

Committee Meeting

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before

JOINT SELECT COMMITTEE ON MEDICAID REIMBURSEMENT

"To take testimony from invited individuals from the Department of the Treasury regarding the amount of disproportionate share payments under the Medicaid Program which the State anticipated to receive in FY 1992 and FY 1993 and the circumstances surrounding the decision to include those payments in the projected State revenues for FY 1992"

LOCATION: Room 319
State House
Trenton, New Jersey

DATE: November 10, 1992
11:15 a.m.

MEMBERS OF JOINT SELECT COMMITTEE PRESENT:

Senator Dick LaRossa, Chairman
Assemblyman Richard Bagger, Vice-Chairman
Senator John O. Bennett
Assemblywoman Harriet Derman
Assemblyman Bernard F. Kenny, Jr.



ALSO PRESENT:

Robbie Miller
Office of Legislative Services
Aide, Joint Select Committee
on Medicaid Reimbursement

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Hearing Recorded and Transcribed by

The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068



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DICK LaROSSA
Chairman

ASSEMBLYMAN
RICHARD BAGGER
Vice-Chairman

SENATE
JOHN O. BENNETT

GENERAL ASSEMBLY
HARRIET DERMAN
BERNARD F. KENNY, JR.

New Jersey State Legislature
JOINT SELECT COMMITTEE ON MEDICAID REIMBURSEMENT
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COMMITTEE NOTICE

TO: MEMBERS OF THE JOINT SELECT COMMITTEE ON
MEDICAID REIMBURSEMENT

FROM: SENATOR DICK LaROSSA, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - November 10, 1992**

The public may address comments and questions to Robbie Miller, Committee Aide, or make other inquiries to Sophia Love, secretary, at (609) 292-1646.

The Joint Select Committee on Medicaid Reimbursement will meet on **Tuesday, November 10, 1992 at 10:30 A.M. in Room 319, Legislative Conference Room, Legislative State House.**

The committee will take testimony from invited individuals from the Department of the Treasury regarding the amount of disproportionate share payments under the Medicaid program which the State anticipated to receive in FY 1992 and FY 1993 and the circumstances surrounding the decision to include those payments in the projected State revenues for FY 1992.

The committee will also take testimony from key personnel in the Office of Management and Budget to gain information regarding the process for estimating the revenues anticipated from the federal government.

Issued 11/5/92

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SENATOR DICK LaROSSA (Chairman): Good morning, everyone. Just as point of information before we get started, I want to let you know the microphones are live, and as is the case in previous hearings, the testimony is being recorded for future transcription and possible use. Also, you might find it a little bit easier to hear this morning, because we have some speakers up here. We've had a lot of difficulty -- at least I have; with advancing age and so on -- hearing everything that was being said in the past.

So if I may, we'd like to open today's hearing. As we open the fourth hearing for the Joint Select Committee on Medicaid Reimbursement, I would like to indicate that I believe that the Committee has been meeting its legislative charges. The objectives and the legislative mission for the Joint Select Committee are very explicit. In Senate Concurrent Resolution No. 65, it empowered this body with a specific policy of focus and, again, I quote: "The Committee shall examine the executive branch decision to include all of the \$450 million in the projected State revenues for Fiscal Year 1992, and this examination shall focus on the information the executive branch had at the time of and subsequent to its December 1991 application concerning the validity of the application in the context of Federal Medicaid retroactive reimbursements. The Committee shall examine and determine the exact amount of retroactive reimbursement payments for State and county psychiatric hospitals, New Jersey is qualified to receive."

Because the Committee members seek to keep the investigation in focus, determine the circumstances involving -- and I use the word in quotes -- "loss" of funding, and steer a factual course of investigation, let me reiterate the review area for the investigation: The empowering legislation set forth two key areas of review in order to determine the circumstances surrounding the \$450 million reimbursement dispute. Until today, we have concentrated on the second of

the two charges, but I'll quote them both: "The Committee shall examine the decision on the part of the executive branch to include all of the \$450 million in the projected State revenues for Fiscal Year 1992," and that, "the Committee shall examine and determine the exact amount of retroactive reimbursement payments for State and county psychiatric hospitals New Jersey is qualified to receive."

In my personal opinion, one of the charges has everything to do with one very simple question: Why did executive branch officials decide to include all of the \$450 million in projected State revenues for Fiscal Year 1993? As a prelude to today's discussion, I expect to receive answers to this particular question from Treasurer Sam Crane a little bit later and, additionally, several other questions to raise with the Treasurer during testimony later today.

Today, however, with the assistance of the executive branch officials from the Department of the Treasury, we begin to address the matter of why the executive branch chose to include the money in the projected State revenues for Fiscal Year '92. Key State officials have been invited to be available for testimony, and scheduled to be available this morning to answer questions are Richard Keevey, Director of OMB, Michael Ferrara, Assistant Director of Budget and Planning for OMB, Charlene Holzbaur, staff member of OMB, and Anastasia Brophy -- did I say that right? -- staff member of OMB.

New Jersey Treasurer Sam Crane will also be available to share with us all documentation, correspondence, notes, summaries of meetings, or recollections of conversations he had with either the Department of Treasury, the Governor's Office, or the Department of Human Services, regarding the \$450 million of reimbursements in question. There's a possibility that once the individuals scheduled to testify at 11:00 end, Treasurer Crane may begin his testimony well in advance of 1:00.

I sent letters to the Chief of Staff, the Governor, the Treasurer, and the Director of OMB asking for all relevant information in writing, and I might also add that subsequent to this statement, I've also sent the same questions to both the Senate President and the Speaker of the Assembly, for any information that they have or that they have acquired as well.

During the morning portion of our meeting, representatives from OMB will be available to provide us with the historical process regarding the inclusion of revenues in the budget.

To conclude my opening remarks, let me reiterate that the Joint Select Committee is in pursuit of the facts regarding circumstances surrounding the \$450 million in question in the Fiscal Year '93 budget.

Again, I'd like to strongly commend the State for its efforts to secure the money to which New Jersey is entitled in regard to the current Medicaid dispute. Let me reflect on some of this Committee's own legislative history for a very brief moment.

As I indicated during the previous three Joint Select Committee meetings, our intent is to operate honestly, seek the facts, and let those facts frame not only our discussion but our conclusions. We will not have our factual review process handicapped by premature conclusions. The facts are our goal, and our process will follow that purpose.

The extraordinarily high caliber of individuals scheduled to address the body today ensures that this Joint Select Committee is on the way to serving the taxpayers of New Jersey by uncovering all the details associated with this case.

Just one other piece of housekeeping business in regards to the request in the letter that was sent by Assemblyman Kenny: I've entered that letter into part of the permanent record for future reference and action once we conclude the business of the Committee. It has, in fact, been

shared -- as you requested -- by all the members of the Committee.

ASSEMBLYMAN KENNY: Mr. Chairman, I'm asking staff to distribute a proposed Assembly Concurrent Resolution which after today's hearing-- Because we're going to hear from State officials today, I hope as a result of that testimony we will be in a position as a Committee to support this proposed resolution. So I would ask the members to read it, and then at the end of the hearing today, perhaps we can jointly, as a Committee, move this. I've asked Assemblyman Bagger to co-sponsor it with me.

What the resolution does is state that the Legislature stands firmly behind the claim to the Federal government for retroactive and prospective Medicaid disproportionate share reimbursement for costs associated with State and county psychiatric hospitals, and stands ready to cooperate with the Governor to present the united front in the State's ongoing negotiations as well as any appeals that may ensue regarding these claims. That's essentially what the resolution does. If the testimony today is what I expect it will be -- which will be in support of this resolution -- I would ask the Committee together move it out of here, then endorse it, and that we all join on and introduce copies in both Houses at the next possible opportunity.

SENATOR LaROSSA: Thank you, Assemblyman.

Our first witness this morning will be-- Who do we have first? Charlene? (confers with Aide) Charlene Holzbaur, and correct me if I'm incorrect on any part of this: You're the Supervising Budget Analyst assigned to Human Services and Medicaid?

C H A R L E N E H O L Z B A U R: Medicaid Division. That's correct.

SENATOR LaROSSA: Okay. It's my understanding that your knowledge or expertise is in the historical process

between the Division of Medical Assistance and OMB for the inclusion of items in the budget.

MS. HOLZBAUR: That's correct.

SENATOR LaROSSA: Okay. I guess really it's a very, very simplistic question, but very, very complicated in terms of its answer: Could you give us a little bit of background as to how Medicaid moneys are viewed in terms of what criteria is used to determine their immediate availability, and what criteria is used for their inclusion? And, is there, in fact, any rating scale, if you will -- for lack of better choices of words -- that would say that this is a high probability/low probability, not so much for receipt, but both for receipt as well as when and how they should be included in the budget process?

MS. HOLZBAUR: My involvement with Medicaid Federal dollars only goes as far as the Medicaid Program as an entitlement. My function in that is to compare my trend analysis to the Department of Human Services in costs of Medicaid Entitlement Program, and in doing so would generate the Federal dollars those costs will support or draw in. This particular item related to reimbursement for psychiatric facilities is a new nontraditional item related to the budget, and I am not involved with the preparation of the anticipated revenue side of the budget.

SENATOR LaROSSA: Okay. When you say "nontraditional," can you expand a little bit on that, as opposed to what is traditional? Are you referring to overall budgetary, or are you referring to it just as it relates to Medicaid?

MS. HOLZBAUR: What I meant was my involvement is on the appropriated side of the Federal Title XIX moneys, not on the anticipated side which these revenues were.

SENATOR LaROSSA: Okay. Now you say trend analysis. Would you expand on that a little?

MS. HOLZBAUR: What I'm talking about are the services that the Medicaid Program provides. For instance: inpatient, outpatient, hospital, physician, and prescription services. All of those are entitlements to certain categorically eligible individuals. My role in that is to determine what future budget year costs will be.

SENATOR LaROSSA: We'll go back, if I may, to the nontraditional statement that you made a second ago. You said it's on the revenue side, not on the--

MS. HOLZBAUR: My role with revenues -- Federal revenues -- is only if those revenues are appropriated to the Department for expenditure which would involve the traditional Medicaid Program, not disproportionate share.

SENATOR LaROSSA: Okay. So, in this disproportionate share then, that is not an area that you would be directly involved with?

MS. HOLZBAUR: No.

SENATOR LaROSSA: All right. Could you give me an example of revenues that would be appropriated to the Department?

MS. HOLZBAUR: Costs related to Medicaid services. For instance, Medicaid pays for inpatient hospital services for eligible individuals. Those costs are borne 50 percent State, 50 percent Federal. Those Federal dollars are directly appropriated to the Division of Medical Assistance.

SENATOR LaROSSA: Is that an ongoing revenue stream -- for lack of a better choice of words?

MS. HOLZBAUR: Yes.

SENATOR LaROSSA: Historically, how far back does that ongoing revenue stream occur? You said Title XIX so I'm assuming this is a multi-year--

MS. HOLZBAUR: Yes. Since the existence of Title XIX, I believe those dollars have been appropriated to the Division.

SENATOR LaROSSA: So on an annualized basis, is that a reasonably static program? Has it been a fluctuating program?

MS. HOLZBAUR: It's an extremely fluctuating program, due largely to costs of services and numbers of eligibles.

SENATOR LaROSSA: I'm sorry, what was that?

MS. HOLZBAUR: Numbers of eligibles. Numbers of eligibles can vary with the economy, etc.

SENATOR LaROSSA: All right. I'm assuming that those fluctuations in terms of the revenues that we would receive both from the Federal government as well-- Is there any criteria that is used on that, if you will, fiscal roller coaster from the Feds as to how you make an anticipation from one year to the next as what you can reasonably, you know, plug in as a number?

MS. HOLZBAUR: There's no criteria. What, in effect, happens is there are several levels of estimating those revenues. The Division prepares an estimate of what they perceive those expenditures will look like -- the Department's Central Office does -- and we do a straight-line analysis. We then compare those estimates and try to reach some conclusion on the most likely scenario of future year costs.

SENATOR LaROSSA: Okay. Forgive me for being so unprecise, but it's an educated guess, based on historic precedence?

MS. HOLZBAUR: Very true. Very true.

SENATOR LaROSSA: I have no more questions for Charlene. Does anyone have any specific questions in her area? Assemblyman Bagger, you wanted to-- Oh, Harriet, I'm sorry.

ASSEMBLYWOMAN DERMAN: Your involvement would be limited to an ongoing revenue item?

MS. HOLZBAUR: Related to this particular issue, I was involved in some early discussions about psychiatric disproportionate share in relation to the type of instance, the

type of claim this would be, the magnitude of the dollars, etc. -- involved in the discussion, not involved in the decision about whether or not those moneys would be included in the revenue estimate.

ASSEMBLYWOMAN DERMAN: But you were involved in discussions. With whom were those discussions held?

MS. HOLZBAUR: Human Services representatives that were here to testify earlier.

ASSEMBLYWOMAN DERMAN: But you wouldn't ordinarily be involved, from what I can deduce from what you said, with an extraordinary item.

MS. HOLZBAUR: Only to the extent of transmitting information to the Director of OMB, related to the type of claim, the parameters of the issue; the type of item we're talking about.

ASSEMBLYWOMAN DERMAN: Just for definitional purposes; could you distinguish between an anticipated item and an appropriated item?

MS. HOLZBAUR: An anticipated revenue are funds that would flow back to the General Treasury. An appropriated revenue item are moneys available for Departmental or Division expenditure.

R I C H A R D F. K E E V E Y: If I may jump in just to clarify something? The way the State budget is constructed with regard to the Federal dollars is they are all, in general, considered appropriated revenue. When one looks at the budget of \$14 billion -- whatever we have -- none of that generally includes Federal dollars. It does not include the billion-and-a-half Federal Medicaid money that we get to support ongoing services in the hospitals, the nursing homes, etc. It does not include the Federal money that we get from transportation programs.

In the terminology of the lay, the New Jersey budget is structured as appropriated revenue. Anticipated revenue is

what normally is associated with supporting the \$14 billion executive legislative budget that ultimately emerges. The principal ones and the anticipated revenues are like sales tax, corporation tax, and income tax.

And in question, this particular sum of money that Charlene is referring to -- the disproportionate share -- was "anticipated revenue," because while Charlene can give you information and background about the claim and our review of the claim, etc., the decision to use it as anticipated revenue is not her decision, per se. It's the OMB Director, Management at OMB, Treasurer's Office, etc., as to whether or not this revenue item could be anticipated as a revenue, because it was an extraordinary Medicaid reimbursement. It wasn't for reimbursement supporting appropriated programs.

ASSEMBLYWOMAN DERMAN: Right. In other words, I think what you're saying is, in a sense: If it had been current, if the bill to the Federal government was current and could be matched with an ongoing expense, then it would be an appropriated item.

MR. KEEVEY: Not necessarily.

ASSEMBLYWOMAN DERMAN: Not necessarily. Okay. When wouldn't it be?

MR. KEEVEY: Because, for example, in addition to this retroactive money, we get disproportionate share reimbursement for our acute care hospitals. You may remember two years ago -- I guess in the 1992 budget -- for the first time the State was able to draw down disproportionate share reimbursement for our acute care hospitals by using the moneys that came in from the acute care hospitals that went into the Uncompensated Care Trust Fund. Well we moved it through the General Budget in order to match Federal dollars, paid it back to the hospitals, and by doing that we drew down the Federal Medicaid reimbursement disproportionate share for our acute care hospitals. That's the first time we did that.

It is outside of the stream of normal Medicaid programs that the State historically supported: nursing homes, outpatient, and inpatient. It was an extraordinary new revenue enhancement that the State got into heavily in trying to attract additional Federal dollars. Because it was an extraordinary outside reimbursement, we showed it as an anticipated revenue.

We could have done it another way. Let's assume this \$330 million that I referred to for the acute care hospitals-- We could have shown it as a deduct against State appropriations to match the Federal dollars and lowered our Medicaid appropriation. That money, as well as this mental health money, we thought, was not the correct way to posture the money, and we would rather highlight it, and surface and show it as an anticipated revenue, because it was outside of the normal stream of what heretofore was the ordinary Medicaid Program. So the State had been over the past couple of years trying to accelerate and find additional Federal dollars that might be around.

You may recall the historical discussion a year or two ago with the claim from the State of Massachusetts, for example, to draw down disproportionate share Federal dollars for their Uncompensated Care -- about that same time we were into the venture of trying to attract this additional Federal dollars; the first rung of it being the acute care hospital, the second rung being the psychiatric hospitals, and as the process of doing that, we claimed current year and all the way back to the first time that we filed a State Plan amendment. On that basis, we anticipated the money in the budget.

I'm jumping ahead, but--

ASSEMBLYWOMAN DERMAN: Right.

MR. KEEVEY: And Charlene's--

ASSEMBLYWOMAN DERMAN: Well, after listening to the prior testimony, I'd like to think that it's not so much an

extraordinary item that we certainly have an entitlement to, but rather extraordinary, perhaps, as to timing.

MR. KEEVEY: Now, for example, we never anticipated prior to 1992 any Federal reimbursement for our acute care hospitals out there. Drawing down Federal money was never done for the acute care hospital reimbursements that disproportionate share related to. It was based upon a lot of research, analysis, and changes in Federal law that New Jersey, as well as many other states, got into the claiming of this money.

I might just digress for a second and indicate the Federal government took great umbrage at this. You know, all of a sudden all these states are emerging out of a small technicality of the law saying that we're entitled to this money, and they were trying to do everything not to grant reimbursements to the states. Ultimately, they had to agree, and this money started flowing to the various state governments. So, from that point of view we viewed it, and I would suggest to you that it's an extraordinary action.

ASSEMBLYWOMAN DERMAN: Well, you just said ultimately they had to agree. How long did it take until they did agree?

MR. KEEVEY: Well they agreed before 1992. I guess somewhere in the spring of '92.

ASSEMBLYWOMAN DERMAN: Which is the time period of what, until they ultimately agreed?

MR. KEEVEY: About a year.

ASSEMBLYWOMAN DERMAN: I guess my point is that it appears to take a long time to make the Federal government agree.

MR. KEEVEY: To this new idea of disproportionate share. But once they had agreed and walked into it and agreed to that, disproportionate share costs are eligible for Medicaid reimbursement, it necessarily follows, in our view, that all of disproportionate share is eligible for reimbursement.

ASSEMBLYWOMAN DERMAN: Now, but you were just focusing on acute care.

MR. KEEVEY: I was giving that example. I thought I was trying to say when the first time we showed any kind of money as an anticipated revenue. I was trying to differentiate for you the technicality of why we distinguish one money as anticipated and one as appropriated.

ASSEMBLYWOMAN DERMAN: Right, and it was very helpful.

SENATOR LaROSSA: Assemblyman Bagger?

ASSEMBLYMAN BAGGER: Not to interrupt, but on that same point: The State's experience with the acute care reimbursement is instructive because that was the first episode, as I understand it, of Medicaid reimbursement outside the normal stream that was handled as an anticipated revenue. It really set the precedent for how this claim was handled as an anticipated revenue. Is that fair to say?

MR. KEEVEY: As an anticipated revenue. Right.

ASSEMBLYMAN BAGGER: An acute care reimbursement was included for the first time in the Fiscal Year '92 budget. Was that included as an anticipated revenue in the Fiscal Year '92 budget at the time that budget was presented to the Legislature?

MR. KEEVEY: No.

ASSEMBLYMAN BAGGER: Was it added sometime prior to the certification of revenues?

MR. KEEVEY: Right.

ASSEMBLYMAN BAGGER: And that certification of revenues for Fiscal Year '92 would take place in June '91?

MR. KEEVEY: June '91.

ASSEMBLYMAN BAGGER: When was the State's claim for the acute care hospitals formally filed with HCFA?

MS. HOLZBAUR: I'm not sure if I can answer that. I don't know the answer to that.

MR. KEEVEY: I can't recall. We could probably check with the Medicaid Division on that one. We will do that.

ASSEMBLYMAN BAGGER: When was that claim approved, in terms of the HCFA granting the State the advance on the funds to draw down?

MS. HOLZBAUR: I know we started to receive funds somewhere in September of '91. HCFA told us we had an approvable State Plan, somewhere in the spring of '92.

ASSEMBLYMAN BAGGER: Prior to the certification of revenues?

MS. HOLZBAUR: No, subsequent to that. The certification of revenues occurred in June of '91. In the spring of '92, they said we had an approvable State Plan.

ASSEMBLYMAN BAGGER: And they started reimbursing in September of what year?

