

ORIGINAL

THE LEGAL SERVICES CORPORATION
AUDIT AND APPROPRIATIONS COMMITTEE MEETING

November 19, 1988

2:30 p.m.

The Horton Grand Hotel
311 Island Avenue
San Diego, California 92101

BOARD MEMBERS PRESENT:

Pepe Mendez, Chairman
Hortencia Benavidez
LeaAnne Bernstein
Paul Eaglin
Lorain Miller
Basile J. Uddo
Claude Swafford
Robert A. Valois

STAFF MEMBERS PRESENT:

Terrance Wear, President
David Richardson, Comptroller
Maureen Bozell, Secretary

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M O T I O N S

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Mr. Eaglin

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Mr. Valois

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P R O C E E D I N G S

1
2 CHAIRMAN MENDEZ: The Audit and Appropriations
3 Committee will come to order. The first thing on the agenda is
4 the reflection of who is in attendance.

5 Let the record reflect that Mr. Durant is carrying on
6 a conversation with a number of people, but he is present. Mr.
7 Eaglin is present, Hortencia Benavidez is present and the
8 chairman and we have a quorum.

9 The first thing I would like to ask it unanimous
10 consent to approve the agenda. Hearing no objection, the agenda
11 is approved.

12 Do I hear a motion to approve the minutes of the
13 August 26, 1988 committee meeting?

M O T I O N

14
15 MR. EAGLIN: So moved.

16 CHAIRMAN MENDEZ: I have a motion, do I have a second?

17 MS. BENAVIDEZ: I second that.

18 CHAIRMAN MENDEZ: It has been moved and seconded, are
19 there any comments about it?

20 (No response.)

21 CHAIRMAN MENDEZ: None appearing, the minutes are
22 approved. The next matter on the agenda is the review of the FY

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1 88 monthly expenditures through September 30th at this time by
2 Mr. Richardson.

3 MR. EAGLIN: Who are we missing from our committee?

4 CHAIRMAN MENDEZ: The members of the committee who are
5 not present are Mike Wallace and LeaAnne Bernstein. We have in
6 a carryover in numbers so far.

7 MR. EAGLIN: This should not be September 31st.

8 CHAIRMAN MENDEZ: Do we have any carryover numbers at
9 all?

10 PRESENTATION BY MR. RICHARDSON

11 MR. RICHARDSON: Yes, we do. I have some information
12 with that with regards to projected committed and uncommitted
13 carryover.

14 CHAIRMAN MENDEZ: What is that?

15 MR. RICHARDSON: Referring to page 12, the total
16 carryover that we're expecting is 1,972,128.

17 CHAIRMAN MENDEZ: Not the 2.4?

18 MR. RICHARDSON: The 2.4 would include the other
19 funds, and yes, that would be the total. As far as total
20 budgeted carryover from the budgeted funds, it is \$1,972,128.
21 We've collected funds from other sources which will give us a
22 total projected carryover of \$2,457,632.

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1 CHAIRMAN MENDEZ: In the congressional comments, they
2 anticipated that we would have a \$1.7 million carryover that was
3 -- have you, in terms of budgeting for '89, included those
4 numbers and figures in your computation and have you worked on
5 factoring them out of this budget?

6 MR. RICHARDSON: Yes, we have. If you'd like to
7 review through the basic field programs, we can do that.

8 CHAIRMAN MENDEZ: Okay.

9 MR. RICHARDSON: In regards to the committee
10 carryover, we have in the basic field, which I am referring to
11 page 11, the total funds is \$311,268. Of that money, \$233,449
12 is committed to two different grantees that are on month-to-
13 month or contract funding.

14 CHAIRMAN MENDEZ: What about the other uncommitted,
15 about \$77,000, will you reprogram that into M&A?

16 MR. RICHARDSON: Yes, sir. That money will be in
17 there.

18 CHAIRMAN MENDEZ: It's my understanding, correct me if
19 I'm wrong, that we have to give a reprogramming notice to the
20 Congress on everything?

21 MR. WEAR: Mr. Chairman, the corporation does give a
22 notice of reprogramming to both the House and Senate

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1 Appropriations Committees. We have been doing that in the past
2 when the Board has taken specific action to do so. The Board
3 has not done that yet.

4 I am giving some consideration to issuing -- rather to
5 sending a notice of reprogramming to those committees without
6 the Board's formal action on it, based on our review here today.
7 The reason for doing that is more, I think, an abundance of
8 caution than anything else, just to be sure that those
9 committees, in fact, receive that notice in a timely fashion.

10 CHAIRMAN MENDEZ: I also think the language there, in
11 any case, with regard to the 1.7 because of their language, it
12 says, that conference and agree that additional carryover be
13 \$1.7 million.

14 MR. WEAR: I don't think that it applies as to the
15 1.7, but since our numbers are a bit higher than the 1.7, I was
16 going to prepare a letter and send it under my signature tot
17 hem, advising them of where we are and what the probable
18 disposition of those funds will be.

19 CHAIRMAN MENDEZ: Okay. Does anybody have any
20 questions?

21 MR. EAGLIN: Is he going to continue with his outline?
22 Either that or he could -- I think in past years we've had

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1 narrative summaries of the status under the different line items
2 in terms of the carryover, just some way that we can understand
3 the character of the money we have left.

