay? How are you this
12 morning, Mr. Kopay?

13 MR. KOPAY: Fine, thank you.

14 CHAIRMAN DURANT: Good.

15 MR. KOPAY: My name is John Kopay. I'm the
16 project director of Laurel Legal Services.

17 CHAIRMAN DURANT: Florida Legal?

18 MR. KOPAY: Laurel Legal Services. It's a
19 five-county program in southwestern Pennsylvania.

20 I would like to address the Board, if possible,
21 about the budget mark, that's my primary consideration.
22 And depending upon this question about the five
23 regulations that were listed on here.

24 If you're asking for a time limit I would say
25

no more than three minutes.

CHAIRMAN DURANT: Okay.

Thank you, Mr. Kopay. Phyllis Swecker?

MS. SWECKER: Swecker.

CHAIRMAN DURANT: What item are you interested
in?

MS. SWECKER: Mostly the budget.

CHAIRMAN DURANT: And how much time do you
think you'll need?

MS. SWECKER: Five to seven minutes.

CHAIRMAN DURANT: Okay.

Mr. Cook -- Ms Swecker?

MS. SWECKER: Yes?

CHAIRMAN DURANT: Can you tell me where you're
from?

MS. SWECKER: I'm sorry. Conservative Caucus,
Incorporated.

CHAIRMAN DURANT: Mr. Cook?

MR. COOK: Items 4, 5, and 6.

CHAIRMAN DURANT: That's focused. How much
time is needed?

MR. COOK: I'll be glad to take 30 seconds if I
could draw up the recommendations for all of those --

CHAIRMAN DURANT: I'm sure you would, Mr. Cook.

MR. COOK: It would be very, very short.

CHAIRMAN DURANT: If the --

MR. COOK: In the event that isn't the case, then it's really very hard to say. I will be as brief as I can. You know, for instance in Item 5, I don't know what the Board plans to do. If, for instance --

CHAIRMAN DURANT: All right.

You don't have to give me a for instance.

MR. COOK: Sure.

CHAIRMAN DURANT: I appreciate that. Mr. Cook -- and let me say to everyone -- one of the reasons that we scheduled the committee hearings yesterday is, quite frankly, because we did want, and those of you who were there, we went well beyond the time limits that were initially scheduled because we do, indeed, want to have the comments and the insights from people of the general public who are involved in the programs or otherwise.

The Board meetings are essentially to review those committee reports and to take appropriate action. Given the fact that we are just getting started in terms of getting used to how this Board is going to operate, I'm willing to try, as I say, within the constraints of time that are permitted to us. And I'm going to ask your cooperation that comments be very focused and very limited.

If there are things that are repetitious of

1 yesterday, all of the Board was in attendance yesterday
2 during most of the meetings and I don't want to repeat
3 things. But, we are more than interested to get focused
4 comments because we do want to hear from the field.

5 MR. MOLA: Mr. Chairman?

6 CHAIRMAN DURANT: Yes?

7 MR. MOLA: Excuse me. I believe you have a
8 request for myself to speak on behalf of the Project
9 Advisory Group.

10 CHAIRMAN DURANT: I'm sorry. I have it from
11 Terry Roche. Will you be speaking in his behalf because
12 of his injury?

13 MR. MOLA: That's right.

14 MR. ROCHE: That was to my leg.

15 MR. MOLA: I'll be speaking on his behalf
16 because of his recommendation of a freeze on the mark.

17 CHAIRMAN DURANT: I noticed, is that why his
18 leg -- he's on crutches today?

19 MR. MOLA: Yes, sir, that's a recent injury.

20 CHAIRMAN DURANT: All right.

21 And that's what you want to focus on?

22 MR. MOLA: I would like 10 minutes on the audit
23 and appropriation report and an additional 10 minutes on
24 the regulations.

25 CHAIRMAN DURANT: Okay.

1 Thank you, Mr. Mola.

2 (Pause.)

3 CHAIRMAN DURANT: Ready? Systems go. Go
4 ahead.

5 MR. BRAUDE: Mr. Durant, my name is Jim Braude
6 from the National Organization of Legal Services Workers
7 of District 65 of the UAW. And I believe a request was
8 also submitted on behalf of our organization to speak on
9 the matters before the Board today.

10 CHAIRMAN DURANT: I don't think we have -- do
11 you want to deal on specific union questions or the
12 specific items on the agenda?

13
14 MR. BRAUDE: Well, at the moment I don't know.
15 We submitted a request asking to be heard on any
16 appropriate item on the agenda. Along the lines of your
17 request a minute ago, we are concerned specifically about
18 the budget mark question, regulations, and should the
19 Reggie question come up during Item, I guess, 6, we're
20 interested in that as well.

21 But frankly in light of the fact that we don't
22 know what you're about to do, nor do I know what the other
23 comments will be, I really can't tell you in advance what
24 our position will be.

25 CHAIRMAN DURANT: Okay.

MR. BRAUDE: May I just add one thing about the

1 process -- I haven't been to an earlier board meeting of
2 this Board?

3 CHAIRMAN DURANT: Jim, go ahead.

4 MR. BRAUDE: And I may have misunderstood
5 something you said a minute ago. But I would strongly
6 urge you and the other members of the Board -- if the
7 comment you made a moment ago about the possibility of
8 reserving the right to take comments at the end of the
9 full agenda is something that you're considering, I would
10 strongly urge that the Board try to take all comments from
11 the floor prior to decisions having been made by the
12 Board. If the inference is the decisions may be made and
13 then comments will be taken at the end of the agenda,
14 needless to say the comments are quite empty when the
15 decision has already been made.

16 CHAIRMAN DURANT: Jim, I understand that, and I
17 appreciate that comment, and I will take it under
18 advisement. Don't you think also that, by scheduling our
19 committee meetings particularly beforehand and having them
20 as lengthy as they were yesterday, that that is a helpful
21 process in terms of getting comments?

22 MR. BRAUDE: I think it's absolutely a helpful
23 process. And I'm not suggesting there will be problems,
24 I'm suggesting I hope you're sensitive to the issue as I'm
25 sure you will be. And if the sacrifice is a few more

1 minutes of time to get a full airing on issues, even if
2 some of the comments are repetitious, I think it's in
3 everyone's interest. So that's that, thank you.

4 CHAIRMAN DURANT: Thank you.

5 MR. ROCHE: Mr. Durant?

6 CHAIRMAN DURANT: You don't have a bow tie on
7 today, you can't speak.

8 MR. ROCHE: You tell it much better than I do
9 so I left mine at home today.

10 I'd like to request the right to reserve the
11 opportunity to speak on the operations and regulations
12 report. I didn't submit anything in writing and I'd be
13 happy to if you wish it.

14 CHAIRMAN DURANT: Well, that will be -- that is
15 the policy.

16 MR. MENDEZ: Since he doesn't have a bow tie
17 put him last.

18 MR. ROCHE: Thank you.

19 MS. EISENBERG: Mr. Chair, you should have had
20 a letter from me requesting to be heard. And mindful of
21 the length of yesterday's meetings, I will defer on the
22 budget mark to PAG and the other speakers. I would like
23 to speak on the Operations and Regulations Committee and
24 possibly on the Delivery of Legal Services Committee as
25 well.

CHAIRMAN DURANT: Okay.

MS. EISENBERG: Thank you.

CHAIRMAN DURANT: Anyone else? Okay.

At this point in the agenda we go to the report from the Audit and Appropriations Committee.

MS. BERNSTEIN: Clark, excuse me. Could we get the certification taken care of for the executive session for today's meeting?

CHAIRMAN DURANT: Sure, why not. We can do that now.

MS. BERNSTEIN: So that whenever we get finished and are ready to go to executive session, that bit of business will be taken care of.

CHAIRMAN DURANT: Are there any objections that we take that up now?

(No response.)

MS. BERNSTEIN: I'm sorry.

CHAIRMAN DURANT: Go ahead.

MS. BERNSTEIN: Along those lines I'd like to move that a portion of the meeting be closed pursuant to the notice that was published in the Federal Register under 45 C.F.R. 1622.5(a), (d), (e), (f), (g), and (h) to discuss personnel personal criminal litigation investigatory matters. And this, as I understand it, needs a second and a roll-call vote.

CHAIRMAN DURANT: Is there a second?

2 MS. MILLER: I second.

3 CHAIRMAN DURANT: Before we take a roll-call --
4 Mr. Eaglin, hold on a second. Mr. Smegal?

5 MR. SMEGAL: I have a question. Is it
6 necessary for us to come back to the public session after
7 the closed session?

8 CHAIRMAN DURANT: The --

9 MR. SMEGAL: We didn't --

10 CHAIRMAN DURANT: I understand, but the prior
11 policy and I think the one that I'm going to go with for
12 the time being is, is that there will be a report at our
13 next meeting of the items that we cover in executive
14 session.

15 MS. BERNSTEIN: Clark, could I clarify, though,
16 any actions that are taken at those meetings are
17 available, pursuant to the Sunshine Act, within one
18 business day after the meeting. If there's no action
19 taken then, you know, the information remains
20 nondisclosed. But the fact that it's deferred to the next
21 meeting doesn't mean that that's when it's available for
22 public viewpoint.

23 CHAIRMAN DURANT: Okay.

24 Can we take a roll-call vote? Paul? Mr.
25 Eaglin?

1 MR. EAGLIN: Right. I raised my hand because I
2 had raised some issues with you privately about that and
3 you've answered it to some extent. But I just wanted to
4 express to the others that I did write and express my
5 concern about -- or my preference, really that, when we go
6 to executive session it might be more informative to the
7 public if we were to indicate by topics what we wanted to
8 cover in the executive session without giving away so much
9 that we defeat the purpose of going to executive session.
10 And then having the information available to the public as
11 rapidly as possible after we conclude the executive
12 session, preferable by coming back and announcing it.

13 CHAIRMAN DURANT: My feeling is that for the
14 time being we will go with the categories as they are
15 addressed in Ms. Bernstein's motion.

16 I do want the availability as soon as it's
17 appropriate under law and under whatever the appropriate
18 circumstances are.

19 Could we take a roll-call vote on Ms.
20 Bernstein's motion? Mr. Eaglin?

21 MR. EAGLIN: Yes.

22 CHAIRMAN DURANT: Ms. Miller?

23 MS. MILLER: Yes.

24 CHAIRMAN DURANT: Ms. Swafford?

25 MS. SWAFFORD: Yes.

1 MR. MENDEZ: Yes.

2 CHAIRMAN DURANT: Durant, yes.

3 MR. WALLACE: Aye.

4 MR. VALOIS: Yes.

5 MR. SMEGAL: Yes.

6 CHAIRMAN DURANT: Mr. Uddo?

7 MR. UDDO: Yes.

8 MS. BERNSTEIN: Yes.

9 MR. BOGARD: Yes.

10 CHAIRMAN DURANT: General Counsel, would you
11 certify, please?

12 MR. BAGENSTOS: I certify that all of the
13 members of the Board of Directors have approved the
14 closing of a portion of this notice meeting held this 20th
15 day of December 1984. The closing is approved in order to
16 discuss personnel, personal, criminal, investigatory and
17 litigation matters.

18 The closing is approved by all 11 of the Board
19 members by a roll call vote taken during the public
20 portion of the meeting. I certify that in my opinion the
21 closing is authorized by the Government in the Sunshine
22 Act, Title 5, USC 552BC and the legal services corporation
23 regulations 45 C.F.R. 1622.5(a), (d), (e), (f), (g) and (h).

24 CHAIRMAN DURANT: Thank you, Mr. Bagenstos.

25 At this point we will get to the report from

1 the Audit and Appropriations Committee which was chaired
2 by Mr. Mendez. Mr. Mendez, your report, please.

3 MR. MENDEZ: Mr. Chairman, the Audit and
4 Appropriation Committee met yesterday and received the
5 report on the revised audit and accounting guide. We
6 accepted it. However, we instructed the individual
7 presenting the revisions to send it out for comments. And
8 it's our understanding, pursuant to instruction, that the
9 guide will have amendments. The amendments will be
10 included in a guide so that the individuals can see the
11 various amendments easily and can contact their CPA's.

12 Secondly, we received a report on various
13 funding formulas for consideration by the Committee. And
14 the Committee recommends, since the Board was there,
15 recommends them to the Board without taking a position on
16 any of the funding formulas. We just recommend them for
17 your attention.

18 We also received the audit for fiscal year of
19 1984 from Pete Marwick. And the Committee is, in turn,
20 presenting this to the Board of Directors. The Committee
21 recommends the Board of Directors accept the report.
22 However, we are not taking a position with regard to the
23 audit.

24 The Committee received the 1984 consolidated
25 budgets and is presenting the budget to the Board and

recommends accepting the report, again without taking position on the consolidated budget.

The Committee received testimony on recommendations for use of the 1984 fiscal year carry-over. The Committee, after vote, unanimously recommends no allocation of fiscal year '84 carry-over at this time. The Committee has asked the administration and the legal community as for advice as to the disposition of these funds.

The Committee received testimony on fiscal year 1986 budget mark. After deliberation, the Committee took no action on the mark. The Committee is referring the matter to the Board for determination. However, the various members of the Committee have opinions about the appropriate mark and the appropriate line-item allocation and will present their opinions to the Board as a whole.

This summarizes the duties of the Committee and I move that we accept the recommendations and the report of the Committee.

CHAIRMAN DURANT: All right.

And then -- just so I'll know, you're moving the acceptance of the report and recommendations.

MS. BERNSTEIN: Could we break that out, please, on each of the individual items? You know, because I think that we ought to have some discussion on,

1 you know, what. If you want to group some of the items
2 together --

3 CHAIRMAN DURANT: I was just going to say let's
4 group the Pete Marwick audit.

5 MR. MENDEZ: The consolidated budget.

6 CHAIRMAN DURANT: The consolidated budget.

7 MR. MENDEZ: That's fine. We'll accept a
8 friendly amendment. And I move the acceptance of the Pete
9 Marwick and the consolidated budget.

10 MS. BERNSTEIN: Second.

11 CHAIRMAN DURANT: All those in favor say aye.

12 (Voice vote.)

13 CHAIRMAN DURANT: Opposed?

14 (No response.)

15 MR. MOLA: Mr. Chairman?

16 CHAIRMAN DURANT: Yes?

17 MR. MOLA: I thought you had said that you
18 would exercise discretion to allow public comment on these
19 items before a vote was taken.

20 CHAIRMAN DURANT: I will exercise discretion.
21 I really thought on these particular items that --

22 MR. MOLA: I don't believe so, sir. There were
23 some very serious questions about questioned costs that
24 weren't included in the audit that I would like to
25 address.

CHAIRMAN DURANT: Go ahead, John.

MR. EAGLIN: Would you reflect a no vote for me too on the COB. Well, really since it was grouped --

MR. MENDEZ: Paul, please speak up, I can't hear you.

MR. EAGLIN: I want to have it reflected that -- a no vote for my part with respect to the COB for fiscal year '84. And since it's grouped with the other one, that too. But now we'll just go to the comment.

CHAIRMAN DURANT: John, before you begin is there any discussion the Board first? Mr. Smegal?

MR. SMEGAL: I might have missed it, but with respect to the audit and accounting guide, I think we agreed on 90 days for comment. And I don't know whether you said anything to qualify that --

MR. MENDEZ: No, I didn't. We might as well go back and we'll touch that later.

MR. SMEGAL: Yes, fine.

CHAIRMAN DURANT: Any comments specifically on the Pete Marwick or the consolidated budget from the Board before we take any --

MR. MENDEZ: Mr. Chairman, all our recommendation was is that we accepted it. It's not indicating an approval of either one of these. We're accepting the budget, but we're not indicating whether

1 we're approving them or disapproving them. We're just
2 accepting them for the Board's reference. That was the
3 motion in the Committee.

4 CHAIRMAN DURANT: John, go ahead. What did you
5 say?

6 MR. MOLA: Mr. Chairman, our concern is
7 regarding the three new back-up center or support grants
8 that were made at the end of 1984 by the Legal Services
9 Corporation. They were for Handicapped Law Center in
10 Indianapolis, Constitutional Law Center in Virginia, and
11 the Urban Law Center in Oakland. The total amount of the
12 grants exceeds \$1 million.

13 As we mentioned yesterday there had been
14 some --

15 CHAIRMAN DURANT: John, let me interrupt you.
16 The Board, by what Mr. Mendez has suggested, is not taking
17 an action one way or the other on those grants at this
18 particular time. I mean, if that's what your comments
19 are --

20 MR. MOLA: That's what my comments are.

21 CHAIRMAN DURANT: Then i really -- since we are
22 not taking a position on those grants with the acceptance
23 of the consolidated report and the Pete Marwick thing,
24 then I don't think -- I mean, when those items
25 specifically come up, when we are going to deal with what

1 the Board will do with them, then it seems to me your
2 comment at that time would be appropriate.

3 MR. MOLA: Will they be coming up at this
4 meeting?

5 CHAIRMAN DURANT: No, they will not, neither in
6 executive session nor --

7 MR. MOLA: I would just suggest, then, before
8 those issues come up, since this topic was completely
9 omitted in the audit report it is our position that those
10 grants were made in violation of Section 1007(f), the
11 Notice and Comment Provisions. And because they were
12 illegally made, those grants should be questioned cost in
13 the audit. And Pete Marwick made no reference to that in
14 the audit or in their management letter. And we think
15 that's a very serious issue and the auditors should be
16 requested to reply to those concerns.

17 MR. WALLACE: Mr. Chairman, if I may ask the
18 controller, I think this audit closes as of September 30,
19 1984. And I'm not as familiar with those grants as I
20 might be, but I think they were after.

21 MR. MOLA: I asked Mr. Bogard yesterday whether
22 the three new back-up center grants in the Reggie contract
23 were included in the 1984 consolidated operating budget
24 and therefore in the audit and he replied in the
25 affirmative.

1 CHAIRMAN DURANT: That is correct, they are '84
2 grants. And the issue was fully discussed with the
3 auditor and there was no problem, as far as the auditor
4 was concerned, after receiving opinions from counsel on
5 that matter. And it is not a questioned cost under the
6 audit.

7 MR. MOLA: I understand that it's not. Our
8 position is that it should have been, that there are legal
9 opinions indicating that those grants were made in
10 violation of the Legal Services Corporation Act.

11 CHAIRMAN DURANT: It is -- okay.

12 MR. MENDEZ: Mr. Chairman, I recommend that we
13 move on. Let's go back to the report of the revised audit
14 and accounting guide. There was a 90-day provision -- or
15 4-month provision, it wasn't 90 days.

16 MR. SMEGAL: I thought it was 90 days; I wrote
17 down 90 days.

18 MR. MENDEZ: Oh, did you? 90 days for comments
19 from the field once that it's presented to the field. I
20 would recommend that we accept the position of the
21 Committee.

22 MS. BERNSTEIN: Could I ask just a question of
23 procedure?

24 When we say once it is published, is the Board
25 making a formal policy statement that we should go to the

1 expense of publishing the entire guide in the Federal
2 Register? Or should we publish the fact that it is
3 available and people may secure a guide if they want it?

4 CHAIRMAN DURANT: Tom -- excuse me. Mr.
5 Mendez?

6 MS. BERNSTEIN: I don't know which one we --

7 MR. MENDEZ: To clarify, the Committee -- and
8 the testimony in the Committee -- was that in the Federal
9 Register there will be summary of the guide and the fact
10 that --

11 MS. BERNSTEIN: Okay.

12 I just wanted to get all of this on the Board's
13 record.

14 MR. MENDEZ: That there is to be a summary of
15 the guide published in the Federal Register. The guide is
16 to be sent to each one of the grant recipients.

17 MS. BERNSTEIN: And we're talking about the
18 chairman of the boards of the recipients so we're dealing
19 fiduciary to fiduciary?

20 MR. MENDEZ: You had the opportunity, you were
21 on the Committee yesterday.

22 MS. BERNSTEIN: Yes.

23 MR. MENDEZ: And you had an opportunity to
24 bring this on at the Committee and you did not address
25 this at the Committee. I wish you had have, because that

was not addressed at the time.

1 Now, to me it makes very little difference
2 because the real object of sending these out is to get
3 comments from the CPA's to insure that these various
4 groups have the notice and understand what it is. But we
5 can send it to whomever you like, it makes no difference
6 to the --

7
8 MS. BERNSTEIN: Okay.

9 Then just consider it a friendly amendment,
10 then, that we send it to the chairmen of the boards of the
11 governing bodies of the individual grantees.

12 MR. MENDEZ: That's fine.

13 CHAIRMAN DURANT: Mr. Cook, just a minute. Is
14 there a second to that motion?

15 MR. MENDEZ: I'll second it.

16 CHAIRMAN DURANT: Any discussion?

17 MR. WALLACE: Yes, after dealing with the
18 Operations and Regulations Committee where one of the
19 items disputed was whether notices of meetings ought to go
20 to the chairman of the board or to the project director, I
21 don't know that it would cost us that much postage to send
22 it to both.

23 MS. BERNSTEIN: That's fine. I don't have any
24 objection to that. I just think that as a matter of
25 legality that we are better off dealing with people whose

fiduciary necks are on the line in terms of the audits.

2 MR. MENDEZ: That's fine. I would accept both
3 friendly amendments.

4 CHAIRMAN DURANT: Any other comment from the
5 Board? Mr. Cook?

6 MR. COOK: Well, as long as you say project
7 directors too, because we know where she's coming from,
8 but we want to make sure the project director gets it.

9 CHAIRMAN DURANT: The project director goes
10 with it.

11 MR. COOK: All right.

12 CHAIRMAN DURANT: The two amendments made just
13 now that these will be sent to the chairmen of the boards
14 of each the recipients as well as the project director of
15 each of the recipients. And I sure hope they're talking
16 to each other.

17 MS. BERNSTEIN: I do too.

18 MR. COOK: I doubt if we will be. We might
19 talk to the rest of you.

20 MS. BERNSTEIN: I'm talking about your
21 chairman.

22 MR. MENDEZ: Mr. Chairman, we have set -- and
23 this is addressed to Mr. Cook -- we have set this for
24 public comment. And I really object to having comments
25 spurious out of the audience.

1 Mr. Cook, we appreciate your comments and I
2 would recommend you listen to your fellow individuals that
3 have commented yesterday because they acted very
4 appropriately. And sometimes I get the feeling that you
5 just really are angry at us for no apparent reason.

6 And I would hope that from now on, Mr.
7 Chairman, that we would rule comments from the audience
8 out of order unless they're recognized. And there is a
9 procedure for standing and asking to be recognized, rather
10 than every time they don't like something running up to
11 the microphone and blurting it out.

12 CHAIRMAN DURANT: Any other discussion on the
13 motion?

14 (No response.)

15 CHAIRMAN DURANT: All those in favor say aye.

16 (Voice vote.)

17 CHAIRMAN DURANT: Opposed?

18 (No response.)

19 CHAIRMAN DURANT: Ayes have it. Mr. Mendez?

20 MR. MENDEZ: We received a report on the
21 various funding formulas, Mr. Chairman. And we recommend
22 the various funding formulas to this Board for
23 consideration.

24 We have not taken any position on those.
25 There's no position. All we did is -- I'm giving you a

summary of what passed. And since you want me to go item
2 by item, I have to tell you that's what we've done.

3 MR. UDDO: There's no motion involved though,
4 right?

5 MR. MENDEZ: No there's no motion.

6 MR. UDDO: Okay.

7 Then we don't need to vote.

8 MR. MENDEZ: No.

9 CHAIRMAN DURANT: What's your next item?

10 MR. MENDEZ: The Committee received testimony
11 on the fiscal year '84 carry-over. The Committee, after
12 discussion and vote -- they voted unanimously and
13 reclamated no allocation of 1984 carry-over at this time.

14 CHAIRMAN DURANT: Okay.

15 Is there a motion to second?

16 MR. MENDEZ: I move --

17 MR. WALLACE: Second.

18 MR. EAGLIN: But there were four committees --
19 and also that we solicit recommendations for that.

20 MR. MENDEZ: Yes, the Committee has asked that
21 the administration and the legal community for advice as
22 to the disposition of these funds.

23 MR. EAGLIN: I second this.

24 CHAIRMAN DURANT: Any discussion?

25 MS. BERNSTEIN: Just a question. Is there a

1 particular format that the Committee wishes regarding how
2 that should be solicited?

3 CHAIRMAN DURANT: Did the Committee discuss
4 that?

5 MR. MENDEZ: The Committee told the staff to
6 come up with this.

7 MS. BERNSTEIN: Okay.

8 MR. MENDEZ: And the Committee also told the
9 audience and Mr. Roche from PAG was there. And I assume
10 that if Mr. -- excuse me. Mr. Mola was there. And I
11 assumed that if we tell him he's going to get the word
12 out. It's been my experience that all you have to do is
13 give John an inch and he's going to take a mile.