MS. HOLZBAUR: September of '91.

MR. KEEVEY: So at the time we put the money in the budget, we did not have an approvable plan.

ASSEMBLYMAN BAGGER: A plan which HCFA had said was approvable.

MR. KEEVEY: Right. Approvable.

ASSEMBLYMAN BAGGER: Obviously it was ultimately approvable.

MR. KEEVEY: Right.

ASSEMBLYMAN BAGGER: Thank you.

SENATOR LaROSSA: Harriet?

ASSEMBLYWOMAN DERMAN: I just want to make sure that I understand, Ms. Holzbaur. You were not involved with respect to the inclusion of the item which was an anticipated source of revenue?

MS. HOLZBAUR: I was not involved in the decision to include them as anticipated revenue. Correct.

ASSEMBLYWOMAN DERMAN: Have you ever been involved in discussions with respect to including an anticipated item from the Federal government?

MS. HOLZBAUR: Not to my recollection. No.

ASSEMBLYWOMAN DERMAN: Okay. Thank you very much.

SENATOR LaROSSA: Just one quick follow-up question. You used the term "extraordinary." And, again, forgive me for just locking onto a word. I just want to get it in the context of-- Is that a term that is used in the day-to-day business or was there something that was extraordinary in the literal use of the word?

MR. KEEVEY: Well, let me characterize it this way. We have never had this source of revenue previously anticipated in the budget. Therefore, that's what I meant by that.

SENATOR LaROSSA: Okay.

MR. KEEVEY: For example, in the 1990 budget we anticipated the unemployment insurance claim or taking of money from the unemployment fund; that was extraordinary. During the 1990 and 1989 budget, we anticipated revenue related to changing of dates on certain taxes that weren't yet in law. That's extraordinary in that it wasn't following the normal existing statutes or patterns of revenue.

SENATOR LaROSSA: Okay. I appreciate that clarification.

ASSEMBLYMAN KENNY: Through the Chair. Mr. Keevey, what about the pension reval that we just did for 1993? Would that be extraordinary?

MR. KEEVEY: That would be an extraordinary.

ASSEMBLYMAN KENNY: An extraordinary action that Assemblyman Bagger shepherded through the legislative process with the Governor's support.

Thank you.

SENATOR LaROSSA: Just want a clarification.
(laughter)

If I may, just one other quick question. Charlene you used a term, and again, forgive me for locking onto these -- but again, your context and my context are not necessarily the same thing-- You used the term nontraditional revenues. What

did you mean by nontraditional? Is that your term for extraordinary?

MS. HOLZBAUR: Yes, it's the same definition that Rich would use. It's a little different from what we had previously done.

SENATOR LaROSSA: All right. Thank you.

Any other questions? (negative response)

Okay. I want to move into another area. Stacy Brophy, you're a supervisor at OMB and your responsibilities are in the area of Federal appropriated revenues. And, again, your background would be to discuss the normal process of inclusion of those revenues in the budget. Is that correct?

A N A S T A S I A B R O P H Y: Correct.

SENATOR LaROSSA: Okay. Director Keevey had talked about -- in terms of the inclusion of the Federal revenues within the budget. But you also indicated, and correct me if I'm wrong, you said that the \$14 billion at a point do not include Federal revenues, and at a point it does include Federal revenues?

MR. KEEVEY: No, it does not include Federal revenues. At the same time we have to recognize that we have this Federal reimbursement out there -- this particular claim supporting the \$14 billion budget. What I was trying to make the distinction was that the majority of the Federal dollars that come into the State -- 95 percent of it -- we show as appropriated revenue, not part of the Governor's \$14 billion budget. It's all displayed in the budget. It's what several people on the Committee would term to be "below the line" appropriations. It's all spelled out in there.

We've had some discussions over the many years that I've been involved in this: Should we put this money on budget? Should we say the budget is not \$14 billion; it's \$14 billion plus \$3 billion in Federal plus \$2 billion in other appropriated revenues? I guess from the technical side of the budget we don't really care.

Tradition in this State has been that we keep Federal dollars in a separate little compartment. The historical reason for doing that more relates to the surety issue and the different fiscal years that the Federal government is on, and we -- accounting-wise -- have tended to handle the Federal dollars a little differently.

We're drifting into a real technical side of how we display a budget.

SENATOR LaROSSA: Yes. I think it's a little bit beyond what we want to--

MR. KEEVEY: I think, but, whatever--

SENATOR LaROSSA: Who knows what it is that-- (laughter) Going back to the specific question: How do you determine -- because, again, I think you answered part of this, Rich -- whether a revenue is designated as anticipated or appropriated, and how the revenue in question of disproportionate share fits into a normal pattern within the historical process: Correct me if I'm wrong, but I believe what you said is that it was an extraordinary revenue which was anticipated, so as far as it fitting into the annual ongoing revenue stream, it really was treated differently?

MR. KEEVEY: It was different. Right.

SENATOR LaROSSA: Okay. Now, as it relates to-- Obviously it was anticipated. It wasn't appropriated. So I guess when you come right down to it in terms of fitting within the normal process is that very simply, it's anticipated revenue. I mean, that's it in a nutshell.

MS. BROPHY: That's correct.

SENATOR LaROSSA: Yes?

ASSEMBLYMAN KENNY: Mr. Chairman, just to address Assemblywoman Derman's concern-- Correct me if I'm wrong, Mr. Keevey. We also anticipated, as extraordinary revenue -- using the terms here today -- the prospective and ongoing Medicaid disproportionate share reimbursement for the psychiatric

hospitals in this year's budget. Both the budget that the Governor proposed and the one that the Legislature passed last June, included \$140 million of Medicaid disproportionate share reimbursement to the State of New Jersey that had never been received before. And we are, in fact, receiving those dollars to the tune of roughly \$40 million a quarter--

MR. KEEVEY: Right.

ASSEMBLYMAN KENNY: --today, and that had never been received before. We did it for the first time last year. It's the same money -- the same kind of money that is the subject of this hearing, except that the money that's the subject of this hearing is retroactive. It's retroactive, but the prospective moneys that we've received -- now we're receiving them concurrently -- were anticipated in our budget for the first time last year which, I think, is to the State's credit and to our credit for having done that. That was extraordinary income. It wasn't appropriated, and, we are, in fact, receiving the money. The point that I think we all share and when we make the point, is that the Federal government is now recognizing this claim for disproportionate share as well as, of course, acute care, which they recognized in the past. It shows that the State is correct in its claim and on the right track.

As I've said several times, the only issue is that the State doesn't -- excuse me -- the Federal government does not choose to give us the retroactive payments, based on a notice objection which the State is appealing. I mean, that's the only issue. All the other issues here, I think, have been answered over and over again by the people that have come before this Committee. So, we did last year -- and the Governor did, and the Legislature -- anticipated the extraordinary revenues of disproportionate share reimbursement for prospective and concurrent quarters, and we are, in fact, getting those for the first time in the State's budget.

Is what I've just said correct, Mr. Keevey?

MR. KEEVEY: That's correct. I would just add another dimension to it. Initially, the Federal government said that they would not recognize any claims for disproportionate psychiatric care hospitals, and we are now receiving third and fourth quarters -- I'm sorry -- first and second quarters of calendar '92. We have already gotten it, and we are receiving current money. I'm not sure what we're receiving with regard to prior to December 30, but we know we're entitled to three days, and it's not clear whether we're getting an extra quarter or not. So, our claim is being honored. It's just taking awhile for them to get around to apparently recognizing, in my opinion, what is a valid claim. But their initial reaction to our claim was, "You're not entitled to this psychiatric hospital." Then they backed off and said, "You're eligible, but you're not eligible beyond a certain date."

ASSEMBLYWOMAN DERMAN: With all due respect, I think the concern is that some of these items were included -- the estimate was included to close the Fiscal Year 1992 budget, and I think they were not received by June 30, 1992. So that's really all I have to say with regard to that.

MR. KEEVEY: Assemblywoman, may I just make a comment on that?

ASSEMBLYWOMAN DERMAN: Please do.

MR. KEEVEY: We don't necessarily have to get the money by December 30 in order for us to recognize it as a revenue. If it is a valid receivable, and we would have some indication that we're going to get this money, we could book it as a revenue. In this particular case, with regard to the \$70 million that we have been approved for, for January through June -- and we've got some of it now and some of it we expect to get by the end of September -- we will recognize that in the '92 closing of our financial statements. Our financial statements are not closed yet for '92, and if we've gotten this

money, even after June 30, we would recognize that as a 1992 revenue item. The Auditor, when he reviews our books, would agree to that because it was a claim valid prior to the close of the fiscal year. Even though we got it after it, we could book it.

ASSEMBLYWOMAN DERMAN: I understand, because you're not a cash method taxpayer.

MR. KEEVEY: Right. We're on generally accepted accounting principles -- accrual basis of accounting. We're on the, if I could use the term, right way of financial statement recording. We meet all gap requirements.

ASSEMBLYWOMAN DERMAN: Well, let's pursue that. What are the indications that are required for it to be part of the budget, then? In your estimation, what are the criteria?

MR. KEEVEY: For booking it or anticipating it?

ASSEMBLYWOMAN DERMAN: Let's start with booking.

MR. KEEVEY: That it has been received or will be received within a reasonable period of time.

ASSEMBLYWOMAN DERMAN: Such as?

MR. KEEVEY: I would say within six to twelve months. Generally, on a more conservative approach we would say within six months.

ASSEMBLYWOMAN DERMAN: Within six months.

For anticipating it, what are the criteria?

MR. KEEVEY: Well, we would say, after review of the revenue source, that we are satisfied that it is a revenue due and owing to the State. For example, if we looked at a sales tax or a corporation tax, different than this particular item-- Sales tax and corporation tax are obviously due and owing to the State. The trick there would be to estimate what the correct level is of the economy, and what would drive the ultimate collection of taxes. In this particular revenue it would be analysis to indicate that: a) the law entitles us to this money, and b) that we expect to receive this money; that

it is a valid claim. On that basis, we would have determined when we submitted the budget that it was a valid claim.

Subsequent to that, as you know, the Federal government wrote us a letter sometime in May, I guess, and said, "We are denying the claim." They could have taken three actions: approve, deny, defer. Originally they deferred, I think. They ultimately denied. We're working down that denial, so to speak. We still believe it is a valid claim. But, once we got in writing something that countervailed our anticipation that this money was due and owing to the State, we had no choice at that time, facing an outright denial by the Federal government, to apprise the Committee and, therefore, recommend the money not be put in.

ASSEMBLYWOMAN DERMAN: With respect to an item that's due and owing, under "gap" what would be a reasonable time to expect it? I mean, you might have an item due and owing in four or five years, I suppose.

MR. KEEVEY: No, we would not anticipate.

ASSEMBLYWOMAN DERMAN: Nothing. You wouldn't enter it. So what would be a time period?

MR. KEEVEY: I would say a six month period of time.

ASSEMBLYWOMAN DERMAN: Maybe you could do this for me, since it's a little hard for me. Could you make a comparison between what the results were, focusing on the item in question -- disproportionate payment -- in terms of what you anticipated and what was booked? What's the contrast for Fiscal Year ending '92 and Fiscal Year ending '93?

MR. KEEVEY: For '92, we anticipated in the budget, I believe, \$380 million retroactive; \$330 million dollars current for the acute care hospitals and \$140 million for the psychiatric current year. In the 1993 budget we anticipated, I believe, \$330 million for the acute care and \$140 million for the ongoing psychiatric hospitals. That's what we showed in the Governor's budget message. The psychiatric hospitals in

1992 was a revision to the original budget because the original budget did not have the \$140 million in there -- I'm sorry, the original Appropriations Act signed prior to July. It was not entered into the budget until we revised it in '92 when we submitted the '93. We put this \$140 million in there, based upon Charlene, our staff, Medicaid Division, and Human Services, reviewing the law and the claim that they made. We said that we were entitled to the \$140 million for all of '92 and all of '93, and we're entitled to the reimbursement retroactively beyond Fiscal 1992 -- showed that as an expected revenue. We did the same thing for '93.

So that was the basis of putting the money in the budget. As we went through the process, originally the Federal government said, "You're not eligible for the psychiatric hospitals." They've backed off of that and now said, "Yeah, you're eligible for it, but only back to December." So, we've actually physically gotten the \$70 million, I believe, with regard to the psychiatric hospitals for half of '92. So we booked that from an accounting point of view. I'm now moving to the accounting side as opposed to the budget side. So as the comptroller operation, we say, "We've got it. We're going to book it." But, we also have on the historical -- on the retroactive payments -- a denial letter from the Federal government. Notwithstanding the fact that we believe that we're entitled to it, in face of the denial letter, we will not book that money.

ASSEMBLYMAN BAGGER: If I could cover the same ground just a little bit, starting with the good news Assemblyman Kenny mentioned. I understand that since the last meeting of this Committee, the quarters of the prospective reimbursements that were in question-- There have been indications that they've been resolved, and that we will be receiving reimbursement for all quarters beginning the fourth quarter of '91 on an ongoing basis.

MR. KEEVEY: I don't know. That's what the Secretary announced: that we're getting "X" amount of dollars. As far as we can figure out, together with the Medicaid Division, we have not got that quarter from October to December. We only have those three days. HCFA has not given us a grant award.

Is that correct, Charlene?

MS. HOLZBAUR: That's correct.

MR. KEEVEY: We have gotten a physical grant award for the other quarters, the first two of calendar '92, but we have not gotten this extra quarter, if you will, from HCFA, yet. So, we're not sure whether the Secretary didn't have his quarters right, or HCFA hasn't caught up with what the Secretary intends to do. But at the moment, we're not saying we've got that money yet, because HCFA hasn't agreed that we're entitled to that quarter from their perspective. We believe we are.

ASSEMBLYMAN BAGGER: Right. If we get that award for the fourth quarter of '91, we'll have three of the four quarters for Fiscal Year '92 actually received, and that will be booked to Fiscal Year '92.

MR. KEEVEY: Let's say we'll ultimately issue our audit report sometime in the middle of December. I think if we don't have that letter with a grant award, we probably would not reflect it because we have these two circumstances: a) a denial, and b) just a verbal comment from the Secretary, who we're not sure whether he had his quarters mixed, quite frankly. If he had it right, that's great, but what we've asked HCFA for is the grant award and if we would get that in the next-- Well, we're almost finished with our statements, but if we would get it in the next month, I would say we would show it as a '92.

ASSEMBLYMAN BAGGER: And that will help--

MR. KEEVEY: And if we don't get it, and get it like four weeks from now or five weeks from now, we'll just show it

as a-- When we submit our '94 budget we'll revise our '93 revenues and include that quarter in there, or even more quarters if we--

ASSEMBLYMAN BAGGER: The quarters you're booking for Fiscal Year '92 will help close whatever year-end shortfall existed in Fiscal Year '92.

MR. KEEVEY: Right. We will close with a positive fund balance somewhere on the order of either ending with \$650 million to \$700 million. I'm not sure yet, because we're not clear on situations like this, as well as several other things.

Just to back up a second: The normal process of closing-- This Office is also the Comptroller, as well as the Budget Office, so we do the accounting and the financial reporting for the State. We prepare our financial statements, and once we're in a position where we can turn them over to the Auditor, the Auditor comes in and looks at how we've shown certain things. For example, he will test income tax accruals and refunds. Have we shown them correctly? Have we booked them properly? They'll look at a large program like Medicaid and say, have we properly booked all the accruals that are due? Even though we haven't made the payment yet, we have a bill due and owing. So those kinds of external reviews are made by the Auditor to satisfy himself that the statements we're presenting are accurate. Once he signed off on them, we will publish the document, and it normally goes in the middle of December.

SENATOR LaROSSA: We're getting a little bit of a feel, but I want to come to back to one question some of you mentioned before. I'd like to get back to -- (laughter) to start to ask Stacy a question.

My feeling is that we've really exhausted that, that the disproportionate share fitting into the normal pattern within the historical process. Do you have anything further to add?

MS. BROPHY: No. The Federal revenues would appear on the appropriated revenue schedules. Within the normal process the appropriated revenues, the Federal revenues, most of them will appear on the appropriated schedules. This particular set of revenues does not fall into that schedule at all. Okay? So it would not have been anything I would have any review of at any point of time.

SENATOR LaROSSA: Okay. One of the comments, Rich, that you made before-- You know, we've talked about extraordinary, not clear in face of a denial, and another term, you said, a loophole. Now I'm sure this is going to relate to the question, you know-- You're talking about a loophole in terms of the State's applying-- Could you expand on that a little bit?

MR. KEEVEY: Maybe Charlene can help me more, but in general, the loophole is referring to this whole disproportionate share reimbursement filing for Medicaid reimbursement. The State never filed for it before. There are provisions in the Federal Act that if there are extraordinary costs within hospital situations for people who "fit" the uncompensated care, or are highly Medicaid eligible, we are eligible for drawing down matching Federal dollars. It was a little known aspect of Federal legislation that got a lot of notoriety with the Massachusetts situation. This State, as well as most states, jumped into fixing onto this all provisions of the Act and beginning to file claims for "the loophole;" this provision of the law that allowed the states to get this money.

Charlene?

MS. HOLZBAUR: I think Medicaid probably did a very good job of explaining to you. Over '90, which was issued November of '90, set the parameters and regulations for states to receive Federal matching funds for disproportionate share. That was pretty much the loophole to which Rich was referring.

It was a clarification of Federal regulations that allowed states to, in effect, get on the bandwagon and receive these Federal dollars.

SENATOR LaROSSA: If -- I hate to use the word-- Who, in New Jersey-- I don't know if this is really a question that-- It really should be addressed to OMB. When a decision is made to move forward to-- I guess that's probably a Human Services question, really, that they would make the decision to move forward on that.

MR. KEEVEY: On filing the claim.

SENATOR LaROSSA: On filing the claim. Once the claim is filed, then, is that there's some coordinated effort between Human Services and OMB as to-- You're really not even interested in the validity of the claim. You're interested in that if they're telling you that it is valid -- all right? -- and we're going to go on the assumption that the claim is valid because we have to go on that assumption. But then you have to make a determination as to whether to treat it as anticipated revenue or whether to treat it as appropriated revenue. But then part of the other question is, in the historical background as to how these revenues come into the State if this is-- Is it reasonable to say that this really was a new revenue source? Is that reasonable?

MR. KEEVEY: Sure. It's all new.

SENATOR LaROSSA: The retroactive disproportionate.

MR. KEEVEY: Right. All of it was. The first time we ever got any disproportionate share money was 1992.

SENATOR LaROSSA: So, it was all-- But that was--

MR. KEEVEY: Charlene has another aspect.

Go ahead Charlene.

MS. HOLZBAUR: What I wanted to explain was, as you heard Medicaid say, they had always been in the process of claiming disproportionate share on their share of

disproportionate share in acute care facilities. That had been historically in existence since 1988.

SENATOR LaROSSA: Right. Maybe this is an overly simplistic question. We talk about anticipated revenue. We talk about it versus appropriated. We talk about outside the stream, reasonable amounts of times -- the fact that prior to last year we had never received this and then, in fact, in the face of a denial we won't book the money, and so on. What reasonable criteria or what criteria exists, or does any criteria exist that is applied to, if you will, a new revenue source, a new program, a change in a program? What criteria exists that makes the determination as to whether or not that you will not book the money in the face of a denial? But as long as the claim is out there, as long as the claim is outstanding, is there anything that would either prompt you to include or exclude booking that money in any year's fiscal considerations?

MR. KEEVEY: You have to make a distinction between, I think, actually booking. I think I made that distinction as originally anticipating the money. In this particular instance we looked at the claim and the law, discussed it in much detail with the Department of Human Services to satisfy ourselves in OMB that it was a valid claim against a valid existing law. On that basis we said that we are entitled to this money and we are able to show that as a budget--

I remember when the budget was presented and we displayed it to the press, for example, and then the first couple of Committee hearings. The several questions that emerged from the press and also from the two Committees was, "Are we going to get this money?" And our comments were always along the lines of, "These are valid claims. We're entitled to receive it."

The Federal government has three actions they can do. They can approve it right out of the box. They can deny it

right out of the box, or they can defer it. They originally deferred it and as things went along, we got this denial letter in May. It was at that point when we had the denial letter we would say, from the financial accounting and good government point of view, "Yeah, we're entitled to it. We think it's meeting the same criteria that we're already getting money for." But in the face of this denial we should not proceed with booking or anticipating this revenue anymore.

