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RETURN TO CORPORATION
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1 LEGAL SERVICE CORPORATION
2 BOARD OF DIRECTORS MEETING
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5 HELD AT:
6 Rustler's Lodge
7 Alta, Utah
8

9
10 Friday, July 23, 1976
11 9:00 A.M.
12

13
14 BEFORE
15 THOMAS ERLICH, PRESIDENT
16 ROGER C. CRAMTON, CHAIRMAN
17

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22 REPORTED BY:
23 LINDA HOOPER
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M O R N I N G S E S S I O N

BEGINNING AT 9:00 A.M. JULY 23, 1976

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3 CHAIRMAN CRAMTON: The meeting of the Board of Directors of Legal
4 Services Corporation will come to order. This meeting will follow
5 a different pattern than most of our meetings. Not only that we
6 are meeting outside Washington D.C. for the second time in the his-
7 tory of the board, but the main purpose of the meeting is to add-
8 ress itself to the more general and long issues that face Legal
9 Services in the United States. In other words, it's a future plan-
10 ning meeting, more than discussion of specific business. There
11 are very few items of specific business which will be taken up at
12 the evening session, tonight. If I have a unanimous consent of the
13 quorum of the Board which is here, except for one or two more to
14 arrive, there are six member of the Board present; Mr. Ortique,
15 Mr. Cramton, Mr. Thurman, Mr. Montejano, Mr. Smith, and Mr. Breger.
16 If I have the unanimous consent of the Board members, we will re-
17 serve the adoption of the agenda, the approval of the minutes from
18 the last meeting to the business session tonight and leaving there-
19 fore all business matters to be conducted at this meeting to the
20 business session this evening. Is that agreeable?

21 MR. ORTIQUE: I would hope that because the proposed agenda
22 says that we discuss the purpose of legal services from 9:00 until
23 11:30, that the chair will not insist that we sit here and pass that
24 time until 11:30, and that if we move along and we have thoroughly
25 discussed everything, that we will move the evening session up if

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1 we have the time to do it.

2 CHAIRMAN CRAMTON: No objections to that. We will see how
3 matters go. I think it will be helpful at this meeting, which is
4 the second meeting outside of Washington, which we have a number of
5 new faces here. If we not only introduce ourselves, but had a brief
6 introduction of members of the public who are here. Just so we know
7 who is in attendance. The usual format of the Board meetings have
8 been to have discussions limited to members of the Board, except as
9 other people are invited to participate by the Board. It may be
10 possible in this setting here to have somewhat more flexibility
11 and informal routine and procedure.

12 Let me start by introducing myself, and then I will ask the
13 other Board members to introduce themselves, and then members of
14 the staff. And then ask members of the public to briefly introduce
15 themselves to the Board. I am Roger Cramton, Chairman of the Board.

16 MR. MONTEJANO: From Santa Ana, California.

17 MR. THURMAN: I am Sam Thurman. My travel this time is min-
18 imal.

19 MR. ORTIQUE: I am Revius Ortique in New Orleans.

20 MR. BREGER: I am Marshall Breger, Austin, Texas.

21 MR. SMITH: I am Glee Smith from Larned, Kansas.

22 PRESIDENT ERLICH: I am Tom Erlich, President of the Cor-
23 poration.

24 MR. BAMBERGER: I am Clinton Bamberger, Executive Vice-Pres-
25 ident.

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1 MS. DANIEL: Alice Daniel, general counsel.

2 MR. JONES: Charles Jones, Director of

3 MR. CORBITT: Alf Corbitt, program advisory.

4 MR. HENNIGAN: I am F.A. Hennigan,

5 CHAIRMAN CRAMTON: If you members of the staff here, Lynn
6 Broydrick, why don't you stand. She's responsible for the arrange-
7 ments and anything she can do to help convenience you, if you need
8 copies of materials, she will try to provide them for you.

9 Why don't members of the public introduce themselves briefly.
10 Perhaps starting from the front row.

11 MR. WENZEL: D. C. Wenzel, Chicago Poverty Law reporter.
12 Chicago, Illinois.

13 MR. GILBERT: David Gilbert, Legal Services Corporation,
14 Denver.

15 MR. GESAS: I am Barney Gesas, Director of Utah Legal Ser-
16 vices.

17 MR. JOHNSON: Lowell Johnson, consultant to the Utah Legal
18 Services.

19 MS. JOHNSON: June Johnson, Utah Legal Services.

20 MR. BYRD: I am Robert Byrd from Tarrant County.

21 MR. HEIGHT: Neil Height, Montana Legal Services.

22 MR. NATHANSON: Paul Nathanson, National Senior Citizens in
23 Los Angeles.

24 MR. BYERS: Ronald Byers, Legal Services Corporation.

25 MR. ASHLER: John Ashler, Colorado Legal Services in Greeley,

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1 Colorado.

2 MR. LUCERO: Arthur Lucero, Legal Service Corporation, Den-
3 ver Regional Office.

4 MR. LEVY: David Levy, National Legal Aid and Defender Ass-
5 ociation, Washington, D.C.

6 MS. DEMAREST: Sylvia Demarest, Dallas Legal Service Found-
7 ation, Incorporated.

8 MR. ROCH: Terry Roch, Director of Legal Aid Society, Rock-
9 ingham County, North Carolina.

10 MR. KNOLL: Gregory Knoll, Legal Aid Society, San Diego.

11 MR. FORESTER: Richard Forester, Portland, Oregon Legal Aid.

12 MR. BROWDE: Michael Browde, Legal Aid Society from Albuquer-
13 que.

14 MR. VENEY: Baernard Veney, National Clients Council.

15 MR. WARNER: Earle Warner, Clark County, Nevada Legal Ser-
16 vices Program.

17 MR. DALLAIRE: Greg Dallaire, Seattle Legal Services.

18 MR. GOMEZ: Raphael Gomez, Migrant Legal Action Program,
19 Washington, D.C.

20 MS. CORBETT: Nancy Corbett, Advisory Chairman of Washington.

21 MR. WALTERS: Steve Walters, Legal Service Corporation.

22 MR. SCHWARTZ: Bari Schwartz, faculty U.C.L.A.

23 MR. LEWIS: Philip Lewis, Oxford, England.

24 MR. ORTIQUE: I would like this next person to be introduced
25 by the member of the Board.

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1 MR. BREGER: This is my wife, Jennifer Breger.

2 CHAIRMAN CRAMTON: Welcome back some old friends, like Greg
3 Dallaire and Bernie Vennie and Barry Schwartz, who have been with
4 us in a good many meetings. Sylvia Demarest was in the meeting in
5 Austin, Texas. The rest of you, I think, are mostly new faces, and
6 one of advantages the Board has in meeting different parts of the
7 country is seeing some new faces, in addition to some old faces,
8 and getting to know the Legal Services Community better.

9 The morning session is devoted to a very simple topic, the
10 purposes of Legal Services. I would like to ask our President,
11 Tom Erlich, to read off this discussion, perhaps by summarizing
12 the paper which has been distributed to the Board, and available
13 to members of the public. Then posing some questions which we can
14 discuss.

15 PRESIDENT ERLICH: I might ask how many who are in the public
16 have not actually seen the four papers that we have distributed to
17 Board members. Leave that a little ambiguous as to whether those
18 who have seen it have actually read it. It looks like there were
19 about eight or ten. I will follow that notion and try to summarize
20 briefly at least the key questions that were raised.

21 CHAIRMAN CRAMTON: Is it possible then, to bet copies for
22 them? It's too late to read this one prior to our discussion, but
23 it will be possible if you spend all of your lunches and dinners
24 reading to catch up with us and have read them at the time we reach
25 them. Lynn Broydrick has copies, why don't you pass them around.

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1 PRESIDENT ERLICH: The concept of this session was for the
2 Board to step back and try to look at five fundamental clusters of
3 issues concerning Legal Services for the poor without being able to
4 resolve the questions involved, to get some sense of direction and
5 ideas among Board members particularly, and among the public, clients,
6 project directors, and others. There are a good many people here
7 who have thought a good deal about all of those questions. Our
8 hope is that after we go through this discussion, those on the staff
9 can take the papers and do a provision in light of the discussion,
10 in light of the comments into a more or less single coherent paper
11 that will give us some ideas of some directions for the corporation
12 and for Legal Services for the poor. Steve Walters, whom you have
13 just saw a minute ago, who is working with me particularly on this
14 project, will be the one, I hope at least, who will be trying to
15 put together these papers into a single document in the light of
16 our discussions.

17 THE PURPOSES OF LEGAL SERVICES

18 First of the five papers, "Purposes of Legal Services for
19 the Poor," which may sound as it does at the outset like such a
20 fundamental question that it's a little embarrassing to ask it.
21 But I was surprised, for one, when I read through all of the legis-
22 lative history of the act to find out little of that question was
23 asked. How it seemed to be assumed that of course we knew what we
24 were doing. The question is, how to do it in a way that would be
25 immune or partisan politics? That is quite understandable, I think,

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1 giving the practical pressures around the time the act was passed.
2 It does, though, leave us with the job of articulating purposes of
3 our enterprise, and out of some ideas about purposes some prior-
4 ities. A number here who has been worrying many, many years about
5 these, just these questions, Murray Schwartz, Phil Lewis from Eng-
6 land and others want the paper before you try to do this indicate
7 some of the questions without getting very far toward the answers.
8 Looking at the act, itself, in not terribly imaginative way to pro-
9 ceed, but nonetheless it seems a reasonable one, looking at the act
10 as a whole there is not a great deal of insight on purposes, but
11 there are some clues, at least. The statement of finding of de-
12 claration of purposes states four key purposes, it seemed to give
13 us some mandate, redress of grievances, continuation of the present
14 vital legal service program and provisions of high quality legal
15 assistance and those who do not have it, promotion of the ends of
16 justice and reaffirmation in our phase of the government of laws.
17 I hope we can come back and talk about each one of those and how
18 much direction they really give us as a corporation deciding our
19 purposes and deciding our priorities.

20 The only explicit preference in this statute is in section
21 1007A2C, which refers to priorities to those least able to afford
22 legal assistance. That provision in itself is somewhat ambiguous,
23 and I hope we can discuss what that means in operation of how a
24 program at least often take account of those unable to at least
25 afford legal service. How the corporation ought to give them pri-

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1 ority?

2 Over the course of the last decade since we started Legal
3 Service it seemed to me there were at least four major purposes
4 that were suggested. Not also in the language utilized in this
5 paper, but I thought at least the ideas were quite common. Those
6 four purposes were stated in the paper as follows: First, because
7 Legal Services are an affective means to ameliorate the affects of
8 poverty. Second, because the hurdles imposed by the legal system
9 oughtn't to be insurmountable due to poverty. Third, because many
10 of the substantive rules of law and the institution that apply
11 them affect the poor unfairly. And finally, because access to the
12 legal system is an inherit right of citizenship. Those at least
13 seems to me handles that we might analyze different approaches to
14 what our purposes and what are these. That is a discussion that
15 takes place largely without much focus on the process by which
16 priorities are set and particularly to what extent they ought to
17 be set on a national level by the corporation? What extent they
18 ought to be set on the regional level, state local project level?
19 To what extent each individual lawyer ought herself or himself to
20 settle priorities? That discussion will lead most directly into
21 our discussions this afternoon which will look at the individual's
22 need to legal services and these needs are met. But I hope we can
23 look in terms of priorities for substantive areas, priorities in
24 terms of types of activities, litigations, negotiations, advice,
25 and so forth. Priorities in terms of resource allocations between

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1 lawyers, peri-legals. Priorities in terms of different kinds of
2 delivery systems and other priorities as well, as to how they ought
3 to be set and on what levels, we ought to be set. Coming back,

4 Coming back, though to the initial threshold questions as
5 an entity of local service corporation. What are our purposes and
6 what are our priorities? We might usefully begin by looking at
7 the, or at least we think we glean from the statute. Then turn to
8 broader issues not feeling particularly bound to the outline we
9 suggested or any other. I will say as a former and Law teacher it
10 is hell of a lot easier to ask the questions than to answer them.

11 MR. MONTEJANO: I read the paper and realized how little I
12 understood about the entire statute and the purpose of the statute
13 into the corporation. I think, I have been one of those who have
14 the same question. How is best to organize? That creates a sense
15 of direction, let's come up with the answer then move forward and
16 then solve those problems. But I truly realize that my scope was
17 quite limited and I found this paper to be most provocative and
18 the first time began to open some areas of thought and discussion
19 for me. I just either ignore it or just totally unaware of them.
20 I am not faced with a very fundamental question and maybe I should
21 further understanding whether or not this is to be considered a
22 poverty program or whether it's to be considered what I would say
23 a legal service program and it may be a distinction without a dif-
24 ference, but it appears from where I look into it that it is going
25 to be a poverty program and then anything is going to spin off from

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1 the concept. If we make that assumption and if we concede that it
2 is going to be a public, then I'm not as much concerned any more
3 about whether or not various actions have taken by various programs
4 out from the field. For example, I had the view that our job was to
5 provide legal services for someone coming in the door with an in-
6 dividual problem. In other words, we were to provide legal services
7 period. In my office, we provide, hopefully adequate legal services
8 for persons coming in the office. If they have legal problems then
9 we think we can be of service, then we establish a field arrangement
10 and then we proceed and try to provide that service. I'm not sure
11 that this is the concept that we are going to have with the cor-
12 poration. It appears that we are going to be zeroing in, not only
13 the problems of the poor, but also trying to eliminate poverty
14 through the program. We may be falling back into the concept of
15 the OEO concept, but it appears that if we don't have enough re-
16 sources to really do anything then try to deal with the poverty.
17 I'm not saying that is all bad. Maybe the best way going. But I
18 find myself, once I begin to understand that particular concept,
19 then I can begin to understand once the people feel the same.
20 Bernie Veney, for example, his view about it, generally don't un-
21 derstand the problems of the poor. Well, I'm to ask, why is there
22 a need to look at the problems for the poor. But it tuns out that
23 maybe this is the essence of the program. Problems of the poor
24 are used, but it requires a different method of approach, a differ-
25 ent method of servicing that clientele. If we just dealt with the

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1 poor and if that is to be our direction and I think this is one of
2 the main areas which we have to resolve, we don't have to answer,
3 we just have to come up with a consensus if we are going to deal
4 solely with the poor. Then I think our approach is going to be
5 different and I think this is going to have a great deal to do with
6 how we approach the urban institute study, for example. I have
7 viewed the delivery systems somewhat differently, but if we con-
8 clude that we are going to deal solely with the poor on a poverty
9 type of concept then it may be that my outlook of the direction of
10 the study which aims so much dramatically. I'm not sure.

11 I find myself totally perplexed when I came in last year.
12 I really was in a position where I was totally confused. Now, I'm
13 really more confused because I begin to realize that the problems
14 and issues which go totally beyond the mere servicing of the cer-
15 tain clientele with a strictly private practice approach. I have
16 many, many other thoughts and opinions and comments that I think I
17 would like to leave it at this point with that one issue. Are we
18 going to have a poverty type of concept dealing solely with the
19 poor, solely with the problems of the poor? And if so, fine. And
20 that may be totally commendable and probably the best way to go.
21 If we are not, then I would like to know so then my viewpoint can
22 change and I can support the direction of the corporation and in
23 turn some leadership, also. Thank you.

24 MR. ORTIQUE: It seems to me that Rudy raises a very basic
25 question and it's one that has bothered me since the inception of

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1 this corporation. That somehow the matter of furnishing legal
2 services to the poor was something that we could state in very pos-
3 itive terms and limit it to certain types of activities and say
4 this is enough. I think that this goes to the very fundamental
5 issue. Are we really ready in this country to say to the poor peo-
6 ple that you have certain basic fundamental rights like everybody
7 else in this country. Are we merely saying to them well, you have
8 some of those rights and we will give you those as we see fit to
9 bill them out to you. If we are convinced that poor people like
10 any other identifiable group have all of those basic fundamental
11 rights then we are all dealing with something all together differ-
12 ent than a welfare type program. As I say, that is what has been
13 bothering me. I read that piece that Tom, I thought very eloquent-
14 ly, responded to the gentleman from Oxford who indicated that there
15 was some problem with extending equality across board. Obviously,
16 I have had problems with that all of my life, but I think that
17 you've got to get to that fundamental issue. Is that what we are
18 saying? I would, without trying to respond to that because hope-
19 fully we will eventually respond to it, I would like to suggest
20 that somewhere along the way the Congress and other leaders of this
21 country have recognized that either we are going to extend to every-
22 one the access to institutions, fundamental institutions in this
23 country, or we are going to deny to certain people access to those
24 fundamental institutions, whether we like it or not. Poor people
25 have developed to the point where they are insisting that they eith-

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1 er have access, or you make it quite clear that they don't have
2 access and then they resort to their own techniques and their own
3 methods for doing something about it. I am assured that there are
4 large numbers of Congressman and leaders in this country who felt
5 that during the periods of tremendous students unrest and the re-
6 actions to the Democratic Party in Chicago and other reactions of
7 Civil Rights movements, that many of them felt that we could resort
8 to the old time when we will state unequivocally, "Well, if you
9 don't like the way we are doing things, then leave." Well, I am
10 sure that all of you have seen the signs about the country saying,
11 "This is my country, love it or leave it." Well, poor people aren't
12 going any place. Just like students decided they weren't going any
13 place and black folks weren't going any place and other minority
14 groups weren't going any place. I think poor people have come to
15 that point, but I think that a great majority of the American peo-
16 ple have not yet realized that that is really what this is all a-
17 bout. We have got to make that basic fundamental decision whether
18 poor people are going to access to these institutions or not. If
19 we are going to have access to these institutions then you can't
20 piece meal them. They have got to have access across the border
21 and it's to that point, Rudy, that I think that we have got to add-
22 ress whether we are really in the business of working ourselves
23 out of job eventually and ultimately. Well, I won't express my
24 view on that. That to me is the fundamental issue, the very basic
25 issue. To continue to talk about it, well, we don't have the re-

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1 sources and can't do this and for the elderly we can only do cer-
2 tain things under Title 20, and for juveniles we can do this or that
3 thing. The basic question is, where do we draw that line and who is
4 going to say that the juvenile in Chicago is going to enjoy rights
5 and the juveniles down in Texas is going to enjoy some other rights?
6 It's a fundamental question to me and I think that has got to be an-
7 swered, not only by this Board, but also by the American people.