14 CHAIRMAN DURANT: A good lawyer. Any other
15 discussion on that?

16 MR. EAGLIN: Has it been seconded?

17 CHAIRMAN DURANT: It has, you seconded it. All
18 those in favor?

19 (Voice vote.)

20 CHAIRMAN DURANT: All opposed?

21 (No response.)

22 CHAIRMAN DURANT: Okay.

23 Mr. Mendez?

24 MR. MENDEZ: The last provision was the '86
25 budget mark. And we are referring the '86 budget mark

consideration to the Board.

1 CHAIRMAN DURANT: What I would like you to do
2 is make a motion so that we can then discuss a particular
3 budget proposal. So that that can be under discussion and
4 we can act accordingly afterwards.
5

6 MR. MENDEZ: Mr. Chairman, I move that, with
7 regard to the budget mark -- we have a budget mark of \$305
8 million for fiscal year '86. I move, as part of that,
9 that basic field programs be increased 4.6 percent; that
10 everything else be reduced, all other line items be
11 reduced; that the management administration be placed at
12 approximately \$10 million; that I want special emphasis in
13 the management and administration on the continuing build-
14 up of accounting and monitoring; and that we allocate
15 sufficient funds for this Board to go out into the field
16 and have meetings in the field so that we can get direct
17 input from the various field groups.

18 Further, I move that we bring the --

19 CHAIRMAN DURANT: Wait a minute. I want to do
20 one at a time or is this part of the same motion?

21 MR. MENDEZ: Well, it's part of the same
22 motion. It's a complicated motion, but it's -- what we
23 have --

24 CHAIRMAN DURANT: Just keep it part of the same
25 motion that's all.

1 MR. MENDEZ: -- that we bring the Reggie
2 fellowships in-house; and that we cut the Reggie
3 fellowships in order to bring -- after the appropriate
4 cuts on other things -- in order to bring the management
5 and administration up to \$10 million.

6 CHAIRMAN DURANT: All right.

7 MR. MENDEZ: Mr. Chairman, that is my motion,
8 but as an explanation: I have asked the accountants to
9 prepare a new spread sheet that will reflect exactly what
10 I'm saying. And they should have this to us by --

11 MR. GESSNER: I'd have to go back -- able to
12 get some of these --

13 MR. MENDEZ: Will you be able to do it by one
14 o'clock this afternoon?

15 MR. GESSNER: If I leave now to do that.

16 CHAIRMAN DURANT: Bye.

17 MR. SMEGAL: Maybe he should hear some
18 others --

19 MR. GESSNER: Would you rather I --

20 CHAIRMAN DURANT: No, why don't you wait.

21 MR. MENDEZ: Please, wait a moment.

22 And I have talked to them about this particular
23 aspect and this is what I desire to present to the Board.

24 CHAIRMAN DURANT: All right.

25 Can I ask you -- before on your motion, are you

1 making it a specific part of your motion as to those
2 specific allocations or are you wanting to make a motion
3 as to what our budget mark should be as it's proposed to
4 Congress? Or do you want to get into this allocation
5 fund?

6 MR. MENDEZ: I want to get into the allocation.

7 CHAIRMAN DURANT: Okay.

8 Is there a second to that?

9 MS. SWAFFORD: I'll second it.

10 CHAIRMAN DURANT: All right.

11 Now, time for discussion.

12 MR. SMEGAL: I've got a substitute motion.

13 MR. BRAUDE: Could you repeat it if you don't
14 mind, just the allocation portion obviously, not the total
15 funding, particularly the portion that relates to the
16 management and the administration portion.

17 CHAIRMAN DURANT: Do you have it right now?

18 Well, while Mr. Mendez is writing it out let me try and, I
19 think, state it that you're moving that there be a freeze
20 in the total amount with a 4.6 increase in the field
21 programs, basic field programs section. And that all
22 other segments of the budget be proportionately, the same
23 equal share, reduced to bring up those \$305 million with
24 the Reggie program being adjusted to make up for the
25 management difference; is that what you're saying?

1 MR. MENDEZ: That's correct.

2 MR. UDDO: If I may -- let me take a stab at
3 what I wrote to understand Mr. Mendez's motion. I
4 understood that he moved for the adoption of budget mark
5 of --

6 MS. SWAFFORD: Put a mike down there by him.

7 MR. UDDO: It is my understanding that Mr.
8 Mendez moved that we adopt a budget mark of \$305 million;
9 that the basic field programs be increased 4.6 percent;
10 that all other line items be reduced to accommodate a
11 management and administrative item of \$10 million. And he
12 then explained that his purpose was to permit accounting,
13 auditing, and monitoring and wanted to allocate sufficient
14 funds so that the Board could get into the field and get
15 input from the various field groups.

16 That he further proposed to bring the Reggie
17 fellowship in-house and to cut the allocation of it in
18 order to bring the management and administrative item up
19 to \$10 million. And it was seconded by Ms. Swafford.

20 CHAIRMAN DURANT: Mr. Smegal?

21 MR. SMEGAL: I have a substitute motion that
22 the bench mark be \$373 million; that line 1(a)(1) be \$304
23 million --

24 CHAIRMAN DURANT: Go slower. Line?

25 MR. SMEGAL: 1(a)(1), which is the basic field

1 program, would be \$304 million; that line III would be the
2 \$10 million Mr. Mendez has suggested; and that all other
3 items reflect a percentage increase based upon the
4 relative numbers that are in the 305 fiscal year of 1985
5 budget.

6 CHAIRMAN DURANT: So you're recommending -- or
7 your motion has \$373 million as the substitute motion; is
8 that right?

9 MR. SMEGAL: \$373 million; \$10 million for
10 corporate management and grant administrations; \$304 in
11 the basic field program; and the remainder spread out in
12 the relationship that they presently have in the fiscal
13 year 1985 budget.

14 Now, unfortunately I don't have a column that
15 reflects that because the column here is incorrect.

16 MR. WALLACE: Could I have a point of
17 clarification? Looking at the column we have, I think
18 what Mr. Smegal said is that 1(a)(1), basic field
19 programs, ought to be \$304 million. And in the column
20 we're looking at, PAG recommendation, it has 1(a)(1) to be
21 \$284 million.

22 Now, 1(a), period, is \$304 million with all
23 these little subcomponents in it, basic field native
24 American. Which do you intend?

25 MR. SMEGAL: Well, Mike, for the second day in

1 a row this column has been wrong.

2 MR. EAGLIN: That's right. It's wrong.

3 MR. WALLACE: It is wrong.

4 MR. SMEGAL: What I intend is what I said,
5 which is 1(a)(1) \$304 million.

6 MR. WALLACE: I want to make sure of that
7 because I didn't understand.

8 MR. EAGLIN: Yes, and Mr. Chairman, what he
9 intended and what he said I second, okay?

10 CHAIRMAN DURANT: All right.

11 I hope they're the same.

12 MR. EAGLIN: Because I agree, the \$304 million
13 must be there at basic field programs and not for the
14 whole category of field programs.

15 CHAIRMAN DURANT: Okay.

16 MR. EAGLIN: All right.

17 The \$304 is for basic field, 1(a)(1), as he
18 said.

19 CHAIRMAN DURANT: All right.

20 Now, since this is a substitute motion, before
21 we can discuss --

22 MS. BERNSTEIN: Is another substitute motion in
23 order?

24 MR. MENDEZ: I think we should just have
25 discussion.

1 CHAIRMAN DURANT: Mr. Gessner, could you just
2 give us a clarification on the figures? I mean, are these
3 in error?

4 MR. MENDEZ: Now, before we turn the --

5 CHAIRMAN DURANT: John, do you want to sit
6 down?

7 MR. MENDEZ: Mr. Chairman?

8 CHAIRMAN DURANT: I'll give you a chance, don't
9 worry.

10 MR. MOLA: I have the correct figures and I
11 thought that might be helpful to the Board.

12 MR. MENDEZ: Mr. Chairman?

13 Well, now, I have a question. Mr. Smegal and
14 Mr. Eaglin, are you really going with the PAG formula?

15 MR. SMEGAL: Modified slightly to reflect what
16 you suggested, Mr. Mendez, which is we cap Item 3,
17 corporate management and grant administration, at \$10
18 million.

19 MR. EAGLIN: Yes.

20 MR. SMEGAL: Other than that change, that's
21 correct.

22 CHAIRMAN DURANT: And PAG wants to give us \$18
23 million.

24 MR. EAGLIN: No, that is not --

25 CHAIRMAN DURANT: Is that where the mistake is?

1 MR. EAGLIN: Those figures do not come --

2 MR. SMEGAL: That's part of the mistake.

3 CHAIRMAN DURANT: Well --

4 MR. MOLA: There are mistakes on every budget
5 line item and I roughed it out on a six-digit calculator.
6 They're rough figures, but I can give you --

7 CHAIRMAN DURANT: All right.

8 Can you wait just a second?

9 MR. MOLA: Sure.

10 CHAIRMAN DURANT: Okay.

11 Mr. Gessner?

12 MR. GESSNER: Yesterday there was some
13 confusion as to whether field programs or basic field
14 programs was \$373 million, whether the total was \$373
15 million. That was discussed and we decided that field
16 programs was \$304 million, based on PAG's figures, and the
17 total was \$373 million. The way this budget is laid out
18 is field programs is a major activity and there are four
19 sublines within the field programs.

20 If PAG has a recommendation, maybe they could
21 tell me what numbers go where and it could be run.

22 MR. EAGLIN: Well, the discussion is still with
23 us right now.

24 CHAIRMAN DURANT: That's correct.

25 MR. EAGLIN: Yesterday in our discussion --

CHAIRMAN DURANT: My Board always has priority.

MR. EAGLIN: Okay. Fine.

As I recall it we didn't say field programs would be \$304 million. I refer to the letter from Mr. Roche in which he said, his recommendation of \$373, the basic field program for \$304 million.

MR. MOLA: Okay.

I didn't under --

MR. EAGLIN: Which means something different than what you just said.

MR. MOLA: Okay.

That would change everything. My understanding was that field programs, not basic field programs, was \$304 million.

MR. EAGLIN: Well, my motion is as I stated --

MR. MOLA: That basic field programs -- okay.

MR. EAGLIN: Line 1(a)(1) to be \$304 million.

MS. BERNSTEIN: Okay.

I would like to amend the substitute motion and --

CHAIRMAN DURANT: If you want to -- I think you're going to be better off if you offer for a substitute motion to the substitute motion.

MS. BERNSTEIN: I'm not sure.

MR. MENDEZ: Offer an amendment. Really what

1 it is, is that it's supposed to be an amendment to the
2 substitute motion.

3 MS. BERNSTEIN: To the substitute motion.
4 That's what I was trying to do. I think that that is the
5 right parliamentary thing to do.

6 In terms of making this, let me offer this
7 background information. We are at the point in the
8 corporation that we are faced with an unusual situation as
9 far as the Board of Directors.

10 CHAIRMAN DURANT: Can you make your motion
11 first, I mean your amendment first?

12 MS. BERNSTEIN: Okay.

13 I would like to --

14 CHAIRMAN DURANT: Okay.

15 Go ahead.

16 MS. BERNSTEIN: Which would you like?

17 CHAIRMAN DURANT: I would prefer that you make
18 your motion first.

19 MS. BERNSTEIN: Okay.

20 I would move that the bottom line figure, the
21 mark that be submitted to Congress, be \$241 million and I
22 would like to explain that.

23 CHAIRMAN DURANT: Before I ask for a second you
24 may go ahead and explain that.

25 MS. BERNSTEIN: Okay.

1 We are in a position at the corporation right
2 now that is unusual. We are authorized under an act which
3 is expired. But under that act, one of the purposes of
4 the corporation was to preserve its strength the Legal
5 Services Program must be kept free from the influence of
6 or use by it of political pressure.

7 We are organized or under the D.C. Corporation
8 Act as an independent Board of Directors. And yet, as Mr.
9 Smegal stated at our first meeting, "At present Congress
10 has the Legal Services Corporation and the Recess Board in
11 a straight jacket. Neither the staff nor the Recess Board
12 can exercise any independent judgment with respect to
13 renewal, refinement, and modification of recipient
14 funding."

15 Now, Mr. Smegal's statement --

16 MR. SMEGAL: Excuse me. A point of personal
17 privilege, do I get a copy of the transcript also? Do the
18 rest of the Board get the copies of the transcript?

19 MS. BERNSTEIN: I just asked for it this
20 morning just to borrow it to read this.

21 CHAIRMAN DURANT: Okay.

22 Go ahead. Are there other copies available?

23 MS. BERNSTEIN: Due --

24 CHAIRMAN DURANT: Excuse me. Are there, Mr.
25 Opsut, copies available?

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MR. EAGLIN: I don't want a copy --

MS. BERNSTEIN: May I go on with my motion?

MR. OPSUT: No, I happen to have the original copy with me today in case there were any questions about the minutes.

MS. BERNSTEIN: And I just asked whether I could --

MR. OPSUT: Ms. Bernstein asked me for it.

CHAIRMAN DURANT: Anyway, Ms. Bernstein, go ahead.

MS. BERNSTEIN: I had taken it down almost verbatim anyway.

CHAIRMAN DURANT: Okay.

Go ahead.

MS. BERNSTEIN: The other aspect of that is as I asked the General Counsel this morning, in his opinion this Board can exercise no independent business judgment. Therefore, I find that we're in a kind of a strange situation. We're supposed to be an independent organization that is to exercise business judgments in order to deliver legal services to the courts. But by everybody's recognition, we are not in that situation.

When the General Counsel made that statement it was very interesting. Mr. Cook and I agree on very few things, but he was very vehement in nodding his head that,

no, we don't have a bit of independent business judgment
2 in the corporation.

3 Now, what does this really put us as in terms
4 of organization? We're an agency of the government. As
5 an agency, we are subject not to giving our own budget
6 recommendation to Congress, but rather to abiden by the
7 president's recommendation. His recommendation is zero.

8 Now, I would like for us to continue to strive
9 for our independent business judgment and our independence
10 as a corporation and our fiduciary responsibility to make
11 descent decisions in this corporation. However, we have
12 not been given that opportunity and there is no reason for
13 us not to have had that opportunity as a board.

14 I would like to suggest, though, in the \$241
15 million mark, this is the reason for that figure: First,
16 the federal budget deficit is worse now than it was in
17 1981 when it was adopted by both Houses of Congress. That
18 was adopted at a time in which the corporation was closer
19 to having the original act which was an authorization act.
20 And therefore Congress was dealing with an authorization
21 which was closer to being valid than we are now when we've
22 been expired for four years. We are dealing with writers
23 upon writers and the corporation itself has lost its
24 independent ability to make these decisions. Therefore,
25 the \$241 million mark because of the budget concerns of

1 the country of the whole. The freeze, I think, at that
2 figure is a justifiable one.

3 But let me make one other statement. This
4 corporation, during the period since that 1982 budget mark
5 which was submitted to Congress and which was adopted
6 by -- not Recess Board members, but by Confirmed Board
7 members. That budget mark was adopted by both Houses of
8 Congress. Since that time, has the Recess Board acted
9 inappropriately, any recess board? No, the Recess Board
10 has continued to try to show Congress that we are
11 dedicated to delivering legal services to the poor.

12 Congress has, in effect though, removed the
13 ability of the Board to do that. But, at the same time,
14 given us more money that we are fiduciarily responsible
15 for. I don't think that's a fair position to put the
16 Board in. I think it's fair for us to go back to the
17 budget mark that was submitted by the Confirmed Board if
18 that's the way Congress is going to look at us, and stick
19 with that.

20 But let me say that, as far as the Recess Board
21 is concerned, by their efforts there has been increased
22 private attorney involvement. There's \$18 million in
23 IOLTA funds that have come in. States have started
24 contributing to the delivery of legal services to the
25 poor. The profession itself has started augmenting this

1 process. And I think that as long as this Board is going
2 to be in this straightjacket and we can't do anything as
3 far as the distribution of funds, period, then our
4 position should be that we must try to augment additional
5 funding from outside the Federal Government. Because I
6 feel very uncomfortable in spending tax-payer money that I
7 have no control
8 over. Therefore, my concern here is that we provide a
9 situation in which the programs can continue to act. And
10 we start acting, as much as we can, like fiduciaries.

11 Now, the alternative to it is, as I say, to act
12 like the agency that we've been made by Congress because
13 their actions really have turned us into agency.

14 Now, in addition there's one other thing. In
15 the allocation -- I'm not giving specific line-item
16 figures on this budget because I doubt that I'm going to
17 have the votes anyway to have it adopted by the Board.
18 But let me say that in considering this budget, in sending
19 it to Congress I would, if it were passed, want to
20 allocate the money specifically to field programs, no
21 support centers, direct delivery to be the emphasis of it,
22 and the direct delivery to be based on a formula. In
23 other words, our request to Congress would say, we would
24 like to put this money where the need is.

25 If there's a program in Pennsylvania that

1 doesn't have money for scratch pads and legal pads, then I
2 think we've got to look at that. And I think we've got to
3 look at the poverty count. I think we've got to look at
4 the cost of delivery services. And we've got to look at
5 the availability of other funds. Some of these programs
6 that are funded the highest, the San Francisco Program --
7 as Mr. Smegal says, not only were they funded the highest
8 in the country, but they've got a very active bar
9 component on top of it; is that fair to Detroit? It isn't
10 fair. It's a situation in which we are being forced into
11 a position of fiscal irresponsibility.

12 And our mission here is to make sure that the
13 money that Congress appropriates is spent appropriately.
14 And we are being denied that possibility. Therefore, I
15 would ask that we reserve a minimum -- the \$10 million is
16 fine with me, regarding the financial management of the
17 corporation. But I think the balance of it has to go on a
18 reasonable, new allocation formula to those areas of the
19 country in which legal services is needed. And I ask for
20 a second for no other purpose than a discussion.

21 CHAIRMAN DURANT: All right.

22 Now, could you state your motion?

23 MS. BERNSTEIN: My motion is that we submit a
24 budget mark to Congress of \$241 million with the back-up
25 information that it be specifically given to delivery of

1 legal services to the poor with a minimum amount left for
2 management and administration.

3 CHAIRMAN DURANT: Is there a second to that?

4 MR. WALLACE: I will give Ms. Bernstein the
5 second on that.

6 CHAIRMAN DURANT: Okay.

7 Then there will be discussion. Mr. Eaglin?

8 MR. EAGLIN: Mr. Chairman, I'd like to respond
9 by saying that I think that we would exercise leadership
10 not by going to \$241 million, but by going with the
11 recommendation of Mr. Smegal, seconded by me. I think it
12 would put us in the position where we can begin to
13 adequately fund the staff programs and the basic field
14 programs, continue with some of these projects that we
15 heard about yesterday.

16 I know there may be some feelings among those
17 within the field programs and the project advisers.
18 Perhaps, their feelings are not quite like ours, but I
19 think if we fund the field programs adequately, continue
20 to work with the other programs, and watch our own costs
21 here at the corporate management level, then we can begin
22 to move towards a point of determining which is the more
23 efficient method of delivering legal services, the staff
24 method or some of the other methods that we're
25 experimenting with now.

1 I think in order to do that we will have to ask
2 for this type of increase. We will have to exercise the
3 leadership here as members of the Board. But the other
4 thing is we will have to involve those in the legal
5 services community to go with it and to advocate this. We
6 need to speak to Congress not in terms -- this is my
7 feeling now -- not in terms of where the federal deficit
8 stands, but we need to speak in terms of our role as
9 directors of this corporation to speak to Congress of the
10 need.

11 If Congress does not see it that way then
12 Congress will say to us, you will get X numbers of
13 dollars, then you manage that. That's the way I see our
14 role.

15 CHAIRMAN DURANT: Any other discussion, Mr.
16 Smegal?

17 MR. SMEGAL: I would speak in opposition to
18 LeaAnne's amendment.

19 \$373 million, as I have proposed, would be a
20 \$52 million increase over fiscal year 1980, if I've got my
21 numbers correct. That was five years ago. That
22 difference between \$321 million and \$373 million
23 represents 16.2 percent or roughly 3 percent a year over a
24 5-year period, a little over 3 percent. That doesn't even
25 reflect this year's 4.6 percent CPI, if it were to extend

over 5 years.

1 I think \$373 million is a modest increase in
2 terms of what has happened over the 5-year period, the
3 increase in the poverty population and just basic
4 inflation. I think it's a modest increase that we should
5 go and ask for. If Congress deems another number
6 appropriate they'll tell us.
7

8 They've exercised independent judgment in every
9 prior year and I think they're capable of looking at our
10 number and determining whether they feel it's appropriate
11 or not.

12 CHAIRMAN DURANT: Mr. Wallace?

13 MR. WALLACE: I would like to speak to the
14 pending amendment to the substitute. And I can't really
15 speak to that without going into the other things as well.

16 I agree with a great deal with what Ms.
17 Bernstein has said about the awkward position that we are
18 in. I was working in the House of Representatives the
19 last time our authorization bill came to the floor. The
20 Committee brought it out; the Committee got rolled; and
21 the authorization bill hasn't been seen since. It has
22 been 1978 since this corporation has been blessed with the
23 full, deliberate will of Congress on what it wants this
24 corporation to do. Until Congress can give us that, we're
25 groping in the dark. We are especially groping in the

1 dark because we've all been here two weeks.

2 And, as I said yesterday, I think the best way
3 that we have in interpreting the intent of Congress is
4 what Congress did. What Congress gave us when we came in
5 here was \$305 million. Our predecessors recommended a
6 little more than that. They've been in, I suppose, a
7 little longer than we have and Congress corrected them on
8 that, gave them \$305 million.

9 On the basis of what I have seen in two weeks,
10 I am not prepared to make a drastic change in either
11 direction in those numbers. I am impressed by the
12 statistics I have seen from this administration. And
13 yesterday I asked if the Washington Council of Lawyers can
14 tell me why those statistics are wrong to please do so.
15 At the \$241 million level, we've still got most of the
16 case load taken care of. I'd love to know if that's true
17 and why it happened. Until I get that kind of information
18 I'm not prepared to make any drastic changes in the
19 administration of this company.

20 I cannot really, at this point, recommend that
21 Congress increase our appropriation by \$70 million on the
22 advice of the Project Advisory Group. Our relations have
23 been most cordial for the last couple of weeks; I hope
24 they improve as we get to know each other. But based on
25 my initial contact with the Project Advisory Group, the

1 only independent knowledge I have of them is the things
2 they have said about me. And if they don't know any more
3 about the budget then they do about me then I have a hard
4 time placing my vote on their recommendation. I hope
5 we're going to get to know each other a little better over
6 the next three years.

7 Right now, all I do know is that Congress has
8 permitted the appointment of a Recess Board, given us two
9 weeks to understand the budget. And I'm not prepared to
10 move off the \$305 million figure where Congress left us.
11 I don't know enough to go either way and I'm not going to,
12 as a fiduciary, recommend that we grope in one direction
13 or another.

14 CHAIRMAN DURANT: Ms. Bernstein?

15 MS. BERNSTEIN: Yes, I just wanted to respond
16 to Tom's comments by saying that it's fine to continually
17 think that more is better. But I'm not sure that that's
18 true as far as the independence of this corporation is
19 concerned. So long as this corporation is subject to
20 pressure from Congress and from the White House in terms
21 of doing this or doing that, then this corporation is not
22 going to be exercising its fiduciary responsibility either
23 to the clients that we are to serve or to the taxpayers
24 who fund it.

25 Now, the answer to this question, I think, is

1 for us to move away from that political pressure; that was
2 the idea of the Legal Services Corporation Act; it was an
3 agency before.

4 And what I am saying is that by increasing the
5 private contributions to this corporation, we move in that
6 direction. And it is my feeling that there is a legal
7 responsibility, a professional responsibility, on the part
8 of the Bar.

9 Now the American Bar Association was very kind
10 to invite the Board to a reception and dinner last night.
11 And the American Bar Association, with all due respect,
12 likes to have receptions and dinners. But I would like to
13 see more on the part of the members of the American Bar
14 Association in terms of turning out.

15 I would like to see the 600,000 lawyers in this
16 country all volunteer to take some cases. And I think
17 that's what we've got to be talking about. I don't think
18 that we need to say that we are here in order to preserve
19 the jobs of 4,500 staff attorneys. We're missing the
20 boat. The clients are what is involved.

21 And if the clients get the service through a
22 legal clinic, through a private law firm, through a
23 Judicare program, through pro bono efforts -- the client
24 satisfaction is what is important.

25 CHAIRMAN DURANT: Mr. -- I don't want to --

1 MS. BERNSTEIN: That's fine.

2 CHAIRMAN DURANT: Mr. Uddo.

3 MR. UDDO: I would like to try and get us back
4 on track here because I think we can do this for the rest
5 of the day, probably the rest of the month, year, God
6 knows how long.