4 CHAIRMAN MENDEZ: Why don't we do that before the
5 December meeting.

6 MR. EAGLIN: It's just three weeks away. That would
7 be fine if you could come up with something like a memo
8 narrating the status.

9 MR. RICHARDSON: I do have a draft proposal that I can
10 give you today that will outline where the money is committed
11 and uncommitted at this point.

12 MR. EAGLIN: The nature of the money that is committed
13 right now?

14 MR. RICHARDSON: Yes, sir.

15 MR. EAGLIN: So that we'll see how much of the
16 carryover is uncommitted?

17 MR. RICHARDSON: Yes, sir.

18 MR. EAGLIN: If he could flush that out in a memo,
19 that would help out.

20 MR. RICHARDSON: Again, that was done later in the
21 cycle, but we're all ready to do that.

22 A PARTICIPANT: I'd like to get a copy of that draft

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1 explanation.

2 CHAIRMAN MENDEZ: Do you have any questions at this
3 time?

4 MR. EAGLIN: That's something that you have now ready
5 for distribution?

6 MR. RICHARDSON: Yes, sir.

7 MR. WEAR: As I understand it, Mr. Richardson, this
8 document consisting of four pages labeled attachment D in the
9 upper right hand corner is a draft document?

10 MR. RICHARDSON: Yes, sir, it is.

11 MR. WEAR: So we will mark it as draft then.

12 MR. RICHARDSON: That's correct. It is subject, of
13 course, as far as committed and uncommitted carryover to Board
14 approval.

15 MR. WEAR: Thank you.

16 CHAIRMAN MENDEZ: I notice under the migrant programs
17 that there is about \$270,000 uncommitted funds. Why is it that
18 large?

19 MR. RICHARDSON: We have got four states that do not
20 have migrant components that have funding available to them.
21 The states are Arkansas, Mississippi, Tennessee and Alabama.

22 CHAIRMAN MENDEZ: Why do we have \$161,000 of

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1 uncommitted funds?

2 MR. RICHARDSON: At the beginning of the year we had
3 approximately \$98,000 in that line as a contingency. We have
4 awarded some one-time grants out of that line and the funds are
5 down, at this point, to the 61. Even in next year's funding
6 there is a contingency allowable.

7 CHAIRMAN MENDEZ: I have no further questions at this
8 time.

9 MR. EAGLIN: I may once I get that memo. You're still
10 going to do the memo?

11 MR. RICHARDSON: Yes, sir.

12 CHAIRMAN MENDEZ: Basile, we're going to do a memo on
13 this explaining in a little bit more detail what's it all about.
14 I know that you're very interested.

15 MR. UDDO: I'm engrossed in it.

16 CHAIRMAN MENDEZ: We won't ask you any questions about
17 it.

18 MR. UDDO: No testimony.

19 CHAIRMAN MENDEZ: If there are no further questions,
20 we'll go to the next issue or the next area.

21 A review of FY 89 appropriations. I've just sort of
22 got questions. Has PAG run the numbers for basic field and have

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1 they cross-checked them with us?

2 MR. CLYDE: The answer to the first part of that is
3 yes. The answer to the second part is no.

4 MS. BERGMARK: We haven't received your numbers.

5 MR. WEAR: Let me ask this, Mr. Chairman. Perhaps the
6 representative from PAG can send us their numbers and we'll
7 compare them with what we have.

8 MS. BERGMARK: We'd be happy to swap.

9 MR. WEAR: Well, we'll resolve that in the coming
10 week, Mr. Chairman.

11 CHAIRMAN MENDEZ: I know that there were a couple of
12 times where we started on a little bit difference premises and
13 came up with just a two cents difference on each one of them.

14 Are there any particular items with regard to the
15 review of the 89 budget that we should be aware of?

16 (No response.)

17 MR. RICHARDSON: The only change in regards to the '88
18 appropriations and the '89 is in regards to the basic field
19 program, the one percent increase went totally into the basic
20 field line. All the rest of the funding is exactly the same as
21 it was in prior years.

22 CHAIRMAN MENDEZ: Well, one of the things that I

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1 noticed was that one of the items I got in the last few weeks
2 was the Clearinghouse decision from the Court of Appeals.
3 Because we got that, I think we should revisit it specifically I
4 want to see how much carryover they have.

5 My recollection was that we did not ask for all of it
6 and based on the decision from the district judge in the Court
7 of Appeals I would like to see what the Clearinghouse is doing
8 and how much carryover they had.

9 Anybody on the Board have any questions or comments
10 about 1989?

11 (No response.)

12 You're going to send us a notice on all of the
13 carryover funds?

14 MR. WEAR: Mr. Chairman, the Corporation will send the
15 two Appropriations Committees, that is the House and Senate
16 Appropriations Committees, the notice of reprogramming as it
17 relates to the carryover funds for the corporation for FY 1989.

18 CHAIRMAN MENDEZ: Are there any other comments?

19 (No response.)

20 I want to make clear that the state bar of California
21 has tendered to us some comments with regard to the IOLTA
22 Program in California and I've delivered some to every chair and

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1 everybody should have a copy of that. I tender that for the
2 record.

3 Let me do one real brief housekeeping thing and then
4 I'm going to turn it over to Bob.

5 How many people would like to make comments or give
6 testimony? I know the two Bobs do. Is there anybody else who
7 wants to make any comments?

