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Transcript of Proceedings

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

MEETING

Washington, D. C.

Friday, 12 December 1975

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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

MEETING

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

Friday, 12 December 1975

The meeting in the above-entitled matter was reconvened,
pursuant to adjournment, at 9:30 a.m. Mr. Roger C. Cramton,
chairman, presiding.

MEMBERS PRESENT:

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

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CHAIRMAN CRAMTON: The meeting will come to order.

We are meeting at this early hour in order to give further consideration to the regulations concerning the State Advisory Council.

It has been moved and seconded that we consider a resolution which would adopt these regulations, subject to their possible revision in light of comments received by the Corporation prior to December 18. That resolution is before us, but we are also prepared to discuss and consider any possible changes or amendments to the regulations.

MR. SMITH: Mr. Chairman, the first thing up for consideration is what Mr. Stophel has in written form.

CHAIRMAN CRAMTON: Mr. Stophel, has that proposed change been put in final form?

MR. STOPHEL: It is being typed right now.

CHAIRMAN CRAMTON: Why don't we leave it for a second and then come back to it and ask whether or not there are other suggestions ready to be considered at this point.

MR. BROUGHTON: Mr. Chairman, while you are doing that, can I ask you a few questions?

CHAIRMAN CRAMTON: Of course.

MR. BROUGHTON: He got into this a little bit yesterday, but I don't think it was answered. Maybe I should

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1 know this. I am still concerned about -- you mentioned
2 legislative history, how far an advisory council should go.
3 What was the basic purpose of Congress writing this section?

4 MR. KUTAK: You are asking me?

5 MR. BROUGHTON: Yes.

6 MR. KUTAK: As we can discern it and develop it
7 in the legislative history assembled, it was primarily
8 to be a local indigenous body to serve as a monitor of the
9 Legal Services Corporation's program in the basic fashion of
10 having a capacity to accept grievances, to be sure that any-
11 thing that the community thought was going awry about the
12 program could be, so to speak, on-the-spot checked, and
13 brought to the attention of the Board back here in Washington,
14 the Corporation back here in Washington.

15 This is what we take it to be, the sense of the
16 provision. It was added, as you know, to the bill that was
17 being processed by the House and not part of an organic
18 legislation included in it.

19 I will defer to any other person with a better
20 explanation.

21 MR. EHRLICH: With all the caveats of finding
22 and following legislative intents, the most clear statement
23 that I found, at least, was the one in the Senate report
24 which says, "The sole function of such advisory committee
25 will be to notify the Corporation of any alleged violations

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1 of this legislation. In such cases the Corporation will
2 immediately furnish a copy of such notification to any
3 recipient, thereby effective..." and so forth.

4 That was in the minds of those who wrote the
5 Senate report.

6 CHAIRMAN CRAMTON: I would also remind members
7 of the Board that our legal staff did prepare a memorandum
8 which discussed the legislative history of the meetings
9 of state advisory council provision and that was circulated
10 to the Board some two or three months ago.

11 MR. KUTAK: I think that it's the sense of it. It's
12 to be a greivance, a local grievance processing center, so that
13 this corporation back here in Washington, perhaps seemingly
14 far away from the scene of action, would have some sensory
15 out there to communicate with them independent of their own
16 corporation.

17 MR. ORTIQUE: May I suggest, historically, Mel,
18 the great area of the criticism of the National Advisory
19 Council was coming from state bar associations, and state
20 governmental entities, government offices or state senators'
21 offices, that sort of thing. I am quite sure persons
22 who thought about this, while thinking in terms of
23 mechanisms to reach this corporation, and as a matter of
24 fact, it is impossible to reach a decision, it was felt, the
25 membership of the American Bar Association, while on the

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1 whole, with persons so far removed from the state bars and
2 the day-to-day operation of the bar association, that there
3 was a need to have a mechanism by which they could be
4 reached.

5 I know those were two areas of concern. There may
6 have been others.

7 MR. BROUGHTON: Was there any discussion in
8 committee on the subject of complaints versus violations?
9 The statute, as I read it, refers to violations.

10 MR. KUTAK: Apparent violations.

11 MR. BROUGHTON: Let me try this so far as
12 1603.2(b).

13 MR. COOK: That's the definition section.
14 "Apparent violation means discovery of circumstances or
15 receipt of complaints, which, if apparently valid, constitute
16 a violation of the Act, or any rules or regulations, or
17 guidelines, promulgated pursuant to the Act."

18 This is in lieu of the present (b) "'Apparent
19 violation' means discovery of circumstances or receipt of
20 complaints which, if apparently valid, constitute a violation of
21 the Act or any rules, regulations or guidelines promulgated
22 pursuant to the Act."

23 It seems to me that may be consistent with the
24 language where it refers to the current violation.

25 MR. SMITH: What would be the improvement of that

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1 over the existing definition which is cleaner?

2 I think --

3 MR. BROUGHTON: I think it is broader. The Act
4 calls for violations to be reported. I am trying to get away
5 from the word "complaints." I think this would give the
6 Advisory Council authority to encourage to determine that
7 there is more than just somebody complaining.

8 MR. SMITH: It is.

9 MR. ORTIQUE: I wonder if you would explain
10 that a little bit more, Mel, so that we can understand
11 what you mean.

12 MR. BROUGHTON: Present"(b) "apparent violation"
13 means a complaint alleging facts which, if established,
14 constitute a violation of the Act, or any rules, regulations
15 or guidelines promulgated pursuant to the Act;" and what
16 I am saying is, you make the emphasis on violations as opposed
17 to complaints, and that this would give the Advisory Council,
18 in effect, being able to report violations rather than just
19 simply complaints.

20 MR. SMITH: They can now, because any member of
21 the Council may receive written allegation on the apparent
22 violation. It doesn't mean it is a violation any more than
23 a crime has been committed.

24 MR. KUTAK: It is a communication.

25 CHAIRMAN CRAMTON: It is a technical term which

1 refers to a document by which it is submitted. The person that
2 submits it is a complainant. What it contains is a "violation"
3 which is a statutory term used in the regulation.

4 MR. BREGER: What if an individual, who was not
5 a member of the Advisory Council, was not certain something
6 was awry, but thought it was a matter that ought to be looked
7 into; would he phrase his concern in terms of a complaint?
8 Unless it is purely a term of art, it is a fairly harsh
9 phrase to say -- I think we may have a difficulty which I
10 would hope the corporation would check into.

11 MR. KUTAK: I would either be concerned whether
12 there was a violation or not. What we are trying to do, Mel,
13 let's say a concerned person had his concern developed over
14 the fact that a lawyer employed by the corporation or a
15 recipient of the corporation came into court with a green
16 tie. He just didn't like a green tie. And he thought it ought
17 to be a blue, brown tie, and he wrote a communication to the
18 Board, "I think the Legal Services Corporation should have a green
19 tie."