7 I'm going to vote against the amendment to the
8 substitute motion and I'm going to vote against the
9 substitute motion. And I'd like to get us back talking
10 about the original motion.

11 I think Mr. Wallace stated very well why we are
12 in an awkward position, that we really don't have the
13 information the short period of time we've been involved
14 with this budget process to go dramatically in either
15 direction. And I think that we would use our time better
16 to get back to discussing something that more
17 realistically reflects what I think this Board is going to
18 do.

19 So I'm going to call the question on the
20 amendment to the substitute motion. I'm going to vote
21 against that and if possible I'd like to call the question
22 on the one after it.

23 CHAIRMAN DURANT: Let's -- and before we do
24 anything on Mr. Smegal's motion I'd like to say just one
25 word on that. All right.

1 As far as Ms. Bernstein's motion, which is an
2 amendment to Mr. Smegal's substitute motion, all those in
3 favor say aye.

4 MS. BERNSTEIN: Aye.

5 CHAIRMAN DURANT: All those opposed?

6 (A chorus of no's.)

7 CHAIRMAN DURANT: The amendment is defeated.

8 MS. BERNSTEIN: Okay.

9 Could we show that mine was the only vote that
10 was aye?

11 CHAIRMAN DURANT: Yes.

12 MR. EAGLIN: Mr. Chairman --

13 MR. MENDEZ: Mr. Chairman, before we go any --
14 I understand Mr. Uddo's position but --

15 CHAIRMAN DURANT: I think you're going to say
16 exactly what I'm going to say.

17 I would like to have discussion not only
18 amongst the Board on Mr. Smegal's motion, I would like to
19 take comments. John, do you have any comments on that?

20 (General laughter.)

21 Wait a minute. I'm just asking if you have
22 them.

23 Then we do it in that order so that we have
24 discussion on Mr. Smegal's motion.

25 MR. MENDEZ: Mr. Chairman --

CHAIRMAN DURANT: So at this point, we will
2 have discussion on Mr. Smegal's motion. Mr. Smegal?

3 MR. SMEGAL: Thank you.

4 I don't think by proposing 373 million we're
5 bowing to any political pressure whatsoever. I think \$373
6 million comes from some very basic information that has
7 not only been available to this corporation for many years
8 but also to Congress.

9 There was a criteria established quite a few
10 years ago of two lawyers for every 10,000 poor people.
11 Based upon that particular formula, 373 million represents
12 one-third of a three year program to get to that level
13 again where this corporation was funded in 1980. \$373
14 million reflects, as I've indicated earlier, a modest
15 increase.

16 With respect to the comment that was made --
17 for \$325 million last year and got \$305 from Congress,
18 that represents 95 percent of what this corporation asked
19 for.

20 If we were to receive equal treatment this
21 year, we would get over \$350 million. Now that's
22 certainly -- if that were the criteria we used, we'd ask
23 for \$600 or \$700 million and hopefully get 95 percent of
24 it.

25 The point being that Congress is very sensitive

1 to this and they're very cognizant of the criteria that's
2 been used for many, many years to establish what level of
3 funding this corporation should have. That level is two
4 lawyers for ten million -- sorry -- 10,000 poor people.
5 Based upon that formula, \$373 million is an appropriate
6 step in that direction that would require two more steps
7 over two more years.

8 CHAIRMAN DURANT: Mr. Smegal, if I might --
9 it's come up in our committee comments and discussions and
10 other things, in terms of trying to fully number one,
11 understand and to review even well-established criteria in
12 terms of defining need.

13 I think that's one of the important things that
14 this Board needs to do is to really try and understand the
15 meaning of that concept and to be, frankly, willing to ask
16 the tough and the hard questions. I think I agree with
17 Mr. Wallace -- in fact, I don't think, I do agree with Mr.
18 Wallace that --

19 MR. SMEGAL: You --

20 CHAIRMAN DURANT: Yes, I caught that too.

21 I agree with Mr. Wallace that I think that
22 - we're in a position that we're just getting started. I
23 think there's much to be said for going in exactly as we
24 are with a freeze. And I have to say this: In some ways,
25 frankly, my nature inclinations are that we ought to be

1 developing creative ways of developing alternative sources
2 of funding because I think one of the ways of de-
3 politicizing what it is that we do is to broaden that base
4 of funding responsibility and sources.

5 And I certainly will, as a part of that
6 management money that we're talking about, and it may or
7 may -- also in terms when we get in the question of what
8 we ought to do with the carry-over is to assist all the
9 recipients in developing ways to create new sources of
10 funding.

11 I had a meeting with one of the members of the
12 National Support Centers and, frankly, one of them was
13 very creative in some of the things that they were doing
14 to try and supplement and increase existing funds.

15 I think that -- I suppose my natural
16 inclination with any public or private body that I've
17 every been associated with, that there are always ways,
18 frankly, to do what we do and to do it for less money and
19 to be more efficient.

20 But even I feel that it is too early to make
21 that kind of judgment on this because I could, quite
22 frankly, be wrong. And I think, as much as I appreciate
23 your enthusiasm and your reasons, I think we would be
24 erring in our judgment to do anything to freeze.

25 Mr. Eaglin?

1 MR. EAGLIN: Mr. Chairman, I appreciate your
2 comments and I can understand that some of you may feel
3 reluctance because we are new and we are just beginning,
4 but I would just like to point out that the need is not
5 just beginning. And the programs have been out there
6 serving this need for some time. It's there and they have
7 been speaking to us of the need and the increase of the
8 need.

9 I think we need to address ourselves to that.
10 Even though we are new and we are beginning, we need to
11 address ourselves of that. And I think we can provide the
12 kind of leadership that you're talking about, not only
13 with respect to those programs, but also getting a
14 significant start on the type of experimental programs.

15 I believe that perhaps some of the -- while
16 resistance or reluctance on the part of some in the field
17 to these types of experiments has to do with the fact that
18 they feel that they are not able to do what they are
19 suppose to do and so they're questioning why you should
20 be, you know, putting money into some other things.

21 So if we help them with respect to funding
22 their own programs, we then ask them to help us develop
23 some programs because that's been missing too. We haven't
24 involved them enough in our new directions, I feel.

25 And I think that if we get them involved in

1 terms of financing them well enough, bring them in in our
2 consultations and task forcing in terms of looking at new
3 ways of delivering to areas that perhaps they can't serve
4 by a staff program.

5 In Winston-Salem we were suppose to cover a
6 fairly large multi-county area. We would get out to it --
7 I know that I would go out from Winston-Salem on occasion
8 answering letters from prisoners, there were a number of
9 prisons within the area, and going out into other
10 counties. We can do that through a staff program or
11 perhaps, for far outlying counties, some sort of a
12 Judicare type of system.

13 I think the way to address the type of issues
14 that you have mentioned is to go with an increase in
15 funding to \$373 million, fund the basic field programs to
16 \$304 million and then increase the funding for the other
17 programs so that we can involve some of it and start
18 moving in new directions.

19 CHAIRMAN DURANT: Mr. Eaglin, I think that if
20 there's anything that is evident by what this Board has
21 done since it's December 3rd meeting, I know in terms of
22 the individual meetings the members of this Board have had
23 with a number of field program, yourself, Mr. Valois, Mr.
24 Mendez and all members of the Board in different ways, I
25 think clearly sends us a strong signal that we really are

1 interested in trying to understand more, learn more
2 specifically how we can help.

3 I have a personal commitment from not only from
4 myself but the president of the American Bar Association
5 that they will help in terms of the development of not
6 only greater assistance for staff attorneys in the way in
7 which they carry on their program, but also in terms of
8 trying to look for ways to develop alternative,
9 supplemental, additional, whatever funding so that if
10 there is a clearly defined need and whatever that that can
11 be met.

12 I hate loosing my voice. I don't think my
13 little girl will now know who Santa Clause is next week.

14 So I think, again, that I would, you know,
15 strongly urge that we go with a freeze. Is there any
16 other -- I want any other discussion.

17 Mr. Uddo?

18 MR. UDDO: Yes.

19 I would say, Paul, I agree with what you're
20 saying. The problem is, is that if we're just asked to
21 give a large increase -- request for a large increase in
22 money without any commensurate or control over how the
23 money is used, I don't know that we address the need.
24 That's my problem.

25 I mean, if I'm going to be asked to make this

1 gesture and the substantive decision, I'd feel better
2 about it if I had some control over and I could be assured
3 that we were going to do something to solve the problem.
4 All I can do now is say, "Yeah, let's have another \$70
5 million and hope that it does something good."

6 I think when this corporation, this Board, gets
7 control over how the money's going to be spent and has the
8 power that it was originally given, I think I'd be much
9 more comfortable with the idea of making judgments about
10 suggestions for increases.

11 Right now we could request \$600 million and
12 maybe not affect need at all since we don't have any
13 control over it. We don't know if we're going to affect
14 need at all.

15 So I think until we've got the kind of control
16 that we're suppose to have we ought to stay pretty close
17 to where we are right now.

18 CHAIRMAN DURANT: Mr. Valois?

19 MR. VALOIS: I sort of take some exception to
20 the characterization of Mr. Mendez's proposal there is a
21 freeze. The only thing that he is actually suggesting
22 remain stable is the bottom-line figure. You know, we
23 have been told and I have been told personally by Terry
24 Roche and others in North Carolina that the need remains
25 with the poor and Mr. Mendez's proposal is actually to

1 increase the basic field programs and to have a slight
2 adjustment elsewhere. So I think it is a meaningful
3 proposal and I support it.

4 CHAIRMAN DURANT: Ms. Bernstein?

5 MS. BERNSTEIN: I would call the question on
6 the substitute motion.

7 CHAIRMAN DURANT: Well, no, I want to take --
8 on this I want to take discussion from the floor if I --

9 MR. SMEGAL: I don't know that you can if she
10 calls the question.

11 CHAIRMAN DURANT: All right, I think we have to
12 vote on it. Can we vote on calling the question? We
13 could do this --

14 MS. BERNSTEIN: All right, I'll withdraw it.

15 CHAIRMAN DURANT: Would you withdraw it?

16 MS. BERNSTEIN: Yeah, I'll withdraw it.

17 CHAIRMAN DURANT: I appreciate that, thank you.

18 MR. EAGLIN: Is the comment now on both the
19 substitute motion as well as Mr. Mendez's motion?

20 CHAIRMAN DURANT: Well, no, it is directed to
21 the issue which is on the floor which is the substitute
22 motion.

23 MR. EAGLIN: Okay.

24 CHAIRMAN DURANT: Now, what I would like -- not
25 seeing anybody who wants to speak --

1 MR. SMEGAL: One more brief point before John
2 starts. I would just also make the additional point that
3 this is the first time, I believe, in three years, or
4 maybe it is four, that there has been a full board serving
5 this corporation. Is that correct, Mr. Bogard?

6 MR. BOGARD: The end of 1982.

7 MS. BERNSTEIN: Could I ask just a point of
8 information?

9 CHAIRMAN DURANT: Just a second.

10 MS. BERNSTEIN: I'm sorry.

11 Since mine was voted on without any discussion
12 from the audience could you just check to see if there is
13 anybody who is interested in addressing that proposal?

14 CHAIRMAN DURANT: I will take that.

15 Mr. Smegal?

16 MR. SMEGAL: My point being that Congress
17 granted this corporation \$305 million last year with a
18 limited Recess Board of five. We now have eleven, a board
19 that has been before the Senate, Labor and Human Resources
20 Committee, and I think we are coming at the Congress in a
21 little different way this year. We look like we are here
22 to do business.

23 We've spent two days now and Congress is
24 certainly aware of what we are doing. The Legal Services
25 Committee are aware of our interest and their input. And

1 I think we are going to the Hill with a different set of
2 circumstances than has been there for a number of years
3 and I think Congress might very favorably entertain a
4 budget request of \$373 million.

5 MR. MENDEZ: Mr. Chairman, just one quick
6 interjection. That means that each one the new members
7 over five is worth \$11.3 million.

8 MR. SMEGAL: At least. Some of us are worth
9 more.

10 MS. BERNSTEIN: Just a brief response to what
11 Mr. Smegal said. I think that there is a -- that Mr.
12 Smegal is making an indirect slap at the Board that served
13 well during the last two years. And these were
14 presidential appointments just as we are, and I think that
15 it is wrong of us to make inferences or to make statements
16 that infers that their deliberations were not due and that
17 their intentions were not honorable.

18 CHAIRMAN DURANT: Any other comments from the
19 members of the Board?

20 Now, what I want to do as far as Mr. Mola and
21 any others that I recognize, there will be different
22 opportunities throughout this. I want you to have your
23 comments focused on a specific item and I'm going to hold
24 you to no more than five minutes.

25 MR. MOLA: Mr. Chairman, is the first item Ms.

Bernstein's?

CHAIRMAN DURANT: No, it is Mr. Smegal's.

MR. MOLA: Very good.

On Mr. Smegal's motion I will be very brief because I think Mr. Smegal and Mr. Eaglin have articulated all of the reasons why this Board should adopt a 1986 budget mark of \$373 million. The Project Advisory Group and those of us in the field believe that is the appropriate amount of money that should be asked for. And we talked yesterday about the really desperate need in the field for an increase of that magnitude and about the conservative political basis for returning to minimum access, three-year cycle of achieving minimum access, that is well-established with Congress and has been the basis of their appropriations over the last few years.

I'd like to remind Mr. Wallace of the John Mitchell principle which he wanted to substitute for the Caspar Weinberger principle that we talked about yesterday. Let's look at what Congress has done over the last two years. And they have increased appropriations significantly both in 1984 and fiscal 1983.

In response to your question about how is it that we serve more people with \$241 million in 1982, I think there are several very basic answers to that. We have a lot of very dedicated people, both staff attorneys,

1 staff paralegals and others within staff programs and we
2 have a lot of dedicated private attorneys who have
3 assisted us to do that. But you have to understand that
4 while the raw numbers went up, the quantity of services to
5 clients went down dramatically. If you look at even the
6 fact book that the corporation staff has prepared you will
7 see dramatic increases in the CSR data in brief service
8 and above, advice only referrals, brief service, and a
9 very dramatic decrease in significant legal work done on
10 client's cases.

11 The second thing that the CSR's don't show are
12 the number of people who requested service and, for
13 priority reasons or a lack of resources reasons, were
14 turned away at the door. And I think that it is
15 inaccurate to think that at \$241 million, despite our best
16 efforts, we are able to deliver the level of services, the
17 quantity of services, that we are able to do in fiscal
18 1981.

19 I think that three other reasons that I would
20 like to address for asking for your support for Mr.
21 Smegal's --

22 MS. BERNSTEIN: Could I ask --

23 CHAIRMAND DURANT: Mr. Mola, could you wait
24 just a minute.

25 MS. BERNSTEIN: Could I ask just a comment -- a

question.

2 At \$241 million, with no funding going to state
3 or national support -- I didn't have the luxury of a
4 computer printout from the corporation -- but at that
5 figure, by my rough calculations, each individual program
6 would be better off than they were in 1983. So the
7 reduction for each individual program would be -- I mean,
8 in 1984 -- and the reduction would be much less than you
9 are intimating. I am just saying that you didn't listen
10 to what I said in terms of no state or national support.

11 MR. MOLA: Subject to check, I would accept
12 your figures that --

13 MS. BERNSTEIN: Well, I'm saying in rough
14 figures.

15 MR. MOLA: -- that would be the case, but I
16 think you base it on a very faulty assumption. You are
17 zeroing out two very basic parts --

18 MR. MENDEZ: I want you to address -- her
19 motion lost so get back on track.

20 CHAIRMAN DURANT: I took into account the time
21 you just lost, but you've got about another minute.

22 MR. MOLA: Thank you, Mr. Chairman.

23 As to the proper budget line items for the \$373
24 mark, I have those. The ones that were done by the
25 comptroller's office, unfortunately, are not accurate in

1 any instance. And if the Board would like to see what
2 those look like by a COB line item I would be willing to
3 share those with you.

4 On the issue of control, fiscal year '86 is a
5 long way off. Who knows what Congress is going to do and
6 what this Board is going to do in the interim? It is very
7 possible that when it comes time for you to make
8 allocation decisions on fiscal year '86 your hands are
9 going to be untied. And a lot, I would say, is going to
10 depend on how this Board acts between now and that point
11 in the future. While --

12 CHAIRMAN DURANT: Mr. Mola, this is like the
13 Michigan Court of Appeals. I mean, we all have oral
14 arguments and sometimes they have to be adjusted for
15 others --

16 MR. MOLA: If I may just make one other point.

17 CHAIRMAN DURANT: No, I will let you come back
18 at the appropriate time --

19 MR. MOLA: Okay.

20 CHAIRMAN DURANT: -- on this particular point.
21 Is there anyone else who wants to address Mr.
22 Smegal's motion? Mr. Milkes? I'm sorry, Ms. Swecker, is
23 it?

24 MS. SWECKER: Swecker.

25 CHAIRMAN DURANT: Swecker, I'm sorry.

Mr. Milkes, you will be next.

2 MS. SWECKER: I would like to speak in
3 opposition to the motion.

4 My name is Phyllis Swecker. I am the Director
5 of Research for the Conservative Caucus, Incorporated and
6 a taxpayer. As such I am interested in how American
7 taxpayer dollars are being spent by the Legal Services
8 Corporation. You've been charged with the responsibility
9 for the distribution and oversight of these tax dollars.
10 In order for you to discharge your fiduciary
11 responsibility, it is necessary for you to ask questions
12 not only about future budgets but about the past.

13 Before you make final decisions regarding
14 future budgets let me give you some examples of how
15 grantees have used my tax dollars in recent years. After
16 you have listened to these examples you may wish to
17 reconsider the lack of competition among grantees as well
18 as the policy of refunding a grantee in spite of statutory
19 regulatory violations, and also in spite of a lack of
20 quality service directed at those who need it most rather
21 than legislative special interests.

22 In addition to the well publicized case of the
23 Western Center on line poverty which Congress ordered to
24 be refunded in spite of proven violations by both the
25 center and LSC there are others which have done

1 essentially the same thing but will be refunded for FY
2 '85. The Massachusetts Law Reform Institute, previously
3 known as Volunteer Defender's Committee, has been the
4 recipient of nearly \$4 million from the Legal Services
5 Corporation. Headed by Allen Rogers, the institute
6 brought suit against the corporation before its renewal of
7 a one-time \$200,000 grant for original training center.

8 MLRI is perhaps better known for its
9 representation of unknown clients in a campaign to defeat
10 Proposition 2 1/2. Undertaken at the request of the
11 Coalition for Basic Human Needs, these unknown clients
12 were aided in efforts attempting to amend the Massachusett
13 Constitution to allow for a graduated income tax and
14 denying the right of corporations to become involved in
15 political campaigns in which a corporation is not clearly
16 at stake.

17 Greg Hartley, who is the Director of the Office
18 of Field Services, noted that MLRI is a funnel for federal
19 funds to the Massachusetts's Poverty Law Center allowing
20 it to engage in activities that MLRI could not properly
21 perform itself. MLRI's political advocacy efforts are
22 concisely summed up by LSC investigators, quote, "To
23 properly analyze the lobbying efforts of MLRI it is
24 instructive to consider those efforts in the context of a
25 memorandum written by Allen Rogers called 'Funding Legal

Services/ Legislative Advocacy in the Eighties,' Mr.
2 Rogers suggested two ways to circumvent LSC restrictions;
3 to set up a second non-profit corporation to do the
4 lobbying or to have lobbyists set up their own practice."
5 MLRI has implemented both of these procedures and is
6 scheduled to receive \$468,386 for FY '85.

7 Community Legal Services located in
8 Philadelphia will receive \$2,655,000 in 1985.
9 Investigation reveals that CLS has represented the
10 Association of Community Organizations for Reformed Now
11 (ACORN), which Mark Jerickson, one-time Deputy City
12 Solicitor charges is, quote, "Primarily composed of
13 persons ineligible for legal assistance under the LSC Act
14 and has more than adequate capital to retain private
15 counsel." Legislative advocacy on behalf of ACORN
16 includes challenging fair increases by the Southeast
17 Pennsylvania Transport Authority, drafting legislation on
18 gift property reform, and seeking exemption from reporting
19 requirements for charitable organizations.

20 Neighborhood Legal Services of Pittsburgh
21 slated for
22 \$1,405,000 also represented ACORN in a case challenging
23 the port authority of Allegheny Transit fare increases.
24 The case included paying an engineering student to, quote,
25 "Come up with a whole new fare system and route system for

1 the transit authority."

2 This is not a complete list by any means. It
3 does not begin to review the 100 or so LSC funded offices.

4 CHAIRMAN DURANT: Ms. Swecker, you've got about
5 35 seconds left.

6 MS. SWECKER: You will hear today comments from
7 persons who, in all likelihood, are paid from LSC funds, I
8 am not. I am part of the citizenery who has been forced
9 to contribute to the propagation of special interest
10 ideology. Clearly there are people who are in need of
11 competent legal representation. Clearly past performance
12 indicates a gross abuse of taxpayer trust. If this Board
13 is to rectify what has gone before, it must deal with the
14 past and consider viable alternatives to those grantees
15 which have abused and deliberately ignored their
16 responsibilities.

17 Thank you.

18 CHAIRMAN DURANT: Are there any questions for
19 Ms. Swecker?

20 Thank you, Ms. Swecker.

21 Mr. Milkes?

22 MR. MILKES: Thank you.

23 My name is Sam Milkes. I am the Deputy
24 Director of Legal Services, Incorporated in Southcentral
25 Pennsylvania. I have with me the, I guess, now-famous

scratch pad that we use instead of legal paper.

I would first like to anticipate, possibly, a question because I've heard it asked throughout the hearings yesterday and at the last board meeting and that is the appropriateness of my being here and other Legal Services representatives being here.

My first meeting that I ever attended, as I stated before, was the last meeting of the Board. I am here with the support of our program. I don't think I would be here if it weren't --

CHAIRMAN DURANT: Mr. Milkes, you don't have to justify your existence.

MR. MILKES: All right.

CHAIRMAN DURANT: I am glad you are here.

MR. MILKES: Fine.

CHAIRMAN DURANT: Why don't you go on to the substance of things?

MR. MILKES: Thank you.

I would like to speak in favor of the motion. The Board may recall the last time I was here and with a client that we spoke about the concerns we had about loss of ability to even represent people in emergency services. I would like to address the question raised about the increase in cases at a time of decreased funding and support, my view of what has happened in our local

1 program, and that is there may be more cases but they are
2 advice-only kinds of cases. Our representation has
3 clearly decreased over time.

4 I do not believe that we are now providing, at
5 the current level, minimum access of poor people to the
6 judicial system. I would like to respond to a question
7 raised by Mr. Durant yesterday, I believe it was his
8 question, and point out that, in fact, we are not now even
9 representing all people who are actively being sued in
10 court. We turn some of those people away, even when they
11 have merit to their defense, if it is not a high priority
12 case, which is basically an emergency case at this point.

13 CHAIRMAN DURANT: Mr. Milkes, I was the one who
14 asked that question of the gentleman from the Washington
15 Legal Group. Do you have specific examples of that, that
16 you don't have to submit now, but that you could send to
17 me at my office?

18 MR. MILKES: I can give you -- yes, I can do
19 that.

20 CHAIRMAN DURANT: I would like that very much.

21 MR. MILKES: All right.

22 I believe that an increase to the field while
23 decreasing -- I'm sorry -- while freezing the overall
24 budget and, in effect, decreasing other programs does not
25 adequately meet the need of Legal Services, Incorporated,

1 or clients throughout the country. To reduce or eliminate
2 services to Native Americans, migrant programs, national
3 and state support centers, Clearing House and the Client's
4 Counsel, all of those reductions will have adverse effects
5 upon our ability to represent our clients and upon the
6 clients themselves throughout the country.

7 I believe there is now extensive control over
8 our funding and that the concerns about the restraints
9 that the Congress has placed upon this Board do not
10 override the fact that we must still abide by the Legal
11 Services Corporation Act and are bound to the conditions
12 placed upon our funding.

13 I think that Legal Services funding is
14 different from other kinds of funding. While board
15 members are entitled to their personal concerns, and I
16 emphasize personal concerns, about the federal deficit,
17 their obligation as board members is, under the Act, to
18 seek that minimum access of representation for poor people
19 throughout the country. And I don't believe there is now
20 minimum access.

21 It is up to Congress to decide, for instance,
22 whether programs should be reduced, other items reduced or
23 eliminated, to make sure that there is adequate funding
24 for this program. I believe it is the obligation of the
25 Board to seek that adequate funding.