8 MR. SMITH: Mr. Chairman, just briefly. I think the funda-
9 mental question you referred to, Revius, has been answered. That is
10 why we are here. If it hasn't been answered affirmatively to en-
11 title equal access, Congress wouldn't have passed this act and we
12 wouldn't be here. I think, the passage of this act and our presence
13 here indicates very strongly the affirmative answer to that question,
14 which is fine, which is the way it should be. I think, that maybe
15 there is not a lot in a name, but it seems to me that when Rudy tends
16 to designate our program categorically as a poverty program, it is
17 somewhat demeaning. I think, in a sense in that in my concept the
18 program that we are involved in, isn't the poverty program, it's the
19 implementation of a basic constitutional and legal right that every-
20 body in this country has, equal access. That we are making it a
21 reality and I think that we are involved in serves the poor, it's
22 serves the extremely poor, and the medium poor and on up the scale.
23 When we finally reach some decision about that level as to how high
24 up the scale and financeability we go. But it is more that just a
25 program to poverty type. To me it's a basic implementation of a

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1 constitutional legal right that has been neglected for at least
2 one hundred and ninety years. And then for ten years has been par-
3 tially fulfilled and then we are involved in making it, hopefully
4 completely fulfilled. I think, therefore that that is a better
5 characterization of the program and what we are doing, then just
6 the poverty program.

7 MR. MONTEJANO: I was read something. I wouldn't call it
8 just a poverty program. On the contrary, I would call it a very
9 poor program. If you are talking about making Legal Services a-
10 vailable to everybody and if it depends on who is able to pay for
11 those, some who can't pay them won't pay them. I think the approach
12 of what we do is a little different. If we use your program, I
13 think, what we do is we open legal offices and dispense legal ser-
14 vices to people who have legal problems when they walk in the door,
15 subject to some resource allocation, sure. I am assuming, this is
16 my view, if you take the position that it is a poverty oriented
17 program, then you don't open legal offices. I think, you set up a
18 mechanism so that it goes to his point of insuring that the poor,
19 and however we define them, that the poor then has equal access
20 into the system, and that is going to mean more than just having
21 three or four attorneys in an office saying we can change your name.

22 MR. ORTIQUE: Absolutely.

23 MR. MONTEJANO: Then you are talking about a positive pro-
24 gram. If necessary, attacking various institutions of government
25 who are unresponsive to the poor for whatever reason. It insures

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1 that the grievances of the poor, even though they aren't totally
2 legal, are carried forth by the corporation employees to certain
3 levels of government to insure that the voices are heard. It means,
4 a program that is merely stepping forward and saying, "We are taking
5 the poor with us and going to move them from X to Y." Instead of
6 saying, "We have a legal office institution going to take care of
7 a person unable to pay for legal services." I think, that this is
8 where the distinction lies. I think, this is what I would like to
9 have resolved.

10 Which direction do we as a corporation, which direction do
11 we want to take? I don't think we can do both, because we don't
12 have enough resources. I really don't. I think, we have to make
13 a very definitive selection one way or another. Are we going to be,
14 if you want poverty as the word, a program oriented toward the needs
15 and the desires of the poor? Are we going to be a program which
16 dispenses legal services to people who cannot afford them? I think
17 there is a tremendous difference there.

18 MR. SMITH: Are you talking about putting us on the cutting
19 edge of social reform and social change?

20 MR. MONTEJANO: I have taken the views that we would dis-
21 pense legal services. The more I read and the more I see and the
22 more I hear, it appears that really we are setting up or heading
23 into the direction of a program for the poor. I think, we darn
24 well better face up to that if we want to call it a problem. If
25 you want to call it an issue, whatever, face up to it now, rather

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1 than a year from now, or two years from now. Better to go in with
2 eyes wide open, to be able to control the animal and be able to
3 lead him into a personal positive direction, rather than coming
4 back and saying, "No, we don't want social reform. We don't want
5 law reform." It's going to make a tremendous difference as to what
6 happens out in the field, assuming we can't even control that right
7 now and that is another question.

8 MR. THURMAN: I think, we are fooling ourselves when we talk
9 about, "yes our goal is to give the poor equal access to system
10 justice in all respects." Always they might want it. We are never
11 going to have that kind of money. I have been greatly heartened
12 by the appropriation we are getting from the fiscal '77, certainly
13 more than I anticipated we would get. In every step here we are
14 going to have to make that priority decision. Congress in the first
15 instance has to make the priority decision. Do we want to give a
16 single dime out of federal money to Legal Services? We have all
17 those other competing demands and the answer there was, "Guess."
18 Each year it is, how much are we going to give? It's not realistic
19 to suppose that we are going to get what we think is enough to give
20 all the poor in the country out of the Legal Services. So, the
21 priorities run right down the line there. Secondly, all right we
22 have got the money, we have got one hundred and twenty five million.
23 Where is this money to go? Is it to go primarily to the present
24 program? How about the other areas in the country that don't have
25 Legal Services, how much of it goes there? When it gets to the var-

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1 ious programs, who gets it? Beyond that, those that do get it, what
2 kinds of services? Now, this anticipates a little bit what Clint
3 and the rest of us are going to be talking about this afternoon,
4 but in every step of the way it's going to be a matter of priority
5 here. Rudy, I would be interested in knowing what your preference
6 is? You stated we have got to make a choice. Have you come up with
7 a decision on that?

8 MR. MONTIJANO: Not really. I was hoping I could walk out
9 of this conference by Sunday and have a much more tentative offer.
10 My initial thinking was it is going to be a program which will dis-
11 pense legal services and it's going to operate, the law office
12 would operate. I have been in a private law firm for almost ten
13 years and this was my prospective. I assume if we are going to
14 have Legal Service offices we are going to operate it like a legal
15 office.

16 MR. THURMAN: Isn't that what Congress told us to do?

17 MR. MONTEJANO: I'm not sure, because when you start leading
18 some of the definitions, they are pretty broad.

19 MR. THURMAN: That is what all lawyers do.

20 MR. MONTEJANO: That there is a need to provide legal action
21 to all systems. That is the first purpose of the statute, equal
22 justice to individuals who seek grievances. Then it says there is
23 an equal right, high quality services. Well, if you read it very
24 technically then our first mission is to provide access into the
25 system for the poor people who have grievances. That is not even

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1 necessarily legal. That is merely taking the poor from X to Y,
2 and that means being on that cutting head.

3 MR. SMITH: I don't think so. I think, it necessarily legal
4 because it says access to the system of justice to grievances. So
5 it means grievances involved in the system of justice, Rudy. That
6 limits it to legal problems, I think.

7 MR. MONTEJANO: That may be, but what I'm saying is that
8 my initial reaction was, it is going to be a law firm.

9 MR. SMITH: I think, your initial reaction is correct.

10 MR. MONTEJANO: The more I see, the more I hear, the more
11 read it appears that the corporation seems to be heading into a
12 different area.

13 MR. SMITH: I think if we do, we are going contrary to Con-
14 gress' intent and we are heading into our own oblivion.

15 MR. ORTIQUE: My answer to that, if we let ourselves in ob-
16 livion, maybe that would be the good thing and the poor people
17 would then decide we need another vehicle. I cannot sit here and
18 feel that, because Sam says that we are not going to have the re-
19 sources next year. That we ought not develop a philosophy on be-
20 half of the poor, that moves them from X to Y. I honestly believe
21 that if we don't do that, we are just supporting a welfare system
22 for people who need legal services, just as we support a welfare
23 system in this country for people.

24 MR. SMITH: But we move them from X to Y by providing answers
25 to the legal problems. That is our criteria, one of the basic cri-

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1 teria when we were talking about the support, was that we
2 couldn't justify contracting support senders to nearly developed
3 theories from X to Y. But we could contract with them to develop
4 answers for legal problems. Now, the development of those answers
5 will move you from X to Y, but you have to do it in that way.

6 MR. ORTIQUE: Why? When we decided to send troops into Viet
7 Nam we decided to give them all of the paraphernalia that is neces-
8 sary. We wouldn't decide to send them in there without supporting
9 services. We wouldn't decide to send them in there without all of
10 the things we can muster for military purposes. When we say that
11 poor people have access to the institutions of justice, we ought to
12 give them all of those additional things they need to have complete
13 access. Now, sure it's going to mean priorities in this country.
14 Sure it's going to mean some over turning of notions that persisted.
15 We are even going to have to change some things in the Bible, the
16 poor must be with us always. But it seems to me that that is a
17 fundamental issue and I'm not disturbed that we only have sufficient
18 monies to dispense legal services in 1977. But what I am concerned
19 is about, is this Board would recognize that the total problem that
20 we are to address ourselves to may be taken care of in 1980 or 1985.
21 But let us have their view even though we don't have the resources
22 at this moment.

23 MR. BREGER: Learning from my brethern at the moment.

24 CHAIRMAN CRAMTON: Well, perhaps I ought to state a view or
25 two. I am not sure that the characterization of poverty law change

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1 program and an access to the system of justice rhetoric really in-
2 volved mutual exclusive objectives. I'm sure that they do no.
3 What we are talking, it seems to me, is a matter of anthesis and
4 a matter of degree. Maybe a semantic problem as well as a problem
5 of substenance. That semantic and rhetorical matters are poor and
6 it seems to me that we are expressed in the way the Legislature
7 was concieved and written and stands before us. I think, along
8 with degree that it's significant that the act never uses the word
9 poverty. It never refers to poor people. It refers to persons who
10 are unable to afford legal services and it doesn't even use that in
11 an all or nothing term. One might say that a person is either cap-
12 able or incapable of affording legal assistance. We know that that
13 is not true. There is a range in which you have some people who
14 ate totally unable to afford legal assistance because of their re-
15 sources are so small. There are others who may be able to partially
16 afford and depending upon the serious necessity of the matter and
17 depending upon their economic circumstances. Then we go to people
18 in limits of the population who are capable out of their own re-
19 sources of affording private lawyers. So that there are matters of
20 degree involved. Not just all or nothing. When I look at the pre-
21 ambular statement of purposes, when it starts out with redress of
22 grievances I have a very different reaction then the one Rudy had.
23 I think of the redress of grievances implies a private grievance
24 remedial technique in which for the most part rights are taken as
25 being involved in pre-existing law and one goes to a tribunal of

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1 justice in order to get an application of those rules to a part-
2 icular situation. IT's true that common law courts do evolve in
3 and declare law, but they are not conscious views of law creation
4 when we refer to grievances, remedial it doesn't have a tone to me
5 of the conscious creation of new law that much more, the application
6 of existing principles for people who have grievances. Now, we
7 know that in going to tribunals and particularly in presenting an
8 articulating for a kind of class of citizens that there rights,
9 there is going to be a tendency for a development of substantive
10 principles and those substance principles may be substance rules
11 that more fairly reflect the interest of poor people or consumers
12 or tenants as against sellers or landlords. The references to
13 access to the legal system seems to be very powerful. I'm myself
14 influenced a little bit by one of the statements which was referred
15 to here and that is the general desire of non-involvement with pol-
16 itics and that takes a double edge approach. They wanted an inde-
17 pendent legal services corporation, so it wouldn't be influenced
18 by the pressure of political officers and elected officers, locally,
19 state, or federal. But also they didn't want the legal services
20 program to be involved in the political scenery and certainly viewed
21 in the light of the back up center in the Legislative system of it.
22 There is a strong tone that this should not be a conscious instru-
23 ment of law change orchestrated from a central office in Washington.
24 IT seems to me that the extent that it does involve law creation,
25 and I hope it will, that law creation ought to come from choices that

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1 are made by the clients, themselves, the clients representative by
2 the local Legal Services program and the cases they bring on behalf
3 of clients, not from the Board of Directors who kick around with it's
4 research staff saying this particular problem is one which Legal Ser-
5 vices program nationwide should attack and it has a very high pri-
6 ority in our view. We ought to encourage programs all over the
7 country to raise this question and pursue it and to try to develop
8 a new legal principles in connection with it. I think, that is too
9 overtly political, that will be done and should be done, but it
10 ought to be done by a somewhat more anarchic, but also individualis-
11 tic matter of local programs determining priorities, choice of those
12 priorities, the clients community participating in those choices,
13 the clients being served.

14 I am also influenced by the fact that the statute in the one
15 section where it talks about priorities, it talks about persons un-
16 able to afford legal assistance and there is no reference, and I
17 find it difficult to read it in, talks about the priorities ought
18 to be structured on a national basis in terms of problems which
19 affect a class of people, poverty people, poor people. There are not
20 measures mentioned in the act, the act talks about persons who are
21 unable to afford legal services, the providing access to the legal
22 system so that their grievances may be redressed and that seems to
23 me to give a very high priority to the new funds that became avail-
24 able, to the sense of programs, the expansion of existing programs
25 to cover more people, and the extension of programs to parts of the

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1 country that are not now covered.

2 We are feeling our way and all I am doing is expressing a
3 kind of tentative kind of reaction to these papers. But I move more
4 in that direction, I would like to be informed to the views of oth-
5 ers.

6 MR. SMITH: I agree with everything you have said as far as
7 our responsibility and our approach and our congressional mandated
8 approach. As I view it, I don't think I disagree with the griev-
9 ances at all with the group of people we are intended to serve.
10 However, you categorize them and I think my main feeling though,
11 is that in approaching the way I feel congress intended us to app-
12 roach it and the way we have started apporaching it this first year
13 of our existance, I feel like that we are going to be able to do a
14 lot more for this group of poor people and the semi-poor and on up
15 the scale who aren't really extremely poverty stricken yet can't
16 afford access to the system of justice. I think, we have a respons-
17 ibility to do the most we can for these people, and I think in some
18 ways we agree entirely with your concept, a while ago, that we give
19 full support to the people of the field.

20 We feel certain that we have the absolute greatest possible
21 support to perform this function of providing legal services to the
22 poor and the semi-poor and everybody else who qualifies for services
23 that we can provide. One of the ways I think it is extremely im-
24 portant for us to provide the greatest degree of service for the
25 poor throughout the country that we can.

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1 Now, for the first ten years that legal service was in this
2 country it came about on the war of poverty throughout the country
3 we didn't in the legal communities and Bar Associations and people
4 at states, local, and national level, in Bar Association we didn't
5 have a very strong degree of support. In fact, we had a lot of
6 opposition, as you know. Another one of the reasons we have been
7 able to create in the last year a tremendous increase in support
8 of the Bar members and Bar Association has been because of the new
9 emphasis of this act, gave us a an independant corporation, a quasi
10 public and a corporation insulated from political pressure, a cor-
11 poration that lawyers throughout the country felt was not going to
12 be involved in just trying to develop social reform, but was going
13 to be involved in a constitutional and a conceptual responsibility
14 that existed in two hundred years and has not been fulfilled, that
15 is providing legal services and providing equal access.

16 We have been able to get this great amount of additional
17 support that we didn't have before, we are going to be able to do
18 much greater. Now, if we move backward to the concept that the
19 program had when it was just a part, and I don't mean to demean
20 just a part was a so called war on poverty under the OEO, if we
21 move backward to that we would lose a tremendous amount of support
22 that we have able to by diligence has been able to obtain in the
23 past year or two years since the act was passed, the year since we
24 started to work as a Board. I think, that support is tremendously
25 important for the benefit of the body of people. You and I are talk-

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1 ing about serving because we want to get the greatest amount of
2 support from lawyers throughout the country we can possibly get
3 because that, along with the congresssional appropriation, I think
4 are about equally important in making legal services available and
5 making access to the system of justice available. So, I think if
6 we jumped off on a concept that would, in my opinion, move it back-
7 ward as far as getting support we would be doing harm to the people
8 we are supposedly trying to help.

9 CHAIRMAN CRAMTON: Mr. Breger was next, and Mr. Erlich and
10 then Mr. Ortique and then Mr. Montejano.

11 MR. BREGER: I agree with you, Roger, that the focul point
12 is the extent in which the corporation either centrally in Washing-
13 ton or at the local level or by individual lawyers should be invol-
14 ved in conscious law creation as a strategy, rather than responding
15 to the individual at an idiosyncratic request of quiescence. I am
16 not sure how realistic your conceptional suggestion, which I agree
17 with, that law creation should occur from the conscious law choices
18 of individual clients. I am not sure how realistic that is in the
19 contention of poverty law. Which is what we are really dealing
20 with, because unlike in the private sector of a corporation client,
21 for example, the clients of legal service lawyers are somewhat more
22 passive and that I thought they might be left clear of what their
23 legal rights are and what their legal options are. Left clear of
24 what the extent to which the situation in which therein can be re-
25 medied by legal removers and the extent to which much of the lower

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1 form and social change aspects of the legal service litigation
 2 rights and group representations and class actions. The respons-
 3 ibilities is much more heavily on the lawyer and the decisions
 4 about cases to bring, how to organize a case, whether to deal with
 5 narrow issues or whether to turn it into a lower form case, tends
 6 to be left to the individual lawyer. I think, that question we
 7 have to consider is whether if priorities are going to be set not
 8 by the client, but realistic by some part of the corporation, whe-
 9 ther we want it to be set by the individual lawyers on an individual
 10 basis rather than by more central well thought out approach.

11 CHAIRMAN CRAMTON: Which do you favor?

12 MR. BREGER: I think, I am saying it is a realistic matter,
 13 at present. The decisions are not being made and in many of the
 14 cases by clients, in the old sense of clients, individuals who has
 15 a specific need that he wants to have solved and responded to by
 16 lawyers in the field or the support centers in the field. I think,
 17 that it's not enough to say that we ought to hold back and let it
 18 be done on a free market approach, because I think it is not being
 19 done by clients now. I think, it is being done in the social change
 20 cases by the lawyer now. I think, that is a problem we have to
 21 address.

22 CHAIRMAN CRAMTON: There is a kind of terminology, I guess,
 23 I don't view the lawyer as being part of the corporation. They are
 24 lawyers who work for independant entities which are community based
 25 legal service programs. They are a grantees and we finance them

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1 and subject them to controls, but I view the corporation, itself as
2 being the Board and central staff and regional offices. These other
3 entities recieved funds from us, but they certainly are independant
4 centers.

5 So, I was approaching, actually something a little bit dif-
6 ferent. I was thinking of the most part, each kind of conscious
7 law creation, social change poverty program , kind of approach the
8 corporation should not do, because really it's inconsistant with the
9 access philosophy which dominates the eye and the like. But it
10 doesn't include the possiblities that the community based program
11 which might develop priorities in connection with the client comm-
12 unities that they represent which taken to act some of the factors
13 that you have in mind. That is, you have three alternatives, it
14 seems to me instead of two.

