

# TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

MEETING OF THE COMMITTEE ON  
APPROPRIATIONS AND AUDIT

Pages: 1 through 316

Washington, D.C.

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LEGAL SERVICES CORPORATION  
  
MEETING OF THE COMMITTEE ON  
  
APPROPRIATIONS AND AUDIT

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

Thursday,  
February 21, 1985

COMMITTEE MEMBERS PRESENT:

- PEPE J. MENDEZ, CHAIRMAN
- LEANNE BERNSTEIN
- PAUL EAGLIN
- MICHAEL B. WALLACE
- THOMAS F. SMEGAL
- W. CLARK DURANT, III
- HORTENCIA BENAVIDEZ
- LORAIN MILLER
- ROBERT A. VALOIS

STAFF PRESENT:

- TOM OPSUT, INTERIM PRESIDENT OF LSC
- DENNIS DAUGHERTY, ACTING SECRETARY
- CHARLES WHITE, ACTING COMPTROLLER
- PETER BROCCOLETTI, ACTING DIRECTOR LEGAL SERVICES

P R O C E E D I N G S

1  
2 MR. MENDEZ: At this time I will call the sub-  
3 committee to order.

4 Do I hear a motion to approve the agenda as pre-  
5 sented?

6 MR. SMEGAL: So moed.

7 MS. BERNSTEIN: Second.

8 MR. MENDEZ: Any discussion? Hearing none, all in  
9 favor?

10 (Chorus of ayes.)

11 The agenda is approved.

12 Do I hear a motion concerning the approval of  
13 minutes from the past meeting of the subcommittee?

14 MR. SMEGAL: Can we have a few more minutes to  
15 consider those minutes?

16 MR. MENDEZ: While they're taking some time with  
17 regard to the minutes, if you wish to speak on any specific  
18 topic please contact Dennis Daugherty and advise him. We  
19 will try to keep fairly close to a schedule of about one  
20 hour for each of the topics this morning, and we would like  
21 to have you address the specific topic if you are going to  
22 make comments as to what we are generally speaking of and  
23 we will try at the end of the day to have general comments  
24 on the topics later but as long as we're covering the Native  
25 American first, the migrant second, we would like to have

1 your comments addressed to that aspect.

2 MR. DURANT: Mr. Chairman, I have one amendment to  
3 the minutes.

4 I had added Tom Smegal as a member of this committee.  
5 He had requested it earlier on and it was due to an over-  
6 sight on my part. He is a member of this committee and it  
7 should so reflect.

8 MR. MENDEZ: That's correct.

9 MR. SMEGAL: Mr. Chairman, I move approval of the  
10 minutes as corrected.

11 MR. MENDEZ: Any questions or comments?

12 MR. WALLACE: I'll second the motion.

13 MR. MENDEZ: Hearing no comments, all in favor?

14 (Chorus of ayes.)

15 Opposed?

16 (No response.)

17 The first person we want to call is Mary Trimble  
18 Norris from the National Association of Indian Legal Services.

19 At the last meeting, Mary did not get an oppor-  
20 tunity to address us, so I indicated to Mary that we would  
21 have her speak first.

22 Mary, we're asking you to come up now.

23 For the Board's information, Mary has presented us  
24 previously, and it should be in front of you, about an inch-  
25 thick brochure of the Native American programs.

1           Again for the record, we have also asked Norman  
 2 Ration who is the director of DNA People's Legal Services --  
 3 and "DNA," for those who are not too well acquainted, is the  
 4 major service provider to the Navaho nation.

5           Also, we have asked Britt Clapham who is the manager  
 6 of the Native American Unit for Office of Field Services to  
 7 be present and answer any questions that we may have.

8           Britt is located in Denver and I've had an oppor-  
 9 tunity to have various conversations with Britt previously  
 10 and some of the materials that are contained in your folder  
 11 are from Britt.

12           Before I open it up for discussion, Mary, do you  
 13 have a statement that you wish to present?

14           MS. NORRIS: Yes, I do.

15           Mr. Chairman and members of the appropriations  
 16 committee, my name is Mary Trimble Norris and I'm the chairman  
 17 of the National Association of Indian Legal Services and  
 18 deputy director of California Indian Legal Services. Although  
 19 I'm not an attorney, I've been associated with Indian Legal  
 20 Services since 1973.

21           Once more, the Native American programs must come  
 22 before the board to address the challenge of providing legal  
 23 services to Native Americans.

24           Legal Services Corporation has throughout its  
 25 history sponsored special actions regarding Indian people.

1 However, often through a newly elected board has proposed  
2 actions or policies that will harm our ability to serve our  
3 clients.

4 In a number of instances over the past ten years  
5 policies had to be amended to conform to the physical,  
6 political and legal realities existing in Indian country.  
7 Over time, previous boards came to realize the unique role  
8 Indians have in our society and the role and challenge of  
9 providing legal services to them.

10 During the tenure of the previous board, their  
11 gradual recognition and understanding manifested itself in  
12 a resolution, pledging its continued support of the Corpora-  
13 tion to the concepts of special Native American legal  
14 services and in the establishment of a separate Indian  
15 regional office with a voice in policy formation.

16 We thus find it truly ironic that one of the first  
17 major acts of this board was to propose an across-the-board  
18 budget cut of 21.6 percent for Indian programs.

19 We ask you now to reconsider this action and learn  
20 what it is that we do and how this budget cut will harm our  
21 clients horrendously.

22 From the inception of LSC, there has been a recog-  
23 nition that Native American people have exceptional need for  
24 legal services due to a variety of factors, some of which  
25 congress explicitly itemized in 1007(h) of the Legal Services

1 Act.

2 Such factors include barriers raised by language  
3 and physical access, and a complex web of laws applicable  
4 solely to Native Americans.

5 Following the mandate of 1007(h), studies were  
6 conducted at the direction of LSC to explore the circum-  
7 stances and recommend solutions for addressing these needs.  
8 Among those studies were the Tosca Report and the Lieberman  
9 Study which concluded that there were additional cost factors  
10 involved in representing Native Americans.

11 As a result of these studies and other needs assess-  
12 ments, funding for Native American programs has historically  
13 proceeded under a different formula than funding for basic  
14 field programs.

15 LSC boards have also come to recognize and appre-  
16 ciate the role and purpose of Native American programs by  
17 focusing regulatory attention on the uniquely Indian issues.

18 For example, the LSC Act, 1007(b)(2), allows  
19 criminal representation in tribal courts, and 1010(c) of the  
20 Act allows special treatment of funds received from tribes  
21 or foundations designed to benefit Indians.

22 The LSC board has exceptions for Indian programs  
23 in their instruction on private attorney involvement and,  
24 finally, LSC regulations provide exceptions for representing  
25 Canadian Indians and others who have a unique citizen

1 relationship with the United States.

2 LSC recently discussed and confirmed these princi-  
3 ples. At its meeting of February 6th, 1984, the LSC board  
4 adopted a resolution which stated that the corporation  
5 recognizes the unique status of Native American persons and  
6 the unique legal needs of this population, and affirmed its  
7 continuing commitment to meeting the special legal and access  
8 needs of Native Americans as mandated by 1007(h) of the  
9 Legal Services Corporation Act.

10 The board then proceeded to create the Native  
11 American Unit as a separate unit within LSC to assist Native  
12 American programs in their efforts to meet the special legal  
13 and access needs.

14 The legal status of Native Americans is at the  
15 heart of their needs for specialized legal services programs  
16 staffed with qualified experts in Indian life.

17 Indian affairs has always been especially an  
18 exclusive province of the Federal Government. Indians are  
19 the only racial groups specifically mentioned in the Consti-  
20 tution. In fact, most tribal members have only been allowed  
21 citizenship since 1924.

22 The Federal Government exerts asserts plenary power  
23 over Indians but over no other citizens. An entire body of  
24 the United States Code deals solely with Indian people.

25 In the last session of congress alone there were

1 20 public laws passed dealing exclusively with Indian affairs.  
2 Indian tribes possess land based on treaty. The legal title  
3 is held in trust by the U. S. Government.

4 Indian tribes retain sovereignty rights while not  
5 not possessing all the sovereign powers of the Federal Govern-  
6 ment. The tribes are not subject to the 14th Amendment.

7 Indian Legal Services has developed to meet the  
8 regional and access needs of native people who have a special  
9 legal relationship with this government. This includes  
10 members of fairly recognized tribes living on or near  
11 reservations in historic Indian areas, as well as native  
12 Alaskans and Hawaiians.

13 The legal status of the Indian people covers a  
14 wide range of special situation individuals -- those tribes  
15 who are recognized by state governments, those tribes who  
16 were lawfully terminated for some services but retained legal  
17 status with the Federal Government, tribes that are unlawfully  
18 terminated and unrecognized tribes who need legal represen-  
19 tation to seek federal recognition.

20 Each tribe has a different history and a special  
21 status within the historical mission of Indian Legal Services.

22 In addition to the complex legal issues Native  
23 American programs must address on a daily basis, they must  
24 also overcome physical and cultural barriers.

25 Many Indian programs because of relatively low

1 population density must provide services to vast geographic  
2 regions that often have unreliable roads and telephone systems.

3 Some programs must also focus on the fact that  
4 relatively few clients speak English and few attorneys speak  
5 the native language.

6 Finally, all Indian programs must not only abide  
7 by the laws of the Federal Government and these United States,  
8 but we must and should adhere to the laws and customs of those  
9 tribes who we serve or that our clients belong to.

10 The proposed drastic reduction in Indian funds  
11 demonstrates an abandonment of historical LSC commitment to  
12 meeting Native American needs.

13 It is well documented that Native Americans,  
14 especially those living on Indian reservations, are the  
15 poorest of the poor in America. Native Americans on the  
16 average have the lowest per capita income, the highest  
17 unemployment, the lowest level of educational attainment,  
18 the shortest lives, the worst health and housing conditions,  
19 and the highest suicide rate in the United States.

20 The extreme poverty in Indian country means that  
21 clients typically present legal problems of prices in pro-  
22 portion. To reduce the level of legal services available to  
23 them is unjustifiable and no rational justification has been  
24 articulated by this board.

25 MR. MENDEZ: Mary, we have various types of Indian

1 tribes. We have the unrecognized. We have the recognized.  
2 We have the terminated and some that are seeking to be  
3 unterminated and in fact receive their recognition again  
4 through the BIA. Is that a fair statement?

5 MS. NORRIS: Yes.

6 MR. MENDEZ: Isn't it also a fair statement that  
7 when the Legal Services Corporation originally funded the  
8 Indian groups and their continuing resolution that we set  
9 up various grants or \$25,000 for terminated tribes and there  
10 was a \$400,000 rotating fund for the various tribes to seek  
11 to become unterminated? Is that a fair statement?

12 MS. NORRIS: It's part of the picture, yes.

13 MR. MENDEZ: Those were originally at one time  
14 grants.

15 MS. NORRIS: Yes, they were.

16 MR. MENDEZ: And they subsequently have been rotated,  
17 turned over, every year, is that fair?

18 MS. NORRIS: I believe that those grants became  
19 annualized to the recipients that received them in --

20 MR. MENDEZ: What was the original purpose for  
21 those grants?

22 MS. NORRIS: 1007(h) identifies unrecognized and  
23 terminated people as a group of people that had huge unmet  
24 needs and in order to address their legal access needs the  
25 Corporation instituted a policy in 1979 that allowed funding

1 for unrecognized and terminated groups.

2 There was a competitive grant process where programs  
3 that are current recipients of both basic and Native American  
4 fundings who had these groups in their service population  
5 could apply for funding to serve these people.

6 They are gradually giving out and it was recog-  
7 nized that if they really weren't successful in using short-  
8 term one-year grants that the recognition process or the  
9 termination process was a lengthy legal one that these funds  
10 were annualized in 1982.

11 MR. MENDEZ: Of these grants --

12 MS. NORRIS: But it didn't meet all unrecognized  
13 groups' needs. If a program had unrecognized groups in its  
14 service area and didn't apply for a grant or didn't receive  
15 a grant, then those groups would still be underserved or  
16 unserved.

17 MR. MENDEZ: Also, these grants were originally  
18 given with no precondition -- My reading says no grant  
19 funded under this provision shall be considered as permanent  
20 funding with the rights of refunding, but rather the amount  
21 granted will be available from its discretionary fund and  
22 is subject to reapplication.

23 This was subsequently changed. Is that a fair  
24 statement?

25 MS. NORRIS: I believe that when the grants became

1 annualized into those recipients' funding base that they were  
2 part of their grant award year after year.

3 MR. MENDEZ: What I'm asking is can you justify  
4 to me why these things became annualized rather than being  
5 rotated back in there, into this discretionary fund.

6 MS. NORRIS: I think from a program point of view,  
7 which is the only point of view that I could express to you,  
8 that these funds were made available in 1979 and that they  
9 were successfully obtained by certain grantees, but the recog-  
10 nition process of a lengthy one and involves a lot of  
11 expense and time and there was a decision on the part of the  
12 Legal Services Corporation that those grantees that received  
13 them continue to receive them because the legal would con-  
14 tinue.

15 MR. MENDEZ: In essence then what we are doing is  
16 we are funding terminated and unrecognized tribes. We are  
17 funding them in their attempts to become recognized and  
18 unterminated.

19 MS. NORRIS: Yes.

20 MR. MENDEZ: Do you think that's an appropriate  
21 use of Legal Services' funds?

22 MR. NORRIS: Yes.

23 MR. MENDEZ: Why?

24 MS. NORRIS: Terminated Indian people and Indian  
25 people who are seeking recognition have a remedy at law in

1 terms of -- Legal Services made a commitment to Indian people  
2 that they would provide them with legal services and address  
3 their legal needs, no matter what their status was in terms  
4 of how the Federal Government recognized them.

5 MR. MENDEZ: We want to provide them with legal  
6 services, but tell me why it's appropriate for us to fund  
7 tribes attempting to become recognized and --

8 MS. NORRIS: Because they have -- Native American  
9 programs have a special mission. That special mission is  
10 well documented through congressional language in 1007(h)  
11 and the exceptions that are in the LSC Act recognized that  
12 Indian programs have a special mission and that mission is  
13 to assist Indian people to enhance their legal rights.

14 Unrecognized people and terminated people have an  
15 Indian law problem and if the Legal Services Program can't  
16 assist them in securing or enhancing their special legal  
17 rights, I think that's an appropriate role for Indian Legal  
18 Services.

19 MR. MENDEZ: Approximately how much of the funding  
20 that we are funding is to the unrecognized and terminated  
21 groups?

22 MS. NORRIS: In actual grants that are given to  
23 Native American programs it's \$448,00.

24 MR. CLAPHAM: \$448,000 I believe in 1985.

25 MS. NORRIS: But oftentimes recipients who don't

1 receive special money represent terminated or unrecognized  
2 groups because those groups are in their service area.

3 MR. MENDEZ: Please continue.

4 MR. SMEGAL: I'm not sure if I understood what  
5 the chairman was driving at.

6 Are there -- There are funds available to tribes,  
7 but aren't there individuals in those tribes who are repre-  
8 sented by the prorgam?

9 MS. NORRIS: Yes.

10 MR. SMEGAL: Was the answer to his question that  
11 certain amounts of money provided for services to the tribe  
12 per se as opposed to the individuals in the tribe? Is there  
13 that kind of breakdown? Is there a distinction there?

14 MR. MENDEZ: That's right. Most of these funds  
15 were given and are given for the benefit of attempting to  
16 receive recognition for these tribes, not for direct delivery  
17 of legal services to the individuals within the tribe.

18 Isn't that a fair statement?

19 MS. NORRIS: Yes.

20 MR. RATION: I think it would be a fair statement  
21 because that block of money of which you speak is set aside  
22 just to get tribes recognition and it's used for that purpose  
23 only, and any other Legal Services dollars that are given to  
24 programs are for the direct delivery of services to the  
25 individuals.

1 MR. MENDEZ: And about 448,000 is only for direct  
2 delivery of legal services -- Is not for direct delivery  
3 of legal services. It's for the attempting to get this  
4 recognition. Is that a fair statement?

5 MS. NORRIS: No. I think it's to provide services  
6 to those unrecognized groups.

7 MR. MENDEZ: That's not what you previously stated.  
8 Mr. Clapham?

9 MR. CLAPHAM: Recognition or termination were the  
10 only people that could be represented as a group. I mean  
11 individuals cannot be recognized as a tribe. It is group  
12 work by nature.

13 The importance of it is that certain rights and  
14 benefits flow to the various members of the tribe. If a  
15 group becomes recognized, then they become eligible for BIA  
16 benefits and various rights that flow from the status of  
17 recognition and it enures to the benefit of the individual  
18 tribal members.

19 MR. DURANT: Could you give me some examples of  
20 that? What kind of --

21 MR. CLAPHAM: Well, by attaining recognition a  
22 tribe is then eligible for the various benefit programs  
23 which the BIA has -- education benefits, the government to  
24 government relationship to the United States, the eligibility  
25 for various funding as prescribed to carry on social services

1 and various types of activities that the recognized tribes  
2 are presently carrying on with their rank and file members.

3 MR. MENDEZ: Isn't it true that the \$448,000 that  
4 we're funding for those goes to the -- almost exclusively  
5 to that aspect?

6 MR. CLAPHAM: Yes.

7 MR. SMEGAL: So that's a special grant for this  
8 purpose -- \$448,000?

9 MR. CLAPHAM: Yes.

10 MR. MENDEZ: And that's a rotating annual grant  
11 that was originally set up as a one-time grant.

12 MR. SMEGAL: And this is a part of the 5.8 million  
13 that they had in --

14 MR. CLAPHAM: Right.

15 MR. MENDEZ: This does not go to the direct delivery  
16 of legal services. It only goes to help them being placed  
17 back into the recognized Indian tribes.

18 MR. CLAPHAM: Right.

19 MR. SMEGAL: It's sort of a class action type of  
20 operation, that you're going to gain benefits for the whole  
21 tribe, each individual member of the tribe, by getting the  
22 tribe recognized as a matter of reversing the termination.

23 MR. CLAPHAM: Right, and the reason that those  
24 funds were annualized, if I can speak to that, was when the  
25 grants were originally made they were made to coincide with

1 the Bureau of Indian Affairs recognition project.

2 Early on, it was thought that a shorter period of  
3 time would be necessary to attain recognition. It hasn't  
4 happened that way. The work to attain recognition or un-  
5 termination has been very long and thorough process --  
6 ethnographic reports, genealogies, basically proving up the  
7 case of the tribes and that has just taken many more years  
8 than any of us ever realized, I think.

9 So in order to allow programs that have undertaken  
10 an attorney-client relationship with the group to complete  
11 that ethical obligation, those funds were annualized.

12 MR. SMEGAL: So theoretically this program should  
13 come to an end at some point. All these issues will be  
14 resolved and this special funding will no longer be necessary,  
15 but it's way off in the future somewhere.

16 MR. CLAPHAM: I guess in theory that's correct.

17 If I can speak from personal experience. In  
18 California at one point in time we worked on a recognition  
19 project with the Death Valley Shoshone. The original petition  
20 for recognition was filed in 1976. I believe I saw the  
21 action by the Bureau recognizing the tribe in 1983. That's  
22 the time frame in which these things operate.

23 MR. MENDEZ: Is there any way that we can pressure  
24 the Bureau of Indian Affairs to take these actions up more  
25 rapidly?

MR. CLAPHAM: I don't know. I can't speak to that.

MR. MENDEZ: Mr. President, I want you to bring in someone from the Bureau of Indian Affairs on this matter.

MR. WALLACE: While we're talking about what other people could be doing as well, I was interested to look at the end of the book with regard to this 92-year-old statute that says the United States Attorney is supposed to be providing representation to tribes.

I gather this doesn't happen very much. I'm not bringing this up because I think there are a lot of cases where the U.S. Attorney is going to be able to remove the burden from Legal Services. We're going to have to carry the bulk of the load.

We've got a statute that's 92 years old that the Justice Department didn't pay any attention to. I would kind of like to ask the Justice Department why because it certainly overlaps with our work.

Mr. Clapham, have you got any insight into this particular statute?

MR. CLAPHAM: In reviewing the case law, while that says U. S. Attorney shall provide, courts have construed the "shall" to be "may."

MR. WALLACE: If he feels like it.

MR. CLAPHAM: Discretionary. There are several reasons for that, and I guess the most interesting discussion

1 there is about 25 USC 175 is found in the  
2 Indian law by Getches, Rosenfeld and Wilkin  
3 discussed under a section called "Conflict"

4 The three cases that are discussed  
5 cases that were brought to force the U.S. Attorney in the  
6 locale to represent tribes in five legal services programs --  
7 the Rincon case in California, the Passamaquaddy case in  
8 Maine and Pyramid Lake in Nevada.

9 Courts have construed the statute in such a way  
10 to alleviate the duty if there is a potential conflict,  
11 where the U.S. Attorney has conflicts between other clients --  
12 other interests in Pyramid Lake, Bureau of Reclamation vs.  
13 Indian Tribes, et cetera.

14 I think it speaks in many ways to the same reason  
15 that there is a need for independent legal services gen-  
16 erally and it is even more necessary within the Indian  
17 setting because of these sorts of issues.

18 MR. WALLACE: What does DOJ usually do when they've  
19 got a conflict of interest in representing somebody?

20 MR. CLAPHAM: I'm not sure I can respond.

21 MR. WALLACE: Okay. I would like you or somebody  
22 else on the staff to find out the answer to that question.  
23 It's my impression that when DOJ ordinarily represents  
24 somebody in the Federal Government, they find themselves in  
25 a conflict, they go out and get another lawyer for them.

2 I don't think you just walk away from a conflict  
of interest when you've got a mandatory duty in the statute.

3 I certainly think that the tribes ought to be  
4 entitled to whatever conflict of interest benefits they would  
5 give to somebody that they're required by law to represent.  
6 I'd like to know what that is, and at some point I think  
7 this board ought to suggest to the Department of Justice that  
8 it start doing something with this statute.

9 Not that it's going to lift the burden from us.  
10 It's just the way, you know -- statutes that say "shall"  
11 shouldn't be ignored.

12 MR. CLAPHAM: I have no quarrel with that.

13 MR. WALLACE: I would appreciate it if you would  
14 find out what they do in other contexts.

15 MR. MENDEZ: When they sought representation or  
16 sought untermination and seek to be recognized, has anybody  
17 ever asked the U.S. Attorney to represent them in any of  
18 these cases?

19 MR. CLAPHAM: Not to my knowledge. I don't know  
20 of any such instances.

21 MR. WALLACE: That would look to me like a clear  
22 conflict but it might also be a case where the U.S. Attorney  
23 has got the responsibility to find somebody else to take  
24 the case.

25 MR. CLAPHAM: Two points I think about 175. It

1 speaks mostly to representing tribal entities.--

2 MR. WALLACE: That's right.

3 MR. CLAPHAM: -- rather than individuals. Number  
4 two is to my knowledge I don't know of any funds that have  
5 been appropriated for DOJ for this direct purpose.

6 MR. WALLACE: I'm sure there aren't any appropriated.  
7 I'm also sure that the Justice Department has got some money  
8 rattling around they can put into things they doesn't have  
9 a line item for and they ought to get put into there I would  
10 think.

11 MR. MENDEZ: Please continue.

12 MS. NORRIS: The Indian communities are struggling  
13 consistent with President Regan's policy to develop private  
14 sector economies. Legal aid programs frequently and  
15 increasingly play the critical role in this process through  
16 their positions as tribal attorneys, but in the meantime  
17 reservation economies are heavily dependent upon the govern-  
18 ment sector for jobs.

19 The recent federal budget cuts have had tremendous  
20 adverse economic impact in Indian communities and private  
21 job creation has not taken up the slack.

22 The economic slump in Indian communities cause an  
23 increase in unemployment, scholastic and welfare problems.  
24 In the face of increased legal needs and a reduction of reser-  
25 vation resources, your proposal cannot be justified.

1           The 21 percent cut in Native American funding will  
2 devastate the delivery of legal services to Indian people.  
3 You need only to look at the effect of the 1982 cut for  
4 proof. The LSC board recognized in 1981 that a 25 percent  
5 cut would do irreparable damage to Indian programs and for  
6 that reason only proposed a 12.5 percent cut. The LSC board  
7 recognized that Indian programs serve a vast geographic area  
8 with one, two, three attorney offices, and a 25 percent cut  
9 would not have been sustainable.

10           Even with the 12.5 percent cut, the number of  
11 attorneys and advocates went from 178 in 1981 to 135 in 1982.  
12 This is a comparable reduction to that suffered by the basic  
13 field and is explained by the high cost of maintaining many  
14 offices in remote areas.

15           With the increase in funding over the past two  
16 years programs are just now being rebuilt. There are 146  
17 attorneys and tribal court advocates, still well below the  
18 fiscal year 1981 level.

19           A 21.6 percent cut for fiscal year 1986 would force  
20 large reductions in staff, the elimination of services to  
21 many reservations and virtual elimination of small components.

22           Idaho Legal Services currently has 2.5 attorneys to  
23 provide legal services to the five tribes who reside in that  
24 state. A 21.6 cut could only mean the closure of one of the  
25 two offices now providing services to these tribes.

1 MR. MENDEZ: How many individuals are in these  
2 tribes?

3 MS. NORRIS: Can we come back to --

4 MR. MENDEZ: I've got a question while you're  
5 looking for that.

6 For the record, I'm directing my question to  
7 Norman Ration and, Norman, you're the executive director of  
8 the DNA people's legal services, is that correct?

9 MR. RATION: Yes, I am.

10 MR. MENDEZ: Norman, you're not an attorney, that's  
11 my understanding.

12 MR. RATION: No, I'm not an attorney.

13 MR. MENDEZ: You're a tribal court advocate.

14 MR. RATION: Yes, I am.

15 MR. MENDEZ: Do you speak Navaho?

16 MR. RATION: No, I don't.

17 MR. MENDEZ: What percentage of your clientele only  
18 speak Navaho?

19 MR. RATION: I would say somewhere around 70 per-  
20 cent, or more than that.

21 MR. MENDEZ: What percentage of your tribal court  
22 advocates speak Navaho?

23 MR. RATION: All of them except myself.

24 MR. MENDEZ: Your letter to us, on page four, the  
25 third and fourth paragraphs say that you're not able to employ

1 full-time interpreters.

2 If all of your tribal court advocates except you  
3 speak Navaho, why do you need full-time interpreters?

4 MR. RATION: Well, I think if you look at the numbers  
5 that we have in our program, there is also 23 attorneys that  
6 practice in our program and they also serve the same clientele  
7 that the rest of the program serves, and in order for them  
8 to carry out their responsibility in representing the Navaho  
9 individuals they need to use interpreters.

10 The way that is taken care of is if there is a free  
11 advocate, the advocate would interpret for the attorney as  
12 he talks with his client, or a secretary or receptionist or  
13 whoever is available would work with the attorney in taking  
14 care of that translation. That's how we cover it right now.

15 MR. MENDEZ: In essence then your tribal court  
16 advocates are only functioning as interpreters and they may  
17 be called tribal court advocates but at least half of the  
18 time they are working for the attorneys as interpreters.

19 MR. RATION: Well, I wouldn't say half of the time  
20 because they have their own case load that they represent the  
21 individuals in tribal court.

22 As I stated earlier, there are some receptionists  
23 and some secretaries that pick up that slack, also, so to  
24 say 50 percent of the advocates' time is spent in inter-  
25 preting I would say is incorrect because they have their own

1 case loads.

2 MR. MENDEZ: How much -- Do you need interpreters?

3 MR. RATION: Yes, I need --

4 MR. MENDEZ: How many do you need?

5 MR. RATION: I use the same process. I have a  
6 secretary and I have the director of administration who assists  
7 me in those type things.

8 MR. MENDEZ: Let's talk about your overall program.  
9 How many interpreters do you need?

10 MR. RATION: Well, if we were going to match them  
11 one on one to do --

12 MR. MENDEZ: You don't need to do that, though.  
13 More than half of my clientele only speaks Spanish and I  
14 speak Spanish all the time and you need an interpreter for  
15 about ten percent of the time when you are actually in court  
16 or having your tribal court interpreters do most of the  
17 interpreting to the extent that you have to. That's what  
18 you're saying.

19 What I want to know is how many interpreters do  
20 you need to staff up and give your people full functioning  
21 capabilities -- your lawyers -- three, four?

22 MR. RATION: I think you need at least one or two  
23 in every one of our offices because we're not --

24 MR. MENDEZ: How many offices do you have?

25 MR. RATION: We have 16.

1 MR. MENDEZ: You have --

2 MR. RATION: I mean we would need 16 because we  
3 have eight offices.

4 I think the point that you were making earlier  
5 that the advocates do most of the interpreting is really one  
6 that's incorrect because advocates have case loads just like  
7 attorneys and some of their case loads are much heavier than  
8 attorneys'. They average anywhere from maybe 40 cases to as  
9 high as 80 cases so they're spending most of their time in  
10 courts representing the clients.

11 When you go into court, I think that's also an  
12 incorrect statement because you have to interview people  
13 before you go to court, so you're interviewing in the office  
14 You have to interview witnesses either there at the office  
15 or you have to go out and meet them and those types of things  
16 so you really need a person on a full-time basis, at least  
17 one in each office if in fact that's what we're going to do  
18 because we will have attorneys in each office that will need  
19 that kind of assistance because somebody is always being  
20 pulled away from another job to assist in the interpreting  
21 area.

22 MR. WALLACE: How typical is your program or programs  
23 nationwide? Is there that much -- Do other programs have a  
24 clientele with this high percentage that do not speak  
25 English as yours?

1           Your program is on reservations, as your letter  
2 says, the size of the State of Ohio. My impression is that  
3 a lot of reservations are much closer, much smaller, much  
4 closer to centers of population and I would think more  
5 people would speak English on other reservations than on yours.  
6 Maybe that's wrong.

7           What I'm trying to figure out is how typical is  
8 your language problem as compared to other Indian services  
9 programs.

10           MR. CHAPHAM: I think from my perspective, having  
11 visited the majority of the programs over the years, the  
12 Navaho situation may be somewhat different. The incident of  
13 non-English speaking may be a little bit higher.

14           I think there is another important aspect to that.  
15 I think it's one thing to be able to write your name and  
16 count your change and another thing to converse in legal  
17 doctrine and so on, so I think interpreters come in there.

18           If you go 30 miles into New Mexico and start  
19 dealing with the program Indian Pueblo Legal Services, there  
20 are 19 separate Pueblos, plus three Navaho communities,  
21 that are separate from the main reservation.

22           If memory serves me right, there are at least  
23 three, if not five, separate native languages spoken amongst  
24 the 19 Pueblos so I think there is a little bit of difference  
25 between bilingual work and multilingual work that affects

1 the Indian programs, also.

2 MR. WALLACE: But, for instance, with those Pueblo  
3 how many of those Pueblo tribes also speak English?

4 MR. CLAPHAM: I think it gets into the write your  
5 name and count your change category.

6 MR. WALLACE: There's a legal doctrine area.

7 MR. MENDEZ: But it's fair to state, though, that  
8 with the Pueblos -- The Navahoes have a very high national  
9 pride in their language and in their cultural traditions.  
10 At least that's my understanding and my reading and my  
11 history, and they have in essence said we were here first,  
12 if you want to communicate with us, you learn our language  
13 and I respect that, but a lot of the other Pueblos and the  
14 other tribes said we're willing to get along and we're willing  
15 to learn English. Is that a fair statement?

16 MR. CLAPHAM: I don't know whether I would charac-  
17 terize it in exactly those terms or not.

18 MR. MENDEZ: My culture is Hispanic and a lot of  
19 the times I'll tell them if you want to speak to me speak  
20 in Spanish or do it whatever way you want to do it and I  
21 respect that aspect and I want to provide these people --

22 When I came on here and before I ever came, my  
23 major thing was -- I've told these board members before --  
24 I want to make sure that we provide in the language these  
25 people want to use, I want to make sure that we provide

1 adequate interpretation and adequate legal services and  
2 1007(h) -- I have never seen any studies addressing the  
3 language difficulties and that's what I'm coming to and I  
4 want to have something firm on this.

5 I think 16 is too many. I don't think you need  
6 that. I think you can use fewer and have them travel around.

7 I also recognize that these various Pueblos --  
8 that this has never been addressed by any of the documents  
9 I've seen on adequate need for interpreters.

10 MR. WALLACE: I must say Mr. Ration's letter has  
11 convinced me that he needs a lot of help out there and I  
12 don't see any point in us being there if we can't communicate  
13 with our clientele.

14 I think we've got to have decent interpreters and  
15 my question is do we have that magnitude of an interpretation  
16 problem everywhere? I'm sure we've got some interpretation  
17 problem everywhere.

18 MR. CLAPHAM: Right. That's probably an accurate  
19 statement. I don't think the magnitude is the same. I would  
20 be hard-pressed to give you a percentage of clients but I  
21 don't think the incidence -- the situation is exactly the same.

22 MR. MENDEZ: Now I want to address another question  
23 to Mr. Ration.

24 There have been two fires in our offices that are  
25 covered by your group, is that correct?

1 MR. RATION: That's correct.

2 MR. MENDEZ: And when were those fires, approxi-  
3 mately?

4 MR. RATION: One was a little over a year and a  
5 half ago -- about a year and a half ago, on September 8, '83.  
6 The one was the July previous to that, in 1982, in Shiprock.  
7 Those are the two fires that we've had.

8 MR. MENDEZ: Did they destroy most of the records  
9 in terms of audits and that aspect?

10 MR. RATION: In the Shiprock office everything was  
11 completely lost. In the Windowrock office, which is one of  
12 our agencies as well as our central administrative office,  
13 most everything was lost. There was some closed case files  
14 that we had in a separate area that were saved. There were  
15 some financial records that were saved but not all of them.  
16 Everything else was lost.

17 MR. MENDEZ: Now it's my understanding that the  
18 present tribal chairman had your position before, is that  
19 correct?

20 MR. RATION: That's correct.

21 MR. MENDEZ: I have read some disturbing things in  
22 the newspaper in Denver recently that indicate that he may  
23 have been traveling around on our money while he was in fact  
24 campaigning.

25 Do we have sufficient records to determine whether

1 that was the case or not?

2 MR. RATION: I think that we do have the r  
3 but in terms of what the chairman was doing during his  
4 campaign, he submitted a resignation when he got ready to  
5 run and he raised his funds, as far as I know.

6 In terms of what comes out in the newspapers, the  
7 source that's giving that information could be checked out  
8 because a number of those statements not only go on on the  
9 reservation but all segments of the country where politics  
10 are involved.

11 MR. MENDEZ: When was the last time that you were  
12 audited?

13 MR. RATION: We're audited on an annual basis and  
14 the last time --

15 MR. MENDEZ: And the Legal Services Corporation,  
16 Mr. Clapham?

17 MR. CLAPHAM: The last report was issued in  
18 August of 1983 from a visit in November of '82 and May of '83.

19 MR. MENDEZ: That was essentially before the fires.  
20 Your audit did not take into account the various --

21 MR. CLAPHAM: It took into account the fire at  
22 Shiprock. The report was issued nearly simultaneous with  
23 the fire in Windowrock and there was an addendum put on the  
24 report raising that issue concerning the fire.

25 MR. MENDEZ: When was the last time they were

d?

MR. CLAPHAM: At that time.

MR. MENDEZ: When are they scheduled to be audited

records,

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MR. CLAPHAM: Their financial physical audit is

6 done annually within 90 days of the conclusion of their  
7 fiscal, which is --

8 MR. MENDEZ: No, I'm not talking about their audit.  
9 I'm talking about our --

10 MR. CLAPHAM: There's a audit visit I would  
11 describe as our auditing process, our field auditing process.

12 MR. MENDEZ: I would like to have this audited  
13 specifically with respect to the Peter Senzal campaign. If  
14 it's clean, it's clean, and I want to make sure that it is  
15 but there were some allegations in the paper that he used  
16 his leadership post to travel around and before he actively  
17 started campaigning to line up all of his supporters and I  
18 want to ensure that that's not in fact the case.

19 MR. EAGLIN: Mr. Chairman, who is that you're  
20 speaking of?

21 MR. MENDEZ: It's the tribal chairman of the Navaho  
22 nation, Peter Senzal.

23 MS. NORRIS: To wrap up my statement, I have  
24 the numbers you --

25 MR. MENDEZ: What are they?

1 MS. NORRIS: The BIA figures indicate that there  
2 is a total population in Idaho of 7,218.

3 MR. MENDEZ: So we in fact have more if we use our,  
4 quote, national average that there ought to be two attorneys  
5 for 10,000 poor people, it's higher than the national average  
6 at this time.

7 MS. NORRIS: We've never applied that formula in  
8 Indian country. The congressional language that speaks to  
9 that minimum access doesn't apply to the Indian countries  
10 as it does in the basic field.

11 MR. DURANT: I'm sorry. I didn't hear your answer.

12 MS. NORRIS: In the floor debate on 3480 there was  
13 discussion between Neal Smith and Congressman Kastenmeier  
14 that talked about minimum access and how it applied to native  
15 American programs and that colloquy basically said that the  
16 minimum access doesn't apply to special mission programs  
17 like Native Americans the same as it does to the basic field.

18 MR. DURANT: Why would that be?

19 MS. NORRIS: Because they recognize that Indian  
20 programs are special missions. They have delivery problems  
21 and access problems that are documented in 1007(h).

22 MR. SMEGAL: When you're talking about minimum  
23 access and that circumstance, are you talking about dollars  
24 or are you talking about lawyers?

25 Are you talking about the equivalent in terms of

1 dollars across the country to provide two lawyers for 10,000  
2 Indians, or are you talking about how many actual lawyers you  
3 have in your program based upon the number of eligible clients  
4 there would be?

5 There are always other factors that come into your  
6 program -- the geography, the other circumstances, the  
7 interpreting we've just been talking about.

8 Are we talking about lawyers or are we talking  
9 about money?

10 MS. NORRIS: I was talking about lawyers.

11 MR. SMEGAL: You have more lawyers?

12 MS. NORRIS: No, we don't.

13 MR. SMEGAL: You have more money.

14 MS. NORRIS: Yes..

15 MR. SMEGAL: But it doesn't translate into more  
16 lawyers necessarily.

17 MS. NORRIS: Yes, that's true.

18 MR. MENDEZ: I'm going to give you five more minutes.

19 I've noticed that you're reading your statement.

20 MS. NORRIS: Yes, I am.

21 MR. MENDEZ: Does your statement contain the material  
22 that you've tendered to us?

23 MS. NORRIS: Any more than I've given to you? No,  
24 it doesn't. I'm finished, actually.

25 MR. MENDEZ: Does anyone have any particular

1 questions of these two individuals?

2 MR. SMEGAL: Mr. Chairman, I think I do.

3 In the material that we have just gotten this  
4 morning there is a memorandum from Britt dated February 20  
5 in which he lays out some dollar amounts per person based  
6 on obviously some census that --

7 MR. MENDEZ: Are you talking about the DNA?

8 MR. SMEGAL: I'm talking about a memo that's dated  
9 February 20, the subject is Impact of Proposed 1986 Budget  
10 and again there are some numbers provided to us where the  
11 range of dollars per poor person varies from one extreme to  
12 the other, and again I guess I would ask you, Britt, are we  
13 talking about people or are we talking about dollars. How  
14 many lawyers are we talking about?

15 How many lawyers do these dollars provide based  
16 on the geography, based on the other problems they seem to  
17 have?

18 MR. CLAPHAM: The dollars per poor person is based  
19 on taking the funding level and dividing it by the number of  
20 poor people, and I tried to explain it in the memo in front  
21 of you.

22 What that comes down to in the Native American  
23 setting, it seems to me, is that because of the various  
24 factors that are discussed in various memos in here, you end  
25 up with a certain number of lawyers to meet a certain amount

1 of legal need. I believe there's a gap between need and  
2 services provide.

3 I don't know if that's exactly responsive to your  
4 question because I don't think I've looked at this in terms  
5 of the number of lawyers provided per program.

6 I can tell you that as contained in Mary's statement  
7 there are roughly 150 lawyers and paralegals out there today  
8 serving Native Americans.

9 MR. SMEGAL: I guess my question is somewhere in  
10 Mary's material as I looked at it on the plane coming in,  
11 there were some comparisons about how much it cost for a  
12 lawyer in their program as opposed to a general program that  
13 we fund.

14 MS. NORRIS: It's in the Lieberman Study.

15 MR. CLAPHAM: It's in the Lieberman Study and there  
16 is another piece in the TOSCO report of the American Indian  
17 population study done by Gatchison and Green and at that  
18 point in time, in '78, I think the data supported the presump-  
19 tion that it took \$10 in the Indian setting versus \$7.70 and  
20 change in the basic field setting.

21 MR. SMEGAL: You don't have any reason to dispute  
22 those numbers or the premise that it takes more money in  
23 their particular setting to provide a lawyer than it does  
24 in San Francisco or Boston or --

25 MR. CLAPHAM: No, and I think in fact my personal

1 experience is that it's probably very accurate.

2 Not only are the Indian programs trying to provide  
3 specialized federal Indian law practice, but because of their  
4 isolation and rural settings they've also got the whole  
5 range of poverty law, too.

6 MR. WALLACE: Mr. Clapham, let me ask you a ques-  
7 tion that comes out of that memo.

8 I see at the low end we have Pine Tree Legal  
9 Services in Maine. I would presume, although I don't know,  
10 that Pine Tree is the general provider up there, just as in  
11 Mississippi, East Mississippi Legal Services gets the money  
12 out of the Native American program to represent the Choctaws  
13 over there in Neshoba County.

14 Can you give me an idea of how well the Native  
15 American component works in with these mainline programs?

16 I can see that what Mr. Ration does is full-time  
17 working on a special case.

18 In pushing \$40,000 or \$50,000 into East Mississippi  
19 Legal Service to help the Choctaws, for example, are we  
20 really getting anything for that? What kind of product do  
21 we get?

22 MR. CLAPHAM: I think one of the ways one would  
23 have to look at that is how the component approach developed.  
24 Part of the rationale for the components was to have earmarked  
25 funds, we have some grant conditions on all these components

1 and they have a Native American advisory board that they  
2 track their money separately and report their funding  
3 separately in audits and so on like that.

4 In that was we are focusing funds on a specialized  
5 group of people and at the same time we can operate a  
6 program with the administration and management support given  
7 by the basic field program for a much more reasonable cost  
8 efficient way.

9 If we had to plug in also all the administrative  
10 costs, it would either drive up the cost of serving the  
11 people or reduce --

12 MR. WALLACE: I'm not suggesting we ought to have  
13 two separate programs out there. I'm just wondering what you  
14 really get for that \$60,000.

15 Do they hire a lawyer that focuses entirely on  
16 Indian affairs? Is that the way it's generally done?

17 MR. CLAPHAM: Well, I think they focus on the  
18 legal problems of the clients that they are targeted to serve.  
19 That's probably a combination of substantive Indian law in  
20 most instances and poverty law issues with Indian clients.

21 MR. WALLACE: That's my concern. If we're just  
22 pumping a little more money into it and you're just using  
23 the same lawyers and the same facilities and the same  
24 resources that you used for your general population, I  
25 wonder how much of that really gets through to the Indian

1 population and do we know and can we tell.

2 MR. CLAPHAM: I think we know pretty well through  
3 monitoring. The Atlanta regional office monitored recently  
4 East Mississippi -- I have discussed that with them, and while  
5 there are some fine-tuning issues that probably need to be  
6 accomplished I think at the same time the folks on the  
7 monitoring with Indian law experience felt they were within  
8 the proper range of providing services to the targeted  
9 population in an appropriate manner.

10 MR. WALLACE: I appreciate that.

11 MR. MENDEZ: Any further questions?

12 MR. EAGLIN: Yes, sir, for Mary and Norman.

13 I want to get some idea from you, since you've  
14 given us remarks about the impact of the cuts, I would like  
15 to mention that Mr. Clapham wrote us a memorandum dated  
16 yesterday in which he discusses the impact of the '86 budget  
17 mark and he notes that after the previous cut there was a  
18 general reduction but an attempt to avoid closing offices  
19 in order to maintain access but it seems that according to  
20 your memorandum that we're already at bare bones.

21 Where do you suggest that we go? Where should we  
22 be in terms of funding for Native Americans and at what  
23 levels in terms of personnel, if you could quickly outline  
24 on that.

