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ORIGINAL

Transcript of Proceedings

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

MEETING

Washington, D. C.

Thursday, 11 December 1975

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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

MEETING

2025 E Street, N. W.
Washington, D. C.

Thursday, 11 December 1975

The meeting in the above-entitled matter was convened,
pursuant to notice, at 2:10 p.m. Mr. Roger C. Cramton,
chairman, presiding.

MEMBERS PRESENT:

Roger C. Cramton, Chairman
Marlow Cook
Marshall J. Breger
J. Melville Broughton, Jr.
Thomas Ehrlich
Robert J. Kutak
Rodolfo Montejano
Revius Ortique
Glee Smith
Glenn Stophel
Samuel D. Thurman

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1 P R O C E E D I N G S

2 CHAIRMAN CRAMTON: The meeting will come to order.

3 We have broken some kind of record by starting only
4 ten minutes late. We will try to do even better in the future.5 The first item on the agenda is the adoption of
6 the proposed agenda.

7 MR. KUTAK: So moved.

8 MR. MONTEJANO: Second.

9 CHAIRMAN CRAMTON: Members Kutak and Montejano
10 have adopted the proposed agenda. All those in favor say
11 "aye."

12 (Chorus of "ayes.")

13 CHAIRMAN CRAMTON: The agenda has been approved.

14 We now move to the minutes of November 6, 7, 1975,
15 meeting of the Board, tab 1.16 MR. KUTAK: Mr. Chairman, one thing which I thought
17 we did at the last Board meeting -- and forgive me if I am
18 wrong on it -- is have you designated your committee member-
19 ships? I thought you did that at the last committee meeting.

20 CHAIRMAN CRAMTON: I did so.

21 MR. KUTAK: I don't think I found in the minutes
22 your assignment on the standing committee on regulations,
23 and reconstructed appropriations committee, and the designation
24 of members of the Legal Services.

25 MR. SMITH: I believe those were done at the

1 executive luncheon.

2 CHAIRMAN CRAMTON: They were announced at the
3 public meeting, and I would like the secretary to add to the
4 minutes of that at that point -- I think it would be page 15,
5 after the adoption of the committee structure -- just a
6 brief statement that Mr. Cramton then stated the appointment
7 of the following members to the following committees, just
8 a list of three committees with the members designated.

9 Does that have the approval of the members of the
10 Board?

11 (No response.)

12 CHAIRMAN CRAMTON: Without objection, the minutes
13 will be so amended.

14 Are there further comments or suggestions
15 concerning the draft minutes?

16 MR. THURMAN: On page 2 -- I was not here. I read
17 the transcript. As near as I can tell what happened a month
18 ago -- at the bottom of page 2 it says "Mr. Kutak moved the
19 adoption of the following proposed agenda."

20 This was on the second day. I don't think he was
21 moving the agenda as stated on page 3. It was either what
22 went on on the third, and the reception and so on and so
23 forth.

24 Could we have that straightened out a little bit?
25 This was on Friday, November 7, and moved the agenda which is

1 retroactive.

2 CHAIRMAN CRAMTON: I think we moved to consider
3 the matter listed in the proposed agenda, but obviously, we
4 didn't consider on Friday matters that --

5 MR. KUTAK: Schedule for Thursday.

6 MR. SMITH: It is accurate to the fact that was
7 the agenda we adopted. The variations is another matter.

8 I would move that the minutes as amended be
9 approved, the amendment being the listing of the committees.

10 CHAIRMAN CRAMTON: Is there a second?

11 MR. KUTAK: Second.

12 CHAIRMAN CRAMTON: Further discussion?

13 (No response.)

14 CHAIRMAN CRAMTON: All those in favor of the
15 adoption of the proposed minutes, please say "aye."

16 (Chorus of "ayes.")

17 CHAIRMAN CRAMTON: Those opposed, no.

18 (No response.)

19 CHAIRMAN CRAMTON: The minutes have been adopted.

20 The third item on the agenda, (a) ratification
21 of Fiscal Year 1977 budget request, and (b) corporation banking
22 accounts.

23 Mr. Stophel.

24 MR. STOPHEL: At the last Board meeting, as you all
25 notice from the minutes, there was a broad discussion of

1 your proposed budget request at that time totalling
2 \$140,790,000 for fiscal '77.

3 And also at that meeting, the Committee on
4 Appropriations and Audits was authorized to submit a budget
5 request not in excess of that amount.

6 Under tab 2 in your materials is the result,
7 printed result in tabular form of the meeting of the Audit
8 and Appropriations Committee in Chicago, at which there were
9 members of the public present to present views on specifics
10 as well as the agenda approach of a budget.

11 And as you will note from that committee action,
12 the proposed budget is a total of \$140,360,000, a slight
13 reduction which primarily resulted from shifting a little
14 and reducing the cost of refinements of amounts within the
15 budget.

16 We are pleased to note that over the total budget
17 something less than 3 percent is devoted to administrative
18 expense which we think is fiscally responsible.

19 We recognize that during the year in which we
20 will be asking this amount of money, that there are admirable
21 restraints being voiced toward expenditures on the national
22 level.

23 However, we feel we have a good story to tell on
24 the part of legal services for the poor, and we feel that
25 this proposed budget is one that can be supported fully by

1 this Board.

2 It does not bring us back fully to a funding level
3 of the 1971 level based on inflation. It also does not
4 expand us into all unaffected areas, all uncovered areas at
5 this time.

6 However, we believe it starts us in that direction
7 with the purposeful strides of proving funds for programs
8 across the country.

9 This is the report to the Board. You have a
10 resolution which was presented by the Staff, but Mr. Chairman,
11 I really do not believe another resolution relative to the
12 budget is required in view of the fact the committee was
13 authorized to take that action and did so in the amount shown
14 in this tab 2.

15 Are there questions that I could answer as Chairman
16 of that committee if anybody would like to ask?

17 CHAIRMAN CRAMTON: Do you think it would be
18 desirable if the Board ratified the action already taken?

19 MR. STOPHEL: I think it would be appropriate, and
20 I move the Board ratify the actions of the Audit and
21 Appropriations Committee in submitting \$140,360,000 for fiscal
22 year '77.

23 MR. KUTAK: Second.

24 CHAIRMAN CRAMTON: Is there discussion?

25 MR. KUTAK: Mr. Chairman, an observation, perhaps,

1 that I looked at it.

2 I thought your subtitles are very creative.

3 Page 3, line 4; "Transportation of Things" --
4 do you need --

5 MR. BREGER: It is right underneath people,
6 transportation of people, travel.

7 MR. STOPHEL: Mr. Kutak, that happens to be on a
8 printed form that you must fill in. You don't have an
9 alternative. We would dare not change that title.

10 MR. KUTAK: I thought that was unusual.

11 MR. STOPHEL: Transportation of things is anything
12 but transportation of persons, primarily relocation of
13 furniture and expenses.

14 MR. KUTAK: I am sure it was justified anyway.
15 The account was modest.

16 MR. STOPHEL: Yes, it is.

17 CHAIRMAN CRAMTON: Further discussion on the
18 pending motion which is to ratify the action of the Committee
19 of Appropriations and Audit in submitting a budget request
20 to the Congress of approximately \$140.2 million.

21 Ready for the question?

22 All those in favor say "aye."

23 (Chorus of "ayes.")

24 CHAIRMAN CRAMTON: Those opposed, no.

25 (No response.)

1 CHAIRMAN CRAMTON: Your action has been ratified,
2 Mr. Stophel.

3 MR. STOPHEL: One other suggestion that came to
4 us, and we thought it worthy of action by this Board, was
5 to consider authorizing the deposited funds in banks other
6 than Riggs National, which we adopted, I guess, at our
7 first meeting as the place where we would deposit your
8 corporate funds.

9 It was then recommended to the Committee, and the
10 Committee recommended to the Board that we adopt resolutions
11 B and C which have been handed to you in looseleaf form, which
12 are the formal resolutions appointing United National Bank of
13 Washington and Hemisphere National Bank of Washington as
14 authorized depositors of the Corporation.

15 I might state that it is the Committee's under-
16 standing that we plan to use these banks not as our full
17 service bank. We will continue with Riggs for that purpose,
18 but this will give us authority to place funds at other
19 banks which we think is probably advisable in view of our
20 corporate nature.

21 One or both of these is a minority bank and perhaps
22 both of them.

23 Mr. Chairman, I move the adoption of resolutions
24 B and C, which are formal resolutions authorizing the deposit
25 of corporate funds in these two banks.

1 MR. SMITH: Second.

2 CHAIRMAN CRAMTON: I gather they are in the form
3 prepared by the respective banks.

4 MR. STOPHEL: By the respective banks, and the
5 signatories authorized are noted in the resolution.

6 MR. COOK: Were we solicited by the banks?

7 MR. STOPHEL: No, we were not. We selected them.

8 MR. THURMAN: Is it common to have as many as
9 6 people authorized to sign?

10 MR. STOPHEL: Nothing is common with us,
11 Mr. Thurman. I think that this -- of course, recognizing
12 that the Chairman and President are not presently available
13 in Washington to sign, and requiring two signatures, you
14 need these people to assure of having two to sign on any
15 day checks are needed.

16 MR. THURMAN: I have no objection.

17 CHAIRMAN CRAMTON: Is there further discussion on
18 resolutions B and C?

19 (No response.)

20 CHAIRMAN CRAMTON: All those in favor of resolutions
21 B and C, please say "aye."

22 (Chorus of "ayes.")

23 CHAIRMAN CRAMTON: Resolutions B and C are
24 unanimously adopted.

25 MR. STOPHEL: That ends our report, Mr. Chairman.

1 CHAIRMAN CRAMTON: Item 4 on the agenda is the
2 report by the Chairman of the new committee on provision of
3 legal services.

4 Mr. Thurman, we are delighted to welcome you back
5 from your world travels.

6 MR. THURMAN: I do not have any detailed lengthy
7 account, but you recall at the end of the last meeting, Roger
8 announced he was going to appoint Revius and Marshall and
9 myself as members of this newly created committee, the one
10 that Congress asked us to study to be made.

11 Section 1007(g) on serving, which, as you recall,
12 requires us to conduct a comprehensive study of the existing
13 staff-attorney program and alternative and supplemental
14 methods of legal services, specifying certain kinds.

15 We met this morning, had a few in the audience
16 here at the time, and we heard some suggestions by four fairly
17 knowledgeable people in this field.

18 One was Leona Vogt from the Urban Institute, who
19 has made a study of various alternative delivery systems, and
20 she gave us some helpful suggestions.

21 Prof. Judith Areen, Georgetown Law School, who
22 spoke largely in terms of the use of vouchers in connection
23 with housing and education programs.

24 Jules Bernstein, counsel for the International
25 Labor Union, who has quite a bit to do with and is

1 knowledgeable in the area of prepaid legal plans; and we
2 also had a report by John Dooley, representing the Project
3 Advisory Group.

4 We had a representative here from the General
5 Practice Section of the American Bar Association, another
6 from Commerce Clearing House, and two or three others in the
7 audience here.

8 There were no votes taken, no decisions made.
9 There will be, at least tentatively, a meeting of this
10 committee on Thursday evening, January 22, preceding the
11 sessions in Austin, and on that occasion there will be
12 several knowledgeable people present for other purposes, and
13 we intend to call them in and may also invite one or two
14 people with varying views on this matter of alternative
15 methods, supplemental methods.