15 MR. THURMAN: Roger, there is a real problem there, too. You
16 have this attorney, too, considering himself part of a corporation,
17 you have a conflict of interest here. He is representing a client
18 there, that is his job, that is his professional job and he is not
19 considering what impact this is going to have on other clients,
20 other segments of the community. Why there is a problem in some
21 stage in there.

22 PRESIDENT ERLICH: We are feeling our way and one of the im-
23 portant is to be sure not to get yourself caught up in the short
24 term operational concept, that we lose sight of the need for a long
25 term sense of direction. But on the other hand, it can get so they

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1 get an abstract as to be without content. It won't come as any
2 great surprise to those with whom I have discussed these issues
3 to know that my own bias such as they are probably primarily to
4 you access as an inherent right of citizenship as it is used in
5 this paper and to view it that way. I can't imagine in the immed-
6 iate future the corporation as a corporation saying that we are
7 now competent that on a national level that housing law is more
8 important than family law, because housing law is the way to over-
9 come poverty and family law just rearranges people's problems and
10 while they are very important, and all that, housing or education
11 or something else is the way to break through. On the other hand,
12 it does seem to me in terms of the statute, legislative history
13 and the general ambience surrounding it, there is a distinctive
14 focus ought to be on the problems of those who are poor, quite poor.
15 The more I have seen and the more I have talked, the more I see that
16 those problems in many ways are distinctive. One of the problems
17 of the analogous of the private law firm is that so many of the
18 problems that emerge out of that emerge out of a property context
19 of landlords, real estate transfers and the like which really have
20 zilch to do with what's going on in the average legal services of-
21 fice. The statute talks about the distinctive problems, I think
22 it talks about poor, quite poor. Now, are these problems that are
23 dealt with by this organization. I think, that is a poor mandate,
24 not to say we should have a national vision of where housing law
25 or health law ought to go, but we ought to be particularly concerned,

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1 I think, about being sure that those problems are dealt with. While
2 I do not see or I am saying on a national level housing law ought
3 to be entitled to more priority than family law, I do see and am
4 saying to project directors and in their boards what are your pri-
5 orities, and we hope you will articulate with them as clearly as
6 you can in terms of substate areas and in terms of performance
7 criteria or lawyers, as well as in other areas we have been dealing
8 with.

9 While we have said that here are some performance criteria
10 that we are looking at we will keep saying to programs, I hope:
11 How do you evaluate those criteria? How do you deal with them?
12 Out of that emerges, I think, some areas distinctive problems of
13 poor in which a national focus is of particular importance. At
14 the same time, it's not an article totally individualistic approach
15 at least one that says on a national level by the corporation only
16 that we will do everything we can to be sure that the program do
17 articulate what their problems are, what their purposes are as op-
18 posed to saying them ourselves.

19 MR. ORTIQUE: I think Tom has put it in excellent focus, but
20 I also think that what he said, he did it with all the sincerity
21 he can muster. But I think inherent in Glee's suggestions are some
22 basic and fundamental facts that have never before been brought out
23 to this Board or at least to my knowledge. One is, Glee, that the
24 impression was given by the administration that this corporation
25 was designed to overcome a lot of abuses that are taken place under

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1 the old program in 1967. Members of the old legal service advisory
2 counsel recognize that we needed a free standing legal service cor-
3 poration, not because of abuses, but because we started fighting
4 battles that we didn't think we ought to be fighting. In '67, '68,
5 '69, '70 every year we were fighting battles with Congress, with
6 Bar Associations, with other groups who says that you have just gone
7 too far in behalf of the poor and we were not doing the things, the
8 fundamental things that we ought to be doing. We recognized that
9 there had to be some other vehicle for doing this. The people who
10 believed so strongly in this wanted a legal service corporation.
11 Of course, we don't have everything in this corporation that they
12 wanted they wanted at that time. But basically, they were for this.
13 This wasn't a notion of President Nixon's that we are going to get
14 rid of evils in the old poverty program. That is why we ought to
15 have a legal service corporation. That may have been what he said
16 to the people who were criticizing him for promising to do this,
17 and you know, anything about the growth and development of this
18 corporation, he had changed his mind two or three times, he just
19 couldn't get out of it. There was no way to destroy this program,
20 but it is unrealistic for us to believe that this corporation was
21 designed primarily to get rid of abuses. Number one, the abuses
22 were not that great. Number two, the Bar Association's complaint
23 of abuses could have been taken care of by Bar Association and by
24 other means other than bringing into existance a legal service cor-
25 poration. The Congress had reached a point where they realized that

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1 we could not take away the poor in this country and on that they
2 had found to be quite helpful to them. And this is the vehicle.
3 But somewhere along the way we have got to recognize we can get rid
4 of abuses and at the same time give to them access to the institu-
5 tion. That is a very fundamental question, but if we approach this,
6 we are going to make sure that we do everything within these guide-
7 lines, we are not going to be giving to poor people what the basic
8 philosophy of this corporation ought to be.

9 It perplexes me when I hear us say as a Board, that we have
10 got to make sure we don't do law reform because those are some of
11 the abuses and we can't do impact cases because that is a part of
12 the abuses. Those weren't the abuses that are being complained of.

13 CHAIRMAN CRAMTON: I don't believe anyone made those state-
14 ments.

15 MR. SMITH: I never used the word abuses. I don't know where
16 you get on this. I didn't characterize this to get rid of any abuses
17 at all. I characterized it as an affirmative act by Congress, being
18 implemented by us affirmatively to strenghten legal service program.
19 I didn't mention any abuses and wasn't using that approach.

20 MR. ORTIQUE: Well, I apologize.

21 MR. SMITH: I think it's an affirmative thing, very affir-
22 mative. The creation was not defenses to get rid of an abuse at
23 all. I think, the creation was an affirmative act to give more
24 power to the provision of legal services and I viewed it in that
25 kind of thing.

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1 MR. ORTIQUE: Why are you, then concerned about whether we
2 are dispensing legal services within a certain contention as oppos-
3 ed to moving poor people from their position of poverty and to the
4 main stream of American life.

5 MR. SMITH: I was concerned, I think, in my previous state-
6 ment about attracting the greatest amount of support and I was talk-
7 ing about attracting support from Bar Associations and individual
8 lawyers. But I think, the results can be magnified many fold, be-
9 cause of that support we have, that local, state, and national lev-
10 el. I just feel that our total program can be completely enhanced
11 and be much more productive if we have the greatest degree of sup-
12 port. I wasn't viewing this creation in a defensive way as a read-
13 ing of abuses at all. But I did say I thought it was created in
14 such a way it attracted tremendously increased support and the more
15 support we have the more we can do with the funds available. In
16 fact, the support, the active support of lawyers is equally im-
17 portant with funds available, because we are getting a tremendous
18 increase in support and I think that is going to enable us to do
19 much greater things.

20 MR. ORTIQUE: Obviously the objections of those forces that
21 you are talking about have to do with these issues of abuses.

22 MR. SMITH: Well, I don't know if it was necessarily an ob-
23 jection. I think, maybe a great percentage of lawyers from whom we
24 have active voculs and affirmative support now with lawyer who wer-
25 en't objecting and fighting and talking about abuses. They are law-

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1 yers who were just completely inactive. They weren't impressed
2 either way. They just weren't participating. Now, they are part-
3 icipating. I have spoken to State Bar Associations in three dif-
4 ferent states and I have found that a great imcrease in their feel-
5 ing for the need for their services. They are willing to partici-
6 pate. For instance, a Bar Association I attended recently where
7 they have some twenty active counsels and they met in counsel ses-
8 sions. By far, the greatest attendance of any section was a section
9 on legal services, by far. At least double the attendance of any
10 of the other counsel meetings. That wouldn't have happened two
11 years ago. One of the reasons it happened is the way this act was
12 created and the way we have moved in implementing this act to at-
13 tract this kind of support. This kind of support is going to make
14 us a lot more effective and the more effective we are, the more
15 poor people we are going to serve.

16 MR. THURMAN: I don't know how much weight you put on this,
17 but the act does say continue the present vital legal services pro-
18 gram. It doesn't say to come up with a completely new system.

19 MR. ORTIQUE: Well, of course when you get to the fundament-
20 als of access, you are talking about something altogether.

21 CHAIRMAN CRAMTON: It's now 10:15. I Think it would be a
22 good opportunity to take a short coffee break and then perhaps af-
23 ter the coffee break I would be very interested in hearing the views
24 of some of the member of the staff and members of the public.

25 (Whereupon, a short recess was held.)

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1 MR. CHAIRMAN: The meeting will return to order, please.
2 During the luncheon recess, we are going to try to change the phy-
3 sical arrangement here, so that we can have one longer and narrower
4 table and everybody around the table, so we don't have this kind of
5 feeling of separation. So it would be easier to call on members
6 of the public for their views.

7 When we recessed, Mr. Montejano wanted to have a word, and
8 I would like to call on some members of the staff with the Board's
9 permission and members of the public to get their reaction on these
10 questions that are in discussion.

11 MR. MONTEJANO: I have a feeling, and I don't have facts,
12 I have a feeling, however, that the thinking of not only the staff
13 of the corporation, but also of the grantees is that the program
14 is a program solely for the poor and everything that flows from
15 that, whereas the Board may have a slightly different opinion as to
16 what the purpose of the program is. I point to the paper, page 7
17 to this point we have assumed that the answer is clear, the group
18 moves only for people. In the next paragraph it goes to talk about
19 what I would define semi-poor and then it says that group does ob-
20 viously much larger than the poor. Such an approach would plainly
21 produce unmanageable problems on that basis alone, it should be
22 rejected. Going on, it states in 9, legal assistance is really
23 primarily for a means to fit priority, then priorities should be
24 given to those matters that most directly may prove the economic
25 lot of the poor and matters that particularly affect the poor as a

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1 group. Go on to page 11. This light of analysis has three inter-
2 related parts. First, the poor faces more legal problems than gen-
3 erally. Second, the poor faces different legal problems than do
4 citizens generally. Third, the poor are at a special disadvantage
5 dealing with the law. Go on page 12, combinations of these three
6 parts suggest that why legal services can be answered, because the
7 legal system places distinctive, heavier and unfair burdens on the
8 poor. Those burdens are accentuated of course by lack of education,
9 etc. The assumption I think is that the staff feels that this is
10 a program exclusively for the poor. I get a feeling that probably
11 the grantees feel the same way. If that is the case, I would like
12 to find out what the position of the staff is. I Would like to
13 find out if we can, by sampling what the position of the grantees
14 also is, because if you are dealing with X and we are dealing with
15 Y, I think we should question this direction. Maybe this is un-
16 realistic, but I think this is too plain to me and I think it is
17 time to put the issue on the table and see what answers we get.

18 MR. BREGER: When you say for the poor, what you are meaning,
19 I take it, is to advance the economic and structural interest of
20 the poor as a class, because certainly the corporation's mandate is
21 to serve people who are unable to afford legal services that are
22 broadly equivolant with poor people. I vote we debate usefully
23 about eligibility, but are you saying that the purpose of legal
24 service lawyers is to advance the cause of the poor as an economic
25 class?

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1 MR. MONTEJANO: This is the feeling that I get. If my feel-
2 ing is incorrect, then I would like to have that thinking corrected.
3 I would like for us, at least to come up with a consensus as to
4 what the view of the field is and what the view of the staff is,
5 and see whether or not that measures with the thinking of the Board
6 might be.

7 MR. JONES: I think the act does help provide a clue. While
8 it is true the act does talk in terms of those unable to afford
9 legal assistance. Under section 1007 which deals with priorities
10 clearly talks in terms of those left able to afford. Which seems
11 to me, maybe equated and certainly in my mind is equated with the
12 poor. I am not sure that that goes exactly to the sense of your
13 question. However, let me take it this way, because there was
14 something that you had said earlier about clients walking into your
15 office. When I was in private practice and a client walked into
16 my office it seemed to me that what I attempted to do was deal with
17 that client's problems. I didn't stop and think about, is this go-
18 ing to be a "law reform solution or impact solution." Example, a
19 client walks in and has got a problem dealing with prime time, be-
20 cause what he wanted was more access to the airways with programs
21 that he was producing. If the solution that I had decided to fast-
22 en was an attack upon prime time and there is no question in my
23 mind that that would be a reformative activity. Though, I did
24 not sit there and say I want a reform, what I was attempting to
25 achieve was to provide access and to provide a grievance resolution.

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1 In this instance being the one that I just suggested. The clients
2 that we are dealing with have an additional problem that the client
3 didn't have, that client could pay me, his access was assured, at
4 least to those institutions that deal with legal problems. Our
5 clients don't have that, but it seems to me that maybe over the
6 years what began as an effort to justify legal service existance in
7 terms of, look, this is what we are doing. We are really fighting
8 that war. Got us into a morass of ideas which most of us in pri-
9 vate practice took for granted when we were trying to fasten a sol-
10 ution for our clients. I don't know if that's terribly productive
11 at this point in time, because I am clear in my own mind that our
12 service is a client or independant service. We start with that
13 client. We fasten a solution for that client's problem. I don't
14 think most of us sit back and think about the law reform potential
15 necessarily of what is going to occur. It may be that after we
16 fasten that solution someone says, isn't that fantastic, because not
17 only have we, who have limited resources been able to provide a
18 solution for that client, but we have been able to provide a sol-
19 ution for other clients similarly situated. That I suggest to you
20 that that is not any different than what happens in private practice.
21 If my producer of television programs has more time available to
22 him, so do other producers. I didn't set out to do that necessarily,
23 but that certainly was one of my products. So in my own mind it
24 seems to me that first of all we do operate as, "ordinary law offi-
25 cers" in the perspective that you were talking about. Secondly,

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1 those services ought to be directed towards those least able to
2 afford it in this society. Third, given limited resources avail-
3 able to us to the extent that it is possible to have a result which
4 impacts on a significant section of the community, so much the bet-
5 ter. Basically, I don't know whether one needs to talk in terms of
6 a war on poverty. Maybe that may be the result that is achieved
7 once access to the system and redress of grievances are assured
8 for a segment of the society.

9 MR. MONTEJANO: Are you at the point or limiting those ser-
10 vices to a specific group, that being the poor people?

11 MR. JONES: I think, it is clear from the act, that we are
12 required to set priorities that deal with those who are least able
13 to afford it. One can say those who are least able to afford legal
14 services are poor, clearly, I think that is exactly what that means.

15 MR. MONTEJANO: Meaning the poor.

16 MR. JONES: That's right.

17 MR. BREGER: At least the way I would see the question, Char-
18 les, Earl Johnson in his book has a long discussion with how you
19 get a lot of bang for the buck with legal services, because what
20 they are going to cost to the program. And then he ways, look it's
21 done, it's transferred X amount of wealth from other sectors of
22 society to the poor. I guess, the question is whether it should be
23 an invowed of the government funding organization to transfer wealth
24 from one sector to the other, as opposed to access to justice mono
25 flash rhetoric which to many have outlined.

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1 MR. JONES: I am not sure I fully comprehend what East John-
2 son is talking about when he says that. But assuming that that is
3 one of the results of the kind of thing that we are involved in,
4 in providing the access, that's fine. It's not what I set out to
5 do necessarily, but what I do want to insure is that those instit-
6 utions which directly affect the lives of the people that we are
7 mandated to provide services for are responsive and that they have
8 access to the system of justice in this country. Let me take it
9 one step further, because it seems to me important, no only are
10 those cases which we bring frequently going to impact the lives of
11 more than the individual clients and other poor people similarly
12 situated, they are clearly going to impact the lives of each one
13 of us when we are involved in a law suit. Which goes to the quest-
14 ion of allocation of funds for schools. It was amazing to me in
15 California that those who came in with us and joined without any
16 invitation with those schools districts which have taxed themselves
17 to the maximum capacity and still could not raise enough to provide
18 sufficient funds to give what they thought was a minimal education
19 to the students. They were not necessarily poor. Clearly, our
20 clients were and our clients believe that they were getting the
21 short end of the stick. So thereby with many of the cases we bring
22 and when we sit down and try and fashion a solution for an indiv-
23 idual client, that is not necessarily a goal as it is not necessar-
24 ily a goal in the private practice. But it certainly is a byproduct
25 and to the extent that it gives you more bang for the buck, fine.

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1 MR. BREGER: You think that is a result not an intent?

2 MR. JONES: That is a result, not an intent.

3 MR. BAMBERGER: I will refer until this afternoon when we
4 are going to talk very the same thing.

5 CHAIRMAN CRAMTON: Alice, there has been a lot of talk about
6 the statutes and what it's intent is on this question. I think of
7 degree of conscious law creation and social change and poverty ver-
8 sus the rhetoric of access and equal rights into a system of jus-
9 tice. Do you have something to offer?

10 MS. DANIELS: Well, actually I would rather hear from some
11 of the people in the audience first.

12 CHAIRMAN CRAMTON: You have some choices?

13 MS. DANIELS: No.

14 PRESIDENT ERLICH: I think I would like to respond squarely
15 to Rudy's point. We have been as a staff and I think has a corpor-
16 ation operating just as you suggested, notions that are responsibil-
17 ities, that have served those in this country who are poor. How we
18 define poor is a process we went through in the eligibility. I
19 think, that is right and going to be motivated that isn't the same
20 and there aren't a lot of benefits that emerge from what goes on
21 in a legal service that help middle class people. It is true that
22 legal service offices are testing ground for techniques and deliver
23 legal services and tremendous advantage in other groups. I think,
24 true in many terms of the substantive law in housing there are sig-
25 nificant benefits that emerge and what goes in legal services office.

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1 But in the same way, that Charles said to the focus clients prob-
2 lems, I think, our national level focus ought to be and will be
3 unless obviously the Board said it shouldn't be. Those people who
4 are below poverty line as defined by the Board.

5 MR. MONTEJANO: If we take the view then, that the purpose
6 of the corporation at this point anyway, is to deal with the poor
7 and only the poor. If we further take the view that it has put
8 forth in the past that we will have a home rule type of concept,
9 then do we not take the position with the individual grantee, if
10 we take the position that he has home rule and number 2 that he
11 deals exclusively before the poor. Aren't the consequences pretty
12 logical as to what kind of program and what kind of position they
13 are going to take out in the field.