CHAIRMAN DURANT: 60 seconds.

1 MR. MILKES: The final point I would like to
2 address is the private funding. We, obviously, have been
3 under pressure to seek private funding. We have done
4 that. We have received some private funding but that is
5 not a solution. I don't believe without that private
6 funding in place that it is fair to seek a reduced the
7 amount under the assumption that that will come about. It
8 is there to some degree but I don't believe that is a
9 problem-solver.
10

11 CHAIRMAN DURANT: Mr. Milkes, there is a
12 question.

13 MS. BERNSTEIN: Okay, this relates to the
14 private funding. Could you tell me what your total grant
15 is each year from LSC?

16 MR. MILKES: It is approximately \$200,000 for a
17 four-county program.

18 MS. BERNSTEIN: Okay
19 What is the amount of private funding that you
20 have in addition?

21 MR. MILKES: It is approximately \$40,000
22 throughout that four counties.

23 MS. BERNSTEIN: Okay, so you've got
24 approximately a fifth in addition to what we give you. I
25 don't know whether you are aware of this, we are

1 compiling -- at my request the corporation is compiling
2 some information on outside funding. But not only is your
3 program probably underfunded on a minimum access level,
4 but your program is competing, in terms of the federal
5 dollars, with programs that get at least half as much as
6 their federal grant from other sources and in some cases
7 get more from other sources than they get from Legal
8 Services. And, therefore, when we are dividing things up
9 on this antiquated minimum access grandfathered formula,
10 we are doing a real disservice to your clients.

11 Now, my concern is, in terms of this, that your
12 Board of Directors, just as we have a responsibility to
13 try to administer our funds appropriately, your Board of
14 Directors has a responsibility to come and compete with
15 these other programs that are getting too much funding
16 from the federal government. That is their
17 responsibility. And I would ask that you go back to your
18 board and you say, "Look, this Board is in favor of
19 getting some things straightened around." Would you
20 please give them your input because I don't have scratch
21 pads.

22 MR. MILKES: If I may respond to that.

23 CHAIRMAN DURANT: I want you to.

24 MR. MILKES: Thank you.

25 First of all let me say one of the first things

1 I did upon returning to Carlisle from the last board
2 meeting was to call our board president and explain to him
3 the things that I had said and he offered his full support
4 to me at that time for the positions that I had taken.
5 And they included the fact that my assertion that programs
6 should not have their funding cut in order to so-called
7 equalize funding.

8 MS. BERNSTEIN: Isn't that a conflict of
9 interest in a professional -- you know -- because your
10 clients are in your jurisdiction, isn't that right?

11 MR. MILKES: Well, I think that there is an
12 interest also to seek out full representation throughout
13 the country of clients and that our concern is --

14 MS. BERNSTEIN: But you've been granted an
15 authority under your grant to represent clients only in a
16 specific area. Isn't that the way the grants are written?

17 MR. MENDEZ: Mr. Chairman, I ask that you call
18 this back to the issue at hand.

19 CHAIRMAN DURANT: All right.

20 MR. MENDEZ: LeaAnne, I'm sorry but really we
21 are getting a little bit --

22 CHAIRMAN DURANT: All right, Mr. Smegal has a
23 question.

24 MR. SMEGAL: You've indicated how much
25 additional outside revenue you have. Do you have some pro

bono activity there to?

1 MR. MILKES: We have pro bono activity, yes.

2 MR. SMEGAL: Could you estimate how much that
3 would be?

4 MR. MILKES: It is in the form of in kind pro
5 bono services. That is hard for me to translate to
6 dollars. I mean, our grant is \$200,000 --

7 CHAIRMAN DURANT: Mr. Milkis, thank you very
8 much.

9 MR. MILKES: May I respond in one other way to
10 a question raised by Ms. Bernstein?

11 CHAIRMAN DURANT: Well, part of it isn't really
12 relevant, I don't think, to Mr. Smegal's motion and that
13 is what I really want you to focus on. Do you have
14 anything else that you would like to focus on as far as
15 Mr. Smegal's motion is concerned?

16 MR. MILKES: Only in that, I want to add that
17 the private funding and many of the supplemental funding
18 sources place additional conditions upon how we can use
19 that funding. And it should necessarily be assumed that
20 those funds are available to meet the minimum access as
21 the Legal Services' Act addresses.

22 CHAIRMAN DURANT: Thanks for making that point.

23 Jim Browdy?

24 MR. BRAUDE: Braudy.
25

CHAIRMAN DURANT: Braudy.

2 MR. BRAUDY: I don't know if this is important,
3 but since the woman from the Conservative Caucus started
4 this way, I also pay taxes and I'm not paid by the Legal
5 Services Corporation even though I was a staff attorney in
6 the South Bronx for seven years before I came to work for
7 the Union. So I've sort of been on both sides even though
8 I think not only the right to speak, but the obligation to
9 speak for those who are funded through the corporation is
10 absolutely extraordinary and very high.

11 I would start by saying, Mr. Durant, that I
12 think that while I will try to comment directly on Mr.
13 Smegal's motion and as seconded by Mr. Eaglin, in light of
14 the fact that the comments by other people on either the
15 305 motion or the 241 motion are on the floor and will be
16 considered, I assume, when people are voting on Mr.
17 Smegal's motion. I think it is relevant for the speakers
18 to get --

19 CHAIRMAN DURANT: When Mr. Mendez's motion
20 comes on the floor I will then entertain, if it is
21 different, public comment.

22 MR. BRAUDE: If I just may, it is very hard, in
23 light of the fact that I assume a vote on Mr. Smegal's
24 motion will in part be determined by what the Board has
25 heard from other speakers, obviously, one must comment

briefly, and I will try to be as brief as I can.

Needless to say on this issue, which is a terribly critical one, it is not just the Board speaking to itself and it is not just the Board speaking to the 50 people lucky enough to be here today. It is the Board speaking to the people in this country whether they be Congress, clients, whatever, who care about this program. And I think that as a result of that this action is probably the most critical early one you are going to take.

It is terribly important for those people who do work in these programs, who have given their lives to these programs, to understand how their Bored, Legal Services Corporation, feels about their work. It is not helpful to have board members make comments about preserving jobs of 4,500 staff attorneys. It is obscene and disgraceful. It is not helpful to hear the president of the corporation on television say he can't imagine why anybody would work here for this kind of horrible money unless they want to be a reformist.

The reality is people work in this program, one, because they believe deeply in the principles and goals of Legal Services and, two, because they have a deep personal commitment to those issues as well. I believe that for those of us who care about this program,

1 supporting 242 or even supporting 305 is probably good for
2 us, to be as candid as I possibly can be. Because,
3 frankly, I think Congress is going to look at it, and say
4 once again it is the board of directors that really is not
5 looking at the need out there, even if the need is not as
6 neatly defined as some of you might like and I wish we
7 could define it as clearly as some of you might like as
8 well.

9 But the reality is, while I am tempted to sit
10 down and let you vote 242, or 305, or less there are
11 clients out there that can't be the guinea pigs while we
12 hope that the world will respond negatively to such
13 action. I worked in a program. I worked in a program
14 where we were approaching two lawyers for every 10,000
15 poor people. I can't give the statistics that I am
16 sure Ms. Bernstein is going to want in a minute, but I
17 could. I could give personal experience and the
18 experience of several thousand people who are part of our
19 union across this country.

20 Mr. Mola spoke of a couple of categories where
21 the numbers fell apart. There is one other place where
22 the numbers fall apart and it is unavoidable -- the people
23 that don't come anymore. Now, can I tell you how many
24 people don't come to our offices? Of course I can't. Can
25 I tell you that when we were funding at \$321 million and

1 we had three staff attorneys in the whole South Bronx to
2 deal with housing problems for poor people in that
3 burrough that dozens, and dozens, and ultimately hundreds
4 of clients who had heretofore come to us for advice,
5 counsel, whatever, didn't come back anymore because they
6 knew they couldn't get the services?

7 So, while I can't say to you today two for
8 10,000 is wonderful or two for 5,000, or whatever, I can
9 tell you without any equivocation that the level of
10 funding that we are currently at, and very frankly, with
11 all due respect to Mr. Smegal and Mr. Eaglin, \$373 is,
12 indeed, a fine first step, but it is only a first step.

13 One thing that is often left out of these
14 discussions, and I believe it is the last two points I'll
15 make, at least on Mr. Smegal's motion, and I am supporting
16 it, by the way, since it is the best motion on the table,
17 is first a dirty word that doesn't get said much anymore
18 is that people that work in these programs are entitled to
19 make decent salaries. That is selfish, self-serving. I
20 said that when I came into legal services in '74. And
21 those around me who said it most loudly were the ones that
22 had to leave most quickly because they couldn't even
23 afford to feed their own families.

24 People who work in this program, whether they
25 work in the neighborhood offices, support centers, whether

1 they work for the corporation, itself, in Washington that
2 speaks to the issue of a \$10 million budget because those
3 people need to be paid as well, deserve, if they show the
4 kind of commitment to this program that they have, to be
5 paid decent living wages so they can continue to work here
6 and worry about their client's legal problems, not their
7 own.

8 Secondly and finally -- I believe finally, at
9 least for now -- Mr. Uddo mentioned before, and I may be
10 making a broader statement than you did and my apologies
11 in advance, but it is very difficult when the Board is
12 restricted as it is by Congress to give more money to
13 something that you don't have an awful lot of control
14 over. Well, one, while you have limited control, and I
15 think, unfortunately, you've got limited control because
16 of what your predecessors and some of the administration
17 people have done here, the reality is you have plenty of
18 power to control the kinds of abuses that people, like the
19 woman from the Conservative Caucus, frankly, made up when
20 she says proven violations in the Western Center. It is
21 unbelievable.

22 Assuming all of those violations exist,
23 assuming all the abuses that we hear about Legal Services
24 and have heard from the first day of Howie Phillips and
25 have heard again and again are true, you have absolute

1 power to deal with programs and people -- I'll be finished
2 in a second -- that are violating the act.

3 Not only do you have the power to do it, I
4 would say that every single person in this room and every
5 person who works in legal services and cares about it
6 believes very strongly that if there are problems in
7 programs that are serious, intentional violations of the
8 Act, they are serious violations of the Act where the
9 clients are suffering, the community is suffering, not
10 only do you have the power to act you have an obligation
11 to act. So I would hope that when you are making a
12 decision about an increase in funding, and I am very
13 hopeful that you come out of here with at least some
14 significant increase in funding, that you do realize that
15 while your powers are limited they clearly are not non-
16 existent.

17 . Finally, I want to close with what I said to
18 begin with please keep in mind, all of you, that you are
19 not just speaking to us but speaking to everybody and we
20 hope, I think speaking for everybody, that most people in
21 this room that you speak loudly in support of a fully
22 funded meaningful legal services firm.

23 CHAIRMAN DURANT: Mr. Braude, two things. One
24 is that as far as understanding the kind of tension and
25 the kind of almost exasperation that staff attorneys have,

1 I know that to be the case. I met last Saturday with all
2 the project directors in Michigan. And one of the first
3 things I said was was that I said staff attorneys are
4 underpaid. I wouldn't go through some of that -- you're
5 dealing with the bare necessities and life essentials and
6 obviously that is a tough kind of practice.

7 So I understand of what you speak but, again, I
8 think that this Board, in some ways, needs to send a
9 number of different signals and that I think to act in a
10 hurried fashion without having the kind of review -- you
11 know, frankly, had there been -- I think it was evident
12 early on, and maybe I shouldn't say this, but I think it
13 was evident early on that this board was going to be an
14 activist board, an interested board, a truly responsible
15 board.

16 And that, frankly, we maybe wouldn't be having
17 this conversation if some had not felt that our
18 confirmation, or whatever, shouldn't have taken place.
19 Because I think that things and some of the issues that
20 you raised may have been addressed in an entirely
21 different way because this board would have been in place.
22 But the point of the matter is is that as, I think Mr.
23 Wallace is quite correct, we are in a circumstance that,
24 in my judgement, to move either way would be
25 irresponsible. But I very much appreciate your comment.

1 MR. BRAUDE: If I just may respond very
2 briefly.

3 CHAIRMAN DURANT: Very briefly.

4 MR. BRAUDE: Very briefly.

5 I should say to paraphrase Mr. Eaglin's
6 comment, as well, you are new and admittedly relatively
7 inexperienced at this, the poor people who are out there
8 are waiting.

9 And finally I would say that while we have used
10 the expression, "Staff attorney," I'm sure you mean to
11 say, as do I, that people who work in the programs whether
12 they be secretaries, receptionists, paralegals --

13 CHAIRMAN DURANT: Oh, I understand that. I
14 understand that.

15 MR. BRAUDE: All right, thank you.

16 CHAIRMAN DURANT: Any other specific comment on
17 Mr. Smegal's motion?

18 MR. KOPAY: My name is John Kopay.

19 CHAIRMAN DURANT: Okay, John, what is it?

20 MR. KOPAY: And I --

21 CHAIRMAN DURANT: I didn't catch your name.
22 What is it?

23 MR. KOPAY: K-O-P-A-Y, Kopay.

24 I don't mean to be redundant, but I think the
25 people in Mr. Smegal in presenting his motion demonstrated

1 an understanding of the facts. To a sense, everything is
2 on a continuum and where we are now is part of everything
3 that took place before. And I think that the most
4 important part of the -- in speaking on behalf of Mr.
5 Smegal's motion -- is that it is understandable and
6 defensible and I think that that is the most that it could
7 really be understood and appreciated. There are other
8 points of view with regard to that but I think that it is,
9 you know, demonstrable, understandable and defensible.

10 CHAIRMAN DURANT: Thank you.

11 MR. KOPAY: Thank you.

12 CHAIRMAN DURANT: Mr. Smegal, the gentleman
13 behind you.?

14 MR. SMEGAL: Mr. Rhudy.

15 CHAIRMAN DURANT: All right, Mr. Rhudy?

16 MR. RHUDY: Thank you, Mr. Durant.

17 Bob Rhudy, Coalition for Legal Services.

18 I won't restate what I presented before the
19 Committee yesterday because I know most of the members
20 that are here currently were there at that time. I, of
21 course, support the motion of Mr. Smegals' for the
22 increase of \$373 million. I think that is a minimally
23 needed amount of funding to support the needs for Legal
24 Services throughout this country, as I stated yesterday.

25 I would like to address one thing very briefly,

1 though, and that is the concern that a number of members
2 of the Board have raised about their lack of control,
3 their inability to support an increase at this time. I
4 think those concerns have been addressed. I would like to
5 express one thing, though. If this Board does not act at
6 this time to ask Congress for an increase in funding until
7 such time that you feel that you have the information, the
8 control, or whatever you wish to exercise the program, I
9 think Mr. Braude's remarks are absolutely appropriate on
10 that concern.

11 If you don't now, there will not be any
12 increase in funding at your request for 21 months from
13 this point. Nearly two years the conditions that exist in
14 the field throughout the country for the lack of services
15 to the poor people in this country, at your request, will
16 not be increased. 21 months from now if you wait until
17 next year to take action in this nature.

18 CHAIRMAN DURANT: Would you take a question,
19 Mr. Rhudy from Ms. Bernstein?

20 MS. BERNSTEIN: No, this is a point of
21 information for somebody from either General Counsel's
22 office or from government relations. Is it not true that
23 this board has the ability to ask for supplemental at any
24 point?

25 MR. BAGTENSTOS: Yes.

MS. BERNSTEIN: Okay.

MR. RHUDY: I would take that under advisement.

MS. BERNSTEIN: And let me state for the record that at such time that this Board is given the judiciary rights and responsibilities that are inherent within the independent establishment of a corporation, I would be in favor of asking for supplemental.

MR. RHUDY: To my knowledge it has never been done in the past but, certainly, I'd support your ability to do so in the future --

CHAIRMAN DURANT: Lots of things that we'll do will never have been done in the past.

MR. RHUDY: -- I understand. I would support the motion for \$373 million. Thank you.

CHAIRMAN DURANT: Thank you, Mr. Rhudy.

I would like to take a brief break right now because we have to check on our technical equipment and make sure all the mikes are working. So we will take a -- how much time do you want -- five minutes.

(A short break was taken.)

CHAIRMAN DURANT: At this time I would like to have a -- Mr. Smegal and I just chatted and I would ask that we -- I think you want me to call the question, is that correct?

MR. SMEGAL: Yes, I would just like to make one

1 other comment if I may.

2 I would like the record to show that I don't
3 take any of LeaAnne's comments personally. I understand
4 them to be for the purpose for our full and clear debate
5 in this particular matter. And I want LeaAnne to
6 understand that. I do want to make one comment, though,
7 on one of the matters she raised with respect to my
8 apparent criticism of the prior Recess Board. And I would
9 point out to you that my motion is so conservative that it
10 represents 50 percent of what the prior Recess Board asked
11 for last year. And it takes very little math to figure it
12 out if you divide five into \$325 you get \$65,000 per
13 Recess Board member. If you divide 11 into \$373 million
14 you get roughly \$33 million which is a 50 percent cut over
15 what last year's Recess Board asked for.

16 MS. BERNSTEIN: Which just proves that more
17 isn't always better.

18 CHAIRMAN DURANT: What I would like to do now
19 is to -- I'd like to do this on an individual vote around
20 the table. All those -- all right, I'm going to restate
21 the motion.

22 The motion is, Mr. Smegal correct me if I am
23 wrong, that we -- it would be better if you stated the
24 motion.

25 MR. SMEGAL: My motion is that our benchmark be

1 \$373 million, \$304 million of which would be ear-marked
2 for line 1(a)1 basic field programs, \$10 million of which
3 would be ear-marked for line item III, corporate
4 management and grant administration. The remaining \$59
5 million would be distributed among the other components of
6 our line item budget in proportionate amount as reflected
7 in the fiscal year 1985 funding level.

8 CHAIRMAN DURANT: Okay.

9 Now, all those -- I'm going to ask you to just
10 vote yes or no on the motion. I am just going to start
11 around the table.

12 Ms. Benavidez, yes or no on the motion?

13 Yes?

14 Ms. Bernstein?

15 MS. BERNSTEIN: No.

16 MR. UDDO: No.

17 MR. SMEGAL: Yes.

18 MR. VALOIS: No.

19 CHAIRMAN DURANT: No.

20 MR. BOGARD: No.

21 MR. MENDEZ: No.

22 MR. WALLACE: No.

23 MS. SWAFFORD: No.

24 MS. MILLER: No.

25 MR. EAGLIN: Yes.

CHAIRMAN DURANT: Okay, the motion fails.

The motion that is now on the table is Mr. Mendez's motion to -- would you like to state it in a more succinct fashion, Mr. Mendez, as to what your motion is?

Wait a minute, Mr. Valois has written it down if you want --

MR. MENDEZ: Please, Mr. Valois.

MR. VALOIS: That a budget mark of \$305 million be established; that the basic field programs be increased 4.6 percent; that all other line items be reduced; that the management administration line be \$10 million -- I won't go into Mr. Mendez's explanation -- ; that the Reggie Fellowship be brought in-house and cut to bring the management administration line up to \$10 million.

MS. BERNSTEIN: I would like to propose an amendment to that motion.

CHAIRMAN DURANT: Is there a second to that motion?

MR. VALOIS: It's been seconded.

MS. BERNSTEIN: Okay.

I would like to propose an amendment to that motion which is that the management -- the corporation management and grant administration line item be increased to \$12 million and that the items in II be reduced equally in order to affect that.

CHAIRMAN DURANT: Is there a second to that motion?

Not hearing one, the motion dies.

Any discussion on Mr. Mendez's motion? Mr. Mendez?

MR. MENDEZ: In order to explain fully what I intend by my motion, it is anticipated that we will close the regional offices, thereby saving \$1.8 million out of the present budget. It is also anticipated that we will bring the Reggie Program in-house and cut the Reggie Program. With those two provisos it is my belief that we can continue the build-up of accounting and monitoring and insure that we can also visit the field regularly and visit the field in all parts of the country. That is the reason that I proposed it in this manner.

Further, it is my understanding that for the fine tuning and the numbers, that we can turn that over to the staff and they will spin out the numbers for us. And it is really not necessary for us to give the fine numbers to the staff, that is their job.

MS. BERNSTEIN: That is part of your motion, the \$10 million cap is proposed, is that not true?

MR. MENDEZ: That's correct.

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

1 CHAIRMAN DURANT: Please, Mr. Wallace.

2 MR. WALLACE: I am not sure that I understand
3 much about our budgeting but if reprograming means what I
4 think it means, it means we can shift things around within
5 the \$305 million. If we do less than a quarter of a
6 million, we don't have to tell Congress about it; if we do
7 more than a quarter of a million, we do have to tell
8 Congress about it.

9 MR. BOGARD: Or 10 percent.

10 MR. WALLACE: Or 10 percent, whatever the
11 numbers are. I am as concerned as Mr. Mendez and Ms.
12 Bernstein that we have enough money in management and
13 administration to find out what is going on. Mr. Mendez
14 thinks we can do it with 10 and Ms. Bernstein thinks we
15 can do it with 12, I don't know. But just as Ms.
16 Bernstein will be willing to send a supplemental to
17 Congress, I'll be willing to send reprogramming to
18 Congress in order to get the money we need to do our job.
19 And it is with that understanding that we can make those
20 changes, if we have to, that I would support Mr. Mendez's
21 proposal.

22 CHAIRMAN DURANT: Mr. Smegal?

23 MR. SMEGAL: Yes, I have another substitute
24 motion which is the seventh column from the left on your
25 sheet which is entitled 4.6 percent increase, categories

1 one, two and three, and if seconded, I would like to speak
2 to this Board.

3 MR. VALOIS: Is this the --

4 MR. SMEGAL: This is the sheet that we got
5 today.

6 MR. MENDEZ: The bottom line is \$319 million?

7 MR. SMEGAL: Yeah, \$319,030,000.

8 CHAIRMAN DURANT: Is there a second to that
9 motion?

10 MR. EAGLIN: I'll second it for discussion.

11 MR. SMEGAL: First off, I'd like to point out
12 that this is consistent with what LeaAnne just said, that
13 would provide \$11.8 million to the corporate management.
14 It is also consistent with Mr. Mendez's underlying motion
15 would provide, which is a 4.6 percent increase for the
16 basic field programs.

17 The problem with the \$305 million is it cuts a
18 lot of programs. Congress has increased the funding of
19 this corporation by 14.7 percent two years ago and by
20 about 10 percent last year. And what \$305 million would
21 do would be to cut, substantially, other programs other
22 than the basic field program. By adopting the seventh
23 column, the 4.6 percent increase across the board, we are
24 asking for a modest increase, a modest increase of 4.6
25 percent, where Congress has gone substantially beyond that

1 in the last two years.

2 CHAIRMAN DURANT: Any other discussion on that?

3 Mr. Smegal, I will say that the difference
4 between the \$5 million and the -- which column do you
5 have, the \$319 or the \$316?

6 MR. SMEGAL: I've got the 319.

7 CHAIRMAN DURANT: All right, the \$319.

8 I will work with you to develop alternative
9 funding to make up that difference because I think it is
10 the kind of thing that I think Congress also sees that we
11 doing that sort of thing to help a number of different
12 programs, that it suggests that there are really a variety
13 of ways of trying to meet some of those specific kinds of
14 needs.

15 Any other discussions on the floor?

16 MR. UDDO: Yeah, I think that there is merit to
17 the substitute motion for two reasons. One is because it
18 does get the corporate management figure up closer to what
19 might be necessary, but also I am hesitant about cutting
20 the Reggie Program without more reflection and this
21 proposal would keep that more nearly intact.

22 MS. BERNSTEIN: Clark, I'd like to speak
23 against the motion.

24 CHAIRMAN DURANT: I'm sorry, go ahead, Ms.
25 Bernstein.

1 MS. BERNSTEIN: From the standpoint that just
2 as I stated earlier we have no idea how the money is
3 really being spent. We are just asking for more. We have
4 no control how the money is being spent, we are just
5 asking for more. I think that is pretty irresponsible for
6 any board of directors. If you were in a school board, if
7 you were in any other sort of board, you would want to
8 know those answers before you simply raised your tuition
9 or somehow made evidence that you were going to be
10 responsible for it. So I am absolutely opposed to any
11 increases while we are under these restraints.

12 CHAIRMAN DURANT: Any other comment or
13 question?

14 All those in favor --

15 MR. MENDEZ: If I am permitted, Mr. Chairman --

16 MR. UDDO: I think we've had enough --

17 CHAIRMAN DURANT: John, not at this point. I'm
18 going to call the question. All those in favor of Mr.
19 Smegal's substitute --

20 MS. BERNSTEIN: Let's have a role call.

21 CHAIRMAN DURANT: We will do it one by one.

22 All those in favor of Mr. Smegal's substitute
23 motion please indicate by saying yes, if you are opposed
24 say no. Ms. Benavidez? I'm sorry?