It was not dissimilar to, if I can draw upon the analogy of the unemployment money-- We believed, back in the 1990 budget when we submitted as an anticipated revenue, that we had done all that was legal to draw down money from the Unemployment Compensation Fund to show as an anticipated revenue in Governor Kean's last budget. We showed the \$100 million dollars. Lo and behold, we had a court case action taken and said, "Mistake. You're not allowed to have shown that money." Now we're in the process of paying it back.

So those things-- You're absolutely sure on certain things, and there are other things you're sure, but somebody else is going to make an external ruling that says, "No," and then we're back into the court situation.

SENATOR LaROSSA: Okay, but you indicated that there was conversation -- for lack of a better choice of words -- or detailed conversation with representatives of Human Services about the validity of the claim. Did those conversations also include trying to come to a conclusion as to whether or not those moneys should be incorporated? Or is that not their purview?

MR. KEEVEY: That's not their decision, I don't think. I think what we do here-- I mean, Charlene was principal analyst on the Medicaid Program. She would have been our principal focus on reviewing the information. I think we have provided schedules on that that showed the work sheets that Human Services gave us on how much money they anticipate

to received in '93 and '94, and how they calculated the retroactive reimbursement. So Charlene's role would have been to review that material; satisfy herself that it was a valid claim; satisfy herself that the Department went through the right process; and satisfy herself that the calculations were correct. I'm putting words out so she can contradict me if I'm saying it wrong.

Based upon that and our review of the material -- "our," meaning management in OMB, then ultimately the Treasurer's Office -- as to whether it met the test that we were eligible for it therefore eligible to receive it, we're entitled to receive it, and the decision was made -- yes, we are. Therefore, it is quite proper to anticipate it in the Governor's budget message as a revenue item.

SENATOR LaROSSA: Okay. But what I'm not hearing-- Or what I am hearing is that if it is a valid claim, it is reasonable to include it in the budget. I'm not hearing anybody say that there was a conversation which addressed with Human Services anything historical, if you will, as to how long it takes to get money after a claim is submitted. Because if, in fact, this is extraordinary, as you said--

Let me reflect back to a piece of testimony which I believe was at the very first hearing that we had. We were talking about the level of complexity of these kinds of claims and how long it takes for revenues to come in. I don't know whether it was Ann or Roseann who indicated that this was a very complex claim and that, in fact, claims of this nature could take years to come in. So, the fact that-- What I'm hearing is that there seems to be a hole; that, yes, if it is a valid claim, if in fact we can book this, if it is something that OMB decides that we can put this into the budget-- It seems that there's a question that was never asked: When can we reasonably expect this? Or is that a question that was asked, and if it was asked, of whom? That goes back to the historical process.

MR. KEEVEY: No, it does not go back to the historical process because what Charlene and Stacy talked about with regard to the historical process, meaning the revenue streams of existing programs, this was a new revelation, if you will. The way I would certainly couch it is in the terms of, we go back to what happened the year before. We had a valid claim and started filing for acute care hospital reimbursement and received it three months or four months into the fiscal year. It was a new revenue that heretofore never came to the State. The Federal government, I guess, could have said, "No, you're not entitled to that. We're going to deny that." We would have had to go through an appeal process. But, they recognized that within a four-month period of time. Ultimately, they didn't recognize it until nine months later, I guess, but they started paying us four months into the fiscal year.

There's every reason, on our part, that, given the fact that the law provided, given the fact that valid claim existed, it was quite reasonable to assume that we would get this money. In fact, even though the Federal government originally declined, we are getting reimbursement for the acute care hospitals.

I don't particularly want to get into all the details of the California decision that was reached four or five months later -- a couple of months ago -- pretty much validated what we've been doing. A ruling against HCFA was that a filing date change, which is what HCFA is holding the State up on, is no reason to deny a claim. Events that have occurred subsequent to their denial sort of validates what we've been claiming all along.

SENATOR LaROSSA: I'm not questioning the State on a procedural basis in terms of what they did with the claim and here's what OMB did. What I'm really trying to drive at, which is a point of genuine concern and confusion to me, is that based on previous testimony which has come before us relative

to the complexity in the amount of time it takes to resolve it, if, in fact, last year it took two to three months from a claim being submitted under acute care, that in turn the payments started coming very, very rapidly and now we have a situation which by definition was very, very complex. What was the difference between the two? And, in fact, if there's no difference between the two, then somebody is really misinterpreting the level of complexity of what this claim was in the first place.

MR. KEEVEY: They're all the same nature. They're all reimbursement of disproportionate share. You've got to recognize in this environment the Federal government isn't interested in paying a lot of money out. The states as a whole, caught up with this problem and started filing. They have their own budget problems. They're not interested in paying money out, but they are supposed to. They are legally obligated in our opinion to make these payments to us. Based upon 1992 experience, based upon what is happening already, based upon the Secretary even coming here and announcing it, in my mind, it says that we had every reason to expect that these claims would have been authorized and approved. The first time that we had any wind of the fact that there would be a denial would be the time when we would have to come back and say, "We got this denial in spite of what we think to be valid claims. We think we better pull this off the table." And that's what happened.

SENATOR LaROSSA: Assemblyman Bagger?

ASSEMBLYMAN BAGGER: Thank you, Mr. Chairman.

Was any part of the application for acute care reimbursement that was first received in Fiscal Year '92 retroactive, or was that first filed as just an ongoing prospective application?

MR. KEEVEY: I think it was ongoing.

ASSEMBLYMAN BAGGER: My understanding of the testimony that was just given was that while there were detailed conversations between OMB and Human Services about the State's very valid entitlement to these moneys, there was not a request for advice from OMB to Human Services, or information from Human Services to OMB regarding when the State could actually anticipate an approval from HCFA and commence receiving these funds.

MR. KEEVEY: I don't know whether Charlene has a perspective on this, but our discussions centered around: Are we entitled to this money, must they honor the claim and does it fit the same parameters that we've been receiving reimbursement? I think we always received affirmative answers on that.

Charlene?

MS. HOLZBAUR: That's correct.

ASSEMBLYMAN BAGGER: Was there discussion-- Is this something we expected to be approved or have reimbursement commence prior to June 30, 1992?

MS. HOLZBAUR: We had a scenario painted for us which is similar to the one Roseann and Ann walked you through, the number of days between each process for HCFA to respond, for us to respond, etc. Within that, we believed that we would have an answer before June 30, '92 and I think Human Services answered that question in an April 27 transmission to the Assembly Appropriations Committee.

ASSEMBLYMAN BAGGER: That Human Services communicated what to the Assembly Appropriations Committee?

MS. HOLZBAUR: That they believed they would have a response from HCFA before June 30, 1992.

ASSEMBLYMAN BAGGER: Did they provide advice as to the timing of that decision to you or to anybody in OMB prior to January of '92?

MS. HOLZBAUR: I think I had discussions with someone in mid-January.

ASSEMBLYMAN BAGGER: About timing?

MS. HOLZBAUR: Yes.

ASSEMBLYMAN BAGGER: Is it fair to say that the revenue anticipation issue really comes down to a judgment call? In terms of anticipating a particular revenue in a particular fiscal year, in a circumstance like this, is a judgment call that has to be made?

MR. KEEVEY: Yes. I think all revenues fit that category. I mean, when we make an assumption for certain revenue growth for the income tax, when we make certain growth rates for anything, going back, for example, to the extraordinary sale of the roads a few years ago--

ASSEMBLYMAN BAGGER: Yes.

MR. KEEVEY: --as to whether or not the deal would be consummated, whether the thing would transact to the point of view that we would get the money was an estimate when we originally put it in the budget. Ultimately it came to fruition. It was an estimate when we put in the budget that the law would be changed, that we would recycle the payment dates for the utility tax in such a way that we would collect the money within a certain period of time. It came to fruition. It was an estimate when we threw the unemployment in there. It's always assumptions.

ASSEMBLYMAN BAGGER: It's a series of judgment calls.

MR. KEEVEY: And what we have to carefully try to do, the extent that we can, is try to make our best judgment as to whether or not, in this case, for example, we met the criteria of the law, that all the claims have been filed, that it was not dissimilar in any character to prior reimbursements that we have received or other states have received. On that basis, found it reasonable.

ASSEMBLYMAN BAGGER: What's the chain of decision in terms of making that judgment call -- that evaluation -- on a general basis in terms of whether to anticipate one of these -- I'll just say unusual revenues, because--

MR. KEEVEY: In general, revenue decisions and budget decisions on the appropriations side and the revenue side, I would say, at the general conclusion of the whole process involve myself, the State Treasurer, the Governor and his staff, as to what is the composition of the budget in all its parameters. Obviously, the recommendations from the Treasurer and myself have to carry some weight in the Governor's vision of what should be put in the budget, where he should spend money, what should be anticipated, and what levels.

ASSEMBLYMAN BAGGER: What was the decision-making chain that took place in connection with the decision to include in the mid-year corrections for Fiscal Year '92 -- to include the \$380 million for the retroactive aspect of the claim when that was included as part of the estimates that were part of the budget presentation for '93?

MR. KEEVEY: Just basically what I described: our judgment that it was a valid claim and that it fit the characteristics of the other claims that we have filed and are receiving money for, and that the State is entitled to do it, entitled to get it, and that we reasonably expect to receive it.

ASSEMBLYMAN BAGGER: The recommendation was made by OMB in that regard?

MR. KEEVEY: OMB and the Treasurer. Right.

ASSEMBLYMAN BAGGER: Because it's not part of their responsibilities, there was no recommendation from Human Services to OMB in terms of timing -- because that's not their job? That's your responsibility.

MR. KEEVEY: Right. Generally, all revenue estimates, depending upon the tax side of the budget -- sales tax, corp. tax -- I would say the other "player" is the Tax Division,

together with OMB and the Treasurer. The revenues that are not tax driven, like this one, would be OMB and the Treasurer.

ASSEMBLYMAN BAGGER: Is it a consensus process between the Treasurer, yourself, and your staffs, or do you make a formal recommendation to the Treasurer?

MR. KEEVEY: Well, I think it's a discussion.

ASSEMBLYMAN BAGGER: So, I take it that you personally had discussions with the Treasurer in regard to the \$380 million retroactive item?

MR. KEEVEY: Correct.

ASSEMBLYMAN BAGGER: And those occurred prior to January--

MR. KEEVEY: Prior January and during January. I think we probably discussed it in December through January. I don't think we discussed it prior to-- I think we started examining it in November.

MS. HOLZBAUR: Late November.

MR. KEEVEY: That's Charlene's level of responsibility. It probably didn't get to me until December.

ASSEMBLYMAN BAGGER: It worked its way through OMB, so then the November to December time frame--

MR. KEEVEY: Right.

ASSEMBLYMAN BAGGER: And then at that point you went to the Treasurer to present this as an option, or was it something the Treasurer was already aware of?

MR. KEEVEY: The Treasurer was aware of it.

ASSEMBLYMAN BAGGER: Prior to your bringing it to his attention?

MR. KEEVEY: No, I don't think so, but it's possible. You remember at this time we had a change in Treasurers? One Treasurer was coming, of course-- The present Treasurer was coming from the Governor's Office, so he was involved in all of these involvements. We had overlapping Treasurers at one point. But all people were involved in the knowledge of and the magnitude of money involved in this.

ASSEMBLYMAN BAGGER: Did our current State Treasurer, when he was in the Governor's Office-- Was he the Governor's Office contact on this particular revenue item?

MR. KEEVEY: He would have been involved. That's correct, because he was going to be the Treasurer. You might have to ask him. But, ultimately, he was the Treasurer, and we finally frameworked the budget out in the middle of December -- late December.

ASSEMBLYMAN BAGGER: He was the Treasurer at the time the decision was ultimately made to modify the revenue to include this?

MR. KEEVEY: To include it. Right.

ASSEMBLYMAN BAGGER: And that was a decision that was reached by yourself in consultation with the Treasurer?

MR. KEEVEY: Right.

ASSEMBLYMAN BAGGER: Were you aware, at the time of that decision, of any issues raised by HCFA in terms of this notice issue on the retroactive piece of the reimbursement?

MR. KEEVEY: No. I think the only time we got a notice from them was in May.

ASSEMBLYMAN BAGGER: That was the first you became aware that the Federal government was raising issues?

MR. KEEVEY: No. The first time they denied it. I think we had earlier notification in March.

MS. HOLZBAUR: In February, of the deferral.

MR. KEEVEY: The first time they deferred it, Charlene, was?

MS. HOLZBAUR: Early February, the 3rd, I think. Our initial September claim was deferred.

ASSEMBLYMAN BAGGER: And that was in about February '92?

MS. HOLZBAUR: Yes.

ASSEMBLYMAN BAGGER: And the executive branch then retained outside counsel to pursue the claim sometime shortly thereafter?

MS. HOLZBAUR: In mid-March. Yes.

ASSEMBLYMAN BAGGER: And it was the receipt of a declination notice in early May that led to the decision to--

MR. KEEVEY: Late May.

ASSEMBLYMAN BAGGER: Late May.

MR. KEEVEY: I think their date was May 22?

MS. HOLZBAUR: May 20, the date of their memo. The receipt of that memo at OMB was May 29.

MR. KEEVEY: I think we provided the certified mail stamp as to when the State actually received it.

ASSEMBLYMAN BAGGER: What process took place thereafter that led to the decision to exclude the \$380 million as an anticipated revenue for Fiscal Year '92?

MR. KEEVEY: As I recall, the discussion was in face of a denial we should: A) inform the Legislature that we have this denial, obviously, and B) make a judgment that on the basis of a formal denial we don't think it prudent to anticipate this revenue. I mean, there's a distinction between, I think, the final certification of revenues in July, where the Governor and the Legislature as a whole is actually certifying under the provisions of the Constitution that there's reasonableness that we're going to get this money. We now have reached the stage, in May, where there is an actual formal denial from HCFA, and therefore we didn't think it advisable to make a judgment as to whether this money should be anticipated money.

ASSEMBLYMAN BAGGER: When you say reasonableness of receiving the money, do you mean reasonableness of receiving the money during that fiscal year?

MR. KEEVEY: Correct.

ASSEMBLYMAN BAGGER: When did you first come to the conclusion that it would not be reasonable to expect that notwithstanding the State's entitlement to this money, that it would not be received in 1992?

MR. KEEVEY: When we go the denial letter.

ASSEMBLYMAN BAGGER: Notwithstanding the deferral in February, at that point it remained your belief that the State could receive the money within Fiscal Year '92?

MR. KEEVEY: Yeah. In fact, we had even testified to several of the committees that we would expect the Federal government to take one of three actions. In many cases, I'll have to refer to Charlene, their initial answer out of the box many times is, "Defer."

MS. HOLZBAUR: Defer.

MR. KEEVEY: It is not a-- Go ahead, Charlene.

MS. HOLZBAUR: In order to get time to ask questions, inquire how the claim was calculated, etc., that's standard procedure.

ASSEMBLYMAN BAGGER: In fact it's also standard procedure that it's actually quite late in the game that an actual formal claim is filed.

MS. HOLZBAUR: Yes.

ASSEMBLYMAN BAGGER: And, indeed, the claim for these moneys was not filed until sometime much later.

MS. HOLZBAUR: The claim for the December quarter which was the one -- September quarter, September of '91 -- that actually got ultimately denied was filed December 15.

ASSEMBLYMAN BAGGER: Of 1991?

MS. HOLZBAUR: '91. Yes.

ASSEMBLYMAN BAGGER: But the claim for the retroactive \$380 million had not been filed at that time?

MS. HOLZBAUR: The largest piece of the retroactive component was not filed until either late May or early June.

ASSEMBLYMAN BAGGER: What were the discussions or decision process that led to the exclusion of this revenue from the '92 budget? Was it the same as including it? The same people involved? The same consensus decision-making?

MR. KEEVEY: Yes.

ASSEMBLYMAN BAGGER: Was there at any time any discussion by you with the Treasurer, or any consideration by you, of including the \$380 million as a certified revenue for Fiscal Year 1993?

MR. KEEVEY: I think the answer to that is no. I'd feel more comfortable if Sam and I both answered that, but my recollection would be no on the basis of several levels: 1) We have the actual denial, and 2) since our fund balance projection for 1993 was so low, to have a number in there that we now have a denial on would be very difficult to support, I think, because we now have a revenue of 380 and a fund balance of, let's say, less than 100.

So, not only would we run into the problem of not having a balanced budget, but we would run into cash flow problems; that is, the normal day-to-day paying of bills. We would have potentially \$380 million less of cash rolling in the door to pay ongoing bills that we have. So, on that basis of discussion, I think, was the general review of whether we should show this as an anticipated revenue to the Governor; would we advise the Governor to feel comfortable in now certifying this revenue.

ASSEMBLYMAN BAGGER: Was the State for Fiscal Year 1992 facing the same sort of unbalance problems in January '92 when this retroactive claim was included as a mid-year correction?

MR. KEEVEY: As you may recall, I think, with the inclusion of this money we had a projected -- I'll have to refresh my memory -- about \$450 million. So this was 380 of the 450. I could clarify the numbers, if they're right. But as some of the revenue situation was deteriorating during the year, we had proposed several other measures in order to balance out 1992 that didn't necessarily need this money. For example, one of the proposals was to show the pension refinancing as a '92 number -- to show the pension number as a

'92 number as opposed to a '93 number. I think it will ultimately play out when we get our financial statements done. It will show that we would have had a balanced budget even if we didn't have the pension refinancing and in face of the fact of not receiving the Medicaid reimbursement -- the retroactive reimbursement.

ASSEMBLYMAN BAGGER: Mr. Chairman, I have nothing further.

SENATOR LaROSSA: Okay.

ASSEMBLYMAN KENNY: Just on the deferral and the denial: The February deferral pertained to what?

MS. HOLZBAUR: To a September quarter claim which had in it two quarters of retroactive claiming: September of '91 and December of '89.

ASSEMBLYMAN KENNY: Okay. Did the deferral apply to the prospective quarters that we are now receiving?

MS. HOLZBAUR: We have not submitted a claim yet for prospective quarters. We just, in late May or early June, submitted the December quarter.

ASSEMBLYMAN KENNY: And those are the quarters we're receiving.

MS. HOLZBAUR: Yes. No, in late May or early June what we submitted was a claim for the December '91 quarter plus all the remaining retroactive components. We have not submitted a claim yet for any of the calendar year '92 costs.

ASSEMBLYMAN KENNY: And the denial in May applied just to the retroactive proportion?

MS. HOLZBAUR: Just to the retroactive component.

ASSEMBLYMAN KENNY: Thank you.

ASSEMBLYMAN BAGGER: If I could just-- The denial that was received in May of 1992 was for one quarter you testified before.

MS. HOLZBAUR: It was on the September '91 quarter, but it pertained to costs for two quarters: September '91 and December '89.

ASSEMBLYMAN BAGGER: Right.

SENATOR LaROSSA: And correct me if I'm wrong: The deferral has decoupled, if you will, for lack of a better choice of words, the retroactive from the prospective?

MS. HOLZBAUR: No, it has not. That deferral related to only retroactive components.

ASSEMBLYMAN BAGGER: But, I think what the Chairman is trying to get at, as Assemblyman Kenny has pointed out before, that as we sit here today prospective quarters are being approved -- or are being paid--

MS. HOLZBAUR: Yeah, grant awards for those. We just have not filed the claims yet. Remember the process is several fold to get a grant award. First we submit a HCFA 25, which is an estimate of expenditures. From there, the Feds give you a grant award -- which we have in our hands -- for all of calendar year '92. Subsequent to that, we submit a HCFA 64, which is a claim. We have not submitted the claim yet for any prospective reimbursement.

ASSEMBLYWOMAN DERMAN: Mr. Keevey, you talked about the authorization for two quarters in 1992. Isn't it true that that actually has not been received -- those funds have not been received yet?

MR. KEEVEY: I think we had to receive it.

MS. HOLZBAUR: We have. We have the grant awards and to the best of my knowledge, we have those dollars. Yes.

ASSEMBLYWOMAN DERMAN: I thought that there was still the ability for HCFA to deny the payment and that it awaited a reconciliation process.

MS. HOLZBAUR: HCFA 64 reconciles drawdowns to actual costs. That HCFA 64 -- the claim has not been submitted yet for any prospective costs.

MR. KEEVEY: But we have--

MS. HOLZBAUR: But we have grant awards in-hand and no recent-- And we've drawn the cash.

ASSEMBLYWOMAN DERMAN: And there's finality to that? There's no reason to believe that there will be any disallowance?