14 PRESIDENT ERLICH: To that I say it really depends on what the
15 issue is. Yes, I understand what you mean.

16 CHAIRMAN CRAMTON: I think, that is going to move very quick-
17 ly into item 2, in determining minimum needs.

18 MR. MONTEJANO: Like I say, we may not be able to control,
19 we may agree to what we want and I'm not sure we have any control
20 out in the field.

21 CHAIRMAN CRAMTON: Murray Schwartz, former Dean, now pro-
22 fessor of law at the University of California.

23 MURRAY SCHWARTZ: I think that we are really talking about
24 several different kinds of questions which inter-relate. My bottom
25 line, I think on the ultimate issue has been discussed is that it's

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1 really a question of confidence and let me work to that. The three
2 major questions which have been discussed are one, the President
3 Erlich term whether there are perculiar problems of the poor which
4 ought to be given priority over. I think, problems that poor peo-
5 ple may have that are not peculiar to the poor I have some diffi-
6 culty with the application of that. Secondly, whether the corpor-
7 ation ought to, itself, or through the legal service office, the
8 program sponser what we can call law reform or social action pro-
9 grams. Thirdly, really which is part of that whether it ought to
10 be a corporation or legal service, the local programs which deter-
11 mine the policy. It's ultimate problem, it seems to me with res-
12 pect to legal services to the poor, can best be suggested by com-
13 paring it to the private sector. It is not a lawyer nor a union,
14 or for a bank or for a teachers organization would be remissed if
15 representing those entities after a while here she did not say we
16 have reoccurring incidents here and we ought to do something to
17 aggregate them either through some kind of class or attack on admin-
18 istrative regulations, just a matter of efficiency. That is done.
19 NAACP in amounting the attack on segregation did that deliberately.
20 The solicitor general on appeal refusing to allow appeal because
21 he thought the cases was a bad one on the standpoint on the United
22 States. Therefore, it seems to me that unless the Legislative His-
23 tory is very clear to the contrary, this kind of lawyering ought to
24 be included in its range of activities which the corporation can
25 sponser, as it is a typical traditional kind of good lawyering for

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1 lawyers to tell clients we have a series of problems here. I think,
2 the best way to handle it is to aggravate it. The problem with
3 the corporation faces is that there are not any clients to whom one
4 can refer in an organized way to say you think we ought to do this
5 and in a large sense the very reason for the existence of the cor-
6 poration is to act as a surrogate for the client. That is a ques-
7 tion. That is not a statement. That is to say, if the client is
8 individually with their individual problems are so not qualified
9 to determine what the best strategy would be, or whether to accept
10 this or that and there is no group of clients to organize. Is it
11 appropriate for the corporation to become the surrogate for the
12 client, act as the client and determine appropriate policy or in
13 the absense of the corporation doing it, to let the legal service
14 through the local program do that. In a sense act as the policy
15 determiner, in which the normal sense the client would do subject
16 to the manipulation by the lawyer where the lawyer could do every-
17 thing he or she would undertake for the client. I think, that that
18 question really has to do with the compedance of and I mean that
19 not in a personal sense, but in a constitutional sense of the Board
20 and the local offices to act as the policy determiners for the cli-
21 ent in the respects.

22 CHAIRMAN CRAMTON: Phrase comparative qualifications may be
23 more neutral.

24 MR. SCHWARTZ: I think Chairman Cramton suggest that it's
25 Board at the national ought not to do that, but that it ought to

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1 be the function or responsibility of the local programs is a lit-
2 tle faciled, because the word in fronting local programs is cer-
3 tainly going to take into account the extent to which those pro-
4 grams are going to or wish to engage in the kind of activity that
5 he would issue on behalf of the corporation, itself. Whether the
6 local programs have the qualifications or the competence to under-
7 take those kind of actions, and I would again repeat traditional
8 law fashions is a difficult problem. I don't think it's a simple
9 problem. There are either these to be the Board, itself or these
10 would be various communities, but as I say, I think that's the
11 issue. I don't really think that the traditional lawyer aggraga-
12 tion of plains, the hearing before an administratitive agency on a
13 hearing, attacking opposing regulations ought to be foreclosed to
14 the program. I am not and those are in the nature of social actions
15 or law reform, On the other hand, the difficult question is who
16 and what restrictions are to be on those activities.

17 CHAIRMAN CRAMTON: Let me pursue that by commenting and then
18 a question. I think the Board and staff has been unanimous in the
19 very beginning on the question of the institutional representation
20 that you speak of as wholly appropriate when a lawyer is represent-
21 ing a freight association or an industry or so on. It is certainly
22 appropriate for a legal service attorney representing a welfare
23 group or an aggragation of poor people, and we are really talking
24 about that second level of questions, that of course administrative
25 representation, legislative representation, class actions, impact

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1 litigation provisions there is a client and the need that it's
2 pro-strategy in terms of the advancing interests of that client.

3 We are concerned, I think, with those deliberate law creation
4 aspects, both the national level and at the local level, where they
5 somebody is acting as surrogate for a client. What the first issue
6 you didn't really address yourselves very much to, and yet it seems
7 to me to be important, this question of legal problems of the poor
8 versus legal problems which poor people have, which other people
9 in society have also. Presumably a divorce would be a good example.

10 MURRAY SCHWARTZ: I think if the corporation would give me
11 time, adopt the stand of giving priority to those problems which
12 it thinks are peculiar to the poor, it might lose the support of
13 the poor community. That is to say, if you put divorce at the bot-
14 tom of the priority list, because middle class people have divorces,
15 you might run into trouble with your major constituents who see that
16 is a very important problem and which has ramnifications obviously
17 for other problems which are peculiar. I guess, I have trouble with
18 how that concept would operate without really having a detrimental
19 effect on the relationships of the corporation to the very clien-
20 tele which is affording the services. I think, it's a small price
21 to pay in terms of allocations of funds to take the general range
22 of the problem. If we are really talking about people who are poor,
23 and I take it that whatever the language of the fact may be this is
24 still a program which is intended to serve those people who fall
25 below a certain income level and I know there are.

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1 PRESIDENT ERLICH: I didn't mean to suggest more than that
2 at the least and maybe at the most too. Such research is sponsored
3 by the corporation through the research institute. Such responsive-
4 ness to why legislative and executive agency of which we get an
5 enormous amount, ought to be particularly sensitive to those people
6 of poor people, because nobody else is going to be sensitive to
7 them. But Tom, if I may, how do you respond to the request of a
8 drafting of a no-fault divorce?

9 PRESIDENT ERLICH: I understand. I go on to say that if we
10 had no no-fault divorces throughout the country it would bring up
11 enormous amounts of resource deals with other problems.

12 MR. BREGER: Isn't it at the present, at the local level?

13 PRESIDENT ERLICH: But there are a lot of people working on
14 no-fault divorces and there aren't.

15 MR. BREGER: Is it at the present time the local priorities
16 sitting just along those lines, deciding that the divorces have no
17 extended impact and so that as we may only deal with certain types
18 of divorces, only those which have custody problems or, for example
19 over and against a decision that cases that will be focused on that
20 may be peculiar to the unemployment, welfare, etc. At least, a
21 number of the reports from grantee organizations that I have read
22 suggest very clearly that that kind of prioritization in a time of
23 scarce resources is being engaged in.

24 MR. BAMBERGER: I just want to say one thing. I have been
25 in private practice, engage in a number of efforts of which if they

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1 had been done by legal service offices one characterized as, I
2 don't like to use these words any more, law reform. I sat at nat-
3 ional meeting of attorneys for insurance companies in which we said,
4 you know, we needed to do this, that or the other thing for the in-
5 surance industry. I sat at meetings of counsels for banks and Trust
6 companies in Baltimore, Maryland and decided we ought to come to
7 our clients and say we need to do this, that, or the other thing.
8 I want to affirm what Murray says, that is a concept that I was--

9 CHAIRMAN CRAMTON: We all accept that.

10 MURRAY SCHWARTZ: The problem is you don't have any clients
11 that you can refer here, that is the problem.

12 MR. BAMBERGER: I want to dispute that with you two. I know,
13 there are ten other people that will and I will leave it to them.

14 CHAIRMAN CRAMTON: I think the problem arises because we are
15 under the assumption that you have a legal service office which, say
16 there are a half a dozen lawyers which are serving a community and
17 there are lots of people that are coming in the door and say I want
18 a divorce, I want a name change, I have got this problem with my
19 landlord. If they can't serve them all, does the lawyer because
20 they think it's important that certain housing or consumer problems
21 be dealt with in that community. Say we are not going to take any
22 of these divorce cases because the interest of those poor people
23 that we represent really are in terms of dealing with some landlord
24 and tenant problems on a larger scale, are some housing authority
25 problems. Then they amount, they devote their time and energy to

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1 those issues. They also have a client when they do that, but they
2 are making priorities essential on the basis of judgements which
3 they either get from the Board or the staff gets from itself. But
4 what are the issues that ought to be dealt with, they are saying
5 that those people oriented notions of somebody wanting a divorce
6 for their own life is less important than for the use of limited
7 funds, then the socially larger issue.

8 MR. BREGER: When you work for the insurance company, you
9 work for a tax insurance company, not for a conceptional problems
10 with insurance companies generally.

11 MR. BAMBERGER: I work for conceptual problems in the insur-
12 ance companies in the hope that I would represent not only X but
13 Y, A,B,C, and all the rest of the others.

14 CHAIRMAN CRAMTON: Sir, would you introduce yourself?

15 MR. ROACH: Terry Roach. I would like to put to rest, it
16 seems to me underline current of an assumption about the clients.
17 It certainly is not true. There are clients. There are poor peo-
18 ple who can't understand the legal process, who can understand how
19 to deal with it. Who when given these same alternatives or the
20 same explanations of alternatives that you and private practice
21 give a relatively unsophisticated client coming in to talk in an
22 area that you are very sophisticated in. You can't understand and
23 make choices and these programs are programs who have been in places
24 ten, twelve, eight years. Those people are there and they do artic-
25 ulate and they do understand. You can't explain to them just the

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1 way you want. Please, I really object to the idea that legal ser-
2 vice lawyers are somehow maniacally in standing around making de-
3 cisions and then going finding a client or getting a client to then
4 articulate to them. That may have been in the past, it isn't hap-
5 pening now in other counties.

6 CHAIRMAN CRAMTON: How could you choose, then, between how
7 you devoted lawyer services, I assume that your client in both
8 cases and you have a long list of divorce applicants and you have
9 got other people who want other kind of problems taken care of.

10 MR. ROACH: This discussion is the blind man on the eleph-
11 ant and we have had other discussions. Let me just review a couple
12 of things I think we can agree on. One, there are unique legal
13 problems in the poor. I suspect that all of you from law school
14 are teaching poverty law courses now. There are things which are
15 unique to you and unique to the poor. Then you have reviewed the
16 philosophy of legal services, historical basis today. I have heard
17 very little about the history of the practice and consequently I
18 would like to remind you that for ten, twelve years or more, there
19 have been lawyers out there in the field who have had to deal with
20 income substitute programs, for example which are very complex and
21 have a very complex body of statutes and regulations, that nobody
22 else in town knows a thing about it. Another thing that I think
23 we would all assume, but I haven't heard you talk much about is
24 what the responsibility enrolled of the private Bar in delivering
25 legal services to the poor. Congress did not intend, I think, to

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1 completely usurp the area by passing this statute. That responsi-
2 bility is still there under the statute. Ought the corporation, which
3 I don't think can make substitute choices, I think that is a question
4 of local conditions and local clients and groups, input. Ought the
5 corporation to have those substantive choices. Obviously, there are
6 limited resources and there is going to have to be some kind of pri-
7 ority set. I think, you can start to inch toward substantive choi-
8 ces by looking at alternatives. Ought we, as legal services attor-
9 neys to spend much resources on which other lawyers in town can do.
10 For example, Charlotte has probably the highest per capita number
11 of title 7 lawyers per bar than any city in the United States. Con-
12 sequently we won't touch title 7 cases. Although, in many other
13 parts of the country access to employment opportunities is the big-
14 gest problem for all the clients around and if you follow that
15 analogy thought, we spend our resources in doing family cases or
16 divorces that private attorneys could do. If we assume that access
17 to poor people to the system is important, ought we to do then,
18 or ought we to reform the use of our resources in certain areas that
19 nobody else deals with and that doesn't talk about law reform, that
20 doesn't talk about impact. So ought we to do that. And if the an-
21 swer to that is, no, then I think one major role of this Board ought
22 to be to deal with the private Board or mass, to reaffirm it's re-
23 sponsibility to people not to let them get away with the fact that
24 now we have to leave the service county in X county to do anything
25 more for poor people. I think, if you started reaffirming the spe-

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1 dialty that has grwon up in the practice, you thn begin to make in
2 general substantive purpose.

3 CHAIRMAN CRAMTON: Are you suggesting that if the corporation
4 on a national level should essentially follow what I have spoken of,
5 the theory of comparative qualifications, but here the comparative
6 qualifications between the private Bar should continue responsibil-
7 ity to provide legal services to those who can't afford it and the
8 legal service Bar which may specialize in particular substantive
9 areas of problems that are peculiar or unique to the poor and that
10 because the variation of local conditions, all the corporation has
11 to ask, naturally is local programs should consider that question
12 and should devote staff attorneys services to those areas in which
13 the private bar is least able to provide legal assistance.

14 MR. ROACH: I think you are saying much the same thing.

15 CHAIRMAN CRAMTON: I was just trying to summarize.

16 MR. ROACH: I think, that is right and that is the process
17 we went through when we were setting our priorities.

18 MR. BREGER: What if the private bar isn't willing in your
19 area?

20 MR. ROACH: Excuse me.

21 MR. BREGER: What if in your particular area the private bar
22 is not willing to undertake to a pro bono basis home and family
23 law cases?

24 MR. ROACH: Well, maybe I'm too much of a Polyanna, but I
25 think if we took our job, well, that one of the things we have to do

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1 in representing poor people is get it know in the local bar and you
2 have to get it known in the national scene what the problems are.
3 I think, once an attorney, not all attorneys obviously in any dep-
4 artment, but ones in the private bar recognize the scope of the
5 need and the elements of the need, and see that you can't do it all,
6 that they will go forward, not all of them, but they will.

7 MR. ORTIQUE: But as a practical matter, in the course of
8 this study that we are about to launch, we would determine that you
9 were going to use the private bar and duty care and lawyers will
10 take the turn to participate as they have done in the American Bar
11 Association, the young lawyers and also the general practice session.
12 Say we have got to have certain of those funds, certain of your re-
13 sources, what happens when you say, we are willing to pay for those
14 areas that we can't handle. Aren't we in the same box as where we
15 were before?

16 MR. ROACH: Not necessarily. I think, that you know to an-
17 swer that a number of levels and showing by biases, one of the rea-
18 sons I don't think judi-care is very consistant, because there are
19 so many people up there that understand how to really do well the
20 kind of cases that we do. I am not going to go to a property guide
21 for a tax question. Consequently, I am not going to go to a gen-
22 eral practitioner for a wlfare case. If you are going to judi-care
23 and they resist that, we have gone through this entire discussion
24 in North Carolina in setting up our statewide structure. That is,
25 you know, a globe answer. But if if fact you find that judi-care

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1 is necessary particularly for access questions, in broad geographic
2 areas with low population, then I think you can start to talk about
3 using the private bar with some incentive. For example, North Car-
4 olina has a statute that permits a prevailing party to get attorneys
5 fees in a contested domestic case. Okay, in theory that's the gen-
6 eral case. But in practice, nobody in the local bar is going to
7 take you without money up front. Okay, one of the things that we
8 have been working in Meckleburg County Bar is the idea, since we
9 now have the public defender and much less involvement by assigned
10 counsel of trying to set up a voluntary panel private bar who would
11 take those cases with even the possibility ultimately to take those
12 cases without money up front, with the possibility of getting these
13 fees. We are trying to figure out some way of replicating the as-
14 signed counsel service situation where they would get paid for some
15 of the time they put into it, even if they couldn't get the award.
16 Which obviously brings up all the problems for the assigned counsel.
17 But nevertheless, I think you can only answer these questions fairly
18 locally. I don't think you can answer that one locally naturally,
19 But I do think that this Board has a very, very heavy responsibility
20 for the articulating the private bar the scope and limits of the
21 problem and doing our public relations for us that we all be doing
22 down home, not for us, but with us, if that makes any sense.

23 CHAIRMAN CRAMTON: I think, that is a very useful comment.
24 Some other members of the public would like to address the general
25 questions that we are discussing.

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1 MR. KNOLL: My name is Gregory Knoll, I am the director of
2 San Diego Legal Aid Society. I just had a number of responses mostly
3 to things that have been said this morning. I think, one thing that
4 I am really not to sure of in very beginning, is whether or not at
5 least from listening to the Board members and staff, I am not really
6 sure whether the sort of, at least a sensitive objective academia
7 approach to the view of legal services and essentially a private
8 bar perspective of legal services will ever be sort of closeted
9 with the field programs in terms of the fact that we are sometimes
10 a little wide and self protective and that what we are doing is
11 very important and no one really understands this. I don't know
12 if that can ever come together, but I think that this dialogue is
13 one very important way that you assure that at least there are the
14 views being passed back and forth. I would like to make that com-
15 ment first of all with regard to Mr. Montejano's opening statement.
16 I think, that it points out that there is not a consensus even a-
17 mong the local Board after a year as to what should be the direction
18 or the corporation. I think, it has an honest and some sense cour-
19 ageous kind of statement to make after a year. I am still asking
20 the same question. Are we going to be committed to solving the
21 problems raised by poverty? Are we going to provide access to all
22 single persons in the country for a law office in every neighbor-
23 hood. No people who simple act afford it. And by the way, if as
24 being suggested you adopt the view that the act does mean that those
25 least able to afford legal services should get a priority and if you

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1 go further and say that that means to the poor or poverty clients,
2 I really don't, as a practical matter a problem. If that's an easy
3 way for the Board to come together and decide, yes, that is what
4 the act says, because I think that is a practical matter. If you
5 decide that you are going to serve poverty clients first or whether
6 the poorest of the poor first, then if in fact until the appropri-
7 ation begins to be 340 billion there will be a long time before we
8 get to worry about serving the middle class. Some of the problems
9 Some of the problems with regard to the discussion as to
10 how the act came about in the corporation. For instance, the com-
11 ments regarding that OEO had very little support in the private
12 bar. I think, that that is basically true, but I think that that's
13 true mainly because there was a lack of understanding as to the
14 services. That legal services programs provided the private bar
15 when they were serving the poverty community. I think, that as
16 not only to the corporation and to the education of the private
17 bar and the support I think also the work that all of you, and hope-
18 that some views in the local level have done in educating the pri-
19 vate bar. Look, we are not taking food from your family, we are
20 not taking clients from your practice. We are representing the
21 people that you will be forced to represent, if in fact there is no
22 legal services program. But I think over the years that that kind
23 of feeling has been ingendered in a lot of Bar Associations and a
24 lot of private members of the private sector. I also believe and
25 would hope that the Board would take a positive approach toward ed-

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1 ucating the people that are yet not sure whether we are poverty
2 programs or whether it's appropriate to serve the poor and not the
3 middle class or whether we sould be in existence at all. I think,
4 that the Board should say, yes, that we must serve the poorest of
5 the poor first and this is what they are doing and we need your sup-
6 port, instead of kind of worrying about not doing something wrong
7 that will hurt them or that will upset the private bar of will turn
8 them against us, bring them into our camp. What I think what we are
9 doing is right and proper. All you have to do is explain it to
10 them, and eventually they may come over. I believe that and I be-
11 lieve a positive approach is educating the bar may be a little more
12 effective. With regard to Charles Jones was talking about, Mr.
13 Montejan's coming in law offices, he indicated that his view was
14 that in a large respect that he may be operating like those law
15 offices in terms of the client that do come in. I think, that in
16 some sense that is true. Where it is not true is the volume and
17 the pressure and the problems with regard to providing legal services
18 to poverty clients. What you are trying to do where you don't have
19 the **choice**, that you do in private practice of rejecting a client
20 or accepting a client, that when someone who comes in and demands
21 your services and they know you are the last place they are going to
22 be able to go. What do you do with a client who qualifies for your
23 services and when there is 22,000 a year and you have ten lawyers
24 and it does become a little more difficult and very often you have
25 to come up with different ways to represent those clients.