25 MS. BENAVIDEZ: Yes.

1 CHAIRMAN DURANT: Ms. Bernstein?

2 MS. BERNSTEIN: No.

3 MR. UDDO: Yes.

4 MR. SMEGAL: Yes.

5 MR. VALOIS: No.

6 CHAIRMAN DURANT: Wait a minute, I've got to
7 get your numbers here.

8 No.

9 MR. BOGARD: No.

10 MR. MENDEZ: No.

11 MR. WALLACE: No.

12 MS. SWAFFORD: No.

13 MS. MILLER: No.

14 MR. EAGLIN: Yes.

15 CHAIRMAN DURANT: Okay, the motion on the floor
16 then is the motion by Mr. Mendez. Is there further
17 discussion amongst the Board?

18 MS. BERNSTEIN: I call the question.

19 CHAIRMAN DURANT: May I ask you just on one
20 item, Ms. Bernstein, if you would -- there are two people
21 that I would like to have the opportunity to speak out
22 from the floor. If you would withdraw the call just to
23 allow those two --

24 MS. BERNSTEIN: Once again, I will withdraw the
25 call.

1 CHAIRMAN DURANT: I appreciate that.

2 If Mr. Randy Chapman, you did not have an
3 opportunity to speak at the last meeting. Do you want to
4 address this, Mr. Chapman?

5 MR. CHAPMAN: If I could, John Mola has
6 prepared some comments. I would like to give my three
7 minutes worth of time to let him make that statement.

8 CHAIRMAN DURANT: Mr. Smegal?

9 MR. SMEGAL: Is the motion on this column or
10 are these numbers incorrect again?

11 MR. MENDEZ: The motion is not on this call.

12 MR. UDDO: The motion is as stated by Mr.
13 Mendez.

14 MR. SMEGAL: So the rest of the programs other
15 than the ones that have been --

16 CHAIRMAN DURANT: Articulated.

17 MR. SMEGAL: -- articulated will be in a
18 proportion --

19 CHAIRMAN DURANT: That's correct.

20 MR. SMEGAL: -- with respect to this?

21 MR. CHAPMAN: May I defer to Mr. Mola?

22 CHAIRMAN DURANT: I am going to poll the Board
23 for that.

24 MR. MENDEZ: I want to hear from Mr. Mola.

25 CHAIRMAN DURANT: Mr. Mola, you have three

minutes.

2 MR. MOLA: Thank you, Mr. Chairman.

3 I would like to address Mr. Mendez's motion to
4 adopt a budget mark of \$305 million. If you agree with
5 Ms. Bernstein, and Mr. Wallace, and Mr. Mendez upon the
6 principle that you are too new and inexperienced to make
7 any policy decisions I think you have to vote against Mr.
8 Mendez's --

9 MS. BERNSTEIN: That was not my position.

10 MR. MENDEZ: Now, let the record reflect that I
11 have never said that I am too new and too inexperienced --

12 MS. BERNSTEIN: That was not my position
13 either, sir.

14 MR. MENDEZ: Let the record also reflect that
15 I've asked for all of the information to be delivered to
16 me and that I have read everything.

17 MR. MOLA: I'm sorry, Mr. Mendez, if you took
18 offense
19 to that. I didn't mean --

20 MR. MENDEZ: I did.

21 MR. MOLA: I apologize.

22 There are a number of members of the Board, and
23 perhaps I had the names wrong, who have said that they
24 want to maintain the status quo until we can have more
25 time --

MS. BERNSTEIN: No, until we have some control.

MR. MOLA: -- or control or whatever reason.

Mr. Mendez's proposal includes some significant policy decisions about various important components of the delivery system now in place. It, for example, only increases the basic field programs, which we call the census base programs. It includes no increases for what are known as the non-census base programs. And this would include migrant service, Native American providers, the Reggie Program, national and state support, the Client's Counsel, all of which have, over the years, been a very intricate part of the total delivery system.

You must vote against \$305 if you wish not, at this point, to make those kinds of policy decisions before you have had an ample opportunity to look at the work of the migrant providers or the Native American providers, or the important components of national and state support you cannot adopt \$305. They will not allow you to gain the knowledge and the experience you need about the specifics of these parts of our delivery system.

CHAIRMAN DURANT: Mr. Mola, is it true that we can get a supplemental if we want to?

MR. MOLA: It has never been done before.

CHAIRMAN DURANT: You mean that it has never been requested before.

1 MR. MOLA: And I think there are some
2 compelling reasons why this Board should act at a higher
3 amount today and not seek a supplemental. I think if you
4 want to maintain the status quo, what you really should
5 ask for is \$319 million. That is a 4.6 percent increase
6 on the total appropriation.

7 You know, the McCarthy Board was in a similar
8 position when they had to take up their first budget mark.
9 And their initial position was that of a freeze. And in
10 the New York City meeting in December of 1984 they voted
11 to seek an increase of \$325 million --

12 CHAIRMAN DURANT: Mr. Mola, you've got about 10
13 seconds. I've given you four minutes.

14 MR. MOLA: If you vote for \$305, it is not
15 going to be received well by the organized bar, the ABA,
16 local bars. It is certainly not going to be received well
17 by Congress. And I think it is going to really question
18 whether this board is engaged in new initiatives. And why
19 act negatively on this kind of issue?

20 We know that Congress, most likely, is going to
21 act independently. Why not come up with a credible budget
22 mark that is going to send a clear message that this board
23 is interested in meeting the needs of clients and people
24 in the field? Why create problems of credibility or other
25 issues in Congress with the organized Bar and with the

1 field. I would strongly suggest that you vote against
2 \$305 and that, in fact, you entertain a motion to ask for
3 a mark of \$321.

4 CHAIRMAN DURANT: Mr. Mola, Mr. Uddo has a
5 question for you.

6 MR. UDDO: Mr. Mola, why isn't that message to
7 sent Congress by our persistent concern that we don't want
8 to ask for increases when we don't have control over how
9 the money is spent? I mean, it seems to me that has been
10 made clear at this meeting today and Congress should be
11 well aware from everything that we have said that we are
12 interested in doing more. But we want to be able to have
13 some assurance that we are not just asking for money, that
14 we won't then have some control over how it is spent. I
15 mean, it seems to me that that message has been made
16 pretty clear.

17 MR. MOLA: Mr. Uddo, I believe if you vote for
18 \$305 without taking into account a 4.6 percent increase
19 for non-census base programs, you are sending not only a
20 clear message but an absolute policy decision on cutting
21 out or causing disastrous consequences to very important
22 components of our delivery system.

23 MR. UDDO: Well, first of all, I voted for \$319
24 so I guess I am off the hook there.

25 MR. MOLA: Yes.

1 MR. UDDO: Secondly, at the committee hearing
2 yesterday I haven't seen anything to suggest disastrous
3 consequences. I mean, you engage in a lot of loose talk
4 at these meetings that I am getting concerned about as a
5 lawyer. I mean, the specificity just never been there.
6 And I don't want to see any damage done to the delivery of
7 Legal Services. On the other hand, I want to have some
8 control over how we spend the money so that this board can
9 feel that it is exercising its responsibilities adequately
10 and that if we ask for more money we are going to be able
11 to put it where it is going to do some good.

12 MR. MOLA: I understand.

13 CHAIRMAN DURANT: Mr. Mola, there is a Mr.
14 Steve Nagler who wants to speak.

15 MR. MOLA: Just one final comment on specifics.
16 If you look in column 13, Mr. Uddo, you will see what the
17 affects of Mr. Mendez's proposal are. The national
18 support, for example, will go from \$7.4 million to \$4.75
19 million. My rough calculation on that is that that is a
20 reduction of 38 percent to national support. If you go
21 down those columns and do similar calculations I think you
22 will find that the reductions to the non-census base
23 programs are going to be in the magnitude of almost 40
24 percent. If that isn't a disastrous consequence it's --

25 CHAIRMAN DURANT: These figures -- remember, we

are not going by these figures.

2 MR. MOLA: Well, they were prepared by the
3 Comptroller.

4 CHAIRMAN DURANT: Yeah, but the motion --

5 MR. MENDEZ: I've changed the motion.

6 MS. BERNSTEIN: That wasn't the motion?

7 MR. MENDEZ: The motion does not rely on these
8 figures.

9 MR. MOLA: I understand that, but your motion
10 only allows a 4.6 percent increase to census based
11 programs. You have indicated that all of the other budget
12 line items will share in a similar cut. My calculation is
13 that those cuts for non-census base programs are going to
14 be very close to 40 percent. That is much worse, that is
15 15 percent larger cut than we suffered in 1981, and we
16 know what the results of that was specifically, Mr. Uddo.
17 Thank you.

18 MR. WALLACE: Mr. Chairman?

19 CHAIRMAN DURANT: Mr. Wallace?

20 MR. WALLACE: It is not a question, Mr. Mola,
21 but it does respond. I am the guilty party who said that
22 we don't know enough to make any drastic changes. I will
23 tell you the basis for my reasoning in supporting Mr.
24 Mendez's motion.

25 I believe, based on my experience in Congress

1 and having sat through that debate in 1981, that a --
2 again, I haven't got all the numbers in front of me -- but
3 as I understand Mr. Mendez's motion, it is not a major, a
4 significant, but not catastrophic change in priorities
5 from support centers to basic field programs. If somebody
6 can come back to the next meeting and show me it is
7 catastrophic I will reconsider it.

8 But 90 percent of the support in Congress to
9 this program is because of basic field programs. And 90
10 percent of the complaints that Congress hears about this
11 program are about the support centers. That is where the
12 debate has always been in Congress and I believe that what
13 I think to be a modest redirection of funds proposed by
14 Mr. Mendez is fully in line with what Congress intends for
15 this corporation to be doing. And that is the basis of my
16 support for the motion.

17 CHAIRMAN DURANT: Mr. Nagler, are you here in
18 the audience?

19 Thank you, Mr. Mola.

20 And I am going to limit you to three minutes.

21 MR. NAGLER: Yes, indeed, thank you, Mr.
22 Chairman.

23 If you will permit preliminarily for me to
24 direct the question through the chair to Mr. Mendez, the
25 proponent of the motion, whether the -- is it the intent

1 of your motion to increase delivery or basic field only?

2 The distinction is between the question --

3 MR. MENDEZ: Basic field programs.

4 MR. NAGLER: In other words, migrant programs
5 and Native American programs would absorb, like support
6 programs, the cuts that are --

7 MR. MENDEZ: Let's go through this so we are
8 all on the same wavelength again. I think the Board
9 understands it but just to explain it to the audience.

10 Basic field programs would increase 4.6
11 percent. The cuts would come from all other line items
12 including Native American programs, migrant programs,
13 reserve programs, the reserve program development,
14 supplemental service programs, Reggie Smith Fellowship,
15 summer internship, supplemental field programs.

16 The cuts would also come from the supplemental
17 delivery of legal assistance including training and
18 technical assistance, the training development, technical
19 assistance, client training, regional training centers,
20 other support that comes from national support, state
21 support, clearing house, national client's council, CLR
22 Grants, and special elderly programs. They would all
23 share equally in the cuts pro rata from this year.

24 MR. NAGLER: I see.

25 MR. MENDEZ: All of those.

1 MR. NAGLER: So, in other words, categories of
2 non-census based field providers, consistent with Mr.
3 Wallace's previous comment, would, indeed, suffer cuts as
4 well.

5 MR. MENDEZ: You understand it correctly.

6 MR. NAGLER: Thank you.

7 I simply wish to add one piece to Mr. Mola's
8 comments and that is a bit of history with regard to
9 the -- what the Board may not know in terms of what its
10 predecessor did. When 25 percent of the budget was cut
11 several years ago by the Congress, and those cuts had to
12 be distributed, the Board made a determination that 12 and
13 a half percent of both Native American programs and
14 migrant programs should only absorb 12 and a half percent
15 cut because of the sensitivity of those programs to such
16 cuts. Many of the programs are very small. Their client
17 population and the service they provide is highly
18 specialized.

19 I speak not as a special advocate for those
20 programs today but of the awkwardness of attempting to
21 deal in a total budgetary scheme in a manner inconsistent
22 with what your predecessors have done with regard to such
23 cuts. And to suggest to you that across the board cuts in
24 that way, and perhaps in other ways, may inflict severe
25 hardship on the client population, specialized client

1 population, served not only by Native American and migrant
2 programs but perhaps by others, field providers in the
3 category that Mr. Wallace described in his last comment.

4 And that I suggest to you that an additional
5 appropriation later on may signal to Congress not what you
6 wish it to, but rather a sign of weakness, a lack of
7 commitment, quite the contrary kind of message that I
8 believe you wish to convey to the Congress at this point.

9 Thank you for the opportunity to address you.

10 CHAIRMAN DURANT: Mr. Nagler, let me just get
11 one thing. I think that the -- Mr. Uddo has raised, I
12 think, an obviously important question. If you have --
13 and not for the purpose of this meeting but, you know, we
14 have a meeting again in the latter part of January -- if
15 there are catastrophic circumstances that are impacted we
16 want to know about them.

17 MR. NAGLER: I simply --

18 CHAIRMAN DURANT: We want -- you know, like any
19 orator I don't want generalities, I want specifics.

20 MR. NAGLER: Well, indeed, I suggest that,
21 consistent with Mr. Uddo's remarks earlier, in terms of
22 the level of the cuts, as projected yesterday, the
23 projection was \$5 million, a cut from about approximately
24 \$4 to \$5,000,000 in migrant programs. And that, indeed,
25 was based on rather conjectural figures not the

1 corporations own figures. And that, indeed, would have
2 been quite devastating.

3 But the kinds of cuts that we project -- the
4 Board has in the past said, "When we cut all programs,
5 national support, field programs by 25 percent because of
6 the sensitivity of certain programs, specifically migrant
7 and Native Americans, we're going to only cut them by 12
8 and a half." And, indeed, that kind of consideration is
9 purely illustrative of the difficulty of attempting to set
10 a budget mark which contains details that you are not
11 prepared today, perhaps, to look at.

12 MS. BERNSTEIN: Could I -- just in adding to
13 what he said, though. When the fiscal '82 budget cut, the
14 25 percent cut was made, these programs were excluded from
15 it.

16 MR. NAGLER: With all due respect, Ms.
17 Bernstein, I think they were cut by 12 and a half percent
18 rather than the 25 percent.

19 MS. BERNSTEIN: But they were excluded by the
20 25 percent cut, they did not suffer the same cut that the
21 rest of the field programs did.

22 MR. NAGLER: No, but the reason for that was
23 because of the sensitivity of those programs and the fact
24 that many of those programs are very small and that one
25 may, by inadvertence, be --

1 CHAIRMAN DURANT: Mr. Nagler, I would
2 appreciate it if you would send me -- I mean, obviously --
3 what -- who are you? I mean just --

4 MR. NAGLER: Forgive me, I failed to introduce
5 myself. I am Executive Director of Migrant Legal Action
6 Program. We are a national support center based in
7 Washington, D.C.

8 CHAIRMAN DURANT: Well, let me say this. If
9 you would to me at my office, and I'm sure a copy to the
10 other members of the Board, of the specific effects that
11 you are talking about, believe me, we will all read
12 them --

13 MR. NAGLER: And, indeed, if I --

14 CHAIRMAN DURANT: -- and read them with all
15 seriousness.

16 MR. NAGLER: I have with me today one page,
17 that I would be happy to pass to the chair and circulate
18 to the Board if a facility exists for making adequate
19 copies, that shows the funding level of migrant programs.

20 CHAIRMAN DURANT: Okay.

21 At this point --

22 MR. NAGLER: Thank you, Mr. Chairman.

23 CHAIRMAN DURANT: Your welcome.

24 At this point is there a wish to call the
25 question?

1 MR. BRAUDE: Can I just get a clarification,
2 Mr. Durant? It is very difficult when the motion is not
3 in writing and not before us at least to understand what
4 is on the floor. May I ask a question?

5 CHAIRMAN DURANT: You may.

6 MR. BRAUDE: First of all, in light of the fact
7 that you asked the people that spoke before to only speak
8 to the \$370, whatever that was on the --

9 CHAIRMAN DURANT: Yeah, but you explained to me
10 the difficulty of --

11 MR. BRAUDE: I'm not going to speak --

12 CHAIRMAN DURANT: I understand.

13 MR. BRAUDE: -- to that. I have a question.

14 You, Mr. Mendez, when you were reading or
15 stating the litany a few minutes ago of programs that
16 would -- parts of the budget that would cut mentioned
17 offhand, and I hadn't heard it before, that what that
18 anticipates is the closing of the regional offices. Is
19 the Board about to vote not only on the budget but to
20 direct its staff as part of the budget request to close
21 the Legal Services Corporation regional offices or is that
22 just something you are suggesting as an individual option
23 to consider?

24 MR. MENDEZ: That is something I am suggesting.

25 MR. BRAUDE: So it is not part of the motion

1 that is on the floor?

2 MR. MENDEZ: No, you understand what the motion
3 was. Mr. Valois has read it on several occasions. We
4 are having discussions and I am suggesting to the Board
5 methods --

6 MR. BRAUDE: I see.

7 MR. MENDEZ: -- of carrying this out. In fact,
8 what we are doing is we are saying we want to look at
9 these pro rata amounts and I will suggest to the Board
10 that, based on the various comments, specifically on the
11 migrant and the native American programs, that we will re-
12 examine that aspect in more detail. We are not saying
13 closings right now. These are just discussions. It is a
14 fairly limited motion.

15 MR. BRAUDE: I just wanted to make sure that
16 everyone understood that because my fear is tomorrow half
17 the Board said we voted to close the regional offices,
18 half say -- it has happened in the past. As long as it is
19 clear.

20 CHAIRMAN DURANT: The chair understands that we
21 are not voting to close the regional offices.

22 MR. BRAUDE: Nor for the other specific cuts
23 that have been recommended on individual lines as the
24 discussion has gone around the room, is that also correct?

25 CHAIRMAN DURANT: The --

1 MR. MENDEZ: That's wrong.

2 MR. VALOIS: That's wrong.

3 MR. BRAUDE: I'm not talking -- well, what --

4 MR. MENDEZ: We are voting to cut pro rata all
5 of the others.

6 MR. BRAUDE: But with no specific instructions
7 as to any of the lines on the sheet that was on the back,
8 is that right?

9 MR. MENDEZ: That's correct.

10 MS. BERNSTEIN: Reggie.

11 MR. BRAUDE: Well, see, half are saying
12 correct, half are saying not correct that is why I am
13 standing up.

14 CHAIRMAN DURANT: That's fine, John.

15 MR. BRAUDE: Jim.

16 CHAIRMAN DURANT: Jim, sorry.

17 MR. VALOIS: The motion was made, has been read
18 into the record at least twice by me and it stands.
19 Nothing that has been said has the affect of amending the
20 motion.

21 MR. BRAUDE: But, Mr. Valois, with all due
22 respect, if half the board members just now don't even
23 know what they are voting on, it speaks to the fact that
24 there should probably be more discussion. I am not
25 quarreling with what is in the record. I am quarreling

1 with the fact that the Board just now, quite honestly,
2 some said, "Yes, we are," some said, "No, we're not."

3 CHAIRMAN DURANT: Well, wait a minute, no. Why
4 don't you read the motion?

5 MR. VALOIS: I would be glad to read the motion
6 again but I think that the speaker, perhaps, is seeking to
7 raise issues when they don't exist.

8 MR. BRAUDE: I don't want to raise them. If
9 the answer to my questions are what Mr. Mendez said and
10 if, in fact, there is a clarification as to what --

11 MR. VALOIS: Does anybody on the Board desire
12 that I read the --

13 CHAIRMAN DURANT: I, the chairman, do.

14 MR. VALOIS: My understanding on the motion
15 is, by Mr. Mendez, that we set a budget mark of \$305
16 million; that the basic field program, and I understand
17 that exactly as Mr. Mendez has stated it to be on the
18 printout which we have, which is dated revised 19 December
19 '84, to refer to line I(A)(1); that all other line items
20 will be reduced apportionately; that the management and
21 administration line will be \$10,000,000, and Mr. Mendez
22 went into an explanation there; that the last of the
23 Reggie Program, that will be used by a cut to bring the
24 management administration line up to \$10,000,000.

25 MR. BRAUDE: Then the only thing that I would

1 suggest -- I thank you for that reading and I was not
2 intending to create issues where they did not exist. The
3 only thing I would suggest is I think I and others would
4 be interested to hear why the Board believes, and
5 particularly the maker of the motion believes, that the
6 Reggie Program should be pulled out for special treatment
7 as compared to the other across-the-board action you are
8 taking, and that is my only other question.

9 CHAIRMAN DURANT: Thank you, Jim.

10 MR. MENDEZ: Let's have Mr. Cook first and then
11 I will respond to the question.

12 CHAIRMAN DURANT: Mr. Cook?

13 MR. COOK: There is one aspect of Mr. Mendez's
14 proposal -- I don't want to deal with the whole motion. I
15 oppose that, but there is one aspect that really has not
16 been discussed an awful lot. And Professor Uddo, I think
17 his name is, put his finger on it.

18 In view of some of the discussion around here
19 about this board not wanting to take action until it has
20 sufficient information, I find it rather curious that the
21 board is going to act, one, to bring the Reggie Program
22 in-house; two, to cut that program by an unspecified
23 amount and, particularly, for that particular amount to be
24 used in the management of this corporation.

25 I was here all day yesterday. There wasn't a

1 great deal of discussion. There was some discussion at
2 the end, pretty much at the end of the Provisions
3 Committee meeting, on the Reggie Program. But I can't say
4 that this board got a good idea, one, of what the Reggie
5 Program is about, what the controversy is about and I
6 don't know why we are taking this particular action now
7 without at least this board taking some time to find out
8 what the Reggie Program is about, what the problems are,
9 and to examine that issue in some considerable detail
10 before a drastic measure as you are proposing right now
11 takes place.

12 As I said to some extent yesterday, the Reggie
13 Program has been around since 1967. For many of us in
14 legal services and most particularly for minority lawyers
15 in legal services and women in legal services that program
16 has provided an entry vehicle by which we are able to
17 participate in that program.

18 LSC staff has taken a precipitous action in the
19 last couple months vis-a-vis the Reggie Program. We don't
20 think that that action was a correct action. We think,
21 particularly because of the importance of that program,
22 that this board ought to exercise some caution and some
23 judgement in considering what ought to be done with the
24 Reggie Program.

25 I do not think that it is wise under these

1 circumstances to take the kind of action that you propose
2 even if you square with earlier logic expressed by this
3 board, at least your intentions, to take a look before you
4 act. And I think Professor Uddo is directly on-point.
5 That program is absolutely too important for this board to
6 take this kind of action today.

7 The thing that I think the Board ought to do on
8 the Reggie Program is to defer any action on the Reggie
9 Program until there has been an opportunity for this board
10 to get information and to have some discussion about what
11 ought to be done with that program because there are those
12 of us in the field, a lot of us in the field, who have
13 good reason to believe that the Reggie Program, for all
14 intents and purposes, if brought in-house under this
15 administration that program will be essentially destroyed
16 in terms of its essential elements.

17 And I would urge you today particularly on that
18 program because of its importance to a large segment both
19 of people who work in this community and clients who
20 depend on that program to proceed with caution. And I
21 think the thing to do would be not to take any action on
22 the program.

23 CHAIRMAN DURANT: Mr. Cook, I think we have a
24 question.

25 MR. MENDEZ: Mr. Cook, tell me what you believe

1 the essential elements of the Reggie Program are.

2 MR. COOK: There are a number.

3 First of all, I think the program offers the
4 possibility or offers not just the possibility but has
5 proven itself to be the most effective national recruiting
6 program for young lawyers in legal services that we have
7 had for the last 17 years. It gets at a base, a
8 national --

9 MR. VALOIS: How do you measure most effective?
10 I mean, how many Reggie lawyers are there in the program
11 right now, Mr. Cook?

12 MR. COOK: Well, I can't give you the number.
13 I think, generally, without knowing exactly the number,
14 about 200 Reggies, both first year and second year
15 Reggies, I think, presently are in the program.