20 At that juncture, on its face, it would appear
21 that it does not constitute a violation of the rules or
22 regulations. At that point it would seem appropriate for the
23 Council to say, "Nothing to it. We have to tell him that
24 fact as we are concerned." That's a communication that on its
25 face couldn't rise to the dignity of any kind of violation,

1 but if he did go and communicate something else that was seriously
2 more substantial --

3 MR. BROUGHTON: Like a bow tie.

4 MR. ORTIQUE: Or no tie. It is a problem
5 in Louisiana with attorneys appearing in court with no tie.

6 MR. KUTAK: At that point I would say a dress code
7 would rise to the matter that they want to look into. We are
8 giving the Council that opportunity to, in a sense, on a thresh-
9 old, have a screen-out of what on its face would not rise to
10 the dignity of a violation.

11 If they have any concern that it is not
12 demurrable, they ought to shoot it off.

13 MR. SMITH: If it does not have sufficient
14 merit to constitute a violation, it is not something that is
15 going to be transmitted to the Council as a complaint.

16 MR. BREGER: I would agree.

17 MR. SMITH: The fact might be kept in mind
18 by the Council and included in 1609 in the annual report as
19 something as a suggestion.

20 MR. BREGER: I thought Mel was going to the case
21 where a person, who has had a worry, was not himself certain that
22 there was a complaint, and therefore would feel unhappy about
23 making a charge, saying I am filing a formal complaint. And
24 the Advisory Council, of course, would say we have the fact, if
25 these facts are true would be a violation, so we send it on.

1 But the complaint would hold back, because he
2 would have to, in good faith, be certain that the charges
3 were correct, before he filed a formal complaint, as opposed
4 to an inquiry.

5 MR. KUTAK: The words fall within the context
6 of apparent violation. We are not addressing the thing that moves
7 prior thereto, which is a communication. It could be a worry,
8 it could be an inquiry. It could be any sort of message that
9 we could call, "X," because we don't know what it is before it
10 reaches the gravity of an apparent violation.

11 MR. EHRLICH: My best judgment is the situation I
12 hypothesize will cover the language the Committee has done.
13 We can try it for a year. I guarantee we'll hear from the
14 Councils, if they have concern about these.

15 At the end of the year I am sure we will want to
16 revise the regulations.

17 MR. KUTAK: With a new Chairman, I hope.

18 MR. COOK: May I say, after listening to all of
19 this, it seems to me you have a very incongruous section which
20 says, "Apparent violation," and then you say "allege facts
21 which."

22 What are "facts which," if established constitute
23 a violation, and then it is a apparent violation?

24 Mel says, and I think where he makes a great deal
25 of sense, adds the phrase, "discovery of circumstances."

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1 That means that the Council itself, or anyone
2 else, who feels that there is a discovery of circumstances,
3 or receipt of complaints, which makes it much broader in
4 relation to what I would think is a practical definition
5 of the phrase "apparent violation," rather than the stark
6 fact, "allege facts," which, if established. Now, it just
7 seems to me that if you are going to say to this Council
8 that you have to be here and the only reason that you are
9 here is because someone else is going to say something to
10 you, and they are going to allege facts which, if you
11 establish, or which if the Board establishes, then constitutes
12 a violation, it seems to me the complainant has got one
13 thing to spend his time on. He can spend his time trying
14 to make his case to the Council.

15 At that stage of the game, the Council makes
16 its recommendations to the Board of this Corporation, which
17 means if somebody wants to pursue his complaint, if he hasn't
18 got a dime in his pocket, the only way to pursue the complaint
19 is to come to the City of Washington.

20 It gives us, it gives the whole program two
21 cracks at destroying his alleged violations, and it seems to
22 me what you are doing, in effect, you are being very dammed
23 restrictive, and you are leaning tremendously over backwards
24 to your corporation to the field facilities in saying,
25 first of all, this is the way you have got to do it.

1 Secondly, this is the way you have to pursue
2 it. When it is pursued at the Council level where they feel
3 it is a violation sufficient to pass the violation on to the
4 Board of the Corporation, which has its headquarters in
5 Washington, then you pursue it the best way you can.

6 MR. ORTIQUE: May I ask you a question, Senator?

7 No matter what this Board says in that regulation,
8 we are not talking how this Board feels about it, or how
9 restrictive, or how liberal this Board wants to be. It
10 is the nature of that Counsel that it is going to determine
11 finally --

12 MR. COOK: You are the final arbitrator of these.

13 MR. ORTIQUE: Of -- the issue. I am talking
14 about the point you and Mel are making, and that is the
15 facility with which the complaint moves from there up to here.
16 They are the ones who are going to determine that, because if
17 that Council, the individuals down there concerned are not
18 sending anything or keeping the lids on it, it appears to
19 me you don't do them any good by cluttering the machinery.

20 MR. COOK: What is wrong with making it as broad
21 as possible? If you turn down the first two or three appeals
22 from the state board, they are not going to send you any
23 more.

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1 MR. KUTAK: They are not appeals. They don't do
2 any deciding.

3 MR. COOK: They send them to you and say this is
4 a regulation or violation.

5 MR. SMITH: No. They don't recommend it as a
6 violation. They pass it on. Their passing it on does not
7 constitute any action.

8 MR. STOPHEL: They do make a threshold determination
9 of whether it is a violation, or whether it will be stopped at
10 that point.

11 MR. COOK: If that is not a recommendation, what is?

12 MR. STOPHEL: It does not come to us if it is not
13 a violation. The same is as saying an apparent violation is
14 a discovery. That doesn't make good sense. And a complaint

15 CHAIRMAN CRAMTON: Do we have a motion before us?

16 I'm very unclear about what we are talking about.
17 Is a motion before us?

18 MR. KUTAK: May, as Chairman of the Committee on
19 Regulations, may I make this suggestion by way of a substi-
20 tute? Instead of using the word "complaint," which perhaps
21 seems ominous or more definitive than we really intend it to
22 be, how about a communication? "An apparent violation is
23 a communication to the counsel allege facts."

24 MR. SMITH: I don't like it because my understanding
25 of the complaint was it was in written form, and a communication

1 being just oral --

2 MR. COOK: There is nowhere here it says it is a
3 written form.

4 MR. SMITH: I think the general understanding of
5 a complaint, it is in written form. I don't think you want
6 oral communications to be the basis.

7 MR. KUTAK: My real concern, colleagues, is that we
8 don't get hung up with the complaint characterization. We get
9 concerned with the apparent violation.

10 However the message is delivered, it is given to the
11 counsel. Let them come by carrier pigeon, by telegraph, by
12 telephone, let them come however and wherever they need to
13 come, but the counsel is given by statute the task of trans-
14 mitting apparent violations, and that is the crux.

15 An apparent violation had to be something short of
16 a conviction. Certainly short of a judgment. It had to be
17 something that on its face is grave enough on the threshold
18 level to warrant the attention of the Corporation.

19 CHAIRMAN CRAMTON: I have received a number of
20 letters in my capacity as Chairman of the Board complaining
21 about the activities of the Legal Services Corporation. My own
22 view, I have one of those letter whether handwritten or typed.
23 If they indeed carry a statement of misconduct, or alleged
24 misconduct on the part of the Legal Services attorney, it is
25 a complaint, and the person who writes it we refer to him as a

1 complainant. You can call it a communication, and the person
2 a communicant, but I don't think it helps any.