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1 Mr. Erlich indicated that for a while the corporation has
2 been operating on the premise of certain rapport as opposed to
3 branch out and serving just those unable to afford. I should say
4 that there has been some feeling and probably some paranoi among
5 the field problems that possibly the corporation might be moving
6 away from that particular concept that you indicated, Mr. Erlich,
7 that may be the move of the corporation is toward serving the mid-
8 dle class in addition to the poor. The kind of wondering how we
9 can do that if we haven't got the ability to serve the poverty cli-
10 ents yet.

11 I believe, that the paper, the discussion paper quite frank-
12 ly is of somewhat of a surprise and does dispel a lot of those feel-
13 ings. I am quite pleased with the paper in terms of some of the
14 aspects and the statements around the table that there is this com-
15 mitment psibly to serve the poorest of the poor first.

16 In response to Mr. Schwartz's talking about, I believe, that
17 is absolutely essential as I do believe a lot of other people do,
18 that you are remiss and not attacking recurrent problems on a law
19 reform basis. However, I would just like to support the statements
20 of my colleague from Meckleburg that we find also in San Diego,
21 that there is a great group of clients who do understand process
22 and who are not only very willing and able to sit down and discuss
23 and make a decision on their particular case, but are quite willing
24 to come and tell us what we should be doing in a substantive area
25 and in making decisions with regard to substantive areas of law that

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1 we practice. I can remember going to the discussion whether or
2 not to do family law or to assist in government benefits, because
3 that would be serving the poorest of the poor better, and whether
4 or not the clients should help determine the priorities. I remem-
5 ber when I was in the program in Newark, New Jersey because of the
6 lack of staff, the traditional idea of some field program attorneys
7 that the best thing to do is go into law reform effort. We were
8 discussing the possibility of cutting our family law and we went
9 to our clients constituent groups with that idea and the absolute
10 indignant outrage that came from clients to think that we would make
11 the determination that family law was not an appropriate area of
12 poverty law, I would say that not only the director of the program,
13 but all of the staff attorneys. The feeling was that family law
14 matters, divorces, custodies, preventing problems in the home is
15 indeed a very poor issue in the poverty law sector. For instance,
16 the point was made that the children or the woman who may be has
17 someone in her life who would like to marry her and support her,
18 etc, but she can't marry him until she gets a dissolution. That's
19 the old reoccurring kind of discussion, but it is important to re-
20 alize, I think that clients can make those kind of decisions and,
21 in fact if we decide to make decisions in substantive areas with-
22 out client's input it is a very dangerous and I would not necessar-
23 ily like to be a part of that.

24 I guess, I could just in determining these purposes of legal
25 services and the directions that the field program should go in, I

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1 think, it's very important that the field program and their clients
2 constituents help determin the goals, objectives, priorities in
3 their localities, much like the title 7 assistance in Meckleburg
4 County. I think though that each program regardless of it's size
5 and it's capabilities has to think that there are a number of reas-
6 ons why legal services programs are there. I believe, that we must
7 provide the direct service on a client by client basis, because that
8 is extremely important to that client that comes in and that's what
9 we are established to do. On the other hand, there might be some
10 thought and movement towards law reform. Also, one that is usually
11 left out or sometimes left out is the idea of moving toward commu-
12 nity education and involvement of the staff attorneys within the
13 program to assist clients to become their own advocates to talk
14 about making choices and then to determine in a law reform effort
15 exactly whether or not the client community should be the determin-
16 ing factors as to whether or not that law reform case is dropped.
17 All of the decisions that go into deciding whether or not to bring
18 a law reform case, that being the role of the client in that. I
19 don't know. I just believe that clients do have the ability to de-
20 cide. I think, that for instance, in San Diego they have decided
21 that that regardless of the court system, regardless of the defend-
22 ers system, with model city money they demanded part of the contract
23 into the Legal Aid Society to provide juvenile and criminal repre-
24 sentation. The reasons are clear. They feel that the residence
25 of the model's neighborhood are continually short changed by the

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1 private bar and the court appointed system. The court appointed
2 system does not provide model city residents with access to the
3 criminal justice system. So in order for us to get model cities
4 money your absolutely forced to doing something that may be crimin-
5 al law aspect, we otherwise would not do. Those are some general
6 comments.

7 MR. HEIGHT: I am Neil Height with the Montana Legal Services.
8 I think, I can do this in about two minutes. I am very pleased to
9 see this discussion taking place. It's a matter of great concern.
10 I think, the programs in the field will very definately guidance
11 from the corporation in order that we can do our job of serving our
12 clients and to maintain the highest possible degree of support which
13 Mr. Smith has indicated is of some importance.

14 I am going to expand a bit on Mr. Erlich's statement. I
15 think that our service of rapport eventually it will be possibly
16 known as a great protector of due process for the poor people. I
17 think, this will be one of the net results of our work. My one
18 contribution or suggestion as a lawyer, I try to narrow the area
19 of disagreement wherever possible. In dealing with a finance co-
20 mpany, for instance, we may have an \$80.00 claim and a \$10.00 dis-
21 agreement or some application of interest. If a clients can get
22 up the \$80.00 and pay which we know is due, then the finance company
23 is left with the company to sue over \$10.00 sometimes. That dis-
24 agreement became so narrow that they find it not worth while to
25 file a suit. Whereas if we try to resolve the thing at the outset

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1 we may wind up with a lawsuit.

2 So, simply the are of law reform and social law is sometimes
3 a great question with us, in my area anyway. I think, this is re-
4 flected in some extent to the corporate law, class action has
5 been equated with social law and with law reform. For instance,
6 one person on my Board, the minute you say class action I begin it,
7 it occurs not what it's about. While for instance, we have a class
8 action going in Montana right now whether we are enforcing a very
9 basic established legal principle, it's no reform whatsoever. But
10 it requires a class action to get the job done. So my suggestion
11 would be that if the corporation could issue some guidance indicat-
12 ing that, you know, class action work and fellow work and these
13 type of things that do have a very good use, purpose of enforcing
14 existing legal obligations. We may have cut away enough of this
15 so that the remaining amount of actual law reform and social law
16 which we are concerned with may become small enough so that the
17 public doesn't have to worry about the way we think it will. Thank
18 you.

19 MR. ORTIQUE: I just wanted to comment that I think a great
20 deal of the discussions about having a client so that we can move
21 forward in some of these problem areas, is really not a substantive
22 issue. I mean, I think about the fundamental work that Paul Mason's
23 group has done with the social security program. I don't know wheth-
24 er they have been able to say, "Joe Blow is our client." But I
25 know that when they say we have got forty people who have the same

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1 problem with the administration of the social security problem,
2 there is no way you can say that they don't have a client.

3 The second point I would like to make, is that a lot of times
4 we think that these poor people are uneducated and don't have col-
5 lege degrees and certainly have never been to law school. We think
6 can't articulate the problems as they see them, but they may not
7 articulate them Oxfordan English, but they will get their point
8 across to you.

9 There is recently the Legislature in Louisiana has passed a
10 statute which says if a landlord is going to require a deposit to
11 guarantee against the tearing up of his property, when you move
12 that he has got to get you to agree in writing from the outset what
13 the assistance is going to be for determining whether you get your
14 deposit back or whether he declares your deposit forfeit. It wasn't
15 the people who are putting up deposits in Louisiana equal to one
16 month's rent, it wasn't the people who were putting up three, nine,
17 or five hundred dollars for the deposit, it was those people who
18 are putting up forty and fifty dollar deposit which represent the
19 rent for their little one room or two room apartment. They are
20 the ones who brought this problem to the attention of the people
21 and insisted that something ought to be done because every time
22 they went into the landlord and said, "I am moving, give me my de-
23 posit." Well, you forfeited because you damaged my property by
24 unreasonable wear and tear. Then those who found out that poor people
25 weren't getting back their fifty and sixty dollars started saying

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1 "Wait a minute, I am going to hire me a lawyer in the private bar
2 and get my deposit." So that I have great confidence, you know,
3 just happens that this is our bi-centennial year and one of the
4 reasons that the historians now say why the English underestimated
5 the Americans is because they thought that those were a bunch of
6 stupid people who had been run out of their countries and didn't
7 understand that those notions, the philosophy of no taxation with-
8 out representation. Maybe they didn't articulate, but they knew
9 if they threw their tea in the river that somebody was going to take
10 notice..That is the same fashion that I think these poor people are
11 articulating and letting you know that they have a grievance that
12 needs to be taken care of. I have great confidence in the poor
13 folks that they will get their point across and if we will just have
14 a similar confidence in them, I think we will do a real service for
15 them as long as we recognize that we have got to promise that we
16 will do something about it.

17 MR. BREGER: I just wanted to fully agree with you that the
18 clients can articulate what their needs and desires are. I think,
19 the peculiar problem in legal services is he or she has a greater
20 responsibility than that's the private clients who feel that he is
21 not getting his point across to his lawyer he can go to someone
22 else. The legal services clients can go to someone else and to
23 that extent the legal service lawyers have to be sensitive to cases
24 in which they might be concerned with their own needs, concerns,
25 perspectives, or visions about the cause of the poor as a metaphys-

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1 ical class as opposed to the needs and desires of the specific
2 grievances in spite of them.

3 It is very interesting piece in the recent Law Journal that
4 deals on this by Derrick Bell who discusses problems of NAACP law-
5 yers in bringing desegregation suits. Of course, it's not a legal
6 service, but it is similar issue. He says that as we know the NAA
7 CP has been directly concerned to force integration in all of the
8 lawsuits and certainly the lack of clients, mostly poor because
9 they have been fostering has been largely concerned with integra-
10 tion. Recently, some of them have been concerned with the question
11 of higher quality education and said that we would be would be more
12 interested in getting for education, for our children and even if
13 that means in some cases less integration. There is almost two
14 sets now of clients, that those clients who want integration as a
15 principle and those clients who say we will take more money and
16 better schooling for our children. The problem is that there is
17 only one lawyer and that lawyer, the NAACP's lawyer, has according
18 to Bell be following a pattern of principles saying integration is
19 our foremost concern. So I think, that if not the suggestion that
20 the clients are inarticulate. I think, the problem is that in these
21 cases in the context of the legal service context the lawyers have
22 much more control over the clients than they do in the private law
23 context. Therefore, the responsibilities of the legal service law-
24 yers in the field, the grantees, and the responsibility of the cor-
25 poration is much greater to insure the clients wishes and needs are

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1 ventilated and licensed to.

2 MR. ORTIQUE: But I'm sure Derrick will tell you that this
3 is a substantive philosophical metamorphosis that is taking place
4 in this whole business of integration as opposed to the version of
5 segregation with high quality education. Just as there will be a
6 certain fundamental barriers knocked down. As someone suggested
7 that you decide that you ask the private bar to take care of these
8 family law problems and we will get to those more fundamental issues
9 because obviously adequate education was the objective in the first
10 place, but we had to cross one bridge before we get to another.

11 MR. SMITH: Mr. Chairman, I just wanted to offer a proced-
12 ural suggestion. It seems to me that we could at this point break
13 according to schedule and not foreclose anyone who still has com-
14 ments, because the subject this afternoon is so closely interrelated
15 that any comments yet remaining would be perfectly appropriate on
16 this afternoon's agenda.

17 CHAIRMAN GRAMTON: Well, I think, that is clear. The con-
18 tinuation this afternoon picks up the same topic under somewhat
19 different organization. If members of the Board is agreeable we
20 will break at this point and return this afternoon.

21 MR. ROACH: Mr. Breger, we are bound by the code of appropri-
22 ation responsibility just like other lawyers are. If you train a
23 legal services lawyer right and if indeed he really believes in
24 working for poor people, he's not going to take that kind of dom-
25 inant reaction to clients that you are talking about. For gosh

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1 sakes, please believe us a little bit.

2 MS. DEMAREST: First of all, I would like to dispel the not-
3 ions that legal service leads clients. We would be ten times more
4 radical if we did everything our clients wanted us to do. More
5 often that not, we are the ones who impose the practical view, who
6 are the conservatives who want them to act within the legal system.
7 You know, I just fight this battle every day in our office and be-
8 fore our Board of clients who want us to be out picketing the school
9 boards ourselves, rather than representing the poor. It's just to
10 think that legal service lawyers are these radicals, I think ignores
11 the fact that if you go to legal service meetings you are going to
12 find that is not quite true at all, that legal service lawyers are
13 a class of very, very conservative people and by large legal ser-
14 vice clients that want us to do more, not less.

15 MR. BREGER: I may have been misconstrued both as supposed
16 information from my point that legal service lawyers are all rad-
17 icals or that they are violating the code of professional respon-
18 sibilities. It just does seem both of those are clearly not the
19 case and I know enough and have enough friends that are legal ser-]
20 vice lawyers that I know intimately is not the case. I just was
21 suggesting that in a context in which you have clients who have no
22 where else to go, you have a separate and special set of problems
23 than you do in a context in which you have clients who can say,
24 "I don't wait. I don't like the advice that he will give me. Or
25 I don't like the strategy you warrant to suggest, and I'm going a-

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1 cross the street." I think of necessity that raises special pro-
2 grams and creates some special sensitivities, that's all I am try-
3 ing to suggest .

4 CHAIRMAN CRAMTON: Thank you, Mr. Breger. I think, you are
5 misunderstood. We are talking about the rationing of a limited
6 service. We are not talking about putting words in clients mouths,
7 but the choice of one client against another client, when you can't
8 serve all of them, isn't that the question?

9 MR. BREGER: Yes.

10 (Whereupon, a lunch break was held from 11:30 A.M. to 2:00
11 P.M.)
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1 A F T E R N O O N S E S S I O N

2 BEGINNING AT 2:00 P.M. JULY 23, 1976

3 CHAIRMAN CRAMTON: This afternoon our topic is Determining
4 minimum needs for legal services. Some of us may find it difficult
5 to distinguish that topic from the topic discussed this morning,
6 but the paper does at least present some new facets and asks us to
7 look at it in a somewhat different way. I think, Mr. Bamberger is
8 going to head off.

9 DETERMINING MINIMUM NEEDS FOR LEGAL SERVICES

10 MR. BAMBERGER: I want first to do something that perhaps
11 I shouldn't. As you will see when you read the first two papers,
12 there is a great deal of similarity between them. That would lead
13 all of you who know us to come to the immediate conclusion that I
14 have committed plagarsim, but that is not the truth. What I did
15 commit was prevarication. I didn't read Tom's papers until yester-
16 day, but on at least three occasions before this when he had given
17 it to me I told him I had read it. This is the honest to God truth.
18 This time I am telling the truth. Yesterday coming here on the
19 plane I had to choose between confessing to prevarication or plag-
20 arism. I would rather confess to prevarication and besides that,
21 I have done it more often. Our paper tried to address really two
22 questions that I think those of you here who are legal servants,
23 attorneys and who are involved in the administration of legal ser-
24 vice programs address and answer every day. Perhaps you formulated
25 the criteria by which you answer those questions, I know at least

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1 some have not. The question seems to us are one, how to marshal
2 this scarce reources of legal services to address the legal problems
3 of the poor? The first discussion did that or that is sort of the
4 basic and principle question and the first discussion addressed that
5 question. But considering what is the purpose of the legal service
6 program and we suggest in this paper, or try to suggest in this pap-
7 er that we address that question by asking two more questions. The
8 first one is, Is there an absolute minimum of legal services that
9 each person should have considering the poor and not as a group of
10 people that thinking about an individual poor person are there cer-
11 tain legal problems that the poor have that ought not to go on un-
12 attended and so when they have that problem they should have a law-
13 yer? Then the second question that we put is, When they do have
14 that problem that ought not go on unattended and they have that law-
15 yer, what limit, if any is to be put on the amount of lawyering
16 that is to be devoted to that client in that case?

17 Now, we suggest somewhat here that in addressing the first
18 question comes that is what are those minimum legal problems for
19 which there ought to be a lawyer that one could look, perhaps at
20 education or health systems. We have made some national judgements,
21 haven't we? We made a national judgement that everyone ought to
22 have at least a primary and secondary education. So that is avail-
23 able for everybody regardless of what impediments of poverty or
24 physical or even mental disabilities that they have to the extent
25 that they are able to take that ecucation that is available for them.

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1 We have made that judgement for two reasons. One, that that edu-
2 cation is necessary to perfect the individuals personhood. That
3 everyone ought to be able to read and to write and to have enough
4 education to keep. We have made it for a second more personal less
5 altruistic reason, that it's good for society, that an educated peo-
6 ple are a productive people, that an educated people are a people
7 who are able to participate in a democratic political process that
8 produces and preserves order.