16 MR. VALOIS: How many lawyers across the
17 country?

18 MR. COOK: Well, that is it, 200. I think, if
19 I'm not mistaken, about 100 --

20 MR. VALOIS: How many lawyers other than Reggie
21 Fellows?

22 MR. COOK: Well, if the figures are correct --

23 MR. MENDEZ: Is it correct that there are
24 approximately 4,800 to 5,000 lawyers?

25 MR. COOK: Yes, 4,500 --

1 MR. VALOIS: How did it become most effective
2 when -- if it represents whatever that is?

3 MR. COOK: The reason is that -- what you have
4 to take a look at is the history of this program over the
5 past 17 years. And the way to track that is to take a
6 look at the number of lawyers who have come into legal
7 services since 1967 via the Reggie Program. And I don't
8 know presently how many of us in legal services are former
9 Reggies but I suggest to you that there are large numbers
10 of people, large numbers of staff attorneys, directors,
11 managing attorneys, et cetra, who formerly were Reggies.
12 I was a Reggie in 1969. And that is one of the things
13 that I am talking about in terms of in answer to your
14 question, state some positive points about the Reggie
15 Program. So I think you can't just look at the 200
16 lawyers who are presently Reggies but you have to also
17 take a look at what the Reggie Program has contributed to
18 this program over the last --

19 MR. VALOIS: I am asking you to clarify for us
20 or to give us some information as to why the Reggie
21 Program is most affected.

22 MR. COOK: I was just about to do that and you
23 asked me about the numbers and I stopped to give you what
24 I thought the numbers were, 200, at the present time.

25 MR. VALOIS: I asked why it was most affected.

MR. COOK: All right.

1 What I mean by most affected is this: As I
2 stated yesterday, I think that this program, the Reggie
3 Program, has the capacity in the recruiting area to
4 recruit and attract, nationally, law students from
5 universities all over the country, that it has that
6 ability and it is unlike any ability that any local
7 program has. Over the years in the Reggie Program there
8 has been particular interest that local programs have had
9 in terms of their needs where they couldn't fill those
10 needs with their local recruiting. But because of the
11 Reggie Program's national scope, in many instances the
12 Reggie Program has been able to provide a specialized and
13 a particularized need as expressed by a local program who
14 could not have filled that need had it not been for the
15 national scope of the Reggie Program.
16

17 My point is that what has happened since 1967
18 is that you have a reputation of an organization that has
19 been built up and people are attracted to that program
20 mainly, in-large part, because of its history and because
21 of its reputation. I dare say a number of people would
22 not have even applied to the Reggie Program had it not
23 been for the reputation of that program. So that is what
24 I mean about the recruitment effort.

25 Point two, well, he asked me for a number -- I

could get --

2 CHAIRMAN DURANT: Mr. Cook, could you hold on
3 just a second, please?

4 (Discussion held off record.)

5 CHAIRMAN DURANT: Mr. Cook, if you would -- I
6 hear what you are saying and I think what you say is
7 important but I think at this point I'm going to ask you
8 that will you stop the comment and Mr. Uddo --

9 MR. UDDO: I want to offer an amendment to the
10 budget proposal motion. I still believe, and I would
11 agree with Mr. Cook, it would be precipitous to single out
12 the Reggie Program for heavier cuts at this time. I have
13 respect for the program and my amendment would be to treat
14 the Reggie Program the same as all other programs, not
15 single it out for any heavier cuts, preserve the part of
16 the amendment that brings it in-house because I think
17 right now that is the only thing we can do until we can
18 reflect upon other ways to deal with the Reggie Program.
19 My amendment is to keep it in with the rest of the
20 programs for proportionate reductions.

21 MR. MENDEZ: I accept the friendly amendment.

22 CHAIRMAN DURANT: Okay.

23 Do we want to call a question?

24 MR. VALOIS: I'll call the question.

25 CHAIRMAN DURANT: All right.

1 All those in favor then of Mr. Mendez's motion
2 with the friendly amendment say aye.

3 (A chorus of ayes.)

4 CHAIRMAN DURANT: All right.

5 All those opposed?

6 MR. SMEGAL: No.

7 CHAIRMAN DURANT: Okay, Tom Smegal should be
8 recorded as no.

9 The next item on the agenda -- wait a second --
10 is Gail Fogarty here? Do you want to speak on this issue?

11 MR. EAGLIN: I think --

12 CHAIRMAN DURANT: I'm sorry?

13 MR. WALLACE: Mr. White has a question about
14 what we just did.

15 CHAIRMAN DURANT: Okay.

16 MR. WHITE: The \$10 million for management and
17 administration, where should that come from now?

18 MR. MENDEZ: It stays.

19 MR. WHITE: It stays?

20 MR. WALLACE: Adjust the proportional changes
21 accordingly.

22 CHAIRMAN DURANT: Adjust the proportions all
23 the way down the line.

24 Would you please be brief?

25 MS. FOGARTY: Okay, I'll be real brief.

1 My name is Gail Fogarty and I am a counsel to
2 the House Judiciary Subcommittee on Courts, Civil
3 Liberties and Administration of Justice. This
4 subcommittee has very direct oversight of the corporation
5 in an authorization role and obviously has been seeking to
6 get an authorization bill through. I would like to state
7 the corporation, as you know, is not authorized. The
8 authorization continues for the corporation. It is the
9 extension of the authorization for appropriation that
10 hasn't been extended for several years except through the
11 appropriation process. So Congress has given you a lot of
12 support through the years despite the fact, for various
13 reasons, the Senate hasn't acted, the House hasn't gone to
14 the floor. This Congress -- because they knew the Senate
15 wasn't going to act then why should they spend three days
16 on the floor when the Senate wasn't going to act?

17 But there is a strong commitment to the
18 corporation and I think, I hope, all of you have that kind
19 of commitment, too. I was concerned -- one reason I
20 wanted to speak was when I heard Mr. Mandez mention
21 something about the regional offices, it surprised me
22 because when Chairman Rodino, who is chairman of the full
23 committee, had asked Mr. Bogart prior to a hearing in
24 September to please explain what, if any, plans are in the
25 works for the regional office and Mr. Bogart has not yet

1 responded to that request. And so it was very surprising
2 that Mr. Mendez would have stated that he thought it would
3 be a great idea to abolish the regional offices. It
4 almost sounded as though it was part of the motion. So
5 beyond that --

6 CHAIRMAN DURANT: I think -- if I might speak
7 to that. As chairman I think I did address that.

8 MS. FOGARTY: Right, and you did, but I wanted
9 to say that was somewhat disconcerting but it's even --

10 CHAIRMAN DURANT: Something else, too. I
11 should point out that Mr. Bogard and I do not carry light
12 minds on many issues. And don't assume from what Mr.
13 Bogard says. He speaks for the corporation in his
14 capacity as president and I speak as a member of the Board
15 and each of us, as the public can tell, has our own
16 separate views.

17 MS. FOGARTY: Well, that may be so. It would
18 be helpful to the committee, though, to have any plans
19 that you, Mr. Mendez, have heard about or have developed,
20 or developing, or Mr. Bogard or the staff are developing
21 in response to that request.

22 But the other issue that I think is a larger
23 issue, and it is unclear to me whether you finally voted
24 on this motion to go for the \$305 million with the limited
25 increase of 4.6 percent for basic field and to actually

1 dismantle, in a sense, or restructure the other support
2 programs. The Reggie -- not the Reggie because there was
3 a motion on that -- it seems to me that when you are
4 looking at presenting this to Congress, and I am just
5 saying this as someone who works on the Hill, with the
6 idea that maybe you come up later on with a supplemental,
7 what you have done today or what you seem to be doing is
8 actually drastically changing the structure of the
9 corporation.

10 And the fact that you are going to then come
11 back later and say we want another \$40 million or whatever
12 it is, you are not just adding on to what is the current
13 situation you would have already dismantled programs,
14 support centers, and other programs if you go ahead with
15 this plan. And, of course, right now you seem to be
16 limited in what you can do because of restrictions but I
17 think --

18 CHAIRMAN DURANT: Gail, if I -- Ms. Fogarty, if
19 I may ask you if the -- it is a follow-up really on
20 Professor Uddo's point.

21 Number one, I very much appreciate you being
22 here, very much so. Number two, if you do have very
23 specific information that when you -- I mean, use of the
24 word dismantle is -- I'm sure you use it advisedly and
25 with care but I would like to see -- you know -- as we say

1 in our trial -- you know -- what are the facts to support
2 the conclusion? And if you have that kind of information
3 or if those who are affected have it, as I asked Mr.
4 Nagler before, we certainly want to see that information.

5 MS. FOGARTY: Well, I would, of course, like to
6 see an accurate fact sheet on the budget mark. And I came
7 in too late and I wasn't given the one. But I think the
8 point is that we will certainly try to keep in touch with
9 you but if you take the action, which it seems as though
10 you are going to be taking today, at least one of the
11 speakers has suggested that you might be cutting back 40
12 percent on support centers or on other programs and to me
13 that seems to be a dismantling. Well, thank you very
14 much.

15 MR. WALLACE: Before you leave, Ms. Fogarty, as
16 one former House staffer or a current House staffer, I
17 appreciate you showing up. I realize the question may be
18 unfair because I, of all people, know how little influence
19 we really have in a staff capacity. But I would like to
20 know when you expect your subcommittee is going to conduct
21 hearings on our reauthorization?

22 MS. FOGARTY: Well, based on past historical
23 experience, I would say probably in March.

24 MR. WALLACE: Okay.

25 I hope we'll know a lot more and we certainly

1 can give you a different idea of what we want to do if we
2 learn. My recollection of what the House wants comes from
3 a floor debate in 1981. And I hope the House is going to
4 give us some updated guidance and bring this thing to the
5 floor so I can see whether my recollections are still an
6 accurate reflection of current sentiment in the House.

7 MS. FOGARTY: Well, 1981 was quite a while ago
8 and I think a lot of people have -- new people have come
9 to the House and old people have changed some of their
10 attitudes. But it would be helpful for us to know what --
11 it supports your rationale for cutting back so dramatically
12 on these other programs because it certainly isn't a
13 freeze it is a cut back and I think we would like to know
14 what some of that rationale is, thank you.

15 MR. WALLACE: I've stated mine, thank you.

16 MS. BERNSTEIN: Isn't that the kind of thing,
17 though, that is developed within the budget presentation
18 to Congress, it is a book that we generally develop these
19 kinds of things?

20 MR. MENDEZ: Is it fair to state that Ms.
21 Bernstein's statement is correct?

22 MS. FOGARTY: Well, I would think that you
23 would have to state some of your rationale, certainly, in
24 the budget request. But what I am saying is today, since
25 you have been on board for about two weeks, it seems like

1 it would be helpful for us to know why you really came up
2 with this dismantling. And it doesn't seem to me, sitting
3 here through this meeting, that I've gotten a clear view
4 of the basis for -- well, when I say dismantling I mean so
5 restructuring the other non-basic field services that you
6 are in a sense --

7 MR. MENDEZ: I don't want to quibble with your
8 language but I don't think that it is a major reconstruction
9 and it is certainly not a dismantling.

10 MR. UDDO: I have the same concern, Ms.
11 Fogarty. I mean, how is it that you use the word
12 dismantling?

13 MS. FOGARTY: Well, I think when you cut
14 somebody's budget by 40 percent, which is what I've been
15 told may occur, and I don't really know if Mr. Mendez has
16 any clear view of how much -- I'm not sure whether this is
17 the Mendez motion --

18 MR. MENDEZ: Let me ask you a hypothetical
19 question.

20 MS. FOGARTY: Okay.

21 MR. MENDEZ: Would it still be dismantling in
22 your vocabulary if it was cut 30 percent?

23 MS. FOGARTY: I think that would be a very
24 severe cut- back.

25 MR. MENDEZ: If it was cut 25 percent?

1 MS. FOGARTY: Well, I don't want to answer
2 that. I think I would have to know more information. But
3 it seems to me that --

4 MR. MENDEZ: Well, I --

5 MS. FOGARTY: -- any cut back, 10 percent or
6 more, could have very severe impact and perhaps even --

7 MR. MENDEZ: How do you come to that opinion?

8 MS. FOGARTY: Well, first of all you have the
9 cost of inflation that you would factor in just having a
10 freeze for many of these programs and support services
11 would be, in some cases, would result in cut backs anyway
12 in terms of the kinds of services that can be delivered.
13 But I think when you start cutting back on the actual
14 funds that they are getting that you are, obviously,
15 severely restricting what those programs can do and their
16 internal structure.

17 MR. UDDO: Ms. Fogarty, would you prefer an
18 across-the-board freeze with no additional money to basic
19 field program?

20 MS. FOGARTY: What I would suggest if I could
21 and I --

22 MR. UDDO: No, just answer my question. Would
23 you prefer an across-the-board freeze with no additional
24 money to basic field program?

25 MS. FOGARTY: I really can't answer that

1 question. I guess that I would prefer that you at least
2 consider maybe the 4.6 percent increase for all the basic
3 field programs you are talking about and so raise your
4 \$305 million to accomplish that. And I would say at least
5 then you would not be cutting back on existing services.
6 Thank you.

7 CHAIRMAN DURANT: Ms. Bernstein.

8 MS. BERNSTEIN: Very briefly, I just would say
9 that I think we need to look again at what actually has
10 been proposed here in terms of what -- you know, what is
11 going to be done for clients. And if the idea of the
12 corporation is to deliver legal services, then it seems to
13 me that where we are looking in fiscal restraint we should
14 look to the clients that are to get the delivery and the
15 most specific, the local level in order to do that
16 funding.

17 CHAIRMAN DURANT: I would also like to direct
18 Mr. Bogard to when we are conducting -- excuse me. When
19 we are conducting our hearings for our information in
20 terms of the allocation of carry-over money that all of
21 the individuals who have spoken here be given a clear
22 opportunity to address that allocation in terms of whether
23 or not that should come and how that should impact in
24 terms of these particular programs.

25 Mr. Nagler's point regarding migrant Indians

1 and native Americans. So if you would have the staff make
2 sure those individuals had a minimum our contact -- in
3 addition any others that would be appropriate.

4 MR. CHAPMAN: Could I just for a point of
5 information -- you requested that comments come and that
6 you would be receptive to comments on the disastrous
7 effects that this could have on some of the programs that
8 are --

9 CHAIRMAN DURANT: That's correct.

10 MR. CHAPMAN: Could I ask that copies of your
11 addresses and so forth be made available and that the
12 final --

13 CHAIRMAN DURANT: You may get them through the
14 corporation and all of our offices addresses. And I see
15 no objection.

16 MR. CHAPMAN: I asked from the corporation two
17 months ago for a printout on state support funding. I'm
18 still waiting for it. I don't know how long we're going
19 to have to wait just to get this printout.

20 CHAIRMAN DURANT: I will circulate a sheet of
21 paper, and we will all write our office addresses down and
22 give it to you personally.

23 MR. CHAPMAN: Okay.

24 Could I ask that the -- what was adopted today
25 also be distributed to all programs.

1 CHAIRMAN DURANT: Sure.

2 MR. CHAPMAN: Thank you.

3 MS. BERNSTEIN: Call the question.

4 CHAIRMAN DURANT: I call the question. We've
5 already voted.

6 MR. EAGLIN: That was on yours; is that
7 correct?

8 MR. MENDEZ: It was on the motion as amended.

9 MR. EAGLIN: Yes, but we still haven't got the
10 base.

11 MR. MENDEZ: No, but based on the friendly
12 amendment it was incorporated.

13 MS. BERNSTEIN: Could I ask for clarification
14 because I've not been out of the room but just a second?

15 CHAIRMAN DURANT: Yes.

16 MS. BERNSTEIN: You're saying that Mr. Mendez's
17 motion was voted on.

18 CHAIRMAN DURANT: Yes.

19 MS. BERNSTEIN: While you were gone.

20 MS. BERNSTEIN: Thank you.

21 Could I just ask that the record show I voted
22 against it. I would have voted against it had I been
23 here.

24 CHAIRMAN DURANT: Okay.

25 The record will so reflect that.

1 I am now circulating the piece of paper for Jim
2 Braude so that he will have our names and addresses.

3 MR. BRAUDE: I have your names and addresses.
4 Thank you.

5 CHAIRMAN DURANT: Okay.

6 Now, that's quick; huh?

7 MR. BRAUDE: Well, how about giving Mr.
8 Chapman --

9 CHAIRMAN DURANT: Oh, Mr. Chapman is the one.
10 I'm sorry. Can you give them to him?

11 Mr. Chapman, is that okay?

12 MR. CHAPMAN: Yes.

13 CHAIRMAN DURANT: Okay.

14 I'd like to move on to the next item on the
15 agenda, which is the report from the Operations and
16 Regulations Committee. Mike Wallace was our chairman.
17 And if you would proceed.

18 MR. WALLACE: Mr. Chairman and members of the
19 Board, our Committee on Operations and Regulations met
20 yesterday for the first time. I will briefly review the
21 meeting, and then after I've done that I will present the
22 items which we have recommended for Board action.

23 We received a report from the General Counsel
24 on the five new regulations which have been the subject of
25 some controversy and which have been the subject of

1 letters from members of the House and Senate asking that
2 they not be put into place. It has been the
3 recommendation of the Committee to the Board that all of
4 these regulations be republished in toto for further
5 comments and further consideration so that this Board may
6 take action at the close of the comment period.

7 There was another motion, and that amendment --
8 that motion, may I say, passed by a vote of four to zero
9 with one member absent. The second motion was to postpone
10 enforcement of those regulations during the interim from
11 now until the close of the comment period and until such
12 time as the Board takes action. That motion passed by a
13 vote of two in favor, one against, one abstention with one
14 absent. Those two recommendations, and we can take those
15 up in a moment -- the General Counsel was prepared to make
16 a report on other regulations which have become effective
17 since April 27th, 1984 in view of the time for our
18 committee meeting and in view of the fact that we know of
19 no controversy about other regulations.

20 We asked the General Counsel to postpone that
21 report until our next meeting. We received a report from
22 the Office of Field Programs with regard to monitoring the
23 field program. That office has compiled a new monitoring
24 book. I'm not quite sure what the proper technical term
25 for it is. But the objective is to have a systematic

1 examination of all of the field programs at least once
2 every 18 months.

3 The members of the Committee and I believe all
4 the members of the Board have copies of that draft
5 proposal. It has been circulated to the field programs
6 for their comments. It is anticipated that that will be
7 placed into effect as of the first of the year. No action
8 was asked on that, and we have no action to recommend to
9 the Board. That's a mere report.

10 Mr. Potack reported on private attorney
11 involvement, gave us some of the background of the
12 regulations which we had already voted to republish. I
13 will not repeat that for this Board since most of you
14 heard them already and since all of us will -- if the
15 Board accepts the Committee's recommendation all of us
16 will be reviewing those recommendations, those regulations
17 extensively over the next month.

18 So that completes our report. I would go back
19 to the start and present to the Board by authority of my
20 committee our recommendation that the Board republish the
21 five controversial regulations, 45 C.F.R.'s 1601, 1612,
22 1614, 1620, and 1622 for notice and comment on -- and
23 reconsideration at the appropriate time by the Board.

24 CHAIRMAN DURANT: Okay.

25 I will entertain a motion to --

1 MS. BERNSTEIN: We need a second --

2 MR. MENDEZ: I second it.

3 MS. BERNSTEIN: I would like to --

4 CHAIRMAN DURANT: Any motion on the
5 republishing?

6 MS. BERNSTEIN: Okay.

7 I'd like to speak to that motion for just a
8 minute. I am a little concerned by -- you know, we've
9 talked about messages, you know, in the board meeting.
10 I'm a little concerned that the concept of republishing
11 the entire text of all of those regulations sends a
12 message that we think the what the Board the last couple
13 of years did was somehow not quite sufficient, that Bob
14 McCarthy, Al Angrisani, Peter Ferrara, Don Santarelli, and
15 Ron Frankum were somehow less capable of analyzing
16 comments, less committed to the welfare of this
17 corporation than we are.

18 And I would make a recommendation to the Board
19 that we not republish all of those but rather that we ask
20 congress -- maybe even ask congress to schedule, you know,
21 a time for us to meet with them to talk about their
22 specific concerns. And if there is specific language that
23 they would like us to insert in specific instances then we
24 should consider as a board deliberately the process of
25 inserting that language.

1 If the Board decides that that's not what they
2 want to do, they just want to blank it, republishing of
3 all those regulations then I would submit that what we
4 probably ought to do is republish every regulation we've
5 got because during the time that the regulations were
6 adopted from the beginning of the corporation there were
7 senators and representatives who wrote us saying I'm not
8 too pleased with this one, whether it was a board that was
9 confirmed or a board that was serving in the same capacity
10 with the same legal authority at the President's
11 appointment.

12 And I don't think that we ought to be in a
13 position of sending a message that we somehow think that
14 either one senator's opinion or one senator polling a
15 group of his friends' opinions is a more important message
16 than other concerns that we've had from congress. And I
17 don't think we need to send a message that President
18 Reagan's appointments during the last two years acted in
19 bad faith. And I have a feeling that that's the message
20 we'd be sending.

21 CHAIRMAN DURANT: If I may.

22 MR. WALLACE: With the permission of the
23 Chairman of the committee proceed, sir.

24 CHAIRMAN DURANT: I would like to say that I
25 don't see that our desire to have those five regulations

1 republished in light of -- and I'm not just thinking of
2 congressional questions that were raised but in light of
3 some of the information that came out during yesterday's
4 committee hearing, in light of some of the meetings that I
5 have had with people in the field and whatever it doesn't
6 speak ill of or in any disrespectful way of any previous
7 board. It simply I think sends a signal that this Board
8 intends to with regulations that sweeping in terms of the
9 areas that they cover and whatever that this Board wants
10 to adequately review the impact, the effect of what in
11 fact those regulations do. And I don't see it in any way
12 disrespectful in the same way that when I disagree with an
13 opposing counsel in trial that I am saying anything about
14 his personal ability to handle a particular case.

15 MS. BERNSTEIN: Well, could we -- let me just
16 say in response to that though that there is an inference
17 here somehow that the process was somehow faulty, that
18 there wasn't a chance for the comments during that period.
19 And I attended -- for instance, with the bylaws I attended
20 a meeting at which Bob Rhudy was the only one there. We
21 had a meeting given over to comments from -- about the
22 bylaws.

23 CHAIRMAN DURANT: Did he wear a bow tie?

24 MS. BERNSTEIN: Yes -- no, I don't think so
25 that day. I'm not sure. I can't remember.

1 But I'm just saying that the process for
2 comments was completely taken care of. There was no lack
3 of opportunity for comments during that period.

4 CHAIRMAN DURANT: Mr. Mendez?

5 MR. MENDEZ: Mr. Chairman, I am a great
6 believer in continuity on boards. But I also have
7 examined each one of these regulations in detail, and I do
8 not believe that it's in the best interest of this board
9 to let these matters stand without complete examination.
10 There are some changes that I really want to see made.
11 There are, and I'll just be very clear. Also I'll be very
12 clear that I think that we are stuck with these for the
13 time being, and I want to give everybody a clear chance.
14 And I'm going to have my two cents worth on changing these
15 things and putting them -- some of them I think should go
16 back the way they were. And some of them I think there
17 are various other changes that ought to be done. But
18 based on the circumstances as they presently exist, not
19 what any prior board had, I think this is appropriate. I
20 also believe that we have these regulations right now, and
21 we've got to live with them.

22 CHAIRMAN DURANT: Mr. Valois?

23 MR. VALOIS: I am personally not particularly
24 interested in sending messages to anybody by what I do.
25 And I also frankly take some exception to people who infer

1 motives from what we say or what we do when we haven't
2 stated those. And that applies to members of the audience
3 as well. As far as I'm concerned, with respect to these
4 regulations, and I have read every comment, letter and
5 suggestion, criticism, and everything else that's been
6 supplied to us I frankly think that a lot of the criticism
7 is, number one, not well-founded, number two, not serious,
8 and number three, is sort of tweedle dee-tweedle dum as to
9 whether or not it does or doesn't do what some people say.

10 That notwithstanding, I am very interested in
11 hearing additional comment, tardy as it may be from the
12 members of the community or elsewhere. And I think we
13 should put this out for a further comment period so we can
14 hear what other people have to say about it.

15 MR. WALLACE: Mr. Chairman, if I may speak. I
16 fully appreciate the things Ms. Bernstein has said. And I
17 for one presume that the regulations were validly
18 promulgated, were done in good faith, and are good law
19 right now. That is why I was the vote against postponing
20 their enforcement, and I will repeat that vote when the
21 time comes today. I presume that the people acted in good
22 faith and did the right thing. At the same time filed
23 every regulation that's ever been published has had
24 problems in congress. This is a problem that still
25 exists. And the other problems are not presently on our

front burner.

1 I think that as a new member of the Board I
2 want to give congress and everybody else a chance to tell
3 me what they say about -- what they think about these
4 regulations. In the meantime I want them to be enforced
5 right down to the last comma.
6

7 CHAIRMAN DURANT: But the issue with the
8 question before the board is whether or not your motion is
9 only republished.

