

ORIGINAL

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

October 2, 1987

Commenced at 9:30 a.m.

Loews L'Enfant Plaza Hotel
L'Enfant Ballroom (A)
480 L'Enfant Plaza East, S.W.
Washington, D.C. 20024

Present:

Clark Durant, Chairman
Robert Valois, Vice Chairman
LeaAnne Bernstein
Paul Eaglin
Loran Miller

Claude Swafford
Hortencia Benavidez
Pepe Mendez
Basile Uddo
Thomas Smegal

John Bayly, President
Timothy Shea, General Counsel

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P R O C E E D I N G S

1
2 CHAIRMAN DURANT: The meeting of the Board of
3 Directors for the Legal Services Corporation is now in
4 session today, October 2nd,

5 Mrs. Miller will give our invocation,

6 MS. MILLER: Dear Lord, give us the wisdom in
7 our deliberations. Let us always remember those we serve.
8 We thank you for your love in all of our doings,

9 Amen,

10 CHAIRMAN DURANT: Thank you,

11 The Board met, by the way, last night in Executive
12 Session to go over personnel and personal matters and in
13 litigation and investigation matters,

14 3. Approval of Agenda

15 CHAIRMAN DURANT: This morning the first item
16 is to approve the agenda.

17 MOTION

18 CHAIRMAN DURANT: Is there a motion to approve
19 the agenda?

20 MS. MILLER: So moved,

21 CHAIRMAN DURANT: Is there a second?

22 MS. SWAFFORD: I second that.

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1 CHAIRMAN DURANT: Any discussion?

2 (No response.)

3 CHAIRMAN DURANT: All those in favor signify by
4 saying aye?

5 (A chorus of ayes.)

6 CHAIRMAN DURANT: Opposed?

7 (No response.)

8 4. Approval of Minutes - August 28, 1987

9 CHAIRMAN DURANT: The first item on the agenda or
10 the fourth numbered one, the first this morning is the
11 approval of the minutes of our August 28th meeting.

12 Any comment on that?

13 MR. EAGLIN: Yes, I have corrections.

14 On page 2 at the end of the first paragraph, the
15 word "public" should be correctly spelled. The last line of
16 the first paragraph,

17 And then later on on page 21 at the end of the
18 second paragraph there is just a mention that I abstained
19 from the vote, but on that particular vote concerning the
20 letter that was to go from us to Congress, I mentioned that the
21 letter, the draft letter was presented to me while the meeting
22 was going on. During that afternoon, I was listening to

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1 presentations and so I did not get a chance to read the letter
2 and that is why I abstained because I was paying attention to
3 the presentations that were going on during the course of
4 the meeting and I did not read the letter,

5 It is not as if I had no position, I didn't know
6 what my position was on the letter because I didn't read it,

7 MS. BOZELL: Excuse me, Mr. Eaglin, would you like
8 me to put into the minutes -

9 MR. EAGLIN: I would like to state the reason why,

10 MS. BOZELL: All right,

11 MR. EAGLIN: I noted, I believe I noted at the time
12 of this motion, I noted what the time was and what time I
13 received the letter from Mr. Elgin and that it had been given
14 to me during the course of the meeting and I didn't read it
15 because there were presentations going on at the time.

16 MS. BOZELL: All right.

17 CHAIRMAN DURANT: I am sure there is unanimous
18 consent to making that change.

19 Mr. Mendez?

20 MR. MENDEZ: On page 10, the middle paragraph
21 that wasn't me, I don't know who it was. That may have been
22 Mr. Wallace. But if nobody else takes credit by process of

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1 elimination, let's give it to Mr. Wallace.

2 MS. BOZELL; I believe that was Mr. Wallace.

3 CHAIRMAN DURANT; And if you could just verify that,
4 Maureen, but I am sure that there would be unanimous consent
5 to that.

6 Any other comments on the agenda?

7 MR. SMEGAL; I wasn't there so I am at a little bit
8 of a disadvantage and I will abstain on the vote, but there
9 are two things that caught my eye.

10 On page 8, the first full paragraph refers to
11 comments made by Mr. Wallace which I think it indicates that
12 several other members expressed similar concerns. I have
13 been expressing similar concerns for quite a while with
14 respect to the portion of our Board meetings that are closed
15 and the desire that I have to having a more specific agenda.
16 I don't know whether Mr. Wallace was referring to that,
17 Maureen, or to the general --

18 MS. BOZELL; No. He was referring to the open
19 meeting.

20 MR. SMEGAL; The open part of the meeting, okay.

21 On page 14, Maureen, there is a reference to the
22 Board as having made a statement. It seems to me that maybe

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1 we could identify who it was. In reading the minutes, I
2 can't --

3 MS. BOZELL: Are you talking about the first full
4 paragraph?

5 MR. SMEGAL: Yes.

6 Down in the next paragraph, we have the specific
7 individual as we do in the following paragraph, but up there
8 the Board responded. Now I assume that was someone who
9 responded. Maybe there was more than one Board member, but
10 maybe we can reflect that exchange with Ms. Garvey.

11 MR. MENDEZ: Well I will put my name right in there
12 because I was one of those. I know there were several others,
13 but I think I was one of the spearheads.

14 MR. SMEGAL: Substitute Mr. Mendez for the Board.

15 CHAIRMAN DURANT: Any other changes to the minutes?

16 (No response.)

17 MOTION

18 CHAIRMAN DURANT: With those corrections, can I
19 have a motion then to accept the minutes?

20 MS. MILLER: I make that motion.

21 MS. BENAVIDEZ: I second that.

22 CHAIRMAN DURANT: Any other discussion?

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(No response.)

1
2 CHAIRMAN DURANT: All those in favor, signify by
3 saying aye?

4 (A chorus of ayes.)

5 CHAIRMAN DURANT: Opposed?

6 (No response.)

7 CHAIRMAN DURANT: Any abstentions?

8 MR. SMEGAL: Abstained.

9 CHAIRMAN DURANT: Okay.

10 5. Consideration and Review of LSC Budget FY 1988

11 CHAIRMAN DURANT: The next item on the agenda is
12 consideration and review of the LSC budget FY 1988. I asked
13 that this item be put on the agenda because our Board has
14 deliberated over almost its whole three-year tenure in terms
15 of the priorities of the Corporation and as it regards
16 national/state support and particular to other items, I
17 asked Mr. Bayly and Mr. Jarvis to commission a review or
18 examination of, in particular, our support and training
19 functions.

20 They have done so with a Professor Frank Booker
21 of the University Notre Dame Law School and Professor Booker
22 is here. He has prepared a report for the Board which I

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1 would like him to give.

2 Is Professor Booker here?

3 Professor Booker, could you

4 MR. UDDO: Mr. Chairman, before we get into that
5 can I ask when this commission was requested and when the
6 commission was given?

7 CHAIRMAN DURANT: I made a request to Mr. Bayly
8 and Mr. Jarvis approximately three weeks ago.

9 MR. UDDO: Can I also ask how this relates to
10 the commission I was given to study national and state
11 support programs?

12 CHAIRMAN DURANT: Yes. I see them in some ways
13 in two distinct ways and also related. I simply -- Professor
14 Booker, it was my understanding, because I had asked for
15 someone who was familiar with some of the national and state
16 support programs and who had monitoring experience with them
17 to review that experience and other documents that the
18 Corporation -- that have been accumulated over the last couple
19 of years and he is here to give us his report on that.

20 I think that certainly his information, I am sure,
21 would be of benefit to your committee.

22 MR. UDDO: Was he asked to work with my committee?

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1 CHAIRMAN DURANT: I don't know. Was he?

2 MR. BAYLY: No, he was not.

3 CHAIRMAN DURANT: Ms. Benavidez?

4 MS. BENAVIDEZ: How much is he being paid for this
5 report?

6 CHAIRMAN DURANT: Mr. Bayly?

7 MR. BAYLY: May I just confer with the Chairman for
8 just a second.

9 CHAIRMAN DURANT: Mr. Bayly will get that informa-
10 tion for you.

11 MS. BENAVIDEZ: All right.

12 MR. UDDO: And the answer to my question, Mr.
13 Chairman, is that he was not asked to work with my committee?

14 CHAIRMAN DURANT: Well Mr. Bayly has said no. I
15 certainly have no objection to him working with your committee
16 and I would hope that he would.

17 While we are getting the --

18 Mr. Smegal?

19 MR. SMEGAL: Well there seems to me there is some
20 more fundamental questions to be asked in addition to what
21 have already been asked. I quickly looked over the materials
22 as I got them about an hour ago. I see no curriculum vitae

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1 To tell you a little about background or experience,
2 my experience with Legal Aid began in the year 1952 where I
3 was a student intern in the Legal Aid Clinic that Professor
4 John Bradnus (phonetic) ran at Duke University Law School
5 at that time in Durham, North Carolina,

6 Between 1954 and 1960, I was in the private
7 practice of law in St. Louis. And at that time necessary
8 pro bono work was assigned by the judges of the federal and,
9 when necessary, by the state court.

10 I did assigned pro bono criminal defense in the
11 Federal District Court and in the State Circuit Court at St.
12 Louis. I served at that time on a couple neighborhood
13 organizations and public interest boards. I was on the Public
14 Library Board and we had little neighborhood association;
15 Northwest Webster Grove Neighborhood Improvement Association.
16 It wasn't a legal thing, but about 1000 people. I know a
17 little something about those sorts of organizations. We were
18 the wrong side of the tracks.

19 From 1960 to 1968, I was at the Stetson University
20 as a professor of law. I was the director of advocacy training
21 there and I did pro bono convict work not in connection with
22 an affiliated agency of any sort.

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1 Foundation, Texas Legal Services Corporation, two visits there,
2 and Evergreen at Seattle, which is a very large program,

3 I have completed the monitor team leader training
4 here in the District of Columbia. I do some current pro bono
5 work in Federal Court and I served a full tour on the LSC
6 Training Task Force.

7 My experience with Legal Aid runs from the all
8 private era back when I was a young man through the OEO era
9 into the LSC era of today and has included both funded and
10 unfunded houses, civil and criminal, here and in England
11 and both centers and provider houses.

12 I have reviewed in addition to this experience
13 about a foot thick pile of documents, but I will try to be
14 brief here this morning,

15 Further about me, I may use rural analogies from
16 time to time. I farm about 50 acres in southern Michigan where
17 I live and I will answer any further questions on my back-
18 ground very truthfully,

19 CHAIRMAN DURANT: Professor Booker, why don't you
20 give us the essence of your report in the detail that you
21 think is sufficient to convey your points,

22 MR. SMEGAL: Let me ask one further question.

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1 CHAIRMAN DURANT: Sure,

2 MR. SMEGAL: The monitoring you referred to,
3 what time period was that? You said you monitored five years?

4 PROFESSOR BOOKER: Well I began back in '83.

5 MR. SMEGAL: When was the last time you monitored
6 a national support center?

7 PROFESSOR BOOKER: The last time I monitored a
8 national support center, let me think -- let me look at my
9 list and see which one it is. Political science in Washington,
10 D.C. And I am trying to recollect when that final report
11 was made. But --

12 MR. SMEGAL: Was it this year?

13 PROFESSOR BOOKER: This was done in '86 and I believe
14 that when the visit took place,

15 There was a dispute which grew out of that. It
16 was September '86.

17 MR. SMEGAL: Thank you.

18 CHAIRMAN DURANT: Professor Booker, if you would
19 give us your point and the detail that you think is sufficient
20 to convey your feelings and your observations and recommendations
21 to this Board. And then I am sure there will be questions from
22 the Board and we will deal with them then.

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1 MS. BERGMARK: Mr. Durant, is there a written
2 report available? We have not been given access to one and
3 would like to have one made available.

4 CHAIRMAN DURANT: Are there any additional copies
5 other than the ones that have been distributed to the Board?

6 PROFESSOR BOOKER: I have three or four additional
7 copies up in my hotel room.

8 CHAIRMAN DURANT: Would you provide one -- at the
9 hotel?

10 PROFESSOR BOOKER: It is up in my room if somebody --

11 CHAIRMAN DURANT: Martha, you may have mine.

12 PROFESSOR BOOKER: -- would like to go up and get
13 what I have got up there.

14 CHAIRMAN DURANT: No, that is all right. Why
15 don't you --

16 MR. UDDA: I would like the record to reflect, Mr.
17 Chairman, that the Board got these reports this morning.

18 CHAIRMAN DURANT: All right. They were delivered
19 to -- I received mine last night about 10:30, 11:00 o'clock
20 and I asked one of the staff to deliver them to each person's
21 mail box.

22 Go ahead, Mr. Booker.

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1 PRESENTATION OF PROFESSOR FRANK BOOKER, NOTRE DAME LAW SCHOOL

2 PROFESSOR BOOKER: Well to be as brief as possible,

3 I --

4 CHAIRMAN DURANT: Brevity is fine, but I also want
5 you to be thorough.

6 PROFESSOR BOOKER: All right.

7 I can begin by saying to the Board something that
8 I am sure you all know that the harvest is heavy and the
9 workers are few. We have an estimated client population of
10 persons eligible for our services between 30 and 35 million
11 persons depending on which set of estimates one uses. To
12 serve the civil legal needs generally of that population, the
13 Corporation has funded 285 basic pool providers at an average
14 level of a little over \$900,000. Now each of them has an
15 average client population to serve between 105,000 and 125,000
16 depending on which set of population estimates one uses.

17 And I am sure I am plowing old ground here. The
18 situation, therefore, is something like a city of between
19 210,000 and a quarter of a million having two law firms to
20 serve all its civil needs. That is the breakout. There is
21 an enormous burden out there, but I am sure you all know that.

22 The CSI statistics tell us that our field providers

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1 served 1,3 million clients during the last reported year,
2 And many of them admittedly only by brief service or telephone
3 type service, There is no way, no statistical record to tell
4 us how many of the eligible clients were turned away from
5 our doors because they did not present cases which fell within
6 the adopted priorities of local provider houses.

7 The field providers have certainly, despite many
8 differences in their viewpoint and makeup have, it seems to
9 me, that say one common thing that we have to do this. We
10 have to close down intake and we sometimes have to cutoff
11 whole categories of cases because we do not have enough money
12 to provide more services. And so sadly the necessary system
13 of priorities often operate to close whole categories of
14 cases, probably the commonest is the family domestic relations,
15 divorce, custody, child support type case and which can be
16 truly tragic with elements of spouse abuse or child abuse
17 that may be involved.

18 I know from my experience that if you run a
19 completely open door Legal Aid Clinic, the commonest problems
20 that clients will bring you far in excess of all others are
21 domestic relation cases.

22 Now these cases typically are the most important

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1 piece of litigation these clients will have in his or her life-
2 time. To them it is vital. The results of those cases are
3 quite unlikely to effect any persons other than that particular
4 client or their immediate family.

5 Now provider houses for the LSC, in my experience,
6 don't turn away people because they are mean or lazy or some-
7 thing like that. They do it because of a certain cruel
8 monetary necessity. They are trying to make the best use of
9 the limited funds they have. And they don't turn away divorce
10 and child cases because there are too few of those cases, there
11 are too many to be handled with the present resources. And
12 for another reason because, I think, for about 20 years the
13 Corporation and its predecessor, the OEO, have held out the
14 essential structure that urges providers to pursue other goals
15 than that sort of case.

16 Now according to the what I mean by the other goals
17 is that the scarce resources ought to be spent on impact
18 litigation and on related coordinated activities. It will
19 have a broad effect in enriching the greatest possible number
20 of economically deprived persons without regard to whether they
21 are actual clients in the cause or not.

22 To recap, we have under what will be given for money

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1 to this operation, the whole LSC, they are administering a
2 system where many individuals and eligible clients go unserved.
3 And the question that raises to me is is LSC doing the best
4 that it can do to carry out its mission with the money that
5 it has to work with. I understand that I am not the voice of
6 God, I am only giving you my poor opinion and views about this.
7 Your responsibility is greater than mine by far.

8 But whether LSC is doing its best or not is, of
9 course, a value judgment and you have to measure actual
10 performance against some standard in your own minds of what
11 you think LSC is and what it ought to be.

12 Primarily there are two competing visions of the
13 LSC and its role. The first vision which we see is the full
14 articulation during Lyndon Johnson's term and when the OEO
15 was created was issue oriented. A primary function was law
16 reform. In this vision, the first vision, a tiny cadre of
17 dedicated and like minded leaders decided what is best for
18 the many and they develop a grand strategy of political
19 action, pressure and litigation to effectuate this strategy.
20 And they lead in carrying it out.

21 The local provider houses and their clients receive
22 the benefits from this system when these benefits trickle down

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1 from the actions and impacts of the leaders and the leader
2 group, The idea is that far more of the general group of
3 eligible people will benefit from this strategy than would
4 benefit from the voting main strength to handling the actual
5 cases of actual clients as they may happen to arise in the
6 natural course of events.

7 For example, a change in a welfare regulation may
8 be worth \$30 or \$40 million dollars to poor people throughout
9 America while an individual client's case is likely -- are
10 more likely to benefit only that client, The general object
11 of this approach is to improve the financial and social
12 position of the poor persons of America, To maximize it and
13 thus serve or do benefit to the whole class of potential
14 eligible clients who might seek the help of Legal Services.

15 In the allocation of resources issues come first
16 and actual clients that arise in the real world come second.

17 Now the second vision that competes with this is
18 an older and less glamorous one, It is not helped by the
19 alluring aura, the power to be is a mover and a shaker for
20 those causes and ideas which are nearer to one's heart.
21 Because this vision is client centered, It directs that the
22 help of lawyer representation should be based on individual
eligible client needs and problems where scarce resources

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1 ought not be rationed on the basis of an ideological agenda,
2 but on the basis of actual present needs of eligible real
3 clients with eligible real cases.

4 And this vision is not a condemnation of the great
5 impact litigation at all. It says instead that the great
6 impact cases will best arise from the ground up and will be
7 brought by high-quality lawyering and that LSC field providers
8 are regular spear point with those real people. They have
9 the skills and the wills, the determination to raise and fight
10 such cases well.

11 Now that vision is used, absolutely the use of
12 political pressure. It leaves that to organizations not fed
13 with taxpayer dollars and it leaves it to free interplay of
14 American political courses.

15 There is a value here that ought to be commented
16 on because this tends to be more client controlled and it
17 avoids something that has sometimes happened in great impact
18 cases in the past. The great Dred Scott (phonetic) case of
19 the 19th century was, it turned out later, a contrived case.
20 Yes, Dred Scott was legally a slave but his owners and other
21 people who justly abhorred the system of slavery hadn't decided
22 to create a situation that would permit them to bring this

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1 issue to the United States Supreme Court where they believed
2 they would obtain a judgment that would free the free states
3 from having to enforce the Fugitive Slave Laws and would permit
4 the new territories entering the Union to come in free. And
5 that slavery could not cross the border of a slave state. That
6 is what they wanted. They knew, and it is true, that Dred
7 Scott never did another day's slavery in his life, but it
8 didn't happen the way they wanted it to. Instead, as you know,
9 the court decided that slavery was like a virus in the blood-
10 stream of the Constitution. Not only was it protected and
11 approved, but it could not be -- it had to be enforced in
12 free territories and in new territories.

13 And what's more it said that the Great Missouri
14 Compromise was itself unconstitutional closing the doors of
15 legislative compromise prompted me to believe that that
16 case did more to bring on the Civil War than any other single
17 event.

18 And that was not the intent of the men of high
19 ideals who proceeded on this planned strategy. The story is
20 well written up in the late Justice Robert H. Jackson's book,
21 The Struggle for Initial Supremacy, to which I will generally
22 refer to.

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1 Now both of these two visions, vision one of the
2 grant strategies, vision two of the client centers I believe
3 can command the respect of decent and well-intentioned people.
4 The choice is not one, as I see it, between good and evil,
5 but between two alternatives which are both in the abstract
6 defensible.

7 So how would one recommend a choice between these
8 alternatives, I believe it would be useful to recall who
9 LSC is and how it came to its present position. And, as I
10 told you, I have lived through the eras and controversies
11 as a person interested generally in assisting people who can-
12 not obtain lawyers.

13 Federally funded aid, Legal Aid was created in 1965
14 as one of the many -- the actual date of the Act is '64, but
15 it was one of the many initiatives of the war on poverty when
16 President Lyndon Johnson was president. It was intended to
17 operate according to the first of our two competing visions,
18 the issues and law reform vision. It was intended to reform
19 the law and to improve the economic and social positions of
20 poor Americans according to a central plan and agenda, and
21 it was to use the entire array of methods, leverage from a
22 pivot of economic and social reform litigation.

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1 The agency at that time thoroughly convinced and
2 in view of that rapidly plunged itself into controversies
3 and in less than a decade it had proven that people who play
4 hard ball politics can get beat,

5 By 1972, I remember the 1972 campaign, President
6 Nixon didn't run against his nominal oponent, he ran against
7 the Warren Supreme Court and the OEO that had opened many
8 doors and many controversies. And he got, you know, the wave
9 of support that pursued him,

10 One of his objectives was to absolutely dismantle
11 publicly-funded Legal Aid by veto anything that was before him.
12 Faced with that, Congress worked hard and made an informed
13 controversy under the right of hard choice and that was, of
14 course, the Legal Services Act of '74. The organization was
15 to provide lawyers for civil cases of actual eligible clients.
16 It was not to meddle in politics as its predecessor had done
17 to its cost,

18 The Corporation was to be a separate federal
19 corporation neutral like the old Panama Canal Corporation.
20 Now there have been several amendments of the basic Act since
21 then which are not particularly germane to what I have to
22 say to you. The whole Act can be read in about half an hour.

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1 The written paper I have given you contains a
2 detailed analysis of why I believe the Act very clearly chose
3 that client centers approach and rejected the issue center
4 approach with citations. I must tell you the second index in
5 here is simply a reprint of the Legal Services Corporation Act
6 as it now exists. I gave that to you because many of the
7 Corporation's publications used the old original bill number
8 such as 10011010C whereas most of us lawyers out in the field
9 work from USCA or USC and it has a different set of numbers.
10 My analysis has the USC/USCA set of numbers and so to prevent
11 confusion, I just reprinted that so you can find out what
12 the 2996J controversy is if it is mentioned in here.

13 The opening Congressional findings of the charter
14 Act -- by the way, it takes less than half an hour to read
15 the charter Act and I would humbly beseech in thinking about
16 the basic question that the Board members might re-read with
17 the points I have made in this paper in mind to see for them-
18 selves whether I have incorrectly or over argued the point.

19 The opening Congressional findings are revealing.
20 It says the service was created to secure access to the system
21 of justice for individuals, not classes, not economic groups,
22 individuals who seek redress of grievances, actual grievances,

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1 not theoretical grievances,

2 The 1977 edition preserves that intent because it
3 speaks of providing legal assistance as being the best way of
4 generally bettering by this agency the position of poor people.
5 The word legal assistance is a word of art and it is used
6 repeatedly in the Act as it is in the regulations. And legal
7 assistance does not mean anything that a lawyer may choose to
8 do for a client,

9 Lawyers, we know, give financial advice sometimes
10 in the general practice. They sometimes do public relations
11 work. They sometimes do fiscal work. They sometimes do
12 lobbying to the private sector. They sometimes do legislative
13 and administrative advocacy.

14 Now the distinction between those things and legal
15 assistance, and it is pretty basic, and I think pretty clear.
16 Each of these activities that I listed for you are activities
17 that people who are not lawyers may with perfect propriety
18 do. Many of our best lobbyists do not happen to be lawyers.
19 They are experts in a particular industry or sector or good
20 old boys or girls.

21 Now legal assistance only -- is that which only
22 a lawyer can give. A long line of cases determining when

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1 lawyer/client privilege attaches attests to this, Lawyers'
2 advice is not privileged in the other fields that other persons
3 may properly engage in as well. It is purely in rendering
4 legal assistance. And the argument is developed at length --
5 I didn't, you know, make that up this morning. It didn't come
6 to me on the way over here.

7 The Harvard Journal of Law and Public Policy at
8 Volume 9, an article beginning at page 203 develops on a
9 parallel basis the same source as an argument that I am making
10 here.

11 Now I will not repeat at length the particular
12 statutory analysis unless you ask me to that I have given
13 you in writing and further lengthen the presentation. I will
14 be glad to answer you if anyone is interested, but you have it
15 basically in writing and can find again in the Harvard Journal.

16 Now the support organizations of centers tend to
17 adopt various depictions to excuse the fact that for much
18 of their activity there is no discernible client and particular
19 case. Among these evasions are that, first, all eligible
20 poor people are our client or clients.

21 Second, I have heard the explanation that all and
22 every LSC-funded program are our clients.

Other centers have used a variety of other devices

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1 to avoid the problem which is in much of what they do, They
2 have no eligible clients with a specific legal problem,
3 But first there is the -- what I regard as an abuse of the
4 group client concept, It is absolutely lawful and correct
5 for an LSC-funded attorney, in my view, to represent a group
6 client such as a tenants association in a specific case or
7 dispute, Indeed, the authors of the article I cited to come
8 to the same conclusion, but we find major legislative and
9 regulation total monitoring of all activities resting often
10 on a group client that is typically in a distant part of the
11 country and not firmly enough organized to trace and who
12 describe in the regulation required states their problem and
13 interest as something like energy issues affecting poor people,
14 which it is, I submit, not the intent of the statute or the
15 regulation,

16 And incidentally, I might recall the Board's
17 memory to the time when you considered the regulation that
18 required a client seeking legislative or administrative
19 aid to make a statement of what he, that client, wants out of
20 the assistance,

21 A very articulate spokesman in opposition to that
22 regulation said that it unduly puts the client in control

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1 of the scope and nature of the representation, And the
2 Canons of Ethics, as we all know, are absolutely clear. The
3 client is in control. He is not a vehicle on which the
4 lawyer can springboard his own personal views. And yet the
5 further we get into these direct cases from grand strategies,
6 lobbying, legislative and administrative actions, the more
7 further you get removed from the real client. Many class
8 actions concede that the actual plaintiffs are group clients.

9 And the greater the pressure on the lawyer to substitute
10 his or her vision for what the client really needs, what they
11 believe they want and it is consistent with the whole grand
12 strategy of programs which teaches and starts from this premise
13 that the few will know best what is best for the many.

14 We have middle and upper class highly educated
15 people and these people are not hypocrites, but they believe
16 that they speak for all of the poor people of America and that
17 is a rather frightening claim.