8 Bob, why don't we have you first.

9 PRESENTATION OF ROBERT CLYDE

10 MR. CLYDE: Mr. Chairman, before I begin on the
11 testimony on the mark, I wonder if we could have a copy of the
12 memo that you were discussion earlier in the full board session,
13 the November 14th memo on staffing levels?

14 For the record, I'm Bob Clyde. I'm co-chair of the
15 Funding Criteria Committee of the Project Advisory Group. PAG
16 represents over 90 percent of all Legal Services Corporation
17 recipients who deliver services to a client community which
18 numbers in excess of 40 million persons.

19 I have appeared before this board for each of the last
20 two years, urging you to join with us in seeking an
21 appropriation mark, which would move us one third of the way
22 towards restoring minimum access level funding.

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1 I believe that the full testimony of the Project
2 Advisory Group has been distributed by Mr. Richardson to the
3 committee and to other members of the Board who are present.

4 It, like last year, sets forth in complete detail the
5 whole rationale for the minimum access formula. For two years
6 as part of that, that is 1984 and 1985, you heard my
7 predecessors Terry Roach and John Mola urge the restoration of
8 minimum access.

9 You have, instead, for the first three of those years
10 ask for no increase in funding. Incredibly, near the end of the
11 appropriations process for 1989, you reduced your earlier '89
12 request from \$305 million to \$250 million.

13 It's obvious that our presentations have had
14 absolutely no bearing on your decisions as to an appropriate
15 level of funding to seek for your grantees and the 40 million
16 persons eligible for their assistance.

17 You have not joined us in advocating substantial
18 movement toward minimum access we believe is wrong. That you
19 have not even sought an increase to cover inflation has been
20 egregious. That you sought in the waning days of FY 88 a \$55
21 million decrease in the appropriation was, in our opinion,
22 outrageous and offensive.

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1 There are thousands of lawyers providing services
2 through staff, contract, pro bono and other delivery miles whom
3 you abandoned, together with the clients they serve.

4 The agenda of six of the members of this board seems
5 to be if we cannot eliminate federal funding for legal services,
6 then the delivery system should be dismantled so as to insure
7 that nothing but individual service will be possible; things
8 such as you have mentioned, divorces, bankruptcies, wills and
9 tenant defenses.

10 In the past year, my office in Ohio has provided
11 service in over 3,500 cases. My staff attorneys have also done
12 a few of these things: brought suit enjoin the relocation of a
13 county welfare department from its centralized downtown
14 location, to a remote, somewhat dangerous neighborhood
15 location.

16 They have also successfully enjoined a court from
17 imposing a filing fee on any tenant seeking to use the state's
18 landlord-tenant escrow provision to effect repairs. They have
19 negotiated the restoration of health benefits to groups of
20 thousands of retirees whose former employees sought to
21 substantially reduce or eliminate them.

22 Could such work have been done without a staff law

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1 firm such as ours? A majority of you probably thinks it could
2 not. We are certain that it would not.

3 None of the work that I described fits under the
4 dreaded L word, lobbying or even the C word, class actions. Yet
5 it is the very kind of work that gives meaning to the phrase
6 equal access to justice.

7 No voucher program would have provided any of the
8 services that I described. PAG will present testimony to
9 Congress seeking \$408.4 million in funding for FY 1990. That
10 represents a 4.5 percent increase over the amount we sought for
11 FY 1989.

12 It is the amount necessary to bring us only one third
13 of the way to re-establishing minimum access. It links the non-
14 census and special census programs to the same percentage
15 increase sought for basic field programs.

16 I should note, as I have in each of the last three
17 years, that field programs continue their strong support for
18 these non-census and support programs. It has been five years
19 since your predecessors asked Congress for \$325 million.

20 They succeeded in achieving a \$30 million increase
21 that year. The ABA sought \$367 million for fiscal year 1989,
22 and will likely increase that for 1990.

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1 We implore you to be more responsive to the needs of
2 the clients whom we serve. We ask that you join with us in our
3 effort to achieve a reasonable increase in funding for fiscal
4 year 1990.

5 Just a note, Mr. Chairman, about the minimum access
6 concept. It has been used, as I have indicated before, by
7 Congress since the founding of the Legal Services Corporation.
8 It continues to be used annually when they determine the funding
9 formula level for field based programs.

10 It is a rational method for seeking funds and
11 distribution of funds based on the poverty population throughout
12 the United States. That's the end of my comments.

13 Are there any questions?

14 CHAIRMAN MENDEZ: Bob, I've just got a few. Since I
15 just got this, I haven't had a really good chance to look it
16 over. My understanding of what you've done is that you've just
17 taken each of these programs and given it the same proportional
18 increase; is that correct?

19 MR. CLYDE: Right.

20 CHAIRMAN MENDEZ: That's not exactly true because you
21 would do -- you want to put Reginald H. Smith fellowships back
22 there?

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1 MR. CLYDE: we have looked at what funding levels were
2 in 1985, and not withstanding the decreases which occurred from
3 the Gramm-Rudman cuts, have prepared increases based on those
4 '85 levels, proportional increases to the ones given to basic
5 field.

6 We have also included on those lines for the Reginald
7 H. Smith Fellowship Program and the Client Support Program down
8 under item II B actually item II B (5), amounts which had been
9 budgeted for those items, but through the funding or
10 discontinuation of the program, not only the amount that
11 existed, updated a proportion of it for 1985, but a proposal for
12 1990 for those same programs.