MS. HOLZBAUR: What the missing piece in that is an approved State Plan. We still do not have an approved State Plan. We're still working out the effective date of that State Plan.

ASSEMBLYWOMAN DERMAN: But Mr. Keevey, you would feel secure to book those items?

MR. KEEVEY: Yes, we've actually got the cash which is a recognition that somebody's agreeing that-- Plus we have the Secretary indicating that we're getting not only that, but perhaps even more. So on the basis of that, I mean, I think it would be reasonable to show that -- more than reasonable.

ASSEMBLYWOMAN DERMAN: And with respect to the amounts in the current budget of \$140 million per year, how do you come up with that figure?

MR. KEEVEY: Charlene can calculate that for you, but it's on the basis of what are the costs in the State's psychiatric hospitals and what is the percentage matching that we're entitled to. Based upon that we file a claim. The calculation of the mental health-- Fifty percent of--

MS. HOLZBAUR: Fifty percent.

MR. KEEVEY: Fifty percent of the cost of running a psychiatric hospital would be eligible for disproportionate share reimbursement.

MS. HOLZBAUR: Of the unreimbursed cost of our operating these facilities.

ASSEMBLYWOMAN DERMAN: Can you run through an exercise of how you calculate that; what your estimate is based on?

MS. HOLZBAUR: The estimates we're using are those developed by Human Services which I believe they transmitted to you. It shows cost of operating the facility as Rich alluded to including fringe benefits, etc. Subtracted from that are

any revenues we expect to receive. For instance, Medicare participates, Medicaid participates to a limited extent. We've got third party revenue from certain families, legally responsible relatives, etc. The net of all of that is what we call disproportionate share costs. Fifty percent of that is what we're asking the Feds to contribute to.

ASSEMBLYWOMAN DERMAN: And you're comfortable with that? (witness nods affirmatively)

Ms. Brophy, I wouldn't want you to think that you just came here to be a spectator.

MS. BROPHY: That's okay.

ASSEMBLYWOMAN DERMAN: When you were part of the process then, you were also only involved with appropriated items of revenue rather than anticipated items of revenue? Did you have any involvement in this extraordinary item?

MS. BROPHY: None whatsoever. I'm only involved in the appropriated revenue side of it. This particular set of revenues are not appropriated.

ASSEMBLYWOMAN DERMAN: So you were not involved at all. Did you know anything about this at all?

MS. BROPHY: No.

ASSEMBLYWOMAN DERMAN: Nothing? You had discussions with no one about it?

MS. BROPHY: No.

ASSEMBLYWOMAN DERMAN: Out of the loop.

MS. BROPHY: Out of the loop completely.

ASSEMBLYWOMAN DERMAN: Thank you.

M I C H A E L F E R R A R A: Until you got your invitation. (laughter) Charlene was hoping she could be Stacy today. (laughter)

SENATOR LaROSSA: Senator Bennett?

SENATOR BENNETT: I just have one or two questions.

You referred to that, "In our judgment this was a valid claim," and that in questioning, responded that it was

similar to claims in the past. I'm a little confused about the-- With the magnitude of the retroactivity aspect, have we had claims in the past similar to that?

MR. KEEVEY: I think that was relating similar claims in character; that is, reimbursement for disproportionate share.

SENATOR BENNETT: Retroactively, though.

MR. KEEVEY: No.

SENATOR BENNETT: Okay.

MR. KEEVEY: But, we have had-- I mean, here I'm drawing on ancient memory, but I think in '88 or '90 we had some retroactive oil windfall profit tax that had been denied at the State Supreme Court level and was in the U. S. Supreme Court, of a retroactive nature. So we anticipated that as a revenue item. It's obvious, retroactive is unusual. This whole Medicaid reimbursement is revenue that heretofore we didn't get. So, by definition they're different and out of the normal process of estimating revenues.

SENATOR BENNETT: I'm concerned, however, though. When Vice-chairman Bagger was asking the questions-- In determining the validity of the claim, which as far as all of us at this table and all of us in this room-- That is no longer the issue, and everyone agrees that we are striving to get the money. But in making a determination judgment call on your part, as to whether or not these moneys should be included in the budget-- At some point in time, in January, there was a determination made by you that these moneys would be a valid claim. Is that a safe statement?

MR. KEEVEY: Yes. It was a determination made by me, the Treasurer, and other people in management.

SENATOR BENNETT: Well, I'm going to start with you. We'll get to the Treasurer later. But I'm talking about you. And your judgment that it was a valid claim was based upon-- And the answer that I got before that the Assemblyman got, was similar to other claims in the past. I'd like you to expound on that if you would.

MR. KEEVEY: Yeah. What I was referring to was the claim for disproportionate share reimbursement. The filing of claims for psychiatric disproportionate share reimbursement was similar in character to claims that we had filed the year before for acute care reimbursement.

SENATOR BENNETT: Okay. But in dealing with the retroactivity--

MR. KEEVEY: Right.

SENATOR BENNETT: --that's something that was rather unique.

MR. KEEVEY: Right.

SENATOR BENNETT: On the retroactivity, upon what expertise and facts were you able to base your judgment on the validity of that claim?

MR. KEEVEY: On our discussions and staff's discussions with the Division of Medicaid as to whether or not they believed that they had a valid claim and had met all the criteria of Federal statute.

SENATOR BENNETT: Could you tell me when those discussions took place?

MR. KEEVEY: Yes. I think Charlene's was in November. My personal involvement was sometime in December with whom we share personal involvement. Charlene and I think Human Services staff?

MS. HOLZBAUR: Yes.

MR. KEEVEY: The people that were here before.

SENATOR BENNETT: Well, I want to clarify this because I'm not sure they said the same thing that you're saying. That's why I'd like to make sure.

With whom, specifically, were these discussions in November?

MS. HOLZBAUR: Roseann Krieger was at the table at that time. I think the distinction that was drawn is, we held discussions with them about the nature of the claim and facts

surrounding the claim. Neither Rich, nor myself, ever discussed with them whether those moneys should be included as a revenue item in the budget, and that's how they answered the question.

SENATOR BENNETT: Did you discuss with them when the money would be received on this unique--

MS. HOLZBAUR: Not received, but what were the parameters around whether you would know from HCFA-- I'm sorry. We discussed the parameters about when you would know from HCFA the resolution to this, and we talked to them about the validity of the claim.

SENATOR BENNETT: Did you or anyone that you had knowledge of ever ask the people in Medicaid as to when the actual dollars could be anticipated to be received?

MS. HOLZBAUR: Dollars to be anticipated, no; but resolution from HCFA, yes.

SENATOR BENNETT: That was in November. And who told you when the resolution from HCFA--

MS. HOLZBAUR: It was probably in late January -- mid-to-late January -- and we had discussions with Human Services representatives; Roseann Krieger in particular.

SENATOR BENNETT: And she, in particular, told you what?

MS. HOLZBAUR: The same information that she gave to this Committee, which was the time frames for HCFA's response and our subsequent responses. She laid out the number of days for each phase of HCFA's review.

SENATOR BENNETT: Okay. She certainly did that. But on the specifics of this particular retroactive application, was that also discussed?

MS. HOLZBAUR: Yes. That's exactly what I meant when I said the number of days for HCFA'S review. It was related to this particular claim.

ASSEMBLYMAN BAGGER: If I could ask just one follow-up on that same line?

Did you in any of those discussions with representatives of Human Services ever ask them or discuss with them when the State could expect to receive the cash advance from HCFA that we'd be able to draw down on?

MS. HOLZBAUR: I don't think I've ever talked on a cash basis. No.

ASSEMBLYMAN BAGGER: Your discussions with Human Services about what response would be received from HCFA, what form was that response to be that you were discussing the timetable on?

MS. HOLZBAUR: The timetable, I think, laid out a pessimistic scenario for actual denial -- what would the length of time be for denial, and it was somewhere near late June.

ASSEMBLYMAN BAGGER: If it was denied, and whatever appeals -- administrative appeals--

MS. HOLZBAUR: We didn't walk through the appeals process of that denial. No.

ASSEMBLYMAN BAGGER: The discussion was that if there were to be a denial, it would be received by the end of June?

MS. HOLZBAUR: Yes.

ASSEMBLYMAN BAGGER: And if there were to be a grant or approval, what was the timetable that that would have been?

MS. HOLZBAUR: It could have been an immediate approval.

ASSEMBLYMAN BAGGER: Did the representatives in Human Services give you any indication or advise as to their belief about when an approval would be forthcoming?

MS. HOLZBAUR: What they said was, as I remember it, a deferral was most likely because this was a new item, a new type of claim. HCFA would want to ask questions which we would respond to. I think they laid out the parameters for the least likely scenario, which was total disallowance.

ASSEMBLYMAN BAGGER: What scenario?

MS. HOLZBAUR: The scenario of disallowance, and with also a statement that this most likely be deferred.

ASSEMBLYMAN BAGGER: There timetable was, that given that deferral, the final action after the deferral would be sometime in the end of June, which, in fact, turned out to be true with the declination in late May?

MS. HOLZBAUR: A little sooner, I think. Yes, a little sooner.

ASSEMBLYMAN BAGGER: And that information, I assume, passed along to Mr. Keevey for his application of judgment?

MS. HOLZBAUR: Yes, it was.

SENATOR BENNETT: And with that historic prospective that Human Services input into OMB was that it would most likely be deferred. It was a new type of a claim, and that if there would be an action for denial, it would be sometime in late June. Was that the factual background that there existed to make the judgment to include it in the budget?

MR. KEEVEY: In addition to the fact that our review was that it met all the provisions of the law and it was a valid claim. We always know with any of the claims that we are subject to somebody saying it's deferred for the reasons that Charlene referred to, particularly in this area when it is a new claim and they want to review and ask questions, and look at the calculation. So it was not out of the realm of possibility that they would ask for, or give us, a deferral.

SENATOR BENNETT: It was not the Human Services people that are the experts in Medicaid that made that conclusion. It was your own people in OMB that made that conclusion?

MR. KEEVEY: Well, I think--

SENATOR BENNETT: I'm asking that as a question.

MR. KEEVEY: What conclusion?

SENATOR BENNETT: That it was a valid claim.

MR. KEEVEY: That is was a valid claim? No, they would agree it's a valid claim. Absolutely. It's not their

role in this whole thing, as it is with any of the revenues, for them to say what is anticipated in the budget as a revenue source.

SENATOR BENNETT: I understand that.

MR. KEEVEY: What we need to ascertain from them is, are they comfortable that they have met all the requirements of the law, and that they believe it is a valid claim and that the State is entitled to this reimbursement? The answers to them are, "Yes."

SENATOR BENNETT: When did they tell you that?

MR. KEEVEY: December, January, and to Charlene perhaps--

SENATOR BENNETT: Roseann Krieger told you, or told Charlene that?

MS. HOLZBAUR: Myself.

SENATOR BENNETT: And you recall her telling you that?

MS. HOLZBAUR: She laid out the dates for--

SENATOR BENNETT: I understand that. That is not what Mr. Keevey said, though. That is not what he said.

MS. HOLZBAUR: She told me it was a valid claim.

SENATOR BENNETT: There are two different things being said here. That is what I don't understand.

MR. KEEVEY: I don't think so, but--

SENATOR BENNETT: She laid out the dates as to when a grant or approval could have been immediate; a denial could come as late as June. But the validity of the claim-- Did she discuss the validity of the claim with you?

MS. HOLZBAUR: We talked about that numerous times; certainly. We talked about the fact that we had an open State Plan amendment since 1988. We were required to make disproportionate share payments -- all of those features of this particular claim.

SENATOR BENNETT: Oh, I agree that it was valid, too, but they were never asked. I have nothing further at this time, Mr. Chairman.

SENATOR LaROSSA: I want to clarify just one other element that I have written down, and then we will take a short recess for the Treasurer to come here.

ASSEMBLYMAN KENNY: I just have a couple of points.

SENATOR LaROSSA: All right, fine, but let me, if I may, just--

ASSEMBLYMAN KENNY: Fine.

SENATOR LaROSSA: Rich, you said that the reason for including the disproportionate share in the budget was the historical-- Or, you used an example of acute care; that it was filed two or three months later, and it ended up being paid. Correct?

MR. KEEVEY: I was using that as an example of the first time that I recalled the discussion; the first time where we had a reimbursement of this nature, where we had never received reimbursement for this kind of expenditure, disproportionate share reimbursement.

SENATOR LaROSSA: Okay. But, if I may -- correct me if I am wrong -- the distinction between the two is that the claim on the acute care was a claim that was made ongoing, or prospectively, as opposed to the claim for the State and county psychiatric, which was retroactive.

MR. KEEVEY: Right.

SENATOR LaROSSA: Okay, thank you. I just wanted to clarify that.

Assemblyman Kenny?

ASSEMBLYMAN KENNY: Thank you. I recall that Saul Kilstein and Roseann Krieger testified here very affirmatively as to the merits of the claim and their opinion as to its veracity, being a good claim.

Mr. Chairman, I would just like to commend the witnesses, as we are wrapping up this portion of the testimony. I think they have demonstrated that they have been outstanding State servants in pursuing not just this claim, but

also the current and prospective claim as to this issue, as the psychiatric reimbursement, the acute reimbursement claim of last year. The State of New Jersey has been aggressive in seeking these funds in what has been described as being a new area of funding in the relationship between the states and the Federal government.

I'm glad that we're here for the purpose of discussing the fact that we have been aggressive and have put this in the budget and have done that, as opposed to being here if you hadn't done it. I certainly wouldn't want to be sitting here today because the State of New Jersey did not aggressively seek reimbursement as to the past and prospective and current quarters as to the current claims. So, we're here, I think, in a very good position, because we are on the cutting edge of seeking reimbursement from the Federal government. The State of New Jersey certainly needs this money desperately -- the \$385 million. We need it desperately. I'm glad our claim is in and that everything has been done to see to it that we win this appeal process.

I just want to commend all of the State officials here today who have seen to it that our position is protected.

SENATOR LaROSSA: I appreciate it.

ASSEMBLYWOMAN DERMAN: Mr. Chairman, I just want to conclude by saying that nobody disputes the validity of the claim. I believe what is in question is the collectibility and when it would have been reasonably prudent to include it under generally accepted accounting principles. That, I think, is really what the dispute is all about, especially when we have all agreed and it is consistent with the process that you utilize, that it was an extraordinary item.

MR. KEEVEY: Right. There are various years where we have extraordinary items. When these extraordinary items are there, they take extraordinary review.

ASSEMBLYWOMAN DERMAN: I don't disagree.

MR. KEEVEY: Right, right.

ASSEMBLYWOMAN DERMAN: Thank you.

SENATOR LaROSSA: We'll take-- Give us about 10 minutes.

(RECESS)

AFTER RECESS:

SENATOR LaROSSA: Sam, you should be happy that you waited the two-and-a-half hours, in that you were not here.

We are reconvening the continuation of this morning's hearing. We are very pleased that the State Treasurer, Sam Crane, can join us for this hearing before the Joint Select Committee on Medicaid Reimbursement. Again, the objectives and legislative mission are explicit. We would really like to focus on the first of our two legislative charges. Very simplistically, and I am not going to be redundant of this morning, but what we were exploring was why the executive branch decided to include all of the 450 projected State revenues for Fiscal Year 1992.

I know you will help us to answer that question from your perspective as well, because, again, it is the key to solving this funding mystery. As you know, we have commended the State repeatedly for its efforts to secure the money to which New Jersey is entitled, but again there are still many important questions to answer; the one which I just stated, and another question which we would like to possibly get into. That is, what legislative recommendations might you be willing to offer in order to avoid having these kinds of situations occurring in future budget projections, or for any Federal revenues that have not been guaranteed by the Federal government, and I use the word, "guaranteed"? Realizing it is also 20/20 hindsight, would you do anything differently if you

could change the way in which the Legislature was informed, or the way you received information? Then finally, who, indeed, made the final determination for the inclusion of the revenues in Fiscal Year 1992?

Again, I appreciate your -- ahead of time -- participating in the hearing. I will periodically interrupt to direct you to answer some of these policy questions. After I ask my initial question, I am going to go right to Assemblywoman Derman, who is going to leave us for a brief period of time to go to another meeting, and then will come back.

If I may, I really only want to deal with one specific question which is a follow-up to a point which was made this morning. I believe it was Charlene Holzbaur who indicated that, based on conversations that were held back in December of last year, there was a discussion of a scenario relative to the inclusion of these moneys in the budget and the conversation reflected that sometime there would probably be a deferral and, in all likelihood, a denial. That did not address the merits of the claim; did not address the validity of the claim. It strictly was the anticipation of how the Federal government would respond to an extraordinary revenue source, and just a manner of realizing that when you get into these kinds of tugs of war with the Federal government, it takes a lot of time to sort through them. I think it was in anticipation of the battles yet to be fought.

But with that commentary coming from Human Services, and realizing full well, again as Director Keevey stated this morning, that it was a judgment call to include that, there was a message -- a veto message from about two years ago where the Governor stated about Federal funds being included in the budget-- His exact quote from that budget message was: "Uncertainty over the exact amount of Federal aid which may be available to the State prevents me from making a like

certification in the case of Federal funds. Federal money specified in the Appropriations Bill cannot be regarded as immediately available for expenditure."

Again, I apologize because part of the testimony you did not hear this morning was Director Keevey talking about anticipated revenue, extraordinary revenues, and so on. But with it being a judgment call, you know, what was your judgment that prompted either OMB or Treasury to really either -- my interpretation would be -- contradict this statement or to include revenues that according to the experts, if you will, at Human Services, indicated that it would probably be deferred and then denied; not that it would not ultimately be available -- all right? -- but it would be deferred and then denied? What prompted the Treasurer or OMB to include these moneys in last year's budget?

S T A T E T R E A S U R E R S A M U E L C R A N E: Mr. Chairman, I think you have asked about three questions, so--

SENATOR LaROSSA: I apologize.

TREASURER CRANE: --let me try to deal with them in their parts, if I may.

First of all, to quote my good friend Saul Kilstein who testified, I think, in front of this Committee that any of these discussions with the Federal government on any money at this time in the Federal government's budgetary problems is -- what did he call it? -- the "dance of the bureaucrats." We expected that that might occur, but let me just say at the outset that this was, under Federal rules and regulations, a valid claim. It is as valid today as it was in January. I believe that the State is due and owed all of the money that it filed for. I believe we will prevail in the dance of the bureaucrats and eventually get the money, if the Federal government doesn't change the rules or do something else in the time period.

So, from the outset, I feel no differently today than I felt in January; that we are due and owed this money. It was my strong recommendation, along with Rich Keevey's, that it be included in the budget because Federal law and regulation suggested that it should be there, and that we should receive the money, and I believe we will. So I think I tried to answer that particular piece of your question. It is my strong belief that we are due and owed the money today, as we were before. I am going to try to remember the other three parts of the comment, but that is my general reaction and feeling about this particular claim.

SENATOR LaROSSA: Okay. As it relates then, again not speaking to the validity of the claim-- I think for all intents and purposes and for the sake of the discussion, we will accept the State's position that it is a valid claim. My concern, quite frankly, is that if, indeed, it is a valid claim -- and as we have seen with the testimony, we're talking about anticipated revenues; we're talking about extraordinary revenues; we're talking about a reasonable period of time in which to receive the revenues; we're talking about something which, if I may draw a comparison between acute care payments, which was used as an example today, which was applied for and received in a short period of time, which was, again, a prospective payment, as opposed to a retroactive claim-- And also keeping in mind, as you said, the dance of the bureaucrats and the Federal government doing whatever voodoo that they do so well, and also, if you will -- I don't want to say a policy decision, but again, even the Governor, in a previous interview talked about uncertainty over the exact amount of Federal aid and that being available in terms of putting it into a budget--

My question still remains: Even with the validity of the claim, taking into consideration that the Federal government will do whatever they can on a new revenue source, an extraordinary revenue source, a change in how they do

things, you know, to deny or delay or whatever it is-- What specifically-- What prompted you, or what prompted these moneys to be included, you know, very affirmatively in this budget? I am not questioning the validity of this claim. I am just talking about the rationale behind the retroactive moneys being included when, in fact, I think our testimony has indicated that it is extraordinary, and that there has been reticence in the past to include, you know, Federal revenues that have not -- expenditures that are receivable, but have not yet been received by the State.

TREASURER CRANE: Well, first of all, let me let Mr. Keevey talk about that piece of the gubernatorial veto, because it really doesn't deal with the issue we are talking about today. It deals with a, what has been -- what I will call a longstanding disagreement, or different view, if you will, between the Legislature and the executive on how Federal revenue will be displayed in the budget. Every year the Legislature displays it one way; this Governor and previous Governors every year do a line item veto to change that when they sign the budget.