25 For example, earlier you were talking about the

1 number of interpreters you think we ought to have per office.  
2 What should our general funding level be for this? What  
3 would you recommend?

4 MS. NORRIS: I think that you really need to look  
5 at the legal needs of Native American. Right now we're  
6 blocked into a funding level that takes into the account  
7 the Corporation's funding policy in the past, which programs  
8 they would fund.

9 I think at some point you really have to look at  
10 the unserved populations and also look at the legal needs  
11 of Native Americans nationwide.

12 Although that's not popular thinking at this time,  
13 looking at a 21 percent cut in funding, I think that nation-  
14 wide there is a great amount of unmet need and that the  
15 Corporation should spend some time and some energy and look  
16 at that problem rather than forcing us into a cutback  
17 position where we cannot adequately serve our clients and many  
18 others go unserved.

19 MR. MENDEZ: With the permission of the board, I  
20 would like to call Susan Harjo, who is the executive director  
21 of the National Congress of American Indians, to come forward.

22 If you can, before you do anything else, why don't  
23 you come up here and address the question that was just posed.

24 MS. HARJO: It's "Harjo." It's a Muskhoge Indian  
25 name and it's our warrior society title and it means

1 enchanted or magic in battle.

2 I think the edge should be given in funding to  
3 Indian programs because of all the reasons that you're fully  
4 aware of -- the isolation factor, the linguistic factor, the  
5 problems of minimum access and what caused Neil Smith and  
6 his colleague to enter into a colloquy that Ms. Trimble  
7 referred to about the difference between Indian programs and  
8 non Indian programs and that we can't look at the same kinds  
9 of factors.

10 As far as a dollar level, that's a decision that  
11 has already been made with the submission of your budget and  
12 I guess I have a problem here of wondering why we have this  
13 post hoc examination of the process. I'm glad that it indi-  
14 cates that there is still an open mind even after submitting  
15 the budget to congress that proposes this cut which will  
16 take the Indian programs below bare bones.

17 I just wanted to echo some of the points made  
18 earlier, that the -- In Fort Hall, Idaho, for example, on  
19 the Shoshone Bannock reservation, while you're dealing with  
20 very few people in Idaho, you're dealing with a reservation  
21 that 300,000 acres and you have individual holdings, tribal  
22 holdings.

23 The people that live on that reservation are subject  
24 to a myriad of laws and regulations and statutes, unlike  
25 other populations.

1           The attorneys who serve that area have a need for  
2 a special library, for example. This 21 percent cut would  
3 cut significantly into one of the mainstays of the legal  
4 services program, which is the Indian law library.

5           MR. MENDEZ: Now that's not part of the 21 percent  
6 cut out of the Indian group. That's out of the national  
7 support centers. Isn't that correct?

8           MS. HARJO: That's right, and there has always  
9 been a benevolent bias against the Indian programs within  
10 the Legal Services Corporation, as I viewed it as an outsider  
11 looking in.

12           MR. MENDEZ: Let's see if I can correct a misimpres-  
13 sion that may have arisen.

14           The 21 percent cut is to Indian legal service but  
15 that doesn't mean that it's across-the-board we're going to  
16 cut every single program by this much.

17           It means that that is the overall line item. We  
18 may take some groups completely out and fund others greater,  
19 leave others the same.

20           It does not mean that each one will be cut 21  
21 percent and what you're saying -- what I hear you saying  
22 is that that's what you believe and that's not necessarily  
23 the case.

24           MS. HARJO: I wonder who is going to make that  
25 decision and on what will that decision be based.

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MR. MENDEZ: We will make the decisio

MS. HARJO: Okay, you will make the d

On the subject of linguistics, for ex:  
who is monolingual and who is bilingual, the reason that  
these good people couldn't give you an answer is that the  
only study that has been done of this issue regarding Indian  
people has been suppressed by the Department of Education  
since August of 1984.

If you could get that kind of information --

MR. WALLACE: Who suppressed it? What office --

MS. HARJO: There was a bilingual education study  
done within the Department of Education, and I could provide  
you with the information about the specific office, which --

MR. MENDEZ: Please provide it to Mr. Opsut.

MS. HARJO: I will indeed. That might help you  
with your look at the linguistic aspects if that is a factor.

MR. MENDEZ: Let me -- so we can clear this up  
right now. I have asked Mr. Opsut to do a special needs  
study for interpreters for all of the Indian nations to see  
which ones we need interpreters, and I have asked him to do  
it as soon as possible, and I have no hesitancy in using  
some of the carryover funds to fund this. if I can convince  
the rest of my board of directors.

I have expressed previously that my prejudice is  
that we need to have everybody here understand what's going

1 on and while my legal secretary speaks Spanish I would not  
2 have her go into court and translate.

3 When you put that in there in your little statements  
4 that really struck me that you really need some help and  
5 we're going to have special attention given to that. I want  
6 to see that everybody -- that we get adequate interpreters.

7 I agree that there is a difference in types that  
8 are spoken and we are going to get that straightened out  
9 if I can convince the rest, and I assume that I can.

10 I'm going to ask Hortencia to join me so I know  
11 I'll have at least on the board.

12 That is a key area and it hasn't been addressed  
13 and it's under 1007(h) and it ought to be.

14 MS. HARJO: One other area, the next area I'd  
15 like to comment on is the discussion about the federally  
16 nonrecognized and terminated tribes.

17 The need still exists. The Bureau of Indian  
18 Affairs does have the federal acknowledgement project and  
19 they have testified to congress that they will be concluded  
20 with their research at the earliest by the year 2005.

21 Yes, I do think that this board could go forward  
22 toward encouraging the Bureau of Indian Affairs to kind of  
23 speed up that process. It wouldn't take a whole lot of  
24 money and it wouldn't take a whole lot of commitment of time  
25 for the Bureau of Indian Affairs to do that and that's an

1 important thing to do.

2           These non-Federally recognized tribes who are  
3 seeking recognition should be shored up by the Legal Services  
4 Corporation so that we have an end to this problem of who  
5 is an Indian and who is an Indian tribe and who is not.

6           We want finality to this issue and we want it faster  
7 than the year 2005.

8           MR. MENDEZ: This issue really though is a BIA  
9 issue. Is that a fair statement?

10           MS. MARJO: Well, it's a public policy issue. What  
11 they're doing -- They're not recognizing -- only congress can  
12 recognize or establish a relationship with an Indian tribe  
13 and this was a subject of great debate in the early '70s  
14 about whether or not Secretary Morton had the authority to  
15 recognize a tribe and the solicitors in the Interior Depart-  
16 ment decided that he did not but he had the authority to  
17 acknowledge the existence of a prior relationship, which  
18 means a huge paper chase that has to be documented.

19           As was pointed out earlier, you have to have  
20 ethnographers and anthropologists and all sorts of historians  
21 and legal experts to create this paper trail to show that  
22 there is a prior existing relationship that the secretary  
23 can then acknowledge.

24           That is one process within the Federal Government  
25 that is going on and it is a legitimate process.

1 Congress, of course, recognizes Indian tribes in  
2 special legislation, and the courts recognize when the United  
3 States has unlawfully terminated or not recognized a tribe,  
4 as in Passamaquoddy v. Morton in 174, as in all of the State  
5 of California where the congress said terminate these  
6 Indians and then never concluded the deal.

7 You are aware of some of these problems and I think  
8 Legal Services provision of expertise and legal assistance  
9 to these people really does assist the overall goal of  
10 consistency in public policy.

11 I think that's our overall goal and what we're  
12 trying to do as a nation, and what we want as Indian people  
13 is consistent here as well.

14 I really wanted to make a special pitch for the  
15 federally unrecognized tribes.

16 Another point on the conflict of interest issue.  
17 Not only does the Department of Justice not represent  
18 Indian tribes when they feel there is a conflict of interest.

19 When it suits the purposes of the Departemnt of  
20 Justice, they often represent an Indian tribe or an indi-  
21 vidual despite that tribe or individual's request, specific  
22 request, that they not represent that tribe or individual  
23 because of a conflict of interest.

24 This is the case with the Omaha tribe of Nebraska  
25 at this very moment, and successor cases to the Wilson, Black

1 decision. I just wanted ot put that in.

2 MR. MENDEZ: May I ask you a question?

3 You're really telling us that you really want us  
4 to increase the funds.

5 MS. HARJO: Absolutely. I don't think it's ade-  
6 quate now.

7 MR. MENDEZ: Let me just follow that up. Are you  
8 willing to have us cut the other programs to increase yours?

9 MS. HARJO: I don't think --

10 MR. MENDEZ: There's a pie and you want your sec-  
11 tion of the pie increased.

12 MS. HARJO: Yes, I do think it should be.

13 MR. MENDEZ: And you are willing to have the other  
14 sections cut.

15 MS. HARJO: I do not know the precise need in the  
16 other areas. I think after looking at this, the colloquy  
17 that was pointed to several years ago persuaded the Legal  
18 Services Corporation internally to allocate a slightly  
19 different way for Indian programs and I think that should  
20 be increased.

21 MR. MENDEZ: Based on your knowledge of all of  
22 the programs and the experience that you bring here, do you  
23 believe that you should have the other ones cut to increase  
24 yours?

25 MS. HARJO: Well, I certainly intend to go to

1 congress and ask them to encourage the Legal Services Corpora-  
2 tion to not have a bias against the Indian programs inter-  
3 nally and to add additional funding to the Legal Services  
4 Corporation for the purposes of Indian programs.

5 MR. MENDEZ: Mr. Ration, I have a question for you.  
6 Do you think you should have more funding?

7 MR. RATION: Yes, I think we should have more  
8 funding, but if your followup question to that is do we cut  
9 the other programs to give Native American programs new  
10 money, I would say no because their need is probably just  
11 as great as ours.

12 What should really be done is that congress should  
13 be approached and asked for more dollars to fund all legal  
14 programs adequately.

15 Now if I could address Mr. Eaglin's question  
16 earlier about the devastating effect a 21 percent decrease  
17 would have on our program, the DNA program if we sustain that  
18 type of a cut would have to at least close three offices.

19 As Mr. Clapham had stated earlier, the last time  
20 that this 12-1/2 percent took place we tried not to close  
21 offices, but when you look at \$500,000, we're talking about  
22 two tribes that will probably lose offices.

23 The Hopi tribe who we now serve, the Apache tribe  
24 who we also serve, would probably be two of the offices  
25 that we would have to close down in addition to another

1 office.

2 The only alternative to that is to make all our  
3 other staff smaller around the reservation, which would make  
4 us totally ineffective and all we would be able to do is  
5 continue with those cases probably for several years because  
6 what that would mean is that we would have to transfer 40  
7 or 50 cases from attorneys or advocates to somebody else and  
8 that would be another effect that people don't want to pick  
9 up those 40 cases.

10 MR. MENDEZ: Speaking of the Apache, do they have  
11 the same ratio of non-English speaking?

12 MR. RATION: I would say it's pretty close to what  
13 the Navaho is.

14 MR. MENDEZ: Now I'm going to cut this off because  
15 we have several others and I don't want to do to them what  
16 I did to you last time and prevent them from testifying. I  
17 hate to cut you off, but if you have any further comments  
18 you can reduce them to writing and present them to us and  
19 we will read them.

20 MR. RATION: May I make just one short comment?  
21 There has been a lot of discussion about how Native American  
22 programs have been funded.

23 I think the key to talking about future funding  
24 for Native American programs is that there should be another  
25 study involving staffs of Native American programs, to sit

own and talk about what it is that we need to look at all these different avenues.

49  
I appreciate the fact that you're looking into interpreters, that you're taking some other specific areas and looking at them, but I think it's best done as a total group being involved in this total study so that we at some point come to some terms on how that funding should take place.

MR. MENDEZ: Okay, I'll tell you what I want you to do. Prepare a proposal and send it to us of what you think we ought to do.

MR. RATION: Thank you.

MR. MENDEZ: At this time we will call Steve Nagler.

MR. EAGLIN: May I indicate to everyone what this is all about?

I had asked -- About five and a half years ago, the Fayetteville Times had a series on migrants. A reporter managed to get into a couple of camps and so yesterday I went by the paper and I got -- they made copies of the clips and I have that.

I asked Mr. Opsut to have each of the board members provided with a copy and I would also like to have them provided with a copy for questions that I may address to them later on. Not that I would expect you to answer them

1 today but perhaps in a followup letter.

2 I think this type of article -- This series of  
3 articles raises some questions about the problems that are  
4 presented to a legal services program and to us then about  
5 how to serve this type of a client community, so you could  
6 just address yourselves to whatever issues you think arise  
7 out of this series.

8 MR. MENDEZ: Please introduce yourselves. I know  
9 Mr. Nagler but I don't know --

10 MR. NAGLER: My name is Steve Nagler. I'm execu-  
11 tive director of the Migrant Legal Action Program. It is  
12 my pleasure to introduce on my right Bob Moore, director of  
13 the migrant program in Maine.

14 MS. FRANCIS: My name is Gail Francis. I'm the  
15 Legal Service Corporation staff representative. I work in  
16 the office of Legal Services as the manager of grants and  
17 budgets unit.

18 MR. NAGLER: Mr. Chairman, how is it your pleasure  
19 to proceed? We have a brief presentation that we can make.

20 MR. MENDEZ: We would prefer that you make the  
21 presentation and if we have any questions we'll feel free to  
22 jump in. We will give you about five or ten minutes to make  
23 your presentation and then after that we will start asking  
24 question unless something is really burning us earlier.

25 MR. NAGLER: The process that this board has gone

1 through thus far, very briefly, with regard to migrant  
2 program funding as it developed at the first meeting involve  
3 I think a fundamental initial misconception, and that was  
4 reflected in a comment made by Mr. Wallace at the first  
5 meeting to the effect that there was a distinction between  
6 direct providers of legal services for whom the board intended  
7 to make the 4.6 percent increase and all others for whom  
8 the board proposed what amounted to subsequently to be a  
9 21.6 percent cut in funding.

10 The basic assumption at that point I think, as I'm  
11 sure we'll acknowledge as mistakenly now, was that migrant  
12 programs and Native American programs are not direct providers  
13 of legal services to a client population.

14 MR. MENDEZ: I can't speak for the rest of the  
15 board, but from the first time on I knew that they were  
16 direct providers.

17 MR. NAGLER: Well, I think many -- I'm sure you  
18 did. I'm sure many others may have, however, had some  
19 misconception in that regard.

20 In any case, migrant programs, like Native American  
21 programs, are unequivocally, for anyone who has any doubt,  
22 direct providers of legal services to a client population  
23 and indeed as such would have, by the reasoning which went  
24 into the decision made at that first board meeting, should  
25 have been for all intents and purposes included in a 4.6

1 funding increase.

2           There was no basis for differentiating migrant  
3 programs from other direct providers or, for that matter,  
4 Native American programs, from other direct providers of  
5 legal services from the standpoint of that kind of budget  
6 considerations.

7           Indeed, insofar as one can make distinctions  
8 between migrant programs and other legal services providers,  
9 I suggest that in certain instances migrant programs may  
10 operate under extraordinary and very special burdens.

11           Indeed, other programs do, as well, but some of  
12 the burdens under which migrant programs operate have been  
13 documented in a study done by the Corporation itself known  
14 briefly as the Section 1007(h) study, a portion of which we  
15 have excerpted to you, a summary of which we have excerpted  
16 for you and distributed -- I understand from Mr. Daugherty  
17 that it's in your briefing books today.

18           Just very briefly, some of the programs from which  
19 the migrant programs suffer indeed parallel some of the  
20 burdens from which their client population suffer.

21           The 1007(h) study pursuant to its directive--

22           MS. BERNSTEIN: While we're clarifying what we've  
23 got here, where did this paper that says "Name of surveyor  
24 report, how counted, survey critique and author of critique"  
25 come from?

1 MR. NAGLER: From us. That came this morning.

2 Briefly stated, as the opening page indicates, the  
3 1007(h) study was conducted on the basis of the directive  
4 from the congress contained in Section 1007(h) of the Legal  
5 Services Corporation Act, which required the Corporation to  
6 conduct a study on whether certain eligible clients suffered  
7 under an extraordinary burden of obtaining access to justice,  
8 access to the system of justice.

9 Among the groups enumerated by Congress in their  
10 Section 1007(h) of the Act were migrant and seasonal farm  
11 workers as well, I might add, as Native Americans.

12 Indeed, the study goes on to document the special  
13 problems of access to justice that different groups in the  
14 population have and especially migrants, and I suggest to  
15 you that no group is more burdened in terms of their access  
16 to justice than the migrant population of the United States.

17 Among the items that were laid out is possible  
18 barriers to access to justice for groups generally, as out-  
19 lined on page 12 of this document, were, to quote, that  
20 have no legal services available. At the end of 1978 this  
21 was true for approximately 20 percent of the poor persons  
22 in the United States, and indeed the substantial portions  
23 of the migrant population of the United States -- and this  
24 factor is pointed out to be highly related to population  
25 density -- for significant portions of the migrant population.

1 of the United States there were in fact no legal services  
2 available.

3 The second item enumerated as an access barrier  
4 is an inability to reach program offices because of physical  
5 distance, lack of transportation and the like and this  
6 barrier is particularly present in sparsely populated areas  
7 where the distance to the nearest service delivery point can  
8 be a hundred miles or more.

9 That's a very conservative distance in some of  
10 our western states, and indeed where distance precludes  
11 reaching service delivery sites situated even a few miles  
12 away, where living and working arrangements preclude reaching  
13 even nearby delivery sites, and indeed seasonal and migrant  
14 farm workers are people who by the very nature work during  
15 the day, are the very poorest working people in America.

16 Down in the valley, the average income to a family  
17 of six a few years ago was somewhere in the neighborhood of  
18 about \$3900 a year.

19 MR. SMEGAL: Which valley is that?

20 MR. NAGLER: The Rio Grande Valley.

21 I might add at this point that congress has made a  
22 particular note of the difficulties of migrants to access,  
23 espeically in rural areas and especially because of their  
24 living and working conditions, living in rural labor camps  
25 and under difficult circumstances, working under circumstances

1 that are also difficult.

2 When the peak of the season comes on they are  
3 working 16 and 18 hours a day.

4 Not only in terms of funding for migrant services,  
5 indeed the first major grant for migrant legal services  
6 through the Corporation came through a supplementary grant  
7 that the congress approved in toto at the request of the  
8 Corporation, while at the same time another supplementary  
9 grant that the Corporation requested for other funding for  
10 other parts of Legal Services was not approved in toto but  
11 only by a third.

12 I might add also that congress's recognition of  
13 the special needs of migrant in this regard has gone into  
14 the food stamp program where indeed there are special out-  
15 reach efforts in terms of food stamps that the Department  
16 of Agriculture personnel involved in food stamps engage in.

17 In the area of migrant health, special outreach  
18 workers are hired by migrant health programs, to go out, to  
19 reach out to a client population that simply is unable to  
20 get away from the labor camps or get away from their work  
21 during the day and doesn't have cars, doesn't have means of  
22 rural transportation to get to service providers, not just  
23 legal services but other service providers.

24 The same is true with regard to identification of  
25 children in the migrant education program.

1           The migrant education program is an interesting  
2 case in point because while other programs in the watershed  
3 year of 1982 were undergoing drastic funding cuts it was  
4 subject to recommendations on the part of this administration  
5 for significant funding cuts, migrant education programs  
6 were neither the subject of such a recommendation nor were  
7 they subjected by the congress to significant funding cuts  
8 because the entire area of migrant education was identified  
9 as one of the few of such critical and sensitive importance  
10 that indeed for congress and the administration chose not  
11 to engage in funding cuts and indeed funding increased in  
12 that watershed year for migrant education.

13           MS. BERNSTEIN: Before we get a whole lot further  
14 in this, just for everyone's edification and just to under-  
15 stand where you're coming from on this, what is -- As I  
16 understand it, the funding from LSC to migrants is to go  
17 toward those persons who qualify as migrants rather than  
18 seasonal workers.

19           MR. NAGLER: Exactly.

20           MS. BERNSTEIN: You combined the two in one of  
21 your statements two or three minutes ago in talking about  
22 them in combinations in the numbers.

23           Would you just get out on the table the definition  
24 of each and whenever you're dealing with specific needs make  
25 sure that we keep strictly to the migrant definition.

1           MR. NAGLER: That is an extraordinarily important  
2 question. Indeed I think the only context in which I men-  
3 tioned the two together was in quoting from the Act, from  
4 Section 1007(h), where the congress listed migrant and  
5 seasonal farm workers. In other respects thus far, I think  
6 I've referred only to migrants and the special problems of  
7 migrants.

8           The distinctions between the two, to respond  
9 directly to that point, and I think the other differences we'll  
10 get into later as we discuss funding distinctions, the person  
11 who stays overnight away from home is defined and crosses  
12 a state line for purposes of engaging in work and expects to  
13 return home is generally regarded as a migrant.

14           The definition tends to carry through to at least  
15 a few agencies around the government. It certainly has been  
16 the Legal Services definition.

17           Seasonals are regarded as other people engaged in  
18 agricultural work on a less than full annual year basis but  
19 who do not leave home for overnight for any period of time.

20           Thus, it is a common practice for crew leaders  
21 to recruit people off the streets of a city, such as Phila-  
22 delphia or Washington or Atlanta, take them out to the fields  
23 for a day, bring them back that night and deposit them back  
24 on the streets where they were found, where they were recruited.

25           Typically seasonals are recruited in places like

1 soup kitchens and missions in some of the poorer se  
2 our major cities.

3 The funding issues with regard to seasonals and the  
4 sensitivity with regard to seasonals are a more difficult  
5 problem.

6 Indeed I should say to you right at this point that  
7 most migrant programs from the standpoint of providing  
8 service in the specialty areas -- that is, the issues that  
9 a person confronts by dint of the kind of work the person  
10 does would have a large part to say if you're a farm worker.  
11 Whether you're a seasonal or a migrant farm worker, you suffer  
12 under the same burdens and carry the same benefits, such few  
13 as they may be, that are inherent in farm work.

14 It is often a problem that although migrant programs  
15 are not funded to represent seasonal programs because they  
16 are counted theoretically at least by the census and there-  
17 fore are assigned to census-based programs for service,  
18 indeed migrant programs have still got to service the seasonal  
19 population as well insofar as issues in which they have  
20 expertise are concerned and typically they are referrals  
21 from parent programs to the migrant programs and seasonals  
22 because there's no one else in the program to handle it.

23 MS. BERNSTEIN: But the point is that if the  
24 seasonal workers are counted in the census base and there-  
25 fore their funding would be covered under the provision in

actions of

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we're increasing their coverage 4.6 percent for those  
ams, and the migrant, because they're not census based,  
use they do move from state to state, you're saying  
d specific funding.

5 MR. NAGLER: For precisely that reason, it has  
6 always had specific funding and it has always been regarded  
7 as needing specific funding. You are absolutely right.

8 MR. MENDEZ: It's my understanding that migrants  
9 were counted in the '80 census. Is that a fair statement?

10 The question is does the census office hold out  
11 that they in fact counted migrants in the '80 census?

12 MR. MOORE: I think the fairest response to that,  
13 Mr. Mendez, is that the census in 1980 attempted to count  
14 migrants. I say that because there are two problems and  
15 your sheet indicates some of them.

16 The census, as we all know states there was a  
17 specific effort to include migrants in the 1980 count as  
18 opposed to 1970. The problem is that --

19 MR. MENDEZ: What total did they come up with in  
20 1980?

21 MR. MOORE: I don't have the actual figure but the  
22 attempt was very perfunctory.

23 MR. MENDEZ: Can you give us an approximate?

24 MR. MOORE: I don't have that with me. I can  
25 provide those figures relatively briefly .

1           While Mr. Nagler is looking for that, let me  
2 respond if I may to the question specifically.

3           When I say that they attempted to and it was rela-  
4 tively ineffective, what I mean is that the census once again  
5 only counted households and the question was where were the  
6 migrants.

7           The other thing is that the census in 1980 was  
8 conducted in March and they asked people in response to the  
9 questions what they were doing the previous week in terms  
10 of work and it is that work the previous week from when they  
11 answered the census and the response to that question that  
12 they were characterized in the sense of being migrant or  
13 whatever other classification in terms of their occupation.

14           We all know that March is not the appropriate  
15 time to ask farm workers, if you're going to make a count,  
16 what you were doing the previous week in order to --

17           MR. NAGLER: Mr. Chairman, in fact they were not  
18 counted because the count is so ridiculously off the mark  
19 and it is regarded as so far off the mark by every person  
20 from the Department of Agriculture who said that approximately  
21 37 percent -- some of the actual numbers I can't find --  
22 Department of Agriculture --

23           MR. MENDEZ: Isn't it approximately 220,000?

24           MR. MOORE: But nobody is using those. They are  
25 clearly erroneous.

1 MR. WALLACE: That's workers, not workers and  
2 dependents?

3 MR. NAGLER: Well, it's not even workers. It's  
4 theoretically households and some workers, but the census  
5 essentially counted at the wrong time, they didn't count  
6 migrant households frequently.

7 The first people to tell you that the census count  
8 of migrants is way off the target is the Bureau of the Census.  
9 They said -- they told Lillesand in 1977 that they were going  
10 to try to make a few minor adjustments to do something about  
11 the problem of not counting migrants but within the Lillesand  
12 study itself is cited a particular statement from the Bureau  
13 of the Census that the fundamental change that would have  
14 been needed to count migrants wasn't going to be made by  
15 the Census Bureau.

16 The Census Bureau says we just didn't do it in  
17 1980 really any better than we did it in 1970.

18 MR. MENDEZ: Let me ask you this question. The  
19 poor people that were counted if they were in southern Texas  
20 in March of 1980 and they're a part of that population of  
21 poor in Texas. Isn't that a fair statement?

22 MR. NAGLER: Sure.

23 MR. MENDEZ: So you were in fact double-counting  
24 this person if you're including him as a migrant later.

25 MR. NAGLER: Not really. Not basically. If you're

1 counting people in southern Texas -- And by the  
2 Bureau of the Census says right off we missed f  
3 poor people in America, some of whom theoretica  
4 migrants.

5 If you're counting them later up the stream there  
6 may be a factor of duplication which is estimated, I believe,  
7 at about 1.25 percent -- 1.25 ratio.

8 MR. MENDEZ: You're using the Lilliland figures?

9 MR. NAGLER: Yes. The 1007(h) figures more likely.  
10 The basic point is there is not an authority in this country,  
11 including the Bureau of the Census, that suggests that the  
12 census figures are anywhere near accurate.

13 Even the Department of Agriculture says that the  
14 census counted approximately 37 percent of the people.

15 MR. MENDEZ: May I just ask you a couple of questions

16 MR. NAGLER: Sure.

17 MR. MENDEZ: The major states which the migrants  
18 come from are Texas, California, Florida and apart from the  
19 States is Puerto Rico.

20 MR. NAGLER: Right, but there are also commuter  
21 workers.

22 MR. MENDEZ: And about 47 percent of the migrants  
23 come from those three states?

24 MR. NAGLER: I would say so.

25 MR. MENDEZ: About half. What ratio of our migrant

1 funding goes to those three states?

2 MR. NAGLER: The funding figures add up to probab.  
3 -- I think it's a little bit higher. Gail thinks it's 40  
4 percent. I think it's a little bit higher than that.

5 If you'll look at the sheet which lists the levels  
6 of funding, and that I believe was also distributed.

7 MR. MENDEZ: And what is the total funding that  
8 migrant programs received this past year?

9 MR. NAGLER: About \$9,400,000.

10 MR. MENDEZ: I get \$3.9 million to those three  
11 states.

12 MR. NAGLER: That's about right.

13 MR. MENDEZ: And we have about nine million, so i  
14 we have to really -- those three states should be receiving  
15 about \$4.5 million rather than the 3.8.

16 MR. NAGLER: If one does it straight across the  
17 board, yes, but the formula Lilliland adopted and which  
18 1007(h) adopted as well tries to look at the population so  
19 there is some duplication.

20 Let's look at the number of person months that  
21 people are working and it's a fairly complex formula. Let  
22 us weight the amount of funding the different programs  
23 receive on the basis of the amount of time that a migrant  
24 spends in different states so that if a migrant is going to  
25 spend more time in North Carolina than in New York, then

1 North Carolina is going to get a little bit of an  
2 funding for servicing those migrants for a longer period.

3 Indeed, that happens to be the case in states like  
4 Texas, Florida, North Carolina and --

5 MR. WALLACE: Can I ask you a question on the  
6 seasonal numbers because --

7 Is the seasonal count all seasonal workers or is  
8 the seasonal count all seasonal workers who are eligible  
9 clients?

10 MR. NAGLER: Well, the effort and the assumption  
11 is basically all seasonal workers who were eligible clients  
12 although it's really -- just as it's really tough to count  
13 migrants, it's tough to count seasonals.

14 MR. WALLACE: That's what concerns me. I mean I  
15 was a seasonal worker when I was a kid and I didn't -- In  
16 Biloxi we pick shrimp and not cotton but it was the same  
17 principle. I didn't get paid very much but I wasn't poor,  
18 either, because I had some place to go home to and it would  
19 make common sense to me that a lot of seasonal workers are  
20 second earners in a family that's not necessarily poor.

21 An assumption that they are eligible clients  
22 would look unjustified to me. I'm willing to be convinced  
23 but it doesn't make intuitive sense that all seasonal workers  
24 are going to be eligible clients.

25 MR. NAGLER: A large part of the estimates that were

edge in

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attempted to be adjusted for the economic situation  
of families and poverty and Lillisand certainly  
that into account in his estimate of the number of  
onals.

Your point in terms of your having worked in this --

6 I assume during your college days, Mr. Wallace -- is an  
7 interesting one from another standpoint and that is that the  
8 Department of Agriculture says that farm workers in this  
9 country, migrants and seasonals -- and they don't make a  
10 distinction really -- are indeed predominantly housewives  
11 and college students.

12 It sounds like a real jetset group of people who  
13 manage -- and there are only a couple of hundred thousand  
14 of them -- manager to get around the country really quickly  
15 probably because a lot of them have fast cars.

16 MR. WALLACE: So says Secretary Bennett, anyway.

17 MR. NAGLER: Indeed. Anyone in this country who  
18 has ever worked with population groups that the Migrant  
19 Legal Services Program serves in this country, that kind  
20 of suggestion is absolutely laughable.

21 That brings us to the question of what in the world  
22 does the Department of Agriculture say about the number of  
23 migrants beyond that.

24 Since they so badly underestimate -- since they  
25 are so badly off the mark in terms of who is doing migrant

1 work, could they be very accurate with regard to the numbers  
2 of people who are doing migrant work, and that indeed is  
3 the next step up the ladder from the Census Bureau in which  
4 everybody agrees is down at the bottom from the standpoint  
5 of its accuracy.

6 Looking at the Department of Agriculture figures,  
7 there's a lot of -- Here again it's reported to you on the  
8 sheet distributed earlier.

9 The answer fundamentally that three or four  
10 different people who looked at that from the standpoint of  
11 independent agencies, including people at the University  
12 of California at Davis, including Isaac Eberstein in Florida,  
13 Leslie Leitner at USDA among other people, say simply that  
14 the sampling that was done, 300 farm worker families, migrant  
15 households, simply isn't enough.

16 The basic problem in terms of counting workers that  
17 the Department of Agriculture has run into is that they do  
18 a fairly good job of counting people who are in certain kinds  
19 of crops, grain especially, and in cattle production, people  
20 who indeed are full-time workers the year around including  
21 in December when agriculture has done the primary job of  
22 counting, they don't count other people. They don't count  
23 other people.

24 They don't count the people in fruits and vege-  
25 tables and that indeed is where the migrant farm worker

1 population of this country is.

2           The population that's served by migrant programs  
3 in this country is in an area that according to Phil Martin  
4 from U. Cal Davis and Isaac Eberstein at Florida State and  
5 other authorities outside the Department of Agriculture, as  
6 well as Leslie Leitner of the Department of Agriculture,  
7 simply don't count the population and that's why they're so  
8 far off the mark in terms of identifying who it is out there.  
9 It is simply wrong.

10           MR. MENDEZ: Mr. Nagler, I am looking at the rank  
11 of states and state total annual person months of the percent  
12 of national total, and you said just previously that that  
13 California, Florida and Texas, that was the reason for the  
14 readjustment downward, and I want you to know that if you  
15 combine those three states in terms of person months total  
16 those three states have 59 percent of the total months used.

17           MR. NAGLER: I think you misunderstood me. I said  
18 that there were complex factors for adjusting the number  
19 of people that were engaged in agriculture, including person  
20 months.

21           Person months, indeed, because the Florida season  
22 is almost 12 months long, or the Texas season tends to be  
23 long --

24           MR. MENDEZ: If that's the person months, don't  
25 you think we should be putting our resources -- if almost

1 two-thirds of -- almost 60 percent of our migrants are in  
2 those three states, don't you think we ought to focus 60  
3 percent of our resources in those three states?

4 MR. NAGLER: Certainly arguably, yes, but there  
5 are other factors that Lillisand takes into account and the  
6 1007(h) takes into account that would be neglected as a  
7 result, and if we are talking about the best of all possible  
8 worlds --

9 MR. MENDEZ: That's where most of the migrants are,  
10 those three states. That's where the most months are and  
11 that's where they live.

12 Doesn't it make better sense to allocate those  
13 resources in those three states than spreading them all over  
14 the country?

15 As much as I like Maine, isn't it better to put  
16 more money in Texas and California and Florida than in Maine  
17 if Maine doesn't even have -- according to the ranking here --  
18 doesn't even come up to two percent.

19 MR. MOORE: Well, that's one of the problems with  
20 the studies. As a matter of fact, in just one crop alone,  
21 which is blueberries in Maine, even according to the state  
22 police of the State of Maine we have an importation of  
23 approximately 4500 to 5000 Micmacs that come in from the  
24 Maritimes as treaty border crossers.

25 Even in Lillisand there are people that are missed

1 and when it shows the migrant stream, obviously it doesn't  
2 show a stream coming into Maine from Nova Scotia and New  
3 Brunswick, but in fact that is what takes place.

4 MR. NAGLER: There is indeed, Mr. Chairman, a bit  
5 of credence -- If you'll look at the average per capita in  
6 1985 that was spent in those three states on servicing of  
7 migrant farm workers, indeed the levels in '85 were 539, 532  
8 and 532 for Texas, California and Florida.

9 But you must also look at the extraordinarily low  
10 per capita funding levels in other states as well and the  
11 fundamental need to supply services in other other states  
12 and there's a tremendous problem of doing so at the funding  
13 levels that exist now.

14 MR. MENDEZ: I'm concerned with this, but I'm also  
15 concerned that we get the biggest bang for our bucks and if  
16 we have more migrants and more time spent by migrants in  
17 Texas, California and Florida and that is essentially their  
18 base states, they are going to spend more time in those  
19 states, and the statistics indicate that the most time is  
20 spent in those states and 60 percent of the migrant months  
21 are in those three states, don't you believe that it's most  
22 appropriate to allocate our money in those states?

23 MR. NAGLER: Not necessarily. I can't give a direct  
24 and complete answer to that as much as I would like to, Mr.  
25 Mendez, for the simple reason that much of the time spent in

1 those states by people who are migrants are people who are  
2 unemployed, they are unable to find work in the --

3 If one visits Belle Glade at this time of year or  
4 down in the Rio Grande Valley, you find tremendous problems  
5 of unemployment and the cases that tend to generate from  
6 unemployment are not farm worker litigation per se.

7 The amount of working months tends to be higher  
8 as you go --

9 MR. MENDEZ: But one of your major functions is  
10 outreach and one of the major functions of outreach, as you  
11 told me in my office, is to educate the people.

12 MR. NAGLER: Indeed.

13 MR. MENDEZ: And you educate the people where they  
14 are located. If they spend the most time in those states,  
15 then it seems to me if you're going to educate them you  
16 educate them in those states.

17 MR. NAGLER: But in addition you spend a large  
18 part of your money on lawyers, the largest part of your  
19 money, not on outreach but on lawyers to resolve disputes  
20 by negotiation, mediation, litigation, however it is necessary  
21 to provide legal services to people, and those legal services  
22 stem from what they do in life and that is farm labor.

23 MR. MENDEZ: If I may, wouldn't it be better if we  
24 could allocate migrant funding in all of our programs?

25 MR. NAGLER: We do allocate migrant funding in

1 all of our programs, or almost all of our programs.

2 MR. MENDEZ: The 300 programs?

3 MS. FRANCIS: To the extent that I get seasonal  
4 farm workers that --

5 MR. MENDEZ: I'm not talking about seasonals. I'm  
6 talking about migrants.

7 MR. NAGLER: That's the -- Essentially the grants  
8 go not to all 300 because --

9 MR. MENDEZ: We have 45 grants, is that correct?

10 MS. FRANCIS: 43.

11 MR. NAGLER: We have 43 grants. Some of the grants  
12 are subsumed in other grants.

13 MR. MENDEZ: And you have two free-standing groups  
14 Mr. Nagler, is that correct that you have two --

15 MR. NAGLER: There are two free-standing groups.  
16 That's New York and Michigan.

17 MS. FRANCIS: I'd like to interject one other point  
18 and that is that the per capita doubles that you see on this  
19 sheet are from the Lilliland study and are not in fact the  
20 per capita levels that the corporation funds at.

21 MR. MENDEZ: I recognize that. I think the board  
22 members do recognize that.

23 MR. DURANT: Mr. Nagler, let's get away from the  
24 question of population things. Identify as specifically  
25 as you can the specific legal needs as you would define them.

1 of migrant workers.

2 MR. NAGLER: Indeed the legal needs reflect to  
3 who migrant farm workers are and what they do and where they  
4 live.

5 The first characteristic is that they are farm  
6 workers and indeed as farm workers, as I mentioned earlier,  
7 they are the poorest group of working people in America.

8 Most of them operate today in what is called a pa-  
9 drone system, the old crew leader system, in which a grower  
10 or an association or corporation will hire a crew leader  
11 or a series of crew leaders and the crew leaders will go out  
12 and pay the workers.

13 In paying the workers, they will theoretically  
14 try and pay on the basis of a piece rate. That piece rate  
15 often doesn't add up to the minimum wage.

16 Let me tell you, when I went out and did farm work --  
17 unlike Mr. Wallace, a couple of years ago I went down to  
18 North Carolina to pick peppers, we got paid off on a piece  
19 rate basis that didn't come anywhere near the minimum wage  
20 and I'm in pretty good physical condition for an old guy.  
21 It didn't come anywhere near the minimum wage and that's  
22 problem number one.

23 Where it does come up to the minimum wage, such  
24 as in crops like tobacco, where there is a straight minimum  
25 wage pay, typically the crew leader takes right off the top

1 amounts of money for housing, food, wine, any number of  
2 different things, most of which he isn't supposed to take  
3 any money off for at all.

4 That drags the worker down below the minimum wage,  
5 often well below the minimum wage.

6 We saw a housing unit in New York a year or two  
7 ago that the crew leader was taking \$35 a week off for each  
8 worker living in the housing unit. The housing had been  
9 inspected by the Occupational Safety and Health Administration  
10 prior to the time that migrants moved into the housing unit  
11 and had approved it for housing for three, four, five people,  
12 and there were 22 or 23 people living in that housing.

13 When you walked through that empty building from  
14 one end of the building to the other end of the building,  
15 the building shifted very much like a seesaw, and that brings  
16 us to problem two -- the nature of housing.

17 MR. DURANT: Was OSHA notified of that?

18 MR. NAGLER: OSHA was notified and refused to  
19 accept the complaint because there was not an identifiable  
20 client in the situation who was complaining -- a person who  
21 was living in the housing.

22 This occurred after the housing had emptied out,  
23 after the season when people were visiting the labor camp  
24 to see what in fact --

25 MR. DURANT: How did they know that there were 23

1 in there that --

2 MR. NAGLER: Oh, I was in there during the season.

3 MR. DURANT: OSHA's authority on these things  
4 doesn't stop when the season ends. You have a specific  
5 reference where OSHA refused to take the case on that basis?

6 MR. NAGLER: Indeed. We can develop that infor-  
7 mation. I'm sure in a number of instances OSHA demanded a  
8 specific complaint and wouldn't come out to the labor camp  
9 out of the ordinary course of its inspections unless there  
10 were a specific complaining individual.

11 The problem with the specific complaining indivi-  
12 dual -- A lot of what 1007(h) tells you you see echoed day  
13 in and day out in terms of the experience of legal services  
14 programs serving migrant clients.

15 One of the things that 1007(h) points out is the  
16 fear of people to step forward if they are migrants, fear  
17 of the crew leader, fear of the grower, fear of the associa-  
18 tion, fear of being blackballed and that's a tremendous  
19 problem in crops like Florida sugar where an active black-  
20 ball system acts to eliminate people who complain about the  
21 situation they're in, even if their complaints are perfectly  
22 justified and perfectly meritorious.

23 MR. DURANT: Let me ask you, in a case like that  
24 that would come up, we're handled different circumstances where  
25 employees are intimidated for one reason or another and that

1 makes a tremendous damage suit.

2           It seems to me that wouldn't be peculiarly it seem  
3 to me a need that would otherwise not be able to be pursued.  
4 If the complaint is that serious, it would seem to me that a  
5 number of lawyers would see that as a contingent case and  
6 maybe even as a class action contingent case that would  
7 generate a fairly substantial fee if the need is that  
8 sharply defined.

9           MR. NAGLER: Well, a major case of that sort on  
10 behalf of the individuals, not a class action case but on  
11 behalf of individuals who were blacklisted, was brought in  
12 New Jersey on behalf of workers from the Commonwealth of Puerto  
13 Rico.

14           MR. DURANT: Brought by Legal Services?

15           MR. NAGLER: It was brought by a legal services  
16 provider because the individual cases don't add up to a  
17 whole lot of money in terms of damages.

18           If you're a prominent actress the the Boston Symphony  
19 says shouldn't perform and you lose a night's work, that's  
20 a lot of money, but if you're a farm worker and you lose a  
21 few days' work and there were a few of you in the camp that  
22 you know of who were discriminated against and you're getting  
23 individual service from Legal Services, that doesn't add  
24 up to a lot of damages and doesn't pay or make it worthwhile  
25 for a lawyer to get involved outside of Legal Services.

1 MR. DURANT: You were moving into the housing  
2 area specifically.

3 MR. NAGLER: I had also mentioned Florida sugar  
4 as a major place of blacklisting. In that situation, Legal  
5 Services at present can't do anything because we're not  
6 allowed to represent H-2 workers who are in this country  
7 lawfully.

8 I would suggest to you perhaps if there is -- at  
9 some other appropriate time -- that is an issue that -- the  
10 position of Legal Services Corporation on the subject of  
11 the representation of aliens is something that I hope this  
12 board will review from the standpoint that that restriction  
13 has major negative impact on what we are able to do for  
14 citizen farmworkers and the injury that is done to citizens  
15 of the United States by the inability of Legal Services to  
16 provide legal services to aliens lawfully in the H-2 program,  
17 such as the blacklisted workers from Jamaica here under the  
18 H-2 program in Florida sugar.

19 The constitute at this juncture approximately  
20 between 90 and 95 percent of the population harvesting sugar  
21 in the State of Florida.

22 MR. DURANT: Talk to me about ones that we can  
23 focus on in terms of --

24 MR. NAGLER: The Jersey example I think was the  
25 most prominent of that in terms of blacklisting cases and

1 the problems inherent thereunder.

2 MR. DURANT: What I want to get a handle on is  
3 some way, some concise way of trying to understand -- I have  
4 a conceptual concern distinguishing between needs and wants.  
5 I mean wants are infiinte. Needs are not.

6 Is there some way of trying to distinguish between  
7 the two and how to do that, and part of that it seems to me  
8 has to go into the basis of trying to clearly understand what  
9 specific needs we are talking about.

10 You have mentioned to me the minimum wage problem.  
11 You have mentioned to me the OSHA problem. Started to get  
12 into the housing but because of my question we got misdirected.

13 You mentioned the New Jersey blacklisting. We'll  
14 leave the Florida thing aside on the citrus thing.

15 Any other specific kind of needs peculiar to  
16 migrant workers?

17 MR. NAGLER: Indeed a whole series of problems  
18 arising as --

19 MR. DURANT: By the way, the minimum wage isn't  
20 peculiar to migrant workers, is it?

21 MR. NAGLER: True.

22 MR. MOORE: But some of the problems with the  
23 minimum wage are more difficult to litigate to some extent  
24 with regard to migrants.