13 MS. SWAFFORD: Under the law school clinics and
14 recruitment, do I understand that you're not recommending any
15 money for law school clinics and recruitment?

16 MR. CLYDE: That, Ms. Swafford, as we did last year,
17 we feel is still a program development item and it's actually
18 included in item III B, under Corporation Management and Grant
19 Administration.

20 MS. SWAFFORD: So in that case it would be \$1.750
21 million dollars as opposed to \$1.1 million?

22 MR. CLYDE: Approximately, yes.

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1 MS. BERNSTEIN: I would like you to -- I mean, I know
2 traditionally why for fundamental field programs it is treated
3 as a different line.

4 Do you think that it ought to be treated separately
5 from field programs and basic field programs?

6 MR. CLYDE: It's been shown that way for years, not
7 only by ourselves, but by the Corporation.

8 MS. BERNSTEIN: I'm just asking you whether you see
9 any real difference. This was an historical anomaly, wasn't it,
10 that these programs were funded differently?

11 MR. CLYDE: I think that's probably a fair assessment.
12 It was an historical anomaly. They do provide basic services
13 and probably could be included under the category of field
14 programs.

15 CHAIRMAN MENDEZ: Would you find it objectionable to
16 have them under a basic filed program?

17 MR. CLYDE: Under basic field programs or under field
18 programs?

19 CHAIRMAN MENDEZ: Field programs.

20 MR. CLYDE: I don't think there would be for item B
21 (1), is that correct?

22 MS. BERNSTEIN: It has bothered me for years if you

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1 are doing something different.

2 MR. CLYDE: Something other than service to clients?

3 MS. BERNSTEIN: Yes.

4 CHAIRMAN MENDEZ: I assume, because of your position,
5 that it would then bother you to have law school clinics put
6 under there as well?

7 MR. CLYDE: I think it's been our position for the
8 last several years that there has not been a full analysis of
9 the delivery provided by law school clinics, such to indicate
10 that they are providing services in an efficient and economical
11 fashion and should be part of the basic delivery mechanism for
12 providing legal services in this country.

13 MS. BERNSTEIN: That should be the criteria for every
14 individual program?

15 MR. CLYDE: I think that is certainly an important
16 criteria when there is talk about deviating from an existing
17 delivery system when the act requires that delivery be provided
18 in an efficient and economical fashion, yes.

19 CHAIRMAN MENDEZ: Does anyone have any other
20 questions?

21 MS. BERNSTEIN: Do you have a chart that shows what
22 your figures would work out for each of the different programs

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1 if we run those figures?

2 MR. CLYDE: Not on the proposed \$408.4 million dollar
3 appropriation.

4 MS. BERNSTEIN: Would you be able to provide that to
5 us a week or so before our next meeting?

6 MR. CLYDE: It assumes that we would continue to have
7 the same method of allocation as we have had this past -- well,
8 for 1989. I would think we are

9 MS. BERGMARK: If you just multiply --

10 CHAIRMAN MENDEZ: Would you just stand up and tell us.

11 MR. CLYDE: I think she's asking how it would break
12 down.

13 MS. BERNSTEIN: I'm just wondering if your allocation
14 is exactly the way it has been done before. You've got the line
15 items here, but I don't know how you would include or allocate
16 it to programs.

17 I'm just wondering if we can have that level of detail
18 about a week before our next meeting, how PAG would be
19 recommending that we allocate it.

20 MR. CLYDE: The PAG process has been to discuss the
21 allocation in the fall, or as we have the early winter this
22 time, then in the spring when we have a clearer sense of what

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1 might actually be appropriated, to sit down and discuss a
2 possible method of allocation.

3 That allocation method would also include discussion
4 of the formula that we would propose, and thus -- although I
5 think it's likely that we would propose a formula very similar
6 to what we proposed to Congress this year, I can't guarantee
7 that.

8 The funding criteria committee has not recommended it
9 and the steering committee has not adopted policy.

10 MS. BERNSTEIN: You won't be doing that before the
11 next meeting you said?

12 MR. CLYDE: No, that's correct.

13 MS. BERNSTEIN: Could I ask then, Pepe, that we have
14 our staff, just for a comparison so we'll know what we're
15 talking about, prepare -- based on last years PAG allocation,
16 some sort of a printout as to what this would mean for
17 individual states and individual programs.

18 MR. WEAR: Mr. Chairman, in response to Ms.
19 Bernstein's question, I believe that we could that. I might ask
20 the PAG representative, though, as a hypothetical, not deciding
21 whether you are going to use that funding formula or not, would
22 it be possible for you to run through the computer your gross

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1 figure and show how that would be distributed if you were using
2 the current formula that was in the FY 89 appropriation bill and
3 show how that would be distributed to the various field
4 programs?

5 MR. CLYDE: I think that's doable, yes.

6 MR. WEAR: Okay.

7 MR. CLYDE: As Martha indicated earlier, we would be
8 glad to trade with you, whatever your computer formula would
9 like as compared to ours.