18 The other approach requires that the actual clients
19 be given the controlling decision in their actual cases.

20 Now the group client ploy, very often the support-
21 ing documents are very old, five to 10 years old. You see,
22 groups don't get old or die, and they are not subject to upper

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1 economic mobility,

2 Often we find that these documents were obtained
3 months or years after substantial work and resources were
4 committed to the project.

5 MR. SMEGAL: Mr. Durant -- where is the Chairman,
6 Is Mr. Valois now in charge of this meeting?

7 CHAIRMAN DURANT: He will preside; I will stand back
8 here.

9 MR. SMEGAL: Mr. Valois, I understood from Mr.
10 Durant that we were going to have a brief introduction to
11 this and an opportunity to some questions,

12 Mr. Booker has now gone through what I estimate
13 to be over a half hour. He is not yet on page 13 of his
14 paper. I have read the paper. I just finished 19, and I
15 find out that there is some proposal he is talking about.
16 I can't find the proposal in his paper. I would like him to
17 summarize his proposal so that we can get to some questions.
18 I can read his paper myself.

19 CHAIRMAN DURANT: Professor Booker, you can continue
20 your presentation.

21 PROFESSOR BOOKER: All right. I will try not to
22 trespass on your patience.

In addition, you frequently encounter the client

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1 of a field program. The work at the center they have under-
2 taken at the request of an attorney in a typically distant
3 program. The centers assume that there is an eligible client
4 out there and they make no independent inquiry or inquiry
5 of the person requesting the work. A monitor visiting such
6 a center, he seeks the documentation from the field program.
7 It is refused on the grounds that the field program isn't being
8 monitored. And it is perfect catch-22. And later other
9 monitors go to the field program and it will work perfectly
10 in reverse.

11 And it only takes a few friendly souls to carry
12 this off,

13 Typically, our centers respond to every service
14 request without an attempt to screen the service to LSC-funded
15 and entitled providers or to eligible clients. Sometimes
16 half or more of the requests come from people claiming to be
17 LSC-funded programs or eligible clients.

18 Now those activities are not inherently evil and,
19 indeed, they are natural and consistent with the grand
20 strategy vision. Spread the word. The more people who
21 know, the better,

22 In a vacuum of pure theory either selection is

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1 possible. I believe that the statutory analysis in the paper
2 shows that the Congress -- that is an academic question for
3 us because the Congress came down so firmly in favor of client
4 center activity and so firmly against the grand strategy of
5 law reform theory.

6 Now if you are following the paper by page --

7 MR. SMEGAL: What page are you on?

8 PROFESSOR BOOKER: Page 13.

9 MR. SMEGAL: I just wanted to make sure I was keep
10 ing up.

11 PROFESSOR BOOKER: Issue alerts and warnings to a
12 network of interested organizations. We've got about 300
13 possible LSC mailees. You find 1500 to 2000 mailings.
14 Now these are informational networking mailings, but it turns out
15 that the organizations who receive them become very active
16 in connection with contacting legislatures and regulators,
17 but the center itself does not make the actual contact.

18 Now the picture here is that I agree that the
19 orchestra conductor does not blow the horns. What he does
20 is pass out the sheet music and raise the baton and the
21 orchestra picks up.

22 It is not the position that the centers are not

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1 good at this that they are doing, It is that they very good
2 at it and the question for you is is that what the Act and
3 you wishes them to use substantial resources for,

4 The declaration and the opening of the LSC statute
5 identifies what I personally believe would be the greatest
6 danger to publicly-funded Legal Aid,

7 The legal service program must be kept free from
8 the influence of or use by it of political pressures, That
9 nearly claimed OEO's time and it was a good and hard day's work
10 to save publicly-funded Legal Aid.

11 Of these centers, there are 17 national and five
12 regional training centers and which, by the way, are not
13 given to training. And 55 state support entities funded
14 from 67 different grants. There are 87 centers to support
15 285 providers. The number of centers is 30-1/2 percent of
16 the number of our providers. For every three provider grantees
17 we have one center as near a few decimal points behind it,
18 It seems top heavy, the tail wagging the dog. The problem
19 that we had a lot of trouble with the Chinese in Korea
20 militarily because our Army puts 5 percent at that time
21 our its people in touch with the fight and the enemy. 95
22 percent is logistic support,

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1 The Chinese on the other hand reverse those figures
2 and were a dreadly fierce opponent. And there is a question
3 as to how much handle is appropriate to the spear.

4 MR. SMEGAL: Mr. Booker, on page 20 of your report
5 you indicate there are 2906 staff attorneys --

6 PROFESSOR BOOKER: Yes, sir,

7 MR. SMEGAL: -- in our funded houses. How many of
8 those are in the 17 national centers, the five regional
9 training centers and 55 state supported entities?

10 PROFESSOR BOOKER: Let me see where we are, sir.

11 MR. SMEGAL: And I am curious what report are you
12 -- there isn't one footnote in your whole 21 pages.

13 PROFESSOR BOOKER: That is right,

14 MR. SMEGAL: There is a lot of statements made
15 here and we are going to go through them line by line, I
16 guess, when you are finished.

17 PROFESSOR BOOKER: Absolutely.

18 MR. SMEGAL: But starting with the 2906, which year
19 -- are we talking about this year, the current year?

20 PROFESSOR BOOKER: I asked for those figures
21 especially a few days ago from the Corporation staff.

22 MR. SMEGAL: Okay, Well you are not comparing

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1 the 285 basic field providers on page 16 with these support
2 centers?

3 PROFESSOR BOOKER: Oh, no, The whole thrust of that
4 argument, if I might answer you, is different. This portion
5 of the report that you have jumped ahead to is an argument
6 that our provider attorneys have the skill and experience
7 to litigate ably even great cases without the necessary
8 shop troops.

9 MR. SMEGAL: Well I am suggesting to you -- you
10 now made a statement that 30.5 percent of the -- you are
11 comparing the number of centers with the number of basic
12 providers and I am asking you how many lawyers there are.
13 Of the 2906, how many of those lawyers are in these centers
14 that you suggest are the support staff? Is it 5 percent?
15 Is it 3 percent?

16 PROFESSOR BOOKER: I cannot breakout that figure.
17 I'm sorry, I don't --

18 MR. SMEGAL: You also indicated that 2906 staff
19 attorneys are in the funded houses --

20 PROFESSOR BOOKER: Yes.

21 MR. SMEGAL: -- and that 39 percent of them have
22 over five years of experience. Does that mean that 61 percent

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1 of them have less than five years of experience?

2 CHAIRMAN DURANT: Mr. Smegal, I don't mind you
3 asking questions --

4 MR. SMEGAL: Mr. Durant, we have been on this Board
5 for 2-1/2 years. We have had a lot of people appear before
6 us. Every one of the Board members that is sitting at this
7 table has asked questions as the presentation was made. I
8 was given this particular document about an hour ago. I
9 am absolutely offended by this presentation. We have two
10 law professors on this Board. As I pointed out to you, I
11 read an article yesterday in the San Francisco Chronical, there
12 are 1945 law professors at least and I don't want to hear from
13 1945 law professors. I would like to hear from Mr. Eaglin;
14 I would like to hear from Mr. Uddo. They are law professors.
15 They have been on this Board with us for almost three years.

16 I haven't seen the written contract under which
17 Mr. Booker was hired, if there is a written contract. I
18 have no idea of what his purpose in being here is other than
19 I get to page 20 of his 21-page report and he is talking about
20 some proposals that he is making and I can't find that
21 proposal in the first 20 pages.

22 He is making statements in here that are unsupported

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1 by fact. He is making allegations. There's a whole bunch
2 of people out there that call themselves law professors that
3 can come in here and give a similar report. Nobody asked
4 him here. This Board didn't ask him to render this report.
5 And I am tired of listening to him, Mr. Durant. And I am
6 going to ask him questions and I want to ask him the kinds
7 of questions that other members of this Board have asked other
8 people who have appeared before us in the past.

9 CHAIRMAN DURANT: Mr. Smegal --

10 MR. SMEGAL: And I am going to ask him as he goes
11 along.

12 CHAIRMAN DURANT: Mr. Smegal, I have no objection
13 to you asking questions of Mr. Booker, but I also think
14 that Mr. Booker, as we have done with other witnesses, should
15 not be interrupted in the train of a particular point that
16 he is making and I am asking that you respect that for this
17 particular witness.

18 MR. SMEGAL: I am not interrupting. He is on
19 page 16. He is talking about 30.5 percent. I am following
20 him with my finger as he reads his report and I want to refer
21 to another part of his report and I've asked him how many
22 staff attorneys he is talking about. How many attorneys --

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1 How many attorneys are there in these support centers and I
2 don't believe he has been able to give me an answer. I've
3 got other questions and I am going to ask them as he goes
4 along.

5 CHAIRMAN DURANT: Mr. Booker,

6 MR. SMEGAL: Do you have to the question?

7 PROFESSOR BOOKER: I answered you before.

8 MR. SMEGAL: Which is you don't know?

9 PROFESSOR BOOKER: That's right.

10 MR. SMEGAL: Then that is the answer.

11 CHAIRMAN DURANT: Well, no, let him answer.

12 PROFESSOR BOOKER: Perhaps 100 statistical compari-
13 sons might be made. I didn't happen to make the one you have
14 asked about. I did make the ones that I reported here.

15 MR. SMEGAL: Well you made another one though,
16 you made the comparison that each of the 285 centers have an
17 average of \$900,000 in LSC funding. What you didn't go on
18 to indicate was that these five regional training centers are
19 funded at \$125,000 on an average. The state support centers
20 that you referred to, the 55, have an average funding of
21 \$140,000 and the 17 national support centers have an average
22 funding of less than \$500,000 as compared to the \$900,000

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1 you've indicated, You have a lot of information here that
2 you haven't provided to us that in just a moment or two I
3 have been able to pick out here,

4 PROFESSOR BOOKER: Yes,

5 MR. SMEGAL: So you are picking and choosing the
6 information you want to give us,

7 PROFESSOR BOOKER: There is a world of facts --

8 MR. SMEGAL: And you have selected certain facts
9 that --

10 CHAIRMAN DURANT: Mr. Smegal, if you would let
11 him answer the question,

12 MR. SMEGAL: Well I haven't asked a question,

13 PROFESSOR BOOKER: You are already tired of
14 listening to me. I tried to keep it short and tell you what I
15 in my poor judgment, thought might be important,

16 MR. SMEGAL: Forty-five minutes to mouth a 21-
17 page report is not short, Mr. Booker,

18 CHAIRMAN DURANT: Well he hasn't had 45 minutes,
19 Mr. Booker, if you would continue your report,

20 MR. MENDEZ: Clark, I can understand Tom's position,

21 Mr. Booker, could you sort of jump to whatever the
22 conclusion is and give us a conclusion or what you suggest and

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1 I think we ought to give Tom his option to ask some questions
2 because I, too, have a few questions and I would much prefer
3 looking at the summary first and then go back and fill in the
4 holes,

5 CHAIRMAN DURANT: Mr. Booker.

6 PROFESSOR BOOKER: The basic proposal is to change
7 the locus of primary source, of primary choice from vision
8 centers of grand strategies to the actual field providers
9 and their clients.

10 The central planning is the system that is doing
11 the very best it can likened to when a dealer winds up with 9700
12 traffic chassis and no engines to put on them with the best
13 planning they can do.

14 The fact that about 300 individual decisions would
15 have to be made by particular programs and centers is not
16 really a drawback. That is the delicate fine-tuning of an
17 open market approach. It is that system that enables me to
18 walk into a small auto store in Edwardsville and buy spark
19 plugs for my tractor made in 1952. It is wonderful at getting
20 goods needed and wanted; services needed and wanted where they
21 are.

22 I would like to supplement this by saying that

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1 the fear that there is no equivalence source in the open un-
2 subsidized world of help, I would humbly invite the Board's
3 attention to the Public Interest Handbook where 370 -- and
4 that is a long way from being all, 370 organizations, founda-
5 tions, public interest firms list their availability and their
6 expertise which runs an enormous spectrum -- as part of the
7 charitable grant others would have to be bought from and
8 about 20 of our centers, by the way -- not centers, 20 of our
9 houses of all sorts are included in that.

10 I only had time to pull together a few larger
11 advertisements, but I did get that as the last one.

12 Now the question that I am proposing to the Board
13 that the money spent now to finance centers should be awarded
14 to the basic field providers so that they, not I or some other
15 person, they that have to do the job can make the decisions
16 and use it for their client service needs as each needs
17 and decides because they have differences.

18 And I believe that is the burden of my refrain, sir.
19 And I am sorry that I offended you with my presentation.

20 CHAIRMAN DURANT: Mr. Eaglin?

21 MR. SMEGAL: As a point of personal privilege,
22 Mr. Booker, you didn't offend me with your presentation, I

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1 am offended by the length that Mr. Durant has allowed you to
2 go in making the presentation. It has nothing to do with
3 you. It has to do with the circumstances under which your
4 presentation has been made.

5 If you thought I was personally referring to you,
6 I apologize. There was no personal affront intended.
7 My comments were directed to Mr. Durant.

8 PROFESSOR BOOKER: I was worried from your comments
9 that I might have personally affronted you --

10 MR. SMEGAL: No.

11 CHAIRMAN DURANT: Mr. Eaglin?

12 MR. EAGLIN: Professor Booker, as part of your
13 report you refer to -- you are citing specific language from
14 the Act to interpret -- to give an interpretation to your
15 report concerning client centers versus non-client centers,
16 and so forth. But there is another thing that perhaps would
17 be helpful for your consideration,

18 In a recent document coming out of Congress from
19 the Senate Subcommittee on State Funded Justice, and so forth,
20 the recommendation for funding for Legal Services Corporation
21 for '88 has two sums. One sum for national support; the other
22 one for state support and, of course, various sums for other

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1 categories. Now the language says, "the Committee again recom-
2 mends earmarking the funding levels for each of the Corporation's
3 line items in the bill."

4 The Committee has taken this action to ensure that
5 that its recommendations are carried out. And since it is
6 the Committee's understanding that the Corporation may not
7 view report language reflecting some Congressional priorities
8 as binding,

9 If we are to be concerned, as you say we should
10 be, about language of the Act and so forth, then shouldn't
11 we also be guided by what Congress has said very specifically
12 it wants for -- as a sum for national support and as a sum
13 for state support if we are going to follow Congressional
14 directives in this?

15 CHAIRMAN DURANT: Mr. Eaglin, may I just ask you
16 was that the full Senate report or the Committee report?

17 MR. EAGLIN: Committee report,

18 CHAIRMAN DURANT: I didn't hear the --

19 MR. EAGLIN: It's the Committee report,

20 CHAIRMAN: Okay, I'm sorry.

21 PROFESSOR BOOKER: Certainly legislative history
22 and whatever law the Congress finally adopts is an important

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1 help in interpreting it. And, sir, the whole burden of what
2 I am trying to argue is not what I might think best, but in-
3 stead calls to let us determine the intent of the Congress
4 in its legislation about this. What you are telling me about
5 a committee report on legislation that is still in progress.

6 I will never sit here and tell you to disobey or
7 dishonor or interpret unfairly what the Congress may make the
8 law to be. I do not know what they will decide. I have to
9 tell you that, frankly, I'm not a very political person. I
10 don't know the terms or the actions of the legislative
11 houses. The only reason I am here is -- I can't control
12 or determine anything that Congress may do. I am trying to
13 do my best to share what I think in general terms with you
14 who have the actual responsibility.

15 MR. EAGLIN: It seems they made it clear that they
16 want us to do concerning national/state support by indicating
17 a specific amount and directing those amounts. In addition
18 to that, supplying a different figure for basic field programs.
19 So it seems that Congress wants that separated also.

20 PROFESSOR BOOKER: I don't know whether that is
21 the final point that the law will take or whether other --
22 you know, we both know that matters in Congress are contested

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1 back and forth and changes are made in compromise committees,
2 I am not in on whatever the political situation may be,

3 MR. EAGLIN: Thank you.

4 CHAIRMAN DURANT: Mr. Mendez, you said you had
5 some questions,

6 MR. MENDEZ: Well, I have been reading several
7 different alternatives and I've been a supporter for a long
8 time of your position and I assume that your position -- correct
9 me if I am wrong -- is that turn the funds over to the local
10 programs and let them decide whether they are going to spend
11 the money on national support, state support or whether use
12 to obtain whatever support they want to do.

13 There is another alternative -- well there are
14 several alternatives, but one of the others is, of course,
15 leave it the same way and I am not very satisfied with that.

16 The next alternative -- another alternative is to
17 bring it all in-house and I am not very prone to do that
18 either and I was curious if you had discussed or thought
19 or considered the option of bringing all of the state and
20 national support in-house?

21 PROFESSOR BOOKER: I had heard talk of this and,
22 indeed, there was a time when that was mandated by the then

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1 law but I think it involves exactly the problem that I have
2 been trying to address, that is of taking control away from
3 the client and local provider houses. I don't think it
4 matters a lot whether it is centered in the Corporation, that
5 we know best or in the centers that they know best. I think
6 people know about their own interest.

7 The opposite view, although it is attractive to
8 highly educated people who mean to do well says that people in
9 general are not able to manage things for their own best
10 interest. But we, on the other hand, can manage things for
11 everyone's best interest. And my experience has not brought
12 me to regard the judgments and decisions of people who do not
13 happen to have very much money who are poor.

14 CHAIRMAN DURANT: I would like to just offer simply
15 a few comments for the record and particularly in light of
16 Paul's observation of the committee language.

17 When the Corporation submitted its 1988 budget
18 request to Congress, it indicated that certain specific
19 programs and assistance were still under examination by the
20 Board and that continuing programmatic evaluation could lead
21 to amendment of the Corporation's budget request for fiscal
22 year 1988;

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1 Since the Corporation's budget request was lodged
2 with the Congress in February of this year, examination of the
3 Corporation's various support componets has advanced signifi-
4 cantly, Individually as well as collectively, the Board has
5 had an opportunity over the last three years of its time, and
6 certainly more recently, to inspect more closely various aspects
7 of the support function.

8 While review has not been wholly exhaustive,
9 sufficient progress has been made and achieved to permit the
10 Board a reassessment perhaps of those support components
11 and others which it identified for possible reconsideration.

12 In the documents it submitted to Congress, the
13 Board noted its reservations about the wisdom of especially
14 dedicated funds for such separately endowed programmatic
15 efforts as migrant assistance, technical assistance, regional
16 training centers, computerized legal research, Clearinghouse
17 and national and state support. Board members did not
18 necessarily question the advisability or even the necessity
19 of any of these functions in relation to any individual field
20 programs. Rather what many of my colleagues and I continued
21 to question and to wonder about was the wisdom of earmarking
22 segments of appropriated money for particularized support and

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1 other functions regardless of local priorities and heedless
2 of specific local needs as determined on a local basis.

3 Many of us were troubled by preserving an expensive
4 and elaborate array of support functions and other functions
5 at the expense, again, of local service and local decision-
6 making in an accountable fashion.

7 An example illustrates what confronted the Board.
8 Despite lengthy study, comment and consideration, distribution
9 of migrant funds has remained fiercely debated and toughly
10 resistant to any nationally determined distribution formula.

11 Similarly, computerized legal research, advocacy
12 training and specialized litigation support have all defied
13 efforts to devise a funding formula which would do distributed
14 justice to each local program and its need.

15 Therefore, I am going to propose today that the
16 Corporation again recognize the fundamental responsibility
17 of each local program to determine its own needs and the
18 corresponding claim of each local program to expand available
19 funds as it, with reference to the community it serves,
20 responsibly sees fit. No study, no poll can convincingly
21 serve as a national substitute for the local decision of how
22 to expend limited resources and how best to address the

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1 needs of clients in that community,

2 From repeated experience, I am persuaded anew
3 of the Act's wisdom in affirming the primacy of local control
4 along with the expenditure of funds and the insoluble diffi-
5 culty of substituting national schemes for local options
6 and self-determination.

7 I also appreciate that ultimately this will be
8 a Congressional determination and as one who has always
9 striven to debate particular questions and know that the
10 ultimate forum will be the Congressional forum I am going
11 to make a motion this morning.

12 MOTION

13 That in an effort to focus scarce funds for legal
14 services on local direct delivery, I move to amend the LSC
15 budget request for fiscal year 1988 as follows:

16 Category I under direct delivery of services to
17 poor persons, there will be category A, programs presently
18 funded as (1) basic field programs and (2) supplemental field
19 programs to receive \$282,938,000.

20 Subcategory B, native American programs, \$7,022,000.

21 C under the same direct delivery of services to
22 poor persons category, law school clinics, \$1,000,000. And

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1 subsection D, direct delivery alternative dispute resolution
2 initiatives, \$2,000,000.

3 And then as a second category, II, administration
4 and development, \$12,540,000 for a total budget of \$305,500,000.

5 It is understood that as part of this motion
6 all funds provided in I, direct delivery of services to poor
7 persons which totals \$292,960,000 shall only be expended for
8 the local direct delivery of client-centered legal assistance
9 to eligible poor persons.

10 And, further, that all programs presently funded
11 as (1) basic field programs and (2) supplemental field programs
12 shall establish specific substantive client training and
13 client-managed initiatives solely dedicated to the purpose
14 of redressing legal grievances of client-eligible persons.

15 Is there a second to that motion?

16 MS. BERNSTEIN: I will second it.

17 CHAIRMAN DURANT: I would like to offer one comment
18 before opening it up to Board discussion.

19 While I realize that there will be much discussion
20 and division about both the wisdom procedurally and substan-
21 tively with this motion, two things motivate me. The first
22 is that I think the -- and I have spoken on this for two years

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1 and Tom and Basile also have directed their comments as well
2 as Mr. Eaglin and every member of this Board to the whole
3 question of what is the purpose of the things that we do.
4 And I think that it is important, in my judgment, that as
5 a Board we recognize that our focus should be the direct
6 delivery, the local direct delivery of the ordinary services
7 for poor people in the daily problems of life and work.

8 I also think it is very important, and I will speak
9 very bluntly that as Board Chairman at times I have not been
10 as listening as I should be regarding some of the questions
11 and comments that have come from clients in the field.
12 I specifically added the last paragraph after meetings that
13 I had with clients in other parts of the country because I
14 think it is important that this Board very clearly state as
15 a part of this motion that it is going to look in a very
16 accountable fashion to the role the clients play in local
17 programs, in local decisionmaking and local client initiatives.

18 We may disagree on the best way for those to take
19 place, but I think that it is eminently important that this
20 be a client center program and, therefore, that is why I
21 added the last paragraph of my motion.

22 I would also say that --

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1 MS. BERGMARK: Excuse me. Are there copies of
2 that motion available?

3 CHAIRMAN DURANT: I just had copies brought to me
4 and --

5 MR. UDDO: I have a point of order, Mr. Chairman.
6 I believe the motion is out of order because I don't believe
7 the agenda suggests that action would be taken on the budget
8 today. The agenda says consideration and review and I don't
9 see any indication that action would be taken. So I don't
10 think there has been proper notice that action would be taken
11 to change the budget.

12 CHAIRMAN DURANT: Mr. Bayly,

13 MR. BAYLY: Well in arranging or in establishing
14 the agenda at the request of the Chairman, Mr. Uddo, the staff
15 considered how best to word this particular agenda item
16 and in doing that we identified, as you can see, all of the
17 lines that are included in our 1988 budget request along with
18 the asterisks that the Board had indicated to the Congress
19 that it may review those lines. By labeling it consideration
20 and review of LSC budget fiscal year 1988, we thought we were
21 including as comprehensively as possible any issue that might
22 arise from the budget as it was requested of the Congress

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1 and I don't believe the provisions of the regulations that
2 would preclude my voting would apply, but in abundance of
3 caution, I have asked that that particular line be separated
4 out and I will abstain from voting on that particular part of
5 the motion.

6 CHAIRMAN DURANT: Mr. Smegal.

7 MR. SMEGAL: Well I have several things to say, Mr.
8 Durant, first of which would be a point of personal privilege.
9 I have been on this Board with you now for almost three years
10 and have observed you through that time period abusing what
11 I consider to be the powers and responsibilities and the duties
12 of the Chairman. You have done it again.

13 As Chair, you cannot make a motion. I would have
14 thought that at least you would have the good sense to have
15 someone else make that motion for you. As the Chair, you are
16 supposed to remain neutral.

17 You poison the water by not only making the motion
18 but then arguing for it in the middle of what was otherwise
19 a discussion with Mr. Booker, you jump up and make a motion
20 that has nothing to do with his presentation. Others of us
21 had questions of him yet you disrupted the flow of that
22 discussion with Mr. Booker. I understand that the phone on

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1 the desk may be for the purposes of a conference call with
2 a possible, another member of this Board at a specific time.
3 If that is what you are doing, you are orchestrating this
4 meeting to get to a vote at a particular time when Mr. Wallace
5 can join us and cast a vote, I am personally offended by
6 it. I have a lot of questions of Mr. Booker, as I am sure
7 other members of this Board do, and I would like to get on
8 with that questioning now and I would expect to have an
9 appropriate amount of time in which to do that.

10 CHAIRMAN DURANT: You may ask --

11 MR. MENDEZ: May I just address one respond.

12 Tom, I can understand your difficulties, but let's
13 just address one issue, the telephone conference. In the past,
14 we made special effort for both you and Mike Wallace on
15 telephone conference calls.

16 CHAIRMAN DURANT: And Mr. Eaglin also.

17 MR. SMEGAL: To participate in the discussion.

18 Mr. Wallace, as I understand it, is scheduled to
19 appear on that phone at 11:30 to vote and if that is what is
20 happening here, I am very concerned about the way the Chairman
21 is handling this meeting. He has not been party to any of
22 this discussion today.

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1 MR. MENDEZ: My recollection of the past was that
2 we made special accommodations to you to specifically --

3 MR. SMEGAL: That is right and I was part of all
4 the discussions that occurred prior to the vote.

5 CHAIRMAN DURANT: And as I recall there were also
6 two things in my mind, Mr. Smegal, one is --

7 MR. MENDEZ: I want to address that as well, Clark.

8 CHAIRMAN DURANT: All right. Go ahead.

9 MR. MENDEZ: When we first came on this Board and
10 we first started making the various discussions, we made a
11 determination that all chairman of all sections, including
12 the Chairman of the Board, could actively participate because
13 this was a special -- my recollection was and is that we
14 thought that since the President appointed all of us that they
15 had a right to make their views known and that this was a
16 special circumstance in the way that this Board was chosen.
17 And that it is not -- the President -- the Chairman of the
18 Board, excuse me, is, in fact, an arbiter, but is also an
19 advocate for his position.