16 The questions were raised as to when we might be
17 wanting some kind of advisory board to work with us, meet with
18 some other leaders of the American Bar and other groups.

19 No decisions were made.

20 We welcome the views of the other members of the
21 Board on the question whether we should have an outside
22 consultant to assist us in this particular field. I think we
23 all feel that this is not only a study that is mandated by
24 Congress, but one that can be a very interesting one, and
25 perhaps one of the most significant things this corporation

1 might be doing in the next year or so.

2 There was a statement of intent to have before
3 you, before the members of the Board, a written proposal --
4 a written analysis of where we might be going, and we ask the
5 representative from the Project Advisory Group who asked to
6 have a little time at the next meeting -- to have before each
7 member of the Board a written statement concerning their
8 views on this particular matter.

9 We would certainly welcome now, or anytime in the
10 future, suggestions and advice from any members of the Board.
11 This obviously has got to be a joint Board venture. We are
12 just the spearhead group of this work.

13 That is all I have to report, Mr. Chairman.

14 CHAIRMAN CRAMTON: Are there questions or comments
15 which you would like to address to the Chairman of the
16 Provision of Legal Services?

17 MR. BROUGHTON: What is the broad range as far
18 as the particular area of study of timetable when the
19 committee would be in a position to report to this Board?

20 MR. THURMAN: We are supposed to report to the
21 President and Congress within two years of last July 14.

22 I don't suppose that has to be a final and
23 definitive report. It presumably could be an interim report.
24 If we are going to conduct studies and experiments, they may
25 not be concluded at that time.

1 The statute goes on to say judicator, vouchers
2 which may be related to judicator, and which might be somewhat
3 separate; the prepaid legal insurance. Recommends
4 subsidization of some of these prepaid plans, contracts with
5 law firms.

6 I think one point was made that was a good one
7 this morning, that the Act specifies in terms of alternative
8 and supplemental methods of delivery of legal services.

9 The suggestion was also made that we consider how
10 you supply legal services to different groups in the
11 population. It may be young people, old people. It might
12 be mentally handicapped, a broad range of methods of
13 servicing the public.

14 And I don't think we really narrowed it down, Mel,
15 particularly as to what we might be considering. But
16 certainly before we get into the matter of spending money,
17 things of that kind, we are going to want to get the views of
18 the Board as to how broad or narrow the study ought to be.

19 MR. BREGER: If my memory serves, Sam, we had
20 informally agreed, at least in October, to put this matter
21 on the agenda for each meeting on the current basis, so
22 that there has been occasion, an opportunity for an
23 interaction and for presentation of views before we move to
24 narrow our focus in any way.

25 MR. THURMAN: You have a suggestion at this point.

1 MR. BROUGHTON: I was just seeking information.

2 MR. THURMAN: We consulted Mr. Brakar (?), who
3 has done a bit in the field of judicare. We want
4 someone coming to us in expertise in these various areas.

5 Are we going to be present at the Austin meeting?

6 CHAIRMAN CRAMTON: The indications at the last
7 Board meeting were that the date was convenient for all
8 those who were there at that time. Whether we will have an
9 eleventh member by the 7th of January, I think is doubtful,
10 but that is not within our control.

11 MR. BROUGHTON: The plan of the organization --
12 don't we have a position of director of research? Would that
13 be an area in which we would be directly involved?

14 MR. THURMAN: I would think so.

15 MR. EHRLICH: Very much so. That is one of the
16 problems. You can't go too far without that person.

17 MR. ORTIQUE: As the chairman of the committee
18 points out, I don't think the President or the Congress would
19 be disappointed to have an interim report. Certainly, even
20 in two years you cannot tell whether the voucher system is
21 going to work or the judicare program is going to work, or
22 whether it is supplementary. That is something else.

23 CHAIRMAN CRAMTON: Further comments or questions
24 about subject matter under consideration by the Committee
25 on Provision of Legal Services?

1 MR. THURMAN: I must just ask for a moment if
2 you have any observation of a Director of Research, or is
3 there some kind of advisory group sense of that one?

4 Do you have some concerns about that?

5 MR. BROUGHTON: I would suggest at some time the
6 position of Director of Research is had. As someone has
7 indicated, part of filling that position is very much involved
8 in the work of this committee.

9 Until such time as that gets underway, and we have
10 someone in that position working full time in the research
11 field, including what your committee is about, that we not
12 broaden the personnel parts of it by an advisory committee.

13 It seems to me once the committee has the
14 opportunity to get further along and gets the help of filling
15 the position, perhaps we could better define what additional
16 help we need, including whether you need the management
17 consultants or not.

18 MR. ORTIQUE: I agree with Mel. I think it would
19 be unfair to the committee to consider that, but even more
20 unfair to a person in charge of our research, and the person
21 would have to have a broad perspective of what we are trying
22 to do is to settle with him, this Board or the committee
23 with an advisory committee on that matter.

24 I am sure we would have to consult with a number
25 of persons, National Bar Association, American Bar Association,

1 who would have strong feelings about this, and suggestions
2 to make.

3 I would urge that we forestall.
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1 MR. SMITH: I think the creation of such would be
2 premature. I am not convinced it would ever be advisable. I
3 think we could get the input without the structure of an
4 advisory committee. But even then it would be --

5 MR. THURMAN: It seems to me this is one topic
6 that a great many leaders in the American legal profession
7 are concerned about.

8 MR. COOK: Aren't you in a position whereas if
9 you do not have a director of research you have nobody coordi-
10 nating any of this? And any input you have comes in with no
11 direction, let alone there is no direction with any evaluation
12 any group or organization has to make. I am not saying any
13 director of research should be completely or totally tied in
14 as to his political ideas or philosophy. It seems to me it
15 is imperative that you get him aboard as soon as you can.
16 Purely and simply, that is the key by which you coordinate
17 everything you do from there on out.

18 Again, I guess along with it goes the admonition
19 that if we don't get on in soon we just get that much farther
20 behind. I don't see any objection, very frankly, in asking
21 the Congress for an extension if it is necessary, and I think
22 it will be granted. But I don't think we ought to be unduly
23 dilatory in the meantime. But I think it is essential that
24 anything you do and any input you get --

25 MR. THURMAN: I think we are particularly fortunate

1 in having a President who is very interested in this particular
2 topic.

3 MR. COOK: He has got his hands full.

4 MR. THURMAN: He has made quite a study of it.

5 MR. COOK: Let's not stretch him too thin. He has
6 his hands full. I think we ought to have somebody on top of
7 this all the time and make the report, pursuant to the by-laws,
8 to him. As long as we know he is there as overseer, I feel
9 comfortable about it, but I think he will feel more comfortable
10 when that man is aboard.

11 MR. BROUGHTON: The President is very mindful of
12 getting this position filled as soon as possible with an able
13 person. When that occurs, then that individual, he or she,
14 could spot it and these other ideas could come later, it seems
15 to me.

16 CHAIRMAN CRAMTON: Further comments or discussions
17 on this subject?

18 (No response.)

19 If not, we move to Item 5, the report by the
20 Chairman of the Committee on Regulations concerning state
21 advisory council regulations.

22 MR. THURMAN: I think he just went out to get
23 the report.

24 CHAIRMAN CRAMTON: Mr. Kutak is momentarily absent.
25 Presumably he will return shortly.

1 MR. SMITH: You have all had the preliminary
2 draft of it.

3 CHARIMAN CRAMTON: While we are waiting, let me
4 suggest to the members of the Board that they look at Resolu-
5 tion D which is the resolution adopting states advisory council
6 regulations. I bring this to your attention because it is
7 my understanding Mr. Kutak and the committee would like to
8 change the resolution, and the President and I wonder whether
9 the first two paragraphs are really necessary. Whether the
10 third part is not sufficient all be itself. But whether or
11 not that is the case, it is my understanding that the resolu-
12 tion should read, "To authorize the committee on regulations
13 to consider comments that are received after or before
14 December 18, 1975, and make such changes in the resolutions
15 that we are considering, and presumably we will adopt today.

16 And then, they can go ahead and publish the regula-
17 tions on behalf of the Board, whether as final regulations,
18 whether or not further comments are received, and this would
19 not return to the Board unless the committee felt that the
20 comments were so far-reaching or raise merits that were so
21 novel it had to come back to the Board for further advice.

22 MR. SMITH: What you are saying, the first paragraph
23 would be all right; wouldn't it? It is the second one that
24 says, "If no further public comment is received." You want
25 to modify it so that even --

1 CHAIRMAN CRAMTON: The way it reads now, the second
2 paragraph applies to the situation where there is no further
3 public comment, and the third could be changed just to add
4 "subject to such revisions as may be approved by the committee
5 on regulations in light of further public comments prior to
6 December 18, 1975."

7 Mr. Tatel, perhaps you could consider the question
8 of the form of the revision of that resolution and we could get
9 a copy typed out.

10 Mr. Kutak, the members of the Board are prepared
11 to receive the report of the committee on regulations. In
12 any event, I have drawn their attention to Resolution D, and
13 raised the question of the procedure you and I talked about
14 delegating the authority to the committee on regulations to
15 pass on to receive comments. We are revising the resolution
16 in the light of the possible changing, but that won't affect
17 the substance of the regulation to which I gather you wish to
18 address yourself.

19 MR. KUTAK: I do. And the Board will have literally
20 momentarily, the new draft. It will be helpful in following
21 the discussions to refer to tab 3 which has that regulation
22 in it, which was drafted for publication about three weeks ago.

23 I apologize if I was not here to hear what was said,
24 but your committee, and therefore this Board, should properly
25 consider the record open until December 17 when the 30-day

1 notice period for comments duly expires.

2 I would be remiss, however, if I did not state
3 for the record and for the benefit of the Board, that your
4 committee, and therefore this corporation, have received
5 excellent responses from the public in response to this
6 notification. But we took more pains than simply to publish
7 the regulation, and I think it is important for the Board to
8 appreciate this fact.

9 In addition to publishing it, and therefore
10 soliciting comments from the public at large, we took the
11 initiative to circulate the proposed regulation to a wide
12 spectrum of organizations who we knew were acutely aware and
13 concerned about this matter. In addition, our staff,
14 temporarily as it might be at this moment, worked diligently
15 to be in contact with groups and individuals who were working
16 closely on this subject.

17 So I would not like the Board to feel, and cer-
18 tainly like to have the record reflect that the only comments
19 we reflected on and considered were such comments as those
20 that came in the mail. We had inputs from a wide variety,
21 and I may parenthetically add, balanced group of organiza-
22 tions, and I think -- I know we benefited substantially from
23 them.

24 The morning session was taken up with a hearing
25 at which your committee went line by line, paragraph by

1 paragraph, section by section, through the regulation. And
2 we then received comments, not only from members of the Board,
3 and also members of the committee, but also members of the
4 committee, and afterwards went into our first executive
5 session where we proceeded to completely redraft the regula-
6 tion on the basis of the inputs which have occurred, and that
7 is what you are going to have in your hands in just a moment,
8 the redrafted version.

9 Let me give you the highlights of it. Let me talk
10 briefly with you about it, and give you the overview. I
11 would like to indulge the Board's time on that, and I'll be
12 brief while, I hope, complete, because it is a very sensitive
13 regulation. It is the regulation that really puts us into
14 direct contact, elbow to elbow, so to speak, with lawyers
15 and clients, community-interest groups, and I think it is
16 therefore very important.