Let me let Rich Keevey make the distinction between the two, because I think--

MR. KEEVEY: That particular paragraph that you read I think you will find in every veto message since probably the early 1980s. It relates to what we had the discussion on this morning having to do with appropriate revenue, and it only has to do with that. You will see it is in that section. It relates to the appropriated revenue. The Governors -- this Governor and prior Governors -- are trying to make the distinction between the budget that is supported by anticipated revenue and the Federal dollars.

In general, what that is saying is that we do not want to anticipate the Federal revenue as a revenue supporting the budget, because of the uncertainty in setting up receivables.

There are some Federal revenues, not only this particular one we are talking about, where we have specifically made a determination to include it as a revenue source against executive budget spending. But also ongoing Federal revenue-- There are some Federal revenues in the anticipated revenue section of the budget. For example, the Federal reimbursement we get for the support of the mental hospitals; the Federal money we get in support of the military and veterans' facilities. They are anticipated revenue, just like this money is. That language does not pertain to the Medicaid reimbursement; it doesn't pertain to the Medicare reimbursement for mental hospitals; and it doesn't pertain to military reimbursement that we get for our veterans' hospitals. It is an isolated piece of language related to why Governors historically have changed the structure of how Federal dollars supporting Federal programs are displayed.

SENATOR LaROSSA: But the money we get for the veterans' hospitals or for the other, you know, programs or areas that you have identified-- These again are currently existing revenue sources, are they not?

MR. KEEVEY: Yes.

SENATOR LaROSSA: Okay.

MR. KEEVEY: And so is other Federal money that is not anticipated. Some Federal money, a very small part of it, is anticipated revenue, and we show that in the "\$14 billion budget." The majority of the Federal revenue, the \$3 billion or so, which that particular language refers to, is the standard language that has been in as to why the Governor is preferring to look at Federal revenue as "appropriated revenue," as opposed to anticipated revenue. It means nothing more than that.

SENATOR LaROSSA: All right. But then you're saying that the \$450 million retroactive is being treated as anticipated -- appropriated--

MR. KEEVEY: That is correct, along with similar other revenues that I referred to: Medicare reimbursement in our mental hospitals, which this is similar to. It is reimbursement for hospital-- And reimbursement in the veterans' hospitals.

SENATOR LaROSSA: Right. But unlike the veterans' hospitals-- Are you saying that the veterans' hospitals money is not then used to support-- Is it underlying support for the existing budget?

MR. KEEVEY: It is.

SENATOR LaROSSA: It is. And this \$450 million--

MR. KEEVEY: But this language does not relate to that underlying revenue supporting the Governor's \$14 billion budget. It pertains to only the off budget -- that we talked about this morning -- Federal revenue.

SENATOR LaROSSA: Well, it says, "Federal money specified in the pro rate cannot be regarded as immediately available for expenditure." So then you're telling me that the \$450 million retroactive you're looking at as being immediately available for expenditure.

TREASURER CRANE: Correct.

MR. KEEVEY: I'm saying that that language has no reference to the anticipated revenue in the Governor's budget. It has been there since I can recall.

SENATOR LaROSSA: Understood what it is referring to.

MR. KEEVEY: Right.

SENATOR LaROSSA: Okay, in context. Let me take a statement out of context, if I may, a statement such as: Federal money specified in the Appropriations Bill cannot be regarded as immediately available for expenditure. So you're saying that only applies in one narrow frame of reference. It does not refer -- or is not appropriate in another frame of reference.

MR. KEEVEY: That is correct.

SENATOR LaROSSA: But the 450 retro was used in support of this budget?

MR. KEEVEY: That is correct. That is why that language doesn't refer to that money.

SENATOR LaROSSA: All right. I will go back to the question I raised originally: With the question of the way the Federal government -- and I like the Treasurer's graphic description of the dance of the bureaucrats--

TREASURER CRANE: Well, Saul Kilstein gets the credit for that one.

SENATOR LaROSSA: Oh, okay. We will give him the credit then.

It seems to me that there was an anticipation based on the testimony we have that, in fact, this dance, this ritual would indeed take place. So again, maybe I -- and I apologize for perhaps being a little bit dense on this-- But if there was an anticipation of this dance taking place, because, again, this was something new, this was not-- It would seem to me that anything that is new, no matter how sure you are, should be couched in some type of very, very cautious terms. You said, knowing that the Federal government doesn't want to pay anybody anything based on, you know, their fiscal vagaries, let alone what we are facing in New Jersey, the certainty of putting that in with a statement that it will probably be deferred and then denied--

TREASURER CRANE: No, no, no. Let's be very precise here. The Federal law and Federal regulation were on our side. Bureaucrats may decide to dance us around, but in the end, the Federal law and the Federal regulations were on our side. So they may defer while they study and write more memos that are not English, and no one can quite understand-- I can't understand anything that the Federal government sends me. But anyway, the bottom line here is, and I want to be very

precise: The law and the regulations were on our side. We expected to get the money; we still expect to get the money.

MR. KEEVEY: And, Mr. Chairman, also what I testified to, and I turned back to ask Charlene to make sure she testified the same way, and what the Department testified to, was that we expected that it would be deferred, not "and then denied." It was expected-- There is a big difference, because the deferral, as I understand it and what was explained to me, is that that is their normal reaction for an extraordinary request, in order for them -- and sometimes not even an extraordinary request -- to delve into more analysis of the claim. So their judgment was that they would initially be deferred.

SENATOR LaROSSA: Right. Correct me if I am wrong, the public-- And again, I am not getting into this as an issue. I want to be very clear and careful on this notice question. Was that first brought to the attention-- Was that one of the reasons that Human Services raised the potential for deferral, with the conversation back in December? That was when the public notice flag, if you will, or that part of the dance was first raised. If, in fact, that was when it was first raised, again, it leads me to ask the same question: If this flag is being floated up as part of the dance that they are going through, and Human Services recognizes, "Okay, guys, we are going to make it hard for you. You may be right, however long it takes, but we are going to throw obstacles. Maybe you will give up and throw in the towel--" Who knows what is going through their minds?

But if, in fact, the acknowledgment is back in December, I still raise the same question: Is it the prudence, or is it the wisdom of including that-- Again, see, I am not disagreeing with you at all in terms of--

TREASURER CRANE: Mr. Chairman, I am not being argumentative; I want to be clear on that point about the--

First of all, I am here to talk about what basically I did. I didn't know that there was a public notice provision required at the time. I mean, the law-- The way I understood it is that the law and the regulation were on our particular side. The public notice provision, once I was made aware of it, seemed to not apply because it is very clear, and I think the California, what they call DAB, indicates now -- bears out our position on that. The public notice would have been, for example -- and I am not saying this is how it will get done-- Alan Gibbs would have sent me a notice saying he was filing for reimbursement because it didn't affect outside providers -- doctors, hospitals, you know, outside providers. That was my understanding when I became aware of it.

I don't know anything about December conversations on public notice.

SENATOR LaROSSA: Okay. When, at what point, does it get to you that this should be included in the budget?

TREASURER CRANE: There were some discussions in the course of the budget deliberations, at the end of December, when I became intensely involved right before I moved to Treasury, and afterwards, that this was an opportunity for us -- as I have already said, the law and regulation were on our side -- and that we should proceed as we did with the acute care hospitals, and we did so.

SENATOR LaROSSA: Right. But again, if I may just go back to something Rich said this morning: The acute care, in terms of the application, was a prospective payment, not a retroactive payment. Correct?

MR. KEEVEY: Correct.

SENATOR LaROSSA: Questions, Harriet? I know you are in a tight time frame.

ASSEMBLYWOMAN DERMAN: I guess I am going to continue the dance analogy.

TREASURER CRANE: Okay.

ASSEMBLYWOMAN DERMAN: We all agree you were going to dance with bureaucrats subject to vagaries in that particular dance. But the question is: Was it going to be the first dance or the last dance? It is really a question of timing. That is really what we are concerned about.

Nevertheless, I have questions. As a numbers man, you'll love them, I promise you. I have questions about the numbers. I totally don't understand them. In the Fiscal Year 1992 budget, it lists \$850 million for the Governor's budget with respect to the item in question; acute care \$330 million; State retroactive 380; and State terms 140.

TREASURER CRANE: Right.

ASSEMBLYWOMAN DERMAN: Was there any particular methodology with respect to dividing the 380 and the 140?

TREASURER CRANE: The 380 was a retroactive claim prior to July 1, 1991. The 140, because we were still in the fiscal year, was the annual claim for Fiscal Year 1992, and the 330 was acute care. I think that covers the three.

ASSEMBLYWOMAN DERMAN: The annual claim, based on quarterly payments--

TREASURER CRANE: Correct.

ASSEMBLYWOMAN DERMAN: What were those quarterly payments? Did you assume then that they were all the same?

TREASURER CRANE: We assumed in the budget, I guess, about 35--

MR. KEEVEY: Yes, 35.

TREASURER CRANE: --to the State a quarter.

ASSEMBLYWOMAN DERMAN: And yet when we look at the quarterly items for, let's say, the end of '91, the period ending March 31 is 37; June 30 is 37; September 30 is 41 -- they are going up -- and December 30 is 41. They are not 35 million.

MR. KEEVEY: Some of that money has to do with filing for county reimbursement, which the State will not be able to

include as its revenue. We were filing on behalf of the State and the county, because there--

ASSEMBLYWOMAN DERMAN: Could you elaborate on that, please?

MR. KEEVEY: Well, I don't know whether I can go into details -- maybe Charlene can help me -- but it has to do with-- The State runs psychiatric hospitals; the counties run psychiatric hospitals. The reading of the law was that we were eligible for reimbursement for both levels of expenditures, because the State participates in county sharing of costs. We have a mental health State aid appropriation. The calculation that the Human Services Department did was on the basis on which we filed it. Part of it -- the State difference between the \$35 million and the \$40-some million -- is the fact that some of that money is county reimbursement.

ASSEMBLYWOMAN DERMAN: Would the State be able to retain it, or--

MR. KEEVEY: I think we would retain some of it, and some of it would go to the county.

ASSEMBLYWOMAN DERMAN: Would be transmitted to the county.

TREASURER CRANE: I think also, Assemblywoman, there was a time period in here where I believe Essex Psychiatric Hospital-- The reason for some of the variance in the numbers is that there is a time period in which Essex Psychiatric Hospital was decertified by Medicaid, so you are going to see some dips in the numbers for the county portion because when they were decertified, obviously they did not qualify for Medicaid, and therefore would not be subject to the reimbursement. That will probably account for some of the balance in the number. It has to do with the Essex situation.

ASSEMBLYWOMAN DERMAN: Then there came a time when \$450 million was withdrawn from the budget. Didn't you indicate at one time that \$450 million would not be available?

TREASURER CRANE: Yes.

ASSEMBLYWOMAN DERMAN: How is that number constituted? What makes up that number?

TREASURER CRANE: That assumed that we would receive reimbursement beginning January 1, 1992 and forward, and that we would be denied anything before that time.

MR. KEEVEY: That is what their deferral letter said, or their--

TREASURER CRANE: It is roughly 380 plus \$35 million per quarter for the first two quarters of Fiscal 1992; the last two quarters of Calendar 1991.

ASSEMBLYWOMAN DERMAN: So the State retroactive of 380--

TREASURER CRANE: Right.

ASSEMBLYWOMAN DERMAN: --plus the two calendar quarters of \$35 million.

TREASURER CRANE: Yes.

ASSEMBLYWOMAN DERMAN: In your estimation then, despite some concern we had -- which history has proven may have been correct as to timing -- you were comfortable that the numbers were precise?

TREASURER CRANE: Based upon what I was given, yes, they were precise.

MR. KEEVEY: The calculation of the numbers?

ASSEMBLYWOMAN DERMAN: Yes. Okay, thank you very much.

SENATOR LaROSSA: Senator Bennett?

SENATOR BENNETT: Treasurer Crane, back in your opening remarks you referred to the fact that this claim was included in the budget because Federal law says that it should be included. What were you referring to on that?

TREASURER CRANE: No, I said Federal law was on our side, and that we felt comfortable that we would be successful in receiving the money on our claim. That is why we included it in the budget.

SENATOR BENNETT: But there is nothing that says under Federal law that it has to be included?

TREASURER CRANE: No.

SENATOR BENNETT: I misunderstood you then, I guess.

TREASURER CRANE: I may have misspoke, Senator.

SENATOR BENNETT: Okay. Obviously this is a national phenomenon that occurred when Congress opened the doors, if you will, for a small period of time. I am curious if during the course of meetings with other Treasurers from around the country whether other Treasurers recommended to the Governors in preparation of state budgets that the retroactive aspect -- that the door that was opened by Congress for that short period of time-- Was that included in any other budgets that you are aware of?

TREASURER CRANE: Not that I am aware of.

SENATOR BENNETT: Would you be surprised to learn that it, in fact, was not specifically included in any other budgets?

TREASURER CRANE: No. I don't know. I don't know what their systems are; I don't know how they are structured. I mean, the budgeting practice--

SENATOR BENNETT: No, I was just curious as to whether you would be surprised.

TREASURER CRANE: --from state to state varies very widely, so, you know--

SENATOR BENNETT: At some point in time, you became aware that there was going to be a problem in the timing of the receipts of these valid entitled dollars. Is that correct?

TREASURER CRANE: That is correct.

SENATOR BENNETT: When did you become aware that we may not be receiving those dollars in time of anticipation?

TREASURER CRANE: Well, the first time I knew we were denied was on June 1. That was when I knew that the Federal government had notified us -- well, not notified me, but

notified Human Services, and they forwarded to me the notice of denial, or what is the proper term?

MR. KEEVEY: Disallowance.

TREASURER CRANE: Disallowance is their term.

SENATOR BENNETT: That is the first time that you became aware that there was any jeopardy as to receipt of these funds?

TREASURER CRANE: We knew there was a deferral. I knew there was some back and forth around the issue, if memory serves me correctly, on this public notice, which we believed then, and believe now, had no application in this particular filing. But the first time I could say with certainty that I knew we were not going to get the money potentially in Fiscal '92--

SENATOR BENNETT: Correct.

TREASURER CRANE: --was when we got the disallowance.

SENATOR BENNETT: And that was when?

TREASURER CRANE: I received it from Human Services on June 1.

SENATOR BENNETT: At some point in time prior to that, were you aware of the hiring of outside counsel to be able to assist the State of New Jersey in securing these dollars?

TREASURER CRANE: Yes.

SENATOR BENNETT: Okay. Would you feel it would be safe to say that the hiring of counsel was done because there was at least -- at least a question of whether or not we would receive these valid moneys in the time frame that we had anticipated them?

TREASURER CRANE: I understood that we had retained the same outside counsel in the past dealing with difficult decisions, or difficult applications dealing with Medicaid and the Federal government, particularly in the human services area, and that it is not uncommon for us to do that whether an application had trouble or not.

SENATOR BENNETT: So we would hire outside counsel even if we didn't think there was a problem in securing the funds?

TREASURER CRANE: I don't know if we-- I think we had hired them when we had a particularly difficult matter before HCFA, and this was difficult, and it was new, so we got the best advice we could.

SENATOR BENNETT: You were still comfortable, then, at the time we hired the counsel that the funds would be received in Fiscal Year 1992, and that the fact that we hired outside counsel to assist us was not any factor that would raise your concern as to the receipt of those funds?

TREASURER CRANE: We have expressed concern right along, particularly after the March deferral -- concern that we hired outside counsel to help us. But let me address the Fiscal 1992 issue.

Senator, the way the Governor's budget was constructed for Fiscal 1993-- I would ask you to note that the budget recommendation ended Fiscal 1992 with a balance of \$450 million. That happens to coincide with the amount of money we expected to get prior to January 1, 1992. So we had assumed, for budgeting purposes, that even if we received it in Fiscal 1992, it would have been-- That amount would have been available for Fiscal 1993. Therefore, the time window on receipt of this money, assuming that we were going to go through a long and torturous process with the Federal government over this application, was really not six months, but in my mind was 18 months.

ASSEMBLYMAN BAGGER: Treasurer, I--

TREASURER CRANE: That is a distinction I think I would like to make.

ASSEMBLYMAN BAGGER: I have a copy of your testimony before the Assembly Appropriations Committee on March 19 of this year in which, as you have just testified, you stated at

that time -- the numbers are a little different, but the point being the same -- that the Governor's proposed budget for Fiscal Year '93 anticipated a year-end balance from '92 of \$403 million in the General Fund, of which \$380 million represented the retroactive Medicaid reimbursement claim. I take your last comment as meaning that we would really be okay as long as the money was received sometime during Fiscal Year 1993.

TREASURER CRANE: Yes.

ASSEMBLYMAN BAGGER: Why then was the \$380 million not anticipated as a revenue for Fiscal Year 1993 either in the original budget or in the Governor's final certification?

TREASURER CRANE: We believed we would get the money during Fiscal Year 1992, but the way in which the two budgets ran together-- As you know, Assemblyman, from service on the Appropriations Committee, you get to the midyear and you are really talking about Fiscal 1991. All of your decisions in Fiscal '91 really have an impact on Fiscal '92, because you are really looking forward you are so far through the fiscal year. We chose to use that money, as you know, to assist us in the Fiscal '93 budget, because we believed we would get it.

The question I think I was being asked was one on process. What I was trying to say to the Senator-- He was talking about, did you think you would receive it by the end of '92? Yes. Maybe I was trying to over-answer the question, which I am told I shouldn't do, but I will over-answer it anyway; that is, even if we hadn't received it by the stroke of midnight on June 30, and we said, "God, we are going to get it July 15," the net effect, based on the Governor's proposed budget of January, was zero, because of the way in which the two budgets were structured.

ASSEMBLYMAN BAGGER: Your conclusion therefore, upon receiving the notice of disallowance-- On June 1 you testified--

TREASURER CRANE: Right.

ASSEMBLYMAN BAGGER: Was it your conclusion upon receiving that that the funds would not actually be received at anytime prior to the close of Fiscal Year '93?

TREASURER CRANE: Yes. I now realize that the first part of the dance had gone to the Feds; that we would have to enter into a series of appeal processes. I think I have supplied the Committee, so I won't read-- I probably should read into the record all of the letters I sent to the Legislature, including the one on June 2 to the two Chairmen of the Appropriations Committees pertaining to this, which said that we were going to proceed on an appeal process. It was my judgment at that time that we had to begin to not plan for having the \$450 million available as a resource either for Fiscal '93.

MR. KEEVEY: Remember I commented this morning also with regard to that decision point as to when we decided not to consider that to be an available revenue source, for a couple of reasons: One, because if it had been included in there, we would have had much danger on the '93 end of it, because we would have had a very marginal surplus, and the fact that the cash consideration of the State managing the money, if that money wasn't going to come in-- It would be a more precarious situation to manage the budget in that kind of a framework. That is the decision we made among ourselves as to whether or not it then became prudent to continue to recommend that this money be anticipated revenue in July in the face of the disallowance.

ASSEMBLYMAN BAGGER: Indeed, I think it would have been prudent to reach that decision in January of 1992, but that relates more to what our recommendations may be.

Senator Bennett?

SENATOR BENNETT: Thanks. Going back now to December '91, January '92. We heard this morning that at some point in time there was a decision made to include the retroactive claim

as part of the '93 budget, and that that was a judgment call dealing with two items: one on the validity of the claim, obviously, which is not an issue that is being disputed; and two, on the timeliness of the claim.

Directing your attention to the timeliness of the receipt of these funds, as opposed to the validity of them, at any time do you recall having conversations with any people in the Department of Human Services as to whether or not the Department of Human Services was able to give to Treasury specific input as to when the timeliness of this rather unique claim would result in the receipt of funds into the State of New Jersey?

TREASURER CRANE: No.

SENATOR BENNETT: Do you feel now, in retrospect, that not having those discussions with the expertise would be one that you would repeat again? Would you repeat that action again now, in retrospect, having the information that you have now?

TREASURER CRANE: I probably would not have talked to them, no.

SENATOR BENNETT: You would not have talked to them?

TREASURER CRANE: No. I rely very heavily upon the expertise of the Office of Management and Budget. They have proven to be accurate in fine analysis and in providing, particularly a Treasurer, not just this one, but all Treasurers, with the kind of an unbiased view that you don't necessarily receive from departments sometimes.