20 MR. SMEGAL: I accept that and there is no problem
21 with that except the way you do that is you step down from the
22 Chair and you turn it over to Mr. Valois and you make your

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1 motion. You do not do it as Chair.

2 My point is not that, but my point is we are in
3 the middle of a discussion with Mr. Booker, who you brought
4 here, with his 21-page report and he isn't completed yet.
5 He is not through.

6 Now why this motion has come up in the middle of
7 Mr. Booker's testimony, I don't understand, unless it is for
8 the purpose of orchestrating this meeting, Mr. Durant.

9 CHAIRMAN DURANT: Mr. Valois.

10 MR. VALOIS: Mr. Chairman, just to get this thing
11 moving forward, if you would relinquish the Chair long enough
12 to make that motion and so it will be in proper order.

13 CHAIRMAN DURANT: Well I will relinquish -- we can
14 do one of two things, I will relinquish the Chair though to
15 you as Vice Chairman for the purpose of making this motion,
16 but I think it might be best if you would do me the courtesy
17 of simply making the motion.

18 MOTION

19 MR. VALOIS: I move the Chairman's earlier uttered
20 motion.

21 CHAIRMAN DURANT: Is there a second to that?

22 MS. BERNSTEIN: I seconded the motion for you and

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1 I will do the same thing for Bob.

2 Let me just state though that every committee
3 chair has at one time or another made motions so it is the
4 practice of the Board --

5 MR. MENDEZ: That is correct.

6 MS. BERNSTEIN: -- to have done it. If it is
7 literally incorrect for some legal impediment and I don't
8 see it in our Act or our regulations, then we have been
9 waiving this along, but it has now been cured. We appreciate
10 your, you know --

11 MS. SMEGAL: Thank you very much. I have not
12 waived it at all. I made this point at our initial meeting
13 back in December of 1984, and I will continue to make it.
14 I don't believe it has been waived. Under the circumstances,
15 I think we should get back to Mr. Booker.

16 CHAIRMAN DURANT: May I just make -- if I might,
17 Mr. Uddo, just one other comment on the telephone in terms of
18 Mr. Wallace. One other instance that I certainly recall is
19 that during, I think, it was our presidential search, Mr.
20 Eaglin had asked for permission to call in in order to cast
21 a particular vote and was not part of all of those particular
22 processes going up to that. I don't at all fault him for that

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1 because he has as much right as any other Board member to
2 cast his vote in a particular way. He is appointed by the
3 President in the same way that all of us are and that if Mr.
4 Wallace feels when he calls in that he doesn't have sufficient
5 information to address the motion, I think we all know Mr.
6 Wallace well enough to know that he will tell you that.

7 Mr. Uddo,

8 MR. UDDO: I do have a problem, Mr. Durant.

9 First of all, let me say in Mr. Eaglin's defense,
10 as I recall, that was at the end of a long process. That Mr.
11 Eaglin had attended virtually all of the search committee
12 meetings, but aside from that, I am very concerned if you
13 think we are going to vote on this in less than 15 minutes.
14 I don't see how that is at all possible. I have a number of
15 questions, I know Mr. Smegal does. I don't see any way
16 that we can in good faith vote on something this major with
17 less than 10 minutes of questioning and discussion by the
18 Board.

19 MS. BERNSTEIN: If we can't, we can't, but the
20 point is that let's move forward with what we are doing.
21 I don't, you know --

22 MR. UDDO: But in the intent is that Mr. Wallace

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1 calls, we are going to take a vote on whether or not to call
2 the question at that point, if that is what is being laid out
3 here, then I think that is an outrageous breach of trust to
4 the Board.

5 MR. MENDEZ: Well if we don't get the job done,
6 I agree with you.

7 MR. UDDO: Well we can't get it done in 10 minutes.
8 I've got 45 minutes of questions, I'm sure.

9 MR. MENDEZ: Okay.

10 MR. SMEGAL: Mr. Durant, there is a more basic
11 question here though. Let me just explain to you my concern
12 here. I have been handed a motion that you have made or
13 maybe now that Mr. Valois has made on your behalf about 22
14 minutes ago and, if I understand correctly, Mr. Wallace has
15 had this motion for quite a while. Why didn't I have it
16 when Mr. Wallace got it?

17 CHAIRMAN DURANT: Mr. Wallace has not had this.

18 MR. SMEGAL: This is going to be read to Mr.
19 Wallace over the phone when he calls?

20 CHAIRMAN DURANT: That is correct.

21 MR. SMEGAL: I see. And he is going to deliberate
22 and instantaneously

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1 CHAIRMAN DURANT: I think you should feel free
2 to ask Mr. Wallace any questions in terms of what he wishes
3 to do.

4 MR. SMEGAL: How is that Mr. Wallace has been --
5 how is it that an arrangement has been made to plug in Mr.
6 Wallace on a conference call if, in fact, Mr. Wallace did not
7 have this particular document ahead of time?

8 MR. MENDEZ: I will tell you, I have been very
9 interested in having something similar to this over a long
10 period of time and I have conducted some negotiations with
11 Mr. Wallace concerning these issues and Mr. Wallace has
12 expressed an interest over the years. As you will well
13 reflect that Mr. Wallace over the years has been one of the
14 prime movers in doing this type of thing, Tom.

15 MR. SMEGAL: I want to know whether Mr. Wallace had
16 this document before I had it at five minutes to 11:00?

17 CHAIRMAN DURANT: No.

18 MR. MENDEZ: Mr. Wallace does not have the document.

19 CHAIRMAN DURANT: The answer is no.

20 MR. SMEGAL: Does Mr. Wallace have the substance
21 of this motion? When did he get it?

22 CHAIRMAN DURANT: This motion was drafted and

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1 written by me last night and I asked Mr, Elgin to type it
2 up. In fact, made some changes this morning,

3 Ms, Benavidez,

4 MS. BENAVIDEZ: I don't believe we should vote on
5 it today,

6 CHAIRMAN DURANT: Ms, Miller,

7 MS. MILLER: We do have a committee on this issue.
8 I think we should wait until the committee is finished with
9 their findings to vote on it,

10 CHAIRMAN DURANT: Okay,

11 MR, UDDO: I would like your assurance, Clark,
12 that we will not vote on this until there is at least adequate
13 time for questions and discussion?

14 CHAIRMAN DURANT: Well I will reserve judgment on
15 that and make a determination,

16 MR, UDDO: Well I don't want to participate in
17 any of the rest of the meeting if I don't have an assurance
18 that we are going to have adequate time for discussion and
19 I would suggest that anyone else that feels that way, that
20 we withdraw ourselves from the meeting and I don't think you
21 will have a quorum if that happens,

22 MR, MENDEZ: Well I agree that we ought to have

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1 adequate time for discussion. Let's get on with it,

2 CHAIRMAN DURANT: So let's discuss.

3 MR. UDDO: If he calls at 11:30 and you try to
4 vote on it, I think that is going to be a breach of trust.

5 MS. BERNSTEIN: I have no intention of trying to
6 vote at any given time, Basile.

7 MR. UDDO: Well somebody told Mike Wallace when to
8 call.

9 CHAIRMAN DURANT: No. Mr. Uddo --

10 MS. BERNSTEIN: We know when Mike Wallace is not
11 going to be in court. And those are the times today he
12 can participate. As you may realize, this meeting today was
13 postponed and, therefore, some of our schedules were not
14 in conjunction with today just as we have tried to accommodate
15 everybody else in terms of making them available especially
16 when we have made changes.

17 CHAIRMAN DURANT: Mr. Booker --

18 MS. BERNSTEIN: We know exactly when he is going
19 to be available so we can let him participate as much as he
20 can.

21 MR. UDDO: I don't mind accommodating him if we
22 have adequate time for discussion.

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1 CHAIRMAN DURANT: Mr. Mendez,

2 MR. MENDEZ: I am willing to sit here today,
3 tomorrow and Sunday.

4 CHAIRMAN DURANT: Mr. Uddo, would you like to ask
5 questions, there is Mr. Booker,

6 MR. UDDO: I think you had already recognized Mr.
7 Smegal,

8 CHAIRMAN DURANT: Mr. Smegal,

9 MR. SMEGAL: Do you have a written contract to do
10 this project that you have brought here today?

11 PROFESSOR BOOKER: I don't think so, sir,

12 MR. SMEGAL: How were you contacted to do this?
13 What was the process that appropriated this draft?

14 PROFESSOR BOOKER: I believe Mr. Elgin phoned me
15 and asked me if I would be willing to give a little outline
16 of what I might think about the support centers and the field
17 providers, which I tried to do,

18 MR. SMEGAL: And this was three weeks ago, as I
19 understand it?

20 PROFESSOR BOOKER: Oh, let me see. Approximately.
21 Not longer than that.

22 MR. SMEGAL: So it was in September?

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1 PROFESSOR BOOKER: Yes, it was in September,

2 MR. SMEGAL: It was not in August?

3 PROFESSOR BOOKER: No. Oh, no,

4 MR. SMEGAL: You indicated you were provided
5 in response to one of my questions, I thought I heard you say
6 you had been given some documents --

7 PROFESSOR BOOKER: Yes, sir,

8 MR. SMEGAL: -- by Mr. Elgin?

9 PROFESSOR BOOKER: Yeah, I believe Mr. Elgin was
10 the -- you know, they came in the mail,

11 MR. SMEGAL: Federal Express?

12 PROFESSOR BOOKER: Or Federal Express,

13 MR. SMEGAL: A package of materials?

14 PROFESSOR BOOKER: Huh?

15 MR. SMEGAL: A package of materials?

16 PROFESSOR BOOKER: Yes, several,

17 MR. SMEGAL: Could I ask, Mr. Bayly, that I have
18 that same package of materials.

19 MR. BAYLY: Yes,

20 MR. SMEGAL: Thank you,

21 Do you have a resume, Mr. Booker?

22 PROFESSOR BOOKER: Not with me personally,

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1 MR. SMEGAL: No, but --

2 PROFESSOR BOOKER: Well on file with the Corporation,
3 yes, sir, I do.

4 MR. SMEGAL: Was it provided to the Corporation
5 in conjunction with your monitoring activities in 1986?

6 PROFESSOR BOOKER: Oh, yes.

7 MR. SMEGAL: Is it as recent as 1986 as a resume?

8 PROFESSOR BOOKER: I honestly, sir, cannot
9 remember when it was last updated. It was correct as filed.
10 I may have made a visit or two since then, you know.

11 MR. SMEGAL: Did you -- I think you mentioned in
12 describing your background that you had been involved in a,
13 what sounded like a Legal Aid program in Michigan?

14 PROFESSOR BOOKER: Yes, sir, Cass County.

15 MR. SMEGAL: Cass County,

16 Was that funded by the Legal Service Corporation?

17 PROFESSOR BOOKER: Well, sir, yes and no depending
18 on which time you asked. It was created by the Cass County
19 Bar Association and for 15 years was supported by Notre Dame
20 Law School and the Cass County Bar Association. Members taxed
21 themselves to have it going.

22 Then Cass County, the county government, decided

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1 it was very good value for money and they funded it.

2 Then in, I would suppose, approximately 1981 the
3 program, which is an LSC program at Grand Rapids, a fairly
4 large one, took in Cass County and there was federal funding
5 in Cass County for about a year until they felt that they
6 ought to withdraw from that service area. That probably
7 strengthened resources and then the law school and the Cass
8 County Bar Association and the Government of Cass County
9 carried it on to the present time.

10 MR. SMEGAL: When it became an independent activity,
11 was there ever an effort made to get funding directly from
12 Legal Services Corporation? Did you make application?

13 PROFESSOR BOOKER: No, sir, there was not. In
14 fact, the current of change was quite the opposite direction,
15 The local lawyers, judges and programs felt very comfortable
16 with what they could do. For example, we could defend the
17 occasional indigent criminal because we did not take federal
18 money. And it, to some extent, constrained what we could
19 do. However, it was, if I can speak frankly, important to the
20 provider house at Grand Rapids because the inclusion of
21 population areas was beginning to have an important effect
22 on the funding of programs. And they were able to persuade

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1 the county government that -- I think the funding that they
2 provided was on the order of \$15,000 for one year. And the
3 county government -- these people are so frugal that they put
4 Sears garage carpeting, you know, patio carpeting in the halls
5 of the court house -- they didn't want to pass up further
6 support that my relieve their budget and they agreed with it.

7 It wasn't a case of anybody at Cass County Legal
8 Aid seeking Corporation assistance or money.

9 MR. SMEGAL: No application was ever filed by
10 Cass County?

11 PROFESSOR BOOKER: I was not the director of
12 that program. I never filed one as the volunteer attorney
13 and I cannot say with absolute certainty what papers might
14 have been filed and by whom. It would be Mr. Gene Brady who
15 was the director of that clinic at that time.

16 MR. SMEGAL: The thesis of your -- what I have
17 distilled from the thesis of your presentation to us seems to
18 be directed at maximizing the use of federal resources, is
19 that a fair statement?

20 PROFESSOR BOOKER: Yes, sir.

21 MR. SMEGAL: Do you believe there is a finite
22 maximum of federal resources available to this Corporation?

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1 PROFESSOR BOOKER: Well, sir, I am no expert on
2 that but it seems as I look at the moneys that the Congress
3 has been willing to give the Legal Services Corporation in
4 the past that there seems to be a real limit beyond which
5 it is very difficult to obtain more money from the Congress,
6 I don't know this firsthand, but I can't believe anything
7 but that the Corporation and its people have earnestly
8 petitioned for more moneys to help with this problem.

9 MR. SMEGAL: Well, Mr. Booker, if you reviewed
10 that a little more closely you would find out that in 1981,
11 I believe, or maybe it was '82, the funding of this Corporation
12 was \$241 million. I believe the next funding level was \$257
13 and I believe the next funding level was \$289. And I believe
14 when this Board, this Board that is sitting at this table right
15 now came, was confirmed, the funding level was \$305.5,

16 The majority of this Board since it has been a
17 confirmed Board has never asked the Congress for more than
18 \$305.5. They have not sought further funding. And, in fact,
19 I appeared before the Appropriations Committee in June for
20 the purpose of speaking for additional funds because the
21 last vote of this Board was 6 to 5 to remain at present funds.
22 Certainly the majority of this Board, the six majority believes

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1 in a maximum. And I am asking you if you share that view,
2 If you believe that federal funding is at a maximum and that
3 we shouldn't seek further funding for Legal Services Corporation?

4 PROFESSOR BOOKER: I don't believe that I am
5 reasonably qualified to pass a worthwhile opinion on that,
6 That wasn't the approach I was making or the matter that I
7 was studying. In a vacuum, I don't know whether -- what a
8 theoretical maximum would be. I am quite unacquainted with
9 the considerations that obviously have been debated back and
10 forth in the Board with respect to strategy and funding.
11 I didn't mean to tell you anything about that. What I was
12 telling you is that with the money that you have in the last
13 period which, indeed, I was aware of the fact that they were
14 coming up with that, there remains a safe number of eligible
15 people with low-impact cases that are tragic to them that
16 the programs they don't want to not serve, but they have no
17 real control.

18 MR. SMEGAL: So is it fair to say that you have
19 asked, would support additional funding for the Legal Services
20 Corporation?

21 PROFESSOR BOOKER: I'd like to have a chance to
22 be better informed on, well, for example, to hear persons like

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1 yourself and those who differ from you explain to me the depth
2 of the issues. It is a complicated question. In general, all
3 my life I have believed in and supported publicly-funded Legal
4 Aid and, in general, I believe that we do not have as much
5 money as I personally would like to see us have. But I under-
6 stand that legislation and budgeting is a compromise like
7 warship designing. You get another coat of armor and you lose
8 10 knots. I don't know all the considerations that are
9 familiar to the Board.

10 I can give you my general predelictions which I
11 have more, but I am not privy to the policy reasons that may
12 be involved.

13 I am sorry I can't be -- I am not here, sir, to
14 try to say that I am an expert on everything. I told you
15 my modest qualifications and they did not include dealing
16 with the congress with respect to general overall funding.
17 I was looking at what might be the best use of what you have.

18 MR. SMEGAL; Fine. Let me focus in on where your
19 expertise appears to be, at least in this paper, and if I under-
20 stand correctly you indicated that in 1986 that you monitored
21 one of the national support centers, social science center,
22 is that right?

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1 PROFESSOR BOOKER: I believe, sir,

2 MR. SMEGAL: Let's just focus on that because that
3 would appear then to be an area where you would have some
4 expertise. On page 9 of your document, you make the statement
5 to cover an abstract class. Now in monitoring at the center,
6 how many lawsuits did you discover that were filed on behalf
7 of an abstract class?

8 PROFESSOR BOOKER: The litigation --

9 MR. SMEGAL: No, no. If you could just respond
10 to my question,

11 PROFESSOR BOOKER: No one sues for an abstract
12 class, as we both know.

13 MR. SMEGAL: Well your document is replete with
14 references to nonexistent clients and classes of individuals
15 that don't exist. I want to know in that last monitoring --

16 PROFESSOR BOOKER: The classes exist, sir, but the
17 clients do not.

18 MR. SMEGAL: Can you give me an example of a law-
19 suit filed by that support center that falls within the
20 category of the statements contained in your document?
21 Is there one?

22 PROFESSOR BOOKER: There were no lawyers on the

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1 staff of that center. Will that help you?

2 MR. SMEGAL: Okay. Well then let's go back to the
3 prior support center that you monitored. Which one is that?

4 PROFESSOR BOOKER: I am concerned now -- as you
5 very well know, there is a lack of attribution of where these
6 things happen --

7 MR. SMEGAL: There are a lot of statements that
8 you personally make, that's correct.

9 PROFESSOR BOOKER: -- in my report.

10 If there is one thing that the Corporation and
11 Mr. Gomez and the Monitoring School have drummed into me is
12 that the Kastenmeier report and its limitations are a truly
13 serious matter and they are not to be played games with by
14 me. I think I can give you general observations, but by law
15 this is a Sunshine public meeting and I am most reluctant
16 to name names or to discuss details in connection with
17 monitorings, some of which have not gone final yet.

18 MR. SMEGAL: Well I want to talk about the ones
19 that are final. I want to talk about your personal experience
20 in monitoring efforts and I want you to try to identify for
21 us examples that support all the statements or some of the
22 statements, at least, that you made in here. Now give me an

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1 example from a monitoring activity you personally were involved
2 in of class action involving a lack of an actual client?

3 MR. MENDEZ: Mr. Chairman,

4 CHAIRMAN DURANT: Mr. Mendez,

5 MR. MENDEZ: I believe that this would be an
6 appropriate matter for executive session.

7 MR. SMEGAL: I am talking about public documents,
8 Mr. Mendez. Now Mr. Booker has been, by his statement, a
9 participant in five monitoring visits of national support
10 centers. I assume they all were before 1986 because the last
11 one he indicated was in September of '86. That didn't involve
12 lawyers so, therefore, that didn't involve litigation.
13 Therefore, that doesn't support the statements he makes in
14 this document.

15 But I want him to go back and give me an example
16 that supports statements such as that made in this document.
17 From a monitoring visit you personally were involved in that
18 has a final report.

19 MR. MENDEZ: Mr. Booker, I know that when I was
20 called -- went before the Senate Committee confirming my
21 confirmation that I had some nervousness and that I couldn't
22 recall some matters exactly immediately on time. And I must

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1 also tell you that I just participated in a trivia, a legal
2 trivia quiz at the Bar Association meeting this last week and
3 I was really surprised that I knew a lot of information but
4 I couldn't get it out very quickly. And if you need some
5 time to think about this and if you want to come back at a
6 later date and give it to us, I think that that is most
7 appropriate.

8 MR. UDDO: And we will delay the vote until then?

9 MR. MENDEZ: Why should we delay the vote on --

10 MR. UDDO: Because the information that Tom is
11 asking for is relevant to the credibility and weight of the
12 conclusion.

13 MR. VALOIS: So is everything we have said for the
14 last three years, Basile.

15 MR. UDDO: I don't think we have said that much.
16 There are some very specific statements in here that I have
17 not yet seen the support for. It might eventually come out
18 if we had taken the time to do it.

19 MR. VALOIS: What evidence is there that we intend
20 to rely on Mr. Booker's report wholly?

21 MR. SMEGAL: Then what are we going to rely on?

22 MR. VALOIS: We are going to rely on the knowledge

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1 that we acquired the last several years as well as what Mr.
2 Booker has said,

3 MS. BERNSTEIN: That is right,

4 MR. UDDO: Well maybe we need a discussion of what
5 that knowledge is, I am not sure of what that body of knowledge
6 is.

7 MS. BERNSTEIN: Okay, I've sat here quietly,
8 Basile, this morning listening to your self-righteous attitude
9 about this and about your committee, Well I found out some
10 time in the spring that you censored a document that the staff
11 had prepared for your committee and you told them you didn't
12 want it going out because it didn't reach the conclusions you
13 wanted,

14 MR. UDDO: That's a lie. And I am calling you a
15 liar for saying that, LeaAnne. And I want you to prove that,

16 MS. BERNSTEIN: Mr. Bayly,

17 I happened to be in the Corporation the day you
18 were there,

19 MR. UDDO: And I have never told anyone not to
20 send out information to anyone on the Board,

21 MS. BERNSTEIN: Because there is a lot of information
22 in here we should have had months ago and your committee should

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1 have been working on getting these things going forward.

2 MR. EAGLIN: What are you referring to?

3 MS. BERNSTEIN: 120 page document entitled,
4 "Preliminary Review of LSC Report," It is marked confidential
5 because there is information in here --

6 MR. EAGLIN: Is that distributed to us?

7 MS. BERNSTEIN: It was supposed to be. I asked
8 for it to be.

9 MR. UDDO: No, it was not supposed to be.

10 MS. BERNSTEIN: Why wasn't it?

11 MR. UDDO: It was not a completed report and the
12 only reason I saw it because of the ongoing committee study
13 and my response to it was, "let's use it as part of the
14 committee study." I never told anyone not to send it out and
15 no one ever asked me if it should be sent out.

16 MS. BERNSTEIN: Anything --

17 MR. UDDO: I want you to prove that I told anybody.

18 MS. BERNSTEIN: Because I was in the Corporation
19 that day, I asked. Oh, they said, oh, Basile was here this
20 morning, I said, "oh, what happened." They said he was
21 briefed on the state and national support, I said, "what
22 was he briefed with?" And there were looks between each

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1 other.

2 MR. UDDO: I want somebody -- I want someone to
3 say that I told them not to send that out because it did not
4 reach the conclusions I wanted.

5 MR. MENDEZ: Well let me just see if we can go
6 through this in a sort of -- arbitrate between the two of
7 you here.

8 MR. UDDO: Well I really would like to know who
9 said it.

10 MR. MENDEZ: Maybe there is a mix of communication.
11 Was this, in fact, presented to Basile or were you
12 present?

13 MR. BAYLY: I really still don't know she talked
14 about.

15 MR. MENDEZ: Or were you even present, that is a
16 good place to start.

17 Basile, do you recall having a meeting at that time?

18 MR. UDDO: Well I had a meeting and I've seen it
19 and my conclusion was that we would take all of that in order
20 before the committee. Some of that was based upon non-final
21 monitoring reports and that would be a part of the committee
22 deliberation. They weren't finished.

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1 MS. BERNSTEIN: But how can committees continue
2 to meet if you've got more information than the rest of the
3 committee?

4 MR. UDDO: It was not appropriate to be considering
5 that at the time.

6 MS. BERNSTEIN: Oh, I see.

7 MR. UDDO: The monitoring reports were not finished.

8 MS. BERNSTEIN: You can make those decisions?

9 MR. UDDO: As the chairman of the committee, yes,
10 I can.

11 MS. BERNSTEIN: I disagree.

12 MR. UDDO: Other chairman of other committees
13 have not waited to release information until it was an appropri-
14 ate time to use it? I want somebody to say that I told some-
15 one not to send that out because it didn't agree with my
16 conclusions.

17 CHAIRMAN DURANT: Dr. Mendez,

18 MR. MENDEZ: I think there was a mix-up of
19 communications between staff and everybody else because clearly
20 LeaAnne thought that and clearly you thought otherwise.

21 MR. UDDO: Well, that is a very specific accusation.

22 MS. BERNSTEIN: No. You just substantiated it.

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1 You said you didn't think it was appropriate. So you have
2 substantiated what I said,

3 MR. UDDO: And I did not tell anyone specifically
4 not to send it out because it didn't agree with my conclusions.

5 MR. MENDEZ: Did you tell them not to send it out
6 though, Basile?

7 MR. UDDO: I don't recall that it was ever even
8 discussed as whether it should go to the Board.

9 MR. MENDEZ: It is obvious there was a mix-up of
10 communications on this issue. I suggest that we pass it.

11 CHAIRMAN DURANT: Do you have further questions
12 of Mr. Booker?

13 MR. SMEGAL: I do. I am not finished.

14 Mr. Booker, on page 5 of your document, the state-
15 ment appears as follows: "the scarce resources are not to be
16 rationed on the basis of an ideological agenda, but on the
17 basis of the actual present needs of eligible real clients
18 with real cases."

19 What is the authority for that?

20 PROFESSOR BOOKER: I am discussing on page 5 the
21 two competing visions about legal service.

22 MR. SMEGAL: Well, let's take the specifics.

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1 You monitored five national centers and other regional train-
2 ing centers and some state centers. Now can you give me an
3 example of one of those centers that would support this
4 statement from your personal experience in monitoring?

5 PROFESSOR BOOKER: Let me ask the Chair to
6 determine whether certain reports have gone final. Could I
7 tell you that --

8 MR. MENDEZ: Would you feel more comfortable --

9 PROFESSOR BOOKER: -- a particular report based
10 on the monitoring of all 17 --

11 MR. SMEGAL: You didn't monitor all 17, did you?
12 I want to talk about the ones you monitored.

13 PROFESSOR BOOKER: You want to know support.

14 MR. SMEGAL: I don't want hearsay, I want facts.
15 If you can testify to your knowledge. If you can give us
16 information to support this document based upon your own
17 personal knowledge.

18 PROFESSOR BOOKER: You have the interim report
19 which does name names which I told you I am reluctant to
20 do because of the Kastenmeier limitations. I do not remember
21 off the top of my head which reports have gone final.