17 The first reaction I would like to make, we
18 considerably shortened it and said in fewer words, and I
19 hope better than what we had said in the draft -- I can't
20 resist saying that one of my colleagues said, "Gosh, Kutak,
21 how can you be so economical with words on paper and so
22 loquacious?" That was our goal.

23 MR. THURMAN: Is that a compliment, Bob?

24 MR. KUTAK: We did cut it down. We cut it down
25 to make it more clear, more concise, and I think equally

1 complete.

2 The first section of the substance is a definition
3 section, and I only assure the Board what we are doing is
4 repeating the section in each regulation because we are
5 publishing them and circulating them separately. We do
6 contemplate, after we complete all the regulation, sometime
7 in the ill-defined future, we will have an omnibus regulation
8 package of regulations and we'll pick up and eliminate all
9 of the repetitious definitions, and so forth.

10 We do have a definition section which is self-
11 explanatory.

12 The third section is one that refers to the
13 composition of the council, and it tracks the language of the
14 statute in providing for nine members. It provides that the
15 majority will be lawyers. It continues to keep the language
16 in the draft section that says the other members of the council,
17 hopefully, to the maximum extent possible, will be broadly
18 repetitive of persons concerned with the effective function-
19 ing of the Legal Services functions, taking that more generic
20 approach rather than to particularize in any fashion.

21 The next section, section 4, is considerably
22 shorter, and we think more coherent description of the pro-
23 cedure for the employment of the council members. Very
24 briefly it, of course, requires the governor to consult the
25 State Bar, for the law says that. But on the other hand, it

1 points out that he should consult other Bar Associations
2 and, of course, be sympathetic to the legal views that might
3 exist in the state.

4 The same thing goes with the nonlawyer members.
5 It is pointed out that they consult with groups organized to
6 promote the interest of eligible clients. But all of them,
7 whether lawyers or nonlawyers, should be those who are con-
8 cerned with, and have some relationship to, the functions of
9 this corporation.

10 The new correction that was made to the
11 regulation is a procedure for triggering a letter to the
12 governor that within the terms, when the term of office
13 expires -- and by the way, the terms are for one year,
14 statutory provided. Within 90 days the governor shall notify
15 the groups in the section so that there recommendations can
16 be solicited in getting replacements for the Board.

17 Next section, section five, relates to council
18 duties and restraints the original statutory functions without
19 broadening it. The purpose of the council is to notify the
20 council of apparent violations as defined in the Act.

21 The key is the next section, section 5(b), and
22 we there went at a much simpler, we think, and shorter route
23 for fulfilling the purpose of the functions, and I really
24 want to turn our attention to that.

25 I think if I were to ask you to focus on one

1 portion of the regulation, I want that portion to be focused
2 on as it seems to me very material, how this procedure in
3 processing complaints of alleged violations might happen. I
4 will make a full reference to that and come back. You all
5 will see the text.

6 We then move to the next section which goes to the
7 processing of the notifications of the violations by the
8 corporation, and I think section 5 really needs to be read
9 together, and I will make the same recommendations, that you
10 focus on that when you have the text before you.

11 Section 7 is again a very briefer section related
12 to the organization of the councils, and we ask for the
13 mechanical procedures to be followed with respect to the
14 employment of the chairperson and the designation of meetings,
15 of the notification of them, and also that the meetings be at
16 least annual. We have eliminated the negative language that
17 would imply that they could only meet four times.

18 Section 8 of the regulation provides for support
19 of the council, and they really go into the matter of expenses.
20 There we took language, as well as heed, from the chairman
21 of the appropriations committee in making certain we did not
22 on the one hand issue credit cards of this Corporation to the
23 councils in doing violence to his budgetary constraints, and
24 yet, on the other hand, we did not give with one hand and take
25 away with the other, which seems to undercut any kind of

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1 effective operation.

2 Finally, on section 9 we talked about an annual
3 report, and there we injected not only the necessity of an
4 accounting by the council, but we encouraged the report con-
5 tain comments, how best to provide legal services for the poor,
6 so that there could be an opportunity there for them to have
7 input to the corporation with respect to the operations and
8 conditions of the Legal Service program or this corporation's
9 program, for that matter, in the state.

10 The tenth and final section addresses a very
11 esoteric subject, multi-state recipients. There we took care
12 of a difficulty where you have a local status problem as
13 regards to where you are going to pursue complaints if they
14 are out of the state, and how you would notify headquarters
15 if it is in a place other than where the complaint might occur.

16 I pull this together, first of all, by saying we
17 have very valuable inputs in response to our call for sug-
18 gestions and comments. And your new draft is the beneficiary,
19 very directly, of those inputs. We also tried to reflect
20 sensitively the concerns that the Congress intended, and I
21 am sure, this corporation desires, about the councils, namely,
22 that they not be supernumeraries into which we threw some money
23 and not expect very much out of, but on the other hand, we
24 don't overburden them with tasks beyond what really could be
25 properly done.

1 With those general views, let me return to the
2 two sections that I really ask you to focus on, and that is
3 section 5 (b), and walk through the mechanics with you. I
4 think it is very important.

5 CHAIRMAN CRAMTON: Let the record show that members
6 of the Board have now received the revised regulation pre-
7 sented by the committee.

8 MR. KUTAK: Mr. Chairman, in that regard, you
9 see in there some things handwritten. We had to do something
10 with the typewriting symbol in the word "section." It
11 came out in a dollar sign.

12 CHAIRMAN CRAMTON: The American Red Cross deals
13 in the dollars, not in sections.

14 MR. KUTAK: It says "the purpose of the council
15 shall be to notify the Corporation of any apparent violation."
16 "Apparent violation" is a specific defined term in the
17 regulation. It means a complaint, alleged fact, which if
18 established, would constitute a violation of the Act, or
19 rules and regulations. The thought being there that the
20 council may very well get complaints that are, on their face,
21 utterly self-evidence to be nothing that violates the Consti-
22 tution or the Act.

23 For example, somebody might have taken offense of
24 the fact that the lawyer walked in with a green tie. I
25 wrote a complaint. Wearing a green tie would not constitute

1 an offense under the Act, and that could be stopped right
2 there. That is something on its face, and without merit.
3 Only to forward apparent violations to the Corporation.
4 Regardless, however, of whether it is a complaint or rises
5 to the gravity of alleged violations, the chairperson of that
6 council should notify the complainants, the Corporation, and
7 the recipients of any action that it takes on the complaint.

8 So that after this position occurs there is, in
9 effect, an accounting and there is not any question in any-
10 one's mind that they are waiting around for the other shoe to
11 drop and wonder if it is ever going to happen.

12 Certainly we stress the next point, which is if
13 they do decide that the complaint appears to be an alleged
14 violation, and they therefore send forward a notification to
15 the Corporation to that fact as the statutory obligation
16 provides, they are not passing on the merits and we have that
17 precautionary language in the next sentence, that any for-
18 warded notification does not constitute a position.

19 We also, in the next subsection, provided that
20 the procedures are not exclusive, that complaints may be
21 submitted directly to the Corporation, as well as to the
22 council, and indeed to the Corporation and the council there
23 is no exhaustion of remedy approach.

24 Likewise, the Corporation would inform the
25 complainant and the council, and recipients of those

1 complaints. They go directly to it.

2 So that is the procedure, members of the Board,
3 and I think it is simple. I think it touches all the basis,
4 and I believe it is fair to everyone involved. The duties
5 of the Corporation, on receipt, are likewise explicit, and
6 I wanted to call your attention to them. This is where
7 the grip is felt. Councils are reportorial bodies, so
8 to speak. The Corporation is the acting body. And the
9 merits contained in any complaint or any notification, I
10 should say, are to be investigated by the Corporation in
11 accordance with the Act and the rules and regulations issued
12 thereunder.

13 And of course we will have a panoply of procedures
14 eventually developed, but right now we have, as you know,
15 interim regulations with respect to processing of grievances.

16 The second point is that if we do process any sort
17 of complaint, the Corporation allows the recipients reasonable
18 time to respond; and thirdly, we again get the Corporation to
19 advise the council of any action taken with respect to any
20 notification made. Likewise, I think that it covers all the
21 basis. It squares with a sense of due process, and I believe
22 it is a practicable route to follow.

23 Mr. Chairman, I would submit this proposed regula-
24 tion may not satisfy everybody's desire. I think, however,
25 it is a balancing of very constructive inputs that have been

1 made to us, and we have a workable blueprint to offer to
2 our councils so that they can become productive entities for
3 this Board and for the program that is to be served.

4 I therefore would move that this Board tentatively
5 adopt this regulation, giving your regulations committee the
6 executive power to promulgate them only after the record is
7 closed and we have considered any further comments from the
8 public, and that we, of course, benefit by those inputs we
9 made. It would be my intention to inform not only the full
10 committee, but council, and the President in that regard and
11 at that time.

12 MR. SMITH: I want to second his resolution, but
13 I want him to reword it in connection with the proposal. I
14 don't like the word "tentative."

15 CHAIRMAN CRAMTON: May I read into the record,
16 which is distributed to you? It is as follows:

17 "Resolved that, subject to such revision as
18 may be approved by the Committee on Regulations in
19 light of further public comment prior to December 18,
20 1975, the attached regulations are hereby adopted
21 by the Board to become immediately effective upon
22 publication in their entirety in the Federal
23 Register, as regulations of the Corporation for
24 purposes of requesting, prior to January 14, 1976,
25 the Governors of the various states to appoint

1 state advisory councils pursuant to the mandate
2 of Section 1004(f) of The Legal Services Corpora-
3 tion Act of 1974."

4 MR. SMITH: If that is your motion, I will second
5 it.

6 MR. KUTAK: It is my motion, sir.

7 CHAIRMAN CRAMTON: The motion is now before you.
8 I suggest we address ourselves first to the merits of the
9 regulation, and after we arrived at an agreement about the
10 text of the regulations, then perhaps anything that relates
11 to the resolution and procedure.

12 MR. BROUGHTON: Mr. Chairman, I would like to move
13 to amend the motion so far as any attempt in both matters
14 are concerned that the Board declare a recess and let's,
15 each member of the Board, read this over for a minute. I
16 have difficulty with the light. It is not coming down from
17 above.

18 CHARIMAN CRAMTON: Let's take a five-minute break.

19 MR. SMITH: I want to take one minute before we
20 take the recess.

21 I am not sure, as Bob Kutak said, if you have
22 seen some of the suggestions that were forwarded to us.
23 There are a number of them that you won't find in here for
24 two reasons. One is some of the suggestions were contrary
25 to the Act, such as appointment of council members be longer

1 than one year, and others were so explicit we didn't feel
2 we needed to repeat them in the regulations.

3 Those two viewpoints account for the fact that
4 some of the suggestions were not incorporated. They were
5 either contrary to or explicit in the Act.

6 MR. BROUGHTON: You say the Act, and specified
7 areas of the Act, and it was not necessary to repeat them.

8 MR. SMITH: Yes. And there were things so clearly
9 contrary we did not put them in the regulation. It is
10 important to keep that in mind as to why some suggestions
11 were not adopted.

12 CHAIRMAN CRAMTON: Mr. Broughton, you want a
13 couple minutes to read the resolution?

14 MR. BROUGHTON: Longer than that.

15 CHAIRMAN CRAMTON: I suggest that we stay in place
16 rather than disperse, or we may --

17 (Recess.)

18 CHAIRMAN CRAMTON: The meeting will come to order.

19 Members of the Board have had a chance to read
20 the revised advisory council regulations. I think we are now
21 ready to pursue further discussion.