9 Consider medicine. We have recently made a decision to in-
10 vest a huge amount of money to be sure that all will be protected
11 against a new strain of flu. We decided that that is a minimum
12 medical need that everyone ought to have. Why? I think, the same
13 two reasons, individual health, that everybody ought not to get
14 that flu. Secondly, because it is an infectious disease and if you
15 get it, I'm likely to get it. Again, the question of preserving
16 the health of the people so that it's a more productive society.

17 How can you translate any of those over-into affairs of the
18 law. There I think, it gets more difficult and what I think we
19 suggested here again is that we need to decide that there are cer-
20 tain things that for one, of a better word, we call in the paper
21 entitlements. That we have selected those entitlements perhaps
22 for those same two reasons. One, because that benefit, that entit-
23 lement is necessary to give dignity to respect to perfect the per-
24 sonhood of an individual. Secondly, to protect the physical and
25 the political well-being of a society. In the paper we suggested

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1 four entitlements. Maybe four entitlements that we, as a society
2 by our legislative process have in our political process broader
3 than legislative process, we have decided our entitlements, shelter,
4 food, clothing, and health. Now then, if those or those entitlements
5 that a person ought to have, then one can say that there is a min-
6 imun legal need, there is a legal need that ought to be met. When
7 in order to have any of those entitlements a poor person must have
8 a lawyer and that so that those occasions as we say in the paper
9 when you need a lawyer to have decent housing, those are minimum
10 needs for which an individual ought to have a lawyer. Having gone
11 through that exercise, let me go back to the second question. The
12 second question is when you have decided there ought to be a lawyer
13 to help a poor person get decent housing or that how much lawyer-
14 ing should be devoted to that? But the second question has to be
15 broader than that. The second question has to be on any occasion
16 when a legal assistance lawyer is assisting a client, how much law-
17 yering does the lawyer devote to that particular matter, whether
18 it's one of those matters that we put in this category of minimum
19 needs, the oughts, the entitlements, or is it one that we didn't
20 put in that category? I am sure you make that decision all the
21 time. In private practice, there is an economic constraint some-
22 times operative that the clients decides. Whether what the lawyer
23 will charge for the lawyering, the additional lawyering, the amount
24 of lawyering is worth the gain. What substitute ought to be, should
25 there be when there is not that economic constraint as there is in

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1 legal assistance? We suggest that there is some other forces made.
2 One, is the obligation of the code of profession responsibility.
3 I don't find much help there, unless I begin with a bias that it
4 ought to be all the lawyering that is necessary to get whatever
5 the client wants, you see. Because then I an hang my hat on words
6 like zeal and complete devotion to the client. My difficulty is
7 I don't think the code of professional responsibility was written
8 having in mind the kind of problem that we are addressing.

9 The second constrant that I think operates for a legal ass-
10 istant lawyer is how much? This is a suggestion that a lawyer
11 made to Alice Daniels in a meeting in Denver. The lawyer is making
12 an investment of his or her own capital, his or her own limited
13 time, resources, energies, emotions. That is a constraint that
14 operates on how much lawyering you devote to the particular prob-
15 lem for the particular client.

16 Then we thought that there was a third force that governed
17 this amount of lawyering. That is what we talked about this morn-
18 ing. What is the purpose of legal services program? Because if
19 you define that purpose, however you define it, then you will apply
20 that defination of purpose to this particular case and decide how
21 much of the resources you're going to put. All of that leads back
22 again the question of allocation of resources among all the clients.

23 Our paper then went on to suggest some criteria which are
24 in item 3 in our discussion outline. I assume you have glanced at
25 the paper. They were, do you give a priority because the lawyering

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1 is being implementation of a public policy that would put welfare
2 high on the list. There is a public policy that one should have
3 certain minimum guarantees through a welfare system and that some-
4 times lawyers are necessary to make that happen. Do you consider
5 improvement in economic plight of the poor? Is the criteria the
6 requests of the clients? Do you look to the affect if necessary
7 of the solutions that the lawyer offers as contrasted with other
8 alternatives non-law, non-legal remedies? Do you look to the facts
9 that the law is the only place that offers a solution, the exclu-
10 siveness of the law solution? Do you look to the consequences to
11 this particular client or to the consequences of a group of poor
12 people ? Do you look at the kind of legal assistance required.
13 A fellow advocacy you decide not to do because it takes up so much
14 time and you just do take cases only to trial or you reduce the
15 amount of time you put in advocacy at all and concentrate on preven-
16 tive legal education and counsel. And then finally, who decides all
17 of this? Does the individual client? Groups of clients? Represen-
18 tative of clients? The Boards of Directors of programs? Staffs of
19 attorneys? The corporation? All of the above? Some combinations
20 of the above? What our papers suggest is that these decisions ought
21 to be made by the governing bodies of programs through a process
22 that the corporation would require and a process that involved both
23 clients and attlrneys. At least I for one am very conscious of what
24 was said today. That in fact, the corporation by the decisions
25 about it makes about funding and kind of regulations which issues

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1 may be deciding it how ever else it may say it is being decided.
2 I think we all need to be conscious of that. That is what we try
3 to say in this paper. If I wrote it that way you wouldn't have
4 caught the plagiarism as quickly.

5 CHAIRMAN CRAMTON: Your paper suggests, Clint, on page 5 that
6 we open the section on this topic by asking the client representa-
7 tive who are present and the project directors to state their views
8 in the minimum legal service of an individual. I don't know whether
9 the Board members want to follow that procedure. Revius, Sam, is
10 that what you have in mind?

11 MR. THURMAN: Clint has done a pretty good job of covering
12 it. I don't know whether he's guilty of perjury or plagiarism. I
13 can't decide which is the more serious crime. I think, Clint has
14 done a very good job of covering the waterfront there. I will just
15 make a couple of comments.

16 We have got with us Philip Lewis who has written a very per-
17 spective paper why should the government, I think is what he is tel-
18 ling us, fund legal services at all. We don't give every member
19 poor and rich everything they want. We don't give everybody a trip
20 to Europe every year just because they want a trip to Europe every
21 year. Tom has written, I think, a very insightful reply to Philip
22 Lewis's paper. I don't know how many of you have that opportunity
23 to see these, but I would recommend you read them..

24 We made that decision in this country. We have made the de-
25 cision that we are putting a pretty high priority on federally fund-

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1 ed legal services. I can see nothing but an increasing percentage
2 of the national income being devoted to that in the future. That
3 puts squarely on the shoulders of the Legal Services Corporation.
4 Whether it's the Board decision or whether it's the local projects
5 decisions or the decisions of individual lawyers how we are going
6 to best use this. It's pointed out this morning that the two big
7 problems are priorities, number one and number two, who is going
8 to make the decisions or what combination of individuals or entities
9 are going to make the decision. As I go over the list of these
10 things that Clint mentioned here, I guess, I don't place too much
11 weight on this matter of, is the lawyer absolutely essential? Un-
12 less you associate that with essentials to achieve what, I can't
13 imagine something. Take one of the examples Clint had in here about
14 having your name changed. Well, I guess a lawyer is essential for
15 that. I don't know whether you have any do-it-yourself packages
16 on that. I don't know how high a priority I would give to that
17 thing. I expect it would be high. Another thing, if you read be-
18 tween the lines here, is a lot of this priority thing might be de-
19 cided on the basis of, let's not get as high a quality of service.
20 Let's go for quantity. You can't give everybody everything by way
21 of amount of legal services they are going to get, but let's give
22 more people maybe a little lower quality of legal services, that
23 possibility here. The question of client requests, certainly the
24 private bar there is much allocation basis, but this isn't the same
25 as paying. We don't have so much a question here as the game with

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1 the candle as it is to the private client. How about just leaving
2 it to the local Board. We know that some local Boards exclude
3 bankruptcy. They will exclude non-dependant divorces, where you
4 don't have any dependants involved. Or name changes. Or things
5 of that kind. Maybe we have got in the last analysis after we have
6 discussed the who question come down to decide some areas of the
7 country might exclude one, some might exclude the other. Others
8 that have been suggested are the broad impact on our alternative
9 methods available. But finally, the one I had put my greatest em-
10 phasis on for justifying the Legal Services Corporation and the
11 one hundred and twenty five million dollars a year this coming year
12 is that it does enable, and it frequently necessary to achieve the
13 things that Clint started out with here, and that is these matters
14 that all of us think would check off as vitals. That is medical
15 assistance. Very frequently legal assistance is necessary to ac-
16 omplish that. The housing, the food, and the clothing. I wouldn't
17 leave off the list the one you started with, Clint, about and that
18 is the matter of the universal education. We know that we have one
19 of the back up centers is involved in the education area. A good
20 many of the projects have been also. And it's on that one that I
21 will close with that note, that I think the greatest stress ought
22 to be placed if we have to have legal services or if they are pri-
23 ority important to achieve what all of us would agree are priority
24 fundamental needs to all members of society, rich, poor, alike.

25 MR. ORTIQUE: I will just make the two brief comments. One,

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1 that I know a number of people in the room will disagree only be-
2 cause they don't like to hear what I am about to say, and that is
3 that this Board and certainly those of you who are connected with
4 this operation must make the decision within yourself, why these
5 poor people deserving of some less than other human beings in this
6 society? It's a very basic question that you have got to ask, but
7 I think that even if you don't respond to that now, because that is
8 something that we would like to dismiss and say, oh, of course not.
9 I will remind that it wasn't so long ago that we decided that the
10 American Indian was a human being. It would appear to me that we
11 have got some active decisions to make about how much lawyering
12 legal services, one, ought to do and two, giving the limited re-
13 sources are capable of doing. Specific example, the legal services
14 attorneys my home town brought an action against certain water
15 Board controls, water services to the homes. They said that you
16 have got to give these people a hearing before you can cut off the
17 water. Just because they don't pay the bill doesn't mean you can
18 just turn off their water at any time they want. Once they won
19 that, once the court said you have got to give them an opportunity
20 for a hearing, what do you do about the local ordinance that admit
21 the certain Board or the utility companies to have life and death
22 controls over poor people. What next steps are you able to do.
23 And I would think that because of limited resources they have not
24 done very much. They got over the initial hurdles and a lot of
25 other things would have to be left to middle class folks or folks

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1 with some money who can follow up the attacks.

2 Now, thinking any number of other areas that you have to ad-
3 mit that because of limited resources, the minimum needs of poor
4 people are not going to be met, but in my view we have got to have
5 some level that we would work toward, even though we don't have the
6 resources now. We recognize philosophically that poor people, dis-
7 advantaged people must have some basic lawyering on their behalf
8 as other members of the society.

9 CHAIRMAN CRAMTON: Do you suggest to follow the procedure?
10 Well, client representative, where is Bernie Veney?

11 MR. VENEY: Roger, I have got a full series of things that
12 are running through my mind. I want to go back to this morning.

13 CHAIRMAN CRAMTON: I think it's the same topic, it addresses
14 it from a different focus.

15 MR. VENEY: Well, then I presume that we have included, in
16 fact the business of the corporation is the delivery of services
17 to the poor, because I guess, I heard some questions in some peo-
18 ples minds this morning. Let me just react to that a bit. I re-
19 alize the legislature sets off an independant corporation, but I
20 guess, I would remind us all that enabling legislative is an amend-
21 ment to the economic oportuntiy act. The Congress, for some rea-
22 son or another, made a decision that it should not be a separate
23 statute, that is should be an amendment to an act. It was geared
24 to bring much government services to a particular group of people
25 in a fashion that was unheard of ten years ago. That, I think is

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1 significant for us.

2 The second part of that, is that I am not sure you have ter-
3 ribly many choices. I think, Rudy was beginning to address that
4 this morning because that statute particularly precludes anyone
5 from interfering in the client-attorney relationship. That sounds
6 strange to you? Client-attorney instead of attorney-client. We
7 are going to make a fashion this year of putting the client first
8 and the attorney second. Client-attorney relationship is what we
9 are now talking about. You can't interfere in that and the attorney
10 because of the codes have an absolute obligation to provide all of
11 the services that a particular client needs once he has agreed to
12 accept the case. I heard Clint's statements and I read the paper.
13 I must confess, I don't understand it. I don't know that the at-
14 torney has any choice. The attorney may decide that he is not go-
15 ing to use just his resources in meeting a particular client's
16 needs. He may call on some outside resources, but I am not sure
17 that the attorney has the right to say to a client, you have an
18 option out here that I choose not to exercise for you despite the
19 fact that I have accepted your case. I would hold that to be com-
20 pletely inconsistant with the old fall attorney technique. I do
21 want to say that I think the corporation has a particulary interest-
22 ing function, having lawyers who have now put you in a position with
23 much of what you do is react, because they are going to pursue mat-
24 ters with their clients for their clients, I would hope. You must
25 remember you have two constituencies. One constituency established

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1 under the act is the poor and that constituency needs to talk to
2 you on a continuing basis, as I talk to you on a continuing basis,
3 as people around the country talk to you on a continuing basis. But
4 you have a second constituency, too and I would hold that that sec-
5 ond constituency is really your client's and your clients are the
6 programs that you fund. It is your responsibility, I would hold
7 and we would hope you would agree, that you have an obligation to
8 your clients, to find out what they are doing and to make sure that
9 in every way you can make their job easier. I am not talking about
10 support at this moment. I am not talking about giving them more
11 money or allowing support centers to continue. I am talking about
12 continuing to look at the patterns of litigations that programs will
13 conduct and finding out whether perhaps a legislative change might
14 not be needed, but the corporation could offer it to the client.
15 Find out whether the system of training attorneys is not such, but
16 you might not want to note some recommendations to law schools.
17 Make sure that you take a look at the degree for which the private
18 bar is in fact cooperative with programs. Once you see the programs
19 as your constituent clients and agree that in fact both of you have
20 an obligation to the poor, I don't know that we have very much ques-
21 tion. I think we have reached bottom line and which you can build
22 with regard to funding decisions, with regard to application of
23 resources decisions, a whole variety. I want to react to some state-
24 ments I think I heard this morning that continue to go back and com-
25 pare practice of law for poor people, practice of law for the non-

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1 poor. I content that the non-poor come to an attorney in one or
2 two conditions. Either crisis or in hope of getting advice. And
3 that advice is usually, how do you stay out of crisis. Well, be-
4 cause of limited resources and because of the lack of consisting
5 use of the client community of Legal Services program, the only
6 way clients generally get seen at most programs is on a crisis bas-
7 is. It's crisis after crisis that the attorney faces. It's crisis
8 after crisis that the client brings. That is not normal law prac-
9 tice. That is just not normal practice of law. You do not get
10 and maybe you want to work toward as a Board, maybe you want to
11 work toward this point in our poverty communiites, everybody comes
12 in once a year for an annual check-up and the lawyer goes through
13 the process as much as a doctor would have. Saying, you need to do
14 this and this so you would not need my further services this year.
15 I don't know whether that is the inoculation clients was talking
16 about or not. But it certainly seems to me that maybe you want to
17 take a look at that kind of activity.

18 I have just one other reaction for the moment and I don't
19 want to do a lot of talking, because I tend to think that you prob-
20 ably could make most of my speech for me or I could go back and
21 clip things from minutes from old meetings, a number of statements
22 that I'm making to you now. Incidentally, I got to take a moment of
23 your time, I recall about a year ago making a somewhat impassionate
24 speech for you to take off your jacket and your ties and let us see
25 you in the process. It's very nice to see you with your jackets off.

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1 I must say it doesn't hurt your thought processes at all.

2 I must react to the question of divorce cases. You know,
3 and there is no question in my mind, I doubt there is really any
4 question in most people's minds. The poor can articulate their
5 means given the opportunity and the poor, if you cut out the legal
6 verbiage and the options that are available, I don't think there
7 is very much question in anybody's mind about that. I hope there
8 isn't anyway. But it occurs to me that the experience of people
9 in the field is that the more sophisticated the community comes
10 the better educated the community becomes, the less conscious and
11 less priorities the community places upon divorces. I would suspect
12 and I want to talk to Greg about it, the outrage expressed by the
13 folks of Newark. I would like to talk to some of those folks. I
14 know some folks in Newark if you told them you had opened a divorce
15 clinic they would throw you the hell out of town. The name of the
16 game in Newark is survival and I've got to tell you that a lot of
17 the communities with divorces, the guy packs up and leaves. Here
18 there are a number of things that go on, but the point of fact is
19 survival issues are the critical issues. If the program is not
20 ready to address the survival issues, then community does not ne-
21 cessarily want that program there. The people who come into that
22 program are not the people who are really looking for change in
23 their lives or in the lives of the community. They are the people
24 who have been so beaten down that the really only thing they are
25 looking for are a few changes, the nonsense changes, the cosmetic

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1 changes in their lives. They are not looking for the hard-driving
2 substantive change.

3 I Have continued much too long, but I want to make one other
4 point. There is no way in my estimation that an attorney receiving
5 a client would consider that client an eligible client only if the
6 matter was subject to litigation. The attorney would make his de-
7 cision based upon the best course of the action, that particular
8 client or that group of clients, and if that's required Legislative
9 change he would go after the Legislature change. If that required
10 seeking funding from other sources, be those public or private,
11 that is what an attorney would do for a client. If what was nec-
12 essary was other forms of assistance in, any other number of other
13 things, that is what the attorney would do. The attorneys in our
14 programs have valuable valid skills beyond the simple act of taking
15 someone's case to court. I would hope that this Board would decide
16 how it could mximize not only the litigation skills of the indivi-
17 dual attorney, but the total skills that the attorney brings and
18 that you would put your efforts to making sure that programs on a
19 repetative constant basis did not have to go back and deal with the
20 same problem, but as their solution, I guess as said this morning
21 that you would be collectively involved in the aggragate of data
22 and the movement toward solution along appropriate lines.

23 CHAIRMAN CRAMTON: Thank you Bernie. Tom, do you want to
24 say something?

25 PRESIDENT ERLICH: I would like to focus on two questions for

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1 those who are project directors, particularly. One, given the pres-
2 sures on your time and talents, how do you go about deciding what
3 is enough time for a particular problem, given that that there are
4 dozens and dozens of more problems waiting to be dealt with? Second
5 one, how do you go about deciding what are minimum legal needs of
6 an individual? Deal with those one at a time. The first one part-
7 icularly I would be most educated.