22 MR. SMEGAL: But is it your statement that in the

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1 reports in which you participated that we would find support
2 for this statement?

3 PROFESSOR BOOKER: Let's see, Which statement are
4 we at?

5 MR. SMEGAL: Well, I am still on page 5. I haven't
6 gotten to a couple of others yet. Start with page 5.

7 MR. MENDEZ: Which section, Tom, on page 5?

8 MR. SMEGAL: Page 5, the middle of the page,
9 "scarce resources are not to be rationed on the basis of an
10 ideological agenda, but on the basis of the actual present
11 needs of eligible real clients with real cases,"

12 Do you have an example in one of your monitoring,
13 personal monitoring activities of a real case that wasn't based
14 on a real client?

15 PROFESSOR BOOKER: Which do you want to ask me
16 about, sir?

17 MR. SMEGAL: That is the question.

18 PROFESSOR BOOKER: Are you asking me about what
19 the text says?

20 MR. SMEGAL: I want to ask --

21 PROFESSOR BOOKER: This is a vision which is
22 supported by your interim report, your interim report on state

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1 centers and the article I cited to you from the Harvard
2 Journal.

3 MR. SMEGAL: I want your personal experience.
4 One of the reasons you are here before us and not one of the
5 other 1945 law professors, I am aware exist in this country,
6 is because among your credentials are you did some monitoring.
7 Your five monitoring visits to the national support centers.
8 And I want to know whether those personal experiences that
9 you had support this statement, "lack of real clients for
10 real cases?" Specific examples.

11 PROFESSOR BOOKER: Certainly at the Center for Law
12 and Education --

13 MR. SMEGAL: Did you monitor that?

14 PROFESSOR BOOKER: Yes, sir. It is not cases that
15 I am primarily aggrieved about. It is the generalized
16 broad policy research, the dissemination of information and
17 contact with network that has at the root of it no real
18 client. You can't, as we both know, bring a case without
19 at least a nominal client.

20 MR. SMEGAL: So this statement is incorrect then?

21 PROFESSOR BOOKER: No, sir. Your interpretation
22 of it is less than fair.

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1 CHAIRMAN DURANT: Mr. Mendez,

2 MR. SMEGAL: "The scarce resources are not to be
3 rationed on the basis of an ideological agenda, but on the
4 basis of the actual present needs of eligible real clients
5 with real cases." Do you have an example of a real case
6 that did not have a real client?

7 PROFESSOR BOOKER: That is one of the --

8 CHAIRMAN DURANT: Mr. Booker, just a second,

9 Mr. Mendez,

10 MR. MENDEZ: How can you disagree with that state-
11 ment?

12 MR. SMEGAL: Because I think it is factually in-
13 correct, I don't think he's got any examples -- he's got a
14 whole 21-page document that is just his personal views not
15 based on anything that he has personally observed, but
16 personal views, I don't know where he even got this. He
17 may have plagiarized it.

18 (Laughter,)

19 MS. BERNSTEIN: I think we reserve that for others.

20 MR. MENDEZ: Tom, let's take the first clause.
21 Would you agree that you don't want to ration the resources
22 on the basis of an ideological agenda?

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1 MR. SMEGAL: Pepe, I think we all agree we want
2 to maximize the effectiveness of thorough funding for the
3 Legal Services Corporation. We have been saying that all
4 along, I certainly share that view as I believe everyone
5 on this Board does. There are lots of ways that that can
6 be done.

7 Mr. Booker referred to the fact -- in the beginning
8 of his dissertation talks about dissolutions. The basic
9 problem is the funding entities don't have enough time to
10 do dissolutions. And one of the things that come as a result
11 of the lack of funding has been local bar associations, pro
12 bono panels taking on some of the cases that are very
13 repetitive that are adapted to be handled by a lawyer who
14 wants to spend a day, a year on this particular subject.

15 In San Francisco, as I told this Board on several
16 occasions, the San Francisco Neighborhood Legal Assistance
17 Foundation when their resources became more limited with the
18 passage of time, the Bar Association of San Francisco now
19 does all uncontested dissolutions, Mr. Booker, because they
20 are the kind of thing that pro bono lawyers can get into.
21 They are not as complex as other matters and that's the kind
22 of thing that has been going on. We are all obviously

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1 interested in maximizing the effect of our resources, but
2 these statements don't help us.

3 His statements, they are not factually supported,
4 He wants to criticize; he wants to suggest that we should
5 take all the funding that presently goes to support centers
6 and he names 87 of them, and we should distribute those to
7 the field programs. And he proposes that that should be
8 done and he basis it on this 21-page document and a lot of
9 statements there, and I am trying to find out where the
10 factual basis for any of this document. And so far, I am
11 not finding any.

12 Now he has had experience. He has monitored five
13 national support centers, he told us. He has monitored a
14 regional training center and he has visited several state
15 centers. So he's got some experience and I want to talk
16 -- I want him to tell us from his personal experience where
17 he finds supports for any of the statements he has made in
18 here about the way that cases are filed and cases are litigated.
19 Now he has made a statement that they are not real cases
20 and they are not real clients. And I think if you are going
21 to make that kind of statement, you better have some proof.
22 You better have some proof. We have been hearing about that

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1 not only from Mr. Booker, but we have been hearing about that
2 for several years now.

3 CHAIRMAN DURANT: Ms. Bernstein.

4 MR. SMEGAL: I have been on this Board, as you all
5 have been, since December 5th or November 25, 1984 and I
6 have yet to see an example of that particular situation since
7 I have been on this Board, happening since I have been on
8 this Board.

9 Mr. Booker has been doing monitoring, I assume,
10 during the term that we have been on this Board and I would
11 like to have him tell us, It would be helpful to me. We
12 have had a lot of witnesses and they never come in with
13 specific examples. They always come in with some platitudes,
14 some reference back in 1968 or some reference to some other
15 time periods, some ideology and let's have some facts,
16 Let's have some facts to support this data.

17 Now where is the real case that didn't involve
18 real clients?

19 CHAIRMAN DURANT: Wait a minute.

20 Ms. Bernstein, did you have a question or a
21 comment?

22 MS. BERNSTEIN: Well, I hate to interrupt this

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1 haranguing, but the sentence itself simply, in my mind,
2 reckons back to the Act itself in which it says in the
3 beginning of the Act that you are to -- that the purposes
4 of the Legal Services Corporation are to represent or to
5 provide legal services for persons aggrieved,

6 In the section that was amended in 1977 when back-
7 up centers or support centers were reauthorized after the
8 Green amendment had excluded them, that section admitted
9 the concept of doing research, but not unconnected with the
10 representation of an eligible client,

11 The question does not necessarily mean that you
12 have to be dealing with a case that has been brought that
13 did not have an eligible client, but if we decide to expend
14 resources studying whether or not we should be implementing
15 or deploying SDI, we better be able to figure out the
16 logical nexus between all of that expenditure of resources
17 for that research and a real client,

18 Now if one of our centers has expended a great
19 deal of funds whether it is the Social Science Center -- and
20 I am going to use that one because it is -- simply because
21 there aren't attorneys involved and because there aren't
22 cases involved and that is a final monitoring report, although

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1 there are questions about it, If there was a finding in
2 that particular situation that there was research done that
3 didn't relate to a specific client, then we have got a
4 problem because we only have a certain number of dollars
5 and why spend them on something that somebody is not concerned
6 about.

7 I hear you saying that it is okay for people to
8 make a decision whether they are at the support center
9 or here on the national Board that it is all right for us
10 to decide what is best for folks, That is where you and I
11 disagree, That is where Professor Booker and I tend to
12 agree is that the decisions about that should come from the
13 clients themselves.

14 Now I read this statement as tracking the Act,
15 I found nothing upsetting about it, I would just ask, Tom,
16 and, you know, I can't control your responses today and your
17 approach today, but I would just ask that rather than being
18 so particularly hostile and abusive that you simply make
19 your decision as to whether or not you believe that Professor
20 Booker is someone that you wish to rely on or not and not
21 spend time haranguing about issues that may provide questions
22 and may cause us problems in terms of monitoring. I

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1 appreciate the fact that he has been ethical in terms of
2 protecting those centers that he has monitored that have not
3 become final.

4 We are not in a situation here where you are being
5 asked to make a decision based on this report alone. I
6 disagree with you and Mr. Uddo about that. We have been
7 dealing with the question of what our focus is in legal services
8 for close to three years as a Board. And there are documents
9 that we have been provided that go back six years before that.
10 And this has been a question that didn't start with the
11 Reagan Administration; it didn't start with this Board.
12 And, therefore, we are not in the situation today of being
13 faced with a snap problem or being asked to make a snap
14 decision.

15 As a matter of fact, this Board made a decision
16 a couple of years ago that we wanted it folded in. That
17 we wanted the decision to go back to the local level. I
18 still believe that was a correct decision. I voted for it
19 then; I am going to vote for this now. But I am concerned
20 that you are trying to divert this debate from that policy
21 question to something snide and personal and it really demeans
22 you and it demeans the process. And I really -- I just beg

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1 you not to do it.

2 MR. SMEGAL: Well, LeaAnne, let me say that if this
3 report had your byline on it, I would respect it as the
4 opinion of a fellow Board member. Mr. Booker is not a member
5 of this Board. I expect when people appear before us that
6 they are fact people. We listen to testimony because people
7 come to us and present facts.

8 If I want ideology or if I want opinion, I will
9 listen to the Board members. That is what we are for.
10 We all have our own views and we express those views as
11 artfully or as inartfully as we can. Mr. Booker is not
12 here to express his views as the 12th member of the Board. If
13 he is going to be here and he is going to take our time
14 appearing at the request of Mr. Durant, I want him to be
15 a fact witness. I want him to be the kind of fact witness
16 that we have been listening to and to a great extent ignoring
17 for the last three years. And if he is not going to be a
18 fact witness, I think all of his testimony should be stricken.
19 We should just ignore the fact that he has been here. He
20 shouldn't be paid for whatever function he was supposed to
21 perform.

22 If he is here as fact witness, I want fact answers.

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1 If he is here to give us his ideology on legal services, I
2 don't want him here because that is what this Board's
3 responsibility is and that is what we vote on every week and
4 that is what you voted in the opposite to me essentially
5 every time we voted, LeaAnne. I want facts here. I don't
6 want a by-line that comes out of Clark Durant under the guise
7 of Mr. Booker.

8 MS. BERNSTEIN: But, Mr. Smegal, I would just say
9 that we can't expect someone to give footnotes to something
10 if it will violate a confidence.

11 If you want to go into executive session and
12 question Mr. Booker about the things that he feels unable to
13 answer in public, I have no objection to that.

14 MR. SMEGAL: That isn't my purpose, LeaAnne. I am
15 offended by having that presentation made to us today.

16 MS. BERNSTEIN: I understand what your purpose
17 is.

18 MR. SMEGAL: Mr. Durant could have made his
19 motion at 9:00 o'clock this morning or 9:30. He didn't have
20 to coat it in Mr. Booker's statement here. It has nothing
21 to do with Mr. Booker's statement as has been demonstrated
22 by our discussion.

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1 If you are stalling for 11:30 to get Mr. Wallace
2 on the phone that is one thing. Why don't you just say that.

3 CHAIRMAN DURANT: Well it is past 11:30.

4 MR. SMEGAL: This presentation has been a waste of
5 our time and I am offended by it, Mr. Durant.

6 MR. MENDEZ: Tom, whenever I make a decision I
7 always like, even though in the past I've had my opinions coming
8 in, and you have had your opinions coming in about various
9 things, I always like to have whatever information is available
10 and whether or not this is couched in all the specific facts
11 or not, a man of this gentleman's experience and he has had --

12 MR. SMEGAL: Providing us with his opinion.

13 MS. BERNSTEIN: He is an expert witness.

14 MR. MENDEZ: -- considerable experience. He can
15 provide us with his opinion and I find it very helpful and
16 I have listened to all of the other ones and I've found that
17 helpful. And they have persuaded me in many instances to
18 change my opinions.

19 MR. SMEGAL: Well I am trying to find something
20 in Mr. Booker's presentation that will be helpful and he has
21 been unable to give me any factual basis for anything in his
22 statement other than his view --

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1 MR. MENDEZ: I understand, Tom. But the fact that
2 you don't find something helpful doesn't mean that it is not
3 helpful to others.

4 MR. SMEGAL: I am not suggesting that you should
5 be governed by my standards, Pepe, but I expect when a witness
6 comes before us which is supposed to be a fact witness -- we
7 didn't ask this individual here as an expert. I didn't ask
8 him.

9 CHAIRMAN DURANT: Do you have any further questions,
10 Mr. Smegal?

11 MR. SMEGAL: Well, yeah, they are all factual
12 questions and I would like factual answers to them.

13 Mr. Booker, do you believe that there is an
14 appropriate place for class actions in litigation brought
15 by Legal Service Corporation?

16 PROFESSOR BOOKER: Certainly, sir.

17 MR. SMEGAL: You've got a statement --

18 PROFESSIONAL BOOKER: I believe just what our
19 policy is, the Corporation says that the local program has
20 a policy and the program director or his designee approves
21 the instigation or institution of a class action. It is at
22 the local level that -- and the local Board policy that it

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1 MR. SMEGAL: I want your view. I don't want --

2 PROFESSOR BOOKER: There is an actual case actually
3 behind that.

4 MR. SMEGAL: What do you believe? What do you
5 believe about this?

6 PROFESSOR BOOKER: Well I told you that. In
7 appropriate circumstances the class action is a useful tool.
8 Corporations never -- or the Congress has never barred them,
9 but it ought to be used correctly as the regulations say.

10 MR. SMEGAL: So this paper is a positive one
11 supporting the concept of class actions in particular
12 circumstances?

13 PROFESSOR BOOKER: This is an actual case, sir,
14 and it happens to concern a case that is published in the
15 published reports.

16 MR. SMEGAL: Do you believe it is a proper
17 expenditure of Legal Service Corporation funds?

18 PROFESSOR BOOKER: Can I tell you how the case
19 came out?

20 MR. SMEGAL: No, I want to know what your answer
21 is to the question. Is it the proper use of Legal Service
22 Corporation funds? If you could give me a yes or a no on
that and then whatever other statement you want to make, I

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1 would be happy to hear it.

2 CHAIRMAN DURANT: Well if he can give a yes or
3 a no answer.

4 MR. SMEGAL: He can.

5 PROFESSOR BOOKER: I think it is debatable because
6 the particular group of very well intended people --

7 MR. SMEGAL: Are those clients?

8 PROFESSOR BOOKER: -- lost the point they were
9 trying to establish in that particular litigation. But I
10 don't want to go into details as to who it was and so forth.
11 They acted for a noble purpose, but they made some law --

12 MR. SMEGAL: The lawyers were not financed by
13 Legal Services Corporation, let's get that straight.

14 PROFESSOR BOOKER: It wasn't in LSC.

15 MR. SMEGAL: Well, I don't think so either. An
16 OEO or anything else and maybe you're right.

17 The point is is that a proper expenditure -- in
18 your view, in your view now, you are here as an expert they
19 tell me, in your view is the use of Legal Service Corporation
20 funds in a class action situation where the rights of a number
21 of clients can be solved with one lawsuit rather than the
22 individual lawsuits is that a proper use of Legal Service

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1 Corporation funds?

2 PROFESSOR BOOKER: It may be or it may be --

3 MR. SMEGAL: It could be?

4 PROFESSOR BOOKER: It's not -- it could be. To pass
5 judgment on that particular case in the abstract seems to
6 me to second guess people.

7 MR. SMEGAL: Well I didn't know that this was a
8 particular case. I thought you were just using this by way
9 of an example. It could have been a Social Security regulation.
10 I thought you were just generalizing as you have throughout
11 this.

12 PROFESSOR BOOKER: I really didn't make up this
13 stuff out of my head. There is a basis under it. I don't
14 want to be unfair. But that was true. A close question of
15 whether the right people to do the cutting edge leadership
16 are the center type personnel or the actual field lawyers
17 that I think are a lot better than anybody tries to give them
18 credit for. The particular group involved there has been in
19 the Supreme Court, I think, more than the Shell Oil Company,
20 but their batting average isn't all that encouraging. That doesn't
21 mean they are wrong. There is a place for bringing cases
22 where the odds may be against you. I was just talking about

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1 the general question of is this what the Corporation Act and
2 what you as the directed Board deems to be appropriate.
3 The question is for you to answer, sir, not for me.

4 MR. SMEGAL: No. But I am asking for your view.
5 You had given us 21 pages and you do have an opinion, I
6 found, on page 19 and I am asking you what is your view?
7 You are here as an expert, I want to know what you believe?

8 PROFESSOR BOOKER: You asked me two different
9 questions, sir.

10 MR. SMEGAL: I have asked you a lot of questions.

11 PROFESSOR BOOKER: I told you my opinion about
12 whether class actions are proper. I am someone who wants to
13 ban all class actions.

14 MR. SMEGAL: So they could be proper?

15 PROFESSOR BOOKER: They could and sometimes they
16 very well are good and useful.

17 My conclusion is what is the best way to share
18 bread in the lifeboat, sir. And I understand honest men
19 with good hearts can see this differently than I do. I can
20 only tell you the best truth I can.

21 MR. SMEGAL: Speaking of that, do you think it is
22 the role of this Board to seek more funding then? Would that

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1 be appropriate? You talk about a lifeboat, let's make the
2 boat bigger.

3 PROFESSOR BOOKER: Okay.

4 MR. SMEGAL: Is it appropriate? Do you think that
5 is beyond the scope of the responsibilities or duties of
6 this Board?

7 PROFESSOR BOOKER: I do not know. I can see one
8 scenario in which responsible Board members who are not
9 people who want to deprive the poor might decide not to go
10 this year or any particular year for more money if they
11 thought that that action because of the political current,
12 that I am so ignorant of, might end up eating up their own
13 seed corn. That they might use the credit and influence
14 where they could make a greater gain the following year
15 over the different administration.

16 I don't know what consideration should move that
17 debate. I wish there was more public funding to help more
18 people unable to afford lawyers. I've believed that all my
19 life.

20 MR. SMEGAL: I appreciate that and that is not a
21 view shared by the majority of this Board, however. We
22 continue to have the majority vote against it, more resources,

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1 federal resources.

2 On page 10 of your report --

3 PROFESSOR BOOKER: I tell you, I would have to take
4 the money away from the poison gas researchers and give it
5 to this program.

6 MR. SMEGAL: On page 10 of your document you
7 say, "the support organizations or centers adopt various
8 fictions due to the fact that much of their activity -- for
9 much of their activity there is no discernible client
10 or case."

11 PROFESSOR BOOKER: Yes.

12 MR. SMEGAL: Now, again, do you have any specific
13 examples? Do you have a lawsuit that has a fictional client?
14 Have you had that experience in your monitoring efforts?

15 PROFESSOR BOOKER: The first of these evasions is
16 the assertion that all eligible poor people are our clients.
17 That happened face to face to me.

18 MR. SMEGAL: Some individual staff lawyer said
19 that?

20 CHAIRMAN DURANT: Mr. Smegal, would you at least
21 let him answer the question.

22 MR. SMEGAL: I am trying to understand the

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1 answer.

2 CHAIRMAN DURANT: Well let him answer.

3 MR. VALOIS: May you can understand if you hear
4 it.

5 PROFESSOR BOOKER: That is not made up, sir.
6 That happened to me. I led the monitoring team. I was
7 talking with the principal director. I was so astounded
8 when he said this to me that I stopped and said, "wait a
9 minute. I am not hear to trap you into a misstatement."
10 And for two hours we talked about is this really what you
11 mean and he meant it. The report is not final. Please don't
12 ask me to break the confidence.

13 MR. SMEGAL: Well you've got it in quotes and
14 unfortunately the people in the public here don't have a copy
15 so that can't see it.

16 PROFESSOR BOOKER: That's right.

17 MR. SMEGAL: But, yeah, you've got in quotes,
18 "all eligible poor people are our clients." I assume that
19 that is a quote from somebody, either you or somebody else.
20 The point is, is that so incorrect? We have some eligibility
21 requirements to be represented by Legal Service Corporation,
22 lawyers using Legal Service Corporation funds and isn't the

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1 criteria an eligible client?

2 PROFESSOR BOOKER: It is very incorrect. I know
3 you are a lawyer and I know you have read the legislative
4 analysis. The Act never in the 28 times it uses the word
5 "client" uses it to mean the class of all people eligible
6 financially to have representation in civil cases from LSC.
7 Clients mean a real person with a real case and a real
8 lawyer. There is no such thing as holding a lawyer/client
9 relationship to every poor person in America.

10 If you believe that, it leads you to use resources
11 differently and often independently of what real clients
12 might choose and want.

13 MR. SMEGAL: Now these words, you can rearrange
14 these words and make them correct, I guess you would agree,
15 all poor people are eligible to be our clients, is that not
16 correct?

17 PROFESSOR BOOKER: That is --

18 MR. SMEGAL: Is that not correct?

19 PROFESSOR BOOKER: That is not what was said and
20 I don't --

21 MR. SMEGAL: Well, I don't know what was said.
22 It is your quote, but I am asking you if that were the quote,

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1 would that be correct, "all poor people are eligible"--
2 assuming the poor people satisfied your criteria -- "are
3 eligible to be our clients?"

4 PROFESSOR BOOKER: To become our clients.

5 MR. SMEGAL: To become our clients.

6 PROFESSOR BOOKER: Within our service area, yes,
7 that would be an accurate statement. But what you see here
8 is no client relationship formed with any actual person.
9 An assumption of being a spokesperson for a class as the
10 activity that the Act funds. It doesn't.

11 MR. SMEGAL: No. But I keep coming back to you
12 make the statement, but then you have no support for the
13 statement. You go on to say, "other centers less blatant
14 use other devices to avoid the problem that for much of what
15 they do." They have no eligible" -- I am quoting you now --
16 "they have no eligible client with a specific legal problem."

17 Give me an example, please, from your monitoring
18 efforts?

19 PROFESSOR BOOKER: All LSC programs are our clients.
20 Just a minute.

21 MR. SMEGAL: No. The statement is, "they have no
22 eligible client" --

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1 CHAIRMAN DURANT: Tom, what page are you reading
2 from?

3 MR. SMEGAL: I am still on page 10. "They have
4 no eligible client with a specific legal problem."

5 Now what is the example that supports that?

6 PROFESSOR BOOKER: For much of what they do, I
7 think it says,

8 MR. SMEGAL: No, it doesn't. A period after
9 problem.

10 PROFESSOR BOOKER: Use the device to avoid the
11 problem that for much of what they do they have no eligible
12 client and no specific legal problem.

13 MR. SMEGAL: Well, I want one example. Not for
14 much of what they do, for one thing they have done. Give me
15 an example from your own personal experiences of monitoring?

16 PROFESSOR BOOKER: Let me see what is complete
17 here.

18 CHAIRMAN DURANT: While you are doing that, Mr.
19 Booker, Mr. Mendez, you had a question?

20 MR. MENDEZ: Well I will pass on this until
21 -- I would suggest that if these are not completed that we
22 go into executive session and Mr. Smegal can ask him these

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1 things so that he can get the answers out.

2 CHAIRMAN DURANT: Is there any objection from the
3 Board to go into executive session to do that?

4 MR. SMEGAL: Yes, I object to that. I want this
5 remaining before the public. If he can't answer it in the
6 public meeting, I don't want the answers. I only want
7 answers he can give in a public forum.

8 MR. UDDO: A point of clarification. As I understand
9 stand it, if the monitoring report is final, you can discuss
10 the information.

11 PROFESSOR BOOKER: Yes, sir.

12 MR. UDDO: So at least 10 of those reports are
13 final, as I understand, so the material in 10 of the reports
14 would be subject to being disclosed?

15 CHAIRMAN DURANT: Mr. Uddo, can I do one thing.

16 Please answer that question, but I have been
17 informed that lunch is -- we have planned lunch for noon.
18 It is 10 after. We are going to take a break for lunch
19 and continue and reconvene at approximately 1:15.

20 MR. UDDO: Can I just get the clarification?

21 CHAIRMAN DURANT: Yes. Go ahead and get the
22 clarification.

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1 PROFESSOR BOOKER: There is a final report in that
2 case. Do you want me to --

3 MR. UDDO: Well, it is Mr. Smegal's question. I
4 just wanted a clarification. The Kastenmeier restriction
5 only applies to reports, monitoring reports that are not
6 final, right?

7 PROFESSOR BOOKER: Yes.

8 CHAIRMAN DURANT: That is my understanding, as
9 well.

10 MR. EAGLIN: Could you respond to that question?

11 PROFESSOR BOOKER: I will because the report is
12 final.

13 CHAIRMAN DURANT: Mr. Eaglin, Mr. Booker --

14 MR. SMEGAL: I would like you to do it right
15 now.

16 CHAIRMAN DURANT: Well, we are going to break for
17 lunch because we are under --

18 MR. EAGLIN: Let's finish this off.

19 CHAIRMAN DURANT: Okay, finish the --

20 PROFESSOR BOOKER: The National Center for Law
21 and Social Sciences in Washington, D.C., the chief director.

22 MR. SMEGAL: I'm sorry, what is the case cite?

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1 Who are the parties?

2 PROFESSOR BOOKER: The National Center for Law
3 and Social Sciences at Washington, D.C. As you may know,
4 the findings in that case where I was a member of the monitor-
5 ing team were upheld and approved by an administrative
6 law judge. I'm not making that up.

7 MR. SMEGAL: That there was a case filed on behalf
8 of a fictional client? A non-real client?

9 PROFESSOR BOOKER: What do you want me answer?

10 MR. SMEGAL: Well, I am just trying to --

11 PROFESSOR BOOKER: Who would say all programs,
12 all LSC programs are clients, and I just --

13 MR. SMEGAL: No, no, no. We were way beyond that,
14 Mr. Booker. We are down to, "they have no eligible client
15 with a specific legal problem." And I asked for some support
16 for that statement. Now you are giving me something that is
17 absolutely unrelated to what I asked.

18 MR. MENDEZ: Now, Tom --

19 PROFESSOR BOOKER: I am trying to satisfy you,
20 sir.

21 MR. SMEGAL: They have no eligible clients with a
22 specific legal problem. That's --

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1 PROFESSOR BOOKER: For much of what they do.