3 Does it? We have to call it something.

4 MR. KUTAK: In response to your directive, may
5 I move my Board to amend the language "complaints" to
6 "communication"?

7 CHAIRMAN CRAMTON: What are you going to call the
8 person submitting it? A communicant?

9 MR. KUTAK: Complaints or other written communi-
10 cation --

11 MR. STOPHEL: Which would cover Marshall's question.
12 It is an inquiry. It is an inquiry as to activities engaged
13 in which, if proven, might be an apparent violation.

14 MR. BREGER: I think people would be loath in
15 many cases to make charges when they may have a concern.
16 I'd like to have more facts.

17 MR. STOPHEL: I agree with that. My experience
18 with grievance committees, a lot of things are said orally,
19 whereas if it is in writing, it is a totally different matter.

20 CHAIRMAN CRAMTON: 1063.2 (b): "Apparent violation
21 means written communication alleging facts."

22 MR. SMITH: I accept that.

23 MR. ORTIQUE: I would accept that.

24 CHAIRMAN CRAMTON: It is 9:00 o'clock and Mr.
25 Stophel has a matter.

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1 MR. BROUGHTON: I don't agree, but I won't discuss
2 the matter at this time.

3 MR. STOPHEL: I have been given the typewritten
4 material which was proposed to be submitted in place of the
5 second sentence of 1603.9.

6 CHAIRMAN CRAMTON: May I suggest one possible
7 change in the first sentence? I think it is intended -- when
8 you use the words "delivery of legal services in the state,"
9 that's a very broad assignment which would include the
10 structure and organization of the bar, dealing with middle-
11 income people and so on. Matters beyond the purview, and I
12 would think certainly beyond the experience of members offering
13 legal services to eligible clients. In order to be consistent

14 MR. STOPHEL: We could repeat the language just
15 before that, "legal assistance to the poor."

16 CHAIRMAN CRAMTON: The eligible clients.

17 MR. KUTAK: Let's use the same thing up above.
18 "High quality legal assistance to eligible clients."

19 If any committee would do so and with the amendments
20 you have very productively suggested here, can we accept this?

21 MR. SMITH: Yes.

22 CHAIRMAN CRAMTON: Mr. Stophel, would you be
23 willing to substitute "provision" for "delivery"? "Provision
24 of legal services," rather than "delivery." "Delivery" seems
25 to talk of mechanisms.

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1 MR. STOPHEL: All I am attempting to do is to
2 encourage the counsel within the budget restraints we give them
3 to tell us what is going on in their state with regards to what
4 we are supposed to be doing there. Have some initiative and
5 creativity.

6 MR. KUTAK: Within budgetary limitations.

7 MR. STOPHEL: That's my concern.

8 MR. EHRLICH: They can spend their own money.

9 MR. KUTAK: Accepted, sir.

10 MR. SMITH: All right.

11 CHAIRMAN CRAMTON: Are there further proposals
12 for amendments?

13 MR. BROUGHTON: Mr. Chairman, I still have concern
14 about the way the pointed process is set out in this. I
15 raised this question yesterday. The statute simply states
16 that the government of course shall make these appointments
17 from recommendations from the state bar associations, and from
18 attorneys that practice in the state. While I realize that
19 under the statute the government, with that one statutory
20 restriction, is free to appoint who the governor desires to
21 appoint, at the same time I think that the language in the
22 regulation, part of which was changed yesterday, whereby it is
23 recommended and it's used in two or three places, and I pick
24 the section that the government consult with representatives
25 of the recipients, clients as prescribed in the definition part

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1 of this regulation. And it still seems to me while this is,
2 as I have heard explained, a recommendation to the governor,
3 that if one of the purposes of this counsel is, as Congress
4 intended to be, a state monitoring agency to report apparent
5 violations, and we have extended that to its perhaps limited
6 involvement as to objective, we hope, reports and suggestions
7 as to quality services for the poor.

8 But I come back to the fact that if the Board is to be
9 totally independent, and this is a matter for the government,
10 it's hard for me to rationalize, frankly, recommend it, that
11 if that is the concept, that the governor consult with those
12 people who would be subject to the monitoring process.

13 I ask Mr. Smith this question within the State of
14 Kansas, or at the legislature setup. I ask him if the advisory
15 counsel reports apparent violations, so far as the public
16 utility is concerned, would he consult the power companies or
17 the gas line, and I realize this recommendation, but at the
18 same time I am concerned that even though it's been that, it
19 does add a flavor or saying that the governor could consult
20 with these groups which are the groups that are in effect
21 monitored or an overseer setup established by virtue of this.

22 CHAIRMAN CRAMTON: Your concern has been effectively
23 communicated. If you want to achieve it, you should move to
24 eliminate from Section 1603.4 of the regulations everything
25 after the first two sentences, which merely contain the statu-

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1 tory language. If you put that in the form of that language,
2 the Board, which has heard argument on the question, and the
3 Committee which takes a different position, can decide whether
4 it --

5 MR. BROUGHTON: I make the motion.

6 CHAIRMAN CRAMTON: It has been moved that all of
7 Section 1603.4 be eliminated minus the first two sentences.
8 Is there a second?

9 MR. COOK: It's been seconded.

10 CHAIRMAN CRAMTON: Discussion on the motion?

11 MR. KUTAK: Mr. Chairman, as your scrivener,
12 and I hope it is that, and not rapporteur, this is from many,
13 many, many sources and helpful suggestions, let me say that
14 the concerns that Mel has addressed have been, I think,
15 considerably responded to beneficially addressed when he
16 changed the word yesterday, the key words "organized to promote"
17 where they were found in the three sentences where Mel's
18 motion now moves to strike and have submitted the words
19 "concerned with" the term "concerned with," I think, was a very
20 constructive improvement as it does not merely define the
21 categories who are the recipients or the beneficiaries of the
22 program, but indeed defines a much larger group who have some
23 related or some tangential concern with it, and it could be,
24 for example, the chamber of commerce.

25 It could be indeed the Red Cross. It is a much more

1 intelligent phrasing of the words and, I welcome them and
2 quickly accepted when they were suggested yesterday, and I
3 wish I had thought of them myself.

4 With the change that's now before you, and that we
5 have in the text as accepted by your Committee, I think that
6 the concerns Mel very legitimately addresses have been taken
7 care of and therefore I would urge Mel that he need not press
8 his motion, but he's certainly --

9 MR. BROUGHTON: Mr. Chairman, it has been pointed
10 out to me by Mr. Stophel that consistent with my motion we
11 should leave in the last sentence which begins "Sixty days"
12 and I --

13 MR. STOPHEL: It is recommended that the governor
14 consult with other associations and the state representatives
15 of government interest in eligible clients and --

16 CHAIRMAN CRAMTON: I thought Mr. Broughton wanted
17 to take that out: "Remaining members will be selected after
18 consulting with members of groups."

19 I was thinking that he was leaving the first two
20 sentences and the last sentence would be left in, and the
21 groups would be left singular because the state bar association
22 would be the only association. Perhaps it would be good to
23 say "state bar association."