10 MR. WEAR: This is a different question. This is for
11 your appropriation numbers that you had here.

12 MR. CLYDE: For 1989 or for 1990?

13 MR. WEAR: For 1990, for this proposal here.

14 MR. CLYDE: I think we can do it. Am I to understand
15 also that you've the staff to run through the computer
16 themselves, using the \$408.4 million?

17 MS. BERNSTEIN: I guess what Mr. Wear is probably
18 saying is that he's concerned that our staff may not pick up the
19 application of your formula last year with a different number,
20 so we give a hypothetical I'm asking about. I understand it's a
21 hypothetical.

22 MR. CLYDE: I understand. When the question was asked

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1 earlier, I indicated that we did have a computer run indicating
2 the various funding levels for programs for 1989, at least what
3 we thought they were.

4 We have not had an opportunity to carefully review
5 that, so I can't tell you that it's completely accurate. I
6 think that's the same thing that you're suggesting.

7 CHAIRMAN MENDEZ: Nobody, neither you nor us, is the
8 final until after we get done sitting down with each of the
9 Board and looking at each of our grantees and looking at each
10 one separately.

11 It is always very helpful because I know that a couple
12 of years -- three years or four years ago -- we had some
13 differences on a few of the programs on how we would do it and
14 we resolved those very easily. Rather than coming to far down
15 and too close to the end of the line, it's much better if we can
16 do that early.

17 Just check to make sure that the numbers that we're
18 getting is close to what you have. We don't want to have
19 anybody running away late and wondering what it is. That's the
20 only reason I asked about that.

21 MR. CLYDE: I would urge that Martha, at some point,
22 get together with Mr. Wear and Mr. Richardson and review '89 and

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1 '90.

2 CHAIRMAN MENDEZ: What percentage did you use for each
3 one of these, or do you know the percentage that you used to get
4 this increase?

5 MR. CLYDE: Well, it's a 4.5 percent inflationary
6 adjustment over what we recommended last year. That gets
7 applied to the basic field line, since the formula deals with
8 the census based population, the poverty population.

9 Then, since we're proposing movement toward full
10 minimum access over a three staged return, we took a third of
11 that and came up with the basic field recommendation.

12 CHAIRMAN MENDEZ: When you're talking about your
13 minimum access, are you talking about minimum access strictly
14 for the field, or is that the combined budget?

15 MR. CLYDE: Well, it's a minimum access concept,
16 applied to the field using the field base to derive both the
17 field line item, the basic field line item, and the balance of
18 the line items.

19 That is, we calculate what basic fields would be,
20 divide the amount necessary to achieve full minimum access into
21 thirds, add that to the basic fields, determine what percentage
22 that is, there are percentages of the whole, and apply those

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1 percentages necessary to bring the rest of the non-census based
2 lines up.

3 CHAIRMAN MENDEZ: What did you use?

4 MR. CLYDE: It's a little over two percent.

5 CHAIRMAN MENDEZ: What did you use as the poverty
6 population in the United States?

7 MR. CLYDE: 29.5 million.

8 CHAIRMAN MENDEZ: 29.5 million?

9 MR. CLYDE: Close.

10 CHAIRMAN MENDEZ: Close?

11 MR. CLYDE: I think it's actually 29,400 --

12 CHAIRMAN MENDEZ: What number did you use, that's the
13 question I want to know?

14 MS. BERGMARK: We used the number that LSC uses for
15 poverty population for the basic field programs.

16 CHAIRMAN MENDEZ: You didn't round it off?

17 MS. BERGMARK: That number is about 29.4 million. We
18 used the actual number and we rounded it off, I think, in our
19 testimony. It is a number that is the total of the poverty
20 population as counted for basic field programs.

21 CHAIRMAN MENDEZ: I hate to be nit-picky. Are you
22 authorized on behalf of all 305 groups to speak for them?

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1 MR. CLYDE: As I indicated at the outset of my
2 testimony, the project advisory group process embraces over 90
3 percent of its grantees. I think it's 94 percent of LSC
4 grantees.

5 CHAIRMAN MENDEZ: So it's not really fair to say for
6 all 305?

7 MR. CLYDE: I suppose that's accurate. There are some
8 who are not members of the Project Advisory Group.

9 CHAIRMAN MENDEZ: Are there any other questions?

10 (No response.)

11 Thank you, Bob, I appreciate your testimony.

12 Bob, I don't know who your representative is.

13 MR. CLYDE: The Maryland Legal Services Corporation
14 and the executive director, Bob Rhudy.

15 PRESENTATION OF ROBERT RHUDY

16 MR. RHUDY: Mr. Chairman and committee members, I'm
17 Rhudy, executive director of the Maryland Legal Services
18 Corporation.

19 That is the organization that was created in 1982 by
20 the Maryland General Assembly to administer the state's interest
21 in lawyer the IOLTA Program and other funds that were raised
22 from various sources for grants and non-profit organizations to

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1 provide legal assistance in Maryland's low income populations.

2 I'm also vice president of the National Association of
3 IOLTA Programs that was created a couple of years ago to work
4 with the organizations throughout the United States.

5 I speak today in opposition to any proposal to reduce
6 appropriations for the Legal Services Corporation by the amount
7 generated annually by IOLTA programs across the country.

8 As many of you know, IOLTA was created in the United
9 States in 1981, brought to Florida by that state's chief
10 justice, Arthur England to assist in funding civil legal
11 services to the poor in the face of federal cutbacks.