2 MR. SMEGAL: For one of what they do. You don't
3 have to do much, I just want one. Give me one example?

4 PROFESSOR BOOKER: How about the extensive
5 research on the work for our proposals --

6 MR. SMEGAL: We're talking about a case.

7 PROFESSOR BOOKER: Oh, no.

8 MS. BERNSTEIN: It doesn't have to be a case.

9 MR. MENDEZ: Tom, it is not a case. You can
10 have --

11 MS. BERNSTEIN: That is what I tried to tell you.

12 CHAIRMAN DURANT: This is going to be a protracted
13 discussion.

14 MR. VOLAIS: He has responded to his question
15 six times.

16 CHAIRMAN DURANT: You will be asked to come back
17 right after lunch. We will reconvene at 1:15.

18 MR. BAYLE: Thank you for your patience, Professor
19 Booker.

20 (Whereupon, at 12:15 p.m., the hearing was
21 recessed, to reconvene the same day at 1:15
22 p.m.)

* * * * *

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AFTERNOON SESSION

1
2 CHAIRMAN DURANT: We are ready to proceed. When
3 we left off, Mr. Smegal, you were in the middle of some parti-
4 cular questioning of Mr. Booker, Professor Booker. You may
5 continue.

6 MR. SMEGAL: I guess, Mr. Durant, all my questions,
7 going through the -- in regard to questions keep coming
8 back, statements he has made, that cause me to ask if I
9 could continue to explore with him his paper, questions that
10 correspond to what I have already asked him and to individual
11 support, personal support, personal information that he has
12 that will support the statements made, and I am satisfied
13 from what he has told us so far that I would get the same
14 answers that I have gotten so far.

15 I believe I heard him say there are no factors
16 or circumstances that support the statements he has made,
17 and I am prepared to accept his paper as one representing his
18 ideology or his personal views based upon no factual support.

19 CHAIRMAN DURANT: Mr. Mendez?

20 MR. MENDEZ: You and I must be hearing different
21 Mr. Bookers because I heard him state specifically that he
22 had the facts to back it up, and that I have been more than

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1 willing to have us go into executive session to make complete
2 disclosure of those, and the rest of it, Tom, you can accept
3 or reject or whatever, but I don't believe --

4 MR. SMEGAL: I think I made that clear that I want
5 from him information that can be shared with the public,
6 and there is none of that, so to the extent that there is
7 other, why, it doesn't help us, until such time as it is
8 publicly available.

9 CHAIRMAN DURANT: Professor Booker, the -- I have
10 heard specific facts from you that are of a public sort.
11 Are there any other particular factual examples based on any
12 of your work that you would want to mention in addition to
13 anything that you have already said?

14 PROFESSOR BOOKER: Yes, sir. I would be happy to
15 have a little chat to refresh my mind for that kind. We do
16 have final reports in the National Science Council, in the
17 Associate Sciences and Law Center at the District of Columbia,
18 at the Center for Law and Education, and the Regional
19 Training Centers, are these -- I have two reports, two years
20 apart, on the very innovative, provocative program at Long
21 Beach, Long Beach Legal Aid. Draft reports are out for
22 comment, for possible correction if we made errors, to three

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1 other fair entities, and I do have some memories of some of
2 these things that we are talking about.

3 The contention that I am unable to persuade you of
4 is that these support centers do much work without a dis-
5 cernible client or a discernible case behind it. To be clear,
6 the support centers do many more things and much more of them
7 than actual litigation. They do pure research, sometimes
8 on broad general policies and law, and they do some specific
9 case research. They do legislative and administrative
10 advocacy. They produce typically publications, sometimes
11 very frequent and widely distributed. They do monitoring
12 functions where they will monitor all public proposals,
13 coming forth, coming before and coming out of a major legis-
14 lative committee, or a major administrative agency. They
15 will assemble a library of materials which, typically, is
16 fairly closely related to their broad research interests.
17 They will do service requests from the field, and they will
18 do, typically, a few actual cases in which they are co-
19 counsel or have a working relationship. They will do some
20 limited training.

21 Each of these activities is at least two steps
22 removed from the presence of an actual client, and for some

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1 there is none.

2 Now, I will document that for you. The Center on
3 Social Science and Laws --

4 MR. SMEGAL: Isn't that the one you told us has
5 no lawyers?

6 PROFESSOR BOOKER: That is right.

7 MR. SMEGAL: I think we can stipulate -- and that
8 they file no cases. I think we all agree on that. I hope they
9 are not practicing law, like Clark would suggest, without
10 a license.

11 PROFESSOR BOOKER: I am trying to respond factually
12 to your questions, and --

13 MR. SMEGAL: My question was with respect to a
14 specific pending case or one that you have reviewed as a
15 monitor, give me an example of one that did not have a real
16 client. That is all I have asked.

17 PROFESSOR BOOKER: No case is without a client.
18 We both understand --

19 MR. SMEGAL: Then that is the answer to my ques-
20 tion. It isn't all of this other rhetoric.

21 PROFESSOR BOOKER: The 90 percent of things that
22 they do that aren't cases doesn't concern you?

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1 MR. SMEGAL: Is -- you mentioned -- is that the
2 national support center --

3 PROFESSOR BOOKER: No. I just wanted to tell you
4 about -- I told you of all the visits, which are final and
5 which not. I don't want to be charged with withholding that
6 from you.

7 MR. SMEGAL: But my question was very specific.
8 With the respect to the monitoring visit of a national
9 support center --

10 PROFESSOR BOOKER: -- about instances where there
11 is no discernible case or client. I am writing it as though
12 where the reports are final.

13 MR. SMEGAL: That is right, but I would like it
14 specific --

15 PROFESSOR BOOKER: That is not to --

16 MR. SMEGAL: I would like -- your report is
17 directed to national instead of state support centers. I
18 don't think Long Beach is relevant.

19 PROFESSOR BOOKER: None of this has to do with
20 Long Beach.

21 MR. SMEGAL: Well, you just mentioned Long Beach
22 as one of those that was final. I assumed you were going to

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1 give me some data from that, and I don't want that --

2 CHAIRMAN DURANT: Mr. Smegal, I think that Mr.
3 Booker is prepared to try and give you information if you
4 will --

5 MR. SMEGAL: No, he isn't prepared.

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

7 MR. SMEGAL: He is going to give me the information
8 he wants to give me which is not what I have asked for.

9 CHAIRMAN DURANT: Well, why don't we find out if
10 that is responsive. Professor Booker, would you --

11 MS. BERNSTEIN: I apologize for the Board's lack
12 of --

13 PROFESSOR BOOKER: Ma'am, I am happy that there
14 are people here who strongly believe a different view than
15 mine so that you will carry out your responsibilities to
16 find what the truth is and what your best policy is. I have
17 no resentment whatever.

18 MR. SMEGAL: I want you to know, all I am trying to
19 establish is the truth, the facts, not views, not opinions.
20 I have my opinions. LeaAnne has hers. So does Patrick.
21 We all do, and to the extent that you are giving us your views,
22 I prefer to have them presented to me in that -- this paper

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1 does not present them as your views. It presents them as
2 facts, and there are no facts to support what you are saying
3 other than the fact that they are your views.

4 MS. BERNSTEIN: And that is your view.

5 PROFESSOR BOOKER: Now, the Center on Social Science
6 and Law did cost of living computations for field programs
7 without the presence of a discernible client or case. They
8 did extensive research on Work Fair legislation absent these.
9 Believe me, sir, I --

10 MR. SMEGAL: These are violations --

11 PROFESSOR BOOKER: -- I have pored over the
12 service requests searching to find, is there a client? Is
13 there a case from an eligible providing agency? There isn't.
14 There also, remarkably, they did extended research on the
15 AT&T divestiture in the same circumstances.

16 MR. SMEGAL: When did they do that?

17 PROFESSOR BOOKER: AT&T divestiture? Just a
18 minute. I am sorry, there are -- I have read thousands of
19 these, and I can't put a date on that, but --

20 MR. SMEGAL: I apologize if I have taxed your
21 memory. I didn't intend to, but if you want to present some-
22 thing that would supplement your report, I would be happy to

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1 read it.

2 PROFESSOR BOOKER: All right.

3 PROFESSOR BOOKER: The Center on Law and Education
4 probably have the final report.

5 MR. SMEGAL: Why don't you just present a paper?
6 I don't think we should take the Board's time. I -- my
7 personal view, if you want to direct the document to me
8 which will substantiate the statements contained in your
9 report, I will be happy to read it when I get it. I am sure
10 the rest of the Board would like to see it also.

11 MR. VALOIS: I would like to hear the remainder of
12 what he has to say.

13 CHAIRMAN DURANT: Professor Booker, go ahead.

14 PROFESSOR BOOKER: The Center for Law and Educa-
15 tion at Cambridge had produced a major book called School
16 Discrimination and Student Violence, and this was worth under-
17 taking without an actual client or an actual case, and it
18 was a very major effort. The Children's Defense Fund, they
19 worked with the Children's Defense Fund, which is not a
20 funded provider entitled to our services. Extensive research
21 and technical assistance on -- done on service requests, very
22 substantial, they conveyed to me that this was a professional

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1 report. Does this report form the basis of a monitoring
2 report that you participated in?

3 PROFESSOR BOOKER: These -- this is a transcript
4 of a piece of my notes. I study these service requests very
5 carefully --

6 MR. SMEGAL: Is that a final report, now?

7 PROFESSOR BOOKER: Yes, sir.

8 MR. SMEGAL: What happens -- what has happened with
9 respect to that particular entity that you are referring to
10 there?

11 PROFESSOR BOOKER: The corporation decided to
12 challenge their funding and continuance on the basis of the
13 report. They did so, and the Administrative Law Judge upheld
14 our findings as correct, which included these things.

15 MR. SMEGAL: Well, I think we can read that report.
16 I don't think you have to detail that any further. You
17 still have not given me a specific case, which is the only
18 question I asked. If Mr. Wallace wants to dump my question
19 and couch it in different terms, I want to know pending
20 litigation that involves a non-real client, and that is the
21 only question that I have asked you, and I have been on this
22 now -- you and I have been going around about this for over

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1 half an hour, and that is the only question I have asked.
2 That is the only question I want answered, and I am satis-
3 fied you don't have an answer at this time. If you can come
4 up with an answer, please reduce it to writing and I will
5 be happy to read it.

6 CHAIRMAN DURANT: Mr. Smegal, you said Mr. Wallace's
7 question.

8 MR. SMEGAL: I am sorry; I meant Mr. Valois.

9 CHAIRMAN DURANT: Mr. Valois?

10 MR. VALOIS: Well, Mr. Smegal is still on it. I
11 don't want to interrupt him.

12 MR. SMEGAL: I am through.

13 MR. VALOIS: Will you give us some other examples
14 as you have been doing where the centers have engaged in
15 the expenditure of resources and hours and presumably funds
16 in doing research or other projects where there was no
17 client involved?

18 PROFESSOR BOOKER: Yes. If you wish, I will.
19 January 1985, request for data or sources on the stigma of
20 welfare participation for the purpose of assisting the pro-
21 gram in researching possible challenges to new AFDC amendments.
22 On my book it is 1612 in that connection. February 1, '85,

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1 critique to Evergreen, a funded program. A CWEP study to
2 challenge the establishment of a work rep program by the
3 state legislature.

4 February 1985, Legal Services, northeastern Wiscon-
5 sin. Data on the stigma of general assistance. That program
6 is considering possibly challenging the practice of paying
7 general relief by vouchers. No client; no actual case.

8 Legal Services in New Jersey conducted a litera-
9 ture search on the cost of welfare to assist the program's
10 general research interests. No client; no case.

11 March 29, request from Massachusetts Law Reform
12 for information of AFDC participation rates since the pro-
13 gram is studying the possible effects of an increase in AFDC
14 payment levels and the other facility standards. No client;
15 no case.

16 MR. ROGERS: Mr. Chairman, I can state on the
17 record that we did have a client, and we consistently repre-
18 sented a client in that particular matter.

19 CHAIRMAN DURANT: Thank you, Mr. Rogers. Mr. Rogers
20 is the project director of the Massachusetts Law Reform.

21 MS. SMEGAL: I am confused as to what Mr. Booker
22 is reading from. Are you reading from a monitoring report

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1 of some entity you monitored because you named about five or
2 six different entities in a row in very close date proxima-
3 tion, and I assume you didn't monitor each of the programs.

4 PROFESSOR BOOKER: The requests, I have given you
5 the source of the requests. These are Social Science and
6 Law.

7 MR. SMEGAL: Okay, so you are monitoring -- these
8 are coming out of a report, monitoring a report you partici-
9 pated in, for Social Sciences.

10 PROFESSOR BOOKER: That is right.

11 MR. SMEGAL: And it involved these other entities
12 that were asked for information to be accumulated, legal
13 research to be done. Is that your point?

14 PROFESSOR BOOKER: I am sorry. I am a little deaf,
15 sir, and I am not trying to be --

16 MR. SMEGAL: Well, the question is not important.

17 MR. VALOIS: May he continue to answer the question
18 I asked him? I thought you were finished, Mr. Smegal.

19 MR. SMEGAL: Well, I was just trying to identify
20 what he is doing here.

21 PROFESSOR BOOKER: I am sorry; is there another
22 question?

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1 MR. VALOIS: Are you finished answering the question
2 that I asked you?

3 PROFESSOR BOOKER: Yes, I pulled together what I
4 could.

5 MR. VALOIS: Have you -- have any other monitoring
6 reports that -- where you were involved in the monitoring,
7 received any judicial or administrative scrutiny?

8 PROFESSOR BOOKER: Yes, sir.

9 MR. VALOIS: Which ones?

10 PROFESSOR BOOKER: Well, in addition to Social
11 Science and Law, I led the team and wrote the report on
12 National Client's Council, and that was scrutinized by an
13 administrative law judge; a Federal District Court judge,
14 impartial, here in Washington; the Court of Appeals for the
15 District of Columbia; and each of those courts found that
16 our report was true and our conclusions accurate, and they
17 would compel. No judge has disagreed.

18 I don't go out into a field looking to see if I can
19 find some minor embarrassing facts. I spend as much time and
20 energy looking for things that are good and straight as I
21 do looking for any shortcomings. When I find good, I put that
22 in the report, and I would not file a strongly opposed report

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1 that might generate defunding unless I were very sure that
2 that was the only proper thing to do.

3 MR. SMEGAL: I do have a question now. You indicated
4 you monitor the National Clearinghouse?

5 PROFESSOR BOOKER: No, sir. I did not say that.

6 MR. SMEGAL: What was it that was --

7 PROFESSOR BOOKER: National Client's Council.

8 MR. SMEGAL: National Client's Council.

9 PROFESSOR BOOKER: Yes, sir.

10 CHAIRMAN DURANT: Mr. Uddo?

11 MR. UDDO: Professor Booker, before I get into
12 asking you a few questions, there is something else I would
13 like to get out of the way first, and I would like to ask
14 you and Mr. Bayly, if he would, to help clarify the exchange
15 that Ms. Bernstein and I had prior to the break so that we
16 can clarify some of that and put that away.

17 MR. BAYLY: It is my recollection, and I speak now
18 from the viewpoint of the staff -- it is my recollection
19 that Professor Uddo at no time instructed or suggested or
20 directed me or any other staff member that I know of, to
21 withhold any report or information from any other member of
22 the Board. I must say, as well, however, that it is always

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1 possible that staff misunderstood or did not fully appre-
2 ciate that documents in draft are nonetheless producible
3 to Board members and may at some time or another have thought
4 that because the Chairman of a committee or subcommittee, in
5 one instance, perhaps, Professor Uddo, wanted to redo a
6 report, wanted to have additional information, wanted to
7 supplement information, in that instance a staff may have
8 misunderstood or may have improperly inferred that that docu-
9 mentation should not be readily provided to another Board
10 member.

11 I do not know for a fact that that occurred, but
12 that is certainly a possibility. In any event under no circum-
13 stances, to my recollection, has Professor Uddo, again, I say,
14 or any other Board member directed me or any other staff
15 member not to supply information to any other Board member,
16 in whatever form the information be -- a draft document, a
17 report, memorandum, whatever it may be.

18 CHAIRMAN DURANT: Mr. Uddo?

19 MR. UDDO: Well, I just wanted to say that I appre-
20 ciate clarification on the record, and I would like to take
21 this opportunity to apologize to LeaAnne. I think that my
22 reaction was harsh, and I apologize for the strong language

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1 that I used.

2 MS. BERNSTEIN: Well, I appreciate that, and there
3 certainly is -- was no intention to bring up other than the
4 fact that we are in a process constantly of needing as much
5 information as we can get, and if the staff was under a
6 misapprehension as far as your statement that you did not
7 believe it was appropriate to send it out, then that is where
8 the confusion came from.

9 CHAIRMAN DURANT: Thank you, Mr. Uddo. Thank you,
10 Ms. Bernstein.

11 Mr. Uddo, your questions?

12 MR. UDDO: Professor Booker, if I might, I want
13 to apologize to you also, not so much for any treatment you
14 are receiving today. I think you rightfully appreciate that
15 that is appropriate for people on this Board to have strong
16 feelings. I would like to apologize to you for the spot that
17 you have been placed on. I don't think that you had a full
18 appreciation for the predicament that you were getting into
19 here, and I don't think that you -- at least, I guess that
20 you didn't fully understand how intense this was going to be,
21 and I think that particularly with the very small amount of
22 time you were given to produce this report, you have been

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1 placed in a very difficult predicament. As a matter of fact,
2 I would like to know with a little bit more precision how
3 much time you have had to produce this report.

4 PROFESSOR BOOKER: I suppose there are two answers
5 to that, running the general clock, and also how much working
6 time within that period. You see, I have a full time teaching
7 job, and I am reteaching a course I haven't taught for ten
8 years.

9 MR. UDDO: And despite what some people think,
10 that does take time.

11 (Laughter.)

12 CHAIRMAN DURANT: Go ahead. I am sorry, Mr. Booker.

13 PROFESSOR BOOKER: And I also farm a little bit,
14 and it is getting a delicate time for my soybeans, and I have
15 got six children who are going to high school and college --

16 MR. UDDO: It is kind of amazing you got anything
17 produced at all.

18 PROFESSOR BOOKER: I would calculate that seven
19 long days, I can do something like this for perhaps ten or
20 twelve hours at a stretch. How much time I was able to
21 devote --

22 MR. UDDO: So you have something in the neighborhood

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1 of a week and a half of work hours, would you say?

2 PROFESSOR BOOKER: Stretched over the period from,
3 I think, perhaps, the 23rd. I'll check that out, but I did
4 my best daytime -- you know, I couldn't do it while I was
5 going in to teach the class.

6 MR. UDDO: And you said the 23rd. The 23rd of
7 September?

8 PROFESSOR BOOKER: Yes.

9 MR. UDDO: That is when you started on that?

10 PROFESSOR BOOKER: I think it came up about, maybe,
11 a week before that, but I tried to calculate before I came
12 up here how much time I had.

13 MR. UDDO: But from its inception you really haven't
14 had much more than two weeks total time; you didn't have
15 anything else to do.

16 PROFESSOR BOOKER: That is right. I presented,
17 pulled together, just -- let's see, today's Friday? About
18 a half day before I started up here with my suitcase full of
19 your -- I must bear some responsibility, I guess, for not
20 having it in your hands sooner. Honestly, I did the best
21 that I could.

22 MR. UDDO: I am sure you did, and that sort of leads

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1 me to my next question. You don't have any doubts, do you,
2 that if you had more time, your report may have looked
3 different, and some of the questions that Mr. Smegal asked
4 and some of the questions that I am likely to ask might have
5 been covered in your report if you had had more time to
6 actually study the information?

7 PROFESSOR BOOKER: The report could have been, I
8 believe, better written. I really don't think there would
9 have been major shifts of emphasis or something like that.

10 MR. UDDO: Not in emphasis. In terms of the support-
11 ing data, and in particular, perhaps, I guess, an executive
12 summary of supporting factual data might have been available?

13 PROFESSOR BOOKER: Instead of giving it to you in
14 response to isolated questions, I am not sure I am peculiar --

15 MR. UDDO: I understand.

16 PROFESSOR BOOKER: I would like to have been able
17 to make the kind of appendix that we made before the Federal
18 Court of Appeals of Chicago, and I think I owe you my
19 apology.

20 MR. UDDO: No, I still think that we owe you an
21 apology because I think you were asked to do something that
22 couldn't be done in the amount of time that you were given to

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1 do it, and I have no doubt that with adequate time, you would
2 have produced or been able to produce a more thorough docu-
3 mentation of -- perhaps we would dispute the documentation,
4 but at least you would have produced a more thorough documen-
5 tation, so I think you haven't been treated fairly in being
6 asked to do something quite this extensive in the amount of
7 time that you have been given.

8 With respect to the request by the corporation to
9 do this, who made the request to you to undertake this
10 project?

11 PROFESSOR BOOKER: Mr. Rob Elgin called me initially
12 and asked if I would be willing to study and report on this.

13 MR. UDDO: And what did he ask you to do, speci-
14 fically?

15 PROFESSOR BOOKER: Verbal phone conversation at
16 that point, and he was asking me if I would examine the
17 question of budgeting these support center organizations with
18 respect to the ongoing idea that has been here since more
19 than a year, that old regulation of -- having to do with
20 what is called, I think, folding back or folding in. The
21 proposal I made; what on the experience I had, did I think
22 about that? Would I make a report? I said I would give it

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1 my best shot.

2 MR. UDDO: So in effect he asked you only to respond
3 to the one possible configuration that the Board had proposed
4 a year or more ago, and that is put the money in --

5 PROFESSOR BOOKER: It wasn't the specific regula-
6 tion. It was the general --

7 MR. UDDO: But that general proposal. He did not
8 ask you to present to the Board an array of alternatives,
9 did he?

10 PROFESSOR BOOKER: No, sir. He didn't ask me to,
11 for example, examine the interesting question that has sur-
12 faced here about what the strategy of the Board, to ask the
13 Congress for more money --

14 MR. UDDO: So when your report says that part of
15 the problem is the limitation of financial resources, that
16 is an observation that you have made based upon your experi-
17 ences with Legal Services, but you weren't asked to con-
18 sider whether the problems that you perceived in your report
19 might also have been solved by a larger budget?

20 PROFESSOR BOOKER: No, I wasn't studying from that
21 viewpoint. My perception about not being able to serve
22 everyone you would like to is based on being in the trenches

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1 when we run out of ammunition. It is a sad thing.

2 MR. UDDO: So to the extent that your report is
3 used by the Board to make a decision, it really ought only
4 be used with respect to the proposal you were asked to
5 evaluate. It is not, and does not purport to be, an analysis
6 of a variety of alternatives.

7 PROFESSOR BOOKER: Not really. The -- obviously
8 the proposal is in opposition or in comparison to the presents
9 -- the currents that I have observed. I didn't know that
10 there was a -- some detail of other proposals you folks were
11 studying. I knew you had been interested in this one since
12 the resignation -- more than a year ago.

13 MR. UDDO: But you weren't -- you didn't have in
14 mind something like reconfiguration of national support
15 based upon functional lines, what sort of things do national
16 support centers --

17 PROFESSOR BOOKER: I was thinking about that and
18 what is the best way to get it, and the report on 1920 and 21
19 deals with --

20 MR. UDDO: Would you show me where? I didn't see
21 any references to the --

22 PROFESSOR BOOKER: Would it be useful to try to

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1 micromanage with a lot of new regulations? And I didn't think
2 it was. I didn't think that our micromanagement had worked
3 in the past. Let me look that up.

4 MR. UDDO: Sure.

5 PROFESSOR BOOKER: I know it is right there. Oh,
6 yes, page 18, where we are examining remedies.

7 MR. UDDO: Examining what?

8 PROFESSOR BOOKER: Remedies.

9 MR. UDDO: Okay.

10 PROFESSOR BOOKER: What measures are wise? Not
11 destruction. What is wanted is a difference in product, not
12 no product. A spate of new regulations -- this approach
13 has been tried and has failed. The discussion of how the
14 centers have reacted to present law and regulation demon-
15 strates this. Besides, that approach involves the corpora-
16 tion in attempting to foresee and micromanage the details
17 of need and service of over 300 entities and 30 million
18 eligible persons, and that is the delusion and weakness in
19 the vision I see. A few of us really devoted and smart
20 people can do that kind of thing better than the free demands
21 of our provider lawyers and clients.

22 MR. UDDO: That is not a response to a suggestion

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1 that there may be certain things, as you acknowledge in your
2 report, that Senators do and do well, and perhaps just a
3 reconfiguration would achieve those same results, is it? I
4 mean, you were not studying that as a possible proposal.

5 PROFESSOR BOOKER: I wasn't studying a reconfigura-
6 tion. The basic question is, does money come to them from
7 the field because of demand and the need to serve, or does
8 it come from the top with directions about how to administer
9 it. I didn't go into -- because for the reasons I said in
10 the report, I think that from the top down is the way the
11 Russians make tractors.

12 MR. UDDO: But you didn't analyze other alternatives
13 for bottom up use of support, have you?

14 PROFESSOR BOOKER: No, I didn't have detailed
15 proposals other than the fold-back. Is it called fold-back?

16 MR. UDDO: I am not sure what it is called.

17 PROFESSOR BOOKER: -- proposal that I discussed.
18 I thought that is what the regulation -- the old one.

19 MR. UDDO: Professor Booker, let me ask you, what
20 materials specifically were you sent by the corporation?

21 PROFESSOR BOOKER: I was sent 18 inches thick of
22 materials.

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MR. UDDO: And what would be included in that?

1 PROFESSOR BOOKER: Great heavens, sir. Well, I
2 got the statistical breakdown report from the statistical
3 records people with respect to the allocation of money
4 within the system. It is about that thick.

5 I got the -- let me see. I am trying to remember.

6 MR. UDDO: I understand.

7 PROFESSOR BOOKER: The funded programs updated
8 because very often the question would cause one to ask, now,
9 wait a minute, was that worth our providing or not
10 and they also have to use the breakdown. I got that. I got
11 copies, I believe, of many of the monitoring reports, not all
12 of them.

13 MR. UDDO: How many monitoring reports did you get?

14 PROFESSOR BOOKER: Well, I first wanted to have
15 those where I --

16 MR. UDDO: And that is five national support centers?

17 PROFESSOR BOOKER: Well, I didn't ask for all of
18 them. National Client's Council I didn't ask for because
19 I just don't think I'll ever forget any of that, and I got
20 a draft of report on the State centers --

21 MR. UDDO: Well, can we get back to the monitoring
22 reports? Which monitoring reports did you have?

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1 PROFESSOR BOOKER: A couple are out of my mind.