24 MR. ORTIQUE: I'm glad we got some clarity on that.
25 The state bar association.

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1 CHAIRMAN CRAMTON: I think the issue has been
2 very clearly drawn. Is there further discussion on the motion?

3 MR. THURMAN: What we have at the present time is
4 a reflection of the legislative progress and not of the Act
5 as we have at the present time. Isn't that correct? Doesn't
6 the legislative intent come through here as suggesting that the
7 governor consult with groups that have an interest and knowledge
8 and delivery of the service? Am I correct in that?

9 MR. SMITH: I think more than that, that we have a
10 logical expression if we are recommending that the governor
11 appoint people to monitor people, that they be people who are
12 interested in, and have a knowledge of, the program. It
13 doesn't mean they have prejudices. I think it would be a gross
14 mistake to leave it out.

15 MR. STOPHEL: What I would like to see on the
16 committees are people that have to do with legal aid.

17 CHAIRMAN CRAMTON: The issue has been posed. Are
18 you ready for the question? All those in favor of the motion
19 say "aye."

20 (Ayes.)

21 CHAIRMAN CRAMTON: Those opposed?

22 (Chorus of noes.)

23 CHAIRMAN CRAMTON: The amendment was defeated. We
24 will have a show of hands. The secretary will record the vote.
25 All those in favor please raise the right hand.

1 (Show of hands.)

2 CHAIRMAN CRAMTON: Mr. Broughton and Mr. Cook
3 voted in favor of the motion. All those opposed?

4 (Show of hands.)

5 CHAIRMAN CRAMTON: Messrs. Thurman, Ortique, Smith,
6 Stophel, Montejano, Kutak, and Breger voted against.

7 Are there further changes? We have reached the
8 appointed hour.

9 MR. THURMAN: It is clear we have stricken the
10 words --

11 CHAIRMAN CRAMTON: "Interest in and knowledge of"
12 were substituted in the regulation. All the changes accepted
13 by the Committee are now before the Committee.

14 MR. KUTAK: If I make take 15 seconds, I would
15 like the record to reflect -- it's terribly important to me
16 that it does, as Chairman of your Committee, that the work of
17 Messrs. Tatel, and Reston and staff, in helping us and
18 processing the numerous responses from the public in giving us
19 input from the broad spectrum that we have contacted, spoken
20 to, have been invaluable to our Committee.

21 When I move now the adoption of resolution "D,"
22 that is correctly labeled a resolution with respect to this
23 regulation on the state advisory councils, it comes with the
24 thanks of our Committee, both to the staff who have helped us,
25 to the public who has immeasurably helped us, and to the Board

1 who have today, and otherwise, helped.

2 CHAIRMAN CRAMTON: The Board is very appreciative
3 of the Committee's work, and particularly the work of the
4 Chairman.

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1 MR. COOK: I want to put one point of importance
2 into the record before discussion. I refer to 1603.5,
3 "Council Purposes and Duties." As I read it, it would seem
4 to me practical -- and I will not pursue it because, obviously,
5 I will not succeed. There is no point in having (b) and in
6 having (c). Section (a) is sufficient: "The purpose of the
7 council shall be to notify the Corporation of any apparent
8 violation as defined in 1603.2 (b)."

9 The reason I say this is that it is so incongruous.

10 (b). "In fulfilling the purpose set forth in
11 paragraph (a) of this section, the council shall forward
12 any apparent violation to the Corporation. The Chairperson
13 of the council shall inform the complainant, the Corporation, and
14 the recipient of all action taken on the complaint."

15 There is going to be one action taken on the com-
16 plaint, and that is to forward it to the Corporation. The
17 reason I say that, it then proceeds to say,

18 "Notification of an apparent violation forwarded
19 by the council to the Corporation shall not constitute a
20 position of the council concerning the apparent violation."

21 If the council comes to the conclusion that they
22 say this looks like a violation, the Corporation looks at it.
23 Then they say because we say it "looks like," doesn't mean we
24 have taken a position, which seems to me most ridiculous and
25 redundant.

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1 Consequently, if I were asked to serve on the board
2 and couldn't made a determination, I wouldn't be on the board.

3 (c). Then it proceeds to get into detail when it
4 says all the council does is pass on -- "These procedures are
5 not exclusive; complaints may be submitted to the Corporation,
6 and the complaints submitted to a council may be submitted to
7 the Corporation without regard to council action. The Corpo-
8 ration shall inform the complainant, the council, and the
9 recipient of all action taken on the complaint," and so on,
10 and so forth.

11 It seems to me what you are saying, you have a
12 purpose, but you don't have a purpose. Why didn't you just
13 have one person that the governor can appoint to get the
14 complaint in writing and pass to the Corporation for review?
15 If they make many review and pass to the Corporation,
16 obviously, any review they make under these rules and regula-
17 tions shall not constitute a position.

18 CHAIRMAN CRAMTON: Have you made a motion to strike
19 the two paragraphs?

20 MR. COOK: I would like -- I doubt very seriously
21 that I would succeed, but for the purpose of your comments,
22 just to prove that point, I will move that Sections (b) and
23 (c) be stricken. The section would, then, read:

24 "1603.5, Council Purpose and Duties. The purpose
25 of the council shall be to notify the Corporation of any

1 apparent violation as defined in 1603.2(b) of this Chapter."

2 I merely ask my colleagues if what they say means
3 nothing, for what purpose is the second sentence, the third
4 sentence in (b)?

5 MR. STOPHEL: Don't you think it is important that we
6 tell people that the advisory council is not the only way they
7 can bring the complaints to us? If the council has a complaint
8 and does not do so, they have a right to bring it, bypass the
9 council, and come to us.

10 MR. COOK: I see no reason for Section (c) and the
11 extension of the language: "Notification of an apparent viola-
12 tion forwarded by the council to the Corporation shall not
13 constitute a position of the council concerning the apparent
14 violation."

15 CHAIRMAN CRAMTON: We have now used 20 minutes more
16 than we promised to this item. I have not heard a second to
17 this motion.

18 MR. SMITH: There is a motion pending.

19 CHAIRMAN CRAMTON: This is a further amendment.

20 MR. BROUGHTON: I will second it, but I am not sure
21 I understand it. I just wondered if you know that I am the
22 one that suggested we carry this one over.

23 MR. COOK: Very frankly, Mr. Chairman, and I am
24 concerned about the same thing you are concerned about, but
25 I am not going to be stampeded into something I don't want

bwm 4

1 to vote for. I want the Chariman to know that.

2 CHAIRMAN CRAMTON: I would not want you to. Other
3 than the fact members of the board insisted today the dis-
4 cussion of this issue, you should terminate at 9:00 p'clock.

5 MR. BROUGHTON: Mr. Ortique added an addendum. He
6 said he didn't think we ought to put a 9:00 o'clock restriction.

7 MR. ORTIQUE: I said that because I don't think
8 anything ought to be restricted.

9 MR. COOK: I would like to amend the motion and
10 strike in 1603.5 -- I move that the following language be
11 stricken from that section, the sentence beginning on the
12 top of the page, which reads, "Notification of an apparent
13 violation forwarded by the council to the Corporation shall
14 not constitute a position of the council concerning the
15 apparent violation."