12 In 1983, it was brought from Canada where it had been
13 very successful there for a number of years. In 1983, LSC under
14 Chairman McCarthy and President Bogard, provided funding to the
15 National IOLTA Clearinghouse, a project of the Florida Justice
16 Institute in Miami, and various state programs to foster the
17 expansion of IOLTA throughout the United States.

18 In fact, there had been some funding and interest by
19 this corporation. Prior to that time that was a major growth
20 period. A review of the record at that time I had some
21 materials with me today from 1983.

22 It would substantiate that LSC's clearly stated intent

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1 in those grants at that time was the new IOLTA dollars
2 supplement not displace federal funds for legal services. Those
3 records were fertile fruit.

4 IOLTA programs are now in place in 48 states and the
5 District of Columbia. Only Indiana and West Virginia do not now
6 have IOLTA programs. Efforts are underway in those states to
7 create such programs.

8 In the current year IOLTA grants will be used
9 nationally for grants totally potentially approximately \$39
10 million for the provision of civil legal services to the poor.
11 Between 1981 and now, however, LSC's annual funding has declined
12 by the equivalent of more than \$150 million, if adjusted for
13 inflation and population growth.

14 Even with IOLTA funding considered, LSC's funding
15 would need to be increased by more than \$100 million annually to
16 return to the very minimal levels that Legal Services provided
17 to our poor citizens in 1981.

18 Let me give you an illustration of the effect of the
19 cut in federal funding has had in Maryland, which is not a
20 typical example in many ways because I think Maryland has done a
21 great deal, probably more than most states, to try to respond to
22 the reduction in federal funding.

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1 The data which follows is also in the packet I also
2 handed out to you. It is a report that was completed in
3 January, 1988 by a 30-member Maryland Legal Services Corporation
4 Advisory Council that worked for nearly a year to do a very
5 comprehensive study on the needs and the resources for the
6 provisions of Legal Services in the state.

7 Total funding for civil legal services for Maryland's
8 poor in FY 1980, that was the period ending June 30, 1980, was
9 approximately \$6.9 million. That funding was approximately 47
10 percent federal, primarily LSC funds, 46 percent state and 7
11 percent other, local governments in order. Local government
12 Title III funding, United Way and private contributions.

13 Approximately 11 percent of the total FY 1980 legal
14 services funding was allocated for specific purposes or groups
15 by particular grants or other obligations to the developmentally
16 disabled, again in order, senior citizens or incarcerated
17 persons in prison, while the remaining 89 percent, or nearly
18 \$6.2 million was unrestricted for general civil legal assistance
19 to the low-income population. Of course that was used for
20 priority needs.

21 In FY 1987, total funding for Maryland legal services
22 providing civil legal assistance support was approximately \$10.4

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1 million. State appropriations were now 49 percent of the total,
2 federal grants 37, declined substantially, and other IOLTA local
3 government Title III, United Way, private contributions 14
4 percent.

5 IOLTA in Maryland with a voluntary program, currently
6 2,700 attorneys or 43 percent of the state's bar participating,
7 generated in that year \$840,000, it's approximately \$1 million
8 today for Maryland Legal Services Corporation grants.

9 In comparison with FY 1980, however, over 40 percent
10 of the funding that year was restricted for general purposes or
11 groups. Abused and neglected children's actions, disabled
12 persons, senior citizens, imprisonments, leaving less than 60
13 percent or approximately \$6 million for the general civil legal
14 needs of the poor.

15 That's without considering the effects of inflation
16 over that seven or eight year period of time, less than it was
17 in 1980.

18 Over the past seven years, ending in 1987, funding for
19 civil legal services to Maryland's poor increased approximately
20 32 percent. The Consumer Price Index increased approximately 33
21 percent. The proportion of allocations from Maryland general
22 revenue funds and other sources expanded while the federal share

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1 declined substantially.

2 The number of eligible clients increased by at least
3 40 percent, leaving the Maryland Legal Services Corporation a
4 little bit higher than your own. All Maryland programs for
5 civil legal services to the poor have received approximately
6 \$9.04 per eligible person in 1980, compared with \$7.24 per such
7 person in 1987, as measured in 1980 dollars.

8 Funding for services to the general low income
9 population, other than those particular groups, has absolutely
10 declined even further over the period.

11 Despite major efforts in Maryland, through increased
12 state funding, IOLTA and private sources, we have been able to
13 offset the very substantial decline in federal LSC funds. Based
14 on the results of this study of the action plan last year, the
15 advisory council determined that less than 20 percent of
16 Maryland's low income population is currently being served by
17 existing legal aid or voluntary private attorney efforts, pro
18 bono and others.

19 The advisory council proposed doubling total resources
20 for these activities in a reasonable period of time. We
21 presented 41 recommendations directed to the private bar, law
22 schools and to IOLTA and to government, local government, to

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1 foundations and to the federal to LSC to address these
2 deficiencies.

3 One critical recommendation, a central recommendation
4 is to increase LSC funding. Numerous recommendations have
5 already been implemented or under active consideration in
6 Maryland right now in the eight or nine months since that study
7 was completed.

8 The responsibility to assure that legal services
9 essential for fundamental access to justice are available to all
10 of our citizens must be shared by federal and state governments
11 and the legal profession.