SENATOR BENNETT: I was under the impression from what we heard today that the expertise that they had received with respect to both the validity of the claim for one, and two, the timeliness of the claim, was based on information that they had received from Human Services.

TREASURER CRANE: Correct.

SENATOR BENNETT: Okay. Now--

TREASURER CRANE: That's my understanding.

SENATOR BENNETT: Right. With that as an historic background, then you would base-- However, the discussions were limited based on a review of what was said specifically to the validity of the claim, and in talking about the timeliness of receipt of funds, there were generic discussions dealing with procedure as to how claims worked; and, in fact, this claim would most likely be deferred with the information that Human Services gave OMB. Was that information that the claim would most likely be deferred a fact that was given to you at some point in time in December or January?

TREASURER CRANE: I know it wasn't-- I mean, it was late December. I don't remember a discussion about, you know, it would take three months for them to do this, and then they would have 15 days to do that. I don't remember any of that. When you are in the final discussions on a budget, you have conversations ongoing on a whole series of matters, you know, so you shift from one thing to another in 15 minutes worth of conversation. All I remember is that the way in which we were talking about structuring the budget, the piece that Rich and I were just talking about in terms of the year end--

My understanding is that-- My feeling and my remembrance is that we were going to receive it in a time frame in which it could be used. Did I have an exact date? No. I don't remember anybody telling me that. I was dealing in time frames about whether it was going to be received, give or take, given, you know, what any process with the Federal government would be likely to be like.

SENATOR BENNETT: Even you said what you get from the Federal government -- that you sometimes have difficulty in understanding their documents. Notwithstanding that fact, a judgment call was made by-- My understanding is that this judgment call--

Let me ask you this: The judgment call was made by the Director of OMB, the Treasurer, and the Governor, to include these as anticipated revenues for the 1993 budget?

TREASURER CRANE: I think it would be safe to say that the Director and I recommended to the Governor that it was our best judgment that they should be included based upon the information we had. He decided that based on that he would -- you know, as he does with all budget decisions -- that it would be included.

SENATOR BENNETT: And on your part that was done based on the validity of the claim more than -- the validity of the claim. Was there a portion of that recommendation based upon your comfort that there would be a receipt of those funds in a timely fashion?

TREASURER CRANE: I believed we would have the money in the time frame we have been talking about. I believed that we would receive the money, yes.

SENATOR BENNETT: And you got that belief from?

TREASURER CRANE: My belief was that we were filing a claim and that if it followed the normal process, and given the way we were structuring the budget, we would get the money within the time frame of the structure of the budget we were working off.

SENATOR BENNETT: I'm sorry, but I think this is critical. That is why I am belaboring it. That was your belief. But was that belief based on your own independent belief, or was it based upon something factual?

TREASURER CRANE: This was based upon the discussions I had had, as I think Rich probably said this morning -- that Rich and I had on this particular matter, that we were filing this claim, that there would be a Federal process, but given the way we were talking about structuring the budget, that within the time frame we would receive the money.

SENATOR BENNETT: Okay. Mr. Chairman, thank you.

SENATOR LaROSSA: Assemblyman Bagger?

ASSEMBLYMAN BAGGER: Thank you, Mr. Chairman. Let me just emphasize once again that the subject matter of this afternoon's hearing, that portion of our inquiry that relates to the validity of the State's claim, our entitlement to every penny of this money, has been completed. I personally have reached the conclusion and agree with the witnesses who I have heard testimony from, that this is a valid claim to which we are entitled. However, I am very concerned and distressed about the decision that was made to include the \$300 million retroactive claim in the Fiscal Year 1992 budget because, as the Treasurer stated, it was an integral element of the carryover of surplus into the Fiscal Year 1993 budget, and the Appropriations Committee, throughout the spring budget process, was concerned, and on a number of occasions inquired of administration officials, and indeed of the Treasurer, as to the likelihood that these funds would be received in the time frame that they could apply toward the balance of Fiscal Year '92 heading into the 1993 budget.

In that regard, at one meeting that was discussed in some detail -- I believe it was our initial hearing of the Appropriations Committee on the budget on March 19, in which The Trenton Times reported the discussion of the anticipation of Medicaid payments stirring concern. The Trenton Times stated: "Crane stated there won't be a deficit because he is confident the money will be paid. Crane said the State has received \$193 million from the Federal government, and that he is confident it will receive the remaining \$657 million." And then a quote: "Right now, Mr. Chairman, we anticipate getting these moneys. We have been told nothing by the Federal government that we won't get the money."

The concern I have doesn't relate to our entitlement to any of this money, but rather is to how this was handled, in that we, right up to the 11th hour, expected in the budget

process that this would be something that could count towards either through a surplus or as a directly anticipated revenue -- count towards the Fiscal Year 1993 budget, only to have it disappear at the 11th hour after all these assurances.

Treasurer, I don't know whether you recall that initial March 19 meeting of the Appropriations Committee, but I do ask you whether you recall giving those assurances to the Appropriations Committee?

TREASURER CRANE: That is, like, 20 committee hearings and 16 or 20 hours worth of testimony ago, Assemblyman. I compliment you on your archives and your memory.

ASSEMBLYMAN BAGGER: It's the archives, not my memory.

TREASURER CRANE: Okay, fine. I remember discussing and feeling confident that we were going to get the money on that day. Did I say those words? I have faith that the press reported them accurately, but I can't remember what we discussed on that day. I think I testified for four or five hours that day on a whole host of subjects.

ASSEMBLYMAN BAGGER: Were you aware at that time that the State's partial claim for the retroactive moneys had been deferred at the beginning of February 1992?

TREASURER CRANE: I don't know if I was aware or not. I still felt that this was part of the process we were going through, so I can't say that I was aware of it.

ASSEMBLYMAN BAGGER: Do you know when you first learned of the deferral?

TREASURER CRANE: I think it was, like, the end of March, or whatever, we had a discussion on it because the Committees had raised some concern about it. But I don't remember exactly when, Assemblyman.

ASSEMBLYMAN BAGGER: Do you know when the Legislature or either of the Appropriations Committees were first informed of the deferral?

TREASURER CRANE: I don't know when -- Commissioner Gibbs and Human Services, I guess, had been here for two days -- they may have testified to either Appropriations Committee. I do know that on April 27 there was a transmission from Commissioner Gibbs, I believe to Assemblyman Colburn, but I don't know if it went to the-- April 27 sticks in my head, but it could have been April 23, sometime then. That transmission contained, I think, the deferral. I think that has all been supplied to the Committee. It was supplied to the Committee first in April and then again in June, in response to a question from Assemblyman Frelinghuysen.

ASSEMBLYMAN BAGGER: Were you aware at the time of that Appropriations Committee appearance on March 19 that the law firm of Covington and Burling in Washington had been retained in connection with this application?

TREASURER CRANE: I think there was some discussion of it. I don't know if they were retained on that date or it was right after that.

ASSEMBLYMAN BAGGER: Did you, at any time, consider recommending that the \$380 million retroactive claim be certified as revenue for Fiscal Year 1993?

TREASURER CRANE: Certified when? The Governor's certification of revenue only occurred on June 30, or thereabouts.

ASSEMBLYMAN BAGGER: Right, and did not include any of the retroactive claim as a revenue. My question is: Before that, at any time leading up to that, was consideration given to including in that certification the \$380 million retroactive claim on the basis of its receipt prior to July 1, 1993?

TREASURER CRANE: When we received the disallowance, I informed, on June 1, the Governor of the budget consequences. I also informed Assemblyman Frelinghuysen and Senator Littell, I believe at home that evening, that I was in receipt of a disallowance, and my concern. I communicated to both the

Senator and the Assemblyman on June 2 in writing that the disallowance had occurred and, in fact, made the disallowance public on that day. I suggested in the letter that it probably could not be used in Fiscal Year 1993, or could not be considered as a resource. I think that was the change -- the disallowance was the change in this process.

ASSEMBLYMAN BAGGER: Do you recall any discussions with anyone, the gist of which would be that the Fiscal Year 1992 budget gap would be closed by applying part of the pension revaluation to that fiscal year and allowing the retroactive Medicaid claim in Fiscal Year 1993?

TREASURER CRANE: We had a discussion at the beginning of May when we reported April revenue collection. You may remember, April revenue collections came in and we basically revised our estimates at that particular time downward because of the shortfall principally in the income tax. We discussed then that-- We came forward on that date with a plan by which to close the '92 budget gap, as you may remember. I don't--

ASSEMBLYMAN BAGGER: May 7, I think.

TREASURER CRANE: What?

ASSEMBLYMAN BAGGER: It was May 7, I think.

TREASURER CRANE: May 7, yes. It was early May. I think we came out with it on the 7th. I think we advised the two Chairs the day before, or the day of. I forget exactly which came first. I don't remember having a conversation about the Medicaid on that date. I think I may have discussed it with Senator Littell or Assemblyman Frelinghuysen, was it still in the works, and I think I was talking about, yes, it was still in the works, and we would have it for '93. As you know, we had counted it as year-end surplus, consistent with what you read earlier in the hearing. We may have discussed it in the course of discussing the overall plan to deal with the revenue shortfall that had developed.

ASSEMBLYMAN BAGGER: I ask the same of Mr. Keevey, whether--

MR. KEEVEY: I think I lost your track. When we wrote the letter -- the Treasurer wrote the letter in June -- I think we referenced in there that for 1992 we would recommend using the pension refinancing to close the 1992.

TREASURER CRANE: Right.

MR. KEEVEY: I think that was in writing.

ASSEMBLYMAN BAGGER: That I've seen. I am curious whether you are aware of any discussions in which -- in connection with that, or separate from that that consideration was given to certifying the \$380 million for Fiscal Year 1993?

MR. KEEVEY: I can't remember directly, but I would have to say that that must have been part of a discussion.

TREASURER CRANE: Yes, I think it was.

MR. KEEVEY: But I think our collective judgment on this was on the face of the disallowance, that it would not be the right thing to do, whereas in the past, you know, going back over the stuff again, it was that we had a claim that we thought was valid and submitted it. When we first got notification of the deferral, it was something that was not unexpected because we had talked about the discussion previously about the Department saying that the first reaction of HCFA probably would be a deferral. Then we got the law firm involved to try to strengthen the State's case, to turn the deferral into an acceptance.

But when we finally got the disallowance, I know our first reaction was in the current year what would we do, and that is where the discussion having to do with the pension revaluation came. I suspect we talked about putting it in '93, but all I can remember is that the final decision was not to include it in the face of the disallowance.

ASSEMBLYMAN BAGGER: Do either of you recall any conversations with members of the Legislature in connection

with certifying the \$380 million retroactive claim as a Fiscal Year 1993 revenue?

MR. KEEVEY: I don't.

TREASURER CRANE: I don't remember any discussion with a member of the Legislature.

ASSEMBLYMAN BAGGER: Or a committee?

TREASURER CRANE: Or a committee, because I don't think I appeared in front of any committee except for a revenue discussion in that time period.

ASSEMBLYMAN BAGGER: Do you recall an appearance before the Assembly Appropriations Committee in approximately the first week of June to discuss an update of revenue? I think it was June 8.

TREASURER CRANE: Yes, I remember appearing.

ASSEMBLYMAN BAGGER: Do you remember the line of questioning by me along the same lines as this line?

TREASURER CRANE: Your memory is very good, Assemblyman.

ASSEMBLYMAN BAGGER: On this point, yes, in connection with the pension reval savings part being applied to close the gap for Fiscal Year 1992 created by the disallowance, coupled with a certification of the \$380 million Medicaid money in Fiscal Year 1993.

TREASURER CRANE: I don't remember suggesting that we were going to certify the \$380 million in Fiscal Year 1993 at any time after June 1, or the night of June 1, when I communicated with the two Chairmen. I know we had a discussion. I'll accept your memory, Assemblyman, that we had a discussion about using the pension, because as you know we have to end the year in the black, and that was our option to do so at such a late date.

MR. KEEVEY: I remember specifically us recommending that we use the pension.

TREASURER CRANE: Right.

ASSEMBLYMAN BAGGER: And we ultimately did.

MR. KEEVEY: And we all ultimately agreed to that, right? I don't recall any discussion on the use of the 380. Maybe I wasn't here, but I don't think there was.

TREASURER CRANE: No.

ASSEMBLYMAN BAGGER: I take it that the ultimate decision on whether to certify revenues, or anticipate revenues, rested with the Governor constitutionally?

TREASURER CRANE: Constitutionally, yes.

ASSEMBLYMAN BAGGER: But that is based upon recommendations made to the Governor by you, Treasurer, or the two of you jointly?

TREASURER CRANE: That is correct.

ASSEMBLYMAN BAGGER: Is it the two of you jointly, or just the Treasurer?

TREASURER CRANE: Yes, we work as a team.

ASSEMBLYMAN BAGGER: And the decision to include the \$380 million in the midyear correction on Fiscal Year 1992 was made by the Governor, based upon a recommendation from the two of you?

TREASURER CRANE: We recommended it, yes.

ASSEMBLYMAN BAGGER: And that recommendation was made in January, or sometime before that?

TREASURER CRANE: Yes, in January.

ASSEMBLYMAN BAGGER: Is it fair to say that the decision of whether to include, or anticipate a revenue such as that in a particular year is really a professional judgment call based upon the information that is available to you and the application of your professional judgment?

TREASURER CRANE: Right.

ASSEMBLYMAN BAGGER: On what did you base your recommendation to the Governor to include the \$380 million in Fiscal Year 1992?

TREASURER CRANE: We felt there was a possibility. We felt strongly that we would get the money. We thought we would get it in Fiscal Year 1992. That is why we included it in there.

ASSEMBLYMAN BAGGER: Were you personally aware at the time of making that decision that the Federal government had already raised the public notice issue with the Department of Human Services?

TREASURER CRANE: At the time of the January decision?

ASSEMBLYMAN BAGGER: Yes.

TREASURER CRANE: I don't recall if I did raise the issue.

ASSEMBLYMAN BAGGER: I take it the decision to reverse course and not count the \$380 million retroactive claim as a Fiscal Year 1992 revenue and to not allow it for '93 was also a decision that was made by the Governor based on recommendations from the two of you?

TREASURER CRANE: That is correct.

ASSEMBLYMAN BAGGER: And that likewise is a decision that is a professional judgment call based upon the information you had available and the application to that of your professional judgment?

TREASURER CRANE: Yes, we believed that it could be certified.

MR. KEEVEY: If I might just-- One of the accounting principles -- I think Assemblywoman Derman asked about this this morning -- on this kind of revenue is the measurableness and the availableness of it. We still felt it met the same criteria of measurable, in that we knew what it was. We knew how to calculate it, and we knew that we were, in our judgment, entitled to it. The availability criteria, in our judgment, disappeared when we got the deferral -- not the deferral, the disallowance, because once the disallowance had hit us there was a lot of question as to whether it was going to be

available, certainly not by the end of 1992. Then, as I suggested this morning, if we had some assurance that we would get it within the next six to 12 months, that would meet the availability criteria. I think, based upon the disallowance, we said it didn't meet it, and were reluctant to recommend the use of it.

ASSEMBLYMAN BAGGER: I think that is a helpful distinction. I have always thought of it in my own mind in terms of entitlement versus collectibility or receipt. I repeat: There is no dispute in my mind, from my perspective as a representative of New Jersey, that the entitlement we are talking about is the application of your judgment, gentlemen, as to availability or collectibility or when it would be received for purely State fiscal purposes.

With that in mind, I ask you, Treasurer, from the standpoint of today, in hindsight, whether you would say the judgment to include the \$380 million claim in Fiscal Year 1992 was a bad judgment call?

TREASURER CRANE: The way in which we structured the budget, the interface between Fiscal '92 and Fiscal '93, the discussion we had already had a little before about the year-end balance in Fiscal '92-- It was not a bad call.

ASSEMBLYMAN BAGGER: You believe this today, even though the money still has not yet been received?

TREASURER CRANE: That is correct. It isn't over yet.

ASSEMBLYMAN BAGGER: I know that. I join in wishing you well in bringing the dance to its conclusion.

Mr. Chairman, that's all I have.

SENATOR LaROSSA: Assemblyman Kenny?

ASSEMBLYMAN KENNY: I really have just some general remarks, rather than questions, because I think these gentlemen have been questioned at great length. You know, the hearing process -- and I appreciate all the questions that have been asked by the Majority side -- reminds me a bit of, I don't know

whether it was high school or college, where we took a course in Greek logic on the way you ask questions in order to get a certain answer. I think it was the Socratic method; some way you can ask a question to get the answer you want. I think we have had a great education in that here today.

I think the answer the Majority side wants is that the Governor should not have included the money in the budget. I think that is the answer they are trying to get. They haven't gotten that answer, but I don't know what purpose an affirmative answer to that question would serve, in any event. I'm not sure what purpose it would serve. It certainly wouldn't serve New Jersey's interests.

From my attendance at these hearings over the last six weeks or so, I want to commend the Treasurer -- I spoke to Mr. Keevey earlier today -- for excellent professional judgment in dealing with this question. You know, it is interesting to me; we all acknowledge that the claim was 100 percent valid. Everybody here acknowledges that. If the claim is 100 percent valid, then where is the dispute that the claim is reflected in the budget? I don't understand how we could say that despite the fact that the claim is 100 percent valid, we should not have put it in the budget. I mean, it makes sense to me that the way you express 100 percent validity is to treat that validity in the real world, and the real world is to include it in the budget. It just makes perfect sense to me.

So, the making of the claim just reflects the 100 percent validity of the claim. The two things go hand in hand. Putting it in the budget is an expression in the real world of how you make the claim. As I said earlier today, I am glad we're here because we made the claim, as opposed to being here today because the State did not make the claim. We are in the fortunate position of having been on the cutting edge of this Federal/State issue, and having made the claim is a credit to our State officials.

As to the issue of extraordinary claims which was discussed at length this morning, the fact of the matter is, extraordinary basically refers to a claim made for the first time. Once it is made for the first time, it becomes not extraordinary. We have all sorts of items that are in our budget that were once extraordinary and then became not extraordinary, and became routine. In fact, every year we have extraordinary claims that subsequently become routinely included into the budget. So the distinction between extraordinary and routine is really a time distinction, not a distinction as to the merits of any specific claim.

The evidence supports that this would, in fact, become a routine source of revenue to the State. That evidence is supported by the fact that disproportionate acute funding from the Federal government which was extraordinary last year is now routine. It is also supported by the fact that the disproportionate psychiatric funding which did not exist last year, which this year is extraordinary, next year will become routine. So we go from nonexistence to extraordinary to routine. That is the path we are going to take with this type of funding. So this claim is not only valid. These claims translate into hundreds of millions of dollars to the State of New Jersey. So we are not talking about claims in the sense of the ideal. We are talking about hundreds of millions of dollars that are real, and they have brought relief to the people of New Jersey and to the taxpayers.

Now, just as a point of reference -- and we discussed this earlier -- last year, for the first time, we included disproportionate acute care dollars -- for the first time. Now those dollars have been routinely accepted into our Treasury because the State -- Mr. Crane, Mr. Keevey, and others -- were there and filed these claims and supported them with appropriate documentation. This year they are doing the same as to the psychiatric care disproportionate funding. So, in

fact, the Federal government now has recognized that claim, because they routinely now give us, and have given grant awards as to the disproportionate psychiatric care for current and prospective quarters. So a new form of funding has been brought into the State of New Jersey, and this is to our benefit.

The funding I am referring to -- the psychiatric funding -- is the same funding that we are seeking pertaining to the retroactive amount that has been referred to here. So the only difference between the two forms of funding is that one is retroactive and one is prospective. The reason that one is retroactive is because since 1988 the State has been paying out to the psychiatric hospitals moneys that it is now entitled to be reimbursed for. There is nothing wrong with making a retroactive claim. Some people here would have you think that because something is retroactive that it has less validity than if it is prospective. The validity has nothing to do with retroactivity or prospectivity. It has to do with the nature of the claim. The Federal government has already honored the claim for prospective, so that should give us all a hint that the claim is a valid claim. Therefore, the only issue becomes the notice issue, which none of us are expert on, on this side of the room. That should be left to the attorneys and the law firm that was mentioned to argue the case of notice.

Now, interestingly, had the Federal government said yes instead of no last spring, we wouldn't be here, and we would be applauding these gentlemen for having done their job. The only reason we are not applauding them as to this specific sum of money is because the Federal government said no. It is not in their power that the Federal government says no or yes. The fact is, they did their job and the State of New Jersey did its job and the Governor did his job by putting a 100 percent valid claim into the budget. The fact of the matter is, the

only thing speculative about this claim is whether the Federal government is going to say yes or no.