16 That is the only thing in my amendment that I wish
17 to strike.

18 MR. STOPHEL: I will vote for that.

19 MR. COOK: I wish to move the following language be
20 stricken: "Notification of an apparent violation forwarded by
21 the council to the Corporation shall not constitute a position
22 of the council concerning the apparent violation."

23 That is the only thing I would move to strike.

24 MR. STOPHEL: If you don't have a second, I will
25 second it.

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1 MR. BREGER: Is it seconded?

2 MR. STOPHEL: He withdrew his former motion, and
3 this is the motion to amend.

4 MR. KUTAK: Mr. Chairman, as your chairman of the
5 rules --

6 CHAIRMAN CRAMTON: I call on Mr. Breger. Mr. Kutak
7 will be next.

8 MR. BREGER: I am pleased to yield to Mr. Kutak.

9 MR. KUTAK: I am going to live with Senator Cook
10 for a long time. I have to say something for the record. I
11 am wounded to think that this board thinks I am stampeding the
12 consideration. I am not. I am the one that brings the
13 regulation to the board. If this board feels I am stampeding --

14 MR. COOK: The stampeding remark I made, I did
15 not intend to aim at you, sir. Does that make you feel
16 better?

17 MR. KUTAK: If my board feels I am stampeding --
18 that is in the record, that I am stampeding. It is in the
19 record that this provision that I worked over, your committee
20 has worked over, we have held hearings over, we have had
21 public comments. Nobody has said that this position is absurd,
22 and it is in the record as absurd.

23 CHAIRMAN CRAMTON: Can you tell us what the meaning
24 and intent of it is?

25 MR. KUTAK: Yes, sir. The hope here is to

bwm 6

1 accomplish two important things.

2 One is to be sure that everybody who is involved
3 in this process knows what is happening, and that we don't
4 leave people hanging around waiting for the other shoe to
5 drop. Whenever any action is taken by this council, in due
6 course it lets this Corporation know because that is im-
7 portant. It lets the affected party know, let the recipients
8 know, because that is important.

9 CHAIRMAN CRAMTON: That is not the sentence he is
10 talking about.

11 MR. STOPHEL: We are talking about it being or not
12 being --

13 MR. KUTAK: With respect to the amended language
14 and the amended motion, we did not want this council to feel,
15 when they were not given the capacity to make a due process
16 hearing, to adjudicate any allegations, to, in fact, extend
17 investigation into any complaints, we didn't want them to
18 feel that they were recommending anything, that they would be
19 otherwise on the spot.

20 They would be saying, "Holy smokes. If somebody has
21 come in to us with a grievance, and we think it is got an
22 alleged violation, and it might look like it, but that we have
23 made a phone call around and checked, but we have not had a
24 hearing and determined this independently, that we are
25 stampeding alleged violations with any blessing from ourselves."

bwm 7

1 We are a conduit for the Corporation and the
2 community. We are not passing judgment.

3 MR. COOK: Do you have to have nine of them to be
4 a conduit?

5 MR. KUTAK: That is the reason we inserted the
6 language. That is not to say they were prohibited, if they
7 wished. But they were not, if they didn't.

8 MR. BREGER: May I --

9 CHAIRMAN CRAMTON: Mr. Breger. Please be brief.

10 MR. BREGER: His point is, I think, at present
11 the state advisory councils are essentially a frivolous set of
12 organizations. I think that, unfortunately, that is presently
13 the case.

14 On the other hand, if we want to, and I say
15 "unfortunately" because I think to some extent -- I appreciate
16 the fiscal reasons for it to do so. We may have lost signi-
17 ficant opportunities in mobilizing the support of persons who
18 are at the varied states to aid the corporation in its acti-
19 vities. But as we are presently organized, these regulations,
20 if we were to remove the language that you suggested we
21 remove, it would be unclear whether or not the sending of
22 a complaint on to the Corporation means that it had an affirma-
23 tive stamp of approval on it or not. It would be uncertain.

24 Then, if a person wanted to directly complain to
25 the Corporation, the Corporation would be uncertain how to

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1 deal with a direct complaint, whether to send it back to the
2 state advisory council, in order to get that ambiguous stamp
3 of approval on it, or not, or whether to deal with it directly
4 in-house.

5 My concern is that the grieved recipient, the per-
6 son who doesn't know his way around regulations, is going to
7 be wasting two or three months with any complaint by sending
8 it to the advisory council, where nothing is going to happen
9 to it, whereas the institutional lobbyist, the middle-class
10 aggrieved person, the lawyer who is concerned, will rightfully
11 and essentially bypass the advisory council and complain
12 directly to the Corporation. That is where any remedy is going
13 to be found.

14 But given that, we have the setup the way it is,
15 if we take out this language, we may well result in a situation
16 where a person who complains to the Corporation can be bounced
17 back to the advisory council, and more time will be wasted
18 before his complaint will be heard.

19 MR. ORTIQUE: I get the impression --

20 CHAIRMAN CRAMTON: Mr. Montejano was next. Then
21 Mr. Cook, and then Mr. Ortique.

22 MR. MONTEJANO: Very briefly, the sentence in
23 question is not absurd. It was well stated. The apparent
24 violation says "facts, if established." We know the state
25 advisory council will not have the mechanism or resources

bwm 9

1 to fully hear the issue and to put them in a position of
2 having to forward a complaint without having fully investigated
3 and heard all the facts, and giving the implication that it is
4 a violation, and then, when the facts are established at this
5 level, and we send it back, it would be extremely unfortunate
6 if we forced them into a position to say we have found a
7 violation, and we are forwarding it, and saying it is in there
8 for the very purpose that they do not have the resources of
9 mechanism to investigate or hear the issue.

10 They are saying, in effect, on paper, we think
11 that there might be an apparent violation.

12 MR. COOK: The problem with what you have said,
13 Marshall, you said, unfortunately, this is a frivolous venture,
14 maybe. If it is a frivolous venture, gentlemen, it is because
15 we have written a series of recommendations to go in the
16 Federal Register, by which the state councils are bound, that
17 make it a frivolous venture. We are the culprit that is doing
18 this, that is passing on this particular set of frivolous
19 ventures to the state organization.

20 In regard to your remarks, you are becoming so
21 negative, you are prohibiting them from doing anything, if they
22 want to do anything other than referring to -- suppose
23 they want to take it under consideration. Suppose members of
24 the council want to go into detail. You are saying the only
25 reason you can't do it, you don't want to give them money.

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Suppose the state legislature gives them some money.

Suppose the governor's office gives them money. Suppose they want to hold hearings. Suppose they are the closest ones to make a determination.

You are saying even if they do it, it is not a recommendation because they can't make one.

MR. MONTEJANO: They don't have a --

CHAIRMAN CRAMTON: It seems to me -- the complaint, the point you are making goes really to the entire regulation. If you really believe that these regulations are a frivolous venture, you should vote against the adoption of the regulation.

Mr. Ortique is next.

MR. ORTIQUE: I want to say, Marlow, my great concern is that I thought this sentence was reassurance to the people out there in the field.