25 If I may just for a moment digress on this. That's

1 correct that the minimum wage -- The Supreme Court just the  
2 other day decided one with regard to transit workers, I'm  
3 told.

4 The problem with representing migrants, for  
5 example, on minimum wage is that more times than not you  
6 have absolutely no records and you end up going through a  
7 long series of discovery in an effort to prove hours worked  
8 and then you have to make a judgment in terms of piece rate  
9 and hours and those kinds of things.

10 The other problem you have in terms of representing  
11 migrants on minimum wage is that you'll always -- seemingly  
12 always get involved in what's called the joint employer issue  
13 and that is you end up trying to prove who in fact is the  
14 employer of this worker that's responsible to pay the wage.

15 Many crew leaders have empty pockets, so that in  
16 fact when you ultimately make a judgment for the wages you  
17 can't collect it so you end up going through mostly deposi-  
18 tions, a series of interrogatories, to try to prove who in  
19 fact is the --

20 MR. DURANT: I have in Detroit represented people  
21 that worked for hotels that were rather --

22 MR. MOORE: Let me just say one further thing.

23 MR. DURANT: -- not paying minimum wage, paying  
24 base on a whole series of things and I know to some extent  
25 of the discovery kinds of problems, but I don't quite under-

1 stand why that is peculiar to migrants in that on any minimum  
2 wage claim you've got the question of certain allocations  
3 that the statute permits, certain things for housing and  
4 whatever, and I don't see where that is unique to migrants,  
5 and if it is please educate me.

6 MR. MOORE: Some of that is not unique to migrants  
7 as you're speaking of it.

8 What is unique is that migrants migrate and what  
9 becomes a problem then, an additional problem, is the very  
10 nature of their migrating, and that is that you have to  
11 conduct this litigation at the same time as you do not know  
12 where your client is more times than not.

13 In response to what Mr. Mendez was saying in terms  
14 of taking Bay State money and concentrating it down there  
15 and taking some money away from Stream States, it would be  
16 almost impossible to litigate in Bay States without knowing  
17 where your clients are when they're in the Stream States  
18 for purposes of answering interrogatories or whatever else  
19 they have to do.

20 MR. DURANT: Let me ask you -- That is a very  
21 difficult problems Let me ask you a question.

22 Is the most efficient way of trying to deal with  
23 the employers, whoever they may be, whether they be the crew  
24 leader or the farmer or whoever, when they are underpaying  
25 the minimum wage is really the most efficient way to try and

1 litigate it in the way which you are talking about?

2 I agree with you it's a problem, and my question is  
3 is it --

4 MR. MOORE: If I can answer your question. I have  
5 negotiated resolutions to claims under the Fair Labor  
6 Standards Act for minimum wage more than I have ever litigated  
7 those claims. Yes, I think you're right. We always attempt  
8 to settle those things.

9 In addition, we have oftentimes used the filing  
10 of complaints with the Department of Labor who is responsible  
11 to investigate those complaints, so we use other vehicles  
12 whenever possible.

13 I did not mean to give the impression that we  
14 immediately resort to litigation. That is not what I intended  
15 to imply.

2-B 16 MR. NAGLER: There's another factor, if I may,  
17 Mr. Durant, with regard to the special nature of migrants.

18 Migrants live in labor camps during the season.  
19 How many workers have Fair Labor Standards Act wage problems  
20 involving deduction of cost of housing, for food, for work  
21 clothing, for the tools theoretically, for things essentially  
22 for the benefit of the employer?

23 Those simply don't arise in most Fair Labor  
24 Standards Act cases. The minimum wage issues are relatively  
25 unusual under the Fair Labor Standards Act.

1           MR. DURANT: Now just a second, Steve. The MASC  
2 office -- I don't want to be anecdotal -- Detroit has all  
3 sorts of cases involving illegal deductions by employers  
4 to take advantage of ignorant workers, hwo don't know their  
5 rights and ought to know them.

6           While there would be specific deductions, I clearly  
7 agree with you, that would apply in the migrant situation,  
8 the idea of deductions it seems to me it's clearly only a  
9 difference in kind, not in the degree.

10          MR. NAGLER: That certainly is true but the  
11 situation with regard to migrants is unique in terms of the  
12 -- I'm almost tempted to say "the near universality of the  
13 problem" with regard to migrants, in the labor camp situatic

14           It's the old I owe my sold to the company store  
15 situation. You don't find it in the industrial sector, in  
16 other sectors of our economy to any significant statistical  
17 extent. You do find it in the area of migrant farm labor  
18 to an epidemic if not an indemic extent.

19           Indeed the tip of that iceberg is a practice known  
20 in our society, as I mentioned to you in our discussion the  
21 other day, known as peonage. Peonage is about a quarter of  
22 a step away from another practice known as slavery.

23           I daresay it certainly could be said that it is  
24 not only in farm labor, that indeed peonage is found in our  
25 society today, but the largest number of cases by far in which

1 peonage arises and in which peonage prosecutions have  
2 successfully been engaged in by the Department of Justice  
3 have darned well involved farm workers.

4 Indeed the two most prominent cases coming out of  
5 the State of North Carolina a couple of years ago were both  
6 major farm worker litigation cases.

7 MR. DURANT: Criminal cases?

8 MR. NAGLER: Oh, yes, criminal cases, in which  
9 Migrant Legal Services Program was not directly involved but  
10 reported to the FBI the instances of peonage which they  
11 discovered.

12 Indeed I must tell you they helped to keep in  
13 touch with the FBI and the Justice Department to keep in  
14 touch with the complaining witnesses, the victims of the  
15 peonage after the Justice Department three or four times  
16 closed cases.

17 MR. DURANT: Give me -- I don't want to monopolize  
18 this. Give me other specific examples of where the migrant  
19 needs, legal need, is unique.

20 MR. NAGLER: Also related to employment is a little  
21 piece of not very well know legislation known as the migrant  
22 seasonal -- Agricultural Worker Protection Act, known to its  
23 friends as AWPA.. About two years ago that replaced the  
24 Farm Labor Registration Act.

25 I daresay that -- I would estimate roughly that 99

1 percent of the labor bar in this country, the labor bar, has  
2 never even heard of the Migrant and Seasonal Agricultural  
3 Worker Protector Act, that indeed matters arising under that  
4 statute is in the hands of a small number of --

5 MR. DURANT: Tell me specifically what issues  
6 arise under that Act.

7 MR. NAGLER: Questions of labor camp inspection  
8 issues initially arise under that act. Questions of  
9 informing a worker as to what the terms and conditions under  
10 which he'll working or contract must be provided to the  
11 worker, safe transportation must be provided to the worker.

12 It's precious little from the standpoint of  
13 statutory protection but it's one of the most important  
14 pieces of legislation protective of the worker.

15 Copies of wage statements have got to be provided  
16 to the workers. There are several other small items under  
17 the Act of that sort.

18 Bob made reference earlier to questions of joint  
19 employer, often involving some complex issues as to deter-  
20 mining who is paying the workers, who is determining the  
21 conditions under which they work, which fields they pick in  
22 in a given day, various other circumstances, who owns the  
23 labor camp, who built the labor camps, complex facts as well  
24 as legal issues that have got to be resolved in the course  
25 of litigation under the Migrant and Seasonal Agricultural

1 Worker Protection Act.

2 MR. DURANT: Any others?

3 MR. NAGLER: Migrant education is another example.

4 As I mentioned earlier, congress has given special --

5 MR. DURANT: Is that a specific act?

6 MR. NAGLER: It used to be Title One. It's  
7 titled -- Everything in education has got a new title under  
8 the new act that came in about a year and a half ago and  
9 I'm not our staff expert in that area so I apologize for  
10 not being able to quote the right title.

11 MR. DURANT: What's the issue?

12 MR. NAGLER: The major issue which we've been  
13 involved in has involved client efforts -- clients are  
14 supposed to be consulted on major decisions affecting the  
15 education of migrant children, the migrant parents who are  
16 from our standpoint clients.

17 MR. DURANT: Through the public schools?

18 MR. NAGLER: Through the public school system.

19 Migrant funds are also supposed to be set aside for the  
20 special needs of migrant children. Often they are lumped in  
21 with other funds and the usefulness to migrant children is  
22 diluted. Those are issues that we have become involved in.

23 The failure to consult with parents in terms of  
24 major decisions with regard to the education of their  
25 children is another major issue we've been involved in in

1 terms of migrant education and that involves issues of first  
2 going to the school board and saying you should have con-  
3 sulted the parents; going to the state board of education  
4 and saying that the local board didn't do this, what are your  
5 procedures for enforcement of the provisions of the federal  
6 act, and when they fail to act going to the U.S. Department  
7 of Education, which is the point at which my center becomes  
8 involved, in terms of efforts to compel the state to compel  
9 the local school district to do what they are supposed to do.

10 On all of the issues that I have mentioned in the  
11 area of migrant education.

12 Another major issue that is unique to farm workers  
13 is the issue of pesticide poisoning. Indeed, as consumers  
14 of fruits and vegetables, all of us consume perhaps miniscule  
15 quantities of pesticides, many of which do not have a very  
16 long life, are biogradable by and large today.

17 As farm workers working the fields, often there  
18 are major problems regarding readmission to the fields too  
19 soon after spraying has occurred, some of which can come  
20 into workmens comp issues but you've got major proof  
21 problems there.

22 Indeed it is now widely recognized that a major  
23 factor contributing to the high early death rates among  
24 farm workers -- high mortality rates -- high morbidity rates  
25 involve the pesticide poisoning question.

1           Many of the standards set by the EPA involve 150-  
2 pound males. Indeed many of the people who work in fields  
3 in migrant farm work are children and there are no pesticide  
4 safety levels applicable to children or, for that matter,  
5 for women, especially not pregnant women.

6           So major issues arise with regard to pesticide  
7 poisoning. There is very little litigation that is actually  
8 done and a lot of investigation and a lot of effort to  
9 attempt to get administrative agencies to do what they're  
10 supposed to do.

11           MR. DURANT: What agency is charged with the  
12 pesticide poisoning?

13           MR. NAGLER: Well, there's a whole collection of  
14 agencies. Initially at the top under the Federal Insecticide,  
15 Fungicide and Redenticide Act, another area of extraordinary  
16 specialization believe me, the EPA has primary responsibility,  
17 but the EPA has authority under FIFRA -- another pet name --  
18 to delegate authority to state agencies and I believe in 48  
19 states they have actually delegated such authority.

20           In most situations, to be quite honest, it's a  
21 division of the state department of agriculture that has  
22 the enforcement of authority and when it comes to spraying  
23 the farm workers in the field the state department of  
24 agriculture doesn't have too much concern about that problem.

25           MR. DURANT: I want to cut my questioning off.

1 I would like to see if there are any additional things that  
2 you and Mr. Moore would want to provide me and the other  
3 members of the committee and the board, things that you think  
4 are specifically unique to migrant workers.

5 Just so you get a sense as to my thinking, on the  
6 minimum wage I'm not at this point -- just to take one of  
7 these -- persuaded that that's unique to migrant problems.  
8 That's a problem that transcends that particular division.

9 I don't want to get into the others at this point  
10 because I haven't thought through it enough to know.

11 MR. NAGLER: I'll just kick off a few others very  
12 simply. Some problems that are not unique to farm workers but  
13 the manifestations are unique to farm workers because, as  
14 Bob said earlier, of the peculiar status of migrants.

15 A person works in one state, goes back to his  
16 base state, want to collect unemployment compensation and  
17 he has a whole lot of trouble because of the interstate lack  
18 of communication.

19 Certainly unemployment compensation is a problem  
20 that many poor people have, many poor working people have,  
21 but when it comes to interstate problems it applies to  
22 migrancy. That's the unique problem involving migrant  
23 farm workers.

24 The same would true of food stamps. The same is  
25 true of Social Security payments.

1           The father of the director of the migrant programs,  
 2 CRLA, California Rural Legal Aid, was a farm worker for many  
 3 years. When he returned to his base state in Texas after a  
 4 number of years of working in the fields and wanted to retire,  
 5 went to a local Social Security office, assuming that he  
 6 would have a Social Security card, assuming he was in the  
 7 system. They gave him a look as if they had never heard of  
 8 him, and as if how could he possibly claim eligibility. He  
 9 certainly didn't have the requisite number of quarters.

10           The reason he didn't have the requisite number of  
 11 quarters was because although crew leaders were subtracting  
 12 money from his wages for Social Security for yea these many  
 13 years they weren't paying it in to the Social Security  
 14 Administration and, like most of us, he just hand't kept his  
 15 pay stubs, so he had no way of proving in fact all the years  
 16 that he had worked that he had invested in his own retire-  
 17 ment, that he was eligible for that.

18           That kind of problem occurs indeed not uniquely  
 19 among farm workers, but it occurs so much more severely  
 20 among farm workers and especially among migrants in the crew  
 21 leader system, in this company store crew leader system as  
 22 it operates in agriculture in America today as to indeed  
 23 render a unique problem.

24           But, like the minimum wage, it's not absolutely  
 25 unique. It's just hte special status of migrancy and the

1 farm workers renders certain manifestations of it as extra-  
2 ordinary and unique.

3 MR. WALLACE: Let me ask some question about the  
4 manner in which the money gets spent, and this may be something  
5 better directed to staff.

6 As I'm looking at this chart in the front of the  
7 book, are there separate recipients -- and I'm not talking  
8 about national support centers -- are there separate field  
9 recipients for migrant programs, or do we pump extra money  
10 into otherwise existing programs?

11 It looks like here at the top TRLA -- I mean that's  
12 a regular recipient gets money for migrants. Are there  
13 separate --

14 MR. MOORE: The easiest answer is that there  
15 aren't separate programs with the exception of those two.

16 What you're doing is you're funding basic field  
17 programs with earmarked money is basically the result in  
18 terms of migrant money.

19 MR. WALLACE: Did somebody say something about two  
20 -- are there two special --

21 MR. MOORE: There are two stand-alone programs --  
22 New York and Michigan. Other than that, we are --

23 For example, I'm in the farm worker unit of Pine-  
24 tree Legal Assistance and I am the so-called managing attorney  
25 of that unit, but all of our management functions and our

1 administrative functions are done by Pine Tree Legal Assis-  
2 tance's central office.

3 MR. WALLACE: I guess I've got the same question for  
4 all of you all that I had for the previous panel. Are the  
5 funds that go into regular programs for migrant components  
6 really getting down to migrants?

7 The previous panel seemed to think it was working  
8 fine. Is it working fine with migrants?

9 MR. MOORE: Yes. For example, our farm worker unit  
10 has at the present time three attorneys, two paralegals and  
11 secretarial support staff. We are engaged 100 percent of our  
12 time in farm worker and migrant issues.

13 We do not do neighborhood office work and things  
14 of that nature.

15 MR. WALLACE: Is this part of your annualized  
16 grant, is it a separate annualized grant, is it a contract,  
17 how does it work technically when you take the migrant money  
18 into regular programs?

19 MS. FRANCIS: It's a component of the annualized  
20 funding for the program.

21 MR. WALLACE: So it's all part of the main annualized  
22 grant.

23 MS. FRANCIS: Yes.

24 MR. NAGLER: But it's earmarked and there is a  
25 grant condition contained in the grant stating X dollars must

1 be used for migrants.

2 MR. MENDEZ: Do you consider this a class -- migra  
3 group as a class?

4 MR. NAGLER: I'm not sure I know what you mean by  
5 "class."

6 MR. MENDEZ: Do you consider yourselves separate  
7 and apart from the state units?

8 MR. NAGLER: There are state units. There are local  
9 units off into which migrant programs -- In New Jersey it's  
10 regional.

11 MR. MENDEZ: Do you consider yourself part of the  
12 state unit or do you consider yourself a separate unit?

13 MR. NAGLER: It varies from state to state.

14 MR. MOORE: Well, I can give you my experience,  
15 and I've worked also in Virginia in migrant work legal  
16 services.

17 It is always considered with those two exceptions,  
18 New York and Michigan, that we are part of the major program.  
19 There are some -- Obviously we have a separate identity in  
20 our own minds because of the nature of our clientele and the  
21 issues that we deal with being so distinct, and they are,  
22 from the regular neighborhood office.

23 However, for example, where we are, and we have one  
24 office in Bangor and in the season we have other offices that  
25 we set up on a temporary basis, but we share office space

1 and everything else with the neighborhood office.

2 MR. NAGLER: You asked how it works, Mr. Wallace.  
3 I would like to direct your attention back again to pages  
4 43 and 44 of the item we distributed on Section 1007(h) in  
5 which there were certain suggestions as to how migrant  
6 funding would operate in the future and some unresolved issues,  
7 especially with regard to the subject that Ms. Bernstein  
8 raised earlier and that is seasonal farm workers.

9 The answer to some of those is, well, maybe it  
10 doesn't work quite as well, as completely as it should  
11 especially with regard to seasonals because the 1007(h)  
12 section left open the issue of how ultimately seasonals would  
13 be served when it came to the farm worker problems.

14 Indeed, in a couple of states there are regular  
15 funds that to some extent can be used to help out the migrant  
16 unit to deal with issues where you see a lot of problems  
17 coming up.

18 The number of seasonals in some states that Lillesand  
19 found and that others have confirmed, states like Tennessee,  
20 if you include the seasonals in Tennessee in terms of all  
21 the work that farm workers that are in Tennessee that are  
22 supposed to be serviced, you've got a funding level of 83  
23 center per poor person and you can't provide legal services  
24 to anybody for 83 cents per poor person.

25 The Corporation suggested that there was special

1 need, to quote item four on page 43, the Corporation will  
2 assist the migrant components in the Migrant Legal Action  
3 program to develop a more effective communication and  
4 coordination network linking, quote, stream, unquote, and  
5 quote, base, unquote, state programs; if available funds  
6 will be set aside for periodic meetings of farm worker staff  
7 in base and stream states to experiment with the use of Wats  
8 lines between base and stream states. Additional funds will  
9 be required to fully implement this recommendation.

10 It just ain't done any more. In large part because  
11 the Corporation has abandoned the rule that said migrant  
12 funds should be -- that the overall amount of money appro-  
13 priate to serve migrant farm workers in this country should  
14 be used to serve migrant farm workers wherever they may be  
15 and that is a program in Mississippi and Arkansas and northern  
16 Mississippi doesn't get funding because there is no program  
17 to receive the funding there, that funding should be spent  
18 elsewhere to service those clients when they're in different  
19 parts of the country.

20 Thus, interstream coordination between migrant  
21 programs to help the migrant programs to service the client  
22 somewhere up the stream later on when they move on.

23 The Corporation doesn't do that any more. There  
24 is precious little funding provided for that kind of function  
25 and the funds that would have been totally allocated to

1 migrants before now are dumped back into the general pot and  
2 are no longer available to provide special services to  
3 migrants as they once were, so the overall amount of the  
4 grant to the migrant programs to service a migrant population  
5 for which there should be flexibility has been reduced  
6 considerably.

7           Indeed that brings me to the subject that I think  
8 Mr. Wallace may have been leading me to involving the  
9 special problems of migrant units.

10           MR. MENDEZ: You're telling us -- Let me see if I  
11 understand your argument that you just made.

12           The argument you just made is that if the person  
13 in Tennessee does not have -- If the program in Tennessee or  
14 Kentucky or North Carolina does not have migrant funding  
15 that they're not going to help the migrants?

16           MR. NAGLER: We won't have the expertise to help  
17 the migrant, Mr. Mendez, and indeed outside of the migrant  
18 units --

19           MR. MENDEZ: They will not -- They won't help them.  
20 That's what you're saying? Shouldn't we write a grant and  
21 don't we in fact write a grant that provides that they have  
22 to help those migrants even if there's no specific dollar  
23 allocated moneys in those states, in certain states and in  
24 certain programs?

25           MR. NAGLER: That goes to the very fundamental

1 question, Mr. Chairman, of the issue of why we have established  
2 separate migrant units, the unique expertise, the unique need

3 MR. MENDEZ: I understand that argument but I also  
4 want to know if we have in some states and in some programs  
5 there is not specific dollars allocated to migrants and  
6 you're telling me that they're not handling this migrant --

7 MR. NAGLER: They probably are not and I think it's  
8 most likely a function of the basic field programs' priority  
9 setting process, and that is that the migrant issues and  
10 problems are not taken into consideration when they set their  
11 priorities, so that when they have priorities in terms of  
12 Social Security entitlements or food stamp issues for their  
13 general population that they're serving, when somebody comes  
14 in and says I have a minimum wage problem they say that's  
15 not a priority in terms of what we just went through to set  
16 up priorities.

17 MR. MENDEZ: There's a national statute that says  
18 that migrant problems are to be considered, and don't you  
19 believe that we ought to put some sort of proviso in each of  
20 the grants with the local groups that says that they have  
21 to look at those?

22 MR. NAGLER: That fundamental question is almost  
23 like among the early questions at the beginning of the Bible  
24 in terms of what is the meaning of life.

25 What is the meaning of life in legal services in

1 terms of migrants. That's why -- The answer to that question  
2 is precisely why migrant units were established in the first  
3 place, to provide that kind of service and to see to it that  
4 the programs in their migrant units would have the expertise,  
5 the special outreach facilities, the language competence.

6 MR. MENDEZ: And for those programs that are not  
7 presently covered -- we have 43 and we have 300 grants, we  
8 have over 250 that are not specifically allocated.

9 Don't you think that we ought to write a provision  
10 into each one of those grants that they have to address the  
11 migrant program?

12 MR. MOORE: No, because there are specific  
13 priority setting processes that every legal services office  
14 goes through.

15 I don't believe that you can impose that on a --

16 MR. MENDEZ: That's a national problem, though.

17 MR. WALLACE: Well, we're doing that by this  
18 component to the grant. We're saying we're giving you this  
19 money and this is what you use it for.

20 MR. MOORE: That is correct.

21 MR. WALLACE: I think that's the priority. I mean  
22 that is a demand.

23 MR. MOORE: But within that money that goes to  
24 basically the field programs to set up a separate office to  
25 take care of migrant problems, then we have our own priority

1 setting process.

2 MR. NAGLER: Let's take a look at the programs that  
3 we imposed that requirement on. Certainly programs you've  
4 got to establish priorities at the local level. First and  
5 foremost, look at who the population they serve is.

6 In the City of Detroit, it doesn't make a whole lot  
7 of sense to impose upon the program that services the Wayne  
8 County program a requirement that they provide a competent  
9 job of servicing the migrants because the migrants that pass  
10 through their area are not a significant portion of the  
11 population.

12 For them to develop the expertise and set aside  
13 resources for a relatively small number of people does not  
14 make a lot of sense.

15 It does make a lot more sense when you get out into  
16 the rural programs, and indeed that's where the migrant  
17 units are located.

18 In different states, there has been exactly that  
19 kind of focus on the part of the Corporation and a well done  
20 job in that area, too, in most places.

21 In certain places, quite frankly -- Northern  
22 Mississippi, Arkansas -- where there are significant numbers  
23 of migrants -- I daresay Arkansas, southeast Arkansas, has  
24 had among the largest growth rates in terms of migrant  
25 population since the development of the Lilliland study.

1           There are no adequate services provided by the  
2 local legal services. Provided the grant does not go to  
3 anybody, it goes back into the general fund. It does not  
4 service migrants either in Arkansas or northern Mississippi  
5 or anywhere else, for that matter.

6           In order to alleviate that problem, my center in  
7 cooperation with Texas Rural, decided that we were going to  
8 try in some way to develop some kind of servicing for Arkansas  
9 migrants and we actually went in and started --

10           MR. WALLACE: Why isn't it being done in Arkansas  
11 and north Mississippi?

12           MS. FRANCIS: He's pointing out the two states in  
13 which migrant expansion has not occurred. When money was  
14 provided by congress for expansion, there were some planning  
15 grants sent to Texas Rural, and I think Mississippi.

16           Money has gone out on a one-time test basis over  
17 the years and in terms of migrant funds retaining their  
18 character, I'm not sure precisely what that means.

19           Mr. Nagler can point out examples to you, I believe  
20 it was in '81 where there was a substantial amount of one-  
21 time expansion money used for migrant purposes, the farm  
22 work advocacy fund, some industry coordination and other  
23 kinds of projects like that.

24           Over the past -- I guess it was in 1983 and in  
25 1984, the dollars, the migrant dollars that were set aside

1 for the states of Arkansas and Mississippi were not speci-  
2 fically used for migrant purposes but were in fact dis-  
3 tributed to -- I believe in 1984 the number was 108 of the  
4 lowest funded legal services programs throughout the country  
5 to increase their service capacity.

6 Those one-time dollars from those two states was  
7 a part of the over a million dollar package of funds of  
8 leftover dollars that were distributed to those --

9 MR. WALLACE: I guess my question is why north  
10 Mississippi and Arkansas don't want the extra money.

11 MS. FRANCIS: We haven't identified a service  
12 provider for those areas. In the past two weeks, we have  
13 advertised in the Federal Register for a service provider to  
14 service two areas and I believe it expires on the first of  
15 March.

16 MR. WALLACE: We've got programs on the ground  
17 there and everybody else -- all of the rest of this goes to  
18 existing programs.

19 This may be specific to people like me in Mississippi  
20 but why isn't north Mississippi doing this job? Why don't  
21 they call up and say, yeah, we'll take the money and we'll  
22 serve these migrants?

23 MR. NAGLER: Mr. Wallace, the answer may in large  
24 part be somewhere in the vague area of politics and poker.

25 The folks in northern Mississippi and Arkansas, fol-

1 a variety of reasons, just haven't been able to get together  
2 on developing a program, although extensive efforts have  
3 been done and, as Ms. Francis mentioned, there were planning  
4 grants made in both northern Mississippi and Arkansas and  
5 people just couldn't do it. They just couldn't submit a  
6 satisfactory proposal for providing services to migrant.

7 Part of it may have been that folks just couldn't  
8 negotiate -- just couldn't deal with each other well enough  
9 to put the proposal together. I just don't know the details.

10 MR. MENDEZ: We're cutting this one off. Thank  
11 you very much.

12 MS. BERNSTEIN: Just one question. I just want to  
13 get on the record.

14 Steve, could you tell me about your board of  
15 directors, just off the top of your head, and what their  
16 qualifications are for your board?

17 MR. NAGLER: My board of directors? I'm sure you  
18 all understand that the Migrant Legal Action Program is  
19 a national support center and I'm honored that the migrant  
20 programs have asked me to represent them here but we're not  
21 funded as a migrant programs. We're funded as a national  
22 support center.

23 If you want to know about the relationship between  
24 migrant programs and the national support centers or  
25 national support centers and field programs, ours is not

1 untypical in that regard in the type of service we do --

2 MS. BERNSTEIN: Okay, I just asked --

3 MR. NAGLER: Our board consists of a majority of  
4 lawyers appointed by the D. C. Bar.

5 MS. BERNSTEIN: To the extent that you can remember  
6 their names and what their affiliations are, I would just  
7 like to get them on the record.

8 MR. NAGLER: Tina Fowski, Illinois Migrant --  
9 director of the Illinois Migrant program is a member of  
10 the board. Timothy Dike, partner of Wilmer, Cutler and  
11 Pickering here in the District of Columbia. Greg Shell I  
12 believe is on the board, Maryland Migrant Program. The former  
13 -- the other lawyers include the former general counsel to  
14 the Agricultural Labor Relations Board in the State of  
15 California whose name escapes me at the moment. David Hall  
16 who is executive director of Texas Rural Legal Aid is  
17 chairman of the board.

18 It consists of a mix of people who are lawyers in  
19 Washington, lawyers who are with migrant programs around  
20 the country and a couple of lawyers who are in general  
21 practice and client members.

22 MS. BERNSTEIN: Do you yourself -- I don't know  
23 that this gentleman was ever introduced to us.

24 MR. MOORE: My name is Robert Moore.

25 MS. BERNSTEIN: Do either of you serve in addition

1 to the programs in which you are funded on any

2 MR. NAGLER: I don't.

3 MR. MOORE: No.

4 MR. MENDEZ: Thank you very much.

5 MS. FRANCIS: If I may, a paper has been prepared  
6 for you on migrant funding and I just for the record also  
7 wanted to include the conclusions reached in that paper --  
8 that is, that funding for migrant purposes has been identi-  
9 fied and funded by the Legal Services Corporation and we  
10 understand or will recognize that is the difficulty involved  
11 but that agreeably there are innumerable difficulties in  
12 counting and defining the number of migrants.

13 Relatively they are a very minor portion of the  
14 census of the entire population of the country. The  
15 corporation does provide some funding. The statistics,  
16 at least that we reviewed, seemed to conclude that those  
17 populations are delining and that a cut in the funding in  
18 1986, as with any other funding component, would have its  
19 impact but that it should not be a severe impact.

20 MR. MENDEZ: Thank you very much. We will incor-  
21 porate the paper prepared by Mr. Bogart for Mr. Opsut into  
22 our record.

23 MR. NAGLER: May I state for the record, Mr. Chair-  
24 man, that we did not have the opportunity to comment on  
25 this paper.

1 MR. MENDEZ: Please prepare whatever comments you  
2 have and mail them off to us and we will use those in our  
3 final decision making.

4 At this time, I will ask Willie Cook to come forward  
5 and we're going to have discussion on the Reginald Heber  
6 Smith Fellowship Program, and I would like to have Joshua  
7 Brooks, as well.

A 8 Mr. Cook, I've asked the others and I'll ask you  
9 the same question. Do you have some remarks that you would  
10 like to make first, or we're at your service.

11 MR. COOK: I prepared some brief remarks and  
12 attached a couple of charts which are results of a survey  
13 that I did in early January, asking a number of questions of  
14 some project directors concerning employment of former  
15 Reggies and the questions that I asked of the project  
16 directors were basically some questions that some of the  
17 board members had posed to me and it was an effort to try  
18 to get some quick answers so that we could begin the job of  
19 getting a clear view of what kind of an impact the Reggie  
20 program has on legal services nationally.

21 Now the questions that were asked of course are  
22 not exhaustive but I think it begins to give us some view  
23 of how important the Reggie program is to the national  
24 program and I suspect that if we do a much more thorough  
25 survey and I'm sure ask a lot more questions we could get

1 a better idea of the role that the Reggie program had played  
2 in the national program since its inception in 1967, so that  
3 was one of the things that I was interested in.

4 Of course the other more immediate problem, too,  
5 is what I consider to be the difficult situation that has  
6 arisen because of bringing this program in-house and in  
7 what I feel a program that's basically at a standstill now.

8 Precious time has been lost in terms of recruiting  
9 particularly for the 1985-1986 program year.

10 I don't know where you want me to start but maybe  
11 the place to start is with the survey and some of the  
12 responses that I got.

13 I sent a letter out, which I attached to the copy  
14 that you have -- I hope all of you have the submission that  
15 I gave Mr. Daugherty and asked him to give members of the  
16 board -- in which I asked project directors four basic  
17 questions:

18 One, I wanted to know how many attorneys on the  
19 present staff are former Reggies. The second question was  
20 how many of those former Reggies are members of a minority  
21 group and I asked them to indicate which minority groups were  
22 represented.

23 The third question was how many of those former  
24 Reggies are women and the fourth question was please indicate  
25 what position those former Reggies hold now, such as project

1 director, managing attorney, director of litigation, senior  
2 attorney, staff attorney, et cetera.

3 I got responses -- I sent out the letter to all  
4 project directors and I got 209 responses as of February  
5 15th, and of those 209 programs responding 129, I think it  
6 was, or 127, 128 programs indicated that they had former  
7 Reggies presently on their staff; 82 of the 208 responses  
8 indicated that they did not presently have Reggies on their  
9 staff.

10 Now the chart that is attached to my written  
11 comments gives two pictures -- One, I listed individually  
12 each program that responded and I gave the individual  
13 responses of each of those programs.

14 Then on the other sheet accompanying my statement,  
15 I have the composite results that key in to the four questions  
16 that I asked.

17 What you will find, just briefly, is that of the  
18 128 programs that said that they had former Reggies presently  
19 employed, that those 128 programs said that they had 252  
20 staff attorneys on their program.

21 In terms of the minority group breakdown within  
22 those 128 programs, they said they had 71 black attorneys,  
23 38 Hispanic attorneys, nine Asian attorneys and ten Indian  
24 attorneys.

25 Also, the responses indicated that of the 252

1 former Reggies on the staff 110 of those are women.

2 In terms of positions that are now held by those  
3 former Reggies within the 128 programs, you have 39 project  
4 directors, 39 managing attorneys, 14 directors of litigation,  
5 25 senior attorneys and the remainder, 135 staff attorneys.

6 I personally was unsure of what the mix and what  
7 the spread was when I set this up and this was one of the  
8 reasons why I suggested in my written comments that I think  
9 what we need to do is to do a much more thorough survey in  
10 terms of gathering information about the Reggie program and  
11 the impact that the Reggie program has had on Legal Services  
12 for lots of reasons.

13 For instance, a number of the people who said that  
14 they don't presently have former Reggies on their staff  
15 indicated that the Reggies have in fact been very important  
16 in terms of that program's existence over the years and I  
17 noted in my written statement that one of --

18 A response, for instance, from Terry Roche in  
19 Charlotte, North Carolina, he indicated that while they  
20 presently don't have any former Reggies on the staff, he  
21 indicated that since 1972 there had been 16 Reggies  
22 assigned to the Charlotte program, that eight have remained  
23 with this program for periods of four to six years after  
24 the termination of their Reggie contract, and he said that  
25 another four had joined other legal services programs

1 immediately after termination of their Reggie contracts.

2 He goes on to say that one former Reggie is the  
3 executive director of an Oregon legal services program and  
4 he points out that former Reggies are doing things not in  
5 legal services but directly related to representing clients,  
6 such as heading civil clinic programs at the University of  
7 North Carolina.

8 He said a third is the clinical instructor at  
9 North Carolina Central University.

10 So what I think we will find is, when we get more  
11 thorough results and perhaps think about some better  
12 questions or more detailed questions, is that the Reggie  
13 program, even though statistically a small part of the  
14 dollars that legal services grants each year, has had a  
15 very significant impact on the national program in many,  
16 many ways.

17 If you take the leadership issue, for instance,  
18 you find that among the 128 programs that said they had  
19 former Reggies, you had 39 of those programs headed by  
20 persons who were former Reggies.

21 Approximately 31 percent of the project directors  
22 of those programs were former Reggies.

23 I think that's a rather significant indication of  
24 what at least local communities feel about former Reggies.

25 I think at any one time, depending upon what the

1 funding level is, you may have anywhere from 200 Reggies  
2 to about 250 Reggies at any particular time out of a total  
3 number of about 4700 staff attorneys in the country.

4 Basically what you are seeing here is an impact  
5 on a program that is relatively small statistically speaking  
6 an impact that goes far beyond the numbers because I was  
7 really quite startled that you would have almost a third  
8 of the project directors of those saying that they had former  
9 Reggies being former Reggies themselves.

10 .MR. WALLACE: That gets me to the real question  
11 that I think if the survey is to be done needs to be asked  
12 and it's really the only question that is going to turn out  
13 to be controlling in my mind.

14 The question that isn't asked is are your Reggies  
15 any better lawyers than the lawyers you recruit by your  
16 normal methods.

17 Now the first lawyer on your list here is Martha  
18 Bergmark in Southeast Mississippi. She's a good lawyer  
19 and if she's typical of the people that the Reggie program  
20 is producing, that's the kind of thing I would like to know.

21 The racial and sexual breakdown doesn't mean very  
22 much to me. What I want to now is are these people any  
23 better lawyers than the ones you get through your normal  
24 recruitment.

25 .MR. COOK: Let me answer that in a number of ways.

1 I disagree with -- Well, you have your point of view in terms  
2 of whether or not the racial and sexual breakdown is impor-  
3 tant. I beg to differ with you. I think the racial and  
4 sexual breakdown is extremely important.

5 Putting that aside for a moment, in answering your  
6 question are these better lawyers than the regular people  
7 who are recruited by legal services, I can't say yea or nay.

8 My personal view is yes, they are, but you have  
9 to keep in mind where I'm coming from. I am a former  
10 Reggie and I tend, for instance, in terms of recruiting  
11 people to my program in Washington, D. C., I tend to use the  
12 same kind of recruiting techniques and the same kind of  
13 criteria in selecting staff attorneys for the D. C. program  
14 that they used in the Reggie program both when I was a  
15 Reggie and also when I was a deputy director of the Reggie  
16 program.

17 I guess in terms of answering that question, you  
18 would have to really go out to your client community, you  
19 would have to deal with staff attorneys, project directors  
20 around the country and ask that question to them.

21 I think if these statistics are any indication of  
22 how people feel, at least as far as project directors are  
23 concerned, somebody out there feels that at least a third  
24 of the project directors who are project directors in those  
25 128 programs, somebody feels that those people have done an

1 extremely good job. Otherwise, I don't think that those  
2 boards of directors would have selected those people as  
3 Reggies.

4 I think that you will also find, too, as you go  
5 around the country that a common view that the Reggies that  
6 have come into legal services since 1967 are among the best  
7 lawyers that this program has ever had.

8 Now wheether or not they are the best lawyers in  
9 legal services, I can't tell you, but I think as a group,  
10 Reggies and former Reggies, most people will tell you are  
11 perhaps among the best if not the best lawyers in legal  
12 services.

13 They tend to be extremely aggressive -- not that  
14 all legal service attorneys aren't extremely aggressive but  
15 I think they are carefully chosen.

16 I think they are highly sought after. I think in  
17 terms of retention or at least people who are viewed as  
18 canidates for retention, Reggies certainly rate very high  
19 on that list.

20 I think the answer, Mr. Wallace, to one part of  
21 your question is that obviously client groups and local  
22 boards of directors obviously feel that Reggies are in fact  
23 among the best lawyers if the promotion rate or the kind of  
24 jobs that they get are any indication.

25 Now on the other part of your question which you

1 question which you said you didn't feel particularly impor-  
2 tant or not as important as the one that you asked, I would  
3 simply say that I disagree with you vehemently for this  
4 reason.

5 The Reggie program I think more than any program  
6 in the national program has been singularly responsible for  
7 introducing into the national legal services movement more  
8 minority attorneys than has any other program that has been  
9 able to do that.

10 I think those of us who have been in legal services  
11 for a number of years will attest to the fact that the local  
12 programs looking back since 1965 and up to the present date,  
13 although things are a lot better now, legal services  
14 nationally has not done the kind of job in recruiting  
15 minorities and women on a local level that they should have  
16 been doing and I think the Reggie program has for many  
17 programs been the primary provider for particularly minority  
18 attorneys.

19 As a matter of fact --

20 MR. MENDEZ: Let me ask a question. Do we have  
21 in our contracts with the local groups that they have to go  
22 out and recruit minorities?

23 MR. COOK: Well, we have an affirmative action  
24 requirement in legal services, but what I'm saying, Mr.  
25 Mendez, there is a disparity between what is supposed to be

1 done and what in fact is done.

2 Let me just point out I'm not saying that in 1985  
3 it is as bad as it was in 1970, but what I am saying is that  
4 even though everybody sort of generally recognizes that  
5 problem, for one reason or another the inclusion of minorities  
6 as staff attorneys in local programs is simply not -- that  
7 job has not been done very well.

8 It is done better in 1985 than it was done in  
9 1970, but the fact is that the Reggie program has been  
10 singularly the most important program in bringing minorities,  
11 and also I would say women, into legal services programs in  
12 a way that no other program has been able to do.

13 MR. MENDEZ: This is to Mr. Brooks. Since 1976  
14 how many Reggies have we funded? Do you have any idea?

15 MR. COOK: I don't know the exact number but  
16 I can tell you since 1976 the average has been about 250  
17 a year. Now that figure has varied. I mean sometimes you  
18 get 130 new Reggies and 100 second-year Reggies. Sometimes  
19 you get 150 first-year Reggies and 120 second-year Reggies.

20 MR. BROOKS: I certainly agree with that, and I  
21 would place the total over the years from 1976 through 1985  
22 figuring on the basis of an average number of Reggies per  
23 year of 200 that we're talking between 1800 and 2200 for  
24 that period of time.

25 MR. MENDEZ: And we presently have about 250?

1 MR. COOK: Keep in mind 252 from the 128 programs  
2 that said they had former Reggies. Keep in mind also that  
3 that means roughly 150-some-odd programs did not respond.

4 MR. MENDEZ: I recognize that, but I also -- having  
5 done lots of polling in my prior years know that if you don't  
6 have something you usually don't respond, and I'm not going  
7 to create any bias one way or the other.

8 I want to have a study to confirm that and I have  
9 on previous occasions asked, and you'll recall that I've  
10 asked him to do a study to tell us that number.

11 Have you performed any studies to that effect or  
12 has there been one started?

13 MR. BROOKS: We have not performed any studies to  
14 answer that specific request.

15 With regard to your previous question of how  
16 many Reggies are we currently funding, the number is 194  
17 for this program year. That includes 111 first-year Reggies  
18 and 83 second-year Reggies.

19 MS. SMEGAL: Mr. Chairman, your numbers don't  
20 include current Reggies.

21 MR. COOK: No, no. Only Reggies -- only former  
22 Reggies, and I might add also depending upon when you ask  
23 a question you'll get a different result.

24 For instance, when I answered the question for my  
25 program as of last Friday, I had a different result because,

1 for instance, one of my managing attorneys who had been  
2 with us for nine years and started out with us as a Reggie  
3 resigned in mid-December.

4 So one of the things that I think will be impor-  
5 tant is to do what Terry Roche did, too, to take a look at  
6 the history of the Reggies from the time they first got  
7 Reggies and to try in some way to track what happened to  
8 those people.

9 For instance, how long did they stay? Of all of  
10 the Reggies that you got since whenever you first started  
11 getting them, say 1972, what happened to each one of those  
12 Reggies that they --

13 MR. MENDEZ: Why should we do that?

14 MR. COOK: Well, I think it gives some notion --  
15 Well, Terry Roche, for instance, even though he presently is  
16 able to say that no former Reggies are on the staff, what  
17 he is saying is that since 1972 former Reggies have played  
18 a very important part in the continuation of its program,  
19 both in terms of leadership positions and staff attorney  
20 positions.

21 What it means is that it gives you some idea as  
22 the person who is making the decision about funding this  
23 program or continuing it or cutting it whether or not the  
24 program -- what kind of benefit does the national program  
25 derive from the Reggie program and it helps to answer that

1 question.

2 MR. MENDEZ: I understand that and I think your  
3 survey is really excellent. For doing it as quickly as you  
4 did, it's really remarkable that our organization, being  
5 large, takes time to develop that and I'm glad that you  
6 could do it on your own and do a really remarkable job.

7 The question I have for you now is when were you  
8 deputy director and how long were you deputy director?

9 MR. COOK: I was deputy director from March of  
10 1973 until March of 1975.

11 MR. MENDEZ: Have you been the chairman of the  
12 board or some such thing?

13 MR. COOK: Chairman of the Reggie board for about  
14 four years.

15 MR. MENDEZ: For what years and how long -- Are you  
16 still on the --

17 MR. COOK: Well, there's some question about  
18 whether I'm still on the board right now. One doesn't know  
19 exactly what the status of the Reggie program is, but I  
20 consider myself still the chairman of the Reggie advisory  
21 board.

22 MR. MENDEZ: Do you have any other comment that you  
23 want to make? I've got a couple of question I would like  
24 to address --

25 MR. COOK: Well, I put some of my notions about

1 what I think this board ought to do as far as Reggie programs  
2 in my written comments, but I just--

3 MR. MENDEZ: I tell you, as I will address every-  
4 one here, it is very helpful when they're in writing because  
5 we can take them home and think about them and review your  
6 comments and I appreciate that.

7 MR. COOK: There are lots of things I could say  
8 about the Reggie program. I just -- Well, let me say this  
9 right now.

10 I'm very concerned about the continuation or the  
11 continuity of the program. I don't know what LSC is doing  
12 in-house in terms of, for instance, dealing with the 1985-  
13 86 class.