2 MR. UDDO: I understand.

3 PROFESSOR BOOKER: And there were some studies in
4 process in the corporation about state support centers and
5 about national centers --

6 MR. UDDO: Were you given the transcripts of either
7 of the two hearings that Mike Menny held on national support?

8 PROFESSOR BOOKER: No, sir.

9 MR. UDDO: Were you aware that there was such a
10 committee? Were you informed by Mr. Elgin that there was
11 such a committee?

12 PROFESSOR BOOKER: I don't recall, sir. I had
13 plenty on my plate.

14 MR. UDDO: Were you instructed, or was it suggested
15 to you, that you might contact me and I might be able to
16 assist in providing you with some information, or at least
17 be made aware of what you were about?

18 PROFESSOR BOOKER: No. I understood the notion was
19 that I would use my experience which included monitoring
20 about a quarter of the national centers, independently, and
21 not try to make a political consensus matter out of it.

22 MR. UDDO: Let me ask you -- go ahead.

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1 PROFESSOR BOOKER: Now, there are two interim
2 studies. One was on the national centers. The other was a
3 detailed discussion of the state support center structure
4 and which is a, as you know, much more complicated -- six
5 three standards, and so many founders, and so forth.

6 MR. UDDO: But do you know who prepared the interim
7 report?

8 PROFESSOR BOOKER: No, sir, I don't. They were
9 documents of the corporation, and I didn't find anything in
10 particular surprising.

11 MR. UDDO: But as far as you know, they have not
12 really been subject to public scrutiny or for any examination
13 as to their content and accuracy?

14 PROFESSOR BOOKER: No, sir. The scrutiny I made
15 of them for that was, does this comport with what I have
16 seen in my --

17 MR. UDDO: I understand that, but you don't know
18 of any process that those reports have gone through that
19 would indicate that they have been subjected to public
20 scrutiny and --

21 PROFESSOR BOOKER: I don't know whether or not.

22 MR. UDDO: Professor Booker, let me refer you to

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1 page 17 of your report.

2 PROFESSOR BOOKER: Yes.

3 MR. UDDO: You say "possible remedies should be
4 examined. It would be imprudent and doctrinaire not to
5 recognize the plain fact that there are many good and capable
6 people in the centers. While they were dark and disappointing
7 spots for the most part, when the centers do serve an actual
8 client in a real case, it is quality work."

9 PROFESSOR BOOKER: Yes, sir.

10 MR. UDDO: I take from that you mean that perhaps
11 if you were given a broader mandate and an opportunity to
12 study alternative remedies, you might conclude differently
13 than you did in this report?

14 PROFESSOR BOOKER: No, sir. I didn't mean to say
15 that.

16 MR. UDDO: Well, you say "possible remedies should
17 be examined."

18 PROFESSOR BOOKER: That is not on 17 -- wait a
19 minute. I am on 19.

20 MR. UDDO: Seventeen, first full paragraph.

21 PROFESSOR BOOKER: Okay, I am with you. Sorry
22 about that.

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1 try to claim that there weren't good people out there, and
2 when they did this sort of work, it was good.

3 The alternative that is under consideration here,
4 sir, is, there are, no doubt, persons who might if they were
5 able to have their total way, say, "These centers are an
6 abomination before the Lord. Let us destroy them altogether,"
7 and I don't come from that character, sir. I liked and
8 respected a great many of the people I met there.

9 The question is, how shall you choose under the
10 Act to direct their work and projects.

11 CHAIRMAN DURANT: Can I just, if I might, Mr. Uddo?
12 What you are saying is that in terms of this, possible
13 remedies or whatever, your essential thrust is that where
14 they are good or where they are bad, the choice in terms of
15 which to use and how to use them and the extent to use them
16 should be made by the local providers?

17 PROFESSOR BOOKER: Yes, my -- I have that view that
18 those people, in fact, are able to manage their own affairs
19 and select their own support group.

20 MR. UDDO: If, however, that proposal, if it could
21 be demonstrated that that proposal would result in the des-
22 truction of the support centers, would you still support it?

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1 PROFESSOR BOOKER: It might be -- it would be a
2 bold man that would claim to utterly foresee all that might
3 happen. Like the outlaw told Rooster Cogburn, "That would be
4 bold talk for a one-eyed fat man in my case."

5 MR. UDDO: It would be bold to suggest that it
6 might destroy the center?

7 PROFESSOR BOOKER: No, sir. It would be bold for
8 me to pretend to sit here and say to you that I know -- I am
9 so wise I can foresee --

10 MR. UDDO: Oh, I am not asking you to foresee it.
11 I am asking you, if, in fact, you could be convinced --

12 PROFESSOR BOOKER: I do think it is possible that
13 some center organizations of these 87 will not meet the test
14 of market need and will not survive in their present form.
15 They may rely on another, on private or other governmental
16 funding. They may -- that may not be successful. I think
17 the centers that have been defunded could not have survived
18 the free choice of the clients to be served and the field
19 providers.

20 I don't think it is -- I have more faith, I think,
21 in the quality of the support center people than their work.
22 When they turn their energy and attention to working for real

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1 PROFESSOR BOOKER: No, on the question of how they
2 ought to operate. It is really a vision one, vision two --

3 MR. UDDO: Well, that is not really my question.
4 My question is, there have been some rather specific criti-
5 cisms of the impact that this budgetary shift would have on
6 the continued existence of all support centers.

7 PROFESSOR BOOKER: I heard about those earlier from
8 a different source.

9 CHAIRMAN DURANT: Mr. Uddo, are you referring to the
10 comments that were made at our June 26 -- when this came up
11 before -- in 1986?

12 MR. UDDO: I am referring to the comments of June 26.
13 I am referring to the comments at the hearing in New Orleans
14 which was the first meeting of my committee in New Orleans;
15 significant written comments that were submitted in response
16 to a request from that meeting in March of last year in New
17 Orleans, and any other sources of -- you said you were privy
18 to that from somewhere else. I take it that was probably the
19 training task force that you served on?

20 PROFESSOR BOOKER: Certainly the surfacing of this
21 idea first crossed my horizon when I learned, you know --
22 studies claiming that this is available, what is available in

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1 transcript is an orange --

2 PROFESSOR BOOKER: Is that your subcommittee?

3 MR. UDDO: Right, back in March. You didn't have
4 that?

5 PROFESSOR BOOKER: Sir, if that was in the packet --

6 MR. UDDO: You didn't read it. I understand.

7 CHAIRMAN DURANT: I don't think he said -- he
8 didn't say he didn't read it. He is just not sure whether
9 it was in the packet.

10 MR. UDDO: No, he said if it is in the packet, if
11 it was in the packet, you don't remember seeing or reading it?

12 PROFESSOR BOOKER: That is right. I don't know
13 whether it was sent out --

14 MR. UDDO: And as I say, I think justifiably so.
15 You were asked to do too much in too short a period of time,
16 but in addition to that set of verbal testimony, there were
17 also a number of written submissions with comments directed
18 towards the problems that this procedure would cause. Did
19 you read those? I am not going to ask you whether they were
20 given to you, but there were rather a large number of written
21 submissions that went along with that hearing in New Orleans.

22 PROFESSOR BOOKER: Well, I was made acquainted with,

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1 perhaps, in thumbnail form, maybe a dozen arguments that
2 could well be important to you folks in deciding. One of them,
3 I think, sir, had to do with the creation of transitional
4 problems and case takeover and so forth. I did pay attention
5 to those, but I didn't see my role as filing some contesting
6 or answering to people with different ideas.

7 MR. UDDO: All right, well, then, having said that,
8 being aware that there are some criticisms and concerns, I
9 am concerned about page 19 of your report where you make the
10 statement rather categorically that this proposal would not
11 destroy the centers. It would make them necessarily
12 responsive to the needs of our providers. The product would
13 have to be needed and valuable enough to be sold rather than
14 subsidized.

15 I find that a fairly bold conclusion unless you
16 addressed specifically or prepared to address specifically
17 some of the criticisms that have been leveled against this
18 particular proposal.

19 PROFESSOR BOOKER: Well, that was my view. I will
20 see if I have got my notes, and I will see if we can get
21 around to answering -- you want to put these -- I have been
22 trying to give it some clear thought.

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1 MR. UDDO: Oh, I am sure you did.

2 PROFESSOR BOOKER: The best conclusion I think I
3 draw on this question would be changes.

4 (Short pause.)

5 MR. UDDO: Do you feel that you gave enough atten-
6 tion to those criticisms to make that clear a conclusion?

7 MR. MENDEZ: Well, let me just -- I think that I
8 have read most of those criticisms, and I don't disagree
9 with that conclusion.

10 MR. UDDO: Well, I am not asking you a question.
11 I am asking Mr. Booker on what basis he makes the conclusion.

12 CHAIRMAN DURANT: Professor Booker, just a minute.

13 PROFESSOR BOOKER: I am sorry.

14 MR. MENDEZ: The way that you are phrasing the
15 question is that if you -- that one must follow if you have
16 these conflicts, that you can't possibly assume that is the
17 correct answer, and I can see all of the conflicts and I can
18 assess all of those, and still come up with that answer.

19 MR. UDDO: Well, I don't doubt that you can, Pepe.
20 My only concern is that if this report is going to be the
21 basis for the action, I would like to know the basis upon
22 which the conclusion was reached, and without a thorough

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1 analysis of the criticism, it is, as I think Tom said,
2 another very respected man's conclusion, but I am not sure
3 that we see here the basis for the conclusion.

4 MS. BERNSTEIN: Could I just interject here before
5 we go any further, because Mr. Valois and I on separate
6 occasions this morning, and Mr. Mendez has said that this
7 presentation would not be the basis of any decision that is
8 being made, at least --

9 MR. MENDEZ: Well, I use the information that he
10 presents to me along with all the information that I receive
11 from you --

12 MS. BERNSTEIN: That is right --

13 CHAIRMAN DURANT: Let's do it one at a time.

14 MR. UDDO: I guess, then, that my question would be
15 if we have been here since nine o'clock this morning, hearing
16 about it, reading it, and talking about it, and if you really
17 don't need it to make a decision, you know, we are wasting
18 time. I thought that it was being offered to support the
19 Board's decision.

20 CHAIRMAN DURANT: It is being offered as a part of
21 a broader mosaic, and the reason we are here until whatever
22 hour it is is because both you and Mr. Smegal have asked to

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1 ask questions of him, and that is fine. Remember, all of the
2 reports, all of the written comments that were received for
3 your New Orleans meeting, I think a good number of the Board
4 members saw those and read those, and that the -- and I know
5 obviously some of you, some of the Board members were present
6 at those committee hearings, I mean, so that it is not as if
7 those items are not being taken into account in the Board's
8 deliberations.

9 MS. BERNSTEIN: Not only that, but Basile, in
10 answer -- in reference to your specific question about his
11 conclusion that the centers need not necessarily have been
12 destroyed, we went through a year and a half ago about the
13 amount of non-LSC funding for the national support centers.
14 We examined that question before your committee was even
15 started. We talked about the viability of the center when
16 more than half of their budget comes from another source, and
17 see, so I don't have a problem coming to the same conclusion
18 he has. His conclusion coincides with my conclusion, and I
19 don't know whether or not he had -- whether he examined the
20 funding for these centers and how their funding has grown,
21 and the proportion of LSC funding as opposed to outside funding
22 and how it has grown. I have looked at those things.

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1 MR. UDDO: Well, I understand. You would concede
2 that it is a legitimate question to try to test the conclu-
3 sion that appears in the report?

4 MS. BERNSTEIN: I am pleased for you to ask as
5 many questions as you like, but I think -- I am with Pepe.
6 I think you need to ask the question in a straightforward
7 way and say, "Upon what did you make those --"

8 MR. UDDO: Well, I did. I went through each one
9 of the things that would have the criticism in them, and
10 asked whether he took those into consideration in reaching
11 his conclusion. You know, I thought I weighed -- the word
12 we use, quite carefully, and all I am asking is how he
13 reaches that conclusion. Now, you may have independent rea-
14 sons for agreeing with the conclusion, but I suspect that this
15 report in the eyes of many is going to be considered the
16 basis upon which the Board makes a decision, and I just wanted
17 to make sure that I understand how Professor Booker reached
18 his conclusion that this would not destroy the centers. He
19 may be right. I just want to know how he reached the conclu-
20 sion.

21 MR. MENDEZ: I think every one of your questions have
22 been fair and legitimate. All I can say is that I had some

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1 difficulties with the way you phrased one of the questions.

2 MR. UDDO: Okay. I appreciate that. We won't
3 belabor this, Professor Booker. Let me just -- one of the
4 things that I thought when I ran into that conclusion, and
5 I don't have an opinion on that yet. I have read the criti-
6 cisms, and I have heard the responses, and frankly I don't
7 know if it would destroy the centers or not. I think that
8 there are legitimate criticisms. I think there are arguably
9 defensible responses so I -- it is one of the reasons why
10 I was involved in what I hoped was going to be a process to
11 elucidate a little bit more specifically what the effect
12 might really be.

13 PROFESSOR BOOKER: And I will tell you when my
14 consideration of that question began. When it surfaced in
15 the Task Force on Training, many members of that committee
16 strongly wanted the task force to adopt a resolution con-
17 demning the policy of the Board, although we have been
18 studying different kinds of things on the budget.

19 In the end it was decided that we hadn't done a
20 study of budgeting money and resources then, but we had a
21 lot of considering, though, a lot of talking among other
22 members of the task force, many who had these fears that this

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1 is a death warrant, and I had to -- the way that task force
2 left it was that each of us were to communicate our conclu-
3 sions about that to the gentleman who is chairman, Dr.
4 Gaboury, and I know that I did so after about a month of
5 talk, and I talked more than once with Dan Kaufman out in
6 Colorado, and with Dean Sponsler down at the law school in
7 New Orleans, and in the end the best -- you know, we are
8 impromptu --

9 MR. UDDO: I understand, and that is half of my
10 concern --

11 PROFESSOR BOOKER: The best conclusion I could make,
12 thinking as hard as I could, was, I thought these people have
13 the stuff and the resources to survive; that they won't
14 be killed by the competition. They are somewhat better than --

15 MR. UDDO: Now, as I recall, that was apparently
16 not the conclusion of most of the people on the task force
17 that you served on.

18 PROFESSOR BOOKER: Well, sir, the task force
19 didn't make a finding about that.

20 MR. UDDO: No, but the individuals did communicate
21 their theories, and that -- as I recall there was a letter
22 including --

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1 PROFESSOR BOOKER: I will tell you how that happened.
2 Six members of the committee, after the committee had been
3 discharged and released of its duties, got together by some
4 means without advising the rest of us, and adopted a joint
5 letter in which they expressed their feelings and conclu-
6 sions. I wrote to the person who had circulated that letter
7 that I was really -- I felt badly about having been excluded
8 from that particular meeting. The reason given was it was
9 thought I might oppose it, and several other -- we had no --
10 you know, a group of like minded people got together and
11 wrote that letter. That is not the work of the committee.

12 MR. UDDO: No, I understand that it was the work
13 of individuals, but at least six of the individuals felt
14 that there was some concern there.

15 Let me --

16 PROFESSOR BOOKER: Most of whom, sir, have a vested
17 economic interest in the continuation of exactly the system
18 we now have.

19 MR. UDDO: I understand. When I read that conclu-
20 sion and the strength in that conclusion, something occurred
21 to me that, as between -- I thought might be something we
22 could discuss and something understandable. You teach, as I

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1 do, torts. Now, I know in my law school torts is a required
2 course. In fact, it is at Notre Dame. And one of the things
3 I think about when I think about it being a required course
4 and, you know, we hear from students all the time something
5 similar to what your conclusion is here, and that is, you
6 really shouldn't impose upon us a required curriculum. It is
7 that kind of top-down management, and we really shouldn't
8 be constrained to take the courses that you think we should
9 take.

10 And I wondered what your response would be to a
11 proposal that law professors -- that we would not have a
12 required curriculum, and law professors would not have guaran-
13 teed salaries but that their salaries would be based upon
14 how many students showed up in their classes, or signed up
15 for their classes.

16 Would that be a system that you think would be
17 workable?

18 PROFESSOR BOOKER: I think you are asking me about
19 apples and pecans.

20 MR. UDDO: It may be, but I would like your answer.

21 PROFESSOR BOOKER: Well, sure. I will be happy to
22 answer that for you. The presumption under which any school,

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1 including a law school, operates is the assumption that we
2 are, in a way, that we are to our students -- that we do
3 know better, and they come here because they accept that
4 notion.

5 We are also charged by the profession with certify-
6 ing in many states their taking certain courses and their
7 competence, and the examiners will turn them out if we don't
8 do it.

9 Now, respectfully, sir, the lawyers in the support
10 centers are not persons superior to the lawyers in the field
11 provider house, able to tell them what is best, and able to
12 tell their clients what is best for them. The analogy, I
13 think, breaks down.

14 MR. UDDO: They could have more substantive exper-
15 tise, couldn't they?

16 PROFESSOR BOOKER: Sometimes they do, sir. Some-
17 times they don't.

18 MR. UDDO: Well, and that is true of law professors,
19 too. Sometimes we are good judges of what students should
20 do, and sometimes we are not.

21 MR. MENDEZ: I think I would look at your argument
22 a little bit --

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1 MR. UDDO: It was not an argument. It is just a
2 question.

3 MR. MENDEZ: Well, let me look at your question
4 one step removed. Doesn't the student really, in the final
5 analysis, have the choice? He can elect to go to that law
6 school or not, and before you go to the law school, don't
7 you or doesn't a student, in fact, look at what the regimen
8 is in the school and that aspect, so he does have that free
9 choice.

10 MR. UDDO: Well, he really doesn't because of the
11 limitation on where you can go to law school. Not every law
12 school can -- has to take everyone who comes there so it is
13 not going to be a free market, no matter how you slice it,
14 so if we had a system where everyone could get admitted to
15 every law school, and it was a perfect, free market, and
16 they shopped for the school that they thought had the most or
17 the least required courses, maybe so, but it doesn't work
18 that way, and I guess one of the things that --

19 CHAIRMAN DURANT: I have never heard the free market
20 defined that way.

21 MR. UDDO: What is that?

22 CHAIRMAN DURANT: The free market has never been

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1 defined that way.

2 MR. UDDO: Well, a law student doesn't have that
3 kind of choice because -- they all might want to go to Harvard,
4 but they can't all get into Harvard, so that may be the
5 school that has the curriculum that they would all choose,
6 but they can't all go there.

7 And one of my concerns is that I wouldn't want my
8 required courses, and I have never -- or my elective courses
9 for that matter subject solely to the whim of students. I
10 mean, I think that at some point it is important that someone
11 make decisions about what sort of things ought to be offered
12 and what sort of things students should take.

13 PROFESSOR BOOKER: As we both know, sir, if
14 we were to purport to give a law degree on the system that
15 you mention, we would be discredited by the ABA and the AKLS.
16 It is our field lawyers, who are men of will, determination,
17 experience, and a damned lot of skill, are not law students.
18 They are full sized professionals.

19 One of my problems with the system that is now in
20 place is that the lesson it holds up to our field provider
21 lawyers is that, "You are somehow inferior. Where the real
22 lawyering, heavyweight stuff is to be done, we have to send

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1 for the intellectual shop crews." No private firm functions
2 that way. The success record with respect to actual litiga-
3 tion does not tend to support that. The four and five man
4 law firm in the rural community is perfectly capable of
5 mounting a successful constitutional challenge on a funda-
6 mental point and getting the help they need off the free mar-
7 ket.

8 MR. UDDO: Of course, law firms use --

9 PROFESSOR BOOKER: They are not law students. They
10 are not high school students. They are full lawyers. We
11 got our clients to trust them, and I think we are right to
12 do so. Why can't we?

13 MR. UDDO: Well, I guess the obvious question then
14 would be, what do you say to the realization that, at least
15 at the hearing in New Orleans and from most of what else we
16 heard, their judgment is that this is only good for both of
17 them.

18 MR. MENDEZ: I would tell you that I think that
19 their judgment weighs equally or less than mine because I
20 sit on this Board and I think --

21 MR. UDDO: I appreciate that.

22 MR. MENDEZ: -- it is a good proposal.

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1 MR. UDDO: You are a skilled litigator. Every time
2 I ask Professor Booker a question that he shows any hesita-
3 tion over, you jump in. I am impressed with your litigation
4 skills.

5 CHAIRMAN DURANT: And we with yours, Basile.
6 Professor Booker, go ahead and answer the question.

7 MR. UDDO: The question was, if, in fact -- and
8 I agree with you that our field lawyers are full professionals,
9 experienced people who can make judgments, that this point,
10 whether we like it or not, the judgment that they have
11 expressed is that they don't think this is a good idea.

12 MR. MENDEZ: Who said that?

13 MR. UDDO: Well, everybody who testified in all
14 the written submissions in New Orleans.

15 MR. MENDEZ: One question, though. Did all of those
16 people have economic interests?

17 MR. UDDO: Well, if he wants to answer it that
18 way, let him answer it.

19 MR. MENDEZ: Professor Booker hasn't said that.
20 He has included in that definition to everybody.

21 MR. UDDO: Professor Booker, I can see they are not
22 going to let you answer the question, so I am going to move on

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1 to another question.

2 MS. SWAFFORD: No, no. I withdraw, and I want to
3 hear what he says.

4 MR. UDDO: Do you want to answer the question?

5 PROFESSOR BOOKER: I do not know the extent of
6 your sampling and participation and the way it was conducted.
7 One of the problems, for example, with the old North report
8 was that they were something like the Literary Digest poll
9 of 1936. There were no safeguards. I have seen entries into
10 that where lawyers firmly believe, and it is idealogic with
11 them, this sort of thing. What the test does not mean is
12 that they used every center frequently, all year long, for
13 every purpose.

14 MR. UDDO: I agree with you. I am not impressed
15 with the North study. I don't think that the North study --

16 PROFESSOR BOOKER: I am sorry, but I have seen
17 nothing really scientific about -- obviously, we are not
18 really talking about people who happen to have collateral
19 interests. The people who believe in the grand strategy
20 theory are not limited to centers. Other good and reasonable
21 persons can believe that, and if they do, they are doing what
22 their conscience and judgment tells them to do in making that

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1 sort of representation to a committee like yours, and -- I am
2 sorry, I don't think the elections, they are on that, and --

3 MR. UDDO: If there were a scientific survey that
4 you thought was well done that reached the conclusion that I --

5 PROFESSOR BOOKER: I would want the Board to con-
6 sider it carefully.

7 MR. UDDO: So you think that would be a legitimate
8 bit of evidence that the Board should consider before enacting
9 a program?

10 PROFESSOR BOOKER: That and many other things. I
11 hope I have not taken out the position that I think it ought
12 to be complied to --

13 MR. UDDO: No, I don't think you have.

14 PROFESSOR BOOKER: -- with your judgment.

15 MR. UDDO: No, I understand that, and you think
16 that the Board should take into consideration a number of
17 things, including if there were such a scientific study, the
18 opinion of the people who are served by the support center?

19 PROFESSOR BOOKER: Certainly.

20 MR. UDDO: And one final question. On page 19 you
21 also make this statement, that this would cut back -- "this"
22 meaning this proposal -- cut back generalized, broad policy

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1 research and political activism, is without a doubt.

2 PROFESSOR BOOKER: Yes, sir.

3 MR. UDDO: How do you know that?

4 PROFESSOR BOOKER: Well, it is like knowing that
5 a heavy object unsupported won't fall -- will fall. Sorry;
6 I am getting pretty tired now.

7 The question is, who will pay for this, and the
8 answer is, people with real clients and the disposition of
9 the money are not going to bear the resource for general
10 policy research. They have too many other good uses. It
11 would have to be a very serious item, and it would have to be
12 -- to that client. I think there would be a lot less of this
13 networking and examination -- you know, passing out the sheet
14 music.

15 MR. UDDO: You would concede, though, that it could
16 not, alas, come out that way? I mean, the field programs
17 could choose to support broad policy research and political
18 activism with the additional money that is given to them with
19 the intent that they will use it to buy back support services.
20 It could be used to buy back that kind of services, couldn't
21 it?

22 PROFESSOR BOOKER: Certainly it could. The real

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1 problem with that, sir, is the LSC Act forbids that choice.

2 MR. UDDO: Well, and that is one of the problems
3 with this proposal, exactly what will the LSC regulations
4 mean in the context of this kind of proposal, but I think
5 it is too early to --

6 PROFESSOR BOOKER: The statute says that neither
7 by grant or by contract can the agency undertake broad,
8 general policies or legal research unrelated to the service
9 of clients.

10 MR. UDDO: Which would seem, as a guess, that the
11 probable approach to centers that do that is defunding;
12 right? Rather than a broadbased change --

13 PROFESSOR BOOKER: The National Science Council
14 took three years and tossed the corporation 80 percent of a
15 year's funding in legal fees to defund. Sir, I know that
16 you know the difficulties of that procedure. You have got
17 87 centers, and besides, sir, defunding is a last resort
18 thing. It is a meat ax. I think the path of the demand --
19 the supply and demand principle, the free market principle,
20 is a gentle and more accurate corrective than to go out and
21 hang up a bunch of scalps or something like that.

22 MR. UDDO: I appreciate your patience and your

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1 cooperation, Professor Booker. I think that, as I say, you
2 have been saddled with something unfairly, and I think it was
3 too much to ask anyone to do in the time that was available.
4 I think you would have been an excellent witness before my
5 committee. I don't think your report substitutes for what
6 my committee would have done or was intended to do, but it
7 certainly would have been helpful to the committee to have
8 had you in, and I appreciate your patience, and again I
9 apologize to you for the unfair predicament I think you have
10 been placed in.

11 PROFESSOR BOOKER: Well, I only hope that I can
12 have been of some small help or service as you struggle
13 with the burdens that you have to carry.

14 CHAIRMAN DURANT: Any questions?

15 MR. EAGLIN: No.

16 CHAIRMAN DURANT: Any other member of the Board
17 have any questions to Professor Booker? Mr. Mendez?

18 MR. MENDEZ: I just have one. If, as a result of
19 us defunding these, or moving all of the funds in from
20 state support and national support, that they undergo a
21 demise, the center, would it be your belief that the local
22 programs can find in these 370-odd places, appropriate, even

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1 though not exactly the same type of support, appropriate
2 support?