8 MR. DALLAIRE: I am not sure that it's possible to even talk
9 about the issue of minimum needs. I think that Clint's paper, even
10 though it's entitled determining minimum needs, correctly focuses
11 on minimum resources and the notion this prioritization has to take
12 place. I would like you to consider some of the variables in add-
13 ition to the things that Clint mentioned. I think, that it ties in
14 a little bit with what Bernie said and that is there shouldn't be
15 an exclusive emphasis on legal representation as in the sense of
16 going to court. I think, that being able to compliment and strengh-
17 then the ability of client groups to be advocates for themselves is
18 one other variable that ought to be taken into account.

19 The services that are being provided in local communities like
20 the Federal Trade Commission or the Attorney General's office on a
21 consumer protection device may necessarily lower your priorities in
22 the consumer area if they are doing an adequate job. Self involve-
23 ment is extremely important. A good lawyer who sees the same problem
24 reoccurring wants to use his or her professional skills to address
25 that problem and what staff input on that is an important issue also.

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1 The staff, the Board, the client community, all three of those are
2 ingredients which I think make up the group that is going to deter-
3 mine those priorities and you consider all of those variables that
4 I have talked about, that Clint has mentioned, I am sure there are
5 many others. The issues I think is not what process of prioritiza-
6 tion is used, but whether or not in fact the program has some sort
7 of process and that process has to come out is consistant with the
8 views of the client community. I think that follows with the sub-
9 sequent issue for the corporation and that is if you find there is
10 a program which is prioritizing cases and not doing it consistant
11 with the wishes of the client community, is a corporation prepared
12 to take any remedial action?

13 CHAIRMAN CRAMTON: Would you define what doing it consist-
14 antly with the wishes of the client community means?

15 MR. DALLAIRE: Well, let's assume that you are talking about
16 Newark and that there is a serious housing problem in Newark or a
17 serious housing problem in Louisiana, the legal services program in
18 that community decided they were not going to handle any housing
19 problems and they make a conscious decision that they were not go-
20 ing to do that, it seems to me that that gives rise to something
21 that you ought to look at, to see whether or not that that is con-
22 sistant with the wishes of the client community. It isn't too dif-
23 ficult to look at St. Louis and say there are housing problems in
24 St. Louis.

25 MR. ORTIQUE: I realize Paul Nathanson does not operate, but

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1 they do serve the clients in my view at least. But Paul, how do
2 you arrive at your allocation in terms of education, because I saw
3 what you did with the peri-legals, the pulling together people who
4 can push buttons in the right places, the litigations annual focus
5 from the client community on what their needs are. How do you pull
6 all those together? It seems to me that would be revealing too.

7 MR. NATHANSON: Well, first of all, we are not a field pro-
8 gram. We are a support center, National Senior Citizens, Los Ange-
9 les. So we really do face clearly different kinds of situation in
10 field process. But we do have a priority setting process which in-
11 volves a Board and substantive priorities. But primarily at least,
12 since we have been in existence our priorities have really been set
13 by the request of the field from legal services attorneys who by
14 defination have a client in their office with a particular kind of
15 a problem and we use the resources we have to get at a particular
16 solution, whether it be legislative or administration on behalf of
17 the client. We use all the tools that the lawyers in the large or
18 any other large practice ought to have available. If it means put-
19 ting together particular, as I say, bringing, bring out Arthur and
20 let him be aware of the needs of the elderly poor family. You know,
21 that is part of that process. But by and large, our priorities,
22 and again it is a separate question from what you are asking, I
23 think, as a Board or has been set very much by the request of the
24 field by that defination that meant there are people out there with
25 legal problems we responded to filled programs.

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1 CHAIRMAN CRAMTON: Sylvia, how do you feel? The question is
2 how much did you decide is enough minimum need?

3 MS. DEMAREST: Addressing Tom's question first of all, we
4 have had this problem in our program when we spent a lot of time
5 particular situations where there may have been a legal right. In
6 fact, we discussed this in Denver, but yet there was no way to ef-
7 fectuate that legal right. Either because the defendant was insol-
8 vent or because there were other problems in terms of effectuating
9 that right. It seems to me, that you have got to sit down initially
10 and set out for the client what their options are and then you have
11 to tell the client you are going to have to take a look at whether
12 or not any of these options are attainable. I think, if they are
13 not, it does not serve the program's interest in attempting to seek
14 out solutions that are so elusive they cannot be achieved. Moreover,
15 even if you can achieve solutions it may not be to the clients
16 benefit to eventually win this case, etc. Many of our problems
17 fall into that category when there are disputes among neighbors
18 and other things of this nature. I am not sure that the question
19 of minimum needs really resolve such issues as this, because it seems
20 to me, that it's very difficult to decide what minimum needs are,
21 unless we answer some of the questions that proposed in this mornins'.
22 discussions. Particularly, whether we are a poverty program or le-
23 gal service program that represents individuals least able to afford
24 legal assistance. I think, a lot of those are semantics but I
25 sometimes wonder what the results of all those would be in terms of

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1 representing our clients. I was very, very interested, for exam-
2 ple in the discussion that when on as to whether or not in terms
3 of priority the Board, itself can set the priorities. There was
4 a great deal of discussion as to whether or not the priorities
5 should be set by the Board. I think, some of us discussed it at
6 lunch, and it seems to me that if a Board is going to set a prior-
7 ity that that priority has to be that in representing our clients
8 we do so aggressively, that we are competent and that we are profes-
9 sional in doing so. And if the Board is committed to supporting
10 priorities that are established by local programs so long as the
11 process is inclusive of the different elements, we will have to
12 live under those priorities so long as those priorities attempt to
13 assist the real needs of the poor.

14 The other thing that interests me in the decision is that
15 there is a sense that I get that the Board wants to pull away from
16 the experience of the past. There is a real feeling I think, to
17 disassociate ourselves from some other things that we have done in
18 the past. I think, that that is a position that is not well taken.
19 We can recognize that mistakes were made in the past and admit our-
20 selves not to repeat those mistakes, but I think we also have to
21 recognize that there were a number of positive things were done we
22 don't need to replicate again. We don't need to reinvent the wheel.
23 There have been some experiences that we can use that we can bene-
24 fit from. For example, if the corporation will not become involved
25 in insuring that there is equality, aggressive representation that

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1 fits in with the needs of the communities that can be a two-edge
2 sore, because in OEO, and I know is a bad name, but if OEO had not
3 been aggressive in compelling programs to do certain things, we
4 would have many, many more bad programs than we have. Maybe some
5 of the more significant things that have been done by programs which
6 have been done. There are some tough questions. I am afraid many
7 of us do not know the answers. But it seems to me, that many of
8 these definations flow from answering some of the basic questions
9 that we attempt to answer this morning.

10 In closing, I might say with regard to some of the points
11 that Marshall Breger made, I realize that some of us leaped upon
12 some of the phraseology that Marshall used, but that is not ignor-
13 ing the fact that he did point out some very serious problems that
14 revolved around, what to do when clients disagree about solutions?
15 What to do when the community, itself is divided among issues? All
16 I can say on that, is that it's a situation that I have had to deal
17 with myself three or four times. It's a situation that we have all
18 agonized over and it's a situation that has very,very elusive sol-
19 utions. I am not sitting here telling you I know what those sol-
20 utions are, but it's also important to recognize that this is not
21 the sixties when a lawyer can go into a client meeting simply be-
22 cause they were a lawyer and influence that client. I say, influ-
23 ence over client is no more prevalent in legal services than it is
24 in private practice. For instance, I have seen lawyers manipulate
25 clients so that the legal problems are exasperated in their fees,

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1 and I can sight numerous examples to that. It is no more prevalent
2 in legal services and in many instances I would say it is less than
3 in private practice. So in terms of Tom's basic questions, I think
4 you have to decide what is important or how much time you spend
5 from objective analysis, of what's achievable, and what's in a cli-
6 ent's best interest. I think, you do that by sitting down and having
7 that kind of discussion with a client on a individual basis. By
8 discussing such issues whenever you decide among competing interest
9 which you will set as priorities and how do you determine minimum
10 needs. I think, some of the things that Clint discussed are very
11 important, but I think each community's will be different. Now, I
12 don't think we can get away from that. Whether the priorities in
13 Newark, New Jersey will not be priorities in Louisiana. What the
14 community wants for itself in Newark, New Jersey will not be what
15 the community wants in Dallas. I think the corporation has to be
16 committed to an aggressive competent reputation. It has to be
17 committed to examining programs to determine that they are doing
18 that and that they are doing it in a way that meets the needs of
19 the community, whatever those needs are.

20 CHAIRMAN CRAMTON: I have the feeling that we are punching
21 a pillow, in a way. I almost have a feeling of a kind that I have
22 when I hear Marxist historians talking about history in the terms
23 of the class struggles. If you have the poor and they have their
24 easily defineable class, and they are totally a homologist, they
25 are interests are all the same, they have self appointed or self

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1 selected representatives that really speak for them and other in-
2 terests. So when you talk to meet the needs of the community, re-
3 present the poor, now that is very good. But the problem in many
4 cases is that we are talking about a spectrum of people who aren't
5 homologist, who aren't individuals, there are actually individual
6 human beings that want representation and then there is a presump-
7 tion that there is some group interest that are kind of peculiar
8 to something that is going to be called the poor. It's this ration-
9 ing process, how you go about determining what those interest are
10 and what time you spend on them is distinct from the individual
11 interests that human beings have.

12 I feel, I am being drowned in a sea of rhetoric which all
13 adds up to one policy prescription and that is the local legal ser-
14 vice program saying leave it to us, we will consult clients repre-
15 sentatives. You make sure we do that and somehow we will come up
16 with the right answers. Maybe that is right.

17 MS. DEMAREST: My prescription, if you do that solely you
18 are not going to end up necessarily with the program. That is why
19 committment has to be on the national level.

20 CHAIRMAN CRAMTON: Committment to what?

21 MS. DEMAREST: Committments of having a program which just
22 has such issues, because quite frankly one of the biggest problems
23 we have in Dallas, Texas is that they are self-appointed and who
24 speak for no one but themselves, who are unlike ourselves are able
25 to impose their will upon members of the client community, because

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1 they are black and they stay poor. It's a serious problem, but there
2 must be a process which permits input if we are going to be able
3 to deal with that problem.

4 MR. ROACH: I can really only support Sylvia and Greg very,
5 very heavily. Particularly, how do you decide how much? To one
6 thing that Clint left out, was that the client's perception calls
7 and the clients perception of costs might not have all that to do
8 with paying money in. How quickly can I get money back? Or am I
9 willing to submit to a deposition? Or do I really want to go to
10 court? Or do I even have to talk to the other attorney? These
11 kind of costs come up and consequently I think that the major de-
12 cisions in our office, whether the major reason for decision is how
13 much does the client want, how far do we go. I am not saying that
14 glibly. People do try to, as Sylvia pointed out, lay out the alter-
15 native and the possibility of achieving them. But ultimately it
16 does come down to a client saying, "Well, can you get that car re-
17 paired today." It may be the biggest rip off car repair in town, but
18 they want to get it repaired today. They don't want to litigate
19 that. So the clients perception of the cost comes in very, very
20 heavily and that flows in to need, because if in fact things are
21 needed by the poor community, they aren't entirely needed in the
22 abstract. We do set a priorities. We do talk to self-appointed
23 people. But the reason you don't get too much of a problem with
24 stopping short of what may be your goals as an attorney in a case,
25 is because you know if it's a problem for the community as a whole

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1 that that problem is coming to come in tomorrow. It's going to
2 keep coming and keep coming and you have seen it enough. You know
3 it's hard not to say that this is a problem. And then when you
4 take that experience and the abstract over the group and you say
5 no, we are really seeing an awful lot of the stuff going on with
6 this particular seller or with the conditions of low income housing,
7 is that really much of a problem as it seems to be. Nine out of
8 ten times they are going to say, yes it is. You do by a constant
9 kind of reviewing of what your own caseload is, reviewing of what
10 people bring to you against what the abstract and start to percieve
11 needs for you community. You know one of the reasons again that I
12 have trouble with National Global needs is the one of them clearly
13 in the abstract is education. But I'm from Meckleburg County and
14 you all may remember Swan versus Meckleburg County and after that
15 all the other problems, the school integration, push-out, and sus-
16 pension. We have been dealing with them and so if you say that
17 our priority is education and then look at our problem program,
18 what are you doing about education. I am not going to ask how much
19 education, how much of a problem. We have done a lot already, should
20 we be really going back more, we are not seeing all that many prob-
21 lems. We are getting a few suspensions from time to time and we
22 go back to our communities and say, "Hey, these suspensions are
23 coming on." So is that really a problem? If they say, "Yes." Then
24 we are really going to be looking more carefully on suspension cas-
25 es. But it's less than a problem this year than it was last year.

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1 Why don't you try some of your income substitute problems
2 over here. It it dynamic kind of thing and it comes from a number
3 of different perceptions. I think, Sylvia is right. I think the
4 only thing you guys can tell us to do and set up any framework for
5 us to do is to make those perceptions, keep that community, special-
6 ized attorney. That is what helps gleem problems effectively, those
7 kind of procedural things. I am not sure there is much more, but
8 I would like to re-emphasis Greg's point, there is a lot of ways
9 of advocating for the poor besides going to court. I think, you
10 need to suggest that to people.

11 CHAIRMAN CRAMTON: Let me pose a question which seems to me
12 not clearly answered. Should there be some requirements, for exam-
13 ple of at least balance in the kind of caseload or representation?
14 Or should a program by going through a process of consulting client
15 groups attending to its own interests and desires, its own assess-
16 ment of what the needs of relative, "community" are? Essentially
17 it turns out to be a specialized program. Could a program that
18 purports to be the only legal services program, the geographic area
19 reach the conclusion that in Newark, for example, housing problems
20 are so critical they are going to be specialized housing law agency?
21 They aren't going to take any family law matters period. They aren't
22 going to take any divorces. They aren't going to take any consumer
23 matters, only housing. Are we going to be laissez faire enough so
24 that all we are going to say we want you to follow a process by
25 which you examine your community and consult with the poor in the

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1 community? If they say put all the limited resources you have on
2 housing and you put them all on housing, then we shouldn't have any
3 say on that.

4 MS. DEMAREST: I feel very strongly there must be a balance,
5 I think.

6 CHAIRMAN CRAMTON: Well, where do you get that from? You
7 haven't stated that before. That is a totally new--

8 MS. DEMAREST: Nothing I have said is inconsistent with that
9 at all. One of the priorities that will emerge from the community
10 is to a certain degree representation of individual clients with
11 individual problems. If it doesn't, I would personally have prob-
12 lems with it.

13 MR. VENEY: It is going to be that the community is going to
14 lay out for you a number of priorities the community recognize. It
15 does not just have housing problems. It has welfare problems. It
16 has problems with administrative agencies. It has problems with
17 public and private sources. It has consumer problems. There is no
18 community that is any different. Where you do get changes, and
19 sometimes this is not trusted, is the degree to which the client
20 community insists on focusing on those problems to the detriment
21 of problems that other folks would be comfortable with. Because
22 you see there are those that hold that, that concentrating on fam-
23 ily law is pacification of the community. It is in fact fostering
24 community dependancy rather than assisting community in achieving
25 the things that would overcome not only the causes, but the affect

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1 upon them. I can't even begin to believe that any program would be
2 told that it's solely should concentrate on housing. But if it was
3 told that, I would hold and I think the Board of Clients Council
4 would agree, that the program had an obligation to go with housing
5 as its primary focus for the majority of the community while it de-
6 velops the auxiliary resources to help the individual who had a
7 problem.

8 MR. ORTIQUE: As a practical matter though, if housing was
9 acute, don't you have to resolve a lot of other problems that are
10 attended with housing. I can't imagine any housing program that
11 didn't have these family problems that would go along with it, be-
12 cause I know of no program for the poor, middle class, or even rich
13 people in housing that didn't require you to do some things about
14 the family relationships because you have got to have somebody to
15 finance it. Somebody is going to become a see simple owner or title
16 holder. There are all sorts of things that can go out of that.
17 Even if they did say housing is the number one priority.

18 MR. DALLAIRE: I think again we have to go back, the issue
19 of resources, because I would disagree with Sylvia as far as balan-
20 cing thing, depending on what the resources were. If you had three
21 lawyers for the whole city of Newark, New Jersey and those are the
22 only resources that you had and you said, okay, this is what can be
23 done with three lawyers and the professional judgement of the attor-
24 neys was that we can do this in housing, we can do that here, we
25 can do this here. The client community said we want you to do hous-

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1 ing. I think, that I would go and say there is no sense in trying
2 to spread our resources any thinner than what we are. Let's stick
3 with housing. If you were talking about twenty lawyers it's a dif-
4 ferent story. Those sort of considerations, that is one of the
5 variables that clients have to take into account when this prior-
6 tization process is taken place.

7 MR. ROACH: Let me tell you what is very real in a day to
8 day in the legal services. I wish, Roger, you and the others could
9 come and sit in our staff meetings. I call it the guilt factor.
10 The guilt factor is the biggest thing in the world which pushes
11 you towards a balance program. It is almost impossible for any
12 lawyer sitting interviewing a client who sees a potential legal
13 solution to that client's problem and not much of an alternative
14 solution. Now, I am not going to do it. The guilt factor is al-
15 ways there and the guilt factor as much as anything is led to a
16 case overload in a lot of programs. The pressure is on us absolut-
17 ely impels balance program because they are always asking us not
18 to do too much in one area at the expense of another. They are al-
19 ways asking us to do much in all the areas. Consequently, I don't
20 think you can ever get away with becoming a specialized program in
21 one area only. Charles will probably be the first one of the peo-
22 ple in Washington to hear about it, because the folks would start
23 screaming. Our Board, you and everybody, that pressure is contin-
24 ually there. I don't think it's real to talk about how can we avoid
25 inbalancing. I think the question really is, how can we narrow

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1 down all those requests?

2 MR. BAMBERGER: Terry, when you have lost the administrative
3 hearing, what do you consider in deciding whether to go to court
4 to seek a review?

5 MR. ROACH: Well, sometimes when we lose the administrative
6 hearing we will be cutting off is back benefits. But if we are
7 not cutting off too much back benefits and we have kind of made
8 our point with somebody in teh administrative agency. We will have
9 a client apply agaain, because they are going to get something
10 faster by applying again than they are by fighting a legal issue.
11 We will explain that to the clients. It really comes back down to
12 what does the clients want. If you say you apply again you get
13 benefits starting thirty days after you apply, versus if we liti-
14 gate this issue you might get back benefits two years from now, it
15 may not be that extreme. They can make those kind of choices and
16 they do.