14 I think we should ask but let me tell you that I  
15 don't think anything is being done and what I think has  
16 happened is we are now at the end of February and if you  
17 deal with the Reggie cycle you cannot deal with getting  
18 a good class to begin in August of each year if by the end  
19 of February you have done literally nothing in the area  
20 of recruiting, in the area of interviewing and trying to  
21 deal with --

22 I have gotten calls from all over the country  
23 from third-year law students asking me what should I do in  
24 terms of trying to get into the Reggie program for 1985 and  
25 '86.

1           The decision to bring this program in-house at  
2 the time that it was made has damaged this program in my  
3 estimation beyond repair for '85 and '86, and I think it  
4 really is a shame that a program as valuable as the Reggie  
5 program has been dealt the kind of fate that it has.

6           Now there is -- as far as I know, there is nothing  
7 being done within legal -- within the Corporation to deal  
8 with the continuity of that program for 1985-86 and it points  
9 out to me the folly in bringing that program in-house.

10           You simply don't have the people in-house who  
11 either have the time or the resources allotted to deal with  
12 the Reggie program.

13           That's aside from another problem I have which  
14 is I don't think the staff of LSC ought to be in the business  
15 of running regular legal services programs.

16           They have never done that before and in my view  
17 they don't do that very well.

18           The other thing is --

19           MR. MENDEZ: Let me ask a question. You say staff  
20 shouldn't be in the business of running a legal services  
21 program.

22           MR. COOK: Yes.

23           MR. MENDEZ: Tell me why legal services ought to  
24 be in the business of providing Reggies, except to recruit  
25 minorities. Is that the only reason that we're doing it?

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MR. COOK: No, no, no. I don't think so. I think that is a very important function but I don't think that's the only function.

We talked at the last meeting that I attended, for instance, about one particular aspect of the Reggie program that I think is important -- national recruitment.

One of the questions that somebody on the panel posed to me -- I think Mr. Potag, as a matter of fact, brought the issues up -- why isn't it better to have local programs do their own recruiting of Reggies? Why wouldn't that be a better way of recruiting Reggies?

My answer is that no local program can begin to match the resources that the Reggie program has provided over the past years, nor can they reach the pool of applicants on a national basis from all of the law schools that the Reggie program has been able to reach since 1967.

MR. MENDEZ: Let me ask a question of Mr. Brooks. Can you tell me how many attorneys in the various groups are black, all together.

MR. BROOKS: You mean in this year's Reggies?

MR. MENDEZ: No. How many black attorneys do we have that are members of the grant communities -- that are -- how many lawyers of our recipients are black?

MR. BROOKS: I don't have the answer to that. That information is readily available. I don't have a copy

1 of that book here.

2 MR. MENDEZ: I've got my staff book here.

3 Tell us what you would like to see done with the  
4 Reggies and what is in fact happening with the Reggies for  
5 this year.

6 MR. BROOKS: Let me start by answering what in  
7 fact is happening with the Reggies this year.

8 Let me begin by saying that at least initially  
9 the reason that the Reggie program is in-house, of course,  
10 is because administrative responsibility for the program  
11 was relinquished.

12 At that point, it fell to the Corporation as its  
13 lot to take over control of the program in midstream at a  
14 very critical, very crucial time, and try to hold it  
15 together as best we can. I think we have been doing that.

16 Where we are in the process at this point is this.  
17 We tied into the process where Howard left off. I had  
18 every reason to believe, and that was since confirmed over  
19 the past couple of months that I worked with the project,  
20 that a significant amount of recruitment had already been  
21 commenced by Howard University.

22 Certainly not as much of a recruitment effort  
23 as they would have undertaken had they been allowed to  
24 or had they chosen to continue with the program, nonetheless  
25 a significant amount of recruiting has taken place.

1 I tell you why I say that. I have had occasion by  
2 telephone and through letters to speak with a great many  
3 law school placement offices. I know as a matter of fact  
4 that there are a great many applications currently on file.

5 I have talked to well over 150 applicants per-  
6 sonally on the phone, applicants and people interested in the  
7 program. We currently have on file at the Corporation I  
8 estimate approximate 200 applications in various stages of  
9 completion.

10 What we found when, as I say, this program came  
11 in-house, was that from a tactical point of view, from a  
12 strategic point of view, we did have a massive problem on our  
13 hands in terms of trying to come to grips with all of this  
14 and to put it into some kind of workable form so that we  
15 wouldn't lose, as Mr. Cook has pointed out, at least those  
16 applicants who had expressed an interest in the program and  
17 who had made some effort to apply to it.

18 I would also add that one of the most complicating  
19 factors with regard to those recruitment efforts that were  
20 commenced by Howard was the fact that current year recruit-  
21 ment materials were never sent out to law school placement  
22 offices, number one and, number two, current applications  
23 were not sent out.

24 We found what we had to do when we took over the  
25 program on December 1st was realizing at that point we neither

1 had the time nor the resources to attempt to draft from  
2 scratch recruiting materials on our own or devising a new  
3 application blank, what we did was plugged into the old  
4 application process the way it worked and attempted to go  
5 with that and that's in fact what we've been doing.

6 Where we're at with the process at this stage is  
7 that we have ready to go a mailing that is designed to go to  
8 law school placement offices where we know there are a number  
9 of applications currently on file. I couldn't tell you how  
10 many.

11 That same mailing is designed to go to local  
12 programs advising them of the process and how they are to  
13 be fitted into the process this year, and that mailing is  
14 also designed to go to current applicants who have forwarded  
15 their application materials to us in order to advise them  
16 of where the process is so that they can plug into it at  
17 this point.

18 We have done a great deal of work in attempting  
19 to tie onto the recruitment efforts that Howard did commence  
20 and I believe that we have done a good job of tying onto  
21 that process and in fact are ready to communicate that.

22 MS. BERNSTEIN: Let me ask Josh a question.

23 Over the history of the Reggie program, if my  
24 memory serves me correctly there has been a lot of concern  
25 about the Reggie program by various boards in various years.

1           The purpose of the Reggie program shifted somewhat  
2 in various years. Could you give us in a couple of para-  
3 graphs what the history of the Reggie funding is in the  
4 Corporation and what some of the major concerns and major  
5 studies found with regard to the Reggie program?

6           MR. BROOKS: Let me begin by saying I, too, am  
7 a former Reggie. I am proud of it. As a matter of fact, I  
8 happened to have served in the same class as Willie Cook did.

9           I think one thing that's clear and that no one will  
10 dispute, the Reggie program has been a source of great con-  
11 troversy throughout its existence.

12           The charges and countercharges primarily have dealt  
13 with the area of activism and go to the matter of whether  
14 Reggies in their zeal, in their commitment to provide legal  
15 services to low income people have somehow or other exceeded  
16 the restrictions, have exceeded the bounds that have been  
17 placed upon them by the Act.

18           A great many critics go on the record as saying  
19 that indeed some Reggies have -- I've never seen any numbers  
20 but there is certainly a body of thought out there in support  
21 of the proposition that Reggies have historically -- Some  
22 Reggies have historically exceeded the proper bounds of the  
23 Act and the regulations.

24           With regard to monitoring reports that have been  
25 issued on the Reggie program in the past, I don't recall

1 any specific sections of the monitoring report that addressed  
2 the question of whether there was any substance to those  
3 charges.

4 The monitoring reports that I'm familiar with,  
5 and they're the only two, I believe, at least that I've  
6 read and I believe that have been done on the Reggie program  
7 within the past ten years, go more to the administration  
8 of the program and how we might effect improvements in how  
9 the program was managed.

10 I don't know if that's responsive to your question.

11 MS. BERNSTEIN: Well, it's not entirely responsive.  
12 One of those questions -- One of my concerns was alluded to  
13 by Mr. Mendez when he was talking about whether or not the  
14 programs already have a responsibility for affirmative  
15 action.

16 When I first started at the Corporation and talked  
17 to Dan Bradley about the Reggie program, he told me that  
18 he felt that the Reggie program provided a crutch to the  
19 program that was inappropriate and that because the Reggie  
20 program existed programs didn't make an effort to push for  
21 the affirmative action hiring of attorneys that they should.

22 I don't know whether that's true or not. That  
23 was a concern at one point.

24 I think that the Robertson study -- if I've got  
25 the name right -- had a concern that there were additional

1 problems in the whole retaining of attorneys. There were  
2 problems in whether or not the Reggies provided enough  
3 service to the program if we were not in a period of large  
4 expansion, that a person should be placed nationally in a  
5 program that might not have the funds to hire somebody  
6 the following year and therefore without the Reggie com-  
7 ponent for the following year that person would not have  
8 an opportunity to work in that program and that recruitment  
9 within that local area would possibly result in more long-  
10 term minority hiring of persons that would end up staying  
11 in the program.

12 Do you have any figures or -- Do you have any  
13 figures of the number of years that -- last year's Reggie  
14 class, how many of them will be retained by the programs?

15 MR. COOK: That's one of the reasons why I say  
16 in terms of additional survey questions we need to devise  
17 a surveying instrument that gets to the heart of that kind  
18 of question.

19 When I mentioned Terry Roche's comments, even  
20 though he doesn't have former Reggies right now, he indi-  
21 cated at least for his program what those 16 Reggies had  
22 done or how long they had been with this program since 1972.

23 I think we should be able to quantify that kind  
24 of information so that we can say for every program that has  
25 had Reggies since whenever they started getting them, they

1 can say how many Reggies remained with their program.

2 Those statistics certainly were being kept when  
3 the program was at Howard because, for instance, that I  
4 got a Reggie one of the things that we were required to do  
5 in applying for Reggies for the subsequent year was that we  
6 had to tell the Reggie program how many people -- whether or  
7 not we were retaining Reggies whose contracts had ended, for  
8 instance, and if we were not retaining those Reggies on our  
9 regular staff, why not, and there were numbers of reasons.

10 Sometimes people would retain Reggies or would not  
11 retain Reggies for various reasons. If performance was not  
12 good, they wouldn't be retained. Or sometimes programs  
13 didn't have money or said they didn't have money to retain  
14 Reggies because there was no expansion in their budgets.

15 I think that we can get a handle on that kind of  
16 information, i.e., how many Reggies have state and local  
17 programs and for what period of time after their contracts  
18 have ended.

19 MS. BERNSTEIN: One followup. The Reggies --  
20 you made a statement that there were people that you got  
21 lots of calls from third-year law students wanting to know  
22 about this year's programs.

23 If I'm remembering the practice right, a person  
24 who wants to apply for a Reggie fellowship can request to  
25 be placed in certain locales, geographical locale, and then

1 it's matched to the extent that it can be with regard to  
2 program needs.

3 Am I correct?

4 MR. COOK: Yes, but that's only part of the process.  
5 That's why I take issue with Josh Brooks in terms of what's  
6 going on now.

7 There really isn't anything going on at the  
8 Corporation in my view -- When I say there isn't anything  
9 going on, keep in mind what the Corporation is doing in-house  
10 compared to what should be done if that program is run  
11 properly. There isn't anything going on.

12 Now in terms of the match, you have to go back  
13 even further. Before you even get people matched -- that's  
14 further down the road when we start considering Reggie  
15 applicants to determine whether or not they're going to get  
16 a Reggie or not get a Reggie, then you start dealing with  
17 their geographical preferences.

18 Long before that, you have to do much more in  
19 terms of generating Reggie applications for the program.  
20 You cannot wait until the end of February like what has been  
21 done now and hope to get the kind of application --

22 People have to go to those universities, they  
23 have to drum up support, you have to get second-year law  
24 students, you have to get third-year law students to come  
25 to seminars, to come to recruitment sessions, so that you

1 have a trained recruiter going out there, talking to that  
2 person or those groups of people at those universities  
3 about the value of the Reggie program, the value of a career  
4 in legal services.

5 That kind of thing is not being done by the  
6 Corporation. They don't have the staff to do it and they've  
7 started very late in the game.

8 By the time that we get to the point that you're  
9 talking about -- i.e., dealing with a person's geographical  
10 preference -- that person has already been chosen. That's  
11 at the end of the process.

12 MS. BERNSTEIN: Okay. I understand the concerns  
13 regarding what the Corporation is doing right now and  
14 that's not really my question.

15 My question is, if the persons who have an interest  
16 in legal services work during the time that they're in law  
17 school have a geographical preference, which I understand  
18 that they do, then it seems to me that a more direct approach  
19 for them and a more direct approach for our programs would  
20 be for them to apply to our programs directly.

21 If we need to have a facility arranged in which  
22 that effort is augmented through the Corporation, then it  
23 seems to me that that's the more direct approach in terms  
24 of persons who many want to be committed to legal services  
25 in a given community.

1 MR. COOK: Ms. Bernstein, that will in fact  
2 happen some of the time but my point is that some of those  
3 law students may or may not write to a particular program.  
4 Some will, some won't.

5 My point is that the Reggie program in the past  
6 facilitated in a way that no other program in the national  
7 legal services facilitates the matching or the bringing  
8 together of law students all over the country.

9 We reach a pool of people, a pool of potential  
10 legal services attorneys that no local program can ever  
11 hope to reach. We can reach --

12 You have in many instances where you have your  
13 most success -- local programs generally have their most  
14 success in recruiting law students in the locales where the  
15 programs are located. That's the practical thing on a  
16 day to day basis.

17 MR. WALLACE: Okay. Now what that says to me --  
18 and this is not a question but it's a statement and it's  
19 for the benefit of the staff and for the general public  
20 that's interested in the Reggie program, of what I need to  
21 see in order to ensure my support for this program.

22 We may very well need some kind of mechanism  
23 at the national level to do recruitment, to get good people  
24 together with programs.

25 It may be beyond the capacity of local programs to

1 find somebody at the other end of the country who might  
2 be interested in coming there.

3 What I want to know is whether the Reggie program  
4 is the best way to get that done.

5 We are charged by statute to have the economical  
6 and efficient delivery of legal services. Are we delivering  
7 lawyers who are the most economical and efficient we can  
8 deliver, and is this the most economic and efficient way  
9 of delivering them?

10 We could talk about affirmative action any time  
11 you like, but to me that's a nonissue here. Our issue is  
12 is this economical and efficient.

13 Activism doesn't bother me in the least. I mean  
14 it may be -- as long as people are within the bounds of the  
15 Act, that's fine.

16 I bring up Martha Bergmark because she happens  
17 to be the first one on this list. She's an activist lawyer.  
18 She's also a good lawyer.

19 If we're getting people like her out in the field,  
20 fine. If we're not, we ought to have some kind -- we may  
21 need some kind of program that does.

22 Those are the facts I'm looking for. I don't  
23 know if this board needs to commission a survey. I don't  
24 know if the facts are in the file and they need to be culled  
25 out, but if we need a national recruiting arm, that's the

1 kind of national recruiting arm we need.

2 MR. COOK: Mr. Wallace, you picked out the first  
3 person on the list and I didn't do this purposely in terms  
4 of this list, but the fact of the matter is I think the  
5 woman you mentioned in -- whatever the state is -- is not  
6 atypical of the kind of people that come through the Reggie  
7 program.

8 MR. WALLACE: That may be fine. Those are the  
9 facts I need to see.

10 MR. COOK: What I tried to do in my survey -- and  
11 as I said it was a quick and dirty survey to get answers  
12 to some specific questions -- one of the things that struck  
13 me is if you have a situation in which 39 of 127 programs  
14 thought so much of those former Reggies that they made them  
15 project directors, that tells you something about what the  
16 local boards and local clients feel about those people.

17 I think that's directly related to your question  
18 about how good are the people that the Reggie program sends  
19 out there. They are so good that they have become project  
20 directors in one-third of the cases in which those people  
21 said they have Reggies and I think that that's remarkable  
22 in light of the size of that program.

23 MR. WALLACE: I'm not arguing. That's a good  
24 piece of information and it's the kind of information I'm  
25 looking for. It's not all the information I'm looking for.

1 but you understand -- I want everybody to understand what  
2 my goal is in considering this program.

3 If that's the kind of results it's delivering  
4 nationwide, and if it's the best way to deliver those  
5 results, then it looks like a good program to me.

6 If it's not and if there is a better way to do it,  
7 I want to hear about it.

8 MR. COOK: I'm suggesting that it is the best  
9 way to do it and I'm also suggesting that we obviously  
10 need more information, but in terms --

11 What I would like this board to do before it  
12 closes the books on the Reggie program is in fact to take  
13 a look at the residual benefits of the program, looking  
14 back from 1967 to the present date, to see what the value  
15 of the program has been.

16 I think that after you do that, you should  
17 conclude a number of things, as I've concluded -- One, the  
18 program is extremely effective and one of the most important  
19 programs nationally; two, it has no business in-house  
20 because if it stays in-house it will languish just as it  
21 is presently languishing, and I think that is a shame based  
22 upon the importance of that program.

23 One of the things you have to keep in mind, like it  
24 or not, in terms of the last two and a half years, in terms  
25 of the way the Corporation has been run, a lot of the law

1 students and young lawyers who would normally be attracted  
2 to legal services and attracted to the Reggie program are  
3 not going to deal with the people on staff because there is  
4 a perception out there about the way the Corporation is  
5 presently run or has been run in the last two and a half  
6 years, and people are not going to deal with the staff in  
7 the same way that they deal with the Reggie program.

8 I hope that situation doesn't continue but there  
9 is that kind of perception and the reason I know -- I haven't  
10 taken any scientific poll but I get a lot of calls from  
11 new Reggies and third-year law students who are intensely  
12 interested in the future of the program.

13 They would like to know what can I do -- I don't  
14 want to go to 15th Street because those people don't care  
15 about legal services and they are floundering around trying  
16 to find the place to go to apply to the Reggie program and  
17 that's why I say we need to get on about the job as quickly  
18 as possible of reenergizing that program in a mechanism  
19 outside of LSC in a way that makes sense in terms of  
20 benefits to this national program so that the program can  
21 continue to be vital and can continue to make the kind of  
22 contributions that it has made since 1967.

23 MR. MENDEZ: I would like for you to forward us  
24 names of everyone that has inquired of you about the Reggie  
25 program -- their names and addresses -- and we will see what

1 we can do to take care of their problems.

2 MR. BROOKS: I can only say, if I might, a number  
3 of things have been said with regard to whether we have  
4 been in touch with the applicants pool that exists out there.

5 I can assure you that from my viewpoint, at least  
6 for a period of a month and a half before I moved on to other  
7 duties, having dealt with that very issue, that the demand  
8 that is currently out there, the interest that is currently  
9 out there, certainly equals what it has been in the past two  
10 years that I've been reacquainted with the program.

11 I, too, could provide you with a list of who I've  
12 been in contact with, who I've talked to and to whom I've  
13 given instructions.

14 MR. MENDEZ: I would like to have the names of  
15 the people that are interested in applying to become  
16 Reggies and maybe we can do something with regard to those.

17 MR. COOK: I don't know that I kept all of the  
18 names, Mr. Mendez. You see, one of the -- I'll do what I  
19 can because I wasn't anticipating that three months ago so  
20 I didn't keep that kind of a list.

21 The other thing about that is you have to keep in  
22 mind that part of recruiting is selling yourself. Now a  
23 lot of the people who contact you on their own obviously  
24 are intensely interested, too, but part of our job in  
25 legal services is to convince good people that they ought to

1 choose legal services over the Justice Department or over  
2 some other agency or over some other kind of concern that  
3 might be equally important.

4 A lot of the time you will not get inquiries from  
5 people. That's why it is important to have the staff --

6 Josh, I'm not criticizing Josh necessarily. What  
7 I'm recognizing is that Josh alone inside legal services  
8 cannot take the place of a Reggie staff. He cannot do the  
9 job. He hasn't done it because he doesn't have the resources.

10 You need to have in place the kind of staff that  
11 we had when the program was at Howard in order to do the job.

12 Even the number, the 200 number, is very low in  
13 my experience. If you have 200 applications, I think that  
14 that is very low for this time of year. You should have  
15 somewhere in the neighborhood of at least a thousand appli-  
16 cations and the way you do that is to get an effective  
17 recruiting program. You can't do that by sitting in-house  
18 the way they've been doing it at LSC.

19 MR. BROOKS: Just one more point in response and  
20 I don't want to belabor it.

21 The reason we only have 200 in-house is we have  
22 specifically instructed law school offices to hold onto the  
23 more than what I've estimated to be 300 to 500 applications  
24 precisely because the process has been changed this year and  
25 the mailing that's going to go out this week will reflect

1 that to gain the kind of local input that LeaAnne talked  
2 about.

3 As a matter of fact, what we are doing -- I speci-  
4 fically have instructed law school placement offices to hold  
5 onto those applications until they receive from us the list  
6 of programs that have been selected to receive Reggies this  
7 year.

8 Those programs have been selected. That list is  
9 about to be communicated to law school placement offices, to  
10 the local programs themselves.

11 That's why we only have 200 applications in-house.  
12 Not because -- I didn't see the point in having 700 or 800  
13 application blanks sent to us and then turn around and send  
14 them back out because we have decided to go this local route  
15 and that's the route we have decided to go.

16 MS. BERNSTEIN: I've got some concerns that I  
17 started to make and rather than belabor it further here, let  
18 me just say, Mr. Cook, you relied on Terry Roche's comments  
19 regarding the efficacy of the program. I was hoping that  
20 Terry would be here today and I don't see him.

21 He wrote in 1976 a letter to Mr. Bamberg, who was  
22 then vice president of the Corporation, which is in a four-  
23 or five-page document one of the most persuasive documents  
24 arguing for the termination of the Reggie program that I  
25 have ever read.

1 He talks about the goals of the Reggie programs  
2 as he perceived them. He talked about the excellence of the  
3 people who were in it, but he also talked about the fact  
4 that the programs need to have the money so that they can  
5 hire staff that will remain in the program.

6 I won't read the entire letter into the record but  
7 I want Mr. Opsut to make it available to you and to Mr. Roche.  
8 He may have changed his mind since then, but he was very  
9 persuasive at that time, and he stated that the Reggie  
10 program "I conclude, must be terminated immediately. I  
11 think the Corporation erred badly in permitting yet another  
12 Reggie class to be recruited. The Corporation in August  
13 1977 should simply cash out to local programs the value of  
14 all Reggies in place, valuing each Reggie at the last used  
15 second-year salary level plus ten percent fringe and should  
16 use the resulting savings in the total Reggie program,  
17 including its national administrative costs, to increase the  
18 money available for equalization across the country."

19 I don't think our problems of equalization have  
20 gotten less severe now than they were in 1976. In fact, as  
21 we've tried to point out in various areas, they have become  
22 more severe.

23 I want to circulate this letter but I've got many  
24 of the same concerns now that Mr. Roche had in 1976, and  
25 unless I get persuasive answers as to why those concerns

1 aren't valid, then I would suggest that Mr. Roche analyzed  
2 it earlier.

3 MR. COOK: In response to that, I'm aware of that.  
4 I personally am aware of that letter that you're talking  
5 about that Mr. Roche sent.

6 I didn't pick his out in terms of putting it in  
7 my comments. I simply -- that was just illustrative of an  
8 answer given by people who didn't have former Reggies on  
9 their staff at this particular time.

10 MS. BERNSTEIN: He was very complimentary of  
11 Reggies back in 1976. He just simply said that we should  
12 be spending our money at the local programs delivering  
13 services.

14 MR. COOK: But in answer to that, I don't know  
15 what the year was, but I have seen that letter and I have  
16 read it, but one thing that I think it indicates too is that  
17 a number of us, as the years go on, mature, we supplement  
18 our thinking, we become a little more enlightened.

19 I think if you talked to Terry Roche today about  
20 the differences in his opinion, whatever that date was, and  
21 today I think Terry Roche would be quite different because  
22 I have a copy of a letter that he sent to me and it's quite  
23 different today.

24 All I can say is I think Terry has been educated  
25 and I'm glad to see that.

1 MR. BROOKS: I would only conclude by saying that  
2 it is precisely because of our recognition of the need for  
3 substantially more local input to the selection and placement  
4 of Reggies that we have put into place this year a process  
5 that will allow programs to receive applications directly  
6 themselves, review them, screen them, and make recommendation  
7 to us as to who it is they want to work with their programs.

8 Our feeling is that if a program is allowed to do  
9 that, they are certainly not going to pick a person that  
10 they can't live with or that they don't at least have a  
11 reasonable expectation that they can live with and it's  
12 precisely for that reason that we have directed the process  
13 this way.

14 MR. VALOIS: There are five law schools in North  
15 Carolina. Four of them are within a few minutes driving  
16 time of some program. The programs are very close to some  
17 of these law schools.

18 Have the programs themselves ever been given any  
19 primary role in recruiting for the Reggie program?

20 Thorence Craven is with us. I know he runs a  
21 clinical program for Wake Forest, five miles down the street  
22 from him.

23 Has he ever been given or has that program ever  
24 been given a primary role in recruiting for Reggies?

25 MR. COOK: I can answer that. Maybe not in each and

1 every instance, but the answer to your question, sir, is  
2 yes, program people have.

3 As a matter of fact, one of the ways that the  
4 program tried to cut costs when it was at Howard in recent  
5 years was to get people onsite -- that is, in the particular  
6 states -- to supplement and in many instances to do the  
7 recruiting, the initial recruiting.

8 People from the programs would be asked to do the  
9 recruiting from universities that were in their particular  
10 aea.

11 Last year, for instance, some of those people, in  
12 addition to doing recruiting, were also brought to D. C. --  
13 those who had primary responsibility for recruiting in  
14 particular areas were also brought to D.C. to serve as a  
15 part of a team that participated in the final selection  
16 of Reggies.

17 There have been a mix of things. I don't want  
18 anybody to get the notion that local programs and program  
19 people, project directors included, clients, have not been a  
20 part of this process.

21 Now you know the program has evolved. When there  
22 have been complaints about administration or inclusion from  
23 this group or that group, I think that we've responded.

24 It isn't that one hundred percent of the recruiters  
25 are project directors because I don't think they should be,

1 but what we tried to do, we tried to mix that in with clients,  
2 former Reggies, present Reggies, project directors, et  
3 cetera, so that we get a mix in terms of views about people  
4 who come into the program.

5 MR. VALOIS: The problem that I see or at least  
6 understand and am being education on, is that we have  
7 created another typical bureaucratic scheme to accomplish  
8 something which can be done much more directly.

9 It seems to make a lot more sense to me to do it  
10 in a much more direct manner than the way we've gone about it.

11 My impression is at the moment that the people  
12 in the programs themselves, and particularly those who are  
13 close by law schools, and in addition if they have a clinical  
14 program, ought to be the primary source.

15 You have pointed out in your statistics today that  
16 many of those people are in fact former Reggies.

17 Now why the Corporation should employ or engage  
18 another party -- in this case recently Howard University --  
19 to then get involved in another national recruiting just  
20 seems to me like a scheme that's weighted and falling of its  
21 own accord.

22 MR. COOK: I don't think so, Mr. Valois. I beg to  
23 differ with you.

24 You have pointed out something that every program  
25 in the country is not as fortunate to have four universities

1 within five minutes as the situation exists in North Carolina

2 You will find many programs out there who simply  
3 don't have at their disposal that kind of a resource. There  
4 are lots of people out there -- project directors who will  
5 write to you and tell you that they don't have that kind of  
6 capability and they are thankful that there is a program like  
7 the Reggie program which gives them an insight or at least  
8 gives them access to national pools.

9 You have to also keep in mind that even with the  
10 University of North Carolina, what we also find in many  
11 instances is that you find North Carolinians going to law  
12 schools in other places around the country. They, too, would  
13 like to return to North Carolina.

14 You don't just depend on the pool of applicants  
15 at the four universities in North Carolina to supply staff  
16 attorneys in North Carolina.

17 There are people who are interested in coming to  
18 North Carolina who are North Carolinians who go to law schools  
19 all over the country.

20 MR. VALOIS: You're suggesting something that I  
21 wasn't which I see no reason why somebody with Mr. Craven's  
22 organization, Northwest, could not recruit at Wake Forest  
23 for somebody who wanted to work in a program in Window Rock.

24 I'm not suggesting any such limitation. I don't  
25 know why you read that into it.

1           You read through the list of places -- Now there  
2 isn't a law school at Window Rock, so far as I know, but  
3 there is one in that part of the country and there's a law  
4 school in many, many places.

5           I'm not suggesting you completely eliminate  
6 participation from afar, which is what we've got now, but  
7 I think at least the emphasis ought to be shifted in a  
8 different manner. That's my present thinking.

9           MR. MENDEZ: John?

10          MR. MOLA: Are you taking comments today?

11          MR.MENDEZ: Yes, if it's on this issue today.

12          MR. MOLA: John Mola, director of Rhode Island  
13 Legal Services.

14           The anecdotal information that's been given about  
15 the Reggie program and using my statewide program as an  
16 example, we don't have a law school although we are fairly  
17 close to Boston.

18           The Reggies in our program over the last ten years  
19 would never come to Rhode Island, especially the minorities,  
20 for a lot of reasons.

21           For several years, our Reggie, for example, was  
22 the only Hispanic lawyer in the state, even though the  
23 Hispanic population is probably in excess of 60,000 people.  
24 Without the Reggie program, that individual would not have  
25 come to Rhode Island to be a part of the bar and in particular

1 serving that bilingual community.

2 MR. VALOIS: I don't know how you can make those  
3 statements -- that no Reggie would ever have come to  
4 Rhode Island or no Hispanic would have ever come or whatever  
5 it is that you're trying to say to us.

6 How do you know that and what's that based on?

7 MR. MOLA: I know that because if I look at the  
8 percentage of minorities who have entered our program through  
9 the Reggie program, they are probably three or four times,  
10 if not a greater magnitude, of the number of minorities  
11 that we've been able to recruit generally.

12 MR. MENDEZ: Let me toss a couple of statistics  
13 out. Bob Sable, of course, is a former Reggie and is in  
14 Boston -- I don't know how many law schools are within --  
15 I wouldn't be surprised if people from Rhode Island didn't  
16 go to law school somewhere in Boston and I think it would  
17 be entirely appropriate for Bob Sable to recruit people  
18 from one or two of those 300 law schools who are from the  
19 Rhode Island area if that's a strong element in recruiting.

20 MR. MOLA: I don't disagree with you. The local  
21 recruitment -- We've also sent people to help the Reggie  
22 program to recruit in the Boston schools.

23 What I'm addressing is that there an attraction,  
24 a prestige, that draws people -- minorities and others --  
25 into legal services that would not otherwise come.

1 I don't disagree with you about local recruitment.  
2 We have done that in the past.

3 MR. MENDEZ: Then your view is that Reggie program  
4 is essentially a minority recruitment tool.

5 MR. MOLA: No. I'm simply sharing information that  
6 without the Reggie program we would not have had the kind of  
7 minority percentages on our legal staff.

8 MR. MENDEZ: What do you think the Reggie program  
9 is, then?

10 MR. MOLA: I think the Reggie program is a mechanism  
11 for bringing minorities and women into legal services. I  
12 think it is also, because of its historical prestige and  
13 current prestige, a way to bring white attorneys, nonminority  
14 males, into legal services who otherwise would not come.

15 MR. MENDEZ: Let me just give you some statistics  
16 based on his return and I know it's not a complete return  
17 and we're going to have this finalized.

18 There are 596 black -- as of the end of 1983 there  
19 are 596 black attorneys in the legal services program. There  
20 are 476 Hispanics and 63 Asian, 67 Indian, 1936 women and,  
21 based on the returns that he's given us, less than ten percent  
22 average come from the Reggies.

23 MR. MOLA: That may be. Those figures may be  
24 accurate. I'm simply talking about Rhode Island and I don't  
25 think Rhode Island is that atypical of other places in the

1 country.

2 Other information -- for a long period of time, the  
3 black bar in Rhode Island was less than ten individuals.  
4 Six or seven of those, up until about two years ago, came  
5 to Rhode Island, not because they were natives, but because  
6 they came to our program as Reggies.

7 Those people, all of those Reggies, since the early  
8 '70s have stayed on as staff attorneys. I can think of one  
9 or two who have not stayed on after expiration of their  
10 Reggie contract. They participate in our program as staff  
11 attorneys. They are now serving on the board of directors.  
12 The chairman of our board is a black lawyer who came from  
13 California to Rhode Island because of the Reggie program.  
14 He was also the first black judge in the State of Rhode  
15 Island.

16 So these people came into Rhode Island and they  
17 would not have come, and I think if you talked to them  
18 directly they would not have come but for the Reggie.

19 MR. VALOIS: What's the relationship between being  
20 a Reggie and going to Rhode Island? What is the connection?  
21 You say that this black lawyer would not have come from  
22 California but for the fact that he was recruited by the  
23 Reggie program. I guess that's what --

24 MR. MOLA: That's correct.

25 MR. VALOIS: What is the connection between the

1 two things? Is there some special component of the Reggie  
2 program that shows films about the glory of living in Rhode  
3 Island or what --

4 MR. MOLA: No, no. What I'm saying is for a  
5 minority attorney there are a lot of better places for that  
6 minority attorney to go.

7 There probably is no geographical connection with  
8 a place like Rhode Island. What the Reggie program allows  
9 us to do is offset some of those negative factors when a  
10 law graduate is making a career decision.

11 It helps a place like Rhode Island who doesn't  
12 have a lot of the factors that are going to attract minorities.

13 MR. VALOID: Wouldn't you agree that the population  
14 of those 300 law schools we've now got around Boston includes  
15 people from California, includes people from North Carolina  
16 and every other place?

17 MR. MOLA: Surely and some of our Reggies have  
18 come out of the Boston law schools but again we have not  
19 been able to, for whatever reason, to recruit on our own  
20 and attract people from Boston in the northeast as part --

21 MR. WALLACE: If you need a recruitment mechanism  
22 to help you do it, and I think I'm following along the same  
23 line Bob is, why is the Reggie program it?

24 I mean why don't we have a recruitment bank on  
25 15th Street and law students around the country who say I

1 want to be in a legal services program and I'd like you to  
2 try to hook me up with programs that need good lawyers,  
3 whether they are black, white, female or purple, and why  
4 can't somebody say to you when you call 15th Street, hi, I  
5 need some lawyers, have you got some good resumes for me to  
6 look at, and we ship you a bunch of resumes and you call out  
7 to California and you get a local California program to inter-  
8 view him, because I'm sure you don't have an airplane budget  
9 to bring him back and forth.

10 Why is the Reggie program so much better at doing  
11 something like that?

12 MR. MOLA: Well, historically they've proved it  
13 by their success rate, and I think a lot of it has to do  
14 because it's a national poverty law fellowship program and  
15 there is prestige involved in that.

16 MR. MENDEZ: Do you call in the last eight years  
17 retaining of 250 lawyers out of 1800 to 2000 a good success  
18 rate?

19 MR. COOK: No, no, no. Mr. Mendez, please, let's  
20 make sure we understand -- let's make sure we're using  
21 those figures properly.

22 Now he's talked about 1800 total number of Reggies  
23 who have been hired. Now this does not tell you -- The  
24 figures I have, the 252 keep in mind are the total number of  
25 former Reggies who are presently employed today in 128

1 programs.

2 That does not tell you how many former Reggies or  
3 how many Reggies who entered their two years stayed in legal  
4 services after they ended that two years, so you can't use  
5 the 1800 figure and compare that with my 252.

6 If you want to do that, then you have to look at  
7 all 1800 Reggies and track them and find out how long they  
8 stayed in legal services after they completed their two-year  
9 Reggie term.

10 I don't think it's fair to look at the 1800 figure  
11 which is the total number of Reggies who have gone into that  
12 program, and then take my 252 figure and compare that.

13 If we're going to be fair about that, let's look  
14 at all 1800 and find out how many of those 1800 spent any  
15 time as employees in legal services after their two-year  
16 contract ended and I think you'll get a better --

17 MR. WALLACE: And how long they stayed there, too.

18 MR. COOK: And how long they stayed.

19 MR. WALLACE: You can't just compare the raw data  
20 but is the retention rate for Reggies that much better than  
21 the retention rate for --

22 MR. COOK: My point is -- I think Mr. Mendez will  
23 concede the point that it isn't fair to say what about the  
24 1800 versus his 252.

25 MR. WALLACE: We need a more sophisticated analysis

1 of the data. We all agree with that.

2 The objective is to see whether we've got a better  
3 retention rate for Reggies than for people Mr. Mola would  
4 pick up on his own.

5 MR. MOLA: Let me suggest on that point, again  
6 just based on my own experience.

7 In looking at what the figures were prior to the  
8 '81 retrenchments, because if you had asked me before the  
9 cutbacks in 1981 I would have told you that I had five  
10 past Reggies on my staff. I only have one now and the  
11 reason is that a lot of them left as part of that retrench-  
12 ment activity.

13 MR. SMEGAL: Mr. Chairman, a couple of comments  
14 that seem to be relevant to me.

15 Mr. Books, first off, your figure of 1800 includes  
16 the 400 in the program right now so we should --

17 MR. BOOKS: There are 200 in the program now.

18 MR. SMEGAL: Aren't there two classes?

19 MR. BROOKS: There are two classes but --

20 MR. SMEGAL: Okay, so you should reduce the 1800  
21 by 16 then -- you're down to 1600. You've got half the  
22 programs responded to you so if we just extrapolate that  
23 you got 500 Reggies still in the program out of 1600.

24 MR. MENDEZ: We're going to do a survey to --

25 MR. SMEGAL: I'm suggesting to you that maybe what

1 you can do -- if I read your January 3 letter right, you  
2 asked the programs to respond in eight days. You wanted it  
3 back two weeks before January 25. You got 66 percent response  
4 in eight days.

5 Why don't you go back to the other ones that didn't  
6 respond, including the support centers, and get the infor-  
7 mation, and ask them one further question -- what year were  
8 you in the Reggie program, if you've got a Reggie tell us  
9 the year you were in.

10 The concern that I heard expressed by John is that  
11 in 1981 all the Reggies got cut. You got two classes of  
12 Reggies there that got cut when the programs got cut.  
13 There wasn't any money for them the next year, the Reggie  
14 program ran out and they were the ones -- they were the lawyer  
15 that didn't stay.

16 We could get that information very easily with  
17 your next --

18 MR. COOK: I think we could get that, but the point  
19 I was making is what I would like to do -- I know how  
20 project directors think. That's why I sent a short letter  
21 the way I did because, you know, when you've got a million  
22 things coming across your desk and people talk about --  
23 Everybody is hitting you to respond I frankly -- and that's  
24 why I wrote the letter the way I did. I know how project  
25 directors think.

1 I think the better thing to do, Mr. Smegal, would  
2 be to devise a survey instrument that asks for all of the  
3 information that you need rather than trying to get it  
4 piecemeal and that way we would save some time and also cover  
5 the waterfront in getting all of the information that you  
6 would like to have in terms of a Reggie profile.

7 If you keep going piece by piece, pretty soon  
8 people are going to say, you know, I don't have time to  
9 deal with this.

10 Let us construct an instrument that elicits all of  
11 the information that you want to make the decision that you  
12 need to make and I think that would be a better way to get it.

13 MR. MENDEZ: We're going to --

14 MR. SMEGAL: Just one quick question.

15 Can't we have a national Reggie program with local  
16 interviewing, like Mr. Valois suggests?

17 MR. COOK: Sure we can and my point is -- I want  
18 to make the point we are in fact doing that, have always  
19 done that and I don't want anybody to get the misconception  
20 that we exclude local people from the whole Reggie process.

21 Local input, local recruiting is in fact being  
22 done, has always been done.

23 MR. VALOIS: The question again it seems to me --  
24 my impression is and I will tell you it's my impression  
25 and subject to correction -- is that the emphasis has not been

1 on the local scene in my opinion where it's going to be most  
2 effective but we've got all these intermediaries and every-  
3 thing else.

4 I hope I'm wrong and I hope that it has been done  
5 the other way.

6 MR. COOK: I think you are wrong.

7 MR. MENDEZ: We're going to adjourn this. We have  
8 one comment for one minute and we're adjourned.

9 MR. LOINES: My name is Dwight Loines.

10 I've listened to the comments and a lot of them  
11 have been pretty interesting even though I disagree with  
12 some of them.

13 I have one question I would like to ask and that is  
14 -- well, before I ask the question.

15 I'm a little concerned about what's happening,  
16 as Willie indicated, currently. I'm frankly more concerned  
17 about that right now than this discussion.

18 I think this discussion should continue and should  
19 frankly be much more in depth and structured.

20 My concern right now is -- I don't want to debate  
21 the question of whether or not minority recruitment is or  
22 is not a primary function or concern or should be a primary  
23 function or concern of the Reggie program, but the fact is  
24 it has apparently to date been a significant factor.

25 I would simply like to know of the current

1 applicants on file at LSC and those applications perhaps on  
2 file in local law schools, what percentage of those are from  
3 minority groups or women.

4 MR. MENDEZ: That we don't know.

5 MR. LOINES: I think that's pretty important to  
6 know because it seems to me as this discussion goes on we  
7 may be months down the line and the next class will have  
8 been determined and I think the direction of the program  
9 might very well have changed without a policy decision being  
10 made by this board.

11 MS. BERNSTEIN: Are you saying that it is your  
12 understanding that the purpose of the Reggie program is to  
13 recruit minorities?

14 MR. LOINES: I think I was fairly careful in my  
15 remarks. I frankly have not made an exhaustive study of the  
16 history of the Reggie program. What I have been able to  
17 discern, it seems to me, is that certainly in recent times  
18 recruitment of minorities and women has been something that  
19 has been very much a concern of the Reggie program.

20 Whether that properly should be the case, I  
21 suspect -- and my personal opinion is that that it probably  
22 should be given some of the comments I've heard from various  
23 project directors.

24 MS. BERNSTEIN: My only reason for wanting that  
25 clarified is because you said that unless we have X number

1 or unless there is a significant number of applicants that  
2 are minorities, then that will reflect a policy decision  
3 that has not been made.

4 I'm just wondering where the policy decision was  
5 made that it is a minority recruitment mechanism.

6 MR. LOINES: I don't know if that --

7 MR. MENDEZ: Let me do one thing. I'm going to  
8 declare us in recess and the three of you --

9 We will be back promptly at 1:30.

10 (Recess.)

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## AFTERNOON SESSION

1  
2 MR. MENDEZ: We're back in session.

3 At this time for the record we have a quorum.  
4 Let the record reflect that LeaAnne Bernstein and Mike  
5 Wallace are present, as well as myself, and we are going  
6 to take up management and administration and hopefully we  
7 can cover that within about 15 or 20 minutes.

8 Mr. Gessner, please.

9 MR. GESSNER: I was asked to prepare some figures  
10 on what the minimum cost of running the Corporation might  
11 be in 1986.

12 In doing so, I assumed that there were certain  
13 built-in increases to the base cost of running the Corpora-  
14 tion, such as annualizations of hiring, auditing and  
15 monitoring, and that aside from the certain minimal built-in  
16 increases and a few decreases, that there were no signifi-  
17 cant changes in the policy of running the corporation --  
18 that is that the regional offices would remain essentially  
19 doing the same thing with the same people that they're doing  
20 now.

21 In preparing the figures I assumed that there  
22 were certain built-in increases which are detailed in  
23 Attachment One of the memorandum you received this morning,  
24 that for the most part the organizational structure and  
25 the staffing structure of the Corporation would remain in.

1 the same level that it is now and that the increases that  
2 I spoke of are merely to operate in 1986 at the level we're  
3 operating at today.

4 The graph depicts the 1985 budget as it exists  
5 now, the built-in changes and the 1986 base level.

6 I should point out that this base level is the  
7 level upon which you would start any considerations of  
8 activity increases and decreases.

9 I made an attempt to functionalize what the  
10 Corporation does in the management and administration area  
11 in four primary functions, just to show you graphically  
12 how the money is distributed among the four functions, and  
13 Attachment 5 gives you this graphic presentation and Attach-  
14 ment 4 briefly describes the four functions.

15 My conclusion is that at a minimum, assuming no  
16 changes in organizational structure or activity levels, the  
17 Corporation would require about \$11.9 million to function  
18 in 1986 at the level it's functioning at today.

19 Can I answer any questions?

20 MR. MENDEZ: We have a budget projection of \$10  
21 million. In order to bring this budget into the \$10 million,  
22 do you or does anyone from your office have any suggestions  
23 as to how to cut funds or where to cut them?

24 MR. GESSNER: I'm not in the capacity of making  
25 recommendations right now, but one option that has certainly

1 been under consideration for some time is looking at the  
2 regional office structure.

3 The office of field services has been doing some  
4 work on restructuring itself with regard to the regional  
5 offices and the need for nine regional offices.