MR. COOK: It is reassurance that what they do out there means nothing. You explain it to me, if that is not the case.

MR. ORTIQUE: It says that your effort to get to this Corporation is facilitated because no matter what the position is down below, the Corporation is the one that is going to take a look at it.

MR. COOK: Why don't you have (inaudible)? Because the statute says no.

1 MR. ORTIQUE: One purpose, and that is to transmit
2 violations.

3 Only yesterday, I was concerned about the negative
4 nature of this legislation, in my view, because I believe
5 there are some state councils that are going to come up
6 with some ideas and good positive suggestions, but unfortu-
7 nately, the act says that you are there for the sole purpose
8 of receiving complaints. We can't get around the statute.

9 CHAIRMAN CRAMTON: I think the issues have been fair-
10 ly drawn. I am not sure how much is going to be repetition
11 from here on.

12 MR. SMITH: The reason the committee has that in
13 there -- on just a cursory examination, it might appear to be
14 redundant. They don't have authority to make decisions, so
15 obviously, it is not a position of the council. It is very
16 significant, and extremely important, this regulation,
17 because it guarantees for freedom of action on the part of the
18 council. The difference is the council has to do a minimal
19 investigation to see if sufficient facts are alleged to
20 constitute an apparent violation, but they do not have to
21 investigate to see if the facts can be proven. The Corporation
22 determines if the facts are really facts. The council has to
23 determine if there are a sufficient number of alleged facts to
24 constitute an apparent violation. With this guarantee, they
25 are free to do so.

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1 CHAIRMAN CRAMTON: Mr. Cook has moved the elimina-
2 tion of the final sentence of paragraph (b). Are you ready
3 for the question?

4 Those in favor, say "aye."

5 (Ayes.)

6 CHAIRMAN CRAMTON: Those opposed?

7 (Noes.)

8 CHAIRMAN CRAMTON: There is a division. The
9 secretary will record the vote.

10 All those in favor, raise your right hand.

11 (Hands raised.)

12 CHAIRMAN CRAMTON: Messrs. Cook Stophel, Broughton
13 in favor.

14 Opposed?

15 (Hands raised.)

16 CHAIRMAN CRAMTON: Messrs. Breger, Kutak, Montejano,
17 Smith, Ortique, and Thurman.

18 Are there further proposals or changes? Are you
19 ready for the principal question on Resolution D, the adoption
20 of these regulations under the procedure indicated?

21 MR. STOPHEL: I move the insertion of the word
22 "necessarily" before the word "constitute" in that same sec-
23 tion.

24 MR. THURMAN: I second that. That would save me.
25 It gives them some adoption.

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1 MR. KUTAK: We accept it.

2 CHAIRMAN CRAMTON: The committee accepts the inclu-
3 sion of the word "necessarily in front of the word "consti-
4 tue" in the second line on the top of the page. It's the
5 carry-over page of Section 1603.5.

6 With that further amendment as a committee amend-
7 ment, Resolution D is now before you for action.

8 Are you ready for the question? All those in
9 favor of the adoption of the regulation please say aye.

10 (Vote taken.)

11 CHAIRMAN CRAMTON: We will have a show of hands on
12 the division. All those in favor raise their right hand.

13 (Hands raised.)

14 CHAIRMAN CRAMTON: Messrs. Breger, Kutak, Montejano,
15 Stophel, Smith, Ortique, and Thurman.

16 Those opposed.

17 (Hands raised.)

18 CHAIRMAN CRAMTON: Messrs. Cook and Broughton.

19 That completes action on item 5 on the agenda.

20 We now go to item 6.

21 We will take a two-minute stretch.

22 (Recess.)

23 CHAIRMAN CRAMTON: Please resume your seats.

24 One of the vital issues faced by Legal Services
25 Corporation in its initial months is the interpretation and

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1 application of Section 1006(a)(3) of the Act. Because of the
2 importance of this issue the board has included it on its
3 agenda in the progress report at each meeting of the board.
4 At today's meeting a number of people expressed the desire to
5 address the board and make their views concerning legal and
6 policy issues having to do with support center activities and
7 function. We are delighted they have done so, a number of them
8 are here today. I would first recognize and call upon
9 Mrs. Edith Green, former congresswoman from Oregon, who has
10 come all the way from Oregon to tell us her views concerning
11 the purpose and meaning of this provision of the Act.

12 Mrs. Green, you are very welcome. Please sit or
13 stand, as you desire, and I think you are in a position where
14 both the stenotypist can record you well, and where we can
15 all hear you and see you.

16 MRS. GREEN: Thank you.

17 CHAIRMAN CRAMTON: While you are assembling your
18 papers, I might first comment that one person that hoped to
19 be here to speak today, a representative of the American Bar
20 Association, Mr. William F. McCalpin, was unable to be here
21 today because of a professional friend's funeral, and he flew
22 in yesterday afternoon and addressed the board very briefly
23 concerning the views of the American Bar Association on this
24 subject. We have already heard from one interested organiza-
25 tion and member of the public.

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Mrs. Green, the floor is yours.

MRS. GREEN: Thank you very much, Mr. Chairman.

I appreciated the letter from one of the board's members to come, and your phone call, Mr. Chairman. I really regret that I have not had as much time as I would like to have had to prepared. I think I received the letter and phone call last weekend and had meetings in Kansas, so I have not been able to review every word.

First, after hearing you discuss the state advisory councils and the controversy, what I thought was a relatively minor provision in the law, I must say I don't envy your position. I am glad I am on the other side of the table.

CHAIRMAN CRAMTON: I am not sure we share that view.

(Laughter.)

MRS. GREEN: And that you people will have to make policy decisions. I shall try to respond to your request, Mr. Chairman, and discuss what has been referred to many times as the Green Amendment. I might say, first of all, that except in name, it really is not the Green Amendment. I offered it on the floor technically, but it represented the views of dozens of my colleagues, and we had worked on that amendment for weeks prior to the time that I offered it on the floor on June 21, 1973, and obviously when dozens of us had discussed this many times, there were reasons for

jeri 4-5

1 that amendment and reasons for concern, and they grow out of
2 what we felt were abuses in the present activities of the
3 OEO, and of the legal services part of the bill. Now, the
4 vote by which my two amendments, there were two amendments
5 in regard to back-up centers which I offered, and the vote
6 on those were very substantial.

7 The first, 245 to 160, and the second, 233 to 139,
8 which reduces the funding, cuts it out entirely for the back-
9 up centers, and therefore reduced the total amounts that could
10 be spent for other activities.

11 May I respectfully suggest, Mr. Chairman, that the
12 opponents of that amendment, a year and a half ago, both the
13 opponents outside of the Congress, and in the Congress, are
14 now being quoted as the authority on what that particular
15 amendment means. I have read in some of the papers quotes
16 from some of the Members of Congress in sections which they put
17 in the record, not speeches which they made on the floor of
18 the Senate, nor speeches which they made on the floor of the
19 house, but simply statements that someone had prepared and
20 they inserted in the record. I respectfully suggest this
21 should not be considered when you are determining the legis-
22 lative history, because a speech is followed by a vote on a
23 particular point. It really reflects nothing more nor less
24 than the views of that individual, one individual member of
25 Congress, and does not represent congressional acts in

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1 determining the legislative history.