22 Before we do, I would like to call to your attention
23 the revised resolution D that has been circulated to you. The
24 fourth line, strike the word "upon" and substitute the words
25 "30 days after." So it reads, "-- adopted by the Board to

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1 become immediately effective 30 days after publication in
2 their entirety --." The reason for that, the law requires
3 a 30-day lag before rules become effective.

4 The revised one-paragraph Resolution D, fourth
5 line, strike the comma and the word "upon" and substitute
6 the words "30 days after," and I think that is the resolution,
7 which, as I understand, the committee accepts and is before
8 you. The merits of the resolutions are before the Board
9 for discussion.

10 Bob?

11 MR. THURMAN: Maybe we went over this a month ago.
12 The decision was made, I take it, that primarily the function
13 of the council is to receive complaints.

14 MR. KUTAK: Slightly more than that, but sub-
15 stantively that. That is what the law envisioned in its
16 narrowest terms. It does have a second function, and if you
17 look back on section 1603.9, in making a report to the
18 Corporation detailing its activities with respect to the
19 processing of the complaints and the forwarding of alleged
20 violations, it also invites, or at least permits views and
21 reflections on how best to provide services in that region,
22 but those --

23 MR. COOK: The thing that bother me about Sam's
24 inquiry, if, in fact, there is going to be a council to re-
25 ceive complaints, is that really going to give them any

1 overview to make a basis for a quarterly report relative
2 to suggestions on providing high quality legal service to
3 the poor?

4 MR. ORTIQUE: What you are saying, everything can
5 be negative as far as you are concerned.

6 MR. THURMAN: You can get able people to serve
7 on the council.

8 MR. SMITH: Except your are going to have people
9 under 1603 who are persons concerned with the function -- if
10 the people appointed meet the criteria of 1603. They will
11 have positive --

12 MR. KUTAK: They'll have input from other quarters.
13 Serving on State Bar committees, ABA committees, serving on
14 multi-disciplinary social groups, and they'll have opportuni-
15 ties to be aware of the quality of Legal Services programs and
16 the rendition of Legal Service operations through those
17 diverse backgrounds and contents.

18 MR. SMITH: I think this directive, as to criteria
19 to be used, will satisfy that there will be people that will
20 have positive ideas. I am familiar with the list of appointees
21 into states right now that are ready to come in. I know of
22 their background, experience, and attitudes, and everything
23 else, and the governors are just waiting to have the invitation
24 to submit those names.

25 CHAIRMAN CRAMTON: There is nothing, I gather, in

1 the proposed regulations which would prevent the Corporation
2 from calling on the state advisory council for advice,
3 assistance or help in connection with wetting up programs,
4 where the needs are the greatest in the state and the --

5 MR. KUTAK: Indeed there is not. As a matter of
6 fact, Mr. Chairman, we took the physically conservative
7 approach where we crawl before we walk, before we run, and
8 one of the more sobering aspects of this whole thinking was
9 the multiplication of any costs that start appearing when you
10 go beyond the contemplated function in the statute.

11 We think, for example, and Glenn, correct me if
12 I'm misspeaking here, but to hold this council to its minimum
13 statutory function may cost anywhere from \$200- to \$250,000
14 a year.

15 MR. STOPHEL: Could be in that range.

16 MR. KUTAK: And that, weighed against the utiliza-
17 tion of more dollars that would have to be spent if you add
18 more expense to them, such as staff and what have you, in
19 contrast to providing legal services, which is the function.

20 MR. COOK: Your (indicating Mr. Ortique) question
21 raising the negative, in my mind, of the narrowing of Sam's
22 remark -- let's enlarge on that though. If, in fact, you
23 view this council as a statutory monitoring function, then I
24 think there is a broad and not totally negative responsibility
25 because if, as you read it and kind of reflect on it, that

1 is the way I look at it. It is kind of an extension of
2 bureaucracy at the low level, but at least it is not an in-
3 house operation and therefore it gives you a good monitoring
4 aspect as to the local statutory procedure which does not have
5 to be totally negative, and the suggestions at the end of
6 the year can be as broad as the program itself and all in-
7 clusive as to limiting or extending or totally broadening
8 any concepts of it or any aspects of it, amendment to it,
9 anything you want.

10 As an evaluation of violations, the fact that
11 violations have to be corrected, the fact that there is a very
12 simple statutory way to correct and apparent violation, that
13 we are flooded with it. It seems to me the only evaluation
14 that this Board is going to get, as diverse as we are, is
15 to have this constant monitoring procedure.

16 MR. ORTIQUE: No question in my mind. My concern
17 is about the negative aspect. I think the point you make is
18 the one --

19 MR. COOK: I would not want state bar associations
20 to feel, "Aha, here's an opportunity to circumscribe the
21 activities of these programs." I think that -- May I say
22 where the corrective aspect to that is, there are fifty of
23 these boards and more. And to the extent that that would be
24 the desire of a particular council, could be very easily
25 pinpointed as a result of an analysis of other council

1 regions. I think the multitude of them is the best hedge
2 against that kind of thing occurring.

3 CHAIRMAN CRAMTON: Are there specific amendments
4 or proposals to the resolution?

5 The quesiton being discussed is most important,
6 but it has been thoroughly aired at a number of committee
7 meetings.

8 MR. SMITH: I think, Mr. Chairman, that what Marlow
9 and Revius have been discussing comes under the same category
10 as a lot of other things we could discuss about it, and that
11 is a possible extension of use of the council as the Corpora-
12 tion may decide from time to time. We may, in our experience
13 as we move along, want to call upon the council to do other
14 things. We might want to braoden these regulations for that
15 matter. That is a starting point.

16 Our Chairman said something about crawling before
17 we walk. The starting point of the minimal regulations, so
18 that there is a procedure outlined for these councils to
19 handle complaints in a uniform manner. Before they do any-
20 thing else we call upon them to do -- the first thing to do is
21 organize and be ready to receive complaints. That was their
22 intent. There has to be some structural organization and
23 procedure for them to handle complaints.

24 We might well, and I am sure we will, have to
25 broaden their input and call upon them to do other things

1 and modify -- I think we ought to view these as minimal
2 starting points in setting up the machinery and not try to do
3 the broadening today, because we have to have some experience
4 before we do know what we want to do.

5 MR. MONTEJANO: Initially, we should stay with the
6 statutory language if for no other reason -- even now I
7 question whether we can find, minimally, all these organiza-
8 tions. If we broaden the scope of the advisory council on
9 any matter at this time, I don't know where the money would
10 come from.

11 MR. STOPHEL: My estimate was based on four meet-
12 ings a year which is what the committee had in the regulation.
13 I think \$100 per council member meeting, and that would have
14 mounted. That lead to \$180,000 just on that. We know that
15 in the larger states, just traveling expenses is going to
16 exceed that in many cases.

17 Going back to just requiring one meeting a year,
18 we would limit our experience. We would have a better feel
19 after a year, and after two years, than we do now.

20 MR. COOK: Might I suggest to you you make a lot
21 of recommendations at the end of the first year under that
22 paragraph that state advisory councils are not necessary.

23 MR. KUTAK: On the other hand, you can't meet once
24 a year. If you really want to initiate a purpose having one --

25 MR. COOK: I insist you don't meet at all if there

1 are no violations.

2 MR. KUTAK: There is no process --

3 MR. COOK: To pursue what I have just finished
4 saying, if that were to be the case, at the end of a trial
5 period, then the best record for a Congressional recommenda-
6 tion would be the record that comes from the state council
7 saying this is not essential.

8 CHAIRMAN CRAMTON: Mr. Breger.

9 MR. BREGER: I apologize if this point was already
10 covered while I was absent.

11 I am unclear as to one point, Bob, about how
12 your committee would envision the advisory council working.
13 Would -- and this question goes to the number of necessary
14 meetings, more to the general understanding of the proposed
15 regulations -- if there is a complaint, would it be necessary
16 for there to be a meeting of the council before the complaint
17 would be forwarded to the Corporation, or could a complaint
18 which the Chairman thought fairly clearly was, if true, and
19 apparent violation, be sent off? If there has to be a
20 meeting for a complaint to be forwarded, there would be a
21 necessity for more frequent meetings if complaints are going
22 to receive proper response and treatment.

23 MR. KUTAK: I think the clear answer to that,
24 there does not have to be a formal meeting. If they just had
25 a meeting and a complaint came in, I'm sure they would

1 photocopy it, circulate it, poll the committee and say we
2 agree this is an apparent violation, let's push it off. I
3 hope they would work that way.

4 MR. SMITH: There would be degrees.

5 MR. KUTAK: At the beginning they would want to
6 feel their way and hold each other's hand. The analogy given
7 this morning it could be over done. It is not like grievance
8 committees on ethics in our profession of lawyers. There is
9 a great deal of wanting to kind of hear the feelings without
10 jumping forward too quickly.

11 CHARIMAN CRAMTON: 1607(c) calls for each council
12 to establish at its first meeting fair and reasonable pro-
13 cedures for its operation as it may deem necessary. In other
14 words, they have a great deal of discretion, and the question
15 what they want to delegate to committees, or the Chairman,
16 or circulate by mail, or telephone calls, is up to them, and
17 there is a procedure for all of the meetings that may be
18 necessary to carry out its duties.

19 If you have a series of complaints and they raise
20 questions on which judgment is involved, they are going to
21 have a meeting. But because of other things, because they are
22 apparent or not apparent, do not require formal meetings.

23 Does that answer your question?

24 MR. BREGER: I think so.

25 In that regard, I had two amendments which I hope

1 the Chairman would accept and the Committee would accept;
2 which would be to add at 1603.5(c), the word "directly" after
3 the word "submitted." It would be just clear that complaints
4 may be submitted directly to the corporation.

5 If that is, in fact, the case --

6 MR. KUTAK: I have no problem with that.

7 MR. BREGER: If that is, in fact, the case, it is
8 clearly designed to make it clear under our Chairman's
9 earlier principle using lay clarity rather than moral-like
10 obfuscation.

11 Similarly, what I consider a fairly perfecting
12 amendment at 1603.4 where we state that the remaining members
13 of the Council, who are not attorneys, should not be selected
14 after the governor has consulted with representatives of
15 groups organized to promote the interests of eligible
16 clients -- I suggest we change "organized to promote" to
17 "concerned with the interests of eligible clients."

18 The purpose of that is solely to give the suggestion
19 to the governor to consult not only the clients' counsel, but
20 also with groups such as NAACP, LARAZA, Tenants' Council,
21 and Community Council.

22 MR. KUTAK: Could I accept the amendment as it is,
23 consistent with the spirit? In fact, it is an improvement of
24 the text.

25 MR. EHRLICH: The intention under 1603.6(c), which

1 states, the one on funding --

2 1603.8:

3 "The Corporation shall appropriate annually
4 funds for reimbursement of actual travel expenses
5 incurred by members of the Council to attend
6 meetings of the council."

7 I gather the intention was to appropriate a set
8 sum of funds each year and allocate those funds among the
9 several states.

10 MR. STOPHEL: I have two suggestions on that
11 subsection.

12 One is at the beginning we add, "subject to
13 budget limitations" to simply reflect this is at our dis-
14 cretion, and the reasonableness is at our discretion and not
15 at Council's discretion, excuse me, Mr. President.

16 I remarked at the Committee we ought not to limit
17 this to meetings of the Council because the Council may have
18 functions other than its meetings that it wants Council members
19 to attend.