6 MR. MENDEZ: If we close the regional offices,  
7 would that save us about the \$1.87 million?

8 MR. GESSNER: One option that has been developed,  
9 and Paul Reddick is here and he's done the work on that and  
10 he can probably speak in greater detail.

11 One option is to retain an office of field  
12 services field office in Denver which would house the Native  
13 American. That option would result in a saving in 1986 of  
14 approximately a million eight, slightly higher than a million  
15 eight.

16 MR. MENDEZ: That would bring us back within the  
17 budget, the proposed budget?

18 MR. GESSNER: Yes, sir.

19 MR. MENDEZ: Does anybody else have any questions  
20 concerning this at this time?

21 Mr. Reddick, I have a couple of questions for you.  
22 Please identify yourself.

23 MR. REDDICK: My name is Paul Reddick. I am in  
24 the office of field services.

25 MR. MENDEZ: You prepared various alternatives a.

1 one of them is the closing of all the field -- all the  
2 regional offices with the exception of Denver, is that  
3 correct?

4 MR. REDDICK: That's correct.

5 MR. MENDEZ: And if we closed all of them except  
6 Denver, what would the budget savings be?

7 MR. REDDICK: Well, there are two different ways  
8 we can -- First of all, the budget that David Gessner has  
9 given you assumes the status quo -- that is, it assumes that  
10 vacant positions in regional offices, which now number 26 out  
11 of 58 positions there, would not be filled.

12 If in fact the determination was made to maintain  
13 the regional office structure and to fill those vacant  
14 positions, obviously the regional office budget would be  
15 higher, the savings of a smaller office configuration would  
16 be greater.

17 If you fill vacant positions in all the regional  
18 offices, your regional office budget in 1986 would go to  
19 \$4,618,000. That's presented on the second sheet that  
20 you've got. It shows the 1986 projection under the current  
21 office of field services configurations for regional offices  
22 all positions filled, and for headquarters all positions  
23 filled.

24 That would give you a consolidated OSS budget  
25 in 1986 in the far righthand corner of \$6.4 million. If

1 all the regional offices were brought in-house you would save  
2 \$2 million off that \$6.4 million. With a Denver field offi.  
3 you would be saving \$1.8 million off that \$6.4 million figure.

4 MR. MENDEZ: Why should we have a Denver regional  
5 office?

6 MR. REDDICK: The rationale for this particular  
7 option, and that is one of several options, is that the  
8 Native American unit has been located in Denver since that  
9 is the geographical center for the work that it does.

10 If we decided to maintain the Native American unit  
11 in Denver, that would be a logical place to site some per-  
12 sonnel for a field office to monitor basic field recipients.

13 That would also allow us a couple of hours of  
14 extra business time every day for working with programs  
15 that are in the western part of the country.

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

17 MR. REDDICK: Just by way of some additional  
18 explanation, the budgets that you've been presented show --

19 MR. MENDEZ: Just a moment.

20 (Conversations re availability of documents.)

21 MR. REDDICK: Just to explain all the different  
22 options that are presented here. The first budget under  
23 full staffing shows 1986 projections for both regional  
24 offices and headquarters, assuming filling each approved  
25 position now in the office of field service.

1           Your first option presents the OSS budget as it  
2 would appear if we had a field office located in Denver for  
3 Native American unit and five additional LSC personnel.

4           Option two shows a Denver and a Chicago regional  
5 office, and option three shows regional offices maintained  
6 in Denver, Chicago and Atlanta.

7           The relative savings from the 1986 projected field  
8 services budget under each of these options are shown on the  
9 first page that you have. These are shown for year one through  
10 year five.

11           We have also calculated the one-time cost that  
12 would be associated with closing each of our current nine  
13 offices and these one-time costs are shown also on the first  
14 page ranging from \$711,000 under full consolidation to  
15 \$439,000 under option three.

16           MR. MENDEZ: You have here "PV savings at 7.5  
17 percent." What do you mean by that?

18           MR. REDDICK: That's the projected savings for  
19 years one through five are inflated at two percent per year  
20 to bring these back into current dollar terms. "PV" means  
21 present value at 7.5 percent.

22           The inflation of future savings as well as the  
23 rate at which we discount future savings to a current dollar  
24 value -- these are all arbitrary and we could present them  
25 under different configurations if you would like.

1 MR. MENDEZ: Does anyone have any questions?

2 Mr. Cook, you had some comments you wanted to make  
3 on this one. Did you want to make any comments?

4 MS. GAINBROOK: My name is Judith Gainbrook from  
5 the Northern Virginia Regional Office.

6 I have prepared -- Mr. Mendez, at the last board  
7 meeting you mentioned that you wanted comments about the  
8 regional office closings and all the staff of all the regional  
9 offices have prepared and submitted through me a report to  
10 you which they would be very grateful if you would read and  
11 consider.

12 MR. MENDEZ: Why don't you -- Make your comments.

13 MS. GRAINBROOK: I don't have any -- I felt that  
14 the report itself stood alone with the information that we  
15 have.

16 The only information that we had at the time that  
17 we wrote this report was the memo that Mr. Potek had written  
18 to the LSC board on June 29th but I don't believe it was  
19 ever formally acted on. It was the memo which recommended  
20 closure of all the regional offices with the exception of  
21 the Denver regional office and I believe that's one of Mr.  
22 Reddick's options.

23 That was the only information that we had as to  
24 how the board would act and that is the information that we  
25 responded to in this report.

1           May I just say that we would welcome -- if there  
2 are other options that you are considering, we would welcome  
3 the opportunity to respond to them, also, but we would need  
4 some time -- several days. We would like to have several  
5 days to respond if you are going to consider other options.

6           MR. MENDEZ: Let's make sure that everybody under-  
7 stands. We're not going to take any action today. I want  
8 everybody to get the testimony, consider all of the infor-  
9 mation that's generated and come back on the 7th of March  
10 and at that time we'll take some actions or change our views  
11 or do whatever we're going to do.

12           MS. GAINBROOK: Thank you. I would appreciate it  
13 if at that time I could present whatever arguments --

14           MR. MENDEZ: I'll tell you what I would appreciate.  
15 If you can ahead of time get us the information which is  
16 more valuable to us if we can read it before the meetings.

17           MS. GAINBROOK: Okay, I will try to do that. It is  
18 very difficult when you're working with nine regional  
19 offices to --

20           MR. MENDEZ: I understand but if it's possible  
21 we will appreciate that.

22           Does anyone else care to make any comments?

23           MR. LOINES: I just have one question.

24           MR. MENDEZ: Please introduce yourself again.

25           MR. LOINES: Dwight Loines, National Organization

1 of Legal Services. I work with District 65 UAW.

2 In the past when this whole question of regional  
3 offices and restructuring has come up, and it has come up  
4 over the last several years, your predecessors have on a  
5 number of occasions indicated that any restructuring question  
6 would be something that would be subject to a fairly open  
7 process in which -- at least I understood -- in which not  
8 simply budgetary concerns would be considered but programmatic  
9 concerns would be considered.

10 I guess my question is right now so far this whole  
11 discussion or presentation about the regional offices has  
12 been budgetary and I would like to know --

13 Certainly I know the comments that the people in  
14 the regional offices prepared would to some extent go to  
15 programmatic concerns and I would like to know if your  
16 committee, before you take some action in this regard, is  
17 going to consider things beyond simply coming within a  
18 somewhat arbitrary budget constraint.

19 MR. MENDEZ: If you would care to present any other  
20 information to us before --

21 I'm not going to predetermine what we're going to  
22 do at the next meeting, or what the board will determine,  
23 but if you want to give us any information ahead of time,  
24 other supplements to what has been previously tendered by  
25 Judith, we will be happy to consider it.

1 MR. LOINES: Obviously, however, if we have some  
2 advance knowledge as to what other information you're going  
3 to be considering, whether from staff or whatever, that would  
4 certainly help us.

5 MR. MENDEZ: We will consider every piece of infor-  
6 nation that's tendered to us.

7 MR. LOINES: Let me ask one further question. Are  
8 you requesting anything from your staff that goes to matters  
9 beyond budgetary concerns in making your decision with  
10 respect to the regional offices?

11 MR. MENDEZ: I'm not requesting -- I have received  
12 numerous reports. I will tell you that I have over a  
13 thousand documents -- maybe three thousand documents in my  
14 home computer on this now. I have read them all and I have  
15 made some notes about what field programs and the national  
16 programs think of the regional offices and I will take those  
17 into account plus --

18 I can't tell what the rest of the board will do  
19 and I can't speak for the rest of the board. I don't know  
20 if they're going to ask for anything else.

21 MR. LOINES: So then as I understand, at least as  
22 far as you're concerned as an individual you are going to  
23 consider all the documents that have ever been generated  
24 around this particular question.

25 MR. MENDEZ: Not all the documents. I'm going to

1 consider all the documents that I've received.

2 MR. VALOIS: Mr. Loines, if you don't want us to  
3 close the regional offices, which is the implication in  
4 what you said so far, it doesn't really matter whether we  
5 do it for programmatic reasons or budgetary reasons or --

6 MR. LOINES: I would hope that it would matter to  
7 you.

8 MR. VALOIS: Well, if it matters to you, then  
9 maybe you should advance the reasons it shouldn't be closed  
10 for programmatic reasons as well as budgetary and that's all  
11 the chairman is saying, I think.

12 Send us whatever you want us to --

13 MR. LOINES: That's fine, but all I wanted to  
14 point out was, and I think I have, that at least the previous  
15 board indicated that there would be a fairly exhaustive  
16 study of this question before these kind of decisions got  
17 made.

18 MS. EISENBERG: I'm Eleanor Eisenberg, Region 8  
19 project director and I'll be very brief.

20 I would just like to say that some of the functions  
21 that regional offices used to perform were quite important  
22 for local programs. They were closer to local programs  
23 obviously than the Washington central office and they were  
24 established at least in part I believe to offer technical  
25 assistance and other forms of program support.

1           Currently, again as I understand it, the only  
2 functions that regional offices are being permitted to  
3 perform are monitoring functions and compliance and review.

4           I think that generally programs would support the  
5 keeping open of regional offices and restoring to them the  
6 primary function of program support, technical assistance,  
7 advice to Washington in decision making that is more  
8 appropriate at a more local level.

9           MR. MENDEZ: Any questions? Are there any questions  
10 on this whole subject?

11           Thank you, gentlemen.

12           We're only a half an hour late which brings us  
13 fairly close to where we were supposed to be this morning.

14           We're going to take national support. Burton  
15 Fretz and Dr. Leonard Goodman. I would also like to have  
16 Mike Murphy and Paul Reddick up, too, for any other comments.

17           So the gentleman on the tape recorder can get  
18 everybody's name, would you introduce yourselves?

19           MR. FRETZ: Burton Fretz.

20           MR. GOODMAN: Leonard Goodman.

21           MR. REDDICK: Paul Reddick.

22           MR. MURPHY: Michael Murphy.

23           MR. MENDEZ: I'm going to ask you the same question  
24 I've asked the others. Do you have a presentation you would  
25 like to make first or what procedure will you be --

1 MR. FRETZ: Thank you, Mr. Chairman. If the  
2 Chair would please, I have a short presentation about the  
3 work for our center and I believe that Mr. Goodman also has  
4 a short presentation and we could make those and then  
5 entertain questions and at the same time proceed thereafter  
6 to address specific questions that were forwarded to us by  
7 Mr. Daughtery. We would be happy to do that.

8 If I may proceed, Mr. Chairman, I am Burton Fretz,  
9 executive director of the National Senior Citizens Law  
10 Center with offices here in Washington, D.C., and in Los  
11 Angeles, California.

12 I would like to make a brief opening statement  
13 that describes the nature of the elderly population that  
14 our center serves, something about the areas of specialization  
15 of our attorneys and something about the variety of functions  
16 by way of support to the field and ultimately to clients  
17 that we try to provide.

18 A word about the nature of the elderly population.  
19 Current census figures indicate that the size of the poor  
20 and near poor older persons -- by "near poor" I mean persons  
21 who are below 150 percent of the federal poverty level --  
22 is quite a sizeable population, probably in excess of  
23 seven million.

24 This represents about 30 percent of the entire  
25 elderly population in the United States.

1           Within that population, there are subgroups of  
2 poor whose numbers are rising rather rapidly relative to the  
3 rest of the population.

4           Those include elderly women, the very old like  
5 75 years and older, and minorities, and the problem is  
6 particularly acute with respect to minority women -- for  
7 example, older black women living alone, of that population  
8 two out of three are below the poverty threshold.

9           So the size of the population and their needs by  
10 virtue of their low income is rather acute.

11           I might say that legal services programs in the  
12 last reporting period of which I'm aware -- 1983 -- indicated  
13 that clients of age 60 and over among local programs repre-  
14 sented 12.7 percent of the total clientele which is a rough  
15 approximation of the number of low income older people within  
16 the older population at large.

17           I might point out that some of those needs are  
18 particularly significant. The latest LSC fact book indi-  
19 cates, for example, that the total number of SSI cases  
20 and Social Security cases, if my memory serves me, was about  
21 93,000 for the reporting year, which is I think quite  
22 significant.

23           The figures indicate that the size of the eligible  
24 elderly population is huge and the number of cases that they  
25 bring to legal services programs are significant.

1 Older people of low income have two sets of pro-  
2 blems, if you will. On the one hand, older people have the  
3 same kinds of legal problems that everybody else does.  
4 They get into traffic accidents. They have consumer  
5 contract problems. They may be evicted from housing.

6 On the other hand, older people tend to have  
7 problems that are somewhat unique to them. One is the need  
8 for income security because they can't work, they're not  
9 allowed to work, they don't work, and the need for income  
10 security among older people falls back on the federal  
11 entitlement programs like Social Security retirement and  
12 Supplemental Security Income, or SSI.

13 It also falls back in part on rights of retired  
14 people to pensions under ERISSA. To some extent it turns  
15 on protections given to older people under the Age Dis-  
16 crimination Employment Act.

17 Again, older persons have far greater and more  
18 acute health care needs, medical needs than the population  
19 at large, and older persons of limited income fall back  
20 on the federal Medicare program and to some extent to the  
21 Medicaid program to provide an underpinning for meeting  
22 those needs.

23 What you have is the traditional or ordinary  
24 legal problems of the elderly population plus the nontradi-  
25 tional legal problems that are somewhat unique to the elderly.

1 population that requires in turn an application of and  
2 understanding of a significant number of federal entitlement  
3 programs or statutes that offer protection to a designated  
4 group that I have just enumerated and I submit to you that  
5 those programs tend to be very complex, tend to require not  
6 only a great deal of time to analyze and understand, they  
7 require a great deal of sophistication and specialization  
8 in order to monitor the myriad regulations, unpublished  
9 opinions, circulars and policies of the agencies that are  
10 called upon to apply them.

11 I cannot stress too much the demands that are  
12 placed upon those who do attempt to implements the benefits  
13 and protections of those statutes for the intended benefi-  
14 ciaries.

15 Just by way of example, Chief Justice Burger looked  
16 at one part of the Social Security Act not too long ago  
17 and called it a morass of bureaucratic complexity.

18 Another federal judge in looking at the Social  
19 Security Act terms it a surbonean bog from which the agencies  
20 and courts have not been fully able to extricate themselves  
21 and I submit that in many respects those metaphors are very  
22 enlightening.

23 The nature of support that our program attempts  
24 to provide is to deliver expertise within these areas to  
25 the generalist legal services attorney.

1           There are many areas in which no field legal  
2 services attorney can -- working as a generalist with a  
3 huge volume of cases and a variety of clients really can  
4 be expected to maintain any kind of in-depth expertise at all.

5           The field attorney as a generalist normally will  
6 not even have access to the body of instructions and cir-  
7 culars and unpublished policy directives that are issued  
8 by an agency charged with the administration of many of these  
9 programs.

10           Just the nub of it, I believe, is that the kind  
11 of support that we attempt to provide in these areas is  
12 support to attorneys and paralegals in the field which goes  
13 both to the quality of the representation to be provided  
14 to clients, as well as to the volume of cases that attorneys  
15 in the field are able to provide as a result.

16           A few words about the law center itself. National  
17 Senior Citizens Law Center has operated since 1972 as a  
18 nonprofit corporation organized in California.

19           We originally were a part of the University of  
20 Southern California and disaffiliated in 1977.

21           We have eight permanent attorney positions, four of  
22 them in Los Angeles and four of them in the Washington office,  
23 as well as an administrator and support staff.

24           Our program is somewhat unique in having an  
25 East Coast and a West Coast office since its inception.

1 Both offices provide traditional support services by way  
2 of technical assistance to the field and litigation support  
3 and a number of other functions that I can try to describe  
4 for you briefly in a moment.

5 I might add that we are very proud of the collected  
6 experience of our staff. Our most junior attorney is seven  
7 years out of law school. All of our attorney staff averages  
8 more than ten years of practice experience. All of our  
9 attorneys paid their dues, if you will, by spending time  
10 in local field programs as generalist attorneys before  
11 developing an expertise in law and coming to the law center.

12 We provide a variety of services to the field.  
13 I think you heard from Bob Sable a couple of weeks ago  
14 describing some of those services. I would like to say a  
15 word about them, without duplicating what Mr. Sable had to  
16 say.

17 One of the most important services that we provide  
18 which takes up probably more than one-third of our attorneys'  
19 time is what we call technical assistance in individual  
20 service cases that are called in to us or that we get by  
21 letter from legal services attorneys and paralegals, and to  
22 a growing extent private attorneys who are representing  
23 indigent clients.

24 We have estimated that in our last reporting year  
25 that we probably handled about 4,000 requests for technical

1 assistance from the field in individual cases.

2 The requests, of course, can cover the full range  
3 of substantive areas and they can involve to some degree  
4 research and analysis, provision of additional materials,  
5 oftentimes drafting at the request of the caller.

6 I mentioned that we are getting an increasing  
7 number of requests from the private bar. In the last  
8 reporting month we had more than ten percent of our requests  
9 coming from private attorneys representing eligible clients.

10 We also put out a number of manuals and other  
11 materials. Most recently we've had in printed form the  
12 litigation manual called Representing Older Persons which  
13 has just become available. The initial costs were paid out  
14 of a contract we have, a subcontract, with the Administra-  
15 tion on Aging. However, we intend to provide a copy of the  
16 litigation manual to each neighborhood legal services  
17 offices at our own cost if necessary, although the clearing-  
18 house in Chicago has offered to try to defray some of these  
19 expenses.

20 I just mentioned the manual. I recognize that  
21 board members have received a huge volume of written matter.  
22 Should any of you want to see the manual for reference or  
23 just to flip through, we would be more than happy to provide  
24 that.

25 Another example of materials that we provide are

1 specialized mailings to advocates in legal services programs  
2 who work in particular areas.

3           Within the last week or two we sent out a specia-  
4 lized mailing to advocates who work in the area of dis-  
5 ability law and provided them with the kind of information  
6 that quite honestly they are not going to get anywhere else.

7           Many of you may have heard about the continuing  
8 disability reviews that have been going on in the past couple  
9 of years. Probably more than half a million persons who had  
10 been found eligible for disability under the Social Security  
11 Act has been subject to review and a large number of them  
12 had been terminated at least on a temporary basis prior  
13 to further review within the Social Security system.

14           This in turn generated a large number of requests  
15 for technical assistance in the area. This latest mailing --

16           MR. MENDEZ: Mr. Fretz, I have the application  
17 for refunding. Under Assurances Given by Applicant as  
18 Conditions for Approval of Grant, you added at the bottom of  
19 paragraph 14 "For items 1, 7, 9, 10, 11, 13, and 14 above,  
20 these assurances and agreements with respect to the Corpora-  
21 tion requirements and actions apply only to the extent that  
22 Corporation requirements and actions are lawful."

23           Please tell me what actions are not lawful and  
24 I would like to know from the president how many other  
25 applicants, national applicants, put that language in.

1 MR. OPSUT: I believe most if not all of the  
2 national support centers have that language.

3 MR. MENDEZ: I want to know what actions of the  
4 board are not lawful and that you don't deem are binding  
5 on you.

6 MR. FRETZ: I don't have that before me. My  
7 recollection was that at the time that the re-funding  
8 application was submitted, there was a legal question about  
9 the applicability of one portion of the private attorney --

10 MR. MENDEZ: I want you to go back and I want  
11 you to prepare a document to tell me what items and actions  
12 of the board are not legal.

13 If I had been on this board and I had seen this --  
14 that's just a bald-faced assertion that you can do whatever  
15 you want to and say that our actions are illegal and I want  
16 to have from now on --

17 I don't know how everybody else feels, but if  
18 you're going to make any assertion about some action of the  
19 board that's illegal, I want you to tell us which actions  
20 of the board are illegal and that you don't deem is binding  
21 on you.

22 MR. FRETZ: If I may respond further, Mr. Chairman.  
23 The issue I think that triggered consideration of that  
24 language was the question of the applicability of the private  
25 attorney involvement regulation at part 1614.2(b) I believe

1 on support centers by virtue of the so-called affirmative  
2 rider to the appropriation --

3 MR. MENDEZ: Why didn't you put that in there?  
4 Why didn't you put that specific statement in there? Why  
5 did you make it a bald-faced statement?

6 MR. FRETZ: The statement was merely a disclaimer  
7 that we understood in signing the re-funding application that  
8 we were not waiving any rights that we would otherwise have  
9 to object to a requirement if in fact the requirement were  
10 not legal.

11 I understand that subsequently the general counsel  
12 of the Corporation has indicated that that particular pro-  
13 vision of the regulation is indeed not enforceable as a  
14 matter of law.

15 MR. MENDEZ: Is that the only provision or action  
16 of the Corporation that you're objecting to?

17 MR. FRETZ: That was the issue at the time.

18 MR. MENDEZ: Is that the only one that -- I want  
19 to know now if that's the only that you're objecting to  
20 and if it's not I want to know now what the other ones are.

21 MR. FRETZ: I'll be happy to respond further after  
22 I've had an opportunity to review the application.

23 MS. BERNSTEIN: One of the things in that para-  
24 graph -- I just have to follow up on this a little bit.

25 One of the things that you objected to was an

1 assurance that you would comply with the law.

2 MR. FRETZ: We have no quarrel with the need to  
3 comply with the law.

4 MR. VALOIS: Mr. Fretz, do you have the application  
5 in front of you that they're referring to?

6 MR. FRETZ: No, I don't, Mr. Valois. I can get  
7 my copy.

8 MS. BERNSTEIN: I was referring to paragraph one  
9 of the assurances that are given by -- I thought were given  
10 by all grantees of the Corporation.

11 Your language was typed in at the back, but the  
12 thing that strikes me as being particularly questionable  
13 is your unwillingness to assure us that you will comply with  
14 the law.

15 MR. FRETZ: Not at all, Ms. Bernstein. I think  
16 that a fair reading of that language is to assure the  
17 Corporation that we will indeed comply with the law and  
18 that was the purpose of it.

19 MR. WALLACE: Comply with the law to the extent  
20 that it's legal. I mean it does leave a little confused as  
21 what you mean by that.

22 MR. VALOIS: I think it's fairly clear what he  
23 means that is that if something is subsequently found to be  
24 unlawful that he's not agreeing to abide by it on some  
25 contractual or other basis.

1 MR. FRETZ: The private attorney involvement is --

2 MR. MENDEZ: Until this last year, did you ever  
3 put any language like this into --

4 MR. FRETZ: Offhand I do not recall that we had  
5 occasion -- I would have to go back and look at the  
6 immediately preceding re-funding application. I believe  
7 that there was qualifying language necessary for inclusion  
8 in one of the contract documents. I don't know if it was  
9 in the re-funding application or a subsequent document.

10 MR. MENDEZ: How many years have you been funded?

11 MR. FRETZ: By the Corporation, since the  
12 Corporation's inception.

13 MR. MENDEZ: I'd like to know if they ever put  
14 in modifying language like this before.

15 MS. BERNSTEIN: Also, when you give your response  
16 to this, and I recognize that this is kind of on the spur  
17 here, I am also particularly interested in paragraph seven  
18 as to your unwillingness to cooperate with data collection  
19 and evaluation activities.

20 What particularly do you reserve judgement on?

21 MR. MENDEZ: I want him to answer on each para-  
22 graph. I want to know specifically.

23 MR. FRETZ: I'll be happy to respond in writing,  
24 as I have indicated, Mr. Chairman.

25 If it please the Chair, I'll proceed briefly with

1 my presentation.

2 MR. MENDEZ: That's fine.

3 MR. FRETZ: Let me just highlight some of the other  
4 functions that we perform.

5 One is the provision of the weekly newsletter which  
6 details legal and judicial developments in the area of the  
7 aging and that goes out to each neighborhood office of each  
8 program in the country.

9 We also provide training consistent with expressed  
10 needs of the field and our own resources. We are hopeful  
11 of providing between 9 and 12 days of training onsite during  
12 the calendar year 1985 in the areas of law that I have earlier  
13 described.

14 We also carry on a substantial litigation caseload.  
15 The open cases now number probably about 50 and that is  
16 carried on in each of the areas of law in which the attorneys  
17 have developed expertise.

18 We engage in important, although to a small degree,  
19 of legislative and administrative work which becomes parti-  
20 cularly important where gains won in court need protection  
21 in the legislative forum when similar issues are being  
22 considered before congress.

23 I was asked to comment on the possible effect of  
24 a 21.6 percent cut in our funding from the Corporation in  
25 1986 and --

1 MR. MENDEZ: Let me ask you a question about your  
2 organization before you get to that, and again I have the  
3 benefit of looking at your application, which I guess you  
4 now have.

5 Looking at your board, I wonder who chooses your  
6 board. Are you all a nonprofit California corporation or  
7 what are you, exactly?

8 MR. FRETZ: We are a charitable corporation, a  
9 service corporation in the laguage of the California  
10 corporation statute.

11 MR. MENDEZ: How does the board get chosen under  
12 that statute?

13 MR. FRETZ: Consistent with the Legal Services  
14 Corporation requirements and regulations, six of our eleven  
15 board members are attorneys who are chosen by the relevant  
16 bar association -- three by the state bar of California  
17 and three by the District of Columbia bar.

18 There is one at-large attorney position that is  
19 chosen by the board. There are four client positions which  
20 are chosen -- that is individuals are selected by client  
21 organizations.

22 MR. MENDEZ: Is that -- Who decided to give client  
23 organizations the right to choose board members?

24 I guess my question is does the board essentially  
25 choose itself other than the ones who are required to be bar

1 representatives by statute?

2 MR. FRETZ: Only indirectly and there are two steps  
3 in the indirection. First, is the fact that an older board,  
4 a precursor board, back in 1983, designated client groups  
5 to make the choice, and then of course now the client groups  
6 choose an individual so at least there is some distance  
7 between --

8 MR. MENDEZ: Okay, but I mean the ultimate  
9 responsibility lies with the board. You can undesignate  
10 client groups and the board can elect its own nonbar board  
11 members. Is that correct?

12 MR. FRETZ: That's correct.

13 MR. MENDEZ: Okay, I just wanted to understand  
14 how it worked.

15 MS. BERNSTEIN: Let's just go on and get on the  
16 record. Mr. Shotlin, who is the chairman of your board,  
17 does he have any other relationship with legal services?

18 MR. FRETZ: Other than as chair of the board he  
19 doesn't have -- He was selected by the -- reappointed by the  
20 California state bar.

21 MS. BERNSTEIN: I just noticed his address is  
22 Arizona. I just wondered why the state bar of California  
23 had chosen him. Had he had previous relationship with  
24 Legal Services Corporation?

25 MR. FRETZ: He was a former active member of the

1 California state bar and now is an inactive member and is  
2 a very distinguished person in the field of aging. He was  
3 the original commissioner of Social Security, among other  
4 things. We're very honored to have him serve on the board.

5 MR. WALLACE: Is it a requirement of all the programs  
6 that they have one-third client representation on the board?  
7 Your board isn't any different than any other, is it?  
8 Everybody has a board consisting of client members.

9 MR. FRETZ: That's correct.

10 MR. SMEGAL: One-third. I think it's at least  
11 one-third.

12 MR. FRETZ: It is one-third and one-third -- that  
13 is, four of our eleven members are client representatives.

14 MR. SMEGAL: Within the last four or five years  
15 it's been -- the responsibility for appointing the lawyer  
16 members has been transferred or at least assigned -- whether  
17 it's been transferred or not it's assigned -- to either a  
18 local bar association, local bar or state bar if it's a  
19 state program, is that right?

20 MR. FRETZ: Yes.

21 MR. SMEGAL: So your program is set up the same  
22 way all the rest of them are.

23 MR. FRETZ: That's correct.

24 MR. SMEGAL: If we had some other program director  
25 up here, his response would be the same as we've been getting

1 from you.

2 MR. FRETZ: As far as I know.

3 MR. WALLACE: And I appreciate that. I wasn't  
4 picking on you. I'm trying to understand because I didn't  
5 know how it worked. It's a one-third client member by  
6 statute?

7 MR. FRETZ: Yes.

8 MR. WALLACE: Is there any requirement for public  
9 involvement on your board?

10 MR. FRETZ: I don't recall specific statutory  
11 language about public involvement.

12 MR. WALLACE: Thank you. Believe me, I just do  
13 not understand where boards come from and that's what I was  
14 trying to understand and I'm sure it's the same for everybody.  
15 Thank you.

16 MR. MENDEZ: Now in your application for re-funding,  
17 on page seven you said that litigation composed 35 percent  
18 of your budget and you've also told us that you have 50  
19 cases that you're doing.

20 MR. FRETZ: Approximately 50 open cases, yes.

21 MR. MENDEZ: Is your budget for the 50 open cases  
22 \$215,600 or thereabouts?

23 MR. FRETZ: I think I explained in the re-funding  
24 application that we made estimates among all of the staff  
25 attorneys as to the proportion of their time spent on liti-

1 gation and on technical assistance, on manuals and materials,  
2 and then offered those percentages to the Corporation to  
3 indicate if they wished to extrapolate those percentages  
4 into budget figures.

5 We do not separately have a \$200,000 litigation  
6 budget. We do not budget by function.

7 MR. MENDEZ: If we choose to look at that in those  
8 terms, that's in fact what it is -- \$215,000 for 50 cases.

9 MR. FRETZ: That's a characterization that an  
10 observer may make, but it does not come directly from our  
11 budgeting, which is not functional.

12 Mr. Mendez, you were kind enough to give me an  
13 opportunity to say a word or two about the effect next year  
14 of a cut of 21.6 percent in the budget, should that happen.  
15 While we strenuously urge that it not happen and commend the  
16 committee for taking a careful look at support for other  
17 programs I would just like to say that a cut of that nature  
18 on our legal services budget would amount to about \$133,000.

19 It would be a substantial cut and one that I think  
20 would affect our ability to provide support to the field and  
21 at the same level that we do and of the same quality.

22 Of course, this far off we can't say with any  
23 certainty what the precise decisions would be to meet such  
24 a cut. I do think we can spot some probabilities and I can  
25 share those with you.

1 I think we probably have to look at one and a half  
2 to two attorney positions with that kind of money, and those  
3 attorney positions would come out of the income security  
4 or health security area that I had earlier described for you.

5 We would probably have to look at onsite training  
6 that we do because that does represent out of pocket  
7 expenses which at '85 levels would probably approximate  
8 \$10,000.

9 We would also have to look at specialized mailings  
10 such as the disability mailings that go out to advocates  
11 that do a high volume of work in that area in field programs.

12 We probably would have to reconsider tentative  
13 plans now to publish an update to this litigation manual  
14 that we would like to put out at the end of this year.  
15 We hope to publish and disseminate copies to the legal  
16 services community at a cost of probably \$7500 to \$10,000.

17 So those are roughly the choices that we would  
18 have to make and we would have to make those knowing that,  
19 as with any program we have an awful lot of fixed costs  
20 that aren't adjustable to meet a cut in budget.

21 I'm afraid I've taken advantage of your kind  
22 invitation long enough and unless there are specific questions  
23 in our program, I'll turn it over to Mr. Goodman.

24 MS. BERNSTEIN: I have just a couple of questions  
25 Mr. Fretz, I have got some materials here regarding

1 your various quarters and I won't try to sort them all out  
2 here during the meeting of your response to legislative  
3 inquiries and I understand that the Senior Citizens Law  
4 Center by being here in Washington -- at least having an  
5 officer here in Washington -- is at the disposal of the  
6 congress.

7 I'll tell you what my concern is about this, is  
8 that we've got clients out in the field who are having  
9 problems, immediate problems, and it seems -- I have my  
10 own concerns about our funding congressional staffs, which  
11 is basically what we're doing if these legislative activities  
12 have any representation to the number of days that you are  
13 spending telling congress what they should be doing.

14 It just seems to me that if congress wants to  
15 fund their staff, they should fund their staff directly.  
16 Maybe that would be good. Maybe the National Senior Citizens  
17 Law Center should serve as an information resource for  
18 congress.

19 I'm frankly disturbed when I see the number of  
20 reports that come under your lobbying reporting requirements  
21 that the Corporation asked you to send in.

22 I'm not faulting the fact that you may have gotten  
23 a request for an individual congressperson on this, but I  
24 do have a concern when we are funded not to support  
25 congress but we are funded to support the clients and we're

1 not here to employ attorneys, we're here to provide services  
2 for clients.

3 I really have a problem when despite whatever  
4 laudable or theoretically laudable goals the center may have  
5 it doesn't in the bottom line increase delivery to clients.

6 I'm a little disturbed when you talk about your  
7 choices that you would make.

8 A litigation manual, which you just finished  
9 telling us how important this was going to be for all the  
10 programs, that was one of the first things that we're not  
11 going to do if we get cut.

12 I'm a little concerned about the choices that  
13 support centers make that don't put the clients first.

14 I would like, to the extent that you can provide  
15 some information why we constantly make choices that don't  
16 deal with the individual requests for assistance first.

17 MR. FRETZ: Let me try to respond. There were  
18 two or three points that you raised, Ms. Bernstein. Let  
19 me take the last one first.

20 We very much share concern that the needs of  
21 individual clients be adequately met and the volume of  
22 technical assistance that we do in all the areas that we  
23 cover is a recognition of that need.

24 While no one likes to look at the potential  
25 cuts that we might have to make, say by updating the manual,

1 if the alternative is to cut back in a substantive area  
2 so that clients and their representatives who call in for  
3 help in that area can't get it because there just ain't nobody  
4 to do it, that creates a critical void.

5 Let me just persevere and respond to your question,  
6 if I may. I appreciate your good articulation of concern  
7 for clients in the field. I think as you put it, what's  
8 happening to clients out there.

9 Apparently there are a large number of people in  
10 congress who share that concern.

11 If you analyze the requests for information and  
12 technical assistance from congress over this last year, you  
13 will see that a very large number and probably the majority  
14 of them attend congressional consideration of the disability  
15 reform legislation which was passed into law eventually  
16 this past November.

17 It's a real complex area. We found that many  
18 members of congress in considering that legislation legi-  
19 timately needed to know what was happening to clients when  
20 they were being cut off, what were the standards being  
21 applied, what were the policies in the Social Security  
22 Administration, what were the procedures clients were  
23 required to follow, what was the framework governing waiver  
24 of overpayments that Social Security was attempting to  
25 collect from clients.

1           The most cost-efficient way for congress to find  
2 out was to ask one of our specialists what was happening  
3 and I assure you that none of the attorneys in my program  
4 are providing personal staff for members of congress.

5           I can assure you that when we get a request of  
6 that nature about something that, as you say, is so important  
7 because of what's happening to large numbers of clients ou  
8 in the field, we will try to respond in a very concise  
9 and economical way by conveying the information that we get  
10 through litigation and through the rendering of technical  
11 assistance.

12           The other area where we have responded is in the  
13 three or four cases in the last year when we have actually  
14 assisted as cocounsel to achieve litigation successes for  
15 clients, and then the government attempts to overcome those  
16 successes by going to congress.

17           If you'd like to hear -- Maybe we should carry  
18 on a colloquy later but I can tell you more than any of you  
19 may want to hear about how the government has attempted  
20 to overturn court decisions that were rendered in favor  
21 of legal services clients with which we were involved.

22           The time we spend in communicating to congress  
23 is virtually negligible in terms of the result for our  
24 clients that comes from simply having the information  
25 available to members of congress who are free to use it or

1 reject it, as they see fit.

2 MR. MENDEZ: I want to turn it over to Mr. Goodman  
3 because we are already falling behind.

4 MR. GOODMAN: I'm executive director of National  
5 Social Sciences and Law Center. I would like to thank Mr.  
6 Mendez and the other members of the committee for the  
7 invitation to appear here today.

8 I would like to reciprocate by inviting each of  
9 the directors to visit our center, look at our materials  
10 and talk to our staff.

11 I appreciate this opportunity to describe the  
12 activities of our center and to comment on the possible  
13 effects of the proposal to reduce or eliminate funding  
14 of national support.

15 Before doing so, however, I would like to say a  
16 word about my professional background. Briefly, I am a  
17 social scientist and received my degrees from the University  
18 of Connecticut and Columbia University, taught college for  
19 ten years before coming to Washington to do research at the  
20 Bureau of Social Science Research.

21 My first project at BSSR was a study for the  
22 Department of Defense on the effects of anticommunist media  
23 materials on the attitude of military personnel.

24 Subsequently I did research under contracts and  
25 grants from the President's Crime Commission, the Kerner

1 Commission, the National Institutes of Health, the Depart-  
2 ment of Health, Education and Welfare, Social Security  
3 Administration and Department of Labor.

4 Much of this research was on poverty and poverty-  
5 related issues. In 1968 following the submission of a  
6 proposal we were asked by the Office of Legal Services  
7 of OEO to establish a support facility to provide quantita-  
8 tive evidence for poverty law cases in legal services. That  
9 was the start of the National Social Science and Law Center.

10 In 1977 in compliance with LSC policy we the  
11 center disaffiliated from the Bureau of of Social Science  
12 and Research and became a nonprofit 501(c)(3) corporation  
13 chartered in the District of Columbia.

14 Unlike the other national support centers, NSSLC  
15 is not identified with any single client issue or subgroup.  
16 We work on a wide range of issues on behalf of any and all  
17 of the poor.

18 Our function is to satisfy every part of this  
19 community's need for the information and tools of scientific  
20 and statistical and economic research.

21 We do or have done data collection and processing,  
22 statistical analysis, systems analysis, scientific research  
23 design, demographic research and population estimation,  
24 questionnaire design, probability sampling and survey  
25 research, retrieval from computerized bibliographic data

1 bases and methodological criticism, including evaluation  
2 of research designs of others.

3 At some time or other to represent their clients  
4 effectively, most legal service lawyers will need quantitative  
5 evidence and some of the associated skills and services.

6 They will need quantitative documentation of a  
7 pattern or practice, for example, for a discrimination suit,  
8 or they will simply need to know whether their allegations  
9 are supported by the facts, and very few are trained to  
10 identify, retrieve, process, analyze and interpret aggregated  
11 empirical data.

12 Or they may have to obtain from a state or local  
13 agency on a discovery motions empirical information on the  
14 agency practices, only to find that the agency has a highly  
15 developed inability to produce the data in quite the right  
16 way.

17 Or they may need to review and evaluate the use  
18 of certain computations or formulas or perhaps make the  
19 calculations themselves without having had the training  
20 or experience.

21 MR. WALLACE: If I could stop you for just a  
22 second. I'm having trouble bringing this down to a concrete  
23 level.

24 What does a lawyer need to know all that stuff  
25 for? What kind of lawsuit is he filing that makes him need

1 to understand, for instance, state agency's date better  
2 than the state agency understands it?

3 MR. GOODMAN: If I may have your indulgence, Mr.  
4 Wallace, I think I will make that clear by example in just  
5 a moment.

6 I might observe in this last connection that there  
7 is an enormous amount of statistical data on characteristics  
8 of the low income population and its many subgroups that  
9 we have to be familiar with in order to serve our clients.

10 We receive an average of eight government statis-  
11 tical publications each day. We try to keep on top of more  
12 than 30 different statistical data periodicals just from  
13 the Department of Labor, most of them weekly, monthly and  
14 quarterly. This includes seven that deal solely with  
15 consumer and producer price indexes.

16 The Social Security Administration also publishes  
17 over 30 different periodicals dealing with public assistance  
18 recipients, as well as their bulletins, special studies  
19 based on their master beneficiary files, and their monthly  
20 public assistance statistics.

21 Further, we stay up on a constant stream of  
22 publications from the Bureau of the Census, and to give you  
23 just a little idea of what this involves, the index of  
24 current population series alone is 49 pages long, and I  
25 haven't mentioned the electronic data which is now becoming

1 available in very large quantities and has great potential  
2 utility for legal services.

3 The relevance of this is that legal services  
4 field programs are continually representing clients against  
5 public bureaucracies that control informational resources  
6 that constitute a substantial advantage in litigation.

7 One of our very basic and essential functions and  
8 one form of staff expertise that our center has is familiarit  
9 with this information and the ability to use it to help  
10 reduce that imbalance.

11 Throughout its history, NSSLC has engaged in  
12 basically two types of activities -- first, direct response  
13 to field requests, and, second, production and dissemination  
14 of general materials, and I'll elaborate on the first now.

15 The great bulk of our work under the first cate-  
16 gory has always been litigation support. Usually it has  
17 consisted of statistical or demographic analysis that  
18 results in a research memorandum, affidavit, exhibit or  
19 expert testimony.

20 The work is undertaken at the request of field  
21 attorneys and performed in close consultation with them and  
22 usually results in the introduction of quantitative evidence  
23 at some point in the trial proceedings.

24 A great deal of this work is done in collaboration  
25 not only with local legal services programs but also with

1 our support centers.

2 To give a couple of examples from our current cas  
3 load. In an ongoing suit brought against a retail estab-  
4 lishment for alleged usurious practice in the rental/sale  
5 of home appliances to low income consumers, we have processed  
6 and analyzed many hundreds of records of actual transactions  
7 in order to calculate their true total cost.

8 In a suit against the Social Security Administra-  
9 tion alleging unreasonable delays in the processing of  
10 appeals of decisions in disability cases, we have helped  
11 design and have been monitoring a court-ordered study that  
12 is intended to reveal the sources of delay.

13 We are doing this at the request of the court.  
14 This case has been going on for a couple of years.

15 In another case in which the migrant legal action  
16 program was also involved, we initially helped and designed  
17 a survey instrument for a study of rural health clinics  
18 which was intended to estimate the incidence of pesticide  
19 related health problems among farm workers and their children.

20 In a later phase of this case, after the court had  
21 ordered OSHA to develop field sanitation standards, we  
22 prepared estimates of the monetary benefits of implementing  
23 those standards, for both growers and workers.

24 We recently worked on a case with a private attorney  
25 in D.C. where the issue was that elderly and disabled persons

1 in subsidized housing projects could not afford the \$125-  
2 plus cost of mandatory meal plans with their \$71 food stamp  
3 allotments.

4 It is a national problem, by the way, aggravated  
5 by the fact that some of these people could not even eat  
6 the standard food.

7 Our role was to determine what proportion of the  
8 eligible applicants would be unable to afford these food  
9 plans.

10 One final example. We were asked by a private  
11 attorney again, in California, to assist in the remedy stage  
12 of a matter where people were not being reimbursed by the  
13 state department of social services for providing care for  
14 their disabled relatives or elderly people suffering from  
15 degenerative disease, for example, and children who were,  
16 quote, retarded, epileptic, blind, brain damaged or schizo-  
17 phrenic, and all of whom were unable to care for themselves,  
18 whereas nonrelatives would be paid under the in-home  
19 supportive services programs for the same care.

20 The problem was to notify the people affected so  
21 that, for example, they would be able to remove their  
22 relatives from nursing homes and care for them at home, at  
23 considerable saving to the state, by the way.

24 What we did was to study the computer printouts  
25 from the state in conjunction with census data on age

1 distributions, disability, et cetera, and estimate the  
2 probable numbers of people who would have been notified in  
3 each county and reimbursed.

4 MR. WALLACE: How do you decide which of these  
5 requests are the most important? It sounds like you provide  
6 expert witness capacity for a lot of ongoing lawsuits. How  
7 do you --

8 There is almost an infinite need for expert  
9 witnesses, I suppose. How do you decide which cases you're  
10 going to be involved in?