12 Activities since 1981 have clearly redirected
13 attention to such state and private bar responsibilities and
14 cooperation. IOLTA has been one very appropriate and successful
15 response, as are increased state efforts and expanded private
16 bar involvement.

17 These efforts must be continued and expanded. LSC is
18 right to expect that its partners in assuring access to justice
19 put up their shares. The federal government has a like
20 responsibility and is likewise expected to put its share.

21 Over the past several years it has failed to
22 adequately meet this responsibility, providing justice and

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1 equality before the law is a central promise in the U.S.
2 Constitution as well as every state constitution.

3 At this time to urge further cuts in your
4 appropriations in the face of overwhelming evidence that current
5 resources serve, I think, across the country less than 20
6 percent of the need for civil legal assistance by the poor would
7 be unconscionable.

8 The inescapable conclusion from such a policy, I
9 think, is that you wish to further reduce the provision of legal
10 services in the nation is more than 30 million poor.

11 Urging states to develop supplemental resources
12 through programs like IOLTA, as you began doing in 1981 and
13 expanded in 1983, and then penalizing them by cutting LSC
14 funding when they do so is reneging on past commitments and is
15 very and abysmal public policy. I urge you to reject any such
16 proposal.

17 Again, I emphasize I think IOLTA efforts are underway
18 throughout the United States. Many states have done better in
19 IOLTA than Maryland has; California, where we are. Efforts are
20 underway to change Maryland's program to a mandatory program.

21 At this time, and for the foreseeable future, it
22 certainly has not come close to addressing the gap that is

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1 primarily caused by the reduction of your federal funding.

2 CHAIRMAN MENDEZ: I have a couple of questions.

3 In your backup materials, at the top of page 3 of your
4 comments that you gave us, you proposed doubling total resources
5 and presented 41 recommendations. Could you point me to where
6 the recommendations are?

7 MR. RHUDY: There is a summary at the front, at little
8 Roman numerals eight through eleven, the entire statement of
9 recommendations are pages 31 through 36.

10 The recommendations go to actions by Congress and
11 Legal Services Corporation, the Maryland Executive and the
12 General Assembly, the Maryland Court of Appeals to expand pro
13 bono activities and other efforts by the Maryland Legal Services
14 Corporation, actions that we should undertake and have you
15 undertake and are working by the Judicare program that is in
16 Maryland by legal services programs in the state, by bar
17 associations, practicing lawyers and law schools.

18 The insurance program provides malpractice insurance
19 in Maryland by private corporations and by other groups.

20 CHAIRMAN MENDEZ: Now, just briefly one thing, one
21 other thing. I'm always fascinated by this, can you tell me a
22 little bit more about how the IOLTA program in Maryland is

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1 working and is it an opt in/opt out required?

2 MR. RHUDY: It's a voluntary program at this point.
3 Legislation was considered and came very close to passage last
4 year to convert it to a mandatory program in keeping with the
5 ABA resolution and recommendation.

6 It has 43 percent participation of the attorneys in
7 private practice today, of approximately 3,000 attorneys.

8 CHAIRMAN MENDEZ: How long has it been in?

9 MR. RHUDY: It was created by legislation at th same
10 time as the corporation, July of 1982. right now it is
11 producing approximately \$950,000 a year. Actually the year
12 before last was a higher year than this past year was because of
13 very high real estate closings before the changes in the tax
14 law.

15 CHAIRMAN MENDEZ: How many lawyers do you have?

16 MR. RHUDY: In practice in the state? Seven thousand
17 we believe in private practice in the state. Admitted to
18 practice in the state is nearly 17,000. Actually in the state
19 of that number is around 14,000, in private practice around
20 7,000.

21 CHAIRMAN MENDEZ: Does anybody else have any
22 questions?

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1 MS. BERNSTEIN: I do have a question that is kind of
2 related.

3 I know that there is an ongoing study that is being
4 pursued to identify what is being done in private for pro bono
5 work in Maryland. I just wondered whether or not what the
6 criteria is for deciding whether something qualifies for pro
7 bono work, what is being -- I forget the judge's name that is
8 heading it up.

9 I just wondered if there had been a criteria set up as
10 to what qualifies as pro bono work, because there can be broad
11 categories that anything that you do for a non-profit
12 organization is pro bono.

13 Well, if you are doing it for the American Red Cross
14 or the American Cancer Society, I can understand that that is
15 pro bono work, but it is not from the standpoint that we are
16 concerned about providing legal services for poor people.

17 MR. RHUDY: Rule 6.1 of the model rules of
18 professional conduct as adopted by Maryland, has this very broad
19 definition. All attorneys have the responsibility to provide
20 pro bono publico public service.

21 That can be satisfied by services to low-income
22 individuals, either pro bono or reduced fee by professional

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1 services to public interest organizations and non-profit
2 organizations or by making grants or funds to organizations
3 providing legal services to the poor.

4 That is pretty close to what we state in 6.1. It is
5 fairly open-ended as you indicated. Our primary interest in
6 this report, in this group is the provision of civil legal
7 services to low-income people.

8 That definition -- there was a proposal in this
9 report, the most controversial of them all, that a moderate,
10 mandatory pro bono rule be adopted by the Court of Appeals to
11 require all attorneys to provide equivalent of at least one
12 case. We found that to be under our extremes about ten hours
13 per year of pro bono services to the court in civil services.