10 MR. WALLACE: Only to republish. I will
11 present the second recommendation once we've finished with
12 the first.

13 CHAIRMAN DURANT: Is there any other discussion
14 from the Board?

15 Is there any discussion from the audience on
16 the specific point of republishing?

17 CHAIRMAN DURANT: Okay.

18 All those in favor of republishing signify by
19 saying I.

20 (Voice vote.)

21 CHAIRMAN DURANT: Opposed.

22 (Voice vote.)

23 MR. WALLACE: Mr. Chairman, the second
24 recommendation of my board which I'll present and I'll
25 give Mr. Smegal the honor of moving is that these

1 regulations which we have just republished be the
2 postponement -- the enforcement of those regulations be
3 postponed until such time as the Board has taken action
4 subsequent to the end of the comment period. If I have
5 not properly stated that regulation, Mr. Smegal, I defer
6 to you and you may move it.

7 MR. SMEGAL: Thank you.

8 CHAIRMAN DURANT: State the motion.

9 MR. SMEGAL: I move that we postpone
10 enforcement of the five reprogramming regulations that
11 we've just voted to republish. If there's a second I'll
12 speak to it.

13 MR. EAGLIN: I second that motion.

14 MR. SMEGAL: While a great part of those
15 reprogramming regulations will not require any particular
16 action between now and the comment period it will require
17 a few months, there are some parts of those particular
18 reprogramming regulations that have an adverse effect on
19 programs, have an adverse effect on their ability to
20 perform and carry out their duties with respect to their
21 clients in the interim. And I think it's incumbent upon
22 this Board to place -- to delay the enforcement of those
23 particular regulations that we've now -- that we'll now be
24 republishing until such time as we have an opportunity to
25 consider all the comments and make a judgment of this

particular Board, the members of us that are sitting here.

2 CHAIRMAN DURANT: Mr. Uddo?

3 MR. UDDO: I would ask the General Counsel a
4 couple of questions if I may.

5 If we pass this motion, i.e., to postpone
6 enforcement of the five motion -- reprogramming that Mr.
7 Smegal is characterizing, the regulations that we have
8 just approved for republication, if we pass Mr. Smegal's
9 motion what regulations will then be in place in there
10 instead?

11 MR. BAGENSTOS: The same regulations. As I
12 understand the motion, you are not affecting the fact that
13 those regulations exist.

14 MS. BERNSTEIN: No, he's not talking about the
15 motion that the Board passed. He's talking about --

16 MR. UDDO: Let me talk.

17 MR. BAGENSTOS: That's what I'm talking about .
18 too. That's what he responded to.

19 MR. UDDO: The regulations would then be in
20 place.

21 MR. BAGENSTOS: Yes, sir.

22 MR. UDDO: And we are then doing what? We are
23 saying as a matter of policy we are directing the
24 corporation not to enforce the regulations which are then
25 in place.

1 MR. BAGENSTOS: That's correct. If I can
2 clarify that briefly. You can't under the terms of the
3 D.C. Code or under the terms of the Act affect the
4 existence of the regulations by any vote you take here
5 today.

6 MR. UDDO: Do we have any legal duty to enforce
7 regulations which are in place?

8 MR. BAGENSTOS: You have a judiciary
9 responsibility to the corporation. That can be
10 interpreted -- I think under the D.C. Act could be
11 interpreted in different ways.

12 MR. UDDO: Well, how would you interpret our
13 not enforcing regulations properly in place?

14 MR. BAGENSTOS: If you're talking about the
15 existence of existing regulations and instructing the
16 employees of the corporation not for a time certain to
17 enforce them, it is the opinion of the General Counsel's
18 office at least that you would have that right if you
19 acted in good faith for good cause to do so. The
20 existence I might say of the regulation is not at issue.
21 And I think the underlying duty of the programs is not at
22 issue.

23 MS. BERNSTEIN: Okay.

24 How would you interpret then the -- as I
25 understand it -- am I correct, Mr. Smegal, in one of the

1 organizations that you think would be adversely affected
2 by these regulations would be the National Youth -- by
3 some of these regulations.

4 MR. SMEGAL: One of the groups that would be
5 affected by these regulations is the Legal Services
6 Corporation, Leanne, of which you were a staff member up
7 until a few months ago.

8 MS. BERNSTEIN: Okay.

9 I just asked a question. Is that --

10 MR. SMEGAL: Obviously all the funded
11 recipients are part of this Legal Services Corporation.
12 Why did you ask that question?

13 MS. BERNSTEIN: The reason I asked the question
14 is because no member of the Board may participate in any
15 decision, action or recommendation with respect to any
16 matter which directly benefits such member or pertains
17 specifically to any firm or organization with which such
18 member is then associated or has been associated within a
19 period of two years. And that's from the Act.

20 MR. SMEGAL: Yes, what's the question?

21 MS. BERNSTEIN: I think your motion is out of
22 order because you may not -- you really cannot even
23 participate in any discussions.

24 CHAIRMAN DURANT: Hold on just a second.

25 Lunch is here. Why don't we distribute lunch.

1 We will take a five minute adjournment.

2 (Whereupon, a short recess was taken.)

3 CHAIRMAN DURANT: Our five minute recess is up.

4 The -- I'd like Mr. Bagenstos and General
5 Counsel to please give me an answer as to after a review
6 that I note took place prior to this meeting as to whether
7 or not any member of this -- the Board would be excluded
8 from voting under the conflict of interest provision,
9 voting on this matter.

10 MR. BAGENSTOS: No.

11 CHAIRMAN DURANT: Thank you.

12 MR. BAGENSTOS: I'll explain if you like.

13 CHAIRMAN DURANT: No. Remember you get paid by
14 the word.

15 Unless there are any other comments from the
16 Board at this point anyway I'd like to take some public
17 comments on the issue of Mr. Smegal's motion that was
18 seconded by Mr. Eaglin on the postponing of the
19 enforcement of the five regulations.

20 Could you identify yourself, please.

21 MR. MEYER: Yes, I am John Meyer speaking as an
22 individual. I'm the Former Deputy Counsel which explains
23 my interest in this.

24 It seems to me from my experience in this I've
25 never actually heard of a proposal of this sort. There

1 is, of course, a procedure for suspending a regulation.
2 But in that case you would have to polish in advance your
3 intention to suspend and then go ahead and do it. You
4 might even be able to do some emergency procedure where
5 you polish intention and did it in less than 30 days. I
6 don't know because it's quite unusual.

7 I think technically you need the 30 days. If
8 the -- suspending enforcement rather than suspending the
9 regulation doesn't fall into the category -- probably
10 doesn't fall into the category of a new regulation. But
11 it is a very strange concept because the -- essentially
12 when you have passed regulation, gone through the comment,
13 and made it final and the 30 days have elapsed. This is a
14 quasi-legislative activity. And a regulation of this sort
15 adopted by federal agencies has a force of law. We're not
16 a federal agency. So -- but effectively the courts always
17 interpret us just about the same way. And so they pretty
18 much have the force of law.

19 And the things that have the force of law you
20 can set them aside by procedure. Setting them aside by
21 saying we're not going to enforce them has the appearance
22 of irregularity. And furthermore, I don't know what the
23 legal consequences would be in case litigation arose
24 concerning a violation of these five regulations, whether
25 the suspension of enforcement could be cited as a defense

1 by a grantee that violated these regulations or not. So
2 you're setting yourself up for an unclarity and therefore
3 for a potential litigation problem as I would see it.

4 But from the perspective of the public the main
5 thing is that it is a very strange action and for a legal
6 body to take to suspend the enforcement of its own
7 regulations. I know there are difficulties in the
8 background of these regulations, problems with congress.
9 And therefore the proposal that already has been passed
10 certainly shows good faith. And it might be nice if
11 you'll get out from under them temporarily, but I think
12 they're creating more problems than you're solving by a
13 procedure of this sort. I would just recommend to you
14 that you not do it.

15 MR. UDDO: To your knowledge, Mr. Meyer, has
16 any court of competent jurisdiction declared any of these
17 regulations to be unlawful?

18 MR. MEYER: I haven't had a chance to research
19 this, and I don't believe any of the five regulations
20 listed have been declared unlawful. I know 83-9 which was
21 an instruction which is related but is not in this group
22 has been declared unlawful and in joint. I don't know the
23 exact status of that litigation.

24 MR. MENDEZ: What is 83-9?

25 MR. MEYER: It's an instruction to your

1 regulation.

2 MR. MENDEZ: I understand that it's an
3 instruction, but what -- is that the one on --

4 MR. MEYER: It's the PAI instruction as opposed
5 to the PR regulations.

6 MR. MENDEZ: Okay.

7 CHAIRMAN DURANT: Any other questions of Mr.
8 Meyer?

9 Thank you, Mr. Meyer.

10 Mr. Bagenstos, I have one -- you'll have to get
11 up because I don't have a -- just simply, when we go into
12 an executive session if you haven't already I would like
13 you to be prepared to discuss whether or not if on the
14 enforcement of the regulations if that in fact is the will
15 of the Board, whether or not the enforcement of them would
16 be contrary to law, any specific one.

17 MS. BERNSTEIN: Are you saying we're deferring
18 the rest of those --

19 CHAIRMAN DURANT: No, no, no. I'm just asking
20 him to be prepared to discuss that.

21 MS. BERNSTEIN: So we're going to pass on it
22 before we hear any --

23 CHAIRMAN DURANT: No, no. We're not, no.
24 We're just taking the prerogative and asking him to be
25 ready to talk about that one issue

1 MR. SMEGAL: If it gets to the executive
2 session.

3 CHAIRMAN DURANT: -- if it gets to the
4 executive session.

5 Would you like to talk? I can't remember your
6 name, and I apologize.

7 MS. EISENBERG: That's okay.

8 My name is Eleanor Eisenberg. I'm with the
9 Region 8 Project Director's Association, and I'd like to
10 speak urging the Board to support the motion to dispell
11 enforcement of the regulations.

12 We spoke somewhat at length yesterday regarding
13 the regulations and were told that we were not going to
14 get into specifics about the regulations. And I'd like to
15 do that to some extent although briefly today.

16 CHAIRMAN DURANT: Didn't I offer you
17 yesterday --

18 MS. EISENBERG: Yes, you did.

19 I would also like to comment that Mr. Rhudy was
20 asked where he could show specificity and lack of
21 objectivity. I think possibly both the content and the
22 process of the private attorney involvement regulation and
23 how it was arrived at may be one of the best examples of
24 the lack of objectivity.

25 The first board meeting of the Legal Services

1 Corporation that I attended was in San Francisco. At that
2 time the private attorney instruction was on the agenda.
3 And there were crowds in that hall from across the
4 country. They included the San Francisco Bar, the
5 California State Bar, the Los Angeles Bar, the Denver Bar.
6 The next day somebody from the ABA was expected.
7 Discussion was curtailed, and one of the members of the
8 Board said "Thank you all very, very much for coming.
9 We've gotten some information here which leads us to
10 believe obviously we do not have any information nor
11 sufficient information to take any action on raising the
12 ten percent guideline."

13 Despite that pronouncement I believe it was
14 within two weeks that the Board met again in St. Louis,
15 and the private attorney instruction was once again on the
16 agenda. The Board was asked if they had had any
17 additional information presented. The answer was no.
18 There was a resolution which had a blank in front of a
19 percentage mark, and the bottom line of the resolution
20 instructed the staff that they could if they felt it
21 justified increase at any time the required amount of
22 money to be spent on private attorney involvement. It
23 didn't say adjust. It didn't say reduce or increase. It
24 simply said increase.

25 At both San Francisco and St. Louis meetings

1 field programs, private bars, pro bono projects, private
2 attorneys stood up and said "Don't do this. It is ill
3 advised. You have no basis for it." President Bogard for
4 the first time yesterday I heard say that no, there was no
5 statistical information upon which the action was taken.
6 We know of no statistical information or any other
7 information that would possibly have justified taking an
8 action that the corporation was told by both the field and
9 the private bar and the organized bars as well as private
10 lawyers was ill advised.

11 There are programs, and again I'm sorry. I
12 cannot be specific because we did not do a survey of
13 programs. But I've heard from programs and of programs
14 that are going to be hard pressed to meet the 12 and a
15 half percent requirement.

16 MR. MENDEZ: Ms. Eisenberg, is the ten percent
17 ill advised as well?

18 MS. EISENBERG: The ten percent was probably
19 ill advised as a requirement, yes. The guidelines -- let
20 me also say this. I know of no practitioner in the Legal
21 Services field that does not recognize the importance of
22 working with the private bar cooperatively, of recognizing
23 the contribution that can be and is being made by the
24 members of the private bar. We have absolutely no
25 argument with that. The argument is that every legal

1 services program operates in an environment that is
2 unique. We have our own service communities. We have our
3 own clients who have unique problems. They may be very
4 different even in congruent counties. I know that's true
5 in California. We have different relationships with our
6 bar associations. And some counties, and probably in my
7 county we are far going to exceed the 12 and a half
8 percent requirement. Even before the requirement we had
9 very, very good relationships with our bar associations
10 and have always had panels of attorneys who could assist
11 our clients upon referrals. That's not true in my
12 neighboring county.

13 It doesn't make sense to have the same
14 requirement for every legal services program given the
15 differences in their individual environments.

16 CHAIRMAN DURANT: Ms. Eisenberg, I want to tell
17 you what is on my mind because I want you to address it.

18 I think that the issues that you raised are
19 extremely important because I think as came out as you
20 know in the committee hearings yesterday there maybe needs
21 to be some focus in terms of how you even calculate the
22 question of ten or twelve or whatever percent that anybody
23 is talking about.

24 In other words, how can you fairly determine
25 what costs are -- or the expenditures are relative to

1 meeting that kind of guideline, goal, regulation,
2 instruction, whatever. Let me tell you what I see is the
3 issue right here this afternoon. We -- one of the things
4 that is imperative for this body at least as long as I am
5 chairman is that we try and act properly according to the
6 rules that when there is time for comment in the -- that
7 there's not a Board meeting two days later or a day later
8 that simply acts -- I'm sure that other boards maybe can
9 act that quickly. I cannot. But the issue here it seems
10 to me is whether or not a duly promulgated regulation
11 should be the enforcement of which that this Board should
12 take formal action to suspend the enforcement of the duly
13 promulgated law. And I am deeply troubled by that
14 because -- I mean -- you know it's the old thing in A Man
15 for All Seasons, you know, with Roper and if all the trees
16 were cut down and the devil was upon you where would you
17 be then. And I see to some extent the same issue here
18 that we have a procedure that has been established and
19 that procedural rights are very much substantive rights
20 and that, therefore, the process that we go through is
21 imperative that we -- you know, even though we may not
22 particularly -- we may want to get to a particular end
23 that we not do it to the extent of what I think are
24 broader principles.

25 So what I want you to focus a comment on is

1 that I see these frankly as duly promulgated regulations.
2 What the motion asks for with all due respect to my fellow
3 member of the Board is is that -- and fellow admirer of
4 more that we basically not enforce as -- that we take some
5 formal action not to enforce the law. I don't want to get
6 into -- I mean you can talk about it if you want, but in
7 my mind is not the substantive things of whether we should
8 have ten or twelve or whatever percent because we've
9 already demonstrated that we're republishing. And we want
10 to get the comments. And I say to you and I say to anyone
11 else assembled I want to hear those comments.

12 MS. EISENBERG: In the first instance --

13 CHAIRMAN DURANT: Here the issue is more
14 narrow.

15 MS. EISENBERG: In the first instance let me
16 say this. I don't think that giving lip service and sort
17 of prima facie adherence to the law means that these are
18 genuinely duly adopted regulations. For instance, when
19 you have over a hundred or two hundred comments that come
20 in from the field, from members of congress, from bar
21 associations written, timely filed and a Board of
22 Directors meets the next day and they are under a legal
23 obligation I believe to genuinely consider and deliberate
24 whether or not to adopt a regulation given those comments
25 you're not being asked to take acts that are not

1 necessary. You're not asked to publish something and get
2 comments and then not read those comments. It doesn't
3 make sense. The law doesn't require that you take acts
4 that are foolish and not going to be followed through on.

5 Therefore, on that basis I would even question
6 whether or not these were really validly adopted.

7 Secondly, I think even on the basis of their being ill
8 advised that you ought to consider not enforcing them.
9 That's a separate issue I realize from whether or not they
10 were validly adopted. But I think their ill advisedness
11 in itself is a basis. For avoiding problems you're just
12 going to be compounding their problems. Not only are
13 there questions about their being ill advised, there are
14 ambiguities. Nobody understands them. That was pointed
15 out with respect to the lobbying regulation in Window Rock
16 when it was adopted. My favorite quote from that meeting
17 is "We're not here to discuss policy. We're just here to
18 run these regulations through." That's a quote from a
19 Board member.

20 We pointed out problems. They said "Yeah,
21 that's a problem." And we said well, don't adopt it now.
22 Straighten the problem out first. They said no, we'll
23 adopt it and then we'll straighten it out. They haven't
24 been straightened out.

25 CHAIRMAN DURANT: Ms. Eisenberg, let me say

1 something. I think you raised very good points. You
2 know, some of the comments that I'm sure were made on the
3 floor of the Senate or the House are probably -- I've got
4 to be careful. You know what they say about laws and
5 sausages. You never want to see how they're made.

6 But the point is is that once it seems to me
7 that -- I hear what you say in terms of, you know, were
8 they validly passed. But to my knowledge at this point
9 there's been certainly no -- on these private regulations
10 there has certainly been no litigation or ruling by a
11 specific court in terms of the promulgation of them. I
12 have asked Mr. Bagenstos to deal with a more particular
13 issue that we will take up in executive session under
14 litigation. But in terms of that issue I don't know of
15 anything that specifically is --

16 MS. EISENBERG: I would suggest to you that
17 should they be enforced -- for instance, if a program was
18 not meeting its 12 and a half percent obligation that
19 litigation might occur challenging the content and the
20 process.

21 CHAIRMAN DURANT: I understand that.

22 MS. EISENBERG: And that's something that you
23 ought to think about avoiding.

24 CHAIRMAN DURANT: Right. And I see that issue
25 in terms of that question as something that in the order

1 of things would be addressed after a resolution of this
2 first one.

3 MR. MENDEZ: Mr. Chairman, in terms of the
4 overall difficulties you have, is it fair for me to state
5 what these -- put these words in your mouth?

6 Does the real key provision that you really
7 want to see, not in force at the present time, is the ten
8 percent, twelve and a half?

9 MS. EISENBERG: No. I just started with that
10 one because it was first discussed yesterday.

11 Let me just point out some difficulties with
12 the priorities. It talks about and somebody on the Board
13 pointed out that at one point it uses substantial equal
14 access another point reasonable equal access. We have
15 asked -- we do not know what reasonable access means.
16 Does it mean equal service in every county? That's
17 nonsense.

18 CHAIRMAN DURANT: I -- Ms. Eisenberg, I know
19 the -- and I will specifically make the request of the
20 staff, you know, I think -- that question has always come
21 up, it seems to me, whether the regulation is a HUD is a
22 HHS or whatever. And each one has its own particular
23 problems.

24 And I will -- I am sure that the staff knows
25 that it will be the, I think certainly, the Chairman's

1 will that great care, sensitivity and understanding the
2 exercise on questions of that sort.

3 MS. EISENBERG: I think the field would fear
4 that that would not be sufficient. And I don't think it's
5 a good way to practice.

6 CHAIRMAN DURANT: We can only do -- we can't do
7 all things at once.

8 MS. EISENBERG: I won't go on. There are
9 problems with each of the regulations. There's a problem
10 with the bylaws that, for instance, that in California I
11 don't always get the agenda in time for turn around mail
12 to reach you with my request to be heard.

13 CHAIRMAN DURANT: I --

14 MS. EISENBERG: There's a problem with the
15 lobbying and other activities that refers to organizing,
16 and Window Rock the discussion was cut off. I said I have
17 a point of clarification, they said write to us. That was
18 in April, I have not yet had a response to my letter.

19 Asking is organizing such as tenants in a
20 multiple housing unit to take forth their grievances
21 together for rent strike or whatever other legal activity
22 and recourse is available to them. Is that precluded from
23 the kinds of activities we can engage in. I have not had
24 an answer to that letter of April yet.

25 I don't see how you can enforce these when we

1 don't have proper notice of what they mean.

2 CHAIRMAN DURANT: Okay.

3 Thank you very much, Terry.

4 Mr. Roche.

5 MS. EISENBERG: You're welcome.

6 CHAIRMAN DURANT: While you're walking up here
7 if we can we can call it that.

8 Mr. Smegal?

9 MR. SMEGAL: Thank you, Clark.

10 I share with you your concern about Thomas More
11 but I don't share with you your interpretation of what
12 we're doing here.

13 Congress passes laws. And this corporation
14 promulgates regulations. Now, if I look at what we're
15 talking about, for example, part 1614 which is entitled
16 Private Attorney Involvement. The best I can determine it
17 finds its genesis in 107(A)(3), which reads, "Insure the
18 grants and contracts are made so as to provide the most
19 economical and effective delivery of legal assistance to
20 persons both in urban and rural areas."

21 Now that's all we had until an instruction was
22 issued in 1983 -- January 1, 1984, instruction 83-6.

23 MS. BERNSTEIN: That's not correct.

24 MR. DURANT: Let me finish and then you can
25 correct me.

1 We now have a part 1614, which did not exist.
2 There was no corresponding part. I've got a set of parts
3 that were sent to me by the Corporation and the cover
4 sheet shows -- doesn't even show a 1614 in it.

5 What we're talking about here, Clark, is
6 promulgating regulations not passing laws. The law's
7 there. The Act has been there since 1974. It's been
8 there to read, it's been there to violate, it's been there
9 to follow.

10 What we're talking about is an over reach on
11 the part of regulations. Now I have a good friend who was
12 on that last Board, LeaAnne. You keep referring to Bob
13 McCarthy, I know him, you know I know him. We're not
14 impinging upon his integrity or his ability. We are a
15 different Board, we are looking at these regulations.

16 The purpose of this motion that I've made is to
17 postpone enforcement of a regulation that did not exist
18 before this one was promulgated.

19 MS. BERNSTEIN: Well, I -- you know, just in
20 terms of response to -- I don't think that we're in a
21 position to question, as Clark pointed out, the procedures
22 under which we govern the corporation because these
23 procedures, the promulgation of regulations were adopted
24 long before that board got there, long before the previous
25 board got there.

1 And when we took our appointments and agreed to
2 be members of this Board we signed a qualification notice
3 which says that as a member of the Board that I will carry
4 out my responsibilities to the best of my abilities and
5 pursuant to law.

6 Now, to the extent that the publication is
7 there, the publication is required. No more can we adopt
8 something without having the 30 day notice, I don't think
9 we can go around getting rid of it when you start talking
10 about the substance of the regulation. I think that Mr.
11 Smegal's point would be a lot different if the Board were
12 deciding that we were going to get rid of a regulation
13 which guarantees 1611 rights.

14 We're just going to suspend the enforcement of
15 that while we do a little look at whether the grantees are
16 doing a good job out there.

17 The point is we can no more get rid of a
18 regulation without following the proper procedures that we
19 can adopt them.

20 MR. MENDEZ: Mr. Chairman?

21 CHAIRMAN DURANT: May I -- with the permission
22 of the Board, since we have a disabled person --

23 MR. ROCHE: I'm well planted so keep going.

24 CHAIRMAN DURANT: Are you all right?

25 MR. ROCHE: Yes.

CHAIRMAN DURANT: Mr. Mendez.

2 MR. ROCHE: I'll fall below the thing.

3 MR. MENDEZ: Just one quick item.

4 I've asked legal counsel to provide me with the
5 genesis of the ten percent rule and this was originally
6 promulgated on December 9th, 1981 to take effect January
7 14th, 1982. And was subsequently amended in 1984 by
8 another instruction and then was amended again by a
9 regulation in 1984. That is the genesis.

10 In 1983 FY83 was the first date that the ten
11 percent rule came into effect.

12 MR. SMEGAL: Well, I'm talking about the twelve
13 and a half percent rule, I'm talking about 1614; isn't it
14 right, Peppi? It didn't exist before it was created.

15 MR. MENDEZ: That's correct.

16 MR. SMEGAL: All right.

17 MR. MENDEZ: But we had instructions before.
18 And I just wanted to clarify the record so that we're all
19 on --

20 MR. SMEGAL: Instructions that were not
21 available for public comment; isn't that correct? Mr.
22 Bogard advised us that yesterday was no period for a
23 public comment on instructions.

24 There were public comments but none in a public
25 comment period; isn't that right, Don?

1 MR. BOGARD: There were comments made and
2 received. There's no requirement that instructions be
3 published for public comment.