2 Now, because of the chronological order of events,
3 it seems to me it was not too relevant to discuss what happened
4 between June 21, 1973, and July 16, 1974 in regard to this
5 particular amendment that concerns you this morning, though
6 I am perfectly willing to do it, if you want to take the time,
7 and if you have questions later.

8 After having deleted the back-up center proposal
9 in the conference, the Senate moved to table that conference
10 report on July 16, 1974, and the report is very clear that they
11 were now prepared to take it up.

12 The House passed the bill with the Senate amendment,
13 and on that same day the House considered the action taken by
14 the Senate just one hour previously. And again I think that
15 Senator Cook will appreciate my position at that time because
16 on July 16, within an hour after the Senate had acted, the
17 House, with no report before it, no written statement of any
18 kind, was required to vote.

19 Ordinarily a conference report, under the rules
20 of the House, is required to lay over 3 days so every member
21 will have a chance to read it and know what is in it. In this
22 particular instance, on July 16, when it came to the House
23 we were depending entirely on the statement of the managers of
24 the bill, the conferees. And it was their explanation, in my
25 judgment, that provided the congressional intent and the

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1 legislative history.

2 Now, the first person that I think needs to be
3 listened to is the chairman of the full committee and the
4 manager of the bill. On July 16, Mr. Perkins, who fills both
5 of those roles said this: He was explaining the situation and
6 he said, "It," meaning the action taken, "simply adopts the
7 conference report as agreed to by the House on Legal Services
8 minus the back-up centers." You note he did not say part of
9 the back-up centers but "We take the Green Amendment on the
10 back-up centers lock, stock and barrel." That's on July 16,
11 and I have the page reference.

12 Later in that same debate, Mr. Perkins said "There
13 is nothing in this conference report that will permit the fund-
14 ing of back-up center through public interest law firms" and
15 then Mr. Quie on that same date, who is the Minority Leader
16 and one of the managers of the bill, the manager of the bill
17 on the minority side, said, "As you recall," and he is refer-
18 ring back to June 21, 1973, when the bill was passed, "The
19 argument was really over back-up centers, and the gentleman
20 from Ohio, Mr. Ashbrook, offered a motion to recommit with
21 instructions to restore the Green Amendment deleting the back-
22 up centers, and this was narrowly defeated by 190-183 vote.

23 "By adopting the motion as proposed from the
24 gentleman from Kentucky, we will then have a conference report
25 with the back-up centers removed."

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1 Now, again he does not say part of the back-up
2 centers removed, but "With the back-up centers removed as the
3 motion to recommit provided first," and as the Green Amendment
4 provided in the bill when it passed the House. "The action
5 today," and I think it is crucial because I read in some of
6 the papers, 1006(a)(1)(b), is being referred to now as the
7 authority for litigation.

8 "The action proposed here today," Mr. Quie says,
9 "would completely restore the language of the Green Amendment
10 prohibiting the establishment and operation of so-called back-
11 up centers and eliminate all language from the conference
12 report inconsistent with the language of the Green Amendment."

13 I call your attention to the language in 1006(a)
14 (1)(b) which was not in the House bill. It was in the Senate
15 bill, and therefore when we debated on June 21, it was not
16 before us to amend, but the language here, that there is
17 nothing in the conference report that is inconsistent with
18 the Green amendment, seems to me to say that the (b) section
19 should not be considered as authorizing any litigation.

20 Now, Mr. Quie also says on page H6553 of the
21 record --

22 MR. COOK: Would you give us the date?

23 MRS. GREEN: July 16.

24 H6553. Mr. Quie says, "Now it is being suggested
25 by some that other language of the conference committee bill

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1 would permit the same results as the establishment of back-up
2 centers through grants to so-called public interest law firms.
3 That is not accurate. First, as one of the managers on the
4 part of the House, I am making it clear that this bill cannot
5 be interpreted to permit the corporation to make any grants or
6 contract for purposes and programs carried out under the so-
7 called back-up centers.

8 Secondly, and more important, the language of the
9 bill itself will not permit that interpretation. The only
10 grants or contracts which can now be made are those for the
11 legal advice representation to specific eligible clients, not
12 general causes having specific need of legal counsel, and not
13 for any legal research, training, or information services."

14 And then on that same date a little later he
15 says -- this is Mr. Quie, the ranking Republican Congressman:
16 "But in any event, not such grants or contracts could be made
17 to any law firm of any description for the purposes covered
18 by Mrs. Green's amendment. That is the second point of what
19 we are doing here today.

20 "Mr. Speaker, the motion now before the House would
21 uphold the position of the House and back-up centers 100 per-
22 cent."

23 CHAIRMAN CRAMTON: Would you read again the quote
24 by Mr. Quie? I missed part of it. There was a reference to
25 advice to specific clients but prohibiting generalized research.

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MRS. GREEN: Yes.

"Second, and more important, the language of the bill itself will not permit that interpretation" that somebody else could do it "The only grants or contracts which now can be made are those for the legal advice representation to specific eligible clients, not general causes having specific needs of legal counsel, and not for any general legal research, training or information services."

I believe that is what you want.

CHAIRMAN CRAMTON: Yes, thank you.

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1 MRS. GREEN. The record, I think, is clear. The
2 litigation was included in the amendment which I offered in
3 regard to backup centers, and at the time I offered that
4 amendment the record clearly shows that I discussed the
5 Harvard back-up center which had carried on litigation. There
6 were other cases of litigation. You have five minutes for
7 a speech on the floor of the House. You obviously can't
8 include every example you want to. I specifically referred
9 to the litigation conducted by Harvard in which they were
10 active counsel in the Detroit school busing case.

11 Mr. Quie said, "Mr. Speaker, the motion now before
12 the House would uphold the position of the House on back-up
13 centers 100 percent."

14 That vote was 265 to 136, the original backup center.
15 The record also, Mr. Chairman -- and this is a point I think
16 is important in the legislative history -- the record would
17 indicate that on July 16, neither Congresswoman Chisholm, or
18 Congressman Bill Steiger, actually spoke on the Floor.

19 Now, reference is made in some of the papers
20 establishing legislative history, that Congressman Steiger
21 or Shirley Chisholm said that. But again, if you insert a
22 statement on the Floor, it does not seem to me that it is open
23 to a challenge of people who might have a different view-
24 point, and, therefore, should not be considered in the
25 legislative intent.

1 MR. COOK: What you are saying, that becomes their
2 intent, not a legislative intent, subject to any questions or
3 further criticism.

4 MRS. GREEN: Sure. It is put in a day or five days
5 after a vote occurs.

6 MR. BROUGHTON: Was that the case with the two
7 statements made by Mrs. Chisholm and Mr. Steiger? They
8 inserted --

9 MRS. GREEN: When they made it.

10 MR. BREGER: They were not made in the debate on
11 the Floor?

12 MRS. GREEN: If anybody is speaking on the Floor, the
13 person controlling the time says, "I yield to Congressman
14 So and So."