20 For example, going to a location for interview --

21 MR. COOK: You want a period after "Council" so it
22 reads, "--incurred by members of the Council"?

23 MR. EHRLICH: That was the intention, not to cover
24 all expenses. As a fiscal conservative, I am worried.

25 MR. ORTIQUE: It seems to me you get some governors

1 who want the Council to have some type of staff, office, some
2 type of place for keeping records, all that sort of thing.
3 You better put a halt somewhere.

4 MR. COOK: It wouldn't be the governor who would
5 want that, but the Council.

6 MR. STOPHEL: It is limited to actual travel
7 expenses. That is what it says.

8 MR. BREGER: I have one concern about that.

9 Although I understand the fiscal reasons, it would
10 mean in all likelihood that the Chairman of the Council would
11 not be able to be a client or a person who would be able to,
12 himself, incur the administrative expenses mostly to typing,
13 et cetera.

14 So by limiting reimbursement to travel, what we are
15 doing, I am afraid, is de facto insuring that people who take
16 on the officer position in the Council would be someone who
17 is able to pay out of his own pocket for the administrative
18 expense of the Council, and I think it is unfortunate, although
19 we may have to do it.

20 MR. COOK: My recollection was refreshed by consulting
21 with my attorney as to why I couldn't pick this up fast enough.

22 The concept of your Committee was we were reflecting
23 the House reports language that they envision travel expenses
24 would be reimbursed, and that is where we were fixed on
25 travel.

1 There is nothing in the law about assigning the
2 legislative hearings in the -- (Inaudible.) -- too, for
3 staff reports. And of course there has got to be some of
4 that, sending out notices, organizing.

5 We contemplated the regional office would provide
6 the services if they needed secretarial help. The regional
7 offices of the corporation would provide --

8 MR.COOK: How would you get the regional office
9 to give all the services if it is a violation against the
10 regional office?

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1 MR. BROUGHTON: How independent is this Council
2 supposed to be of this Corporation, and of the local office,
3 and of the regional office?

4 MR. COOK: It is going to be as totally pro bono
5 including expense.

6 MR. STOPHEL: I am in favor of making them more
7 independent, but not in favor of giving them much more money.

8 MR. EHRLICH: Bob, "The Corporation shall inform
9 the Chairperson of each Council of the funds available
10 annually for reimbursement of actual expenses incurred by
11 members of the Council to pursue Council business."

12 My concern is we do not imply more than what we
13 are prepared to do. I worry about conflict of interests.

14 MR. COOK: May I interject.

15 I think in some way this could be resolved. First
16 of all, this Council is going to have a chairman. It seems to
17 me that this facility right here can establish some kind of
18 a standard form for violations and so on. There is no reason
19 why -- you are not talking about an awful lot of money.

20 My only complaint in here, after all we are doing
21 a lot for this Corporation right here that just is our own
22 capabilities, and that is what we enjoy doing. People on
23 this Council are going to feel the same way.

24 My own request is to take out "attend meetings of
25 the Council."

1 Getting back to the point that was raised when a
2 chairman will say -- and I look at the States of Kentucky --
3 to a man in west Kentucky who lives in Paducah, will you go
4 down there and investigate that particular violation.

5 I think he ought to be reimbursed. If he is going
6 to go in his automobile and drive back, he is not going to
7 send you a billing.

8 MR. SMITH: One reason we put that limitation, the
9 e9g sample you give would be one reason to extend it beyond
10 the Council. The Council might say it is advantageous to
11 send the Chairman and to delegate Board meetings, or to the
12 American Bar Convention, or -- if you left it "meetings," it
13 could be wide open.

14 MR. KUTAK: I want to preserve Mel's point. I
15 think that the language which has been suggested give the
16 flexibility so we don't get cross-wise with any conflict
17 and we stay within the budegatary considerations.

18 To suggest that the language reads, "The Corpora-
19 tion shall inform the Chairperson of each Council of the funds
20 available annually for reimbursement of actual expenses in-
21 curred by members of the Council to pursue Council business."

22 MR. BREGER: I am very pleased with that language.

23 MR. COOK: Fine with me.

24 MR. BREGER: There is freedom for various possi-
25 bilities that may come up. Among them the point of clients

1 being officers of a council.

2 MR. COOK: Our Board is getting too big. A
3 recommendation has been made, has been amended --

4 CHAIRMAN CRAMTON: "The Corporation shall reim-
5 burse Council members for actual and reasonable travel ex-
6 pense incurred on Council business, and may reimburse Council
7 members for the other reasonable expense incurred on Council
8 business."

9 MR. ORTIQUE: I like that other language.

10 CHAIRMAN CRAMTON: I withdraw.

11 MR. ORTIQUE: It seems to me you better get on
12 top so that they know in front how much money, so California,
13 and New York, and the slickers from the north --

14 MR. COOK: Let me tell you about those fellows.
15 If they decide they want a national convention, you will be
16 trying to get one in Newark.

17 CHAIRMAN CRAMTON: Mr. Kutak.

18 MR. KUTAK: I will read the proposed substitute
19 language for Section 1603.8 (a). The Corporation shall inform
20 the Chairperson of each Council of the funds available
21 annually for reimbursement of actual expenses incurred by
22 members of the Council to pursue Council business."

23 CHAIRMAN CRAMTON: Would you be willing to insert
24 the words "and reasonable?"

25 MR. KUTAK: Yes.

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1 MR. THURMAN: I think it is implicit.

2 CHAIRMAN CRAMTON: It doesn't state that.

3 MR. BREGER: We wouldn't limit it to travel.

4 MR. EHRLICH: It would be the Council to come
5 forward to you with an amount. Without having any idea --

6 CHAIRMAN CRAMTON: You have heard the proposed
7 language. What we consider now is a motion moved and seconded.
8 Is there further discussion?

9 MR. SMITH: I second his original motion. We were
10 just agreeing to adopt that change in our motion.

11 MR. KUTAK: We accept and recommend it as part of
12 the package.

13 CHAIRMAN CRAMTON: The language in Section 1603.8
14 (a) is now being amended by the Committee.

15 MR. KUTAK: I have three changes that would be
16 part of my recommendation. One is what would be page 3, to
17 strike the first, "organize to promote," and insert in lieu
18 thereof "concerned therewith." That is 1603.4.

19 And then 1603.5 (c), to insert the word "directly"
20 after the word "submitted" on line 2 thereof. And to substi-
21 tute the entire subsection (a) in Section 1503.8 for the
22 language previously addressed.

23 With those amendments I would renew our motion to
24 accept the regulation.

25 CHAIRMAN CRAMTON: Are there further discussions?

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1 MR. BROUGHTON: Are we voting on this motion?

2 MR. SMITH: No. We have changed the original
3 motion.

4 MR. BROUGHTON: I still have a question, notices
5 and so forth going out by a reasonable period. I notice in
6 the report to us that as to the appointed process of the
7 governor, you have eliminated the word "encourage" and in-
8 serted the word "recommended" with respect to certain steps
9 and consultations he should take. What is the thrust of
10 this?

11 The point is this: we have had discussion about
12 the negative part of this, that is Council quoting complaints
13 and we have had discussion and Duane has written something
14 here he may want to present in a moment: the positive side
15 of the involvement of the members of the Council whereby they
16 could identify more of the legal services and be in a posi-
17 tion to make suggestions as to improvement, within respective
18 states.

19 It seems to me as this is now written, and not
20 necessarily the change from "encourage" to "recommend," that
21 you are in effect urging that the governor appoint people
22 directly involved, that is directly connected with the state
23 or city.

24 It seems to me that we may lose -- and I referred
25 to this a moment ago -- may lose the independence of the

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1 state advisory council if its membership becomes heavily
2 made up of people who are directly involved as opposed to
3 people who have a concern and a commitment to legal services,
4 but who may have a sense of independence so far as to be able
5 to evaluate a complaint and so far as to be able to evaluate
6 a program period.

7 It has never been clear to me the intent of
8 Congress as to this advisory council. The statute itself
9 says the governor shall appoint 9 members and have recommenda-
10 tions from a majority, and the majority shall be appointed
11 after recommendations have been received from the state bar
12 association, from among the attorneys admitted to practice
13 in the states, and that the membership of the council shall
14 be subject to reappointment and so forth.

15 As I see this, the governor is given a pretty
16 strong push in this direction that I mentioned a moment ago.
17 I may be reading it wrong.

18 I think if you are going to have a strong
19 advisory council, I think the advisory council can be a
20 tremendous thing positively for the promotion of legal
21 services, but I think that the advisory council needs to
22 have as its membership, and I know the statute doesn't say
23 the governor can't appoint anybody that is directly involved,
24 but I think if you have a council that is somewhat independent
25 of direct daily involvement, or legal services, I think you

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1 have a better selling point for the program in that way,
2 and I think you have a more objective evaluation than if the
3 council is subject to those, and that may not be the case.

4 In any type of complaint, it may be defensive
5 about any type of objective --

6 MR. STOPHEL: I think the point Mel is making
7 has to do with the word "experience." "It is recommended
8 that the governor appoint attorneys who have experience and
9 knowledge in the delivery of quality legal services to the
10 poor."

11 I am not sure who that would be other than the
12 staff attorney of the legal services program. I think better
13 wording might be "an attorney who has an interest in and
14 knowledge concerning the quality of legal services." There-
15 fore, I think I could qualify. I serve as Chairman of the
16 Legal Services Program. I have rendered free legal service.
17 I am not sure it was quality.

18 MR. KUTAK: Before we address the phrase or the
19 word, let's focus on the philosophy and what we had in mind.

20 MR. THURMAN: What does the Act say?

21 MR. KUTAK: The Act simply provides that the
22 governor shall have the power to appoint this council of whom,
23 and of which the majority must be lawyers, period.

24 Now, the coloration of that mandates, and that is
25 why we had to use the word "recommended," because we recognize

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1 the fact that the governor could ignore and appoint, I
2 suppose, people who had no interest in or experience with,
3 no liking for the organization.

4 He has the power, as the statute provided to
5 appoint the council of whom the majority must be lawyers, and
6 that's all.

7 What we were trying to do, Mel, by the language
8 saying it is recommended, is to recognize the sensitivity.
9 This is a governor we are dealing with. This is a sovereign
10 state of which he is chief executive, and he should get
11 some guidance from us.

12 What we would say the states and trust language,
13 the hortatorial language, what we would think would be the
14 direction he ought to look, but he is not governed by it.

15 CHAIRMAN CRAMTON: I didn't get the feeling they
16 were objecting to the hortatorial language as such.
17 Mr. Stophel is suggesting or asking whether or not the
18 Committee would accept "who have an interest in an knowledge
19 concerning the quality of legal services." It is all just --

20 MR. KUTAK: I wanted Mr. Broughton to know what
21 was running through my mind as I tried to direct the language
22 here and the regulation, but I agree with you. The word or
23 phrase I am not hung up on. "Experience," I would not read
24 narrowly. But if there is a concern, it could be read so
25 as to preclude someone --

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1 CHAIRMAN CRAMTON: Are you willing to accept the
2 proposed language which would substitute for the words "ex-
3 perience and knowledge in" which is grammatically wrong any-
4 way, for "who would have an interest in and knowledge of?"

5 MR. SMITH: Let's accept.

6 MR. KUTAK: Accept.

7 CHAIRMAN CRAMTON: Any more changes, Mr. Broughton?

8 MR. KUTAK: I was trying to get to it. I got the
9 sense that I was filibustering, but I didn't mean to fili-
10 buster. I wanted you to know my genuine feeling. I am
11 entirely --

12 MR. COOK: Mr. Chairman, let's follow it to a
13 conclusion. If you at take the language as it is now written,
14 first of all, a governor is going to choose who he wishes to
15 choose.