17 CHAIRMAN CRAMTON: I see four hands there. Rudy has been
18 waiting for some time. The President and there was a hand down on
19 this side.

20 MR. MONTEJANO: I appreciate all the comments in all the
21 input. I think it should continue, but I think the main purpose
22 being here was the Board to come to some minimum consensus as to
23 how it was going to approach these decisions. One issue I see here
24 is who is going to determine what the needs are. The priorities
25 and the allocation of resources. It's going to be done by the Board,

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1 by the staff, the Board is it going to be done by the local pro-
2 grammer or the client? Now, I would imagine that if the Board had
3 a choice, probably it would be a balance program out in the field.
4 I hear you telling me we are going to have balance programs in any
5 event, so what is the difference. I am really concerned about who
6 is going to establish the priorities, as to what kind of program
7 is going to be offered out in the field? It's going to be done by
8 the Board and let's assume the Board includes the staff or is it
9 going to be done by the people in the field. I think, this is the
10 question we, as a Board have to address and we have to evolve. Oth-
11 erwise, we are going to be here next July and we still are going
12 to be talking about it. There are going to be some programs that
13 are going to say, well, not having an answer we are going to go a-
14 head and do what we think ought to be done. Well, not having an
15 answer we better not step off too aggressively, because we may make
16 a mistake and lose our funding. I think, this is unfair to the cli-
17 ent not the program, not the Board but the client. It is essential
18 that the Board give a sense of direction. Now, who is going to es-
19 tablish the prioirites and what priorities do we want?

20 MR. JONES: It seems to me this one gets to the issue, what
21 quality of service. Only after you get and deal with the first is-
22 sue that we talked about this morning. Just assume certain facts
23 with me. Let's assume that in this society there are, in fact prob-
24 lems that poor people, have, that other folks don't have by virtue
25 of their being in the povety. There are areas of the law which pov-

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1 erty lawyers then of necessity must deal with that other lawyers
2 don't deal with for their clients. There are a whole range of bene-
3 fits. Those are the most obvious ones. The rest of them, the rest
4 of the ideas get a little more difficult, they may cause more ser-
5 ious problems for people than they do for others. For example,
6 the housing, but housing problems aren't problems exclusively of
7 the poor. So, once you get away from that class of problems then
8 it seems to me it becomes less clear, but we assume that we agree
9 that the focus of your activities ought to be directed to those
10 least able to afford in this society. Then it seems to me that I
11 have to agree with what Bernie says, the quality that we give the
12 client in terms of the minimum services is the best quality we can
13 give them. That does not mean that we subvert our judgement, our
14 experiences, and our training. We have an obligation to explain
15 to the client, who says to us after we lose the welfare hearing,
16 that in our judgement we cannot in good faith procede with it if
17 that is the fact. I don't think that we will have any trouble ex-
18 plaining that. I don't agree with Greg that you can take all of
19 your resources and say, housing for a variety of reasons, that is
20 not the only problem poor people have in Newark or any place else.
21 There is going to be a substantial part of that community. And
22 let me make clear, lord knows I know this, the community is not a
23 cohesive whole, but if you deal with poor people and their problems,
24 you certainly are dealing with a class of problem that helps you
25 narrow the issue. Once you narrow that issue, there are a whole

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1 range of things in there to which you must give attention. I
2 don't have any problem in saying that it is not inconsistant to
3 say that we make a committment to do that which in our best judge-
4 ment, after all you don't give that up when the client walks in the
5 door, ought to be done for that client. Sometimes you may be wrong,
6 but I remember some years ago when a young lawyer came up to me in
7 the program and said, one of the most difficult things initially
8 was to sit down and go over the thing with that client and say that
9 is a problem but we don't have a solution for that problem. He said
10 that it occurred to me that if I did my job effectively and a client
11 walked out the door that client also felt that he had been helped.
12 It seems to me, that again we have got to have some responsibility
13 for assuring that our lawyers do exercize that judgement. There is
14 no client that I know who will object to that. The difficulty I
15 have going the other way, is how do we know that you are really ac-
16 countable to clients when all we have to go on is this. It is a
17 lot easier for us to deal with each other honestly if we say, look
18 there are these problems we know damn well they have. Maybe it's
19 disputes between poor people. I don't have any serious problem
20 with that, but it seems to me, that ought to be a process, whoever
21 these people are. That they be solved in that process. I person-
22 ally feel that we can't exclude all divorces because that is a de-
23 mand. On the other hand, I have serious reservations with the pro-
24 gram that takes--

25 CHAIRMAN CRAMTON: It seems to me, Charles, you are talking

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1 what I would call in the FCC contact is the balance programming,
2 on a requirement of all programs. If you want to specialize pro-
3 grams or specialized branch, you have to apply and have it approved
4 as a specialize grant. Essentially, there is going to be some kind
5 of a requirement that you actually represent clients in different
6 areas in which the corporation has a judgement or has experience
7 that and that no poor people have problems.

8 MR. JONES: I don't know that the corporation has to say
9 much more than, we have as our goal the provision of service to
10 those least able to afford it. It seems to me, that once that is
11 said you have defined a group of individuals. Now, we are not go-
12 ing to have the same problems all across the country. You have got
13 to be flexible so that Newark can give some emphasis to housing so
14 that some of the areas in the country which have extraordinary un-
15 employment rates can give some emphasis to unemployment if there
16 are no other alternatives, and I keep coming back to that.

17 I also have serious difficulty when I am in an area where
18 you know you have, as Terry suggested two title 7 lawyers for every
19 other lawyer, or twenty five or whatever the number is that he sug-
20 gested, so that there are whole series of factors that one looks
21 at. But it seems to me, once you have established a notion that
22 there is a priority and that priority is to provide services to
23 those least able to afford it, then you can deal with the whole
24 question of what minimum level of services. The answer is, that
25 which in your judgement is necessary to effectuate the end. Whether

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1 that be through litigation, negotiations, legislative change, or
2 whatever.

3 PRESIDENT ERLICH: Well, I gain a general sense of agreement
4 to the following proposition and if there is not, I would like to
5 hear. The proposition is that the corporation can and should ask
6 at least two things of every legal service program that it funds.
7 First, that it articulate priorities in it's caseload management
8 consistant with the statute, including the statutory requirement
9 of priority for those least able to afford. Second, that it artic-
10 ulate the process by which those priorities were arrived at in a
11 way that they can be looked at and analyzed.

12 MR. ORTIQUE: In my views, Tom, there is one thing that is
13 being left out, the element of those who are least able to afford
14 is a high priority item. But also, as the Congress said, that we
15 ought to provide equal access to the system of justice in our nat-
16 ion for individuals who seek redress of grievances. In seeking re-
17 dress of grievances, I find that there are some negative products
18 that come from the seeking of redress of grievances. I haven't
19 heard very much attention being focused on that. I just believe that
20 we have some responsibility in that area because I believe that
21 there is a philosophy somewhere in the back of the minds of the
22 Congress that we take the redress of grievances out of the streets
23 and bring them into the institution where they can be redressed in
24 an orderly fashion.

25 MR. LEVY: Yes, I was a program director for three years be-

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1 fore I came with the NALDA and I would say this, that first of all
2 programs are setting these priorities and maybe accidently right
3 now without thinking about them frequently. The priorities are be-
4 ing set. I would like to support the basic notion of articulation,
5 what the priorities are and the process by which they are reached.
6 I think, the Board has to come to some agreement that that right
7 there is a basic element that is to be demanded from the legal ser-
8 vices community. I would make the second point that after that
9 state you get into a much more complex area of what the priorities
10 are, of how to balance the program. For one thing, a lot more in-
11 formation about how priorities can be set, what kind of range of
12 priorities ought to be set. Various mix will happen in the state-
13 wide program as opposed to a small program. You have just got a
14 lot of complex elements. I seems to me, that the Board has to come
15 to some agreement that priorities setting is a good exercise for
16 local programs. Also it seems to me, that in applying that state-
17 ment that the Board is not ready now, maybe I'm throwing this out
18 to you, I'm not sure it is true or not, to set priorities for these
19 programs. I see one other point to that, that in terms of our
20 small local program in Charlottsville we found that the priorities
21 setting process which we engaged in was a major step in involving
22 the attorneys in a management and running of a program that have
23 their working line that encompassed them and kept them in that pro-
24 gram, kept them working hard and motivating toward the end that
25 they are helping to set. If you engage in priority setting at a

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1 national level without this country, I think you get into the bu-
2 reaucratic danger of the static development at the lower levels of
3 feelings of lack of control, of lack of direction, and lose your
4 motivated people. I just throw that out and I think the Board can
5 respond.

6 MURRAY SCHWARTZ: It seems to me, that the Board once again
7 inevitably is going to get into priority setting when it, for ex-
8 ample, decides to fund the Senior Citizen Center and decide to al-
9 locate some of its funds to that particular group of clients. So
10 that the field office then has that resource available for them in
11 determining how to represent their constituents. The Board does
12 not find some other group inevitably in a least that limited way
13 who is setting priorities. I am making particular kinds of talents
14 and information available. The issue it seems to me, is the one
15 you put Roger, which is where the Board ought to try to prescribe
16 some normal package programs. Perhaps the kind that was suggested
17 earlier, those legal services which are incidental to the maxima-
18 zation of shelter, food, clothing, health and Los Angeles I would
19 add transportation. I say that seriously. Leaving it to each pro-
20 gram to justify exceptions, that is not for closing different pri-
21 orities, but for the Board to set some kind of national policy of
22 mixed programming, if you will and leaving it to each program to
23 justify different set of priorities, both in terms of the substance
24 and the procedure by which those differences have been arrived at.
25 The alternate, the two alternates are to require every program to

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1 behave in the same way or to say those programs come forward in
2 the first thing.

3 MR. GOMEZ: I just want to say that it seems to me, that le-
4 gal services is really operating under the premise that it's man-
5 dated to provide services to all the poor and that it comes to pri-
6 orities because it can not possibly serve all the poor. Because
7 that happens, I think, that if you look at the realities of the
8 situation for legal services project, your priorities are often
9 said by the people who are walking in the door and what you are com-
10 ing in contact with. If the corporation were to set up, and I say
11 we are to have to X priorities, it would have to be you would have
12 to balance that in reality of who is coming into the door and whe-
13 ther you are going to tend to have educational kind of services
14 provided to that local community. If you are presuming the priorities
15 of the corporation is set pervasive across the country in order to
16 give those kind of requests coming in. So I think, that priorities
17 is inevitable, that priorities are going to be set by local com-
18 munities.

19 CHAIRMAN CRAMTON: Set by the attorneys in the programs, in
20 the local communities?

21 MR. GOMEZ: No, by the Board of the local legal services,
22 by the clients that are coming into the local legal services pro-
23 ject.

24 CHAIRMAN CRAMTON: Even if we go to local options, is it the
25 client community that sets it, and how is the client community to

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1 fund? Is it the governing Board which may have some client's re-
2 presentation on it, but by statute has to have a majority of attor-
3 neys, is it the staff director, program director? Is it the indiv-
4 idual attorney who interviews the client who comes in the door? Is
5 it the staff attorney and the attorneys as the group? I mean, what
6 combinations of these?

7 MR. GOMEZ: I think, you really have to take some consider-
8 ations of the people who are coming through the door, the people
9 that are from local community groups, the people that are also on
10 the Board and the people that are supposedly community leaders.

11 CHAIRMAN CRAMTON: Who does it now? I guess, I have a kind
12 of cynical guess that it's the staff attorneys who do it now.

13 MS. DEMAREST: Not really. It's the clients that walk in
14 the door.

15 CHAIRMAN CRAMTON: But don't the clients who come in the
16 door, aren't they largely in response to a certain extent, the past
17 image of the program, the past successes?

18 MR. KNOLL: But they have helped establish that image, too
19 when it was first opened and when the clients come in and when there
20 was something that you did in the beginning and the word got out,
21 they're great at divorces, they are great at fighting the welfare
22 department.

23 MR. LEVY: There are various ways actually priorities are
24 being set by one way in many programs of just who walks in the door.
25 Another way, is the director sets out who is going to be interviewed,

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1 divorce as opposed to other things. Another way is the staff at-
2 torneys decide and really lobby through a change into almost ad-
3 mission policy. Another way that has been used by several programs
4 have been an extensive planning process by which the clients, the
5 Board, the staff, are all involved over a period of several months.
6 There are numbers of models that have various levels of success.
7 I would go to the last problem, but you realize that.

8 MR. WARNER: I just started as a project director, and so
9 I am going to bring a little bit different perspective to it. It
10 is the Las Vegas program, Clark County Nevada. What I call the
11 human barometers in the program, we get basically committed people
12 who come into the program and they begin to find out what the is-
13 sues are and what the priorities are very quickly, because after
14 they have had ten people come in and do what they consider band-
15 aid work, or quick work and they start getting frustrated, behind,
16 now they don't say. Now, the client is in the process, the attor-
17 neys are in the process they come in to me and talk to me and I
18 become a part of the process and I go to the Board and talk to
19 them. That happens on and on going process, both consciously and
20 unconsciously. I think, what I see is a necessity from where I'm
21 from, the state hates to have people come from outside to do any-
22 thing, and even move into that state.

23 Just to re-emphasize what Tom said and what other people have
24 said today, which is particularly focused, I think that the program
25 can bring on the process that is being used. If you think clients

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1 should be involved, if you think staff attorneys should be involved,
2 if you think administration of the program should be involved, and
3 the Board then lays out some criteria by which you look at the pro-
4 cess that we would submit and tell you and ask for us to make it
5 clear to you what we have done. You know, if you want to set the
6 thing up and go by listing those four things, that's fine. But if
7 we come up with our inclusive list of eight hundred possible neces-
8 sary topics, that's fine. I think, it's going to cause us to en-
9 gage in the game plan. Obviously, it can go one or two ways. We
10 can start playing games like with health and use it like a world
11 health definition for health which has been for the last twenty
12 years, anything that affects the psychological or social, as well
13 as physical well-being of a person, or we can just start playing
14 the game of telling you why that transportation is not an issue
15 there. I would rather see us engage in some sort of process where
16 we have dialogue with you, you help us improve the process we use,
17 but encourage us to get into a process which is going to bring
18 meaningful results to that community and that client group.

19 MR. VENEY: I am going to go all the way back to a question
20 Rudy asked. That is, who controls? Who sets the first priority,
21 and that is always the corporation. Dr. Schwartz said, well, I
22 think in terms of you make the finding decision. Making the fund-
23 ing decisions whether you do it by planning process or not, you are
24 making the basic judgement as to what these programs will do, who
25 they will in fact serve. The question of how else priorities get

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1 set is an interesting one, and I would like to look at it backwards.
2 That is to say, why the corporation can't set the priorities by which
3 a program will operate. I will give you the situation of that you,
4 Roger are very familiar with, when you had the flood several years
5 ago in and around the Ithaca area, the legal services program in
6 that area completely stopped all its other work and started to work
7 on housing and the other emergency issues that were necessary by
8 that environment at that moment in time. The corporation could not
9 have possibly wiped those priorities away and changed the priorities
10 that quickly. It doesn't have that kind of capacity. Take the pro-
11 gram that has a priority of housing where all of a sudden this city
12 decides to invest a major sum of money in housing and that hasn't
13 been foreseen before. That program no longer has to view housing
14 with the same critical eye. Therefore, you again cannot set forth
15 the priority of housing. That has got to be set at the local level.
16 It has got to be set by, I hope, the governing body in concert with
17 the staff and the client community. It's not always going to be every
18 element of the client community represented, but as you get better
19 at it, as the processing proves, those elements that had not been
20 represented previously will be represented.

21 There is just one other thing I want to say and that comes
22 out of the experience in planning that program. That is, poor people
23 continued to know the problems of other poor people. We did a plan-
24 ning session upstate in New York around the Rochester area where
25 there were no representative migrants in that planning process be-

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1 cause the migrants have left the area for the season. There were
2 no representative of mobile homes, but when we got to the filing
3 of the issues and looking at the problem of that community, the
4 community and the attorneys of that program made sure that the
5 interest of the migrants and interests of the people living in mo-
6 bile homes were represented and protected. It is not an exclusion-
7 ary process and it's one the corporation does not have enough in-
8 formation for. It's got to vest at the local level.

9 MR. JONES: Let's assume that that is the process and the
10 corporation says that programs must go through a process which in-
11 volves the client. How does the corporation then insure account-
12 ability in terms of assuring that process perform? Who do you go
13 to? What do you do to make sure that that happens?

14 MR. VENEY: You give the client's counsel more money? No,
15 that is one of the answers.

16 MR. JONES: What I'm really saying, is let's assume that we
17 accept the fact that the process is gone through. How can we then
18 assure that that kind of participation has occurred?

19 MR. VENEY: Because, Charles, your original people are inter-
20 esting folk. They either are interested or nosy because if I told
21 them that there was going to be a planning session in a particular
22 program that I was connected with, almost inevitably they would be
23 there. That is solid because that makes sure that at that level
24 the corporation thinking is also factored in when the priorities
25 are being set. I think, that is a groovy way to get it done.

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1 MR. BAMBERGER: I want an idea I would like to know whether
2 it is worth while or not. There is another reason to think about
3 this thing of minimum need of legal services for an individual, the
4 act of legal services, and that is to justify to argue for the fund-
5 ing. I think, we know the probability of being able to attain e-
6 nough funding to meet every request of every client for legal ass-
7 istance. It seems to me, not likely. Does it make sense to set
8 some more realistic goals to say that there are certain rights to
9 legal assistance, that there is a minimum need for legal assistance
10 and that is at least the immediate objective.

11 MR. VENEY: Clint, can I respond with the risk of taking up
12 too much time. I wanted to say it when Terry responded at the
13 question that you raised, it depends on the resources available
14 to the program at a particular moment in time. If for example, the
15 award has been lost and there is a question as to whether you should
16 appeal, the project has got to use its judgement about its avail-
17 able resources versus community need at a given moment in time.
18 If there is the capability and the client is willing and award seems
19 great enough, then the project can pursue that. Is that responsive
20 to your question, Clint?

21 MR. BAMBERGER: Well, no. Maybe the question isn't any good.
22 What I think I mean by the question is that if we decided that there
23 ought to be lawyers for housing, education, etc, that we could prob-
24 ably define how much lawyering that took and what it would cost?
25 That is a basis for our procedural operation. But I said I thought

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