3 PROFESSOR BOOKER: Yes, sir, I do. I don't believe
4 that such results will follow. I have too much respect for,
5 you know, the manuals prepared by the consumer center are
6 standard fare in every glossary in this country unconnected
7 with our city. I think that that market for products and
8 skills -- but if it were to be so, yes, there are these 370
9 and in addition, there are the resources that ordinary, private
10 law firms use when they feel they need an expert witness or
11 a study of some sort. I just gave you very quick, random
12 pages out of standard Bar journals indicating that. Because
13 they must subsidize the present system, our providers do not
14 look into the external market although without their willing-
15 ness it is costing them about six percent or more of their
16 annual budget to subsidize this.

17 I should also note that a section of the statute
18 that is not often paid attention to authorized the President
19 by Executive Order to make available to the corporation the
20 resources of every other part of the Federal Government
21 that might relate, details to be worked up, to their work.
22 I would like to say of the Training Task Force, for example,

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1 we met representatives of all the services. They have a
2 real law school over there in Virginia that is a high class
3 operation, and it is not about court martials and military
4 law, not all of them, because what service lawyers do, or
5 half of what they do -- when I went to Grisholm Air Force
6 Base, half of their legal office in that base was not devoted
7 to these court martial type things. It was devoted to the
8 fact that enlisted personnel with large families frequently
9 fall below the eligible assistance line. They have the kind
10 of consumer and landlord-tenant and being ripped off problems
11 that plague so many of our people, and the service school
12 give a lot of training to qualify their legal officers for
13 that, and those people, I know they spoke to us, were
14 delighted at the notion of cooperation that could be worked
15 out between us.

16 What other resources the Federal sector might
17 present -- see, if you make your own product and then sub-
18 sidize it at your delivery system's expense, the delivery
19 system would be foolish to look outside the flock. They have
20 already paid for what they got, whether they want it or not.

21 This thing is called the Public Interest Handbook,
22 and it was published this year in 1987, and -- it has got an

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1 excellent index at the back. You might want to look at that
2 and see if you think -- there is a lot of help out there
3 that there has been no incentive to consider, and it is not
4 necessarily simply Class A baseball.

5 CHAIRMAN DURANT: Ms. Bernstein?

6 MS. BERNSTEIN: I just have a question, follow-up
7 to that, because you had said that you did monitor some of
8 the basic Guild programs.

9 PROFESSOR BOOKER: Yes.

10 MS. BERNSTEIN: As well. When you monitored those
11 programs, did you see a large, specialized need for support,
12 unusual support, unusual cases, in the centers that you moni-
13 tored that would take an outside unit? I know some of our
14 local programs, for instance, have their own elderly unit,
15 or their own housing law unit, where they develop their own
16 experts, but did you see in the monitoring that you had a
17 kind of reliance or a helplessness that would indicate that
18 there is a definite need for specific support?

19 PROFESSOR BOOKER: No, I did not. I have monitored
20 Long Beach twice, two years apart, and an innovative program
21 at Evergreen which covers about 39 counties in the state of
22 Washington, and these people did not have occasion to require

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1 those -- in fact, they were bending their own systems to
2 carry it and doing it, I thought, extremely well.

3 MS. BERNSTEIN: Thank you.

4 CHAIRMAN DURANT: Any other Board questions of
5 Mr. Booker?

6 (No response.)

7 CHAIRMAN DURANT: The court reporter needs a break,
8 and why don't we take a break for about ten minutes or
9 fifteen minutes?

10 (A short recess was taken.)

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1 CHAIRMAN DURANT: The Board meeting is reconvened.
2 Are there any other questions for Professor Booker from the
3 Board?

4 Mr. Rogers?

5 MR. ROGERS: Mr. Chairman, my name is Allan Rogers,
6 executive director of the Massachusetts Institute.

7 I have one request, and that is that I didn't hear
8 Professor Booker say that he had reviewed any final report
9 of the State support center, and I also heard him say that
10 he had reviewed a hearing report on State support, and I would
11 like to ask if this hearing report is available, and on behalf
12 of the State support centers I would very much like to review
13 that report and have an opportunity to comment on it. I am
14 troubled by the notion that the witness would come before
15 you and draw conclusions about State support, anyway, on the
16 basis of the report which I gather is a distillation of mone-
17 tary visits and other information, and that that report has
18 not yet been made available to the State support units, and
19 I would like formally to request that we be given a copy of
20 that report and an opportunity to comment on it.

21 CHAIRMAN DURANT: Thank you, Mr. Rogers.

22 MR. SMEGAL: I believe I made a request earlier for

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1 all of the material given to --

2 CHAIRMAN DURANT: And Mr. Bayly has it down.

3 MR.SMEGAL: Are we open for discussion on the
4 motion?

5 CHAIRMAN DURANT: Yes, sir.

6 MR.SMEGAL: As a point of personal privilege I
7 would like to point out to you, I believe the motion is out
8 of order, and out of order in the sense of the understanding
9 I have had since January 30, 1987.

10 CHAIRMAN DURANT: I think, for the purposes of the
11 record, because of your earlier point, I think this is Mr.
12 Valois's motion.

13 MR.SMEGAL: Well, irrespective of where the motion
14 comes from, I mean to point out to you that at a meeting of
15 the Audit Preparations Committee on January 30, 1987, Mr.
16 Chairman, you announced the appointment of a committee to
17 study support, and in fact I am going to quote for you, and
18 I have got the transcript, page 214, in front of me, the
19 January 30, 1987, meeting. "I have asked Professor Uddo to
20 chair a committee that he and I will establish to review some
21 of those letters and the points raised and determine whether
22 they make sense or whether they don't make sense, and then

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1 revisit this question when Professor Uddo's committee has
2 completed with its work," unquote.

3 I ask Professor Uddo whether he has completed with
4 his work; his committee has completed its work?

5 PROFESSOR UDDO: No.

6 MR.SMEGAL: Who is your committee?

7 PROFESSOR UDDO: Mr. Valois, Ms. Miller, and my-
8 self.

9 MS. BERNSTEIN: I am also on the committee.

10 PROFESSOR UDDO: I have never gotten anything,
11 information to that effect. As far as I knew, it was Bob,
12 Lorain, and myself. I can't find anything else in any of
13 the minutes --

14 MS. MILLER: Pardon me. She did ask to be on that
15 committee.

16 MS. BENAVIDEZ: So did I, but I never was --

17 MS. BERNSTEIN: Yes. See, this is something that
18 has been very confused, Basile, is part of the problems is
19 that this has never been established as a separate committee.
20 It is a subcommittee of Mr. Valois's committee, and that is
21 all the people that are on Mr. Valois's committee are on your
22 committee.

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1 PROFESSOR UDDO: I never got any communication to
2 that effect. All that was sent to me was Bob, Lorain, and
3 myself.

4 Everyone is welcome. I am just telling you what
5 I was --

6 CHAIRMAN DURANT: I understand that, and I think
7 as I -- I don't specifically recall as I sit here who these
8 specific people that -- you and I talked about who the
9 members of the committee ought to be, and whatever, and I
10 don't recall specifically, and maybe, Tom, if it says it in
11 that transcript or any other who the particular members are --

12 MR.SMEGAL: That isn't my point. You are missing my
13 point.

14 CHAIRMAN DURANT: Well, but the point has been
15 raised --

16 MR.SMEGAL: My position to the committee is --

17 CHAIRMAN DURANT: -- and therefore I wanted to
18 address it so that it would be addressed since it had been
19 discussed.

20 MR.SMEGAL: No, the significance of what I read,
21 the quote I read from you, is the fact that there was a com-
22 mittee set up chaired by Professor Uddo, and that this

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1 question, the question of your motion or Mr. Valois's motion,
2 whoever we can attribute it to today, the question of that
3 motion was to be revisited when Professor Uddo's committee
4 completed its work. Now, that is your quote. I have gone
5 through many transcripts of meetings since that time, and the
6 only other mention I can find is in the material that was
7 sent to Congress.

8 Now, at the point where you make that statement,
9 I believe there was a footnote on our budget that said
10 "subject to Board studies." That became more elaborate after
11 the appointment of Professor Uddo's committee to have suffi-
12 cient additional words in it to certainly lead Congress to
13 believe as well as myself to continue to believe, that this
14 Board would not review the question of State and national
15 support centers until such time as we had an opportunity to
16 receive the benefit of Professor Uddo's committee report,
17 and I don't believe that we have that report today, and I
18 believe, Mr. Durant, your motion, or Mr. Valois's motion, is
19 out of order, inappropriately presented to us today.

20 CHAIRMAN DURANT: Any other comment?

21 PROFESSOR UDDO: I share Mr. Smegal's view as to
22 the -- the motion is out of order because I don't think it is

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1 adequately described on the agenda, but I did believe that
2 the -- the creation of the committee would be given suffi-
3 cient time to study the question of National and State
4 support, to weigh the current systems that had been --
5 against this Board's action last time a similar proposal was
6 enacted. We have really only been in existence something
7 around six months. That was a January meeting. It was some
8 months after that that you finally appointed a committee.
9 We had a first meeting in March in New Orleans, and have not
10 had, I think, sufficient time to produce anything that would
11 be of use to the Board. I don't think anything that we have
12 seen today is of much use to the Board to try to make such
13 a dramatic decision so I would concur with Mr. Smegal that
14 it violates the letter and spirit of the creation of the
15 committee to now short circuit the work of the committee and
16 to offer this motion, so I would concur that it is out of
17 order and that it should be voted on.

18 CHAIRMAN DURANT: Okay, any other? Ms. Miller?

19 MS. MILLER: Well, this is not to this, but I just
20 would like to know what contract was Mr. -- Professor Brooks
21 under.

22 CHAIRMAN DURANT: Professor Booker?

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1 MS. MILLER: Booker, yes.

2 CHAIRMAN DURANT: It is my understanding that he
3 was sent a personal services contract from the corporation
4 which I am told he has not received that was -- and I have
5 not seen it, either -- in order to do a report to the Board
6 for this meeting on this subject.

7 MS. BENAVIDEZ: Could you tell us when that report
8 was mailed to him?

9 CHAIRMAN DURANT: When the personal services con-
10 tract --

11 MS. BENAVIDEZ: Uh-huh.

12 CHAIRMAN DURANT: Mr. Bayly, if you would please
13 find that out and let Ms. Benavidez know when the personal
14 services contract was sent to Mr. Booker. It is my under-
15 standing that Mr. Bayly will find that out for you.

16 Mr. Rogers?

17 MR. ROGERS: Mr. Chairman, I had a question about
18 the meaning of the motion. The motion states that all funds
19 provided to one involved of four subcategories shall only
20 be expended for the local delivery, direct delivery, of
21 client services for eligible poor persons.

22 What if I am in a field program, and I want to get some

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1 training done or some support from existing or maybe former
2 support center or some other entity. Do I read this that
3 that would not be permitted by a program because all of the
4 funds have to be used for direct delivery?

5 CHAIRMAN DURANT: I don't read it that way. I
6 read it that if the -- obviously, if you have to represent
7 a person in a landlord-tenant matter or whatever the parti-
8 cular item is, is that -- and there is a trial, for example,
9 and you need just to use a common example, you need an expert,
10 and a different -- and an entity provides that support to you,
11 I see that as part of direct delivery.

12 MR. ROGERS: So, for example, under -- I am trying
13 to figure out what you intend here by this language. So that
14 your intent is that if this motion passes, if it goes into
15 effect, and programs could contract with national centers --

16 CHAIRMAN DURANT: Yes.

17 MR. ROGERS: -- export centers?

18 CHAIRMAN DURANT: Yes.

19 MR. ROGERS: Regional training centers --

20 CHAIRMAN DURANT: Yes.

21 MR. ROGERS: -- and others --

22 CHAIRMAN DURANT: Yes.

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1 MR. ROGERS: For same kinds of services that they
2 ask for or use now, provided what, provided that they are --

3 CHAIRMAN DURANT: Well, so -- I suspect if you
4 contracted with a -- you know, the support center to simply
5 do a research project or whatever, that is unrelated to a
6 particular case for a particular client, that is a part of
7 what -- I mean, usually when -- well, go ahead, Mr. Mendez.

8 MR. MENDEZ: I think, really, what that is saying
9 is that we don't want to have all of these studies done by
10 local programs, that he made reference to those type of
11 studies without a specific client being involved.

12 MR. ROGERS: Let me test that out a little further,
13 if I could. As you probably know, there are a lot of support
14 services that are offered, programs, in the context where
15 there is no particular client case involved. Training is
16 one. For example, under this language could a field program
17 contract with an outside entity to provide training to the
18 field program staff?

19 CHAIRMAN DURANT: Ms. Bernstein?

20 MS. BERNSTEIN: The local field programs right now,
21 if there were no entities directly funded by the corporation
22 for support services, local field programs can contract with

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1 their trial lawyers association to get training. Right?

2 MR. ROGERS: Correct.

3 MS. BERNSTEIN: They could contract with an expert
4 in a field of law in order to testify at a trial. Correct?

5 MR. ROGERS: Correct.

6 MS. BERNSTEIN: They could retain some entity to
7 be on call for a period of time in order to provide assis-
8 tance. Is that correct?

9 MR. ROGERS: Sure.

10 MS. BERNSTEIN: The training threshold would depend
11 on the work plan of the program, would it not? In other
12 words, a local program could not realistically expend half
13 of its funds in training and expect their budget to be
14 approved by the corporation, but in terms of necessary
15 training for the ongoing delivery of legal services to
16 eligible poor persons, the idea of this, at least my under-
17 standing of this motion, is that that choice making possibi-
18 lity is in the local programs, and if they wish to contract
19 with your center to provide a piece of testimony on a given
20 case or some research on a given issue, and it is in the
21 delivery of services to an eligible client, if they wish to
22 contract with your center to do training on an area that

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1 their clients need help on, they are free to do it. If they
2 don't want to contract with your center, and they want to
3 use the trial lawyers' association or they want to use the
4 National Health Lesson or the National Youth Center instead,
5 they are free to do it.

6 MR. ROGERS: My question is, I don't think this is
7 what the language says.

8 MS. BERNSTEIN: I think it is clear.

9 MR. ROGERS: I think the language ties this to
10 having specific eligible clients for a particular matter, and
11 there are a whole host of support -- work that is now done
12 by support centers and the program, indeed, which are not
13 tied to a specific client. They are a general need.

14 MS. BERNSTEIN: This language is directly out of
15 the Act: "Legal assistance to eligible clients" is used
16 in the Act many times, and --

17 CHAIRMAN DURANT: Allan, let me just add one other
18 thing. I mean, I think it is also important in this, is one
19 of the reasons that the last paragraph was added, that is
20 focusing on substantive client training and client managed
21 initiatives, is to also in those decisions, perhaps, or in
22 specific training, Board training, or as in some cases I know

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1 down in New Orleans that when we had clients at that particular
2 meeting, we talked about specific kinds of client advocacy
3 in administrative hearings and working out some specific
4 things and some welfare programs and projects. I mean, that
5 is the kind of thing we would want to encourage, to, in
6 effect, also broaden, if you will, the participation of
7 clients, clients trained, in the whole delivery of legal
8 services.

9 MR. ROGERS: I am trying to figure out what you
10 intend to exclude, if anything, from what activities are now
11 carried on by field programs by using this language. I heard
12 Mr. Mendez say one thing, and that is, perhaps, studies or
13 research efforts unconnected with client representation. I
14 ask whether there is any other kind of activity which you
15 intend by this language to prohibit the field programs from
16 engaging in?

17 CHAIRMAN DURANT: Well, I think all of those,
18 obviously, are going to -- I mean, the -- when the process
19 takes place of evaluating and approving what it is first by
20 local boards as to what has to be specifically done in order
21 to deliver those services, local Boards with, you know, review-
22 ing those particular training and support needs, and I am sure

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1 that as, you know, that if there is the appropriate local
2 Boards are satisfied that that is dealing with particular
3 clients and particular service ways, I suspect the corpora-
4 tion isn't going to object.

5 MR. ROGERS: Okay, is the answer to my question yes?
6 I asked whether there was, is the intention to make through
7 the motion or, indeed, anybody else on the Board, to prohibit
8 field programs from doing -- by these new findings -- from
9 doing anything that they now do. Mr. Mendez mentioned the
10 area of studies. I was trying to figure out what it is you
11 intend.

12 MR. VALOIS: I think I would have to do it the
13 other way around which would be to have somebody tell me a
14 specific example, and then decide whether or not that fit
15 into our definition of direct delivery of services to poor
16 persons. I voted last year for what I thought was a proper
17 reform which was really to take the support funds and give
18 them directly to the field for their expenditure as they
19 deemed appropriate, obviously within the -- whatever rules
20 and regs we have. The only specific example I have heard,
21 in answering your question, but it is the only one you have
22 raised, is studies unassociated with a present client with a

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1 present legal problem. That sort of expenditure would not
2 be permitted under category one, as I understand the motion.

3 MS. BERNSTEIN: I seconded the motion. I do not
4 have anything in mind that this would change in terms of the
5 local programs, in terms of their activities, because the
6 local programs have fiduciary boards that make decisions
7 based on priorities and in conjunction with our Act, relating
8 to the direct delivery of legal services to clients.

9 Now, in terms of delivering a quality service,
10 they can't wait, if they have got a knowledge that there has
11 been a change in the law in a particular area, and that they
12 are likely to have clients because in the past they have had
13 clients, if they wish to have a two-day seminar for the
14 attorneys in their office or contract if there has been a
15 procedural change in the state as far as trial procedures are
16 concerned, they don't have to have an eligible client in order
17 to get that training because it is within the fiduciary
18 decision of that board that in order to provide quality
19 legal services, they need to prepare for that, and a certain
20 amount of that is going to be done at the local level. That
21 doesn't change the fact, though, that the local programs
22 should not be in response to this motion, should it be passed,

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1 decide that they can broaden the possibilities of problems
2 that they need to prepare for because they are still dealing
3 with their priorities, the Act, their responsibility to follow
4 their work plan and what kinds of proportion of their budget
5 is to be spent for training, how much is to be spent for
6 community education, and those kinds of things. I don't see
7 it changing the local programs at all.

8 MR. ROGERS: All right. Let me put the question
9 another way. You do not intend by this wording to restrict
10 field programs engaging in any activities that they can now
11 engage in under the Legal Services Appropriation Act, regula-
12 tions --

13 MR. MENDEZ: No.

14 MS. BERNSTEIN: No.

15 MR. MENDEZ: Let me see if I can clear up what I
16 wanted to do. I don't want to see local programs assuming
17 a character such as some of the national programs have now,
18 the research, in quotes, character.

19 MS. BERNSTEIN: But the only thing I see in this
20 motion is in the second paragraph, as Mr. Durant points out.
21 There is within this motion a reflection of this Board's
22 interest in local programs providing for client centered

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1 activities. Now, obviously in a motion you don't set out all
2 the particulars.

3 CHAIRMAN DURANT: One of the concerns that I
4 certainly have heard in my travels around the country from
5 individual client is that in the process sometimes, too, of
6 making some of these decisions there is not the participation
7 and the openness sometimes with clients in the process of
8 making those decisions. On the other hand, there are programs
9 that strive very hard to have substantial client involvement,
10 not only in the Board sense but in a programmatic sense and
11 in the delivery sense.

12 Yes, sir?

13 MR. CLYDE: I am Bob Clyde on behalf of the Funding
14 Criteria Division of the Budget Advisory Committee. Since
15 the issue has come back around, apparently, to a form of
16 privatization, I thought it was appropriate that we reiterate
17 that the position of the committee has been expressed to
18 this Board on a number of occasions. I myself on November 1
19 last year --

20 CHAIRMAN DURANT: Mr. Clyde, I can't hear you. If
21 you could speak up?

22 MR. CLYDE: I am sorry. In testimony to the Board

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1 in support of its mark, or this year, reiterated that we had
2 adopted the resolution unanimously in Cambridge last year
3 that opposed any effort to privatize support, and instead
4 urged that full funding, in fact increased funding -- not
5 just from the Funding Criteria Division of the Budget Advisory
6 Group. The entire steering committee of the Budget Advisory
7 Group which consists of over 220 -- fund raising that we have
8 been talking about here today.

9 And the representatives to the Budget Advisory Group
10 are not just directors like myself but include staff and
11 financial representatives so we think that there is a broad
12 spectrum of support in our basic service delivery component
13 for the continuation of support services that you are
14 describing as being eliminated.

15 CHAIRMAN DURANT: I don't -- no, no, wait a
16 second.

17 MR. BLYDE: Privatization.

18 CHAIRMAN DURANT: I don't describe them as being
19 eliminated. I -- it is a question of accountable decision-
20 making. It isn't enough, Mr. Clyde, to simply say that we
21 are gathered together and have formed and are going to provide
22 you with this unanimous resolution because when people begin

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1 -- I mean, it is like the Nork Study, and one of its defects
2 is that when people get together in a local program with
3 client involvement and have to make accountable hard choices
4 of the allocation of their resources, it is a far truer
5 reflection of what is necessary and what is needed, and that
6 is the essence of it. It is very easy, frankly, for, you
7 know, resolutions to be passed, and as Professor Booker said
8 in response to one particular question involving the Nork
9 Study, it is very easy to say "I use this every day, every
10 time, and in every possible way," and it also doesn't surprise
11 me, you know. The status quo, the way things are usually
12 done, is always resistant to change, and that the -- I
13 remember in the late 19th century when the head of the -- I
14 don't think it was the Patent Office, but -- made the obser-
15 vation that there were few inventions left for man and women
16 to do, so I think it is, in terms of what works best and in
17 terms of what serves clients best, I think that that decision
18 will be more appropriately reflected in decisions that are
19 made in how resources have to be directly allocated rather
20 than in polls that have no direct accountability to them.

21 PROFESSOR UDDO: Mr. Chairman, I would like to call
22 a question on the motion.

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1 MR. SMEGAL: Well, preliminary to that, I ask for
2 a ruling of the Chair. I believe your motion, the Valois
3 motion -- everybody wants to take credit for it today -- is out of order
4 for the reasons that I have stated, you made a representation
5 on January 30 that this Board would not revisit the question
6 until such time as Professor Uddo's committee gave us the
7 benefit of their deliberations, and you have just restated
8 that right now, and I want a ruling on it. Are you going to
9 suggest that this motion is in order?

10 CHAIRMAN DURANT: I ruled earlier, Mr. Smegal, in
11 response to Mr. -- Basile's question that it is not out of
12 order.

13 MR. SMEGAL: This motion is in order and consistent
14 with what you told this Board on January 30?

15 CHAIRMAN DURANT: This motion is in order, and if
16 it is inconsistent with anything that has been said,
17 obviously the Board can vote it down if the Board agrees with
18 you. Second, I don't see that it is inconsistent because
19 I think that as Basile has pointed out in his questioning to
20 Professor Booker, he possibly believes that a particular
21 configuration is a better approach to go, and if he upon
22 completion of his work can persuade the Board that that is, in

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1 fact, the case, he is a persuasive advocate and I know will
2 attempt to do so.

3 I think this motion is broader than just the
4 question of the support.

5 MR. SMEGAL: I would like to join Mr. Uddo in calling
6 for the question, Mr. Durant. It is obviously wasting our
7 time talking about this subject any longer. There is a group
8 in here that have a preconceived attitude towards this issue.
9 They are not willing to wait for the committee you appointed
10 to come in with its deliberations. It held several hearings.
11 They are in the process of distilling those hearings, and
12 you are not willing to wait for that. Let's get on with the
13 issue. I want to vote right now and call for the question.

14 CHAIRMAN DURANT: I know you want to vote right
15 now because of plane considerations, and as I have indicated
16 to you, that I have made a commitment to Mr. Wallace regard-
17 ing his opportunity to vote on this matter. I have been
18 informed by the Secretary of the Board that Mr. Wallace will
19 be calling at 4:00 o'clock for that purpose, and that there-
20 fore discussion will continue --

21 MR. SMEGAL: I don't believe that is the case.

22 CHAIRMAN DURANT: Well, just a second.

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1 MR. SMEGAL: If you wanted Mr. Wallace to vote on
2 this matter, we can start the vote, and you can recess the
3 Board --

4 CHAIRMAN DURANT: No, no.

5 MR. SMEGAL: In my absence and the absence of
6 others, you can get the vote when Mr. Wallace calls here.

7 CHAIRMAN DURANT: Just a second.

8 MR. MENDEZ: Tom, would you agree to take the vote
9 and leave the vote open for Mr. Wallace?

10 MR. SMEGAL: I just suggested that.

11 MR. MENDEZ: Okay.

12 MR. SMEGAL: If that is what Clark wants to do, if
13 he wants Wallace's vote and you are going to sit around and
14 wait for Wallace to call you back -- I don't want to do that.
15 I want the vote now, and you can have Mr. Wallace call in
16 any time he wants.

17 MS. BERNSTEIN: Could I just respond to this whole
18 business about the committee for just a minute? Because I
19 talked with you during one of the breaks, Basile. I do not
20 believe that a Board vote on this today means that the com-
21 mittee is not to finish its work because the committee's
22 charge is to look at those particular structures and the

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1 concept of a national approach to support, as to whether or
2 not that is something that has, in fact, worked in the past
3 and should be the operation for the future.

4 We are in a situation, though, where we have always
5 been given to understand here that as long as something had
6 status quo standing, that it somehow came in with a better
7 opportunity than something else, and that we should give
8 deference to it. I disagree with that. I think that we
9 continue our look at where -- you know, what kind of specialized
10 support is needed. I think we look at some of the options
11 that are out there. Maybe there are situations where there
12 are national benefits to be gained by purchasing something
13 on a national level.

14 However, I think that we also can in good faith
15 say, without knowing -- I mean, the suppositions have been
16 forwarded that the support centers will fall. I disagree with
17 that.

18 PROFESSOR UDDO: In all fairness, LeaAnne, that
19 was the understanding, I think, when the committee was
20 appointed, that it was going to be studying specifically the
21 question surrounding the Board's action last time and any other
22 alternatives or proposals that might come out of it, and I

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1 don't at this moment agree that this committee survives this
2 vote. I just don't -- I am not sure what the committee
3 would do, but really, I would like to again reiterate my
4 motion to call the question. I have a plane to catch, too,
5 and I would like a vote on that motion to call the question.

6 MR. MENDEZ: Let me clarify this. I want to make
7 sure that we are all in agreement that we can leave it open
8 for Mike as a courtesy to Mike.