16 Two, if he chooses people that do not technically
17 fit within that requirement, who will raise the issue? The
18 issue will be raised by the very people that violations will
19 be filed against.

20 Therefore, it seems to me apparent that the language
21 ought to be changed so the issues can't be raised in that con-
22 text, because I think you immediately create the worst kind
23 of adversary proceeding within the concept of the council
24 and the program within the state. Because the only people
25 really to complain that these people are not knowledgeable,

1 and they are not working, will be those within the program.

2 Do we agree with that, or is there some real serious
3 arguments with that?

4 MR. BROUGHTON: As far as the complaints are
5 concerned, violations that would not necessarily come from
6 people within the program.

7 MR. COOK: No, no, no, no. I didn't say that.

8 I said that the violations would be against the
9 maintenance operation of day-to-day significant of the program
10 itself, which goes to its operation within the confines
11 of that program that we operate in that state.

12 CHAIRMAN CRAMTON: Mr. Cook, are you supporting a
13 specific amendment?

14 MR. COOK: I support the adoption.

15 MR. SMITH: I think we change the words "organize
16 to promote" to "concerned with" in lines 5 and 6, and we
17 should do the same with the end of line 11 and the beginning
18 of line 12. Strike the words "organized to promote" and
19 put "concerned with."

20 MR. COOK: Done.

21 CHAIRMAN CRAMTON: Change the words "organized to
22 to promote" in two places in which they appear on that page,
23 and the words "concerned with" substituted.

24 Are there further amendments?

25 MR. BROUGHTON: I was hearing Mr. Kutak out.

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1 MR. KUTAK: I think, Mel, that you understand I
2 was antagonistic of any notion here about trying to get
3 committees kind of preselected by our regulations. We wanted
4 to have committees that empathized with our efforts and do that
5 in some language that seem to help the governor when he was
6 making the selections.

7 I think, in focusing on the language, the kinds of
8 words you have proposed, really do make an improvement and I
9 would agree with them.

10 MR. BROUGHTON: My other point has to do with the
11 legislative intent so far as the Council is concerned.

12 I think you said you could speak to that. That was
13 part of the question also. That is as to the true nature of a
14 state advisory council.

15 MR. THURMAN: If the legislative intent wasn't to
16 have experienced people who are interested in and knowledge-
17 able of --

18 MR. COOK: That could be found in the legislative
19 history, and it is suggested, it is in the Senate report,
20 where they were again trying to impart some qualification, but
21 the real qualifications have to be looked at. The governor
22 shall appoint --

23 MR. THURMAN: That is all we are saying.

24 If you say "interested in and knowledgeable of,"
25 I am prepared to go with that.

1 CHAIRMAN CRAMTON: Are there further suggestions to
2 change?

3 MR. BROUGHTON: I would like to move we amend the
4 motion. We take all this with the changes that have been made
5 thus far, and we put it back on the agenda first thing
6 tomorrow morning.

7 We made quite a few changes here today.

8 MR. SMITH: None of any great substance.

9 CHAIRMAN CRAMTON: I worry about our coming
10 tomorrow morning if some board members have said we have to
11 leave 12 o'clock.

12 MR. BROUGHTON: I suggest we start our meeting 8:30
13 or earlier.

14 MR. BREGER: I second Mel's motion.

15 I second Mel's motion that if people want to
16 deliberate, or contemplate, and maybe talk about this, there is
17 no rush to judgment, and that as long as we put this first on
18 the agenda and move to a rapid vote in the morning tomorrow,
19 we would, with the aid of our parties, bring it to a decision.

20 MR. COOK: I would only say I would not want to
21 rush to judgment as it is my assassination.

22 CHAIRMAN CRAMTON: Would you accept we do it after
23 the public discussion?

24 Some people have been invited from the representa-
25 tive states and their views would be entertained at 9.

1 MR. COOK: I move we come in at 8:30 tomorrow
2 morning. I think if you digest these things tonight and
3 are satisfied with them, you can remove any problems with
4 dispatch. If you go after your formal meeting starts tomor-
5 row, this thing is going to go on at length and you will
6 lose a quorum here at 12:00, 12:00 o'clock.

7 MR. SMITH: It's imperative we take action at
8 this meeting. We have to take action before we transmit
9 to the governors.

10 MR. COOK: I am in support of Mel's motion.
11 Purely and simply, the language that appears in the Congressional
12 Record has been substantially modified by the proposals
13 plus the changes, and to delegate thirty minutes to it from
14 8:30 to 9:00 would be sufficient. I think, then, Mel, would
15 be sufficient. I would have serious reservations about
16 putting them --

17 MR. BROUGHTON: At the last meeting when this first
18 came to us, it was later part of the afternoon, November 7,
19 and I think all would agree we had a rather strenuous
20 Tuesday. I don't recall any discussion that Mr. Kutak
21 make a report. It was agreed to get the comments started,
22 it would go into the Federal Register, so that if we had any
23 discussion it was a very minimal discussion. In the mean-
24 while the committee has received a number of comments and it
25 has met very strenuously and diligently. And this is

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th first time that the board itself has had any discussion.
We all agree this is a very important matter, and this is the
purpose of my motion. This is the first discussion,
and we now come with a draft that the committee has substantially
revised and has recommended, and I respect that, but
I still would like to --

CHAIRMAN CRAMTON: Is there further discussion on
Mr. Broughton's motion?

MR. SMITH: Do we do it at 8:30?

MR. ORTIQUE: I think we ought to take the matter
up at 8:30 tomorrow morning. I see no reason why
it should take a lot of time once we have had a lot of time
to digest it.

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1 CHAIRMAN CRAMTON: Further discussion on the
2 motion?

3 Are you ready for the question?

4 MR. MONTEJANO: I think Mr. Broughton has made a
5 very reasonable request. I don't think there is any need for
6 a vote on this issue.

7 CHAIRMAN CRAMTON: Those in favor say "aye."

8 MR. STOPHEL: Since we are going to carry over,
9 I do have a suggestion.

10 I think it does add to a substantive part which,
11 while perhaps not essential, perhaps adds to at least the
12 looks of the thing, and that is in 1603.5 A, having to do
13 with the purpose of the council, that we add the following
14 phrase: "and to the reports to the corporation on such
15 matters having to do with delivery of legal services in the
16 state as the council may deem advisable."

17 MR. THURMAN: That opens up a whole can of worms.

18 MR. SMITH: It is almost in 1603.9.

19 MR. STOPHEL: Pretty close, but it tells them it
20 is one of the purposes.

21 MR. BREGER: 1603.5?

22 CHAIRMAN CRAMTON: Is there a seconder?

23 MR. BROUGHTON: I second.

24 CHAIRMAN CRAMTON: There is now a motion that this
25 amendment of proposed change be adopted.

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1 MR. BREGER: Although you are correct, that language
2 is suggested later on, Glee. 1603.5 states one purpose and
3 suggests it is the sole purpose, whereas the amendment allows
4 room for creativity and really states what we later don't
5 want to allow to happen will happen.

6 MR. SMITH: By putting it in the form and place
7 you are mandating it to the council, you are saying that is
8 the purpose and they shall do it. In 1603.9, it says they
9 may.

10 As it now appears, it gives them the opportunity
11 to do this if they desire in their report, but if you repeat
12 the language in the section you suggest, your mandating
13 them to do it.

14 MR. ORTIQUE: I am as concerned as Glee is.

15 Fifty states are going to feel that is a purpose.
16 I have no problem with it. But I would certainly suggest
17 that we leave it in the "may" category as opposed to a
18 specific purpose, because I think --

19 MR. THURMAN: Agreed.

20 MR. STOPHEL: We limit the "may" thing to how best
21 to provide quality legal services. That doesn't ask for
22 comments as to how it is being done.

23 MR. MONTEJANO: We had covered that point that you
24 raised and we decided not to include it under the purpose
25 as we felt it would be a mandatory function of the state

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1 committee which would create a financial burden on the
2 corporation, and it would go beyond the narrow scope that
3 we would like to have initially.

4 There would be expansion down the road. We would
5 like to narrow it as much as possible. The point you raise
6 could be taken care of if you put it, not in the purpose,
7 but at the end of 1603.9, and you could appropriate that
8 language: "The report may contain," and then incorporate your
9 language in there.

10 MR. STOPHEL: I would agree with that and accept
11 that. If we simply expand the planning of 1603.9 to include
12 "other than how best to provide," but include something along
13 the lines of that language for that purpose.

14 With the consent of the seconder, I will withdraw
15 the motion for the time being, and we will see if it is
16 appropriate to include in 1603.9.

17 MR. COOK: May I suggest your seconder withdraw
18 the first? Would you ask your staff to take your language
19 and work on some modification of the language so it can be
20 available to you in the morning so it is not a matter that
21 would drag out in the morning?

22 MR. BREGER: Hopefully we will get the movers and
23 seconders before we begin tomorrow.

24 MR. SMITH: If you put in the addition to .9 as
25 an addition to the "may" sentence.

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1 MR. COOK: If he submits the language to some of
2 our staff members that they might make some recommendations,
3 and it would be easy and expeditious.

4 MR. STOPHEL: I will be glad to do so.

5 CHAIRMAN CRAMTON: Are you willing to do that,
6 concur with that, Mr. Broughton?

7 MR. BROUGHTON: Yes, sir.

8 CHAIRMAN CRAMTON: I gather Mr. Stophel will
9 consult with the staff as regards the provisions on 1603.9.
10 Are there any changes?

11 (No response.)

12 CHAIRMAN CRAMTON: Are you ready to vote on
13 Mr. Broughton's motion to meet tomorrow at 8:30?

14 All in favor, say "aye."

15 (Chorus of "ayes.")

16 CHAIRMAN CRAMTON: We will consider the regulations
17 in their presently amended form at 8:30 tomorrow morning.

18 The next item on the agenda is item 6, discussion
19 of support center activities.

20 A number of people have, in advance, expressed a
21 desire to make brief statements to the Board and there is
22 at least one individual who is here today who cannot be
23 here tomorrow who has expressed a desire to address the Board.

24 With the unanimous consent of the Board, I would
25 like to invite William F. McCalpin, the Chairman of the

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1 Standing Committee on Legal Aid and Indigent Defendants,
2 and of the American Bar Association, to briefly address the
3 Board on any matter on which he cares to state a view
4 relating to support center activities.

5 Mr. McCalpin, I am sorry you can't be here tomorrow.
6 We fully understand. We are delighted you can be here today.

7 MR. MC CALPIN: Thank you very much, Mr. Chairman,
8 and members of the Board.

9 I am grateful to you for affording me the
10 opportunity this afternoon, and I regret that a personal
11 problem requires my being in St. Louis tomorrow morning.

12 I trust that you will understand if I leave very
13 shortly after the conclusion of my remarks for National
14 Airport, hoping I get a plane out of here this afternoon.

15 The American Bar Association has, for at least
16 11 years since the historic resolution opinionated by now
17 Mr. Justice Powell, expressed a deep and abiding interest
18 in the provision of legal services for indigent citizens of
19 these United States.