14 Recent action by the ABA and other groups encourage
15 all attorneys to perform at least 50 hours of such services, but
16 this was a requirement to do so.

17 That rule, after a lot of discussion and
18 consideration, currently I think the Court of Appeals in
19 Maryland is on the verge of adopting a mandatory reporting rule
20 annually that all attorneys will indicate what they are
21 currently doing to provide public interest service.

22 They stayed away from the definitions. It is one of

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1 the toughest items in terms of tightening down that 6.1 language
2 currently to say we will only consider pro bono work if it is
3 provided for a low-income person, otherwise they don't have
4 access to services.

5 Under a recommendation that may have been adopted
6 yesterday by the Rules Committee of the Court of Special
7 Appeals, Court of Appeals.

8 We believe that they are recommending a notice to go
9 from Court of Appeals to all attorneys, restating 6.1,
10 indicating that the court is very concerned about the inadequacy
11 of the provision of civil legal services to the poor.

12 It is urging all attorneys to assist in meeting that
13 need, requiring all attorneys to annually file a report
14 indicating what they are willing to do for such purposes, what
15 organizations they are willing to do it through -- not a
16 requirement that you have to do it through an organization--
17 many attorneys do pro bono in terms of -- we appreciate their
18 doing so, what they would do.

19 If they feel like they are currently already
20 fulfilling their public interest requirement in one way or
21 another, indicate how they are doing so. We feel like that is
22 an intermediate step and we're asking the court to monitor that.

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1 If it is not being demonstrated, that in fact that
2 step hasn't helped to expand the provision of services to take
3 further measures, perhaps revisit the mandatory rule that we've
4 studied for the past year.

5 MS. BERNSTEIN: Will the questionnaire delineate
6 between legal services for eligible clients and the kind of
7 general public service?

8 MR. RHUDY: Yes and no. It will in terms of what are
9 you doing -- in terms of what you're currently doing. Again, as
10 it's been drafted attorneys are free to say, "I am providing
11 services to the local Red Cross and serving as an attorney on
12 the board of directors."

13 It leaves that open. It's stating why they are doing
14 this, what the urgings are, but it doesn't say only services to
15 poor persons qualify at this point. That's tough.

16 I understand that the ABA at its pro bono conference
17 in April of this coming year, one of the major debate topics
18 will be should there be a re-examination or tightening up of
19 6.1, looking at that. It's an ongoing debate across the
20 country.

21 MS. BERNSTEIN: Thank you for your patience.

22 CHAIRMAN MENDEZ: I have something that I want to

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1 follow up on. A lot of lawyers don't feel particularly
2 comfortable and doing pro bono or going outside their area of
3 expertise.

4 Has Maryland thought any of allowing them to buy their
5 way out for a specific donation or a monetary, or are there any
6 recommendations in this about how much would be an appropriate
7 donation to what kind of group?

8 MR. RHUDY: There was quite a bit of debate and not
9 focused, not demonstrated on that issue. There are strong
10 feelings on both sides. One group says just what you say, and I
11 find generally the larger the law firm, the more interest in
12 buying out.

13 The president of the state bar last year, Cleveland
14 Miller, equated it to buying out of the draft in the Civil War.
15 You're creating the possibilities for two classes of lawyers.
16 It hasn't been resolved.

17 Under the proposal that's current by this anyway,
18 under the proposal that is being made to the Court of Appeals,
19 attorneys would be permitted to buy out. It doesn't set a
20 standard at what level, how much do you buy out an hour of time.
21 There is no flat mandatory rule as such at this time.

22 North Dakota was the state that was very, very

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1 specific in their proposal for mandatory pro bono, which is
2 still on the table.

3 It's gone through a lot of ups and downs, but I think
4 they were going to have a buy out at -- they had a 20 hour per
5 year requirement proposed for pro bono service, or a buyout at I
6 believe \$50 an hour for any hour not served in that period.

7 CHAIRMAN MENDEZ: I'm very curious about that. Do you
8 think that eventually it will go to a buyout provision?

9 MR. RHUDY: Honestly, myself, I think the odds are
10 good.

11 CHAIRMAN MENDEZ: I'm not asking --

12 MR. RHUDY: I think that makes it more appealing and
13 acceptable to a lot of attorneys to have those options. I
14 personally believe anyone that's graduated from law school and
15 has passed the bar is able to contribute something to the
16 persons that we're concerned about. I think there are different
17 roles that people have.

18 CHAIRMAN MENDEZ: The choice, I think, is whether you
19 want to spend the time or want to give the money. There is very
20 little distinction between the two. In fact, I'll have Mr. Uddo
21 tell me what the ethical ramifications are of it.

22 Bob, it's a pleasure to have you back. You've been

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1 very enlightening in your presentations here.

2 Does anyone else have a question?

3 (No response.)

4 No further questions. Thank you for coming.

5 Are there any other comments?

6 (No response.)

7 None appearing, do I hear a motion?

8 M O T I O N

9 MR. VALOIS: So moved.

10 MS. BERNSTEIN: Second.

11 CHAIRMAN MENDEZ: We've got a second over here. All
12 in favor, say aye.

13 (Chorus of ayes.)

14 Thank you for coming.

15 (Whereupon, at 12:07 p.m., the meeting of the Audit
16 and Appropriations Committee of the Legal Services Corporation
17 was adjourned.)

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