11 MR. GOODMAN: We go through a priority-setting  
12 process each year in the course of which we send questionnaire  
13 forms to all legal services programs, and in the last two  
14 years to all state bar pro bono committees.

15 We ask these programs and committees to indicate  
16 to us what their anticipated priorities will be for the  
17 coming year, usually the calendar year.

18 We tabulate those results and that becomes one  
19 of the major bases for determining our priorities which  
20 are set by our board of directors usually in meetings held  
21 in September and December of each preceding year, and that  
22 becomes the basis for our determination of which kinds of  
23 requests to accept.

24 MR. WALLACE: There are other ways of setting  
25 priorities, and one that has been used for a long time is

1 the price mechanism and we've talked here about -- There  
2 have been mentions made before about using national support  
3 centers on a contract basis.

4 It looks to me like yours is tailor-made. People  
5 are hiring you as expert witnesses.

6 We hire expert witnesses in our firm and we pay --  
7 if the case justifies it, we pay them the cost that the case  
8 justifies.

9 It seems to me -- If hiring expert witnesses is an  
10 ideal place to save programs in the field, you ought to  
11 hire the best experts you can and pay the best price you  
12 can get for them.

13 You're providing a free service which you allocate  
14 according to a survey and it's not obvious that's the best  
15 way to set priorities.

16 MR. MENDEZ: You're asking the question on my  
17 letter, I think.

18 MR. WALLACE: I am but I mean this looks like --  
19 I'm not sure how it works in every case, but it looks to  
20 me like you're selling expert witness services to a large  
21 extent and every law firm in the country handles expert  
22 witness services with a price mechanism.

23 That looks to me like intuitively the best way  
24 to buy expert witnesses -- buy the ones you need at the  
25 price the case justifies and the program in the field can

1 decide what price their case justifies.

2 MR. GOODMAN: Shall I respond to that?

3 MR. WALLACE: Please.

4 MR. GOODMAN: My first response is that I really  
5 don't know how that would work within the legal services  
6 program.

7 I do see one likely difficulty with that sort of  
8 arrangement and I think it's a serious one, and that is that  
9 the program that has a particular need for a particular  
10 service of the kind that we can provide might not neces-  
11 sarily be able to afford it.

12 It doesn't follow that important cases, for  
13 instance, if that's one of your criteria, or cases of a  
14 certain substantive kind would just come out of the larger  
15 programs, or programs that have the kinds of funds that  
16 would enable them to purchase these kinds of services.

17 I haven't looked at this in our own records, but  
18 I can certainly imagine instances in which there would be  
19 an institutionalized kind of inequity that would result from  
20 that sort of arrangement.

21 MR. WALLACE: It seems to me there are two answers  
22 to that. One is that you can get resources out to the field,  
23 whether it's increasing annualized grants or by special  
24 process of saying we have a case and we think it justifies  
25 X thousand dollars in expert witness fees and will the

1 national corporation make us a grant for expert witness fees  
2 and you could handle it that way.

3 The second problem with that is that you may not  
4 be the best expert witness they can find. I mean you're  
5 spending X thousand dollars to provide the service but since  
6 you're providing it for free they're going to use you. They  
7 might get service from somebody else who would spend less  
8 money on it than you would if they had a choice.

9 They don't have a choice. When you're giving some-  
10 thing away free, you look like the best expert witness in  
11 town and it seems to me that maybe poor people could get  
12 better expert witnesses than you can provide.

13 I'm not attacking the quality of your work. I'm  
14 sure it's good. I'm just saying that you've got a lot going  
15 for you when you're not charging for your services.

16 MR. GOODMAN: I believe some of that may be true  
17 but again I don't know where the evidence is to support  
18 some of those assumptions.

19 MR. WALLACE: Years of experience with the price  
20 mechanism and economics and lawyers that hire expert  
21 witnesses every day.

22 I'm doing all the talking, Mr. Chairman, but this  
23 is --

24 MR. MENDEZ: You're very articulate. Keep it up.

25 MR. DURANT: Dr. Goodman, from an operational

1 standpoint, essentially I think Mr. Mendez and Mr. Wallace  
2 were only talking about a small portion of what is in fact  
3 your total budget.

4           Would that not be a helpful way of affecting up  
5 the hierarchy of priorities in having the programs who are  
6 using your services -- and I assume effectively and well --  
7 and Mr. Fretz, I ask you the same question -- would it not  
8 be a good way of trying to measure the question of need and  
9 support by having the particular programs, if they chose  
10 on portions of this shortfall to call you up and say, look,  
11 I need help and this portion of my budget I'm going to  
12 allocate, or those that you provide manuals to as a service,  
13 then they should pay you a fee for that, and I wouldn't  
14 think -- I don't know if our regulations would permit it,  
15 but you could do that with the private sector in certain  
16 areas.

17           Wouldn't that help in terms of the allocation of  
18 scarce resources to allow that process to take place?

19           Either one of you can go first.

20           MR. FRETZ: I can try to respond, and I guess we  
21 have to clarify the proposal that we're talking about. As  
22 I understand it, we have on the table at least two proposals.

23           One would be that support centers' funding be  
24 cut by 21.6 percent and that the market mechanism play to  
25 try to make up that difference -- forgive me if I'm not

1 charactertizing --

2 MR. DURANT: That's fine.

3 MR. FRETZ: The other proposal is everything goes,  
4 funding for support centers is abolished and the market  
5 mechanism should be looked --

6 MR. DURANT: Mine is the first example.

7 MR. FRETZ: To use your example, Mr. Durant --

8 MR. DURANT: Let me add something. I can see  
9 Dr. Goodman's point that there would be certain kinds of  
10 things that would within the limited market that we're  
11 talking about probably couldn't be properly funded in that  
12 mechanism, so use the first example.

13 MR. FRETZ: In fact, I'll try to follow up the  
14 example you gave of the manuals as something marketable.  
15 I would say I have a number of problems with this approach.

16 Primarily I think because I sense that support  
17 now is allocated in a fairly rational way and in a way that  
18 tries to make support services available as needed to all  
19 clients through all programs as those clients and programs  
20 figure out their support needs, to try to let the market  
21 play I am afraid injects such an element of both uncertainty  
22 and partial allocation that when the dust clears there are  
23 going to be some clients that can't get their support needs  
24 met.

25 Let me get back to the example of the manuals.

1 As of today --

2 MR. DURANT: Hold it. Just one quick thought on  
3 that point. That might be true, but wouldn't the needs that  
4 are given the highest priority -- in other words, you might  
5 say we have an almost inexhaustible need in certain --  
6 wouldn't those needs with the highest priority, the ones  
7 that are the most important in fact be met that way?

8 In other words, there would be a mechanism for  
9 finding out and understanding where that hierarchy of  
10 priorities would play.

11 MR. FRETZ: When I was in a field office, my  
12 priorities for support in January could be much different  
13 than my priorities in October and I think that's a unique  
14 problem, that we're dealing with budgets that have to be  
15 allocated over a considerable period.

16 MR. MENDEZ: When you were in the field, though,  
17 you bought and you knew you were going to buy your sub-  
18 scriptions to the books in January and you allocated those  
19 in January. Isn't that a fair statement? And you carried  
20 them out over the course of the year.

21 You knew that you needed X volumes of -- it was  
22 going to cost you X dollars and you allocated it over the  
23 year. You knew your rent was going to cost you X dollars  
24 and you allocated it over the year.

25 The need for national support is very similar to

1 those subscriptions. Rather than subscribing to books,  
2 you're subscribing to national support centers.

3 What I would really like to have both of you  
4 gentlemen do -- I'm a little bit more market-oriented I  
5 guess than my colleagues.

6 I would like to hear what your response is if we  
7 just go to zero funding and ask you to bid or take bids  
8 from the local field groups or recipients and your budget  
9 is based on what their needs and desires are.

10 MR. DURANT: Are you talking about what field  
11 programs have allocated to them?

12 MR. MENDEZ: All the money from --

13 MR. FRETZ: Mr. Chairman, before we address that,  
14 would you be kind enough to allow me to persevere with  
15 my response to Mr. Durant's question on the manuals?

16 It seems to me that today our system is such that  
17 it encourages the broadest possible dissemination of the  
18 manuals and materials and newsletters.

19 People will call us up and say can we reproduce  
20 your newsletter and give it out to 50 legal services  
21 attorneys or paralegals and we'll say sure, or can we repro-  
22 duce a copy of the manual and give it to separate legal  
23 attorneys and we say sure. It's copyrighted, but go ahead.

24 It seems to me that the market mechanism does  
25 carry a risk of turning that on its head, that we would then

1 have an incentive to sell everything and to discourage  
2 dissemination if it's not for sale.

3 Do we then ardently enforce the copyright pro-  
4 tection on our manuals or on our newsletter?

5 I put those out because I think they may cause  
6 troubling and practical questions.

7 MR. DURANT: Let me give you an example. I was  
8 connected with a college at one time that was publishing  
9 a monthly newsletter and -- this is an anecdotal response  
10 to that -- and we gave it away and the mailing list went  
11 from about 20,000 to just in excess of 100,000.

12 It was a wonderful way of generating interest  
13 in supporting the particular kinds of activity and the  
14 generation of funds was far in excess of what we would have  
15 gotten had we made it a subscription because people valued  
16 what it was that they were receiving and knew what we were  
17 doing.

18 In fact, it was a mechanism frankly to increase  
19 the money, not to decrease it.

20 I don't know that the example would really -- is  
21 appropos with manuals or newsletters or whatever. I think  
22 if I were sitting with you and we were designing the way  
23 in which to do it, I would encourage the widest distri-  
24 bution so that people would know what in fact you were doing  
25 and get a broader base.

1 MR. FRETZ: I hope the day doesn't come, but if it  
2 does and you're available for consultation --

3 I think we can both be cognizant of the distinction  
4 between the population that might support a college and the  
5 population of legal service providers that we would be  
6 dealing with and I think that's also critical.

7 MR. MENDEZ: Let's turn back to mine. I ask both  
8 of you to address the second proposal, where it is if we  
9 abolish the centers entirely and ask them -- we don't abolish  
10 the centers, we abolish the funding -- and ask the local  
11 programs to buy whatever amount they need from you or carry  
12 out subscriptions, that aspect.

13 I assume that you would have the same answer as  
14 you gave to Mr. Durant with regard to the 100 percent.

15 MR. FRETZ: I would have the same answer I would  
16 say about ten times but I would try to refine the response  
17 a little.

18 I guess we ought to look at the kinds of things  
19 that we are called upon to market. Manuals and materials  
20 are probably the most marketable just as a general matter.  
21 The local attorney hears about it, knows what the need is,  
22 knows what the price is, has a pretty good, pretty concrete  
23 expectation of what to get.

24 Telephone consultations, which in our center's  
25 case is probably a third of the time that attorneys spend,

1 I think that's a lot dicier. No one can predict what  
2 kind of telephone or letter consultations are going to be  
3 needed or the depth of it, and certainly cannot predict that  
4 months in advance when the clients walk in and start arti-  
5 culating their needs.

6 Cocounseling on cases, involvement in complex  
7 litigation, I think that's even tougher still, particularly  
8 so with small programs, but I think with any local program  
9 it's just very hard for a project director to take \$20,000  
10 or spend a substantial sum of money on a case for two  
11 clients when --

12 MR. MENDEZ: Mr. Fretz, one moment.

13 MR. MOLA: I would simply like to address the  
14 purchase of services or support from field --

15 MR. MENDEZ: We'll do it later.

16 MR. FRETZ: I think we essentially would have to  
17 write off the prospect of support center involvement in  
18 depth in complex litigation because of that cost factor.

19 The other element, and that is the notion of a  
20 retainer agreement between our center and a large program  
21 for a year, say, it seems to me is fraught with just manage-  
22 ment problems.

23 I would need to advertise our services, negotiate  
24 a retainer agreement with a project director. The project  
25 director then would want to negotiate that agreement with

1 his board and get board ratification, I assume, and there  
2 may even be board members who want to look at the language  
3 of the documents and ask questions about it.

4 Then it would go to the Legal Services Corporation  
5 for its review and approval, and if that is done with every  
6 local program and with every national support center, if  
7 my math serves me, we're talking about 5,000 different  
8 documents and with the Corporation that doubles it to 10,000  
9 transactions and I would be afraid that just the time and  
10 the energy and the paperwork would be very substantial.

11 MR. WALLACE: But at every step of the level,  
12 people are being forced to set priorities in a concrete way.  
13 They are being forced to decide whether they want to spend  
14 scarce resources on those.

15 In my capacity as chairman of the regulations  
16 committee, I will be wrestling tomorrow with the priority  
17 section of our regulations and I must say I don't under-  
18 stand how anything we're sending out to people helps to  
19 set priorities in any kind of a rational way.

20 You can do a scientific survey, which I suppose  
21 some of the national support centers have the capacity to  
22 do. You're big, you've got a budget, you can do that.

23 A lot of local centers can't do that. They set  
24 their priorities, I suppose, by sitting around the table  
25 saying, well, what do you think is the most important problem

1 we've got and that's as good as anything short of a survey  
2 except for a price mechanism.

3 People have to sit down and say what are we willing  
4 to spend money on.. Do we want to spend this money on a new  
5 word processor or on a new lawyer or on hiring support  
6 services from the Naational Senior Citizens Law Center?

7 They really have to think about what's important  
8 to them in concrete terms, the way any businessman does.

9 I'm sure -- You've described the free rider problem  
10 that makes sense to me, and there are some problems of  
11 coordination and heaven knows if we have to approve every  
12 one of those at the national level there are some red tape  
13 problems that we had better think about how to cut through  
14 before we do something like this.

15 You haven't convinced me at this point that asking  
16 prople to pay for what they get when we're providing the  
17 money in the long run is somehow unfair.

18 It looks like the way most people set priorities  
19 and --

20 MR. MENDEZ: I would like to have Mr. Goodman  
21 respond to that.

22 MR. GOODMAN: It's a very complicated question.  
23 I don't know, for example, whether there are parallel  
24 experiences in service programs like legal services where  
25 mechanisms of this sort have been tried out and where there

1 would be some base of experience for reaching conclusions.

2           Otherwise, short of that, at least against my  
3 background and training, much of this is very speculative  
4 and I'm very hesitant to speculate about how all of this  
5 might play out.

6           At the same time, it seems to me some things are  
7 fairly obvious and one of the foremost is the difficulty  
8 this would pose for any kind of rational planning, especially  
9 in the national support centers, and I think to some extent  
10 at the local level where people would be essentially making  
11 judgments for at least perhaps a year in the future about  
12 what their litigation would be, what support services they  
13 would need in connection with that litigation or other  
14 activities, which institutions would be able to supply that  
15 and at what cost, and to make all those decisions long in  
16 advance I think would be extremely difficult.

17           It would also be very difficult if not impossible  
18 for a support center like mine, for example, to do any  
19 kind of rational planning in advance.

20           If we didn't know ahead of time what sort of  
21 issues we were going to address ourselves to in the coming  
22 year, we wouldn't know how to staff.

23           MS. BERNSTEIN: Can I just interrupt. You just  
24 said you needed to know what issues you were going to  
25 address yourself to in the coming year.

1 MR. GOODMAN: Yes.

2 MS. BERNSTEIN: And yet, according to your re-  
3 funding application, 70 percent of your funds go toward  
4 responding to requests.

5 MR. GOODMAN: Yes.

6 MS. BERNSTEIN: Those requests haven't come int.

7 MR. GOODMAN: But may I clarify? The issues --  
8 Our priorities are not as specific as a particular piece  
9 of litigation. They are simply broad priority areas.

10 For example, public benefits is one of our priori-  
11 ties as opposed to, let's say, housing or health or various  
12 other substantive areas.

13 We don't know what cases we're going to have to  
14 work on. We simply know what broad general areas we're  
15 going to --

16 MS. BERNSTEIN: What are your current priorities?

17 MR. GOODMAN: Mostly public benefits right now.  
18 That's the major one. Housing is --

19 MS. BERNSTEIN: We've got a housing law center.

20 MR. GOODMAN: But the housing law center doesn't  
21 do the statistical kinds of things or address the kinds of  
22 issues that might have to do with housing that we do.

23 MR. MENDEZ: I've got one question for you.

24 Wouldn't you rather have the 300 programs deciding  
25 what your budget is than this board of directors?

1 MR. GOODMAN: I have no objection to the 300 programs  
2 making decision about whether or not to use our services if  
3 they could be -- if they themselves were adequately informed  
4 or in a position to do the kind of planning that would  
5 enable them to make the kind of decision of whether we're  
6 going to be useful to them and useful to their clients in  
7 advance.

8 I'm just very dubious about whether they have that  
9 kind of basis on which to do that and I'm afraid that --

10 MR. MENDEZ: Let me ask you a question. How long  
11 would it take you to educate each one of the 300 -- one year?  
12 It surely wouldn't take one year to educate them as to what  
13 your benefits are and what you can do for the various  
14 organizations or haven't you in fact already educated them  
15 as to what you can do?

16 MR. GOODMAN: I would say somewhere in between.  
17 They are partly educated. I think some programs are  
18 thoroughly familiar with what we can do and some know some  
19 of what we can do.

20 What I'm also concerned with is that the programs  
21 themselves don't know what they are going to be doing in  
22 the future.

23 MR. MENDEZ: One last point. You have a budget  
24 of approximately \$300,00 and yours is approximately \$600,000  
25 or thereabouts.

1 Both of you desire more funds to do more and  
2 better things. We have a finite amount of money that we ca.  
3 distribute.

4 How we distribute between the two, it seems to  
5 me the highest and best need ought to get the most increase  
6 or the most money absolute.

7 MR. GOODMAN: Mr. Chairman, could I make one  
8 point in connection with that?

9 I share your interest in the economy and effi-  
10 ciency and effectiveness. I think that the cost of this  
11 sort of arrangement would far exceed the present cost for  
12 the same service.

13 The overhead costs of providing national support  
14 services in this manner I think would be -- I don't know  
15 how much greater. I have no idea. I preface my remarks  
16 with the statement that I really don't know and I don't  
17 know what the experience is in comparable service programs.

18 I would think that there would at least be some  
19 estimation of what the cost of the publicity, the bookkeeping,  
20 contracting, the advertising and all of the associated  
21 overhead costs would be under that sort of a plan.

22 I would think that the board would be well  
23 advised to look into that before pushing this proposal hard.

24 MR. WALLACE: It seems to me that everything you  
25 were talking about is what capitalists call market research

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and advertising.

Any organization, if it's going to distribute what it produces in an efficient fashion, researches its market, figures out what it is that people need within general categories, and gets the word out to the people to let them know what they've got and how they can be helped.

If you're a capitalist organization and you don't do that efficiently and economically, you go belly-up. If you're not a capitalist organization you can keep getting a government grant every year whether you're efficient or not.

Now I don't know whether you all are or whether you aren't, but it does seem to me -- especially with the kind of services you provide you need to have pretty general idea of what kind of lawsuits are out there, what kind of services will be needed and get the word around to people and if you're the expert they need, they can buy you, and if there's another expert that can do the job better, they buy them.

That's the way organizations work.

MR. FRETZ: Could I ask a question or make a comment? I guess the question is whether there has been any effort to have counsel independently example possible tax consequences of this sort.

I ask it because I really don't know, but it seems to me that the proposal does embody the notion at least of

1 fee for service provision even on an individual basis and  
2 I just suggest that sort of provision may be consequential  
3 upon the 501(c)(3) status of our center, and I guess most  
4 of the centers, and that probably should be looked into  
5 before we go much further.

6 One other point I want to make is to remind the  
7 members of the board of the survey, the so-called DeMoss  
8 survey that was taken January of 1983, which in a very  
9 straightforward way asked the question of program directors  
10 and board chairman what they thought was in the best interest  
11 of their program -- to continue with the support structure  
12 or to take the money and run with it -- and the overwhelming  
13 response of both the chairmen and program directors was  
14 to stick with the status quo.

15 MR. MENDEZ: Didn't that study -- Wasn't the real  
16 question not the way you phrased it, but whether they should  
17 keep the funding the same or increase the funding, not  
18 whether they should turn the funding over to the local programs?

19 MR. FRETZ: I believe there were two choices if  
20 my memory serves me. One was do we keep the funding in  
21 national support centers the same, or do we take that money  
22 in national support centers and increase your local program  
23 budget by that amount, which was about 2-1/2 percent.

24 I think 90 percent of the project directors said  
25 keep it the same.

1 I don't think that survey permitted or tried to  
2 tap the reasons for the response. I know that there were  
3 hearing held in Jackson, Mississippi, where a number of  
4 project directors talked about support and what it meant.  
5 I think that's very instructive.

6 I recall one project director said, gee, I can  
7 take that 2-1/2 percent and I would have \$12,500 and I can't  
8 buy anything with it.

9 It's just not cost-effective to try to trim off  
10 support and put it in the pockets of individual programs.

11 MR. MENDEZ: How would it be best, assuming we  
12 left the national support centers alone and did nothing,  
13 for us to determine the appropriate allocation to each one?

14 How would you suggest that we do that? Would it  
15 be fair to send out a questionnaire to the local programs  
16 asking them if -- what percentage they use your services  
17 and how much they think your services ought to be allocated  
18 of the total national support center?

19 Do you think that would be a fair question?

20 MR. FRETZ: I think that would be a useful approach.  
21 I think we all need to wrestle with the questions primarily  
22 because there may be some services that most everyone needs  
23 that are fairly easy to provide, others that are less  
24 frequent but involve greater complexity, and I think the  
25 question should recognize those distinctions.

1 MR. MENDEZ: I think by phrasing both questions  
2 that you have in fact done that because you've asked them,  
3 one, as to high volume cases and, two, as to the dollar  
4 amount for each one.

5 MR. DURANT: Didn't the NORC survey do that? Didn't  
6 they allocate according to use or --

7 MR. FRETZ: It did try to survey frequency of use.  
8 I think one of its weaknesses was that it couldn't examine  
9 the depth of use and complexity of the issues that were  
10 involved, but it certainly is instrumental as a beginning  
11 to address that inquiry.

12 MR. DURANT: In what way was it not sufficient in  
13 terms of complexity and depth of use? How was it deficient  
14 in that?

15 MR. FRETZ: My recollection is that the survey  
16 did not attempt to gauge the nature of support that would  
17 be needed from a particular -- on a particular issue --  
18 for example, to distinguish between telephone conversations  
19 and cocounseling, manuals and specialized --

20 MS. BERNSTEIN: But it did show that cocounsel  
21 was the lowest need for support. Not from the support  
22 centers -- I'm not saying as regards support centers, but  
23 the responses from the field listed cocounsel as one of  
24 the lowest priorities.

25 MR. FRETZ: If I recall -- I don't think I could

1 share characterization it was a low priority but rather I  
2 think 20 percent of the respondents rated cocounseling as  
3 the most important need, and of the 20 percent of the  
4 attorneys in the field, it's probably a thousand or more  
5 now, rated it as the most important need. That in itself  
6 is fairly significant, even though a greater percentage  
7 of attorneys may have indicated that they had other needs.

8 MS. BERNSTEIN: I'll try to get the actual table  
9 that I'm referring to and get back to you.

10 I just have a question for Mr. Goodman.

11 In 1979 you were monitored. The center was given  
12 high ratings. I presume you were monitored again in 1981.

13 Did you change anything from 1979 to 1981 in the  
14 way that you were handling things?

15 I know that the last monitoring, the 1983 total  
16 reports are not finalized I understand from the Corporation  
17 so I won't deal with those at this point. I'm just trying  
18 to deal with '79 to '81.

19 Did you change any approach?

20 MR. GOODMAN: I haven't had an opportunity to  
21 look that up. I can give you --

22 MS. BERNSTEIN: Here's my concern. I'll just lay  
23 it on the table.

24 In 1979 the monitoring team of the Corporation said  
25 "Most fundamentally we believe that the Social Science Law

1 project and its staff must begin to see themselves as  
2 advocates on behalf of the poor and not as technical advisors  
3 to advocates, and certainly not as neutral social scientists."

4 I'm just wondering whether or not you followed  
5 their advice.

6 MR. GOODMAN: Well, we tried to follow their  
7 advice. I think we made a serious effort to do that, and  
8 there is on the record I think a fair amount of evidence  
9 of the fact that we made a genuine effort to do that in  
10 the form of papers that were more policy-oriented papers, for  
11 example than litigation support.

12 I think in honesty and fairness and other things  
13 I should also say that I find it somewhat difficult to take  
14 that role as advocates. We are not trained advocates and  
15 we are not attorneys.

16 MS. BERNSTEIN: I'm a little bit concerned with  
17 that being the advice given to you because we believe that  
18 the -- The report goes on to say, "We believe that nearly  
19 all of your work should be on national and federal government  
20 issues and problems, and that the major portion should be  
21 fixed in advance by your staff rather than left open for  
22 choices from outside programs."

23 I guess my concern is that this is what the  
24 Corporation was telling you back then and if you've followed  
25 their advice then I think I understand some of the problems

1 in terms of your wanting to respond to field requests. You're  
2 not set up to do that now.

3 MR. GOODMAN: We never stopped doing it. It was  
4 always just a matter of degree and we did attempt to do some  
5 of those things. I don't know with what degree of success  
6 but always with some degree of discomfort.

7 I understand where that was coming from and I  
8 think there was a certain amount of merit to it, but I'm a  
9 social scientist, personally, and my staff are social  
10 scientists and we regard ourselves as advocates in a somewhat  
11 different way.

12 We are advocates for poor people. We believe that  
13 they are in dire need of all the help they can get in many  
14 ways and we can help with some of them, so in that sense  
15 we are advocates.

16 We are not advocates in the sense of lobbyists.  
17 We're not trained to do that. We have no interest in doing  
18 that. We're not skilled at that sort of thing. We prefer  
19 to leave that to whatever extent it should be done to others.

20 I understand what you're saying and I just want  
21 to assure you of the fact that I have also had misgivings  
22 about those directives.

23 MR. MENDEZ: Does the board have any other  
24 questions of these witnesses?

25 MR. DURANT: You had a comment?

1 MR. GOODMAN: I thought I might be able to clarify,  
2 a little bit, the question you were raising, Mr. Durant, by  
3 saying that measures in the surveys are mainly couched in  
4 terms of frequencies of response. They are percentages of  
5 program directors, they are percentages of other things.

6 They do not have the more important dimension of  
7 service which is however you want to define it, seriousness,  
8 extent or --

9 We are working on cases now that have gone on for  
10 two years or more -- three years in one case. That would  
11 be counted if you do that kind of tabulation as a case, but  
12 to count it as a case I think would be total distortion of  
13 the effort that is going to those things.

14 MR. DURANT: I understand that.

15 MR. MENDEZ: I want you to know that we understand  
16 that and we were very concerned about that aspect. You  
17 have to measure more than just frequency. That is on -- How  
18 you measure that is a key concern of ours.

19 MR. SMEGAL: I do have a question.

20 How much space do you have for your staff? How  
21 many square feet?

22 MR. GOODMAN: I think it's around 2,000 square  
23 feet, of which we rent a -- well, I don't know, maybe 10 or  
24 15 percent.

25 MS. BERNSTEIN: Let me just clarify something,

1 Mr. Fretz.

2 The table that I was referring to is shown on  
3 page 28 of the fact book and we are both right. The very  
4 important need, the percent of staff attorneys who listed  
5 cocounsel was 21.5 percent. Judicare attorneys listed  
6 cocounsel as needed 1.9 percent felt that cocounsel was  
7 important.

8 Support needs experienced very often, though, was  
9 6.3 percent of the staff attorneys said that they experienced  
10 cocounsel very often as a support need and none of the  
11 Judicare attorneys experience for cocounsel very oftne.

12 MR. MENDEZ: We'll take testimony from the  
13 audience. John Mola is first and Mr. Cook second.

14 MR. COOK: I'll reserve.

15 MR. FRETZ: May I submit the statement?

16 MR. MENDEZ: Certainly. Again to everyone, it's  
17 much -- it's very helpful if your statements are written  
18 and you provide to the board. We read them. I assure you  
19 that when I read it, it's retained much longer than if I  
20 hear it, and I like to have that. It goes in my library,  
21 which I always enjoy.

22 MR. MOLA: For the record, I'd just like to address  
23 several of the points or make several points about the issue  
24 of support, national support and state support.

25 The question about fee for services I think is

1 basically a field program question, and I don't think any  
2 field programs have been asked about the wisdom of fee for  
3 services as regards national support and there are lot of  
4 unanswered questions just off the top of my head.

5 What kind of additional revenue are we talking  
6 about coming in to a particular field program? What kinds  
7 of services could I think that relatively small amount of  
8 money buy when you have a diversified area of support needs  
9 across a number of substantative areas?

10 I think that we have some indication, though, from  
11 basic field programs, the NORC study, of the importance of  
12 the support components of the delivery system currently in  
13 place and as I recall those statistics they were very  
14 heavily in favor of the kinds of support that are now given  
15 by state and national suport entities.

16 The second concern I have about fee for service,  
17 whether that's technical assistance or cocounseling,  
18 publications or whatever, that this really is not a very  
19 stable source of funding.

20 There may be peaks and valleys in a particular  
21 substantative area, an issue that's important one year and  
22 not the next. There may be a lot of disparity from time  
23 to time between support centers, and I don't think fee for  
24 service is going to allow the kind of basic funding that  
25 you're going to need to maintain the very valuable support

1 services and resources that are currently available.

2 I think over a couple of years you will probably  
3 see that state support has withered away because of those  
4 economic vagaries.

5 The third point is that it has traditionally been  
6 the obligation of the Corporation, and by law is the obli-  
7 gation of the Corporation, to help with quality, efficient,  
8 effective services to clients, and I think the Corporation  
9 has a proud history in the area of support and they should  
10 continue to help local programs with efficient and effective  
11 quality representation and I think that the support  
12 mechanism that currently exists has gone a great distance  
13 with the amount of money that has been spent in that area.

14 There are simply things that national support  
15 does for my program and other programs around the country  
16 that we could not duplicate ourselves.

17 An example is on my last two points in the consumer  
18 area. I mentioned the '81 retrenchments. As a result of  
19 the retrenchments I lost the two senior attorneys in my  
20 consumer unit. Because we didn't have revenue to replace  
21 those individuals I had to run that unit with a Reggie,  
22 thank God, that we got that year, and an attorney who was  
23 just a year and a half out of law school.

24 By necessity we had to draw very, very heavily on  
25 both the publications and the resources available to us in

1 the National Consumer Law Center.

2 In 1982 and 1983, there is no way that I could  
3 have paid a dime for any of those services, so they are  
4 extremely valuable, especially in times of tight resources.

5 MR. MENDEZ: Just out of curiosity, how frequently  
6 have you used the National Senior Citizens?

7 MR. MOLA: We are very fortunate to have a very  
8 experienced, about nine- or ten-year attorney, who is  
9 running our elderly project, although that attorney is in  
10 frequent contact, if not directly with the center, using  
11 the center publications.

12 MR. MENDEZ: What about this -- Mr. Goodman's?

13 MR. MOLA: I cannot recall, since I've been  
14 director of the program, over the last four years, that I  
15 have directly used any of the services on a technical  
16 assistance basis, although we have received periodicals from  
17 the center that have been helpful to us.

18 MR. GOODMAN: If I may, Mr. Chairman --

19 MR. MENDEZ: Please.

20 MR. GOODMAN: For one thing -- well, the one thing  
21 that comes to mind -- I believe it's the Rhode Island building?

22 MR. MOLA: Yes.

23 MR. GOODMAN: We did a priority-setting, legal  
24 needs assessment survey for that program along about 1979 --

25 MR. MOLA: '78 it was, '78, '79.

1 MR. GOODMAN: Along about 1978, you say?

2 MR. MOLA: That's correct.

3 That was before my tenure.

4 My last point is that the other problem that I  
5 foresee with fee-for-services is that a support staff can  
6 spend an awful lot of their time marketing services and  
7 products, and I don't think that's the business they should  
8 be in, and I think that's counterproductive to meeting our  
9 needs in the field.

10 MR. WALLACE: I mean, marketing is -- marketing,  
11 as I say, is a capitalist name for telling people what you  
12 have got. I mean, every -- if they're not telling people  
13 what they've got, they ought to be.

14 MR. MOLA: I may, for example, have a need in a  
15 public utility litigation, something that was raised when  
16 Ms. Bergmark was here. That might not be a popular seller.  
17 And because of the market pressures, the energy project,  
18 that NCLC might not be there any more, not able to meet my  
19 needs. I simply can't replicate the kind of --

20 MR. MENDEZ: Well, for instance, let me explain.

21 Mr. Goodman previously stated that he didn't  
22 believe that every one of the 300 groups knew what he was  
23 marketing.

24 Now, that seems, to me, a real tragedy.

25 MR. MOLA: I agree.

1 MR. MENDEZ: And if we put a little bit of  
2 market service in here, all 300 would know about it very  
3 well.

4 MR. MOLA: Advertising is a lot different than  
5 fee-for-service and marketing those services and products.

6 I would agree that the advertising would be great,  
7 if they can stand the increased demand upon their services  
8 that advertising is going to create.

9 The other thing is, even in the advertising that  
10 does happen, I just recently got a second -- again, using a  
11 Consumer Law Center -- a second mailing that we've sent on  
12 to participants in our volunteer lawyer program, reminding  
13 them that the center is available for Judicare and pro bono  
14 attorneys.

15 And I think that service has been used. The  
16 advertising is good. I know the day after we sent the last  
17 one out, I got a call asking whether a person -- a private  
18 attorney could call the Consumer Law Center on a poor person's  
19 issue.

20 MR. WALLACE: It seems to me that what would likely  
21 happen with State support -- I would think it would happen  
22 in Mississippi -- is that if everybody got their extra  
23 2-1/2 percent back or 5 percent, whatever it was, I think  
24 most of the local programs in Mississippi probably think  
25 enough of their state support center that they would

1 essentially keep it going as a joint venture. I mean, it's  
2 not that you would take that money and give everybody an  
3 incremental raise. You would set it up as a joint venture  
4 of the six programs.

5 Now, I wonder -- I wonder whether, on a more  
6 complicated basis, the same sort of thing would happen with  
7 that money to national support centers that they feel they  
8 really need.

9 I mean, Mr. Mendez' question still makes sense to  
10 me -- if we're going to have all these national support  
11 centers, how in the world do we know which ones are the most  
12 important, which are the most effective, and how to distribute  
13 the resource among them.

14 One way is seeing which ones that groups of local  
15 people get together and put their money in a hat and want to  
16 keep going. I think that's going to happen a lot of times  
17 with State support centers; I really believe that from  
18 everything I've heard. National support may be a little  
19 more complicated, but they will be funded to the extent that  
20 the local programs think they're worthwhile, and not more  
21 and not less.

22 MR. MOLA: That may be the case. I think at  
23 least the four issues and others that I can think about on  
24 the plane back home today --

25 (Laughter)

1 -- are probably going to be heard in that system.

2 If you end up with the same result, what's the  
3 sense of it? If you end up with the same result of national  
4 support centers, much like we know and use them today, what's  
5 the sense of decentralizing that money and running the havoc  
6 of dismantling what's proven to be a very, very important  
7 and effective mechanism?

8 MR. WALLACE: Well, I think with national support  
9 centers, it may not look very much like it what it does today.  
10 And that's what we're trying to figure out, is a good way to  
11 see who really uses what.

12 In State support, one thing is that the -- the  
13 services, the volume, the magnitude of the services are going  
14 to be decided not by us and not by Congress trying to fill  
15 a budget, but by the local people who actually use those  
16 services, and I think will, at that level, be much more  
17 likely to reflect what they really need.

18 MR. MOLA: In Rhode Island, that would not be a  
19 hard issue, because we --

20 MR. WALLACE: You're it.

21 MR. MOLA: -- both basically feel that it's State-  
22 supported.

23 MR. VALOIS: The National Clearinghouse for Legal  
24 Services puts out a publication which I have recently  
25 received, which is very helpful, called "The Directory of

1 the National Support Centers." And I don't know whether the  
2 other members of the Board have had the time to see it or  
3 not. But it describes what each of the support centers does  
4 and gives phone numbers and so forth. And inside it also  
5 says that it is free to attorneys and paralegals practicing  
6 in LSC-funded programs.

7 So, the marketing has already been started. And,  
8 you know, everybody at least should know about who does what  
9 and where they are and so forth. There's no pricing mechanism  
10 in here for services, but --

11 (Laughter)

12 -- I guess that's what this is about.

13 MS. BERNSTEIN: But, you know, we're missing another  
14 aspect of this. And Mr. Mola started -- he referred to it,  
15 in a way. He said that the Newark study showed that the  
16 field programs supported the kinds of services that the  
17 support centers provided.

18 Now, that does not mean that the field -- that the  
19 Newark study showed that the field programs felt that the  
20 support centres were the only providers. And it did not say  
21 that the field programs agreed with the priorities set by  
22 the National Support Centers.

23 For instance, the highest -- the very important  
24 support needs by both staff attorneys and Judicare attorneys  
25 was training in substantive areas of the law.

1 Now, support centers may be able to do that. But  
2 I'm not sure that support centers allocate that proportion  
3 of their budget to that, whereas if --

4 MR. MOLA: It's --

5 MS. BERNSTEIN: -- just -- let me finish.

6 MR. MOLA: Excuse me.

7 MS. BERNSTEIN: Just a minute.

8 Whereas if the field programs were given the  
9 pot of money and said, "If you need training in a substantive  
10 area of the law, maybe you want to contract with a support  
11 center to get the training."

12 The second most important support need from the  
13 field programs was law library materials. Maybe they need  
14 a litigation manual to be provided on elderly issues, and  
15 maybe they can contract with the Senior Citizens Law Center  
16 to get that litigation manual.

17 In other words, I'm not saying, if we were going  
18 to actually use the market mechanism, which is what we're  
19 talking about up here, that we don't just retain a support  
20 center to be on call, that there are any number of variations  
21 on the requests that a field program might make.

22 A field program might request that someone be  
23 available to co-counsel with them on SSI issues. A field  
24 program might want to ask a specific support center to  
25 provide an expert witness.

1 Expert witnesses, by the way, Mr. Goodman, you  
2 may be happy to know, ranked higher as very important support  
3 needs and as support needs experienced very often ranked  
4 higher than co-counsel. You've been getting the short end  
5 of the stick.

6 (Laughter)

7 I'm -- what I'm saying though is if we provide  
8 the field programs with the ability to make these variations,  
9 in terms of their allocation of their funds, maybe we'll  
10 end of giving them the best support.

11 MR. MOLA: Ms. Bernstein, you raise a topic that  
12 is near and dear to my heart, and that's training support.

13 As you may be aware, from 1978 to 1981, I was  
14 director of the Advocacy Training and Development Unit in the  
15 the Office of Program Support.

16 I have some personal knowledge and some professional  
17 knowledge about what are the best mechanisms to deliver  
18 substantive skills training. And I can recall back in  
19 those days that we put lot of our money into the -- into  
20 the production of manuals, and most of those contracts were  
21 made with National Support Centers. And I wish that I had  
22 the resources to publish even one short pamphlet, because,  
23 as I recall, the cheapest that I could do it at 1981 prices,  
24 substantive manuals, was about \$20,000. I simply don't  
25 have those resources. It's another indication of where

1 these kinds of projects are very important and should be  
2 be nationalized. The support centers do them best.

3 The problem -- the real tragedy is that I think  
4 we published somewhere in the neighborhood of 20 substantive  
5 manuals between 1978 and 1981. We don't have a penny to  
6 update them. There are a lot of manuals sitting on the shelf,  
7 library resources, that are created especially for Legal  
8 Services practice. And if they were published in the early  
9 part of that era, they are now what, six years old.

10 Some of the centers have found resources to update  
11 them, but we've got a real big investment that's just being  
12 squandered for lack of updates.

13 The Federal Litigation Manual is another indicatio  
14 where, in the skills area, we are able to contract with  
15 private practitioners and Legal Services practitioners to  
16 put together probably one of the finest nuts-and-bolts  
17 Legal Services federal practice manuals that's ever been  
18 produced in this country.

19 Hopefully the update is going to be out, but that's  
20 the kind of situation where new resources are going to protect  
21 older investments.

22 In the area of training, during that period of  
23 office program support, you're very right, that decentraliza-  
24 tion of training, local control of those dollars, is a very  
25 important mechanism in support to Legal Services staff.

1           And during that period of time, I was involved in  
2 getting money out to field programs so that repetitive train-  
3 ing needs, special training needs, could be handled at the  
4 local level or, if people wanted to, on a regional basis.

5           That was much more cost-effective, much more  
6 efficient, than doing national training events on paralegal  
7 skills, client trainings, basic lawyering skills, those kinds  
8 of things.

9           In the area of substantive training though, we  
10 found that decentralization was not the method for delivering  
11 those trainings. Again, we had to go to national and  
12 state supported entities to help us put those specialist  
13 trainings on.

14           MS. BERNSTEIN: But things have changed so  
15 dramatically in terms of technology that a videotape on  
16 the substantive area, it could be disseminated either from  
17 the corporation or from a unit in the Rhode Island program.  
18 I mean, there's no magic in the 17 national centers that  
19 have traditionally claimed rights to this money, is there?

20           MR. MOLA: If you're talking about lectures on a  
21 particular topic, I think perhaps videotape might be somewhat  
22 of a comparable substitute for a live lecture. But if you  
23 look back at some of the training materials, some of the  
24 schedules for both the substantive and skills training,  
25 that's not a big part of the training. It's an important

1 component.

2 Very important though is the interaction between  
3 specialists in substantive areas, having people talk about  
4 cases that are giving them problems or issue that they're  
5 dealing with, how i it being dealt with in Massachusetts as  
6 opposed to how it was already decided by the Nevada Supreme  
7 Court.

8 And in the skills area, videotapes simply don't  
9 work, because the major focus of skills is learning by  
10 doing. So, you see it demonstrated, you hear lectures about  
11 it, but then you actually get up and perform --

12 MS. BERNSTEIN: But you said skills were better  
13 off being done at the local level anyway.

14 MR. MOLA: Yes, but videotape or that kind of  
15 packaging is not the proper pedagogical tool for --

16 MS. BERNSTEIN: But we had CLE and all sorts of  
17 other alternatives, and many times CLE courses are offered  
18 at nominal for very low rates to Legal Services attorneys;  
19 isn't that true?

20 MR. MOLA: That's true, and a lot of them are  
21 packaged. I mean, you're buying them to put on. They  
22 weren't done in Rhode Island; they might have been done in  
23 New York or Philadelphia.

24 We're talking about many instances, at least in  
25 1978, drawing up a lot of these training packages from

1 scratch.

2 A lot more developmental costs in that kind of --

3 MS. BERNSTEIN: I would just like to Mr. Fretz if  
4 he has any idea as to why it might be that Judicare attorneys  
5 have a lower need for support -- or at least, in the NORC  
6 study, expressed a lower need for support than did Staff  
7 attorneys.

8 MR. FRETZ: I could only conjecture -- I understand  
9 the report is just out in final form and I haven't had an  
10 opportunity to read it. I have a couple of thoughts. One,  
11 my recollection is that the report showed that among Judicare  
12 attorneys you used support that there was an extremely high  
13 level of satisfaction -- I think 85 percent of them found  
14 it satisfactory.

15 MS. BERNSTEIN: I'm not talking about whether or  
16 not -- you know, evaluation -- I'm talking about the --

17 MR. MOLA: I understand.

18 For those who didn't use support, it certainly  
19 permits an inference that those attorneys were engaged in a  
20 very traditional kind of case, adoptions or guardianships or  
21 custody cases or dissolutions, for which specialized support  
22 from the State or National Support Center wasn't needed.

23 That's -- but that's only conjecture on my part.

24 MR. MENDEZ: Thank you.

25 For the record, Mr. Cook has come to the table.

1 MR. COOK: Willie Cook, Executive Director for  
2 Neighborhood Legal Services in D.C.

3 I just wanted to comment because of the conversa-  
4 tion with Mr. Durant, and Mr. Mendez, and Mr. Wallace on  
5 the whole market concept.

6 And from a -- to tell you, from a field perspective,  
7 there are some things that you're missing in terms of our  
8 buying all of these great services that these people --  
9 these people render.