The reason the Federal government is saying no is because they don't want to pay it, not because it is not valid. Now, I have never heard it argued until today that because your opponent in a dispute -- and in this dispute the Federal government is our opponent-- I have never heard it argued in any form of competition, whether it be politics or sports or whatever it is, that because your opponent doesn't do what you want to do that you therefore don't do what you are supposed to do, which is support the claim and put it in the budget. Because the Federal government is going to say no, or may say no, or whatever they are going to do, that is not within our ability to make a determination on. We don't have that crystal ball.

However, the fact that the Federal government could have said yes make it mandatory that we put it in the budget, because if we had not, we would have lost the opportunity to realize the money, and they could just as well have said yes.

Now, the tip-off on this was the trip to Washington by the Speaker and the Senate President, where the Federal government actually raised the question as to the retroactive claim. They basically said, "Listen, we'll recognize some prospective quarters, if you waive your right to the retroactive claim." That was reported in the press. So it's clear that the Federal government's position is not as to the validity of the claim, because they asked us to waive it. They asked us to waive it in conversation with our leaders. So the real issue is not the validity. It is just that they didn't want to pay it, and they held our feet to the fire in order to get those quarters that we ultimately did get. As you all know, now we are getting what we are entitled to, both prospectively and concurrently.

So what they tried to do to us was wrong. Now I think this goes to the heart of the validity of the claim; that the government tried to deny us the retroactive claim by having us waive it. Fortunately, we did not accept that deal. We still ended up with the prospective and concurrent claims, but that should say something to all of us: that the Federal government was wrong in trying to make the deal, in trying to withhold from us something that is clearly ours, which is the concurrent and prospective claims, in order to give up the retroactive. When we are looking for motivations here, I think we only have to look to that particular conversation to realize that it is the Federal government that is in error here, and not the State of New Jersey.

The final point, just to try to clarify what I see as being the issue-- We'll take the pension reval, which, as I have said many times, Assemblyman Bagger was very adept and successful at getting moved through the Legislature, with the Governor's support. Now, that was a highly speculative piece of budgeting, some \$770 million, I think, in last year's budget -- very, very speculative. The only way you could pull it off was because you had the Governor's support, and we were able to do it because we had support. You had political support. The only reason this hasn't happened to date is because we don't have the political support from the other party, which in this case happens to be the Federal government.

So, it is really a political question, and we happen not to be benefiting from the Federal government's decision up to this point. But, not to have made the claim and to put it in the budget because of a lack of political support, which we weren't sure of to begin with, would have been a bad judgment call on the part of the Treasurer. I think the Treasurer did the right thing.

I really don't know how much further we can go with this. You know, we all want to see the State get the money.

What it comes down to is the question of whether or not the Treasurer was correct in putting it in the budget. For all the reasons I stated, I think he would have been negligent and irresponsible had he not put it in. But, be that as it may, it still leaves us with the question of moving forward and doing everything possible to get the moneys that we are entitled to, both retroactively and in the future. That is why I have passed around this proposed resolution which Assemblyman Bagger has agreed to co-sponsor with me in the Assembly, which basically states that the testimony presented has shown that the claim is valid; that the retroactive claim is valid; that we should go after it; and that we should all stand together. The resolution reads for itself.

I would ask the Chairman -- I spoke to the Chairman before, and he was kind enough to be supportive of this -- that the sense of the Committee be expressed that we are supportive of this claim. In the Assembly, Mr. Bagger, Assemblywoman Derman, and I are going to introduce the resolution on Thursday for the Assembly's approval. I would hope that Senator Bennett and yourself, Mr. Chairman, would do the same thing in the Senate.

I don't know what the appropriate mechanism is for us to endorse the spirit of this thing so that we can then move it into the two Houses.

SENATOR LaROSSA: I think we need to find out-- As I discussed with you before, it might be appropriate to incorporate the other part of the file, but I am not sure what the appropriate mechanism is because of the charter we have. So please bear with us until we find out what the appropriate mechanism is on that. I thank you for your comments, until we can find out what the appropriate avenue is for that.

I have one final question--

ASSEMBLYMAN KENNY: Let me just--

SENATOR LaROSSA: I'm sorry.

ASSEMBLYMAN KENNY: I understand you. What I would like to do today, and I think it is important, is that we express the sense of the Committee in support of what is set forth here in the resolution. I think that is important, and I'll tell you why. The Houses are meeting Thursday; they may meet next week. Then we get into Thanksgiving and the end of the year. These things have to move through a process. It would be helpful, I think, to the State if they have these two resolutions from the Senate and the Assembly voted on and approved; helpful to the State of New Jersey in seeking this claim. I think it would be a very affirmative statement that the people of New Jersey support the claim. Perhaps President Bush, or, if he can't get to it, President Clinton, will be able to get around to this very soon so that we can make our case in Washington.

So I would like today -- we have OLS here -- if maybe Robbie could just articulate a motion for us to be supportive of what is set forth in the resolution. I think Assemblyman Bagger joins me on this.

ASSEMBLYMAN BAGGER: I will let the Chairman speak for himself. This Committee doesn't have any legislative jurisdiction. I know that my co-sponsorship of the current resolution has been prepared and circulated. That, and that of Assemblywoman Derman, speaks very clearly of the sense of the Assembly -- of the Majority members of the Committee. If the Senators pursue it likewise in the Senate, I think that will speak for itself. But in the parliamentary sense, I mean, this Committee does not have the jurisdiction to act on pieces of legislation. I'm sure our final report, which we will get to shortly now -- and this may well be our final hearing at which we take testimony -- will include recommendations on both parts of our charge. Our conclusions on one part of our charge went into entitlement to the funds, and could be very much what is stated in the concurrent resolution.

ASSEMBLYMAN KENNY: Does that mean that you are supportive of a motion? This is the only Committee that has been authorized by the Legislature to review this question, and we have been doing it now for the better part of two months. We have had exhaustive testimony. All I am asking for is that this Committee release a motion that expresses its sentiment, as I stated earlier. Then we can, in both Houses, pursue it with the appropriate resolutions. So, you know, I would make a motion, Mr. Chairman.

SENATOR LaROSSA: I'm trying to get a sense-- I am not sure what the--

ASSEMBLYMAN KENNY: Perhaps if I say the motion, nobody will be unduly concerned. My motion is, and the exact language of it could be put into the proper form-- My motion is that this Committee -- that it is this Committee's sense that the Legislature should stand firmly behind the claim to the Federal government for retroactive and prospective Medicaid disproportionate share reimbursement for costs associated with State and county psychiatric hospitals, and stands ready to cooperate with the Governor to present a united front in the State's ongoing negotiations, as well as any appeals that may ensue regarding these claims. That is the essence of what I want to say. I don't think that is particularly controversial in view of all the testimony we have had and everybody agreeing that the claims are 100 percent valid.

SENATOR LaROSSA: Yes. My only question is whether it is within the purview of what we are doing as a body.

MS. MILLER (Committee Aide): I think as a body you can support such a motion just to support a resolution. You don't have any authority to release any legislation. This isn't legislation yet. So, a simple motion to support a proposed resolution is fine.

SENATOR LaROSSA: Is that what we're talking about? Where are we? (members of Committee consult with one another)

MS. MILLER: What you're doing is supporting-- It is affirming the sentiment of the Committee that, as he stated, the Legislature stands behind the claim and wants to cooperate with the Governor, in a sense, to pursue the claim.

SENATOR LaROSSA: All right. We are going to entertain the motion and ask for a second. If, in fact, there is a vote, I will give any of the members of the Committee an opportunity to express their comments briefly as to what their position would be on that.

Do we have a motion?

ASSEMBLYMAN KENNY: I'll move the motion.

SENATOR LaROSSA: Do we have a second?

ASSEMBLYMAN BAGGER: Second.

SENATOR LaROSSA: I guess we need a roll call.

MS. MILLER: Yes. Assemblyman Kenny?

ASSEMBLYMAN KENNY: Yes.

MS. MILLER: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Well, I don't know if I missed anything while I was out, to tell you the truth. Is it the same motion that we were given? Have there been changes made?

SENATOR LaROSSA: Could you repeat the motion?

ASSEMBLYMAN KENNY: Yes. The motion is: It is the sentiment of this Committee that the Legislature should stand firmly behind the claim to the Federal government for retroactive and prospective Medicaid disproportionate share reimbursement for costs associated with State and county psychiatric hospitals, and stands ready to cooperate with the Governor to present a united front in the State's ongoing negotiations, as well as any appeals that may ensue regarding these claims. It is essentially the first paragraph of the "Be it resolved" portion of the--

ASSEMBLYWOMAN DERMAN: And the "whereases" are as they were, too?

ASSEMBLYMAN KENNY: We are taking the fourth "whereas" out at the request of the Chairman.

ASSEMBLYWOMAN DERMAN: I'm sorry, we're taking which--

ASSEMBLYMAN KENNY: The fourth "whereas" out, where it says, "Whereas the only outstanding issue--" We have taken that out at the request of the Chairman.

ASSEMBLYWOMAN DERMAN: If I could have a moment, please?

SENATOR LaROSSA: If I may, I am going to ask for about a 10-minute recess, because apparently there is enough conversation over here-- It is going back and forth, and I would rather have everybody on the same page.

ASSEMBLYMAN KENNY: You know, I am very anxious to cooperate so that we can--

SENATOR LaROSSA: Assemblyman Derman just walked back in, too, as well.

ASSEMBLYMAN KENNY: Okay, fine. Very good.

SENATOR LaROSSA: We'll take a 10-minute recess.

(RECESS)

AFTER RECESS:

SENATOR LaROSSA: Sorry for that delay, but as is always the case when you have Committee meetings and you try to move things forward, sometimes you get everybody on the same page, and sometimes you don't.

We are going to continue with the roll call.

MS. MILLER: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: In view of the fact that I support the spirit of the resolution, but that I was absent when the Treasurer gave a substantial part of his testimony-- Of course, I do look forward to reading the transcript of what

he said, but at this time I feel obligated to abstain. I do wish to repeat that I support the spirit of the resolution.

MS. MILLER: Senator Bennett?

SENATOR BENNETT: I believe we are an investigative body charged with issuing a report on two issues. Those two issues include the timeliness, as well as the validity of the claim. I am not prepared to do a piecemeal approach to our charge. I think it would be premature to do so prior to our conclusion. Therefore, I am voting, "No."

MS. MILLER: Assemblyman Bagger?

ASSEMBLYMAN BAGGER: I support the State's claim in its entitlement to these funds, which addresses one of the two prongs of this Committee's inquiry. I will be bringing to this Committee and to the Assembly, at a later date, a resolution addressing the second prong of the Committee's inquiry; that is, recommendations and guidelines for when revenues like this should be anticipated in the budget.

So with that in mind that this is addressing one of the two areas of inquiry of our Committee, I vote, "Yes."

MS. MILLER: Senator LaRossa?

SENATOR LaROSSA: Again, the position which I have held constant is to not draw conclusions prematurely. While I will say nothing negative towards the resolution, and we had the conversation at lunchtime, my only concern is that it is premature because, again, we-- Even if we had one more question, possibly one more hearing, it would be premature. So at this point I am going to abstain on the motion and not cast a vote either way.

MS. MILLER: The motion is not carried.

SENATOR LaROSSA: I have only one final question of my own, and then I believe, Assemblyman Bagger, you have one or two others? (no response) Okay. Again, I apologize for the delay.

Using the acute care example from this morning, in terms of a claim, it is submitted, it is paid within a reasonably short period of time and, again, proactively -- or prospectively. To your knowledge -- and, Mr. Treasurer, I will address this to both of you, but will keep in mind Mr. Keevey's longtime history with the State of New Jersey--

Has there ever been an inclusion, to your knowledge, of a retroactive claim for reimbursement in any budget presented and adopted by the State of New Jersey?

MR. KEEVEY: I can think of one; there may be more. I would even have to check this. I think I alluded to it this morning, and that is the Oil Windfall Profits Tax, where the money was in litigation. We had lost, I believe, in the New Jersey Supreme Court, but it was remanded to the Federal Supreme Court and we believed, in '89, that we were on sound ground, and put it into the budget -- about \$110 million or \$120 million.

Now, you know, pending my research of it myself and your own staff as to the exact dynamics of it, that one I fairly recollect. We ultimately received the money. I think we made-- In fact, I believe we made a midyear adjustment similar to what we did here -- that is, if my years are correct. When we submitted the '89 budget, we adjusted the prior year's budget and moved it up by the \$110 million, without having finalization to the case.

SENATOR LaROSSA: Okay. But it was a prospective inclusion, or--

MR. KEEVEY: As an anticipated revenue, yes.

SENATOR LaROSSA: I'm sorry?

MR. KEEVEY: As an anticipated revenue.

SENATOR LaROSSA: As opposed to a retroactive revenue. You were anticipating a resolution of it.

MR. KEEVEY: No, it was retroactive.

SENATOR LaROSSA: Oh, it was retroactive?

MR. KEEVEY: Yes.

SENATOR LaROSSA: All right. If I may then--

MR. KEEVEY: Now I have to-- You know, don't hold me to the exact dates on the process, but I think I am correct on that.

SENATOR LaROSSA: If I may pose that as a formal question, I would request a response on that.

MR. KEEVEY: Sure.

SENATOR LaROSSA: I think that would also help us from a historical perspective. If, in fact, that is a civil action, I would also like you then to separate that out from any governmental action in terms of a retroactive reimbursement. Do you follow what I'm saying? If that was a suit in terms of a reimbursement from a civil suit--

MR. KEEVEY: Well, no. We believed that several corporations had not paid us taxes and that they owed us money. So we had this claim. If my recollection is right, it had wound its way through the courts. The New Jersey Supreme Court had denied us, I believe, and it went on to the Federal Court on the basis that it was -- that it had a broader scope than the State of New Jersey, and ultimately won retroactive payment.

SENATOR LaROSSA: All right. Then if I may, let me separate that example from any retroactive reimbursement on any Federal claim under any other Federal program; separate those to make a clear distinction between those two.

MR. KEEVEY: I can't even remember anything near that magnitude.

SENATOR LaROSSA: All right. Again, if there is something in the records based on what you have experienced, I would appreciate getting a response in writing as quickly as possible.

Assemblyman Bagger?

ASSEMBLYMAN BAGGER: Thank you, Mr. Chairman. Just two questions: If you can think back in time before the discussion of that resolution, to Assemblyman Kenny's comments, he forcefully made the argument that if in a claim such as this retroactive reimbursement claim, the \$380 million, if we are 100 percent convinced of its validity, then per se it should be included as an anticipated revenue. I think I have summarized that argument fairly. Mr. Treasurer, I ask you whether you agree with that?

TREASURER CRANE: I think I have already said today that I thought the claim was valid, and that I thought it would be paid, and therefore it is okay to anticipate it, as we anticipate other things in the budget that have not yet occurred.

ASSEMBLYMAN BAGGER: One thing I am trying to get at through this Committee is whether there can be guidelines or rules of thumb that the executive branch uses when determining whether to anticipate or certify revenues. Assemblyman Kenny has proposed, essentially, a per se rule. I know, Treasurer, that in your professional judgment and experience, you believe that the decision you made in January '92 was the correct one. But I am asking you now more abstractly whether you agree with the premise that if we are 100 percent sure we are entitled to something, and the Federal government disagrees, whether we should automatically anticipate that as a revenue?

TREASURER CRANE: Let me answer that, not specifically about the Federal government, but by anything that you would anticipate in the budget, because that is really the issue here.

I think when a Governor prepares a budget and delivers it at the end of January or early February, this Treasurer and this OMB Director, or the people before us, make certain assumptions about something that is going to happen 18 months away, whether it be the state of the economy, hospital rates, the welfare caseload, or a whole series of assumptions, and

some assumptions about a continuation of Federal law and State law in its present form, or in an amended form because the Governor is suggesting a change in State law that has an impact on the budget -- expense side, revenue side, whatever.

So, there is a whole group of assumptions that go into this. Any one of them, or a whole group of them, could be right on point, or could be very, very wrong, depending on what happens out there. We make an assumption -- and Rich can correct me on any of the technical stuff-- We make an assumption that when we submit a budget to the Legislature, and, indeed, when the Legislature -- this Legislature and previous Legislatures -- adopt it, that a certain set of activities are going to happen at the Federal government, even though the Federal government's fiscal year -- their new fiscal year begins October 1. As you know, unlike New Jersey, they use their appropriation process not just to appropriate money: They create new programs; they do away with programs. I mean, a whole series of things happen that way.

So, you are making a whole host of assumptions. Some of them very far down the road, and some of them -- a whole bunch of them dependent on something else happening. You don't know if you are going to have a court case, or whatever. So, Assemblyman, I think if you were to start to construct a set of guidelines that the executive branch should follow-- We should follow our best judgment and common sense and what is actually known or what best you can project at the time at which you put a budget together. Frankly, even if you set a set of guidelines, that will be the case.

I would also submit, although having spent some time on that side of the table and now a lot of time on this side of the table-- I would also submit that those guidelines ought to apply to legislative action as well, because, one -- and I don't want to get into a political argument over budgets -- but

that guideline also has to apply then across-the-board to what people are prepared to assume, no matter which branch they are in.

So, first of all, I would be glad, in fact, if you ever wanted to return -- because as you note, the light is getting very dim in here -- sometime and talk about that. I would be glad to do that, or talk to you personally or members of this Committee.

Mr. Chairman, I have answered a lot of questions today. I want to answer one thing that has been in the press since June and has stuck in my craw. So I am going to take this opportunity-- It is about this issue, and I figure I am going to take my opportunity today just to clarify the record, because the tapes are rolling. So I want to make it very, very clear.

I want to review with the Committee the communications between myself and the Legislature during June. I have supplied this to the Committee. I assume it will be in the record, but I wish to comment on it today. I have already commented today, and I will just take a few minutes of your time.

On June 1, when I received the notice of disallowance, I did not want until the next day, but I informed both Chairmen of the Appropriations Committees that night at home on the telephone. The next day I submitted to both Chairmen of the Appropriations Committees-- I assume this will be made part of the public record. I have already notified them that I thought it would. I haven't released it today. I submitted a letter to them which said: "I submit a letter on this particular issue with the disallowance notice."

ASSEMBLYMAN BAGGER: The June 2 letter, sir?

TREASURER CRANE: What?

SENATOR LaROSSA: The June 2 letter?

TREASURER CRANE: June 2. I was asked, at that time, to keep the Legislature advised of what was occurring with this particular claim. On June 12, I think, I wrote a letter to Assemblyman Frelinghuysen and Senator Littell, basically outlining a meeting that was held between State officials and the Federal government on this particular claim, and kept them advised. In both letters -- and I wish to read this into the record, because I have had to hear this for a while-- In both of these letters I reiterated the caution about including money in the FY '93 budget. I wrote: "At this time it would be prudent to plan a budget that assumes a denial, or further, to follow up our claim."

So, the notion that has been -- and I don't mean to get into a political debate here-- The notion that someone was not informed until 48 hours before the Committees released the budget at the end of June, frankly, is not correct. Both Chairmen were informed as early as June 2 of our opinion that the plan -- the alternative plan should be made for that particular revenue.

I did respond, and I submitted to you the other letters. But I want to make it very clear that this Treasurer and this OMB Director, when they knew, informed the Legislature of what we knew. We informed them that there was a problem with Fiscal Year 1993 revenues beginning on June 2, not as has been suggested by some that this was done at the end of June in the dark of the night. Indeed, the final information supplied to the Legislature was requested by Assemblyman Frelinghuysen. In response, he asked me what my best judgment was of what revenues should be included in the Fiscal Year 1993 budget, and I so replied to the Chairman, in writing, making a number of other revenue changes, I might note, in that response; that the revenues for Fiscal '93 should be adjusted, not only in the area of Medicaid, but in the other areas of the taxes as well.

Mr. Chairman, I thank you for the opportunity of at least adding those comments to the record, because it is a piece that we didn't cover very much today, but it is a piece that has been the subject of some speculation and some suggestion that people were notified, like, on June 29 that this was a problem. That is not the case. It was June 2. I just wish to have that go into the record.