9 PROFESSOR UDDO: That is fine.

10 MS. BERNSTEIN: But I am not so sure that that --

11 CHAIRMAN DURANT: I don't know if you can technically
12 do that. I suppose if we unanimously agree to that --

13 MR. MENDEZ: I think if we unanimously agree to it,
14 I think we can do it. I think that is a courtesy to Mike.

15 CHAIRMAN DURANT: Do you have any disagreement to
16 that?

17 PROFESSOR UDDO: I have no objection.

18 CHAIRMAN DURANT: Mr. Smegal, do you have an
19 objection?

20 MR. SMEGAL: No, I already stated --

21 CHAIRMAN DURANT: Mr. Eaglin, do you have an objec-
22 tion?

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1 MR. EAGLIN: No.

2 CHAIRMAN DURANT: Ms. Benavidez, do you have an
3 objection?

4 MS. BENAVIDEZ: No.

5 MS. MILLER: No.

6 MR. VALOIS: My problem is that, given the
7 vagaries of what is actually going on, I don't know what
8 happens if Mr. Wallace does not call. Mr. Wallace is in
9 trial, and is going to a Judge and say, "Your Honor, I have
10 to make a call at 4:00 o'clock." It may or may not be heeded
11 by His Honor. I don't know what kind of trial it is, what
12 the jurisdiction is, or anything else, but if Mr. Wallace
13 doesn't call at 4:00, and Mr. Wallace doesn't get around
14 to calling at 6:00, do we just sit here and wait for Mr.
15 Wallace's call?

16 MR. MENDEZ: No.

17 PROFESSOR UDDO: No. I think the agreement was
18 that -- I think you would have to have him vote at some sort
19 of open meeting.

20 MR. MENDEZ: That is correct, but -- that is fine,
21 but I think --

22 PROFESSOR UDDO: I am willing not to object to his

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1 -- to leaving the vote open so that he can vote. I can't
2 waive the requirement that it be done at an open meeting.

3 CHAIRMAN DURANT: Ms. Benavidez, would you be
4 willing to wait until -- I mean, I understand your plane
5 doesn't go until tomorrow. Is that correct? I think every
6 other person who is -- I think Mr. Smegal, Mr. Uddo, Mr.
7 Eaglin, and Ms. Miller all have planes to catch. Would you
8 be willing to wait until Mr. Wallace calls and then if we
9 take their votes now?

10 MR. EAGLIN: I want to wait until the end, too.

11 CHAIRMAN DURANT: Oh, you will be --

12 MR. EAGLIN: If I have to change my plane reserva-
13 tions, I plan to be here until the end of this meeting,
14 whenever that happens.

15 CHAIRMAN DURANT: Okay.

16 We haven't gone -- I have unanimous consent on
17 Mr. Uddo's point.

18 MS. BERNSTEIN: Did he say he consented?

19 CHAIRMAN DURANT: He hasn't said yet.

20 Do you consent?

21 MR. EAGLIN: Mr. Chairman, there is no specifica-
22 tion that the vote has to be concluded within a certain

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1 period of time once we begin to vote, is there?

2 MR. VALOIS: As long as the meeting is still going
3 on.

4 We will leave the meeting open until next Wednes-
5 day, if that is what it takes?

6 PROFESSOR UDDO: I don't think we would do that
7 even if we were going to all stay here, leave it open until
8 next Wednesday. I mean, that is the problem with having
9 tried to arrange it this way.

10 MR. MENDEZ: May I make one suggestion? I would
11 suggest that we --

12 CHAIRMAN DURANT: I think we can do this. Just a
13 second. Let me just --

14 MR. EAGLIN: I believe his likely time, Clark,
15 is probably at 6:00 because that is 5:00 Central Time, and
16 I am sure that they would conclude whatever they are doing by
17 then.

18 PROFESSOR UDDO: You have to go to my motion calling
19 the question, don't you?

20 CHAIRMAN DURANT: Yes.

21 MS. BERNSTEIN: It takes a two-thirds majority.

22 PROFESSOR UDDO: To what, to call the question?

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1 CHAIRMAN DURANT: To call the question.

2 MS. BERNSTEIN: Well, Mr. Smegal pointed that out
3 at an earlier meeting.

4 PROFESSOR UDDO: Well, let's vote.

5 MR. MENDEZ: I agree that we should do this voting
6 now and leave it open for Mike.

7 MS. BERNSTEIN: Well, unless we get demand on this,
8 I don't want to do it, and besides I am not sure it is legal.

9 CHAIRMAN DURANT: You will be here until the --

10 MR. EAGLIN: I will stay until the bitter end.

11 CHAIRMAN DURANT: Well, we first have to make the
12 unanimous consent decision.

13 MR. MENDEZ: Bob?

14 MR. VALOIS: What is it we are being asked to con-
15 sent to? To leave the meeting open until such time as Mr.
16 Wallace and every other member of the Board has cast his
17 vote? Is that what we are being asked to consent to?

18 MR. EAGLIN: Yes, to leave the vote open until
19 that time.

20 MR. VALOIS: Is that what we are being asked?

21 MR. EAGLIN: Yes.

22 MR. VALOIS: I will consent to that, if that is what

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1 we are --

2 CHAIRMAN DURANT: All right. LeaAnne?

3 MS. BERNSTEIN: I will consent to that.

4 CHAIRMAN DURANT: Mr. Mendez?

5 MR. MENDEZ: Yes.

6 CHAIRMAN DURANT: Ms. Swafford?

7 MS. SWAFFORD: Yes.

8 CHAIRMAN DURANT: So we have unanimous consent to
9 that.

10 MR. MENDEZ: All right, now, in view of that I
11 think we will take the vote. If they want to have the vote,
12 let's have the vote.

13 MS. BERNSTEIN: No, no. I consented to that. Now
14 I want to do something else. I need -- I need to have an
15 opinion from General Counsel whether there will be any allega-
16 tion that somehow this is not appropriate because Mr. Wallace
17 has not been --

18 CHAIRMAN DURANT: I don't think he can give you an
19 opinion as to whether there will be any allegations. I think
20 he can give you an opinion as to whether or not he can --
21 whether, in his judgment, that is permitted by the bylaws.

22 MS. BERNSTEIN: Yes. I am concerned, frankly --

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1 MR. VALOIS: Well, specifically, whether or not a
2 vote under such conditions is a valid vote.

3 MS. BERNSTEIN: Yes.

4 CHAIRMAN DURANT: If you want to take a look and --
5 if, and I appreciate the taxi problem -- if as a matter of
6 courtesy --

7 PROFESSOR UDDO: It will be moot.

8 MR. SMEGAL: Well, it seems to me highly inappropri-
9 ate that we are sitting here discussing whether two
10 members of the Board who have been here all day are going to
11 be able to vote on an issue that has been discussed all day,
12 or whether our votes will be cast aside in favor of someone
13 who has been in court all day and has heard none of this.

14 CHAIRMAN DURANT: Mr. Shea, do you have an opinion
15 on this?

16 MR. SMEGAL: That is a very interesting situation.

17 MR. SHEA: I would like to hear, if I may -- there
18 have been a lot of exchanges. May I have the question with
19 some precision?

20 PROFESSOR UDDO: Whether or not we can leave the
21 vote open until Mr. Wallace calls in to vote by telephone.

22 MR. VALOIS: Well, specifically, what I said was until

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1 every member of the Board has voted.

2 CHAIRMAN DURANT: If there is a quorum present at
3 the time the vote --

4 MR. SHEA: Yes, I think a quorum, I think a quorum
5 must remain, and I think the Board on its own, and frankly
6 I am venturing on this, but I think the Board on its own may
7 decide to extend that acceptance of the votes, but I think
8 nevertheless there should be a quorum here during the
9 pendency of the vote.

10 MR. EAGLIN: The absence of a quorum has to be
11 raised, though; isn't that right?

12 MR. SHEA: That is -- as a matter of fact --

13 MR. EAGLIN: So if we complied in this, then we are
14 not going to raise the issue of the absence of a quorum.

15 MR. MENDEZ: Let me ask this question to the Board.
16 How many of you will be here? How many will stay?

17 CHAIRMAN DURANT: Mr. Eaglin will be here. We
18 will have a quorum.

19 MR. MENDEZ: Let's vote.

20 PROFESSOR UDDO: We are voting on the motion --

21 MR. EAGLIN: We may not raise the issue --

22 CHAIRMAN DURANT: But you will be here?

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1 MR. EAGLIN: Yes.

2 CHAIRMAN DURANT: Okay.

3 MR. MENDEZ: Let's vote.

4 CHAIRMAN DURANT: Wait, wait, wait. Mr. Shea is
5 to give us an opinion.

6 PROFESSOR UDDO: He gave an opinion.

7 MR. SHEA: If we have a quorum here, yes.

8 MR. EAGLIN: Is that correct, or is it the fact
9 that the absence of a quorum has not been raised?

10 MR. SHEA: Well, I would say out of prudence I
11 would suggest that a quorum remain. I think it is a matter
12 of -- there is a -- once the meeting is convened with
13 a quorum as you have it, there is a presumption that the
14 quorum remains, and yes, that presumption will prevail unless
15 a Board member asks for a roll call at the conclusion or
16 during a vote because a roll call would reveal the absence
17 of a quorum. But absent the roll call, then the presumption
18 of a quorum will remain.

19 CHAIRMAN DURANT: But you are going to be here,
20 and Ms. Benavidez is going to be here; is that correct?

21 MR. EAGLIN: And I won't raise the issue of the
22 absence, if it comes to that.

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1 CHAIRMAN DURANT: And you won't leave?

2 MR. EAGLIN: I plan to stay here until the end,
3 and you are going to stay here until the end?

4 MS. BENAVIDEZ: Yes.

5 CHAIRMAN DURANT: Okay.

6 MR. EAGLIN: I will change my reservations if I
7 have to.

8 CHAIRMAN DURANT: So you don't see any problem
9 with us doing a vote in terms --

10 MR. VALOIS: No, he doesn't. Let's vote.

11 CHAIRMAN DURANT: Well, are we voting on your
12 motion to -- are you withdrawing your motion to call?

13 PROFESSOR UDDO: We have consent to vote on the
14 motion. Nobody objected. I withdraw my motion to call.
15 Let's just vote on the motion.

16 MS. BERNSTEIN: All right, exactly how does it work
17 that the training is out of it?

18 CHAIRMAN DURANT: There are two votes.

19 PROFESSOR UDDO: I am going to abstain from that
20 vote, anyway, so it doesn't make any difference.

21 MS. BERNSTEIN: Okay, which one are we doing, is
22 my question.

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1 CHAIRMAN DURANT: We are doing the main motion
2 first, the main motion first.

3 MS. SWAFFORD: We are doing Mr. Valois's motion?

4 CHAIRMAN DURANT: Yes, which -- and I will just
5 quickly read --

6 MR. EAGLIN: You don't need to do that.

7 CHAIRMAN DURANT: Well --

8 MS. SWAFFORD: We know -- that is --

9 CHAIRMAN DURANT: It is designated as Exhibit 1,
10 and I will hand it to Mr. Bayly so that the record is clear.

11 Ms. Swafford, how do you vote?

12 MS. SWAFFORD: I vote for the motion.

13 CHAIRMAN DURANT: Mr. Mendez?

14 MR. MENDEZ: Aye.

15 CHAIRMAN DURANT: Ms. Bernstein?

16 MS. BERNSTEIN: Yes.

17 CHAIRMAN DURANT: Mr. Valois?

18 MR. VALOIS: Aye.

19 CHAIRMAN DURANT: Mr. Durant votes "aye." Ms.
20 Miller?

21 MS. MILLER: No.

22 CHAIRMAN DURANT: Ms. Benavidez?

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1 MS. BENAVIDEZ: No.

2 CHAIRMAN DURANT: Mr. Eaglin?

3 MR. EAGLIN: No.

4 CHAIRMAN DURANT: Mr. Uddo?

5 MR. UDDO: No.

6 CHAIRMAN DURANT: Mr. Smegal?

7 MR. SMEGAL: No.

8 CHAIRMAN DURANT: Okay, and we will wait until

9 Mr. Wallace calls to vote.

10 MS. BERNSTEIN: We don't want to do the second vote

11 with --

12 CHAIRMAN DURANT: We are going to wait for the

13 second. We can't --

14 PROFESSOR UDDO: Well, I am going to abstain.

15 MR. SMEGAL: I vote that you reverse the roll call.

16 Roll calls are normally done alphabetically, Clark, and I

17 don't know whether Smegal comes first or last.

18 CHAIRMAN DURANT: All right.

19 MR. SMEGAL: I will say no whenever you tell me to

20 say no.

21 CHAIRMAN DURANT: Okay, thank you. We will just

22 do the second after Mr. Wallace calls. Why don't we take

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1 a --

2 MR. MENDEZ: Why don't we adjourn subject to call?

3 MR. SHEA: May I be heard --

4 CHAIRMAN DURANT: No, I don't want to --

5 MR. SHEA: I would just suggest that the Board be
6 cognizant -- I want to just advise the Board on the basis of
7 my rationale. Under Section 1601.15(c) which deals with
8 meetings, and in particular meetings where Board members
9 participate telephonically, there is a provision that a
10 quorum is present, all the directors may participate by means
11 of conference telephone or any means of communication by which
12 all persons participating in the meeting are able to hear
13 one another, and by which the interested members of the public
14 are able to hear. I take this consent that was just raised
15 as effectively either obviating, dealing -- either waiving or
16 obviating that, if that was -- I think that was the tenor of
17 the incorporated --

18 MS. BERNSTEIN: We do not need to waive that, do
19 we, because there will be a speaker phone in which everybody
20 will be able to hear the votes that are cast.

21 MR. SHEA: That is correct. As long as there is a
22 quorum here, of course the Board is able to --

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1 MS. BERNSTEIN: And those votes that have been
2 cast will be reiterated so Mr. Wallace will be able to react
3 to what the votes have been.

4 MR. SHEA: That is correct, and correct me if I am
5 wrong, but the main vote has not even been voted on.

6 CHAIRMAN DURANT: Yes, it has.

7 MS. BERNSTEIN: The main vote was voted on. I
8 don't quite understand how that came first, but --

9 CHAIRMAN DURANT: It has been voted on. The main
10 vote has been voted on. That is what we just voted.

11 (Telephone rings.)

12 CHAIRMAN DURANT: Hello? Michael, how are you?
13 We are voting, and we are all voting because we are waiting
14 for your vote, so just a minute. Let me put this on the
15 speaker.

16 Michael, can you -- all right, the motion that
17 was made by Mr. Valois and seconded by Ms. Bernstein is as
18 follows:

19 "In an effort to focus scarce funds for legal
20 services on local delivery, I move to amend the LSC budget
21 request for Fiscal Year 1988 as follows: Roman numeral I.
22 Direct Delivery of Services to Poor Persons: A. Programs

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1 presently funded as basic field programs and supplemental
2 field programs, \$282,938,000. B. Native American programs,
3 \$7,022,000. C. Law School clinics, \$1,000,000. D. Direct
4 delivery alternative dispute resolution initiatives,
5 \$2,000,000. And then Roman numeral II, Administration and
6 Development, \$12,540,000, for a total budget of \$305,500,000.
7 All funds provided in Roman numeral I, 'direct delivery of
8 services to poor persons,' close quote, herein totalling
9 \$292,960,000 shall only be expended for the local direct
10 delivery of client centered legal assistance to eligible
11 poor persons. All programs presently funded as basic field
12 programs and supplemental field programs shall establish
13 specific substantive client training and client managed
14 initiatives solely dedicated to the purpose of redressing
15 legal grievances of client eligible persons."

16 The motion was seconded. The vote that has been
17 taken, Ms. Swafford voted in favor of it. Mr. Mendez voted
18 in favor of it. Ms. Bernstein voted in favor of it. Mr.
19 Valois voted in favor of it. The Chairman voted in favor of
20 it. Ms. Miller voted against it. Ms. Benavidez voted against
21 it. Mr. Eaglin voted against it. Mr. Uddo voted against it.
22 Mr. Smegal voted against it. It is five-five. It is your vote.

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1 gets folded into the basic field and supplemental field pro-
2 gram lines. In fact, the number I read, the \$282,938,000
3 in the motion, the first motion, assumed the money from
4 training development and technical assistance so that would
5 have to be a technical correction, but there is now --

6 MR. WALLACE: -- a separate vote to fold that in.

7 CHAIRMAN DURANT: -- a separate vote to fold that in.

8 MR. WALLACE: Okay.

9 CHAIRMAN DURANT: And we will take that vote now.

10 MR. VALOIS: For the record let the Vice Chair say
11 in view of the objection of the prior motion by the Chairman,
12 that the Vice Chair hereby utters the Chairman's motion on
13 this subject as well.

14 CHAIRMAN DURANT: Thank you.

15 MS. BERNSTEIN: I second it.

16 CHAIRMAN DURANT: And it has been seconded. Is
17 there any discussion?

18 (No response.)

19 CHAIRMAN DURANT: We are prepared to vote. Ms.
20 Swafford?

21 MS. SWAFFORD: I vote "aye."

22 CHAIRMAN DURANT: I am sorry; yes?

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1 MS. SWAFFORD: Yes.

2 CHAIRMAN DURANT: Mr. Mendez?

3 MR. MENDEZ: Yes.

4 CHAIRMAN DURANT: Ms. Bernstein?

5 MS. BERNSTEIN: Yes.

6 CHAIRMAN DURANT: Mr. Valois?

7 MR. VALOIS: Yes.

8 CHAIRMAN DURANT: Mr. Durant, yes. Ms. Benavidez?

9 MS. BENAVIDEZ: No.

10 CHAIRMAN DURANT: Mr. Eaglin?

11 MR. EAGLIN: No.

12 CHAIRMAN DURANT: Mr. Wallace?

13 MR. WALLACE: Aye.

14 CHAIRMAN DURANT: Mr. Smegal, and Mr. Uddo, and

15 Ms. Miller are out of the room, but the record should

16 reflect that Mr. Uddo would not vote on this particular item,

17 but that Mr. Smegal and Ms. Miller if they were present would

18 vote against this motion as well. The motion carries.

19 MR. WALLACE: Mr. Chairman, do you have further

20 need for me, or can I get back to my client?

21 CHAIRMAN DURANT: Anything further from the Board?

22 MR. MENDEZ: Thank you very much, Mike.

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1 MR. WALLACE: Thank you all, folks. Have a safe
2 trip home.

3 CHAIRMAN DURANT: Good luck. Bye.

4 The next item on our agenda, if the Board wishes --

5 MR. MENDEZ: Mr. Chairman?

6 CHAIRMAN DURANT: Just a second. -- if the Board
7 wishes to take it up, is the voucher project status report
8 and the report on the law school clinics. Is there any
9 feeling of the Board as to whether to take those up?

10 MR. EAGLIN: I read them.

11 CHAIRMAN DURANT: I beg your pardon?

12 MR. EAGLIN: I read them.

13 CHAIRMAN DURANT: Oh, did you? Okay.

14 MR. MENDEZ: Mr. Chairman?

15 CHAIRMAN DURANT: Mr. Mendez?

16 MR. MENDEZ: I would request that Mr. Bayly
17 immediately pass this information, this vote, to the Hill.

18 CHAIRMAN DURANT: Believe me, I think it has already
19 happened, Mr. Mendez.

20 MR. MENDEZ: I request that a formal letter go.

21 CHAIRMAN DURANT: Is there any feeling from the
22 Board on the items of six and seven on the agenda? Is there

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1 any feeling?

2 MR. MENDEZ: I move that we postpone until the
3 next Board meeting.

4 CHAIRMAN DURANT: Is there a second to that?
5 Is there a second to that?

6 MR. VALOIS: I second.

7 CHAIRMAN DURANT: Is there any discussion?

8 MR. EAGLIN: Do you want to mention when the next
9 Board meeting is going to be based on what we talked about
10 last night?

11 CHAIRMAN DURANT: Yes, I agree with you.

12 MR. MENDEZ: Is the next Board meeting Monday?

13 CHAIRMAN DURANT: Just a second. I assume all in
14 favor of that motion, signify by saying "aye."

15 (Chorus of "ayes.")

16 CHAIRMAN DURANT: Opposed?

17 (No response.)

18 CHAIRMAN DURANT: Motion carried. Those two reports
19 will be deferred. Mr. Bayly, when is the date set for our
20 next Board meeting?

21 MR. BAYLY: The next Board meeting is the fourth and
22 fifth -- fourth, I mean to say, Thursday and Friday in

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1 November, and that is -- it is right before Thanksgiving,
2 as I recall.

3 CHAIRMAN DURANT: The 18th and 19th of November.

4 MR. BAYLY: The 18th and 19th.

5 CHAIRMAN DURANT: In Philadelphia.

6 MR. BAYLY: The 19th and 20th, and we will be in
7 Philadelphia, I expect.

8 CHAIRMAN DURANT: It is not the fourth, then.

9 We moved it up --

10 MS. BERGMARK: -- because of Thanksgiving.

11 MR. BAYLY: Excuse me. I am corrected, but the
12 proper dates are November 19 and November 20.

13 CHAIRMAN DURANT: In Philadelphia.

14 Ms. Bergmark, do you want to speak before we
15 adjourn? Please.

16 MS. BERGMARK: I realize it has been a long day,
17 and my request for your consideration is on the refunding
18 application, grants assurance. Once again this year there
19 have been a few changes in grant assurance. We sent out our
20 first problem is -- somebody noted it -- is
21 the fact that no notice of these changes has gone out prior
22 to releasing the refunding application, and in at least one

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1 instance there was apparently a change in policy that is
2 incorporated in one of the grant assurance changes. I call
3 your attention specifically to grant assurance number seven.
4 An addition has been made to this grant assurance that we
5 -- the recipient will be responsible for all reasonable and
6 necessary expenses relating to the LSC information gathering
7 efforts, including but not limited to the following. One,
8 costs associated with the production, duplication, and sub-
9 mission of documents of incorporation. Two, costs associated
10 with meetings between representatives of the corporation and
11 the auditor who was and/or has been engaged to perform the
12 annual audit. And three, charges for telephone calls made
13 in --

14 CHAIRMAN DURANT: Martha, Martha. Believe me, I
15 appreciate your industriousness, but I don't think that
16 with the Board not -- I think that this sounds like a matter
17 that ought to be taken up with Mr. Bayly directly in the
18 course of --

19 MS. BERGMARK: Mr. Durant, with respect to grant
20 assurance eight, we raised a similar objection last year. It
21 was taken up with Mr. Bayly and the corporation. No resolu-
22 tion of it was ever reached. The same change that we raised

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1 last year and the year before appears again in grant assur-
2 ance number eight.

3 CHAIRMAN DURANT: Then here is what I would ask is,
4 because I don't -- with Mr. Smegal and Mr. Uddo and Ms.
5 Miller and Mr. Wallace not here, I will ask if Mr. Bayly
6 to expeditiously get out to the Board -- and if it is a
7 specific matter that deals with the Board having to make
8 a decision, to get out very quickly to the Board what is at
9 issue here.

10 MS. BERGMARK: Well, the grant assurance appears
11 to intend a major policy change in monitoring -- who assumes
12 the cost for monitoring information gathering? And it is
13 simply plopped into the middle of a grant assurance without
14 any advance notice to anyone, without, to our knowledge, any
15 more discussion of it, and that application is due on
16 November 5.

17 CHAIRMAN DURANT: Mr. Mendez?

18 MR. MENDEZ: Some of those are prerogatives of the
19 president, and I know that I have had an interest in these
20 grant assurances for several years, and I have read all of
21 them, and I thought that they were all appropriate before
22 they went out.

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1 MS. BERNSTEIN: We went through the grant assur-
2 ances at one point as a committee, I think.

3 CHAIRMAN DURANT: You did?

4 MS. BERNSTEIN: Pepe will remember --

5 MR. MENDEZ: Oh, yes.

6 MS. BERNSTEIN: -- that it was laborious. We
7 stayed for hours and hours and hours going through, word by
8 word, the grant assurances, and frankly, our feeling is that
9 if you have got specific problems that you cannot negotiate
10 with the corporation, I think the more information the better.
11 If you wish to send us the things that you object to, fine,
12 but there are requests for information and assurances that
13 I think that the corporation has a right to have, and I
14 frankly, I will tell you that is my attitude.

15 MS. BERGMARK: Ms. Bernstein, this has nothing to
16 do with the --

17 CHAIRMAN DURANT: It is the allocation of costs.

18 MS. BERGMARK: This has to do with the allocation
19 of costs for monitoring visits. The way this grant assurance
20 is drafted, it could be read to allow the corporation to
21 bill programs for the entire cost of monitoring.

22 CHAIRMAN DURANT: All right. It is the -- have you

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1 taken this up with Mr. Bayly?

2 MS. BERGMARK: No, sir, I have not.

3 CHAIRMAN DURANT: All right, would you -- you
4 will agree that Mr. Bayly is a reasonable person?

5 MR. BAYLY: Sometimes.

6 CHAIRMAN DURANT: If you would take it up with him
7 specifically right after this meeting, and if there is any-
8 thing specific that you feel the Board needs to know or that
9 Mr. Bayly feels we need to know on that, then I would ask
10 both of you to do it expeditiously, but I suspect -- I am sure
11 you can probably get it worked out with Mr. Bayly.

12 MR. MENDEZ: I think that you can -- if the issue
13 that you have raised is that particular one, I am sure that
14 John can issue a clarifying letter.

15 CHAIRMAN DURANT: I see the problem that you are
16 pointing out, and I think that that is probably something
17 you can work out with Mr. Bayly, and if there is a problem,
18 I am sure the Board is willing to move quickly to resolve it.

19 MS. BERGMARK: Thank you.

20 CHAIRMAN DURANT: Anything else?

21 (No response.)

22 CHAIRMAN DURANT: I will entertain a motion to

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1 adjourn.

2 MR. VALOIS: So moved.

3 MS. BERNSTEIN: I second it.

4 CHAIRMAN DURANT: There has been a motion and a
5 second. Any discussion?

6 (No response.)

7 CHAIRMAN DURANT: All those in favor, signify by
8 saying "aye."

9 (Chorus of "ayes.")

10 CHAIRMAN DURANT: Opposed?

11 (No response.)

12 CHAIRMAN DURANT: The motion is -- the meeting is
13 adjourned.

14 (Whereupon, at 4:10 p.m. the meeting was adjourned.)

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