10 And the problem is that -- and just to personalize  
11 it -- we, in the field, simply find ourselves being squeezed  
12 out of all markets, a lot of markets, because we simply  
13 don't have the money to purchase the services.

14 Now, in D.C. to give you an example of what I'm  
15 talking about, in 1985, we are going to have to raise -- or  
16 we're in the process of raising an additional \$205,000 to  
17 balance our budget over and above the LSC grant and the other  
18 grants that we have.

19 So, in terms of trying to buy services from Len  
20 Goodman or from Burt Fretz, we simply don't have the money.

21 And let me just give you a very practical example  
22 of a very important service that we got in our program from  
23 Len Goodman -- I think it was in '83 or '82 -- that was  
24 very, very important to a large segment of clients in the  
25 District of Columbia.

1           We had a lawsuit that we won back in 1974, in  
2           which we sued the District of Columbia on a very common  
3           problem in Legal Services nationally, and that is trying to  
4           force the District Government to process AFDC applications  
5           within a 45-day period.

6           We won that lawsuit in 1974, but believe it or not,  
7           even in 1985, we are still going back into District Court  
8           getting contempt citations to force the District of Columbia  
9           to comply with the 1974 decision rendered in our client's  
10          favor.

11          Now, that particular decision affected thousands  
12          of AFDC -- potential AFDC applicants in the District of  
13          Columbia. And I think the methods that we used are very  
14          beneficial.

15          Now, when we had to deal with the contempt  
16          motions -- and we are in, now, the third contempt motion,  
17          in terms of getting them to comply, one of the things that  
18          we found that we did, in 1982, was that we spent almost  
19          one-quarter of our budget -- our litigation budget -- in  
20          dealing with the Motley case. And even though it was  
21          extremely important, the problem is that we expended one-  
22          quarter of our litigation fund in order to deal with  
23          discovery in that particular contempt citation.

24          Now, one of the things that the D.C. Human Services  
25          Department came up with, they had this elaborate computer

1 setup, and they were changing over to a new computer system.  
2 And in the monitoring process, it was our contention that  
3 they were simply -- that they simply had not monitored in  
4 the way in which the court had ordered them to monitor.

5 Well, when they came out with their computer  
6 statistics, all of their computer runs, our people, while  
7 good lawyers and good in public benefits, didn't have any  
8 training in that. I called Len, and we used -- I don't know  
9 how much we used Pam, but we must have used he at least  
10 eight days, in dealing with that particular area of that  
11 case that we, ourselves, were not expert in dealing with.

12 My point is if we had to pay for that -- and it  
13 was very critical to the contempt motion -- if we had to  
14 pay for that, no amount of marketing would have helped us,  
15 because we had already spend one-quarter of our litigation  
16 budget on discovery.

17 MRS. WALLACE: Well, somebody has got to pay for  
18 that, Mr. Cook. The question is the most efficient way to  
19 decide --

20 MR. COOK: Well, Mr. Wallace, I agree somebody has  
21 to pay for it. And what I'm asking you is to have you  
22 continue to pay for it, just as you're paying for it now,  
23 because we, in the field, cannot afford to set up a kind of  
24 specialties that these people have been dealing with and  
25 have been dealing with for years in our shops on a daily

1 ongoing basis, nor can we spend any more of our money in  
2 dealing with that, because we, frankly, are being strangled  
3 in the field.

4 Now, you have to keep in mind that there are lots  
5 of things that we are being required to, including allocating  
6 12-1/2 percent of our budgets for private bar involvement.

7 And the restraints, along with the cost-of-living  
8 increases, are really putting us at a disadvantage.

9 Now, there are some programs that are having a lot  
10 less -- a lot fewer problems, but I'm one of the so-called  
11 rich programs in the country which has meant, practically,  
12 that the last two years we have received a 5 percent increase  
13 in our budget.

14 And, you know, I have gone along with the funding  
15 formula, because in terms of the national good, it has -- I  
16 think it is something that eventually will benefit everybody  
17 else. But in terms of what is happening to us here in D.C.,  
18 it really is strangling us quite a bit. That's why I wanted  
19 to say that when you talk about market forces, market forces,  
20 yes, if you have the funds to deal with that.

21 But what you have to understand is that, as a  
22 local program director, when we are looking at our budgets  
23 each year, what we are finding is we simply do not have the  
24 kind of funds that will allow us to purchase these kinds  
25 of services, and they are highly specialized services.

1           We could not bring -- it would not be cost-  
2 effective for us, for instance, to bring a computer expert  
3 on our staff on a regular basis in order to do the work that  
4 we needed done in that one case.

5           But the eight days that we use his computer  
6 expert to deal with a problem that affected thousands of  
7 AFDC recipients in the District of Columbia was something  
8 that, if we had to pay for it, it would have strained our  
9 litigation budget a lot worse than it was already strained,  
10 because as I said, for the once case, in 1982 -- or it was  
11 1983, one of those two years -- we spent 25 percent of our  
12 litigation budget on discovery in that case.

13           Now, I didn't want to do that, but what I realized  
14 was that particular issue -- i.e., the processing of AFDC  
15 applications within a 45-day period was very important to  
16 thousands of District of Columbia residents.

17           So, if we didn't have his services, if I had to  
18 purchase those services, I would have strained an already  
19 strained litigation budget. That's my point.

20           So, you need to understand, while you're dealing  
21 with the market things -- you know, the market concept --  
22 we don't have the kind of funds that allow us to participate  
23 in the market.

24           And what I think -- what I'm afraid you're going  
25 to do is that you're going to price us out of the market,

1 Because when I think that we may have had to decide to do --  
2 we may have had to decide not to get the computer expertise  
3 and thereby jeopardize the case. And I think that that  
4 would have been -- that would have been very, very unfortunate  
5 in that particular situation.

6 MR. MENDEZ: Okay.

7 Thank you.

8 We're going to move on to the next topic, unless  
9 I see any real imperative hand on this topic.

10 (Pause)

11 Let me ask one question to all of you.

12 We're running very late. Please come forward.

13 We're running very late. Is there anybody here  
14 that wants to make any public statements that has to make  
15 a point?

16 (Pause)

17 None appearing, we will take you gentlemen now.

18 MR. FRETZ: Thank you, Mr. Chairman, for allowing  
19 us to address the committee.

20 (Pause)

21 MR. MENDEZ: Gentlemen, will you please introduce  
22 yourselves.

23 MR. BROWN: Mr. Chairman, my name is Steven Brown.  
24 I'm the chairperson of the National Organization of State  
25 Support Units, NOSSU for short.

1 I appeared before you on January 25th, with  
2 Mrs. Martha Birdmark (ph), a director of a field program in  
3 Hattiesburg, Mississippi. And the gentleman on my right,  
4 Jeffrey Barker, is the director of the State Support Center  
5 in Florida in Tallahassee.

6 MR. FARMER: So, I'll refrain from introducing  
7 myself.

8 (Laughter)

9 MR. BROWN: You will recall, that we appeared to  
10 speak on behalf of State Support Centers, but did not --

11 MR. MENDEZ: Yes.

12 MR. BROWN: -- complete our presentation because  
13 of time pressures.

14 Since then, Ms. Birdmark (ph) has written you,  
15 requesting that you not reduce spending for support centers.

16 In her letter, she pointed out that the dollars  
17 gained for her program would be more than offset, in her  
18 opinion, by the reduction of state support services to  
19 her program and her program clients.

20 As I indicated the last time I was before you, I'm  
21 the director of a support center in Rochester. I started  
22 in Legal Services -- one of those Reggies. I don't know  
23 whether I made the list --

24 (Laughter)

25 -- that was talked about before.

1 I would note, however, that in Rochester, in the  
2 absence of the Reggie program, over the 15 years that I've  
3 been there, there would be virtually no minorities attorneys  
4 having entered the program except through that program.

5 When I came to Rochester in 1970, the Bar had 1500  
6 members, and at that time there were five black attorneys  
7 in the Bar, despite the fact that the local program recruited  
8 very heavily for minority, as well as non-minority attorneys,  
9 they couldn't even get minority attorneys to consider coming  
10 to Rochester, because of the legal community being what it  
11 was.

12 The only reason basically that Reggies did come  
13 to the program in the next 15 years who were minorities was  
14 because they were assigned to Rochester by the Reggie Program.

15 I think what happened in a number of cases, the  
16 Reggies had committed themselves to the Reggie Program, and  
17 as the selection process came along and in spring, when they  
18 got notified that they were a Reggie and that they would be  
19 assigned to a program and they were assigned to Rochester,  
20 New York, they either came to Rochester or they didn't have  
21 a job.

22 So, that's how we ended up getting a lot of  
23 minorities coming to Rochester.

24 (Pause)

25 As I indicated last time, I've been the director

1 of the Support Center in Rochester for about 12 years now.  
2 Mr. Barker has been the director of the Florida State Support  
3 Center for the past four years. Before assuming that  
4 position, he was deputy director of a rural Legal Services  
5 program in Florida, two-and-a-half years; and before that  
6 he was four years as a private attorney and four years as a  
7 public defender.

8 He's currently the vice chairman of the Delivery of  
9 Legal Services Committee of the Florida Bar, and he's a  
10 consultant of the Florida Bar Foundation on matters relating  
11 to legal assistance to the poor.

12 Obviously, we appreciate coming here today. In  
13 the time since I was here last, you've obviously done a  
14 lot of reading and a lot discussing about support.

15 It should come as no surprise, of course, to you  
16 that we're here, as proponents of support and support  
17 services, because we're convinced -- I'm especially convinced  
18 after 15 years as a Legal Services attorney -- that they  
19 play a crucial role in developing the capabilities of local  
20 programs to consistently deliver high-quality, effective,  
21 efficient legal services to their clients.

22 In fact, I believe that the positive impact of  
23 State Support Services in improving the quality and expand-  
24 ing the amount of services at the local level is so signifi-  
25 cant that the cutback of State Support Services will cost

1 money, not save money.

2 I'm convinced that cutting back State support  
3 will be penny-wise and pound-foolish.

4 Why is this so? Because a cutback in the avail-  
5 ability of typical State Support Services, most of which  
6 can't be duplicated effectively locally, will increase  
7 inefficiencies at the local level.

8 For example, a reduction in the availability of  
9 expert lawyers to provide legal advice, mentoring and  
10 co-counseling, help the local attorneys and paralegals,  
11 will cause local staff to waste large amounts of time learn-  
12 ing complex subjects and issues which a laid-off Support  
13 Center attorney had already mastered.

14 One hour of advice and guidance by an expert at  
15 the State Support Center --

16 MR. MENDEZ: Excuse me. Would you rather have  
17 us lay off someone in one of the field programs, in one  
18 of the support groups?

19 MR. BROWN: I'm not sure we're at that choice.

20 MR. MENDEZ: If there's -- the same question I  
21 have -- if you have a big pie and there's only so many  
22 dollars, now do you want your pie -- share of the pie smaller,  
23 or do you want the Field Service's share of the pie smaller?

24 MR. BROWN: To a certain extent, we have a  
25 Solomon's Choice.

1 I'll only make this suggestion, that I am convinced  
2 that State Support staff had a leveraging impact with respect  
3 to the delivery of effective services, efficient services,  
4 and quality services that more than make their expenses  
5 justifiable.

6 MR. MENDEZ: I think that the whole Board agrees  
7 that we need both national and State support. The --

8 MR. BROWN: But here's what the -- I think here's  
9 what the issue is with much of the support work. It's the  
10 opportunity for an expert lawyer to talk to an attorney  
11 in a local field program and, in one hour or less, have  
12 that attorney, who knows maybe nothing about a subject or  
13 an issue or a problem, and in one hour get that attorney,  
14 that paralegal, started with respect to case citations,  
15 model pleadings, an analysis or an explanation of a complex  
16 statutory or regulatory scheme, in maybe a half an hour  
17 or an hour's worth of explanation, save that person five,  
18 ten, twenty or more hours. We know that that is often the  
19 case. It happens regularly every day in our office when  
20 field attorneys and paralegals call our attorneys and speak  
21 to experts.

22 When you say what is more important, that's a  
23 tough question. All that I can say is that I'm convinced,  
24 and I think any analysis of support work will show that  
25 there is an incredible leveraging -- disproportionate

1 leveraging impact because of the efforts of State Support  
2 staff.

3 (Pause)

4 Obviously, we feel that your decision on December  
5 20th to reallocate monies, to take monies away from State  
6 Support Centers, was a mistake and should be reconsidered.

7 The comments I have prepared, which I can -- which  
8 I am prepared to pass out to you afterwards -- will address  
9 the immediate concerns of the Board, what the impact is  
10 of the 21.6 percent cut on State support. I gathered data  
11 from about a dozen State Support Centers, and I will share  
12 that with you.

13 Again, the impact of that cut, however, I think  
14 needs to be discussed against the backdrop of the history  
15 in a role of State Support and the effectiveness of current  
16 State Support efforts.

17 Last time when I was here, I mentioned to you  
18 that I distributed some materials to you. If you recall,  
19 one was a short paper. At the meeting, I gave each of you  
20 this long paper.

21 I hope you've had a chance to review them. I  
22 think they -- they present maybe the best analysis we now  
23 have of what State Support centers do and why they do it.

24 I think they clearly that State Support is an  
25 essential element to the delivery of effective, efficient,

1 and high quality legal services at local levels.

2 I won't give you a detailed review of these things,  
3 presuming you've already read them and, in the meantime,  
4 picked up a lot of information.

5 I think what I would like to do is probably move  
6 on to just summarize quickly the basic things that State  
7 Support Centers do.

8 The main things they do is have specialist  
9 expertise, and these are the experts, the senior partners,  
10 of course, that can provide a whole myriad of services and  
11 help to clients. They're available, with skilled people  
12 who can do research support. They have brief banks, many  
13 of them. They have all kinds of documents and paperwork  
14 and reports, pleadings that they can distribute to local  
15 staff to get them going.

16 Many of them have specialized libraries with  
17 research information, and several of them have LEXUS.

18 My program is one that has LEXUS.

19 A major activity of the Centers, of course, is  
20 training. Training is very important at the State level,  
21 because typically a greao deal of training can't really  
22 be effectively done at local level, because the training  
23 involves resources and skills and time that are just not  
24 available at the local -- at the local staff level.

25 Most State Support Centers provide specialized.

1 training and legal skills training, substantive law training,  
2 support staff training, manual or desk book production.  
3 Some do audios and tape -- videotape production. And many  
4 of them do "Know Your Rights" handbooks and pamphlets, self-  
5 help brochures, and that sort of thing.

6 Some of them have trained eligible clients who  
7 are on boards.

8 Obviously, a major role also of State Support  
9 Centers is Information Clearinghouse. They are sort of,  
10 in many States, the hub where information travels from one  
11 program to the Support Center and then back to old programs,  
12 to allow Staff to know what's happening.

13 This is done through mailings, task force meetings,  
14 training events, newsletters, routine service contacts,  
15 and so forth.

16 And the information usually disseminated are  
17 recent and unpublished court decisions, agency opinions  
18 or decisions, new case filings, recently passed legislation,  
19 pending legislation or pending agency rules and regulations  
20 and that sort.

21 There are numerous other activities that Support  
22 Centers play -- there's an extensive enumeration and  
23 description of them in the Grubb papers

24 With respect to Support Centers, you know, I have  
25 mentioned before they vary in size. Some are very large,

1 some are very small. And the smallest ones only have \$35-  
2 and \$50,000. Probably the average size is 125, 150,000,  
3 which would probably give those programs two or three  
4 specialists, maybe four specialists at the most, to provide  
5 support work.

6 So, we're basically talking about, on the average,  
7 not large programs. We're talking about many programs of  
8 moderate size.

9 Some are independents, structurewise. Some are  
10 joint ventures. Some are incorporated, like Mr. Mola's,  
11 within a statewide program.

12 In talking about some of the detailed work that  
13 State Support Centers do -- if you had told me, I talk about  
14 a few things that we do in New York. Why? Because I think  
15 some of the things we do in New York are very typical and  
16 might help you get a little better handle on this.

17 In New York we have a grant of just about \$4000,000.  
18 What that buys is six lawyers, including myself, and one-  
19 and-a-half lawyer professionals.

20 We have attorneys on staff who are expert in the  
21 area of the welfare law, housing law, Medicaid, family law,  
22 education law, consumer law. These experts provide litigation  
23 advice and assistance to field staff.

24 Now, the assistance that they provide ranges from  
25 brief telephonic conversations to co-counsel work, depending.

1 on what the needs is from the local person who calls.

2 These substantive experts also provide local staff  
3 training, they assist our training director in virtually  
4 all the training or most of the training that is scheduled  
5 and done. They do LEXUS searches. They write newsletters --  
6 articles for our newsletters. They serve on task forces.  
7 They distribute relevant information to local staff. They  
8 review pleadings. They draft pleadings, legal memoranda,  
9 and briefs.

10 Medicaid is an interesting area of law. It may  
11 be the most confusing and complex substantive area of poverty  
12 law. We luck to have on our staff an attorney who is probably  
13 the foremost expert on Medicaid law in the entire State  
14 of New York. We're convinced he's more knowledgeable about  
15 Medicaid than anybody in the State Welfare Department.

16 I think a description of his role dramatizes the  
17 vital role of State support.

18 Due to his expertise, which he developed from  
19 10 years of Medicaid litigation, his assistance is sought  
20 in virtually all of the many Medicaid cases that involve  
21 any unusual issues.

22 MR. MENDEZ: Tell me what the difference is between  
23 the support that you render and, for instance, the National  
24 Support Group, if you have a man of his talents?

25 MR. BROWN: Because the Medicaid system, the

1 Medicaid statutory conflict -- the statutory scheme we have  
2 in New York is a Federal-State System. And in New York  
3 we have a very complex State regulatory scheme overlaid  
4 on the Federal regulatory scheme. It's not very likely  
5 that your national, if you would call them that, experts  
6 in welfare or public benefits would have all the nuances  
7 and knowledge of the local State regulatory schemes and  
8 the --

9 MR. MENDEZ: Wouldn't it be true, then, just  
10 following through on your argument, that each State has  
11 this regulatory scheme imposed over the national thing and  
12 that it would be a much better benefit in this particular  
13 instance to always rely on your State Support Center?

14 MR. BROWN: No necessarily.

15 Our person at times consults with some of the  
16 National Support Center folks with respect to some of the  
17 nuances related to the underlying Federal overlay in the  
18 whole area.

19 So, there is -- there is some of that interplay.

20 As I said, he's involved in any significant  
21 litigation in Medicaid in the State. And what does he do  
22 in those cases, he provides advice regarding State strategy,  
23 tactics, legal claims. He provides background materials,  
24 pleadings, briefs, and so on.

25 Each time he gives such assistance, the local

1 attorney saves countless hours of work and provides, we're  
2 convinced -- and they're convinced -- higher quality  
3 representation to their clients.

4 He participates sometimes as lead counsel, some-  
5 times as co-counsel, sometimes as of counsel status. And  
6 his participation has dramatic effects. With him, we have  
7 initiatives to settlement that just never appear when local  
8 attorneys are involved in the litigation.

9 His participation in this litigation, However,  
10 provides many advantages. Besides improving the likelihood  
11 of the victory in the cases by the local attorneys, they  
12 include a significant enhancement, I think, in the quality  
13 of representation and a dramatic reduction in their local  
14 staff time used in representing the clients.

15 Maybe as important, he gives local attorneys the  
16 opportunity to work with and be tutored by a senior --  
17 senior-partner-type attorney.

18 Our office also provides LEXUS support. We are  
19 one of only two programs that provides free LEXUS support,  
20 and we feel it has been extremely capable, extremely  
21 efficient and effective, and it is very largely wanted by  
22 our constituent programs.

23 Training -- we have a very complex training  
24 activity. We put out a catalogue, which just came out of  
25 the press this week. It lists over 100 courses, which are

1 offered to local attorneys, local paralegals, and local  
2 support staff in the 18 programs in New York. And this  
3 is sent out to every staff person, and we have a process  
4 in which they consult with their program supervisors and  
5 every attorney indicates to us what training programs that  
6 person is in need or will need during the next year and  
7 go through a complex process of setting up schedules to  
8 deliver that training on a regionwide or statewide basis,  
9 as appropriate.

10 The training events range from a half a day to  
11 a day, all the way up to four days. Clearly, an awful lot  
12 of the training is training that just could not effectively  
13 be put on at the local level.

14 One of the things we do is we -- I'll give you  
15 an example of a couple of newsletters we put out on a monthly  
16 basis, the newsletter which we distribute to all paralegals  
17 and attorneys, to keep them informed on case developments,  
18 regulations that have been promulgated, statutes that have  
19 been promulgated, case filings, and that sort.

20 We have put out, approximately each month, a publi-  
21 cation which distributed to clients throughout the State  
22 through the local programs. This issue just came out last  
23 week, and it's devoted to assisting clients to learn how  
24 to read, believe it or not, their welfare budgets. For  
25 clients to read a welfare budget, we found we had to write

1 about an eight-page document just to explain that.

2 MR. MENDEZ: I have a client brochure that I give  
3 my clients. It's five pages long. And I discovered, over  
4 the course of years, that they really don't read mine. Do  
5 you find that they read yours?

6 MR. BROWN: We get some very positive feedback  
7 that they're read; yes.

8 We distribute them through the local staffs of  
9 the 18 programs, and they put them in their waiting rooms.  
10 And they're snapped up by clients as they come in. And --

11 MR. MENDEZ: Mine are snapped up, too. But when  
12 I ask them, a month or two later, they --

13 MR. BROWN: Well, all we can say is that the  
14 local programs get an awful lot of calls with respect to  
15 matters that they're introduced -- from -- in this newsletter.

16 I would agree with you, I would be sure that a  
17 lot of them aren't read. But we do what we can do in that  
18 regard.

19 MR. MENDEZ: Oh, yes. I understand.

20 (Pause)

21 Let me -- we're running a little bit behind, and  
22 I understand that you have your remarks prepared to be  
23 delivered to us.

24 MR. BROWN: Yes.

25 MR. MENDEZ: Is there any specific thing that

1 you want to highlight, something we can touch base with?

2 MR. BROWN: Yes, there are a couple of important  
3 things, I think. And that is -- maybe the most important,  
4 one of the more important is that what we have in state  
5 support right now has been as a result of a kind of evolution  
6 for the last almost 20 years. The whole process started  
7 under OEO, and five or six programs got set up. They're  
8 an unqualified success.

9 OEO encouraged, during its latter years, local  
10 programs to pool their resources and develop joint ventures.  
11 They encouraged statewide programs to set aside some of  
12 their money to do statewide activities. And all those  
13 activities unfortunately slowed down dramatically in the  
14 early '70s when funding for legal services was was flatted  
15 -- totally flat.

16 State Support developments were in kind of a limbo  
17 until the latter part of the '70s, when the new corporation  
18 came into existence and new money flowed, and the Board  
19 of directors, in 1979, approved this policy, this options  
20 paper, with respect to State and national support, which  
21 set in motion two things: One, a commitment by the corpora-  
22 tion to dramatically increase State Support funding. But  
23 as part of that, set in motion something, I think, very  
24 important, a planning process in every state for the plannir  
25 of appropriate State Support delivery mechanisms in those

1 States.

2 The mandate was -- in essence, the instructions  
3 from the corporation was: "States, if you want money for  
4 State support in your States, you have to get clients and  
5 Staff members together, and they have to work and develop  
6 a State Support plan that will make sense with respect to  
7 meeting support in their -- in the particular States.

8 And the long and short of it is that 47 of those  
9 plans were submitted to the corporation, the corporation  
10 used those plans to a certain extent as a blueprint for  
11 distributing, in 1981, \$2.7 million of new State Support  
12 money.

13 And it was expected at that time that that was  
14 going to be the first stage of a four- or five-year process  
15 to, in effect, equalize State Support money in each State,  
16 up to 6 to 8 percent of the field base. Unfortunately,  
17 they only had one year to distribute the new money, because  
18 the next year was 1982, when the 25 percent cut came in  
19 and everything dramatically stopped.

20 Things pretty much stayed the same, of course,  
21 until the Harvey board commissioned the study of support  
22 in the latter part of 1982. Two relevant pieces of that  
23 we think are the most relevant, of course, are on-site visits  
24 that were programmed to take place in all of the national  
25 support centers and 11 of the State support centers, the

1 other piece being the nationwide survey of Legal Services'  
2 program, of their support needs, the famous NORC study.

3 We haven't been able to do much with that study  
4 apparently. To my knowledge, the outside visits have not  
5 been -- you know, the reports from the outside visits haven't  
6 been completed or distributed. And apparently the NORC  
7 study just came out, and I have not seen the final copy.

8 But you should know that in early '82, when that  
9 study was set in motion in December of '82, the contemplation  
10 of the Board was to fund the programs for six months, complete  
11 the study by June, and then use the study results as a guid-  
12 ance for funding of State and National Support for the second  
13 half of 1983.

14 What happened in the meantime, were two things  
15 that shortstopped that.

16 The affirmative was -- the so-called "affirmative  
17 rider" was passed at just about the time the Board funded  
18 Support Centers for six months, in Decmeber of '82. And  
19 secondly, the reports just didn't get completed as the Board  
20 wanted by June.

21 And as a result, with the affirmative riders,  
22 we have basically continued our State Support structure  
23 as it is.

24 That brings us, of course, up to now, where you,  
25 on December 20th, decided, we think, in effect, shift gears

1 significantly with respect to what corporation policy had  
2 previously been with respect to State Support.

3 The thing that we found, I suppose, the most  
4 puzzling is that the shifting of gears took place, at least  
5 from our perspective, in the absense of reports, analyses,  
6 studies that gave you options and did any significant analyses  
7 on what the tradeoffs would be with respect to to reallocating  
8 funds.

9 And that's why we're here today, of course, to  
10 speak to you, the effect that we think that the reallocation  
11 decisions that you made were incorrect.

12 Again, the main reason that they're incorrect  
13 is, with respect to Support, is that taking money away from  
14 Support means that you're taking away dollars from activities  
15 which, we believe, have a tremendous leveraging effect with  
16 respect to saving time of local attorneys and with respect  
17 to improving the qualigy of representation at the program  
18 level.

19 With respect to the cuts themselves and their  
20 impact, I think I'd like to make a few comments.

21 It is our perspective and our analysis that the  
22 21.7 percent cut will have a much more dramatic effect in  
23 local programs and at State Support Centers than just a  
24 21.7 percent cut in staff.

25 That 21.7 percent cut, effective virtually a year

1 from now, will be kind of increased by an inflation factor,  
2 which everyone estimates to be about 5 percent, so that  
3 you're talking about a 26 or 27 percent loss right there.

4 To make up that kind of money a year from now,  
5 since most programs are faced with fixed overhead costs,  
6 the only, in effect, source of savings are staff cuts.  
7 And when you start talking about the typical Support Center,  
8 you're talking about taking a 27 percent decrease out of  
9 only 65 or 70 percent of the budget -- i.e., the staff,  
10 the personnel budget.

11 To do that means that your staff in virtually  
12 all support centers will be reduced at least 33 percent  
13 and more.

14 So, again, as explained in my paper here, that  
15 21.7 percent decrease will actually, in practicality, result  
16 in staff cuts at support centers, at least in the vicinity  
17 of 33 percent.

18 I did some -- again, I did surveying of programs  
19 and did some analysis on my program, and that's how the  
20 numbers actually worked out, when I had to take those  
21 dollars out of our personnel budget, because I couldn't  
22 take them out basically for my nonpersonnel. I had to make  
23 disproportionately larger cuts than 21.7.

24 In my program, for example, I would have to make  
25 up \$87,000. To make up \$87,000, I have to cut at least

1 two, and probably three, people from my staff. That would  
2 be a professional staff of six-and-a-half -- two-and-a-  
3 half to three is 33, 40 percent, something in that vicinity.

4 The problem is I would have to choose, with respect  
5 to those layoffs, among my four substantive law experts,  
6 who do my housing work, my public benefits work.

7 In surveying the other programs, the same story  
8 occurs in Colorado, but it will be worse there because  
9 there's only a two-professional program. And to take a  
10 \$23,000 cut from the two professionals there basically will  
11 result in one of the other positions actually being eliminated  
12 or virtually being eliminated.

13 In Virginia, two of the five professionals will  
14 have to be cut. In Vermont, they will lose their litigation  
15 director, who is the key person with respect to assuring  
16 quality control in their eight local programs, which they  
17 desperately have to keep, because they have to have eight  
18 programs to service their rural state.

19 In Michigan, the Director expects to have to  
20 eliminate three of his six substantive experts.

21 State after State, in my survey, the same story  
22 unfolds. One-third or more of the professional staff of  
23 State Support Centers will probably be laid off if the cuts  
24 occur.

25 Senior partner talent, expertise, and leadership

1 will be pushed out of those key programs where such talent,  
2 expertise, and leadership qualities have a disproportionate  
3 impact in promoting the delivery of cost-effective, efficient,  
4 and high-quality legal services at the local level.

5 In order to avoid this result, again, we would  
6 encourage you to rethink this reallocation process.

7 (Pause)

8 MR. MENDEZ: This is a good stopping point.

9 Now, I want to hear from Jeff.

10 MR. BARKER: Thank you, Mr. Chairman.

11 And I will, to a certain extent, cap -- or extend  
12 the vigor of Steve's remarks, but I wanted to point out  
13 some of the different functions that are carried out by  
14 my office to highlight what is shown in the Brown papers,  
15 that State Support truly is a unique component, as I suspect  
16 all of us within the various components of the provider  
17 system can claim, but we are unique because each state is,  
18 in fact, unique, whether it's a statewide program, a joint  
19 venture program, a state with a very confusing provided  
20 system, such as we have in Florida, which is a mixture both  
21 of Legal Services Corporation programs, the 12 programs  
22 in Florida that are recipients, as well as another seven  
23 Legal Aid Societies, that are also staff programs funded  
24 on a local basis by filing fee, United Way, and other  
25 funding sources.

1           in 1972, when funding for OEO Legal Services was  
2 frozen and looking very shaky in terms of congressional  
3 reallocation or expansion, Ray Smith was president of the  
4 Florida Bar. He subsequently became president of the  
5 American Bar. Mr. Smith funded -- or, excuse me, founded,  
6 as president of the Florida Bar, Florida Legal Services,  
7 to be a resource development center and advocacy center and  
8 a coordination office for all of the programs in Florida,  
9 be they OEO programs that existed at the time or the local  
10 Legal Aid Societies.

11           As it turned out, the local Legal Aid Societies  
12 had even fewer dollars than did the OEO programs, which were  
13 also struggling.

14           And then, as State Support funds for the OEO  
15 programs came back to Florida, those programs continued  
16 to help provide resources to my office for the purpose of  
17 expansion of the provider community.

18           We therefore look, in the concept that Steve has  
19 mentioned to you, in terms of leverage for the client  
20 population, the opportunities that our office has by combining  
21 LSC funds from State Support as well as other funds that we  
22 raise within the State of Florida, to leverage the activities  
23 that our office provides to the provider community in a  
24 synergistic sense.

25           The local Legal Aid Societies are still struggling,

1 probably even moreso than the Legal Services programs,  
2 which certainly are still not even back to the 1981 funding  
3 level and dealing with a client population in Florida, this  
4 has expanded by over 50 percent since the 1970 census data  
5 was accumulated for a funding base.

6 MR. MENDEZ: Speaking of the client population in  
7 Florida, what is your impression of the migrant population  
8 in Florida?

9 MR. BARKER: Well, the migrant population in  
10 Florida, as Mr. Nagler described earlier, Florida is a base  
11 State, from which the stream begins and ends on its annual  
12 cycle.

13 I believe -- and I have to be very candid with you  
14 -- I think it's approximately \$1.1 million worth of migrant  
15 funding exists in the State for 1985. I'm sorry I don't  
16 have the exact figure; perhaps you do.

17 MR. MENDEZ: It's 900,000 --

18 MR. BARKER: Okay.

19 MR. MENDEZ: -- according the figures --

20 MR. BARKER: 900,000.

21 That all goes to one program, Florida Rural Legal  
22 Services, which has a 14-county local service district for  
23 its non-migrant population, and then provided services  
24 throughout the State. And we believe that Florida Rural  
25 Legal Services leverages its funds by working with the other

1 programs and providing support services to them on particular  
2 migrant issues. Florida -- the biggest problem we have in  
3 Florida is with wage payment and collection. Florida is one  
4 of only two States in the United States that has no wage  
5 payment and collection standards for its local farm labor  
6 crew chiefs, meaning that they can pay them when they want  
7 to and how they want to, with little or few records.

8 We contrast with the fact that the FLCA, the  
9 Farm Labor Contractor Act, is very, very poorly monitored by  
10 either the Federal Government or the State of Florida. And  
11 the migrants in Florida are faced with an employment  
12 collection practice that is very, very difficult.

13 I'm not an expert in migrant substantive law,  
14 Mr. Mendez, and so I would hesitate to --

15 MR. MENDEZ: Let me just ask you one other  
16 question, to follow that up.

17 Mr. Nagler previously told me that most of the  
18 attorneys that had need of speaking Spanish in the Southwest  
19 and in the West were, in fact, Spanish-speaking, and it was  
20 over 90 percent.

21 In Florida, do you have much need of Spanish-  
22 speaking attorneys?

23 MR. BARKER: It's my understanding from my contact  
24 with the programs that deal with -- particularly migrants  
25 in Florida; yes, sir, there is that need. Now, what

1 their staffing is at present, in terms of bilingual persons,  
2 particularly Hispanic-speaking or Creoles, because we have,  
3 obviously, a large number now of other Caribbean immigrants  
4 and aliens in the State that are also entering the migrant  
5 stream as an attempt to find employment.

6 He had a large number of H-2 workers, also, on  
7 contract through the United States Department of Agriculture  
8 with the sugar industry in particular --

9 MR. MENDEZ: Okay. The H-2s are all out of  
10 Jamaica though; right?

11 MR. BARKER: I thought there might have been some  
12 from Haiti, but I could be wrong.

13 So, Creole becomes another problem. I recognize  
14 that, because our office is also, as Steve mentioned, a  
15 consultant to the Florida Bar Foundation on the distribution  
16 of the interest on trust account funds in Florida, and --

17

18 (Continued on next page)

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1 MR. BARKER: And several of the providers, both  
2 Legal Services and non-Legal Services programs, have high-  
3 lighted their need for bilingual attorneys and staff, and  
4 expansion into these new mini societies as it were that are  
5 being created by the immigration departments abroad.

6 What I wanted to particularly highlight in addition  
7 to the leveraging concept is the concept of training that  
8 Steve spoke about. I think perhaps above all on a uniform  
9 basis throughout the country, state support centers look at  
10 training as perhaps our highest obligation.

11 As Ms. Bernstein pointed out, the work study shows  
12 training continues to rank extremely high in terms of need  
13 for support. Training cannot be described just in terms of  
14 a substantive event for lawyers who are perhaps practicing  
15 the Medicaid law.

16 Practically everything that Florida Legal Services  
17 provides to the field program attorneys and even private  
18 counsel that are working in pro bono with our local offices  
19 has some sort of a training element involved in it whether  
20 it is for the senior lawyers or the junior lawyers.

21 And as I was preparing these comments, I thought  
22 how can I highlight training without anticipating someone  
23 perhaps saying, well, after you have learned a certain series  
24 of training events a few times you have got it done. You have  
25 got your videos made if in fact you are lucky enough to have

rct2

1 video equipment. We do not in Florida Legal Services. And  
2 then you have got this library.

3 MS. BERNSTEIN: We had video equipment until we gave  
4 it away.

5 MR. BARKER: I beg your pardon.

6 MS. BERNSTEIN: I said we had video equipment until  
7 we gave it away.

8 MR. BARKER: You did not give it to me.

9 The fact book for 1984 put out by LSC on the  
10 statistics and staff programs indicates that the average staff  
11 attorney in the country is only there approximately four years.  
12 That means that your whole system is a continually repetitive  
13 system even for senior attorneys who end up involved in what  
14 we call in Florida our work groups, but perhaps in other  
15 states they are referred to as task forces.

16 The most experienced attorneys who try and provide  
17 that mentoring, our office does that. In our state support  
18 planning program in the late 1970s with the twelve legal  
19 services programs, they identified that they did not  
20 particularly need the same kind of substantive experts all  
21 in one building or in one office as Steve's program perhaps  
22 has in New York, but would like for Florida Legal Services  
23 to be the office that developed that expertise within the  
24 programs then to be shared with other programs.

25 So we broke with that concept through these work

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1 groups and the senior counsel mentoring approach. There is  
2 a cost effectiveness there that we feel in terms of Legal  
3 Services Corporation dollars in particular, because our  
4 providers are the largest funded that is almost immeasurable  
5 in terms of those senior attorneys getting together to  
6 analyze a particular piece of litigation such as provision  
7 of counsel to parents whose children are being taken by the  
8 state through dependency procedures.

9           That issue I promise you exists in all twenty  
10 circuits of the Circuit Courts of the State of Florida. But  
11 if we find that one particular fact situation lends itself  
12 to concentrated litigation and coordination by our office by  
13 the drawing in of the senior people from around the state by  
14 analyzing existing case law both within the state and of  
15 course perhaps by even the National Youth Law Center on their  
16 issues, getting in touch with computer systems legal research  
17 programs, we can in fact identify the best fact situation,  
18 and in a truly we think good lawyering situation identify  
19 perhaps perhaps the best circuit where we might be most  
20 properly received by the judges on that bench when we are  
21 avoiding repetitive litigation by this continued coordinated  
22 association with senior attorneys that our office provides  
23 both the library, the training, the legislative history  
24 research which is one of the priorities of my particular job  
25 description.

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rct4 1           Another issue that we feel that we are also using  
2 LSC dollars for in a leveraging concept is development of  
3 private bar supplements through the staff programs through  
4 pro bono. It is truly public relations. I do not think that  
5 we need to rehash the fact that over the years between the  
6 staff programs and many private bar associations relations  
7 were not developed at the highest level of good communications  
8 and cooperation.

9           We feel lucky in Florida, because our office having  
10 been created as one of the bar family of programs as it is  
11 described provides that bridge and that liasion between the  
12 staff attorneys and the organized bar. As Steve mentioned,  
13 at this stage I have been appointed by the president of the  
14 Florida bar to be the vice chair of this standing committee  
15 on delivery of legal services.

16           We feel that obviously there is some recognition  
17 then that through our offices a tie between the private bar  
18 and the development of that incredibly important supplement  
19 to the staff programs that we can do that at a one office  
20 level. That if we lose our funds, each office will then have  
21 to replicate at least to a certain extent one-twelfth of the  
22 time plus perhaps even some of those Legal Aid Societies to  
23 whom we provide our limited resources.

24           We have also included private bar attorneys in these  
25 work groups and task forces as representatives of the private

rct5  
1 bar who can give advice to our Legal Services staff people  
2 in proper litigation, and analysis, and methodology.

3 The resource development concept again is another  
4 issue in spite of the fact that there are certainly some  
5 proscriptions on current LSC dollars, that with our continued  
6 relationship with both the Florida Bar Foundation and through  
7 the historical relationship between our program and the state  
8 government of Florida that we have been able to protect tax  
9 sales exemptions for the State of Florida.

10 Two years ago, a bill was filed to actually revoke  
11 tax exempt status for all Legal Aid programs in the State of  
12 Florida which would have been approximately a quarter of a  
13 million dollar impact on all of the programs, LSC and non-LSC.

14 Because of good connections between our office and  
15 the state government, we were able to provide the information.  
16 Not in a staffing approach, Ms. Bernstein, but truly as an  
17 advocate for a community that is nowhere else represented.  
18 I think that the whole concept of policy advocacy can sometimes  
19 be bogged down in unnecessary political issues when in fact  
20 we are talking about good government and a system of justice,  
21 which is certainly far beyond just the courts, but it does  
22 in fact include the executive branch and their regulatory  
23 authorities as well as the legislative branch and their  
24 statutory authorities.

25 The Act certainly indicates that that is a proper

rct6  
1 function. And because of the bar support for our offices,  
2 we have been able to leverage those small amounts of LSC funds  
3 to the extent where we have been able to provide for the  
4 clients' needs on the most effective basis.

5 MR. MENDEZ: Mike, did you have any particular  
6 questions or issues that you want to address?

7 MR. MURPHY: Yes, Mr. Chairman. I had the pleasure  
8 of meeting Mr. Brown when I began my association with LSC a  
9 little over a year ago. I monitored the GULP program in  
10 Rochester. It may not have been a pleasure for Steven,  
11 however, but I have visited his center in Rochester, and I  
12 have also visited his other office in Albany.

13 And I was curious to know, the welfare specialist  
14 that you were referring to, is that Mr. Gambino?

15 MR. BROWN: No, the Medicaid specialist was Mr.  
16 Rajak in the Rochester office.

17 MR. MURPHY: Okay. You gave some cost estimates  
18 concerning lay off of staff.

19 Is your Albany office figured in in your  
20 calculations?

21 MR. BROWN: Yes. One of the substantive experts  
22 would be the public benefits person who works out of my  
23 Albany office. I have not decided which ones would in effect  
24 be the ones to go. If we get to that point, of course, I  
25 presume that we would go through a priority process with our

rct7

1 local constituent programs to come to some conclusions as to  
2 what in their judgment would make the best sense if we had  
3 to cut services, which ones we would cut.

4 MR. MENDEZ: Do you have any other questions?

5 MR. MURPHY: No.

6 MR. BARKER: I have one more point. Seeing now that  
7 Mr. Durant was able to come back, and I was able to make a  
8 comment to a few of you in January, but I remember him reading  
9 Senator's Rudman's letter regarding the obligation of the  
10 corporation and those associated with it to get into resource  
11 development.

12 I cannot highlight that enough, Mr. Durant, as far  
13 as some of the operations that are not only going on in my  
14 office, but through the fact that I was able to be the first  
15 state support center director to work with a bar foundation  
16 in developing interest on trust account programs both in terms  
17 of recruitment and advertising of those, but also then to work  
18 with the foundation for distribution formulas, and standards,  
19 and criteria.

20 State support centers as we had pointed out in the  
21 Grubb papers have heavily concentrated our work in resource  
22 development. And it would be another impact on the program.  
23 Were these cuts to happen in 1986, we would certainly do it  
24 across the board. I do not think that anything in my office  
25 exists within a vacuum. It all ties in with itself, hopefully

rct8  
1 anyway. That is our design.

2 And that significant loss to state support centers  
3 that are now on the verge, perhaps not as far long in their  
4 interest in trust account programs, and even perhaps state  
5 funding or local funding, would also suffer. And as Steve  
6 pointed out in his opening remarks, it may be a penny wise,  
7 pound foolish issue that you are talking about.

8 Because we truly are on the local level the place  
9 where the provider community can work with the organized bar,  
10 the private sector whether it be through foundations or other  
11 organizations, or the state governments to develop those  
12 supplemental funding sources, so that no particular one of  
13 those funding sources has to bear an unfair burden as it wer  
14 or share of the entire burden of funding the system.

15 So I hope that you will seriously consider the  
16 impact that would be lost on resource development.

17 MR. DURANT: Do you know how successful Randy Berg  
18 was when we were discussing it the last time?

19 MR. BARKER: Well, splitting his case the last time,  
20 I guess that I did a good job. I wanted to bring him up here  
21 to help me today.

22 MR. DURANT: Well, I mean do you know how successful  
23 he was though in terms of -- I mean he did not get what he  
24 asked for from us, but he was able to develop alternative  
25 sources.

rct9

1 MR. BARKER: Supplemental.

2 MR. DURANT: Supplemental, whatever.

3 Do you know what those numbers are?

4 MR. BARKER: I do not, Mr. Durant. I did see Randy  
5 recently, and all he spoke in terms of was I am going to work  
6 out for you with LSC, because all of us had believed that his  
7 grant was worthwhile to be funded, but did not get the dollars.  
8 I think that he was going to --

9 MR. DURANT: He was asking us for what, \$180, and  
10 I guess he got about \$80?

11 MR. BARKER: About \$80.

12 MR. MENDEZ: We gave him \$80. I thought that that  
13 was based on the fact that he had gotten --

14 MR. BARKER: That he gotten.

15 MR. MENDEZ: Commitments for supplemental funding.  
16 And I also gave him names of foundations, and have agreed to  
17 solicit those foundations for him when he gets his materials  
18 put together.