20 We have frequently, by resolution of our policy
21 making bodies -- the Board of Governors and the House of
22 Delegates and sometimes by statements before the Congress
23 and in other remarks by the President of the American Bar
24 Association -- expressed as our fundamental goal and purpose
25 what I am sure is exactly your fundamental goal and purpose

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1 under the Act: to provide efficient, effective, legal
2 services of as high a professional caliber as possible to the
3 greatest number of indigent citizens of this country who
4 can use and profit by them as is possible within the resources
5 available.

6 We frequently stated this as our human attempt
7 within the limits of our abilities to make effective the
8 realization of the goal of equal justice for all.

9 What we are considering here in terms of backup
10 centers, support services for legal services, are means by
11 which we may arrive at that goal, and I am happy to have this
12 opportunity to express a few concerns and thoughts with
13 you as you move towards the implementation of that phase,
14 through the adoption of regulations which will govern you
15 and the agencies whom you fund.

16 I need not remind this Board of the background
17 against which this problem arises. Legal service operations
18 all over the country are not only serving all of the people
19 who require their services, but they are actually turning
20 them away through the various stratagemms and devices such
21 as limiting office hours or closing up on certain days of
22 the week. -- indeed, I know of one office that takes new
23 clients only between 2:00 and 4:00 on Wednesday afternoon --
24 or through the limitation of kinds of service representation
25 that may be provided.

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1 And even in spite of measures such as this, there
2 is, I think, a reasonable apprehension that the quality of
3 legal services which are being provided, because of the sheer
4 numbers of people being seen, is sometimes not up to the
5 standard that each of you and I would demand and insist upon
6 in our own legal offices.

7 The very human problem is that you tend to take
8 on, because of the great need, more than you can effectively
9 provide, and that is a terrible problem among all of us as
10 we address the problems which are before you.

11 How can we solve them? It is easy to pay more
12 money, offices, lawyers, but is this an effective, efficient
13 way to solve those problems? We can't realistically staff
14 our offices to meet the peak demand, and yet we know that
15 there comes into all these offices at one time or another
16 a particular case or a particular client which imposes an
17 inordinate demand upon the resources of this system.

18 Maybe I can make this a little more meaningful,
19 if you pardon the personal reference. If I just take two
20 kinds of everyday sorts of examples.

21 Two months ago, our office was approached by
22 a national title insurance company which maintains house
23 at the local, the regional, and the national level, and they
24 said they were inundated with problems beyond the capacity
25 of their staff to handle, and the very words they used to

1 us were would we operate in an extended house council
2 capacity for that firm.

3 In that two months' time, we have now three members
4 of our firm operating from 25-75 percent of their time handling
5 the problems of that client.

6 Indeed, I spent an hour with them in our office
7 before I got to the plane this morning to come here.

8 Perhaps more appropriate in this context is the
9 situation we had a couple of years. A nearby Illinois
10 community found itself named as defendant in at least four
11 actions brought by the local legal aid agency in the United
12 States District Court more than 100 miles from that community.
13 These were actions brought under the Civil Rights Act, and
14 invoking constitutional provisions.

15 That community had a single part-time city attorney
16 who could in no way cope with the complexity and the volume
17 of the litigation which with he was faced.

18 Again, they came to us. She sent us the pleadings.
19 We analyzed them. We prepared memoranda of the issues,
20 we prepared motions, we briefed motions, responsive pleadings,
21 and occasionally we appeared in court to assist that particular
22 client.

23 We were a backup center, a support center for
24 those operating legal aid, operating laws rendering legal
25 services to clients.

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1 And I would suggest to you that this is an
2 appropriate problem, an appropriate approach to be considered
3 by this corporation when it addresses the problems of the
4 operating legal aid agencies across the length and breadth
5 of the United States.

6 We are familiar, more or less, with the way the
7 backup centers have operated in the past, but let me suggest
8 to you that that is not the only way. That is not the only
9 model.

10 Suppose for a moment that 4 or 5 legal aid
11 agencies in a given state or region were to decide that the
12 effective and efficient way they could provide legal services
13 was to limit them to an office practice and refer out all
14 contested matters, and suppose there was then created in that
15 area a single operating legal assistance organization which
16 would do nothing but represent people in contested matters;
17 an obvious parallel to the solicitor-barrister system.

18 I suggest to you there is no prohibition of that
19 type of arrangement under 1006(a)(3) of the statute which
20 you administer, and indeed your experimentations with that
21 model may be entirely appropriate under 1007(g) to which you
22 have referred here earlier this afternoon.

23 A system in which a local legal aid office would
24 refer out not all litigation but particular types of
25 litigation to an operating entity, an operating litigation

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1 entity nearby, would not be different in kind or substance,
2 but only in degree.

3 And I suggest to you that that parallel is not
4 unknown even in the private practice in this country today.
5 As Mr. Kutak will remember, we looked at something called the
6 Barnett Firm in Southern California, on the availability
7 committee of the American Bar Association, which is a partner-
8 ship of partnerships.

9 Each one practices in a specific area with a
10 common intake, and this indeed is another parallel which you
11 might follow, and one I suggest you consider seriously.

12 I submit nothing in 1006(a)(3) prevented this
13 corporation from funding specialized or generalized regional
14 or national programs to provide a particular kind of service
15 to identified, eligible clients with a specific problem on
16 a referral or co-counsel basis.

17 And I would hope that your regulations, when you
18 get to them, would provide for that kind of opportunity.

19 What, then, is the scope and function of 1006(a)(3)?

20 Without minimizing in any way the importance of
21 the training and technical assistance aspects of the
22 clearing house review function under subsections (b) and (c),
23 the real problem as we see it in terms of providing legal
24 services to people, arises with the interpretation of sub-
25 section (a) and the word "research."

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1 I point out to you that that word is neither
2 defined or limited in the statute. Everyone, I think,
3 agrees that the section cannot be construed to preclude a
4 local, operating legal aid agency or lawyer that has a client
5 with a problem from researching that client's problem.

6 Anything else would be entirely contrary to the
7 fundamental professional responsibility and duty of the
8 lawyer.

9 If 1006(a)(3) must be interpreted that way for
10 a local lawyer researching a client's problem, how can it
11 be interpreted differently for a referral lawyer researching
12 the same problem for the same client in a different office?

13 Obviously, reading the legislative history, we
14 know that 1006(a)(3) was aimed at nonclient-related, think-
15 tank, type of operations, people who had the solution before
16 they had the problem, sometimes called "social engineers,"
17 sometimes characterized as a solution in search of a client.

18 I am, of course, not advocating that the
19 corporation get into that kind of operation at all. What I
20 am suggesting is that at the core of the responsibility of
21 this Board under the Act is the provision of the most efficient
22 possibly legal services to a client with a problem.

23 And I am suggesting also that there is nothing
24 in 1006(a)(3) which prevents you from funding operations to
25 provide that service whether they are located in a local

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1 community, or regional, or nationally, so long as they are
2 representing a client with a problem.

3 And I would suggest and hope that your regulations,
4 when prepared, would reflect that point of view.

5 Thank you very much, Mr. Chairman.

6 CHAIRMAN CRAMTON: Gentlemen, do you have questions
7 for Mr. McCalpin?

8 MR. BROUGHTON: Under (3), you mention research,
9 training and technical assistance, and it serves as a clearing
10 house of information.

11 Is it your view it is the same as --

12 MR. MC CALPIN: I have a conceptual difficulty in
13 talking about a clearing house activity related to a specific
14 client. It seems to me when it is not related to a specific
15 client, the statute says it has to do with a grant operation
16 in-house as opposed to a grant in contract.

17 I think when you have an activity, research is
18 easy for me to visualize. Technical assistance, I am not
19 sure I know what that means.

20 My concern is the client with the problem.

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1 MR. BREGER: Mr. McCalpin, it is your concern
2 or the concern of our committee that these particular
3 effective support functions continue to exist, or does
4 your concern also go to where the support functions are
5 located; that is to say whether they are to be in-house
6 or by some type of grant or contract?

7 MR. MC CALPIN: If you take the kind of
8 situation that I suggested, a regional litigation center,
9 or the kind of parallel that I posed from my personal
10 practice, I think that is 1006(c)(1) of the Act precludes
11 the corporation itself from engaging in that kind of
12 activity. There that kind of client representation could
13 not be done to this corporation.

14 MR. BREGER: Your concern would be a statutory
15 one. It wouldn't be a concern on any principle than your
16 rereading of the statutory language.

17 MR. MC CALPIN: I do have a concern. I think
18 the statute is wise in that respect because I think that
19 it is important that there be not only effective
20 independent counsel, but that there be the appearance
21 of that. And I am concerned if a client comes in with
22 a problem against the Social Security Administration, he
23 goes to the local legal aid corporation. He knows they
24 are local and it is a home kind of position, and he is
25 comfortable being represented by them.

1 If they say this is a big serious problem and
2 we have to go and go to the corporation funded by the
3 corporation that sits in Washington, D.C, I am worried
4 about the appearance of that as far as the client. He
5 is going to say I don't know about the operation now.
6 That same government I have a problem with is going to be
7 sitting right there on my case, as it were.

8 I think that this separation of the actual
9 representation of the client from this corporation,
10 independent, yet though as close as it is to the federal
11 government, is a wise provision.

12 MR. BREGER: Thank you.

13 CHAIRMAN CRAMTON: In the views you are
14 expressing, you are expressing your personal views, the
15 views of the committee, or views of the American Bar
16 Association?

17 MR. MC CALPIN: Of the Standing Committee on
18 Legal Aid of Indigent Defendants, and that committee
19 operates under express grants of approbation of the
20 Board of Governors of the American Bar Association to
21 express the views of the association to this Board in
22 respect to the regulation concerning the activities of
23 the Board.

24 MR. BROUGHTON: You mean that the expression
25 by the committee of which you are chairman constitutes the

1 expression by the Board of Governors based on the authority
2 extended to the Board of Governors?

3 MR. MC CALPIN: In May of this year the Board
4 of Governors delegated to this committee the responsibility
5 of representing the Association before this Board in terms
6 of the draft of the regulations of the corporation.

7 MR. THURMAN: Bill, as much as you know about
8 the various centers in the country, you envision they are
9 at the present time engaging in some activities that you
10 say are necessary for twentieth century practice of law
11 and are not forbidden by this particular provision? Also
12 they may engage in activities that come under the
13 prohibition?

14 MR. MC CALPIN: I don't have a detailed
15 knowledge of the operation of the existing centers, and
16 let me say that in coming to the answer to your question,
17 that I do commend this Board for the approach that it is
18 taking, the study that I understand has been commissioned
19 of the existing centers to find out exactly what they do and
20 this kind of discussion here to try to explore all the
21 ramifications and the problem.

22 It is my genuine understanding that some at
23 least of the backup centers as presently constituted provide
24 services of the type which I believe can and should continue
25 to be permitted by this Board, and they may well provide other

1 services more generic in nature, not client-related,
2 which would have to be brought in-house.

3 MR. BROUGHTON: By virtue of the Act?

4 MR. MC CALPIN: There are certain types of
5 things under the statute that cannot be done except by
6 grants or contracts.

7 MR. COOK: David and John, I got their
8 memorandum that they gave to us, and I am sure you
9 read it, Bill. This applies to 1006.

10 The question I want to ask you, which gives
11 me trouble, is in reading this I get the specific
12 distinction shown between the phrase -- get these in your
13 mind so you give me your analysis "specialized legal
14 representation." and the fact that an in-house function
15 is the training and technical assistance.

16 Now, the position in this particular paper is
17 that nowhere in the Act do they treat the phrase, or
18 treat the aspects of the specialized legal representation
19 where that can be done and by contracts.