SENATOR LaROSSA: I will reaffirm that, because as we discussed, I think the early part of last week, you were going to supply information which had already been provided us and it was all in one place. Just, you know, for the record, the letter you are referencing is the letter of June 2 which is addressed to Senator Littell and Assemblyman Frelinghuysen. It says: "Essentially, the Federal government is withholding their approval based on the technical public notice provision. We believe and argue that this provision does not apply to this application. We will appeal the decision." And, continuing on to the following page: "While we jointly seek a favorable outcome, it would be prudent to begin planning for a denial or further deferral of our claim by the Federal government." That is your letter of June 2 to the respective Chairmen.

Then the subsequent piece of correspondence that you refer to, again under your signature, on your letterhead, dated June 16: "Subject: Final revenue estimate and budget impact." It states: "Therefore, to reemphasize the \$450 million must not be included as a resource in the Fiscal Year 1993 budget."

TREASURER CRANE: In addition, on June 12, I also informed the Legislature. It is part of the communications that have been supplied to the Committee.

SENATOR LaROSSA: I was just tying the two together because of the initial notice and then the actual certification notice.

Yes, Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: I just want to follow up on Assemblyman Bagger's comments with respect to his hope and expectation that we come up with some curative legislation. I am still concerned about the standards for inclusion. You spoke in terms of the reasonableness of including the item in the judgment of the appropriate individuals, and then at the same time in June, that in your judgment it was no longer reasonable to include them in the '93 budget.

Can you provide for us any suggestions as to standard? I mean, have we learned anything from this that we should take away? We can only anticipate that the Federal bureaucracy will get worse as revenues grow scarcer and scarcer and the states look around for additional funds everywhere they can, and the problems of Medicaid increase.

So, going forward, is there any hope we can have in terms of predictability?

TREASURER CRANE: Assemblywoman, I have been doing budgets since 1978, and every year there is an amount of unpredictability. It may not be attributable to the Federal government at all. I remember one year that the Joint Appropriations Committee at the time was ready to release a budget at the beginning of June, and the New Jersey Supreme Court decided the morning that we were releasing the budget to rule unconstitutional the commuter tax -- the final decision on the commuter tax.

Now, it was a smaller sum of money, but I can assure you that the two Appropriations Committee Chairmen at the time were ecstatic about that change in circumstances. There are a variety of things, and if we are going to talk about it, you just can't talk about it on the Federal government's side -- on the set of standards. I mean, if you want to talk about a policy of what is reasonable to assume, and assuming that you want to apply it to both branches of the government so that -- obviously, something has to be reasonable all the way around--

I mean, that is something that we ought to talk about. But you are going to get into the fact that some of the projections made, first by the executive and then by the legislative final resolution, are 12 to 18 months before something occurs. And they will assume a whole series of things, whether Federal actions, State actions, economic actions, changes in enrollment in colleges, changes in enrollment in welfare. So there is a whole series of unknowns here. What happens is that everybody tries to make their best judgment about what is going to be available based upon law and reason and judgment.

Therefore, if one were to try and apply a set of standards to a particular situation -- this happened to be the situation under discussion today-- Mr. Keevey and I could probably go back and think about all of the unpredictable things that have happened over-- Rich probably has more examples than I of the things that occur that everybody, in good judgment, Governors and Legislatures, have included in budgets that never came to pass, or where there was a change afterwards based upon their best judgment at the time.

So I think if you are going to enter into that discussion using this particular circumstance to leap off onto a general discussion, I think you have to talk more locally about all the assumptions in a budget, because they are huge. I mean, we make an assumption on how many people-- I think Charlene testified today that the Medicaid Division-- We'll stick with Medicaid. They assume certain rates; they assume a certain eligibility level; they assume certain participation. Those assumptions, frankly, could be overrated, based on data that is older than when the projection was made.

So when you walk into this area, you have to look at it more broadly than this particular set of circumstances. I mean, I think that is something that the Committee, if they want to spend the time on it-- They ought to spend some time

looking at it across-the-board. There are a lot of assumptions in the budget made by everybody.

ASSEMBLYWOMAN DERMAN: But there are assumptions, and there are assumptions. I think some assumptions are more reasonable than other assumptions.

TREASURER CRANE: That's true, but you also have to understand that we make certain assumptions based on law all the time -- reasonable assumptions -- based on procedure or practice, or past practice, and whatever. Sometimes those things don't hold water. I mean, you don't know.

MR. KEEVEY: If I may, Sam. Also, whatever standard you have, there also becomes judgment involved. I mean, we adhere to accounting standards which say the revenues have to be available and measurable. We agreed that these two criteria were met. They're certainly measurable. We had a claim. We had a law. We had a computation. Available: Are we going to get it within the next 12 months, 6 months? I'm not sure whether it's 6 or 12 -- somewhere between 6 and 12. It was clear in our opinion that at that point in time that we felt it met those criteria.

But there is a judgment there on more difficult kinds of revenue estimates -- same thing the answer that I gave back to the Chairman having to do with the putting into the budget of the Oil Windfall Tax; it was measurable. Was it available? We made a judgment that it was available, and in that particular instance we did get it, six months or so later. We'll check that for you. But it came about. But there are other instances -- in the unemployment tax that I referred to earlier; it was measurable and it was available. Then six months later we had it pulled out from under us, and we're repaying it now. So, they're the kind of things that you can't always have, in my opinion, absolute standards on, but it's certainly something that could be reviewed.

ASSEMBLYWOMAN DERMAN: When you use the term available, do you use that on an interchangeable basis with collectible?

MR. KEEVEY: Yes.

ASSEMBLYWOMAN DERMAN: Thank you.

ASSEMBLYMAN BAGGER: If I could interject, Mr. Chairman, that measurable, available distinction is very important. We've talked about it before. I know we agree on the fact that it requires professional judgment and expertise to apply those factors on whether or not to anticipate something as a revenue. Where we disagree was on whether good judgment called for including that \$380 million retroactive piece in January of '92. That's the subject of our disagreement -- on the availability or collectibility of it.

I return to where I was a few moments ago, and that is: If something is measurable only, but we don't know when it's going to be available, should it be anticipated as revenue or should it require both measurability and availability, as you've stated?

Assemblyman Kenny, before, enunciated a per se rule that if there's an entitlement which in your terminology would be measurability, we ought to anticipate it. What's your reaction to that?

TREASURER CRANE: Are you talking about a general rule, or applying to this?

ASSEMBLYMAN BAGGER: As applied to these funds.

TREASURER CRANE: Are you asking me? I mean--

ASSEMBLYMAN BAGGER: We'll start with Mr. Keevey and then work our way up to--

MR. KEEVEY: Let me try.

TREASURER CRANE: I wasn't sure. You were looking at him, and I was going to say, good.

MR. KEEVEY: When we applied those standards, particularly when we issue financial statements, there's a distinction, I think, as opposed to budget, and we do apply those standards. They have to be measurable and they have to be available. The availability of it is within the 6-to-12

month period of time, and there becomes a judgment at budget time -- meaning like January -- as to whether we're going to get it within the next 12 months and put it in the budget. Different standard than when we're closing the books. Would we actually book that money? We now have another six month's worth of experience. So things have transpired in this example between January and June.

What has transpired is we have an actual disallowance from the Federal government. So that now changes our professional judgment to say, "Wait a minute. It's still measurable, but we really now have to question the availability of it." We didn't question it before because we felt that we were entitled to it, and we would get it resolved within a period of time. Now, with an actual disallowance we say, "Our judgment is: We'd better be careful on this availability standard." That's the reason why we advise the Legislature that it no longer met, in our opinion, the availability standards. So we are applying standards. We just may not always agree on application, I guess.

ASSEMBLYMAN BAGGER: You apply more stringent standards in terms of availability for booking a revenue in terms of the State's financial statement?

MR. KEEVEY: Well, in this instance, because we now have six more months and an actual letter of disallowance. We didn't have that in January. We had a law. We had an interpretation that said we're entitled to it and it is reasonable to expect that we're going to get within the period of time.

ASSEMBLYMAN BAGGER: And that second piece is the availability criteria that you were speaking of.

MR. KEEVEY: Right.

ASSEMBLYMAN BAGGER: You're applying both this measurability and availability. Now the decision to not certify the funds for Fiscal Year 1993 was in no way related to measurability or entitlement?

MR. KEEVEY: Not the measurability, but now to availability.

ASSEMBLYMAN BAGGER: Correct.

MR. KEEVEY: Because we have a letter that says, "We're not going to pay you."

ASSEMBLYMAN BAGGER: The standards that are being applied and the analysis that we've gone through are something that intrigues me very much, and something I look forward to exploring further with you, if only as an individual and member of the Appropriations Committee, as we address future budgets.

MR. KEEVEY: We'll send you some of our criteria from the -- basically -- accounting manuals that we have to adhere to on the Comptroller side of our responsibilities.

ASSEMBLYMAN BAGGER: On the financial statement side, which don't apply to the anticipation side.

MR. KEEVEY: Well, we don't have, like some states do, one surplus for the budget and one surplus for the financial statements. Some states do it that way. We don't. We keep them consistent. So we apply the same rigors to both.

What I was trying to describe to you in this example, we then, at the end of the year, had more knowledge; knowledge being that we had the disallowance. Therefore that threw into question the availability standard. We still felt we met the measurability, but it was no longer, in our judgment, going to be readily available.

ASSEMBLYMAN BAGGER: And you won't anticipate funds based only upon measurability?

MR. KEEVEY: No. It has to meet both.

ASSEMBLYMAN BAGGER: Thank you.

SENATOR LaROSSA: Just one question and one comment. Just out of curiosity: If we go into January or February, would you expect these revenues to be included in next year's fiscal estimate?

TREASURER CRANE: We haven't made any decisions on that yet. We haven't made any decisions.

SENATOR LaROSSA: One other question: With all of the speculation -- and I think that's probably a good word in terms of how high is up, which a lot of the judgment questions are-- Would you expect that the revenue forecasting board or that piece of legislation would be helpful in resolving some of these issues? Because quite frankly, I agree--

It's one of the few times I'm going to make a very affirmative statement. I've been very reticent to make proactive statements, but I absolutely concur that the Legislature needs to be held to the same standards as far as trying to develop a budget. You know, I think everybody needs to be on the same page, and I haven't really seen that. We can argue this issue and discuss that issue at length, but I think ultimately the resolution is going to be to have some way that everybody gets on the same page.

Do you think that that revenue forecasting board, in fact, holds some hope of achieving that particular end? That really is not a question that has anything to do with this Committee, but as long as I have you--

TREASURER CRANE: I think the Governor signed the bill. I think the question is on ongoing revenues and economics. It's probably helpful to everybody to have somebody advising them on that. I think when you get down to-- You just spent three full days discussing a Medicaid claim. I can't imagine that a revenue forecasting board is going to be willing to spend the time to delve into the technicals behind a sophisticated claim to the Federal government, on this issue or any other issue.

So principally, my guess is that they will be helpful with everybody developing one of the underlying assumptions on recurring revenue, principally sales, corporate, and income. I assume Rich probably talked to you about the economic measures that we will set against our revenue estimates.

SENATOR LaROSSA: Any other questions? (negative response) If there are no questions we will adjourn.

Thank you very, very much for your courtesy and your patience.

(MEETING CONCLUDED)

APPENDIX

Fourth Hearing - Joint Select Committee on Medicaid Reimbursement
November 10, 1992

OPENING STATEMENT

WHEN CAN DOLLARS BE INCLUDED IN THE BUDGET?

Senator Dick LaRossa

Chairman

Joint Select Committee on Medicaid Reimbursement

As we open our fourth hearing for the Joint Select Committee on Medicaid Reimbursement, I would like to indicate that I believe this Committee has been meeting its legislative charges.

The objectives and legislative mission for the Joint Select Committee are quite explicit. Senate Concurrent Resolution SCR-65 empowered this body with a specific public policy focus, and I quote:

"...the committee shall examine the Executive Branch's decision to include all of the \$450 million in the projected State revenues for Fiscal Year 1992. This examination should focus on the information the Executive Branch had at the time of and subsequent to its December 1991 application concerning validity of the application in the context of federal Medicaid retroactive reimbursements. The committee shall examine and determine the exact amount of retroactive reimbursement payments for State and county psychiatric hospitals New Jersey is qualified to receive."

Because the committee members seek to keep this investigation in focus, determine the circumstances involving the "loss" of funding, and steer a factual course of investigation, let me reiterate the review area for our investigation.

The empowering legislation sets forth two key areas of review in order to determine the circumstances surrounding the \$450 million reimbursement dispute. Until today, we have concentrated on the second of the two charges, and I quote them both:

- A. ***"The committee shall examine the decision on the part of the Executive Branch to include all of the \$450 million in the projected State revenues for Fiscal Year 1992."***

- B. ***"The committee shall examine and determine the exact amount of retroactive reimbursement payments for State and county psychiatric hospitals New Jersey is qualified to receive."***

In my opinion, one of the charges has everything to do with one simple question:

Why did Executive Branch officials decide to include all of the \$450 million in projected State revenues for Fiscal Year 1992?

As a prelude to today's discussion, I expect to receive answers to this particular question from Treasurer Sam Crane. Additionally, I have several other questions to raise with the Treasurer during his testimony later today.

Today, with the assistance of Executive Branch officials from the Department of Treasury, we will begin to address the matter of why the Executive Branch chose to include all of the \$450 million in the projected State revenues for Fiscal Year 1992.

Five key state officials have been invited to be available for testimony.

Scheduled to be available for morning testimony or to answer questions are:

- * **Richard Keevey** - Director of OMB, for the purpose of answering questions
- * **Michael Ferrara** - Assistant Director of Budget and Planning, OMB
- * **Charlene Holzbaaur** - Staff member, OMB
- * **Anastasia Brophy** - Staff member, OMB

New Jersey Treasurer Sam Crane will also be available to share with us all documentation, correspondence, notes, summaries of meetings, or recollections of conversations he had with either the Department of Treasury, the Governor's office or the Department of Human Services regarding the \$450 million in questioned reimbursements. There is a possibility that once the individuals scheduled to testify at 11:00 a.m. end, Crane may begin his testimony prior to 1:00 p.m.

I sent letters to the Chief of Staff, the Governor, Treasurer and the Director of OMB asking for all relevant information in writing.

During the morning portion of our meeting today, representatives from OMB will be available to provide us with the historical process regarding the inclusion of revenues in the budget.

To conclude my opening remarks, let me reiterate that the Joint Select Committee is in pursuit of the facts regarding the circumstances surrounding the "loss" of the \$450 million in question in the Fiscal Year 1993 budget.

We commend the State for its efforts to secure the money to which New Jersey is entitled in regard to the current Medicaid dispute.

And, let me reflect on some of this Committee's own "Legislative history" for a moment. As I indicated during the previous three Joint Select Committee meetings, our intent is to operate honestly, seek the facts, and let those facts frame not only our discussion but our conclusions. We will not have our factual review process handicapped by premature conclusions. The facts are our goal, and our process will follow that purpose.

The high caliber of individuals scheduled to address the body today ensures that the Joint Select Committee is on the way to serving the taxpayers of New Jersey by uncovering all the details associated with this case.

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STATE OF NEW JERSEY
OFFICE OF THE TREASURER
CN 002
TRENTON, N.J.
08625-0002

JIM FLORIO
GOVERNOR

SAMUEL CRANE
STATE TREASURER

June 2, 1992

Honorable Robert E. Littell
Chairman, Senate Budget and Appropriations Committee
Honorable Rodney P. Frelinghuysen
Chairman, Assembly Appropriations Committee
State House
Trenton, NJ 08625

Dear Chairmen Littell and Frelinghuysen:

Thank you for your recent letter concerning the state's application for retroactive Medicaid reimbursement for services provided to patients at state and county psychiatric hospitals.

As we have discussed in the past, we believe the state is entitled to this reimbursement under federal law. The state has answered all questions raised by the relevant federal agencies. However, last Friday we received formal disapproval of any claim prior to December 29, 1991. I have attached a copy of this letter for your review. Essentially, the Federal government is withholding their approval based on a technical public notice provision. We believe, and have argued, that this provision does not apply to this application.

We will appeal this decision. The ability to change this position now rests with the Bush Administration. The timing of this decision is in their hands as well. I have attached a copy of a letter the Governor has sent to the entire Congressional Delegation. We are seeking their intervention with the Administration on behalf of the state. We are hopeful their action will make a real difference in our efforts to receive this deserved reimbursement.

You can help in this effort by joining me in a joint letter or telegram to the Bush Administration and the relevant federal agencies asking for speedy and favorable resolution of our claim. I am ready to take such an action with you this week.

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Chairmen Littell and Frelinghuysen
June 2, 1992
Page 2

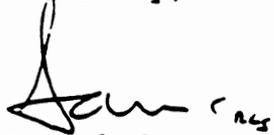
In a related matter, the recent federal court ruling puts in doubt the continuation of federal reimbursement for acute care hospitals. If this ruling stands, the FY 93 budget will lose \$320 million in reimbursement revenue. Further, the budget assumes a substantial reduction in Medicaid payments to hospitals, related to federal Medicare "upper payment" limit. The hospital rate setting commission has deferred action on this initiative due to the recent court decision regarding payor differentials. Consequently, unless the upper payment limit issue is addressed, the Medicaid budget will be underfunded by at least \$75 million. You should consider these two items in your continuing budget deliberations.

While we jointly seek a favorable outcome, it would be prudent to begin planning for a denial or further deferral of our claim by the federal government. Therefore, I recommend the Legislature consider the following options:

- Act soon on the amended pension revaluation proposal so the FY 92 savings can replace this Medicaid reimbursement as a FY 92 revenue.
- If the reimbursement is received place the amount into a Rainy Day Fund for budgeting purposes, so that it can be saved for future uses.
- Take a portion of the \$1.1 billion in budget and revenue adjustments under consideration by the Legislature to cover these lost revenues. \$1.1 billion in budget or revenue adjustments will be sufficient to replace the \$608 million in lost sales tax revenue and the federal government's denial of this \$450 million reimbursement. This option assumes you have accepted our suggestions to replace the recent shortfall in revenues.

I look forward to hearing from you, and to continuing to work with you on this important issue.

Sincerely,



Samuel Crane
State Treasurer

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Attachment

c: Honorable Garabed "Chuck" Haytaian,
Speaker of the General Assembly
Honorable Donald T. DiFrancesco, Senate President

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STATE OF NEW JERSEY
OFFICE OF THE TREASURER
CN 002
TRENTON, N.J.
08625-0002

JIM FLORIO
GOVERNOR

SAMUEL CRANE
STATE TREASURER

June 12, 1992

Honorable Robert E. Littell
Chairman, Senate Budget & Appropriations Committee
Route 23 & 517
P.O. Box 32B
Franklin, New Jersey 07416-0328

Dear Senator Littell:

As you know, a meeting was held Wednesday with staff from the U.S. Health Care Financing Administration (HCFA) and staff from New Jersey to discuss New Jersey's pending State Plan Amendment and claims for disproportionate share payments to state and county governmental psychiatric hospitals.

No conclusions were reached. The deferral of \$74.0 million remains in force; the disposition of the remaining \$412.0 million remains in question.

The meeting was chaired by Christine Nye, Director of HCFA's Medicaid Bureau. HCFA's top policy, financial and legal staff also attended the meeting. In addition, senior staff from the Region II HCFA office were in attendance.

New Jersey was represented by Saul Kilstein, the Director of the Division of Medical Assistance and Health Services, Ann Kohler also from the Division, Roseann Krieger from the Department of Human Services and Charlene Holzbaur from the Office of Management and Budget. Charles Miller, Esq., from Covington and Burling, New Jersey's Special Counsel on this matter, was also in attendance.

A number of technical issues were discussed regarding a variety of aspects of the claim. Ms. Nye stated that HCFA was anxious to resolve the issue. We also agreed to limit comments to the press to indicate a useful exchange of information and a mutual desire to resolve this matter swiftly.

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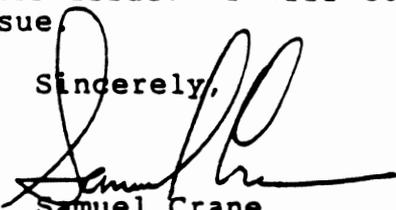
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Based on the above, I reiterate my comments in my letter of June 2, 1992 to you and Chairman Frelinghuysen.

- We believe we are entitled to the dollars.
- We have answered all questions raised by the relevant federal agencies regarding the claim.
- At this time, it would be prudent to plan a budget that assumes a denial or further deferral of our claim.

Staff will continue to work with HCFA and provide them with all the information needed to resolve this issue. I will continue to keep you apprised on this critical issue.

Sincerely,



Samuel Crane
State Treasurer

c Alan J. Gibbs

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