19 MR. BARKER: Well, as we had talked in January also,  
20 even though it was not something as I told Mr. Mendez when  
21 he asked me the question that I had come prepared to discuss  
22 in terms of a long range plan for that kind of process, I  
23 believe that the corporation has a significant interest in  
24 continuing just on trust account program support wherever it  
25 may be.

rct10 1 I do not think, and Randy has since confirmed to  
2 me in private conversation, and I think that he probably has  
3 with you all, that he had no permanent concept in mind. And  
4 I was real pleased last weekend and all of last year that I  
5 was glad that you were spending your tax dollars in Florida  
6 by the way.

7 MR. DURANT: Those were my own personal dollars.

8 MR. BARKER: Increasing Florida's tax base. He  
9 did indicate that he had gotten the funds. But also, I was  
10 real pleased to hear that the American Bar Association has  
11 chosen to recommend permanent standing of the clearinghouse  
12 function and support within their structure. And speaking  
13 of the American Bar Association, the letter that was  
14 distributed to you all today from the Standing Committee on  
15 Legal Aid and Indigent Defendants about these cuts, we  
16 certainly hope that you will consider.

17 They have obviously worked very, very closely with  
18 the support centers over the years, and have continued to  
19 understand the leverage and concept of all of the components.  
20 And when one suffers, the other may not gain in the offset.  
21 And I think that that is the one premise, Mr. Mendez, that  
22 I heard you keep coming back to.

23 That there are a finite amount of dollars, and whose  
24 slice of the pie is going to expand to someone else's decrea  
25 I am not so sure that there is a showing first that there are

rctll  
1 a finite number of dollars is in fact the right level. I  
2 think that you still have the opportunity, and we certainly  
3 hope that you will consider upping your request to Congress.

4 And secondly, even if not, if you stay with the  
5 phrased budget in terms of working with the president, then  
6 I am not sure that there is a showing that any of the internal  
7 components need to be reallocated until such time that there  
8 is a higher funding level.

9 MR. DURANT: Jeff, let me ask you, do you think --  
10 someone pointed out to me that when there was a reduction,  
11 I guess that it was in 1980 and 1981, and then 25 percent,  
12 what was it, 3 something, 321 down to 260 or something.

13 MR. BARKER: 241.

14 MR. DURANT: That there was a tremendous outpouring  
15 at that time of so much of the ABA pro bono record which has  
16 really been substantial. I mean no one can say that they have  
17 not moved heaven and earth and more to make that successful.  
18 But that the reduction there brought about, and I would be  
19 curious to see the numbers, in effect perhaps more in certain  
20 ways kinds of services.

21 One of the things that I think prompted the Senator  
22 Rudman letter too was the realization that if in fact there  
23 may be reductions, or freezes, or whatever, that that is a  
24 starting point for going out and making the case in ways that  
25 people would perhaps appreciate. That there really is a

rct12 1 financial need that has to be met, and that it needs to be  
2 satisfied from sources other than as Senator Rudman said in  
3 his letter, you know, solely federal sources, funding sources.

4 And it gives an impetus, as Randy found out, to in  
5 effect get more with less, because he ended up getting, as  
6 I say, additional sources that he would not otherwise have  
7 gotten.

8 MR. BARKER: Well, I do not think that anyone would  
9 disagree with the idea that necessity is in fact the parent  
10 of invention. On the other hand, I hate to see crisis be the  
11 catharsis for reorganization of a program that for twenty years  
12 has evolved into something that those of us who do it as a  
13 living honestly believe is doing a very, very good job.

14 But as inflation and the number of poor people have  
15 increased over the years, we have fallen farther and farther  
16 behind on our two lawyers per 10,000 clients. I mean that is  
17 a frightening low ratio even if we were to assume it.

18 MS. BERNSTEIN: I am not positive. The allegation  
19 is constantly made that we have fallen farther and farther  
20 behind in the allocation of two lawyers per 10,000. You told  
21 us about what seven or eight programs operated by the bar  
22 association in Florida.

23 MR. BARKER: By local bar, voluntary.

24 MS. BERNSTEIN: By local bar?

25 MR. BARKER: Right.

rct1<sup>3</sup>

1 MS. BERNSTEIN: Those figures go in, if they are  
2 also serving eligible clients, those figures go into the  
3 representation, do they not?

4 MR. BARKER: Those lawyers have about, there are  
5 about twenty -- the numbers are less.

6 MS. BERNSTEIN: I am not talking about the numbers  
7 they are doing.

8 MR. BARKER: I do not know.

9 MS. BERNSTEIN: What I am saying is that I think  
10 that there is a feeling here that the only source of support  
11 for the representation of poor persons is federal dollars.  
12 And I take umbrage, I do not understand.

13 MR. BARKER: I did not say that, nor did I intend  
14 to imply it. If you inferred that from me, that was not my  
15 intent.

16 MS. BERNSTEIN: Okay. But unless we have some sort  
17 of actual evidence that we are in fact actually falling  
18 further and further behind. I see that there are consumer  
19 protection divisions springing up everywher. The American  
20 Bar Foundation has issued a report, a four part tape, which  
21 talks about the alternatives in various places that core  
22 persons can go for legal assistance including such things as  
23 Call for Action, you know, and media broadcasting efforts.

24 MR. BROWN: And you end up referring the client  
25 to the Legal Services program.

rctl4 1 MR. BARKER: The Legal Aid Society, or the Legal  
2 Services program. In 1981, there was X number of dollars,  
3 and then in 1982 there was \$.75 X. In 1981, those X number  
4 of dollars were based on the number of poor persons determined  
5 in 1970 that has increased in 1980. There are lesser dollars  
6 and more people. I cannot imagine that any conclusion other  
7 than the fact that we are falling farther away from our goal  
8 could be drawn from just that basic data.

9 MR. DURANT: I think that what Ms. Bernstein is  
10 suggesting is that in measuring the two to ten, assuming that  
11 is, that you should not just look at the question of federal  
12 dollars. In other words, the question came up in one of our  
13 meetings, board meetings, a month or whatever ago that in  
14 calculating private attorney involvement shouldn't you in  
15 fairness take into account the work that a staff attorney or  
16 a staff person does in processing that case for the private  
17 attorney in the initial interview and take whatever.

18 And I think that my initial reflection is yes,  
19 as a matter of fairness, that should be. But it also seems  
20 to me in the matter of trying to get a complete picture that  
21 if the two per ten is the factor, and I really want to look  
22 at that and how that came about, but --

23 MR. BARKER: A lot of us are still confused by that.

24 MR. DURANT: I understand that. But then you  
25 should look and factor in not only the Legal Services' lawyers

rct15

1 but also the pro bono lawyers, the other agency administrative  
2 people or whatever who are dealing with poor people in solving  
3 their day to day ordinary life crises kinds of problems rather  
4 than just dividing federal dollars, and figuring out two per  
5 ten.

6 MR. BARKER: Oh, I think that we would probably --

7 MR. DURANT: That is probably your point.

8 MR. BARKER: -- be failing our clients if we were  
9 advocating in any other sense than if we have all of the  
10 aggregate down. On the other hand, I had just recently opened  
11 up is apparently going to be a continuing series of letters  
12 between myself and other persons with the Florida bar regarding  
13 the value of those private bar services, how you do value  
14 them, do you choose an arbitrary figure of dollars per hour,  
15 at a hundred dollars an hour which was the value that the  
16 Florida bar statisticians attributed to the pro bono work  
17 in Florida.

18 I am so sure that you will get many staff attorneys  
19 who would agree that an uncontested dissolution needs to go  
20 out at a \$100 an hour. So there are some quantitative sort  
21 of subjective problems that are always going to face us. We  
22 do the best we can.

23 And if in fact we had only used federal dollars and  
24 only used demographics from a dicentennial population count,  
25 then we are probably missing some of the important parts.

rct16

1 On the other hand, I certainly would not want to overvalue  
2 those things that are very difficult to define.

3 MR. MENDEZ: Mr. Brown.

4 MR. BROWN: Just one comment as much as anything  
5 else. There has been much discussion today with respect to  
6 the market economy approach to providing services. And we have  
7 not had that question asked. I do not know whether it is a  
8 matter of fatigue, or boredom, or what have you. I will just  
9 make a --

10 MR. DURANT: It is not boredom, but it might be.

11 MR. BROWN: I will just make a couple of comments.  
12 It could very well be in New York that is the X dollars were  
13 given to the local programs that they might turn around and  
14 in effect give it back to my state support center. I would  
15 certainly hope that that might be the case. There is a chance  
16 that it might now. And maybe I can give you insights as to  
17 why not, and then what the impact of what that might be.

18 In New York, there are a number of smaller programs  
19 which I know very well and the directors very well. These  
20 programs are so struggling with respect to keeping their  
21 programs, coping with a client flood. And you have to recall  
22 that there has been something like a 20 percent increase of  
23 clients since 1980, eligible clients since 1980.

24 It is true that there is somemore money in some  
25 areas because of IOLTA, or United Way, or what have you. But

rctl7

1 I have yet to meet a director who has done anything but  
2 complain about how excruciatingly difficult it is to make the  
3 decisions to turn away clients and to set priorities. And  
4 they are convinced that they are not coming close to meeting  
5 them.

6 But having said that, what my point is with respect  
7 to market economy is that there are a number of smallish  
8 programs in New York who are absolutely up to here with  
9 respect to trying to keep their head above water. And while  
10 it may be -- and interestingly enough, they are the programs  
11 that typically use our services probably disproportionately  
12 more than the larger programs.

13 My guess would be that if push came to shove and  
14 they got money, say the state support allocation, that the  
15 directors might want to allocate that money back to me. But  
16 their boards may come to a contrary conclusion. They may say,  
17 wait a second, we are turning so many clients away, director,  
18 you know that you say that those support needs are important,  
19 but they leveraged the capability of your staff, they save  
20 you time, but we want another staff person, or we want another  
21 half-time staff person.

22 And it could very well be that at the local level  
23 some of those dollars could not come back. It could be  
24 something as fortitudious as a labor contract that was just  
25 negotiated which is going to obligate that program to some

rct18 . 1 sums of money that they did not have, but they decided to agree  
2 to the contract anyhow. And despite the fact that they would  
3 otherwise have say bought those state support services or those  
4 national support services, their obligation is going to be  
5 contract salary amounts, and they just will not have some of  
6 that money to buy these services that you would like to see  
7 them make choices about.

8 MR. DURANT: Mr. Brown, let me ask you is the  
9 flooding that you talk about in some of the bigger programs --

10 MR. BROWN: The smaller programs as much as the  
11 larger programs.

12 MR. DURANT: Okay. I had a staff attorney tell me  
13 that one thing that was very interesting was is that to some  
14 extent that when you do provide a service that does cost  
15 anything to the receiver of it, that there does tend to be  
16 an increase in the demand. Simple economics would tell you  
17 that in certain kinds of contexts. And I think that it would  
18 be true whether you are talking about food, or lawyering, or  
19 shelter, or whatever.

20 If there is a free good, there will be a demand that  
21 will more than always make it seemingly difficult to serve.  
22 Maybe part of what we need to think through and talk out  
23 together or whatever is a way of trying to see if the demand  
24 is in fact a demand of -- you know, some idea of copayment  
25 for example -- so that the demand that comes in is in fact.

rct19

1 a conscious choice of allocating hierarchies in that particular  
2 person's life. If it is a free thing and you have got time,  
3 why not go talk to a lawyer. Because most of the time they  
4 are decent people and nice to talk to, and maybe we can deal  
5 with this particular problem.

6 Maybe that is a way of spreading out this whole  
7 idea of allocation of resources so that it does not flood.  
8 I think that you make a very good point about the project  
9 directors and their tension with the board. But maybe one  
10 of the other things to do is to spread it out, so that there  
11 is more sense of allocation and choices made, because you have  
12 to pay \$2, or \$5, or something like that.

13 There was a study that one of the Ohio judges had  
14 done on habeas corpus petitions. That when he, and as I  
15 understand it and I have asked to try to get this study, but  
16 when he assessed something like \$10 or \$15, a nominal amount,  
17 on habeas corpus petitions, it reduced the number drastically.

18 Now my concern would be did that price cut off  
19 petitions that desperately ought to have been heard, but did  
20 it also perhaps serve as a sieve to cut off what might  
21 otherwise have been petitions that were filed simply because  
22 there was available time. We do not know the answer to that.

23 I am just saying that I think that it speaks in  
24 some tentative way, you know, to this problem of allocation  
25 and choices.

rct20

1 MR. BROWN: A couple of reactions. With respect  
2 to --

3 MR. DURANT: And I will not ask another question.

4 MR. BROWN: With respect to the habeas corpus  
5 situation, obviously you have people in jail with time on  
6 their hands, and there maybe an awful lot of frivolous habeas  
7 corpus work coming out of jails where prisoners might just  
8 as well do a habeas than do nothing at all.

9 With respect to what walks into most Legal Services  
10 offices, and I speak for New York, you are not talking about  
11 people who could do substantially anything with respect to  
12 a copayment approach. A phenomenal percentage of them are  
13 already on welfare or welfare eligible, which in New York  
14 means despite the press about New York having real high  
15 welfare levels and all that, I have yet to meet a welfare  
16 recipient in my fifteen years who really had significant  
17 amounts or anything more than the most nominal amounts of  
18 discretionary cash especially at the end of the two week  
19 period when they got between checks.

20 And besides if it is going to be a nominal kind of  
21 thing, my guess would be that that is not going to be a very  
22 successful operation with respect to generating any kind of  
23 significant funds to support Legal Services.

24 MR. DURANT: Well, I was not thinking of that so  
25 much.

rct21 1 MR. BARKER: Just finishing his answer partially,  
2 part of this market force concept that you have all been  
3 discussing presupposes that this program that is going to  
4 participate in the market force has that choice. In the  
5 private sector, you do. You just increase your gross revenue.  
6 You raise your cost deposit for your client, or you raise your  
7 client fees, or whatever it is that you are trying to do in  
8 order to buy additional services.

9 Those local field programs are not going to have  
10 that sort of choice or option available to them. Even if  
11 you increase their funds at the outset, the boards and the  
12 staff are going to sit down, and they are not going to be  
13 able to set aside and say, gee, in October maybe we are going  
14 to need hire Len Goodman to send us down.

15 MR. MENDEZ: You mean those local boards are not  
16 setting aside money for rent?

17 MR. BARKER: Of course, they are.

18 MR. MENDEZ: They are not setting aside money?

19 MR. BARKER: But they cannot anticipate an October  
20 lawsuit that may require social scientist expertise of Dr.  
21 Goodman's status, or someone out on his staff.

22 MR. MENDEZ: I have not thought this too difficult.  
23 But it seems to me that you could have something in the nature  
24 of an insurance program or a subscription, and all of the  
25 groups around the country or whatever groups around the

rct22 1 country instead of saying specifically provide X dollars that  
2 we are subscribing to this fund year, and if we have need of  
3 it, we use it; and if we do not, we will not. And that is  
4 one of the selling points, and that is one of the selling  
5 points I think on some of the state funded or program funded  
6 support centers where they say, well, this year, we are not  
7 going to use the state support center so much, but we want  
8 you there just in case.

9 Is that not what in fact is happening at the present  
10 time in several of these programs supported centers?

11 MR. BARKER: I hear that premise going to the  
12 national support centers.

13 You mean the state support centers?

14 MR. MENDEZ: Yes.

15 MR. BARKER: No, sir. I think that what they do  
16 is they commit themselves to a level of funding. And then  
17 as soon as they know what that level of funding is, they say  
18 now we know we have got that funding, we are going to demand  
19 that amount of services that go right up to that level, as  
20 opposed to saying we will give you X, and then hold some of  
21 it back up.

22 My experience with the joint venture programs  
23 particularly those that pride themselves, as the Mississippi  
24 programs do, in addition to the state support funds is  
25 precisely that. If there is not enough state support funds

rct23

1 then we are going to take a percentage of our field program  
2 dollars, and turn it into a cotraining type thing.

3 MR. BROWN: Mr. Chairman.

4 MR. MENDEZ: You have one minute, and we are  
5 finished. I hate to cut anybody off.

6 MR. BROWN: Just one last point with respect to the  
7 market economy. Your point is well taken. The programs will  
8 pay the rent. They will pay the malpractice insurance. And  
9 at the beginning of the year, they will allocate monies to  
10 cover salaries and to cover those fixed non-discretionary  
11 kind of expenses.

12 The problem with the market economy possibly and  
13 support is that when push comes to shove and there are  
14 impossible budgetary choices to make, support may in many  
15 programs or some programs support costs, support expenditure,  
16 support budget items, but it might take on the aspect of a  
17 discretionary type of expenditure.

18 And in the pressures of budget setting in November  
19 and December where there just ain't enough money to do the  
20 job, those discretionary and discretionary-like allocations  
21 go down the drain. And the problem with that means that that  
22 program while it thinks that it may get by and it might not  
23 need those support services come what might happen during the  
24 year, those support services may be very much needed, and  
25 they would not be available.

rct24

1 MR. MENDEZ: Thank you very much.

2 MR. BARKER: Thank you, Mr. Chairman. We apprecia  
3 the opportunity. Please introduce yourself starting at your  
4 right and my left.

5 MR. BROWN: Steve Brown, Greater Upstate Law  
6 Project.

7 MR. LEONARD: My name is Michael Leonard. I am the  
8 director of the National Clearinghouse for Legal Services in  
9 Chicago.

10 MR. CRAVEN: Thorns Craven for the Legal Aid Society  
11 of Northwest North Carolina.

12 MS. PAQUETTE: Pat Paquette, acting manager of the  
13 Substantive Research and Support Unit of OSC.

14 MR. MATHISON: CORE IV Project.

15 MR. MENDEZ: Before we enter into any discussions,  
16 I have been instructed by the president to let him speak and  
17 say a few words, and clarify and clear the air on a couple  
18 of things.

19 MR. OPSUT: Just so that we bring matters up to date  
20 for members of the committee, late last week and early this  
21 week, there were settlement negotiations concerning the amount  
22 of refundings of the CALRs. As a result of those  
23 negotiations -- well, let me start out with the one.

24 With respect to the Oregon Legal Services program,  
25 they did not contest the refunding, and did not file a

rct25

1 response to the preliminary determination letter, and that  
2 denial of refunding became final.

3 With respect to the other six, a settlement agreement  
4 was reached at the end of last week. Our preliminary  
5 determination letters were withdrawn. As with any settlement,  
6 there was some exchanges of money, and there will also be a  
7 study done of computer assisted legal research funding during  
8 the course of this year.

9 MR. MENDEZ: So that we are all on the same wave-  
10 length, I assume that you gentlemen are probably intimately--

11 MR. CRAVEN: We just signed the agreement.

12 MR. MENDEZ: Okay. So you are very intimately  
13 familiar aware of what the agreement says.

14 MR. CRAVEN: And we understand that the check is  
15 in the mail.

16 MR. MENDEZ: The check is in the mail. I am always  
17 on the other side. I always hear those things.

18 Who is going to be the spokesman?

19 MR. CRAVEN: Thorns Craven from Winston-Salem. I  
20 would like to start by saying that I think that there is a  
21 great deal of information which we are not going to provide  
22 you directly. We are not going to add to the burden that you  
23 carry around. But the final reports and evaluation report  
24 on the demonstration project of the computer assisted legal  
25 research program is something which is extremely thorough,

rct26 1 very informative, and we will provide you with the executive  
2 section which outlines the conclusions of the report.

3 But I think that it is important for you to know  
4 that -- I have been listening to the discussion of most of  
5 these things, but this is an area like state and national  
6 support and the other support functions that you have been  
7 discussing that the corporation in its study of how programs  
8 work and how they need to work, and what elements are necessary  
9 to provide quality legal assistance to clients determine that  
10 the technology that was beginning to explode in our whole  
11 society and the legal profession was probably something that  
12 was beyond the reach of most programs but needed to be study.

13 And computer assisted legal research, as I am sure  
14 several of you are aware, is something that has really become  
15 an enormous asset in the practice of law because of the  
16 information explosion.

17 So the corporation's role of creating a climate in  
18 which programs can call upon resources which they would not  
19 have the means to provide for themselves created our programs.  
20 It created the six that were in the demonstration project.  
21 The conclusions were drawn from those on how to provide these  
22 services.

23 And in our situation, we are providing mostly  
24 remote access service. And that is we provide service to  
25 programs all over our region, all over the country in fact.

rct27

1 The lawyers and paralegals in those programs call us to make  
2 requests, and we do computer searches and provide results to  
3 them.

4 We are very pleased that we are in 1985 going to  
5 examine our experiences over the past three years as with any  
6 project that involves technology and new people. There is  
7 a growth curve that is necessary, and we have reached it we  
8 think. So we can come up with some conclusions, and make some  
9 recommendations on how the corporation can provide it.

10 But we are convinced that this is the kind of thing  
11 that the corporation must continue to provide. That programs  
12 again back to --

13 MR. MENDEZ: Lest you operate under any misconception,  
14 we all really agree that this program must survive as the  
15 various other ones. The question is how it should survive.

16 MR. CRAVEN: All right. Well, the thing as Mr.  
17 Opsut pointed out, we are going to during 1985 examine our  
18 experience to come up with a more specific recommendation.  
19 We are recommending today that in your budget for 1986 that  
20 you retain at least as much funding as you are providing in  
21 1985 which is a 21 percent reduction from 1984.

22 And we are also recommending that you maintain some  
23 flexibility should the results of this study show that perhaps  
24 some additional funds are necessary.

25 One of the things that has not been adequately dealt

rct28

1 with I think, and we are here as the representatives of the  
2 formal activity which is funded directly by the corporation,  
3 are the activities in computer assisted legal research that  
4 are taking place at the field level.

5 Only today, for instance, have I gotten a sheet,  
6 and all of us have seen it for the first time, that sets out  
7 the percentage of time that we are using as opposed to in-  
8 house programs are using. That is connect time with LEXUS  
9 and WESTLAW.

10 It indicates, what do we have, Pat, 30 percent?

11 MS. PAQUETTE: That are using the service, yes.

12 MR. CRAVEN: No, I am talking about the connect  
13 time. We are using 19 percent of the time. One might draw  
14 the conclusion that somehow with 80 percent of the time going  
15 to field programs, that perhaps we are not doing anything.  
16 I think that it is a subject to study. The QUIP program  
17 demonstrated that when you have experienced users who are  
18 using it all of the time, the amount of time per search goes  
19 down significantly, because the person becomes much more  
20 efficient.

21 MR. MENDEZ: I have read all of the data.

22 Ms. Paquette, I do not know, but have they seen  
23 the materials?

24 MS. PAQUETTE: They have seen everything submitted  
25 twelve statistical tables and two narratives have been

rct29

1 provided to them.

2 MR. MENDEZ: We have seen all of those materials,  
3 and I have looked those over very carefully.

4 MR. CRAVEN: I think that what we are saying now,  
5 Mr. Mendez, is that a lot of those things we saw only in a  
6 posture in which we have now removed ourselves from which was  
7 an adversarial relationship. We now want to proceed, and  
8 I think pursuant to the terms of the settlement can proceed,  
9 to examine some of the presumptions that were in the materials  
10 that you have gotten.

11 We think that there are some very serious flaws in  
12 the assumptions that were made in those. We think that the  
13 measurements in very many cases were not things which could  
14 stand up. We compared the time period for instance. In one  
15 instance, there were a lot of data generated in only three  
16 days of activity in August of 1984 compared to the two years  
17 of study that the programs underwent in the origination phase.

18 And we think that at this time that you should  
19 suspend any conclusions that you might be drawing based on  
20 the documents which you received already. And let us now  
21 proceed cooperatively to reexamine our experience in a  
22 corroborative way. We have not yet for the past two years.

23 We have not met. We have not gotten together. We  
24 have not had what we think is a climate in which we could come  
25 up with a conclusion which says this service could be

rct30 1 provided to the field universally for a particular amount of  
2 money. We have no preconceived notion as to how, why, or wh  
3 is necessary.

4 MR. MENDEZ: Now just to make sure that the record  
5 is clear, the Legal Services Corporation itself is purchasing  
6 the time from LEXUS and WESTLAW, and is in effect  
7 subcontracting for time to you, is that not a fair statement?

8 MR. CRAVEN: In some instances, that is correct.  
9 There is a national contract with both the data bases.

10 MR. MENDEZ: That is correct.

11 MR. CRAVEN: The cost for connect time has gone in  
12 the situation of five of the seven centers to the actual  
13 user. And the programs themselves are billed for actual  
14 connect time. They are not billed for staff time. They are  
15 not billed for all of the costs of the center, only for cost  
16 of the search. And only the cost as it is represented by the  
17 billed time under whatever the monthly rate is under the  
18 national contract.

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

20 MR. CRAVEN: Let me just amplify I think the other  
21 part of that. One of the interesting things in our study is  
22 that there are two programs which provide free searches. In  
23 other words, the usage in those is much higher. One of the  
24 things which we want to experiment with is because somehow  
25 the assumption is somehow somebody is using it more than

rct31

1 others, why is that.

2 One of the reasons we think is perhaps researches  
3 would increase in use.

4 MR. MENDEZ: If you have got nothing else to do --

5 MR. CRAVEN: I think that that is a true statement.  
6 That does not necessarily diminish the value of the service  
7 in either direction.

8 MR. MENDEZ: Well, I recognize that. But we have  
9 really recognized that that is an imperative, or believe that--  
10 I should not say "we", I believe that that is part of the  
11 market concept. And that that is one of the key things that  
12 we ought to look at.

13 Does this group have any particular questions on  
14 this, or do you have anything else that you want to address?

15 (No response.)

16 MR. MENDEZ: The question that I have for you is  
17 under the agreement that you have we are to work with you in  
18 putting together a study?

19 MR. CRAVEN: That is correct.

20 MR. MENDEZ: And submitting whatever private firm,  
21 we are to come together on some sort of statement about that.  
22 It is very amorphous.

23 How much time do you need to put together the type  
24 of questions?

25 MR. CRAVEN: I think that we can proceed immediately.

rct32

1 We certainly anticipate doing something very, very quickly.

2 We have not had a chance.

3 MR. MENDEZ: I recognize that.

4 MR. CRAVEN: But we are getting together tomorrow  
5 on the phone, for instance, to determine how we will among  
6 ourselves seek to provide service to the constituents that  
7 use the service provided at our end. Then I think that we  
8 can move to say what is it that we want to do, and who do we  
9 do it with, and how fast can we do it.

10 It is in our interest as well as yours to find out  
11 as quickly as we can.

12 MR. MENDEZ: That is what I wanted to get to. The  
13 second thing is, and I am not sure how you are going to  
14 answer this, -- as one of the old trial lawyers said, you should  
15 never ask a question that you do not know what the answer is,  
16 but that is what I am doing anyway.

17 MR. CRAVEN: Okay, I will try to surprise you.

18 MR. MENDEZ: I will be very surprised.

19 What is your position on whether local programs  
20 should be connected to NEXUS and WESTLAW?

21 MR. CRAVEN: I think that it depends on the program.  
22 I think that there are some programs that have demonstrated  
23 the sophistication in their own representation and expertise,  
24 and the opportunity to use is very effectively. I do not  
25 think that all programs have. One of the things that we got,

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1 for instance, most recently is the programs that have turned  
2 down the continuation of the LEXUS.

3 We talked to the programs in our region about their  
4 experience. We found one program that last year had \$6000  
5 in on-line expenses in a program that had six attorneys. Our  
6 program has eight attorneys. We had, the number of searches  
7 on it I have no idea, but 40 percent of the searches in the  
8 region, I think that that is overstated of the way that it  
9 was done, we spent \$600 on on-line time.

10 So I think that there are programs that can use it  
11 and can use it effectively, and I think that there are some  
12 that cannot. I think that our function is to find out which  
13 ones can, and help them if they want to make the determination.

14 I have got some figures for you if you want to see  
15 them on our own analysis of the capital investment beyond the  
16 on-line time which shows that very seldom does it make sense  
17 in a program that is not of a very large size.

18 MR. MENDEZ: The next question that I have for you  
19 is each one of you are paying rent, each one of you are paying  
20 certain staff to do this, and you have got a certain number  
21 of telephone lines.

22 Does it not make sense to house all of this in the  
23 same area?

24 MR. CRAVEN: We are not convinced that it does. It  
25 may, but we are not convinced yet that that has been

rct34  
1 established. In fact, on rent, I was talking to somebody here  
2 today, and they were telling me what they were paying in ren  
3 We did not charge CALR for the rent, and I think that that  
4 is the case in all of the other programs, or all but one.

5           Actually, we bought our building seven years ago,  
6 and our cost per square foot is \$1.75. It is \$1.75, but we  
7 do not even charge the program that. We host it for free.  
8 There could be some economies there, but we still want to  
9 stay the effect of having the program close enough to our  
10 customers to do the same kinds of things that I think the  
11 distinctions were made with state support and national support.

12           MR. MENDEZ: Do you think that it would be wise for  
13 us after this study comes in to put out a RFP?

14           MR. CRAVEN: I think that that depends on what the  
15 study says. The study might convince any reader that a  
16 continuation or a modification of existing grantees is called  
17 for. I look on all of our things not as something that, and  
18 I think this is also true for the state and national support  
19 centers -- there has been an enormous investment over time  
20 in experience, in reputation, in good-will, all of the  
21 intangibles of business as well.

22           And to me, some of these things cannot be  
23 sacrificed or moved around without the loss of that.

24           MR. MENDEZ: Again I come back to private initiati  
25 and private enterprise for profit and that sort of thing.

rct35

1 Have you tried to sell your abilities with this to  
2 your local areas?

3 MR. CRAVEN: We are now prohibited by the terms of  
4 the contract from selling our services beyond Legal Services  
5 grantees. We have discussed it. As a matter of fact, one  
6 of our contentions with the corporation right now is some  
7 of the conversations with our data providers take place  
8 without our participation.

9 We were just informed of the rate increase three  
10 and a half months after it had gone into effect. If we get  
11 back into a more corroborative posture, we can examine some  
12 of these things.

13 I will tell you that we have had conversations  
14 ourselves to say what could we do. It is interesting I think  
15 that as we talk about all of this that we do not have any  
16 investment bankers coming to us and saying we think that you  
17 have a hell of an idea and we would like to invest in it  
18 because we think that the market is going to take off.

19 We do not know of any private service that is  
20 providing this. We know of lots of people who say that they  
21 would subscribe as private attorneys, but they would pass those  
22 costs on and presumably buy wholesale and sell retail to  
23 people. We are not doing that, and we are not capable of doing  
24 that now.

25 It is something that I think that we could explore,

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1 but I do not think that it can be presumed just by the  
2 suggestion that it is salable that there are customers who  
3 are willing to buy it. I have got a lot of tee-shirts that  
4 I tried to sell at a NLA convention once. I can tell you that  
5 just because you think that you have a great idea, it does  
6 not mean that everybody is going to buy it.

7 MR. MENDEZ: You mean that they do not wear them  
8 to court.

9 MS. PAQUETTE: Excuse me, may I comment?

10 MR. MENDEZ: Sure.

11 MS. PAQUETTE: I do not think that the board is  
12 aware that in the first year of operations that one of the  
13 existing satellites did have a subscription process in which  
14 they assessed a fee to the regional programs to participate  
15 in the CALR services, and it was pretty well responded to.  
16 And that idea was only dropped when the corporation continued  
17 to fund to such an extent that it was not necessary to also  
18 collect that fee from the programs.

19 MR. MENDEZ: Well, now it seems to me that this is  
20 one of the things that needs to be encompassed in your study.

21 MR. CRAVEN: Precisely.

22 MR. MENDEZ: And some of the discussions about it  
23 would take place in that.

24 MR. CRAVEN: Our survey of users has been on servi-  
25 what did you get for what we did, what was the quality, how

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1 much time did it save you, how satisfied were you, could you  
2 have done this yourself.

3 MR. MENDEZ: Put one other thing in your survey.

4 MR. CRAVEN: What did you pay for it.

5 MR. MENDEZ: Yes, and how much of the \$600,000, can  
6 we do it for cheaper than \$600,000, and give them relatively  
7 the same program. And what would be the difficulty in asking  
8 all of you to bid for the whole thing for the next year.

9 MR. CRAVEN: I think that until we have determined  
10 what it is that can be done, that is premature.

11 MR. MENDEZ: I am not asking that now.

12 MR. CRAVEN: My only response is that I would not  
13 rule that out at all. But I would suggest is that your request  
14 for proposal cannot be drafted until you know what the  
15 dimensions of the service is that you are asking for.

16 MR. MENDEZ: We are going to adhere to the contract  
17 and to the spirit of the agreement, and we fully believe in  
18 that. But I was just curious as to what your personal view  
19 was on that.

20 MR. BROWN: Just a comment with respect to the  
21 suggestion of consolidation and the national scope for example.  
22 That is certainly something to take a look at. I just want  
23 to make this suggestion. That there may be local mechanisms  
24 that might be more effective. For example, in New York, our  
25 support center does the LEXUS searching. And we have the

rct38 1 the highest usage rate of any of the programs in the country  
2 even though we only service half of -- well, all of New York  
3 State except the city.

4 One of the things that we think is real important  
5 in our program with respect to this is that our support center  
6 attorneys do the search for local program clients, and lawyers,  
7 and paralegals. That has a tremendous impact with respect to  
8 exactly what their needs are.

9 Because when they call us about a research problem,  
10 they are talking to a lawyer from their state who is familiar  
11 with the statutory system in New York State, the court  
12 procedures, the key words, the mechanics of litigation in New  
13 York.

14 And I think that it has a very, very important  
15 impact with respect to the efficiency of searching and the  
16 effectiveness of searching. And my suggestion, of course,  
17 is that we design this study, and that we take a close look  
18 at whether or not it might be helpful in larger states that  
19 have state support centers, to in effect have this delivery  
20 done that way rather than consolidate.

21 MR. MENDEZ: Do you think that we can get the report  
22 and the studies done by let's say the first of June?

23 MR. CRAVEN: I would not want to be pinned down,  
24 but I certainly would hope so. We have been trying to do th'  
25 for the last eighteen months. So I think that we have in our

rct39

1 own minds the kinds of questions that we want studied. I  
2 think that we have in our own heads the kinds of comparisons  
3 that we want made. So I think that we can operate with some  
4 alacrity here.

5 One of the things that I think that we are focusing  
6 on to the exclusion of something that you might be as familiar  
7 with, and that is something that I think again the corporation  
8 is uniquely positioned to be the initiator and to be the  
9 supporter of an activity which I think all of us as attorneys  
10 have been frustrated with, and that is the creation of our  
11 private library and the national document bank.

12 MR. MENDEZ: You gentlemen are attorneys?

13 MR. CRAVEN: Yes. Chuck is not.

14 MR. MENDEZ: Who drafted this?

15 MR. CRAVEN: You are talking about settlement?

16 MR. MENDEZ: Yes. Your lawyer?

17 MR. CRAVEN: Our lawyer.

18 MR. MENDEZ: Now I hate to do this, but to follow  
19 the spirit of this, but your lawyer did not provide who is  
20 going to pay for this, for the studies. Now you go back and  
21 tell your lawyer that we will follow the spirit of it. But  
22 if he is going to draft something like that, we ought to  
23 always do that sort of thing.

24 MR. BROWN: I think that there was clear under-  
25 standing of how the study was going to be financed.

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1 MR. MENDEZ: I do not know if there was or not.

2 MR. LEONARD: The Legal Services Corporation had  
3 proposed to do the study in February of 1984.

4 MR. MENDEZ: We are going to do it. But I just  
5 read this thing over, and I was curious as to who was going  
6 to pay for it.

7 MR. CRAVEN: Mike is going to be curious as to what  
8 happened here, and I will be sure and tell him that, that  
9 that deficiency has been noted.

10 MR. MENDEZ: I came into it cold, and read this over.  
11 And if you read the paragraph, the paragraph sort of implies  
12 that you are going to pay for it.

13 MR. LEONARD: No.

14 MR. CRAVEN: Could I go on?

15 MR. MENDEZ: Please.

16 MR. CRAVEN: Rather than dwell on that, I would  
17 really like to do two things. I would like to discuss just  
18 briefly so that you are familiar with a completely separate  
19 function. And that is something that I think we have  
20 struggled with, and I think that we are finding that we know  
21 what we are doing. And it is something that I think that most  
22 lawyers struggle with, and find that they have very great  
23 difficulty doing.

24 And that is using not only appellate research, but  
25 getting the documents that we as lawyers have created in our

rct41  
1 own practice out to other people who can use those. And I  
2 would like if maybe you could just thumb through this to show  
3 you an example. I want to show you an example of an actual  
4 search. And I also want to show you what is available now  
5 in every program, and what is in our programs, and what we  
6 use.

7 The microfiche system which has got now 12,000  
8 documents which is available at a very low cost, and programs  
9 can opt to subscribe to these. And to tell you again that  
10 this is a function which improves the quality of local offices  
11 which have made the choice, made the retrenchment to sell  
12 their books, or have made the choices not to subscribe to  
13 things because of the cost, who have made all of the kinds  
14 of discretionary choices that we have been talking about all  
15 day, and have reduced their research capacity.

16 We are I think for a very little amount of money  
17 supplementing that, and in some ways being the only research  
18 capacity that they have in complex cases, and even in the  
19 ordinary case. And I think you will see that the sample that  
20 I have given you is a fairly ordinary case. And yet what we  
21 did was not only provide research, but provide a work product  
22 that saves time, saves money, stretches the ability of local  
23 lawyers to deal with real problems, gives them the confidence  
24 and the material to demonstrate to courts generally unfamiliar  
25 with the kinds of cases that we present that other courts have

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1 seen the same issues, that other courts have passed on those  
2 cases, and that there are materials, and that we are not  
3 operating in a vacuum.

4 And it is only because I think of our activity which  
5 not only solicits but then takes those things, puts them into  
6 an abstract which is searchable in the same search that we  
7 are doing for WESTLAW and LEXUS for appellate opinions, that  
8 we can come up with these kinds of things. And that the usage,  
9 the materials that Pat will provide you, show that there is  
10 a small amount used.

11 We are just reaching a data base which is actually  
12 valuable.

13 MS. BERNSTEIN: Could I ask a question. I do not  
14 know, because the settlement was waved under my nose, and  
15 I have not had a chance to read it.

16 This study, is it also going to include Clearinghouse  
17 and to what extent Clearinghouse is overlapped in his brief  
18 bank with the computer assisted legal research?

19 MR. LEONARD: I would expect it would. You know,  
20 we do a number of things.

21 MR. MENDEZ: Really, to be fair to everybody, I  
22 think that we ought to include that in there.

23 Would you gentlemen agree with that?

24 MR. CRAVEN: Clearinghouse is one of the things.

25 MR. LEONARD: A lot of what Clearinghouse contributes

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1 to the brief bank aside from what comes from the other centers  
2 goes through the Clearinghouse review under a separate  
3 contract with the corporation. And there are a lot of  
4 efficiencies for doing that. And we certainly have always  
5 expected that any kind of study would have to include looking  
6 at the entire Clearinghouse operation.

7 MS. BERNSTEIN: Okay.

8 MR. CRAVEN: We are just in efficiency cost  
9 effectiveness, and we are the people who are the ones who  
10 are struck with this.

11 MR. MENDEZ: Do some of the local programs do the  
12 searches?

13 MR. BROWN: Have we seen that?

14 MR. MENDEZ: Yes.

15 MR. BROWN: I have familiarity with a program in  
16 New York.

17 MR. MENDEZ: One of the questions that I have is  
18 when they are doing the searches and getting the printouts,  
19 do they go under the printer themselves, or are they printing  
20 it onto the disk?

21 MR. LEONARD: Depending on the system that they  
22 would have.

23 MR. MENDEZ: Is that not in fact one of the key  
24 reasons why you have longer on-line time?

25 MR. CRAVEN: Sure.

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1 MR. MENDEZ: And I assume that you gentlemen are  
2 just putting it right on the disk.

3 MR. CRAVEN: We operate through a process rather  
4 than through a dedicated terminal.

5 MR. BROWN: We have not bought the hardware to do  
6 that.

7 MR. MATHISON: We do. One of the additional things  
8 we do is we are able -- I think that all of us have managed  
9 to find economies of scale individually. We have not gotten  
10 together to really share those. But one of the things that  
11 CORE IV does is we are able to preprogram searches on our  
12 computer before we actually type in our ID number.

13 So normally, when you are searching LEXUS or  
14 WESTLAW, you type in your ID number, the meter starts running,  
15 and then you have to type your search. We can do all of that  
16 typing ahead of time, transmit those search levels with one  
17 key stroke.

18 We also in the middle of a search is the search is  
19 going in a direction that was unexpected, we can go into one  
20 of the help functions where the meter is not running. Go  
21 back into our computer system, program new search levels, and  
22 go back. And we have cut our search time, on-line charges,  
23 by as much as two-thirds in some cases. And we also save to  
24 disk.

25 MR. MENDEZ: You also save to disk?

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1 MR. MATHISON: Yes. And then we edit that with  
2 word processing.

3 MR. CRAVEN: We do our abstracts too of the  
4 documents, and send those by disk.

5 MR. MENDEZ: Depending on --

6 MR. CRAVEN: Who has got compatible equipment.

7 MR. MENDEZ: Compatible.

8 MR. CRAVEN: And I think that one of the things --

9 MR. MENDEZ: Do you factor that in as well by disk?

10 MR. MATHISON: Well, yes, and we subscribe to major  
11 electronic mail services as well, and programs that also  
12 subscribe. This is new, and has not really occurred to any  
13 extensive degree. But we can get a phone call, we can do the  
14 search, we can transmit it to an electronic mailbox, and they  
15 can down-load it instantly.

16 MR. CRAVEN: One of my aspirations at some point,  
17 Mr. Mendez, is to be able to -- and we think of ourselves I  
18 guess as a research and development function of any business,  
19 in saying that some of these things we cannot determine today  
20 have a cost benefit that you would say let's choose this over  
21 salaries or fringe benefits.

22 But we think that we can develop to the point where  
23 attorneys themselves can start to abstract, and that we can  
24 help offices determine what kind of technologicis they want  
25 to put in, to make sure it is compatible, make sure that

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1 people know how to abstract their documents, and submit them  
2 in a form which could be transmitted, and start to save time  
3 by working smarter rather than trying to pile more stuff on  
4 people.

5 MR. MENDEZ: As you can tell, this is one of my  
6 areas of interest.

7 MR. CRAVEN: It is one of ours too.

8 MR. MENDEZ: And I really enjoyed this. I will talk  
9 to these gentlemen after we adjourn, but I want to have all  
10 of my members of my committee be able to adjourn if there are  
11 no further comments.

12 Is there any comment from the audience about any  
13 particular thing?

14 (No response.)

15 MR. MENDEZ: I think that we have outlasted all of  
16 the comments, it looks like.

17 MR. SMEGAL: I would like to say, Mr. Chairman,  
18 you asked all of the questions that I would have asked.

19 MR. EAGLIN: Mr. Chairman, I have a question growing  
20 out of something that you said earlier today in terms of the  
21 next meeting of the committee.

22 What is your idea about the next time that we will  
23 meet, what date is it, is it before the March 8th meeting?  
24 It was my understanding that we would not have committee  
25 meetings. Are you going to call a committee meeting of this

rct47

1 committee for March 7th?

2 MR. MENDEZ: March 7th is a committee meeting.

3 There are two days of meetings scheduled for then.

4 MR. EAGLIN: And then the board on the 8th?

5 MR. MENDEZ: Yes. And that committee meeting should  
6 be fairly short. We are adjourned.

7 (Whereupon, at 5:35 p.m., the committee was

8 adjourned.)

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endrct  
end6B

REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: MEETING OF THE COMMITTEE ON  
APPROPRIATIONS AND AUDIT

HEARING DATE: February 21, 1985

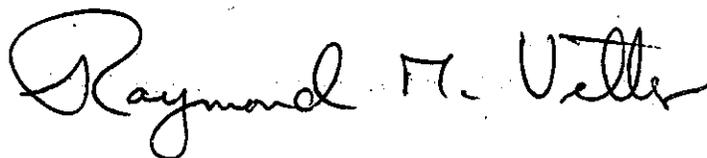
LOCATION: Washington, D.C.

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

LEGAL SERVICES CORPORATION

and that this is a true and correct transcript of the same.

Date:



Official Reporter  
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