20 My problem in reading 1006(a)(3), (a), (b), and
21 (c), I read it "To undertake directly the following
22 activities relating to the delivery of legal assistance"
23 and then it goes on to say "research and technical assistance,
24 and serve as clearinghouse for information" my problem is
25 I can't see the technical distinction between specialized

1 and (3), "to undertake directly and not by grant or
2 contract activities relating to technical assistance
3 on the delivery of legal services" and that technical
4 assistance is technical legal assistance which could be
5 interpreted to mean a specialized legal interpretation.

6 I think we are looking for phrases and the
7 fact that words mean different things when in effect you
8 can put them in a context to mean the same thing.

9 MR. MC CALPIN: Senator, the distinction I
10 would make is whether you have got a client or not, it
11 seems to me when you talk about specialized representation
12 you have got to have a client.

13 You are not representing a thing or a concept,
14 or an idea. You are talking about representing a client.
15 So that when you were authorized to make grants for
16 specialized representation, you are talking about a
17 guy who has got a client with a problem that needs solution
18 through a recognized process, judicial or administrative.

19 When I look at the phrase, to paraphrase
20 relating to the delivery of legal service, training and
21 technical assistance, I don't think that that necessarily
22 or may be even under any circumstances relates to a
23 client.

24 I think that that relates to the training of
25 the people who might some day have a client or technical

1 assistance in the operation of a program, but I don't think
2 that that necessarily means training of a lawyer or some-
3 body to handle a specific problem of a specific client.

4 I don't know frankly whether the technical
5 assistance means technical assistance like an expert
6 witness.

7 MR. COOK: I don't have any trouble with it
8 until I am faced with the fact that that language and the
9 language specialized legal representation is altogether
10 different and there is nothing about them the same.

11 Then I have trouble with my own interpretation
12 with what technical assistance means. I don't until then.

13 MR. MC CALPIN: I agree with you that the
14 question technical assistance could obviously be of several
15 kinds. I suspect your regulation is going to have to draw
16 some distinction between or among those kinds.

17 If you are talking about technical assistance
18 to the St. Louis Aid Society in the operation of its
19 program, how to be a more effective business entity, if
20 you will, or a professional entity, how to be a better
21 law firm, that is one thing.

22 If you are talking about technical assistance
23 in terms --

24 MR. COOK: Suppose you are talking about
25 technical assistance in regard to a particular case, then

1 you are talking about specialized legal representation.

2 MR. MC CALPIN: Then I think this. There is a
3 gentleman here with a real concern about the mental
4 disabled, and I think that it is true, that is an area
5 where specialized technical assistance may be desperately
6 needed by lawyers in the field who have no particular
7 expertise and training in that respect.

8 The question is whether in the confines of
9 a particular case the corporation can fund by grants or
10 contract an entity to provide that assistance, or whether
11 it must do it in-house.

12 If you are going to do it in the confines of a
13 particular case, you run into 1006(c) again. You are then
14 participating in litigation or perhaps administrative
15 activity on behalf of a particular client.

16 If you are going to do it in behalf of a
17 particular case, you may have to do it by grant or contract.
18 If you do it generically, not related to a specific client
19 problem, then I think you have got to do it in-house.

20 CHAIRMAN CRAMTON: Are there further questions?

21 MR. BROUGHTON: The committee, since the adoption
22 of its Act, as I understand, considered the language in
23 some of the sections that you have referred to. Has your
24 committee or subcommittee done any evaluation of the present
25 existing centers in any respect as to what they are doing

1 and the type of work they are doing?

2 MR. MC CALPIN: Let me give you two answers
3 to that question.

4 First of all, both during the course of
5 legislative enactment and subsequently, the committee
6 has intensely studied the Act and it had a role in
7 considering draft regulations to be proposed to this
8 group.

9 We have been intimately involved in the
10 detail of the Act.

11 Secondly, as a committee, we have not undertaken
12 to analyze or investigate the operations of any of these
13 support centers.

14 However, some members of the committee, by
15 virtue of their activity of the committee, and in other
16 contexts, have personal knowledge of some of the backup
17 centers.

18 It is a spotty sort of thing, and I would not
19 express any expertise on that.

20 We know something of some of them. We have not
21 undertaken to look at all of them such as you have on a
22 broad basis.

23 CHAIRMAN CRAMTON: Thank you very much,
24 Mr. McCalpin.

25 MR. MC CALPIN: Thank you. I am grateful for

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2 this opportunity.

3 CHAIRMAN CRAMTON: We have about ten more minutes
4 this afternoon, and there are several people to express
5 their desire to speak. There being further opportunity to
6 address the board tomorrow morning at 9:00 o'clock, would
7 Mr. Veney or Mr. Silverberg like to address the board at
8 this time briefly?

9 MR. VENEY: I was going to ask the board's permission
10 mission to ask Mr. McCalpin a question.

11 MR. MC CALPIN : If you can get me to the airport
12 on time, I would be happy to stay.

13 MR.. VENEY: I would rather address the issue
14 tomorrow.

15 CHAIRMAN CRAMTON: Mr. Silverberg?
16 Would you please identify yourself?

17 MR. SILVERBERG: Herbert Silverberg, presently
18 employed by the American Bar Association as director
19 of its Commission on Mentally Disabled.

20 I think Mr. McCalpin, were he here, would
21 rather I did not come this afternoon. I am concerned to
22 talk with you as a lawyer in charge of Legal Aid programs
23 that rendered legal assistance to the disabled and who finds
24 this area to be -- maybe I am being unduly chauvenistic --
25 most disregarded, classically, by your predecessors and your
self in planning for the operation of the Legal Services

m2 1 program. Part of that is a factor to start with. On the
2 list of 17 back-up centers that you folks have had an opportu-
3 nity to visit, there appears none on behalf of the mentally
4 disabled. We are forming one in the American Bar Association.

5 Among all the substantive areas that have been
6 considered routine business of OEO Legal Services or
7 Legal Corporation, the mentally disabled have been ignored.
8 We have heard of Indians, minorities, tenants' substantive
9 rights -- you know the litany --.

10 There, as we see your budget plans go down the
11 road, and your back up studying down the road, as we see
12 concerns about substantive areas continue to take form as
13 they should, we see the mentally disabled ignored, or at
14 least substantially unplanned, and so this is simply the first
15 opportunity that I have had to come and nag you about this
16 subject. I hope to continue to do it in the back center
17 context, in the budget context, in the in-house planning, and
18 out-house -- forgive the express -- context. We need to
19 take into account this group and not only those groups
20 historically that have been taken into account. I urge your
21 attention to the ABA Committee on Mentally Disabled as a
22 back-up center recourse in this field for whatever way you
23 can use it. I urge your board, your committee, and your
24 staff's simple recognition of the mentally disabled as a
25 client group that has heretofore not been served as it should

1 be by you and your predecessors.

2 MR. COOK: Your point is well taken. I am not
3 trying to get out from underneath your criticism of the board.
4 I think we ought to put it in context. And I think it will
5 help you. I think first of all, somewhere in this change
6 whether it is at the board or where it is, the initiation
7 of a program that you are vitally interested in should com-
8 mence. Where that particular avenue is, is something that
9 together with you, we should reserve, and develop and find.

10 This budget is made up from the request that first
11 commenced from the field. The overhead expenses of this
12 board and its operation at the national staff level are
13 probably some of the smallest percentages of expenditures
14 in relation to total expenditures of any governmental or
15 semi-governmental function that there is. Because the
16 legal problem that you discuss is in all 50 states, its
17 origination basically should come whether from us, I think pro-
18 bably so, but it should come from that regional aspect and get
19 its way into our budget.

20 For your edification, the budget of 140 million
21 that you heard today, you have got to remember we have been
22 under a continuing resolution at 71-1/2 million dollars for
23 4 years. If we finally got up to 88, and to jump from 88
24 to 140, is a Mary Poppins exercise, and we all look forward
25 to it. I don't mind taking a big umbrella in my hand, but
you have to to understand the concept we are dealing with.

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1 Therefore, I don't think there would be any effort
2 of anybody on this board to deny what you have stated is
3 a justifiable function of the Legal Services Corporation.
4 You have got a lot of work to do. Not that we are going to
5 deny it. Not that we are going to get it under the rug.
6 While you are here, and if you are going to be here tomorrow,
7 Latch on to the regional people that are here under Legal
8 Services and begin your job.

9 I don't think Bill Mc Calpin would have resented lis-
10 tening to what you had to say at all because I think if we
11 can get it into this budget, and there is a place for it, we
12 had better get it there. There are people that are being
13 ignored everyday in this country for several reasons. One of
14 which because the programs can't afford them, and they try
15 not to get anguished over the fact they are ignored, but they
16 know they can't do anything about it if they take it on,
17 or nobody has raised the question and raised that hue and
18 cry strong enough to get it on that agenda.

19 So, I would only say this board will never deny
20 you that forum. But there is a lot of work to be done to get
21 it in this budget.

22 MR. SILVERBERG. I appreciate the remarks and
23 thank you for your guidance. I should point out Mr. McCal-
24 pin and I had some concern today. The ABA House of Delegates,
25 at its annual meeting, passed a resolution specifically

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1 directed to the American Bar Association, to call to the gentle-
2 men's attention formally the ABA specific concern with the
3 mentally disabled and those institutions, and their access to
4 Legal Services, and that so far as I know, has not been done
5 and was not on Mr. McCalpin's agenda to do.

6 MR. COOK: Can a member of the ABA, my address
7 is this: I have had no communication from the ABA on this
8 subject and I look forward to the resolution that they
9 brought, and concluded, and opted, and I will read it with
10 a great deal of interest when I get it from them.

11 MR. BREGER: Many of us are aware of the resol-
12 ution, but may not have seen the specific language.

13 MR. BROUGHTON: What action so far has been
14 made as far as the OLS?

15 MR. SILVERBERG: It's been very sporadic. We
16 attempted unsuccessfully over 2-1/2 years to institute any
17 system of referral to the corresponding OLS for any clients
18 under any circumstances who happens to be mentally disabled
19 and, we could not do it. The record is well documented.

20 For psychological reasons and others, they have
21 simply all sorts of good reasons to continually put this
22 group at the bottom of the list. I know for a fact that,
23 as Senator Cook points out, other people have had to be
24 turned down. It is very convenient to turn down this entire
25 class. They can't come Wednesday from 2:00 to 4:00.

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1 They are ins an institution. This class, for reasons I don't
2 need to go into at great length, have simply been discrimin-
3 ated against even more than any other denied services from
4 your predecessors.

5 MRA. BROUGHTON: Are you familiar with the program
6 that Mr. Dooley has in Vermont in the area of assistance
7 to the mentally disabled? This falls under a state contract.
8 It doesn't borrow any funds from this corporation or OLS.

9 MR. SILVERBERG: We are in touch with every
10 program unde the ABA auspices disabled program. We are try-
11 ing to pull together what we can into a resource center of
12 our own. We are poised with one foot on the dock to get
13 on the boat and the boat is pulling upstream very quickly
14 without us, and we are concerned to jump on before it pulls
15 away.

16 MR. BROUGHTON: I commend you for that concern.

17 MR. COOK: I commend you also.

18 CHAIRMAN CRAMTON: Without objection we stand
19 adjourned until 8:30 tomorrow morning.

20 (Whereupon, at 4:45 p.m., the meeting was ad-
21 journed, to reconvene at 8:30 a.m., on Friday, December
22 12, 1975.)

end 6A

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