4 MR. SMEGAL: And there was no period for public
5 comment?

6 MR. BOGARD: I don't believe it was published.

7 MR. SMEGAL: All right.

8 Are you aware -- it was published, wasn't it?

9 MR. POTACK: Yes, it was published.

10 MR. SMEGAL: But for public comment?

11 MR. POTACK: I don't know what section of the
12 Federal Register it would be published in.

13 MR. MENDEZ: I have the publication.

14 MR. POTACK: I believe it was in the --
15 section.

16 MR. BOGARD: I think it was adopted and
17 published as an instruction but --

18 MR. SMEGAL: Well, I would assume there is some
19 obligation upon the corporation to publish instructions.
20 I mean, we don't keep them a secret, do we?

21 MR. POTACK: No.

22 MR. MENDEZ: No, I think they would have gotten
23 out.

24 MR. SMEGAL: Great.

25 CHAIRMAN DURANT: Terry. Mr. Roche?

1 MR. ROCHE: Mr. Chairman, I would like to try
2 and urge an old lawyers trick of applying a course of
3 logical conduct to a cloudy legal issue for you to work
4 on.

5 I think the only person in the room that has
6 tried to get a specific legal handle on the question for
7 you is Mr. Bagenstos. And I think I heard him say, and
8 please correct me if I'm wrong, that under the D.C. Code
9 it really comes down to a question of how you as a Board
10 best discharge your fiduciary duty.

11 Now, none of these, in response to Mr. Valois'
12 question, none of these particular regulations, as far as
13 I know, has been subject of a law suit. But that's not to
14 say that in the next month or so they might not be.

15 And the corporation so far, and I don't mean
16 this disparagingly, doesn't have a whole lot to show for
17 the probably million or so dollars that
18 in a conservative use of the discretion which you have in
19 order to discharge your fiduciary duty. You're just
20 simply trying to avoid any further questions and costs
21 which might create a money drain that you'd like to avoid.
22 And that seems to me to be sound reasoning. Sound
23 discharge fiduciary responsibility.

24 And the negative side of that, you all know a
25 lot more about corporate law than I do, is the question of

1 whether or not given an opportunity to seek a moratorium,
2 if you will, that could create review. And not having
3 taken it, if that, in turn, ends up in some unnecessary
4 funding or loss of funding -- loss of money through legal
5 fees is that not a violation of fiduciary duty?

6 I honestly don't know the answer to that but I
7 urge that you take sort of a practical approach to
8 construing this vagary in making your decision and use
9 some conservative discretion.

10 CHAIRMAN DURANT: If -- hold on a second
11 because I think Mr. Wallace has a question.

12 MR. ROCHE: Sure.

13 MR. WALLACE: Well, it's not a question but a
14 response to what our obligations are in the face of a
15 potential law suit.

16 I'm not sure I know everything about this
17 corporation's litigation history, but I believe what it
18 boils down to is the people who are getting this
19 corporation's money have standing to sue us to keep it
20 coming.

21 Other people, like members of Congress, who
22 want to sue us for not enforcing regulations don't have
23 standing to sue us. So -- I mean, if we do -- if we pass
24 Mr. Smegal's motion, you're right. We won't get sued
25 because nobody's got standing to do it. But it seems to

1 me the fact that nobody can sue us makes it all the more
2 important for us to decide as a matter of independent
3 judgment whether what we are doing is right.

4 If we are the only power on Earth that can tell
5 us -- that can decide that these regulations ought to be
6 enforced because we don't do it, nobody can sue us to make
7 us.

8 It seems to me we have all the more reason in
9 the world to look at what Congress intended, to look at
10 what we think the proper procedures are and to do it
11 because there's nobody out there to correct us if we vote
12 for Mr. Smegal's motion and we're wrong.

13 But I think that puts all the burden on us.
14 And it's not just dodging law suits it's discharging our
15 duties as best we see it. And the way I see it, these
16 regulations may not be smart but they're valid, and
17 they've got to be enforced.

18 CHAIRMAN DURANT: But, Mr. Roche --

19 MR. ROCHE: I think -- may I just respond one
20 bit. I mean, without getting into that very naughty
21 standing question which is a bute.

22 I think what I've heard Board members say and
23 public members say is that you and we have enough question
24 not only about the procedures with which these regulations
25 were adopted but with their consistency with the Act and

1 various appropriation riders.

2 That really the answer to your question, it's
3 sort of a circular question, the answer is we need to look
4 at this a little bit more carefully.

5 CHAIRMAN DURANT: Terry, let me ask -- let's go
6 right to that point. I agonize, believe me -- you know I
7 consider the public comment and these things to be very
8 helpful and I think it's also reflective that this Board
9 does, to, in a variety of things even that we've done
10 today. I've agonized very hard over the last week when I
11 really began to focus on this question as to where to go
12 and what to do.

13 Ultimately, it really came down to -- you see
14 you make the distinction in terms of the exercise of
15 discretion and the circular thing. It really isn't
16 circular. There's a linear aspect to this that the
17 ultimate rule, the ultimate principle is the first one
18 about if it is truly promulgated and with all due respect
19 to Ms. Eisenberg because frankly I have appreciated her
20 counts today and yesterday. I don't think there is a
21 serious question regarding -- there may be prudential
22 questions but not legal questions in terms of the
23 promulgation of those regulations and given that I would
24 have a very hard time being in a position where I am
25 Chairman of the Board of a corporation that we are trying

1 to -- you have a ship that is tilted and to put it right
2 again that even though I may want a particular end to
3 trample on the way to get there, I just don't want to do
4 that.

5 The other thing is that there are two levels of
6 discretion. There are levels of discretion that go into
7 the question you're asking as to exercise discretion and
8 by that you mean our judgment in voting for Mr. Smegal's
9 motion. The other element of discretion is in terms of
10 judgment as to particular facts in relation to the
11 application of the regulations.

12 Now it is obvious that when Ms. Eisenberg says
13 that, you know, well -- or somebody said yesterday during
14 the meeting, well, all of these designed to gotcha. I
15 know I speak for myself and I think the rest of the Board
16 that we're not approaching things with that attitude at
17 all and that we do intend, you know, to review, you know,
18 things as they go along so that to try and if you will
19 break that cycle of distrust but it's a two-way street.

20 I think that we have demonstrated -- this Board
21 anyway -- exactly how it is going to be approaching those
22 kinds of things and as I say I guess the bottom line for
23 me anyway comes down to that I think I would violate a
24 higher principle to achieve this other end and if I
25 violated that higher principle it would undermine the

1 ability to do anything else in my judgment that we wanted
2 to do during the course of our surveys whether it's one
3 year, three years or whatever it is.

4 MR. ROCHE: The only response I can make to
5 that is to remind you that by saying that you would not
6 enforce these regulations for awhile, you are not saying
7 that you would not enforce the act which is the bottom
8 line which is what Congress is most interested in.

9 CHAIRMAN DURANT: No. I think -- go ahead.

10 MS. BERNSTEIN : Let me respond to that. If
11 you would turn to part 1618 of our regulations which were
12 then duly promulgated and are not under concern, they are
13 not one of the ones questioned. This is a section of our
14 regulations that relate to the enforcement procedures for
15 the corporation as it relates to our grantees and in that
16 regulation it states that as used in this part Act means
17 the Legal Services Corporation Act or the rules and
18 regulations issued by the corporation. Rule and
19 regulations rise to the same level of authority as the
20 Act.

21 Now unless you're going to question 16182 which
22 was passed several years ago, long before President Reagan
23 made any appointments to this Board, then I don't believe
24 that you can ask us to not enforce certain sections of our
25 binding statute.

1 MR. ROCHE: I'll leave it to General Council
2 the analysis of that one but I think you understand my
3 point.

4 CHAIRMAN DURANT: Thank you, Terry, very much.
5 Is there anyone? John.

6 MR. MOLA: If I can speak very briefly in a
7 personal capacity and not representing any organization.
8 I spoke yesterday about some of the very dire consequences
9 of enforcement of this Act and I would support Mr.
10 Smegal's motion and understand the legal quagmire that
11 you're in in this situation.

12 If the Board were not to pass the motion, I
13 would suggest that perhaps just to clear the air and hold
14 this period until we can resolve these issues, a harmless
15 period perhaps taking on the Chair's suggestion, a
16 resolution of the Board or a sense of the Board that the
17 staff of the corporation should go very slowly should they
18 take any action adverse to the interest of grantees or
19 contractors that might involve any of the regulations
20 under question. I think that would be a gesture that
21 would carry out all the objectives of everyone that has
22 been participating in this discussion. Should the motion
23 fail a sense of the Board resolution I think would quell a
24 lot of my personal fears about 12.5 or some of the
25 legislative administrative advocacy questions that we were

1 talking about yesterday.

2 CHAIRMAN DURANT: Okay, thank you, Mr. Mola.

3 Any other public comment? All right, do you
4 recall the question on the --

5 MR. BOGARD: May I make one comment?

6 CHAIRMAN DURANT: Oh, I'm sorry, please.

7 MS. BERNSTEIN : I'll withdraw the call.

8 CHAIRMAN DURANT: Did you withdraw the call?

9 Thank you.

10 MR. BOGARD: I just want to point out one
11 additional point to you which has not been raised thus far
12 and that is on the basis of 1606 Regulation which is
13 Termination of Funding. There is provision in 1606 that
14 says that if termination is warranted it can't be done on
15 the basis of a rule regulation guideline, et cetera, that
16 was not in effect at the time the grant was issued.

17 If you would suspend enforcement of the
18 regulations and if there would be some violation under
19 those suspended regulations which would rise to the level
20 of a terminable offense then I don't believe there would
21 be a basis for termination under 1606 because the rule or
22 regulation would not have been in effect.

23 I'm not suggesting that there are going to be
24 violations or anything like that. I'm just saying I think
25 it would be very difficult to proceed with that sort of an

1 action if the regulations was not in effect at the time
2 the grant was issued which is going to be as of January
3 1st.

4 CHAIRMAN DURANT: Do you call the question, Ms.
5 Bernstein?

6 MS. BERNSTEIN: If we can --

7 MR. SMEGAL: Just one final comment. We have
8 been advised by counsel that our proper exercise of
9 authority authorizes us to postpone enforcement of these
10 regulations.

11 MS. BERNSTEIN: Only if we're acting in good
12 faith and I know -- you know, that's --

13 CHAIRMAN DURANT: I'm going to call the
14 question.

15 MR. SMEGAL: LeaAnne, I don't act any other
16 way. I don't know about you.

17 CHAIRMAN DURANT: I am going to call the
18 questions. Mr. Smegal's motion was if I may state it that
19 we postponed the enforcement of the five regulations
20 reported out of committee and I want to do this on a roll
21 call basis. Just to start differently, Mr. Valois, yes
22 or no.

23 MR. VALOIS: No.

24 CHAIRMAN DURANT: Wait a minute. No?

25 MR. VALOIS: No.

1 MR. MENDEZ: No.

2 MR. WALLACE: No.

3 MS. SWAFFORD: No.

4 MS. MILLER: No.

5 MR. EAGLIN: Yes.

6 MS. BENAVIDEZ: No.

7 CHAIRMAN DURANT: No.

8 MS. BERNSTEIN : No.

9 MR. UDDO: Yes.

10 MR. SMEGAL: Yes.

11 CHAIRMAN DURANT: The motion fails.

12 MR. EAGLIN: You have somebody trying to get
13 your attention.

14 CHAIRMAN DURANT: Mr. Rhudy.

15 MR. RHUDY: Thank you, Mr. Durant.

16 The vote on the motion just before you was to
17 suspend the operations of the regulations and request an
18 opportunity to speak at this time are deferred until you
19 after you take an action on that. I wonder if there would
20 be discussion or any consideration as opposed to the
21 action just voted upon temporarily rescinding the
22 operation of the regs in a way that can legally be done.

23 I think under legal opinion that I have seen
24 and had some access to until such time as the other regs
25 were republished and were re-adopted by this Board and if

1 there's any interest in this, Mr. Steve Brown has gotten
2 some legal opinion. I think it's compatible with what you
3 heard from Mr. Meyer and it may not be incompatible with
4 what Mr. Bagenstos has indicated that may be of interest
5 to you.

6 CHAIRMAN DURANT: Mr. Rhudy, let me -- I'm
7 speaking only for myself. I think that the -- I hear very
8 much what is being said by John, by you, by Terry and
9 others. I think the staff is also present in the room and
10 as is the president of the corporation. I think the staff
11 is well aware of the sense of this Chairman of the sense
12 of this Board, the process that we are going through that
13 we are looking to have a thorough comment period where
14 there will be comments I hope would come in not only
15 through the regular channels but if perhaps there should
16 be an opportunity to for individual members of the council
17 be present at a particular time to hear a particular
18 thing. You know how Professor Uddo and I like
19 particularity in certain kinds of things so that those
20 kinds of -- the impact of the effect of those regulations,
21 you know, could be had.

22 I don't -- what I am trying, frankly, to stay
23 away from is that I don't want us -- Mr. Roche mentioned
24 the thing about litigation or, you know, the concerns
25 about that and whatever. What I would prefer is that we

1 would simply -- I think attitude is more important than
2 sometimes other things and I think that attitude at least
3 as I say as far as this Chairman is concerned and I think
4 the Board is concerned is clearly reflected.

5 If there are particular problems regarding this
6 period of time, you know, one of these regulations are in
7 effect, Mr. Bogard knows that I want to know about it. I
8 think that's in my judgment anyway where I want to leave
9 it.

10 MR. RHUDY: All that I was -- I think I
11 understand that. All that I was suggesting is I think
12 there is a way in response to some of the concerns I heard
13 raised regarding this motion to temporarily rescind them
14 in a legal way that doesn't raise the corporation subject
15 to law suits, et cetera and that was not specifically
16 discussed. I wondered if there was any interest in
17 considering that as a contrary course.

18 CHAIRMAN DURANT: Well, --

19 MR. SMEGAL: I thought I heard Pepe ask for
20 that yesterday.

21 CHAIRMAN DURANT: Well that's what I was just
22 going to -- is that your --

23 MR. SMEGAL: Why haven't we been told that?

24 MR. MENDEZ: I didn't reraise it today. Let me
25 just say subsequent to yesterday I've re-examined 1618,

1 the enforcement procedures. That's what we've -- really
2 that's the essence of what this is. It's my sense and I'm
3 not going to ask the Board but it's my sense that I am
4 telling the President where I'm coming from and it says in
5 there to do it by informal procedures if there's problems
6 and I want them very informal and I want to know about
7 those procedures and I'm very troubled about these
8 regulations but I also believe that you can't violate the
9 law in something that you don't like simply because you
10 don't like it.

11 Based on this information and based on the
12 sense of the Board this is where I'm coming from. I will
13 also tell you that in my sense of what comments are I've
14 read a lot of th comments and now I'm going to direct this
15 to John and to you. If you want besides comments it might
16 be wise to draft some potential statements about what
17 regulation you think is acceptable to you. You can tender
18 it to me and I'll look at it.

19 I've seen enough of your comments to say where
20 it's illegal and it's bad and that is not very helpful.
21 Do you understand what I'm saying? When we're asking for
22 comments, we want substantive comments.

23 MR. RHUDY: I think we've tried to suggest that
24 we think are legal and effective and proper as in addition
25 to suggesting areas that we think are arbitrary and

improper. I will certainly take it under advisement.

CHAIRMAN DURANT: I think what Mr. Mendez is saying in particular in the process of examining the existing regulations is that -- I saw John nodding his head over there that you make a concerted effort rather than to take the position I think that Mr. Mendez said this isn't good. It doesn't do any good to offer as Mr. Cotton said in a letter to make construction suggestions and how the purpose would be achieved consistent with rather than just simply to -- I mean, you know, typically to enjoy these kinds of things.

MR. MENDEZ: May I make a suggestion?

CHAIRMAN DURANT: Surely.

MR. MENDEZ: I would suggest that two or three major groups get together and discuss this and see if you can come up with the uniform proposals on these. You can tender them to us and we can examine them. That to me at least as far as I'm concerned -- I'm speaking only for myself that would be very helpful to me. If you can come in with a fairly uniform voice on some of these things and if they're reasonable.

MR. VALOIS: I think, Mr. Rhudy, you all are in the -- when I say you all I mean those of you who are on that side of that table have got a particularly good opportunity now. I mean you know what the old reg was,

1 you know what the newly promulgated reg is, you hopefully
2 have something in mind as to what is wrong with it and
3 you're an ethic in a good position this time at least to
4 write it out, tell us what it is, propose -- don't give us
5 propaganda. Write the reg out that you think accomplishes
6 what we need to accomplish and what you think is
7 reasonable.

8 MR. RHUDY: I appreciate the action of this
9 Board very much and I'm sure everyone here does as well to
10 republish the regs and provide an opportunity to the field
11 and my organization and others to comment -- I'm sure
12 we'll take the suggestions that you're raising now to not
13 only raise the concerns of -- that were raised in the past
14 by comments that we though were created in terms of the
15 application of the regs without reason of judgment, et
16 cetera, but to suggest by the regs I think that I do
17 appreciate your --

18 CHAIRMAN DURANT: Mr. Wallace.

19 MR. WALLACE: I want to follow-up with Mr.
20 Valois said because as I understand it except for the
21 private attorney involvement regulation, the rest of these
22 regulations were already enforced. PAI comes in first of
23 the year.

24 You had experience under the old regulations
25 and you've now had some experience under the new

1 regulations. I want to know what you can't do now that
2 you could do before. I want to know why you think
3 Congress intended you to keep doing that and having
4 written statutes and having written committee reports, I
5 want to see more than committee reports. I mean I want to
6 see what Ken Kramer said in 1981, I want to see what
7 Lungren said, what Sensenbrenner said, Larry McDonald said
8 and what Dan Daniels said, members of both parties because
9 they had some intentions here, too,

10 If you can convince me that a majority of
11 Congress feels that you ought to keep on doing things
12 you could do before that you can't do now, fine. But I'm
13 telling you what kind of a broad demonstration you're
14 going to have to make to me to tell me the sense of
15 Congress. And quoting the committee report "I promise you
16 right now is not going to do it."

17 MR. RHUDY: I think that we had sited in the
18 past your comments to relevant legislative history that
19 properly sited to, we'll certainly continue to do that.
20 My concern has been consistently over the past many
21 months that action has been taken by previous Boards with
22 no citation to authority, with no citation to facts on the
23 ground to justify it.

24 I think the primary body for justify what
25 actions are taken by this body, your predecessor body

1 relies on them yourselves but I certainly appreciate the
2 opportunities you're giving. The major point, though, in
3 terms of the operation of these regulations, until such
4 time as you've gone through the republication and re-
5 adopting whatever regs and whatever format you adopted
6 that time. I think the regulations could be legally,
7 properly rescinded by a publication in the Federal
8 register prior to the time that you republished the
9 regulation.

10 I assume from what I've heard in the same form
11 they currently are in effect although I would suggest that
12 you consider making some changes prior to the time you do
13 that but that you public the Federal Register a notice of
14 rescission of the operation of these regulations --
15 rescinding the regulations until such time that you
16 adopted new regulations.

17 I think Mr. Brown can speak to it better than I
18 can that it's legal, it's proper and it clearly messages
19 in a legal way to the entire community, the all affected
20 persons what you're doing regarding these regulations unti
21 such times as they've been readopted.

22 CHAIRMAN DURANT: Mr. Mendez.

23 MR. MENDEZ: Let's go back to this joint group.
24 Are you going to be able to do that? John -- Mr. Mola.
25 Will the three major or four major national groups be

1 thinking on that for me.

2 MR. MOLA: Mr. Chairman, I think that yes, we
3 would like to cooperate. I just raise one potential issue
4 that comes out of a litigation context. Very often in
5 litigation where we're challenging a rule or part of a HUD
6 manual adverse party access to draft. The Regulation
7 four, then, that really is not our function. There may
8 be some of the legal tension here but I think we will do
9 whatever we can to specifically indicate what we think
10 would be legal and permissible regulations in each of
11 these areas.

12 CHAIRMAN DURANT: John, I have many clients
13 that would love the opportunity that I could draft the
14 regulations that would end up applying to them.

15 MR. MOLA: I just raised that as an issue. I
16 think we're going to take you up on your generous offer
17 and perhaps suggest some specific language for each of
18 those regulations.

19
20 CHAIRMAN DURANT: I think that's a more
21 constructive dialogue.

22 MR. MENDEZ: I really -- that's my view. I've
23 read enough of the comment. When I've asked for comments
24 I have read all of the comments and I've read comments on
25 each one of these. I've asked for them. I pulled them

1 in. Just in my own mind it's a lot more constructive if I
2 have some opposing language or something else to work from
3 rather than saying this is bad, this is bad. It doesn't
4 really tell me what's good and how to make it better.

5 MR. MOLA: I understand.

6 MR. MENDEZ: Most of it just doesn't really
7 address that issue and that's what I'm talking to the
8 group about. If we can have something fairly informal to
9 discuss about it.

10 CHAIRMAN DURANT: With all the --

11 MR. MOLA: The only other question is what
12 timeframe are you looking at here? If it's within 30 days
13 of today, I think that's going to be a very tight
14 timeframe.

15 CHAIRMAN DURANT: No. I think my feeling would
16 be is that you do it within your own timeframe. I mean we
17 are going to direct staff at the republishing on the
18 east -- place immediately. You don't have to wait for
19 that, you know. You can start as soon or as late as you
20 want.

21 We've got to move on to another --

22 MS. SWAFFORD: Could I ask a question?

23 CHAIRMAN DURANT: Oh, I'm sorry, Ms. Swafford.
24 I apologize.

25 MS. SWAFFORD: There was some reference made to

1 the four major national groups for my information so let's
2 just put them down like project advisory group. I've got
3 that.

4 CHAIRMAN DURANT: You mean Mr. Mendez's
5 suggestion?

6 MS. SWAFFORD: Uh-huh.

7 CHAIRMAN DURANT: John.

8 MR. MOLA: I would imagine that the
9 recommendations would come from the project advisory group
10 or maybe some other group. There's a widespread
11 involvement in that but they would be proposed by PAG I
12 would imagine.

13 MS. SWAFFORD: PAG.

14 MR. MOLA: Project advisory group.

15 MR. MENDEZ: But the other groups will work
16 with you.

17 MS. SWAFFORD: And what are the other groups?

18 MR. MOLA: National Legal Aid and Defenders
19 Association is a national organization and coalition for
20 legal services is another.

21 CHAIRMAN DURANT: Thank you, John, very much.

22 The next item on our agenda is the report from
23 the provisions for delivery of Legal Services Committee.
24 The Chairman of that is Robert Valois.

25 Mr. Valois.

1 MR. VALOIS: I will be brief as I encouraged
2 other to do particularly because we met, we followed the
3 agenda, we had very good comment from the audience, we had
4 excellent reports from the staff all of which are in
5 writing and I come with no motions or recommendations from
6 the committee.

7 I would point out that of course all of the
8 discussion impacted upon things which are now the content
9 of the budget and that is my report.

10 CHAIRMAN DURANT: That's it?

11 MR. VALOIS: That's it.

12 CHAIRMAN DURANT: Any comment on that report?

13 MR. MENDEZ: I wish we all were succinct.

14 CHAIRMAN DURANT: That being the case there are
15 no other items on the agenda other than we are going to
16 adjourn to executive session pursuant the certified
17 closure that General Counsel gave us before.

18 I want to say again and I think it's said
19 enough but sometimes in the beginning it helps to say
20 things many times. I have found these last two days to
21 have been very, very helpful. I think I speak for the
22 whole Board that it is my hope as Chairman that we are,
23 you know, beginning to a period in which there is going to
24 be a willingness to examine. There are no sacred cows
25 that we honestly and together try and examine what are the

1 problems in delivering legal services to the poor and
2 trying to help and to find need.

3 I think as one member of the public was
4 commenting yesterday said -- I think it was Ms. Eisenberg
5 if I'm correct that we would have to have been prepared
6 to come to some of these meetings with our facts and
7 figures because nobody listened to us before. We are
8 going to ask, I hope, the tough questions not only of the
9 public and only of our staff but of ourselves as well. So
10 with that we'll see you next time.

11 MR. MOLA: Mr. Chairman, on behalf of those of
12 us in the audience I would like to thank the Board for the
13 very hard work they've done in preparing for this meeting
14 and for your previous meeting. I just want to tell you
15 that we all appreciate the stance that this Board has
16 taken and the openness and t-he dialogue and the
17 discussion. I think it's to all of our benefit and
18 hopefully to the benefit of the client.

19 CHAIRMAN DURANT: Time's up.

20 (Whereupon, at 2:15 p.m., the hearing was
21 adjourned.)
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REPORTER'S CERTIFICATE

DOCKET NUMBER: NA

CASE TITLE: BOARD OF DIRECTORS MEETING

HEARING DATE: December 20, 1984

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Legal Services Corporation and that this is a true and correct transcript of the same.

Date: January 7, 1985



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