15 Before Mrs. Chisholm's and Mr. Steiger's speeches, there
16 is no such indication. It gives the name, and I am sure
17 Senator Cook would support me, that that is the way the statements
18 are put in the Record.

19 On the Senate Floor, the manager of the Senate
20 bill and the conference report, Senator Nelson, and that
21 was in the speech which he actually made on the Senate Floor, he
22 said, "The language in the revised conference agreement is now
23 exactly that proposed by Congresswoman Edith Green and adopted
24 on the Floor of the House."

25 July 10, Senator Javits, on page Senate 12132 said,

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1 "With the backup centers authority out, the President will
2 sign the bill."

3 Senator Javits did not say part of the authority
4 of the backup centers, or part of the work, but with the
5 backup centers out.

6 Later, Senator Javits: "This bill is essentially,
7 even with the backup center proposition dropped out, is
8 essentially what the President wanted, "and again he did not
9 fracture the backup centers and divide them."

10 Senator Taft, on July 10, said "Removing the authority
11 to make contracts and grants for backup centers," in referring
12 to this action, and again, he did not say removing part of the
13 authority of backup centers. He said, "removing the authority."

14 Senator Cranston, on July 10 -- I'm not sure whether
15 it was inserted or given -- reverts to the language of the
16 House bill prohibiting grants or contracts for backup centers.

17 And again; Senator Cranston did not fracture it and
18 say only part of it. There is a question that has been raised
19 whether litigation was included in the amendment which I
20 offered and several members of the Congress in the debate
21 referred to the litigation, referred to co-counseling as part
22 of the research and part of the backup center activities.

23 As I said, twice on the Floor I definitely referred
24 to the litigation and this was what we wanted to get rid
25 of.

1 Members of the House found the litigation that
2 was being done by the backup centers as some of the most
3 offensive things which they objected to.

4 Also, in terms of the litigation being included,
5 I refer to the conference report of the 1974, not years back,
6 but 1974, on May 30, these words are found: "The terms
7 'research' and 'research in connection with the provision of
8 legal assistance to eligible clients,' are understood
9 by the Congress to mean the types of research activity
10 currently being adopted under Section 232 of the Economic
11 Opportunity Act" of 1964 including the provision of co-counsel."

12 Then later on in that same language of that
13 Conference Report, "The functions authorized by this
14 provisions," that's research, "are of utmost importance
15 for the continuation of high quality services. Such functions
16 included programs concerned with clinical legal education,
17 research specialized litigation and training in the area
18 of para-professional personnel, as well as similar activities."

19 It seems to me when I strike the only language
20 in the bill that refers to backup centers, and the only
21 language in the bill that has given any backup centers the
22 authority to do litigation, and when we say you no longer give
23 contracts or grants to them, that it destroys the authority
24 which some people claim.

25 Now, I know it is in one of the papers that the

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1 argument was made that my amendment does not cover litigation
2 because later amendments were offered to do that: Congressman
3 Mizell, on the busing amendment, on therapeutic abortion,
4 the amendment in regard to veterans.

5 I am aware that for those who have not participated
6 day by day in the House debates, that the procedures are
7 sometimes difficult, but I think it is critical in your
8 consideration of the intent. The specific limitations, the
9 one on busing, which some argue is proof that my amendment
10 did not cover litigation, because otherwise why would you have
11 to have an amendment on busing or litigation? In the House
12 the rule requires the members to amend busing.

13 My amendment was to Section VI. These prohibitions
14 to which I just referred, come in Section VII. And they could
15 not be offered until after my amendment was either approved
16 or disapproved.

17 I offered my amendment. It was approved by the
18 House, and therefore, for the purposes of future debate on
19 June 21 in the House, there was no backup center which I
20 could amend, or which you could modify, or to which you could
21 refer. And the amendments to Section VI on busing litigation,
22 and on the therapeutic abortions, and other kinds of
23 litigation, those applied only to Section 1006(a)(1). Not
24 three.

25 And 1006(a)(1) is your project attorney. Actually,

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1 providing the legal services to an eligible client.

2 do not refer to the backup centers, because
3 there were no backup centers at that time in the debate.

4 MR. COOK: May I inquire if they had meant
5 that those amendments under Section 7 were somehow to
6 re-establish or reaffirm the significance of backup centers,
7 there would have been a parliamentary request to go back to
8 Section 6. Is that not correct?

9 MRS. GREEN: That is correct.

10 MR. COOK: And that would appear in the record?

11 MRS. GREEN: And for that you would have to have
12 unanimous consent.

13 MR. STOPHELL I think you said 1006 refers to
14 regular programs. I think you meant 1006. 6, you amended.

15 MRS. GREEN: The amendment of mine occurs in
16 Section 1006(a)(1)(3), and the Mizell amendment on busing, the
17 one on therapeutic abortion, and the veterans, appear in
18 Section 7.

19 But at that time there is no backup center in the bill,
20 so they can't refer to it. In addition to that, some of the
21 limitations and some of the amendments, they refer to the
22 recipients. If you look in the definition of recipients,
23 a recipient of funds under the Legal Services Corporation,
24 is only the individuals to whom Section 1006(a)(1) refers.
25 A recipient is not defined under this bill in the backup

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1 centers in 1006(a)(1)(3), which again supports my contention
2 that these limitations on litigation were not applying to
3 the backup centers at all.

4 On July 18 in the Senate debate, I would like to
5 call your attention to the facts that on pages S12927, Senator
6 Nelson says, "The Senate stands in recess until 1:50."

7 At 1:50 it was called back into session on July 18 and the vote
8 had been predetermined to occur at 2 o'clock, so there is a
9 ten minute time between the time they came back in, and the
10 time of the vote, and yet the records would indicate that in
11 those ten minutes the following Senators gave speeches on
12 what they considered intent of the back-up center:

13 Senator Abourezk, one half-column, single-space;

14 Senator Cranston, two and a half pages of the speech, seventh
15 column; Senator Tunney, according to the record during that
16 ten minutes spoke twice. Two pages, one time, and half a page
17 another; Senator Hughes, Senator Mondale, Senator Hughes
18 again. Senator Stennis, Senator Kennedy, Senator Mathias
19 Senator Williams, Senator Hart.

20 One of the members of our board is obviously a much
21 better authority on what happens in the Senate, but I would
22 suggest in that ten minute period, that it would be pretty
23 difficult for 30 pages, three columns, single space, to actually
24 have been spoken on the Floor to establish legislative intent.

25 I would suggest that most of those speeches were

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1 inserted after the vote took place, but that is something that
2 you can discuss later.

3 Mr. Cook. I think for the record we should clear
4 it up. The procedure is that at the request of any member on
5 a prepared text that he wishes to place in the record
6 in full and not put into extension of remarks, that he merely
7 comes in and drops them off with the Clerk with the request
8 that they be inserted into the Record prior to the point where
9 the record would establish a vote taken on the matter that
10 they wish to express their opinion on.

11 Therefore, without any speeches on the Senate Floor
12 at all, you could have a complete volume of the Congressional
13 Record having been submitted to the Clerk at the desk with
14 the request that they appear before the roll call votes on
15 a particular bill. The roll call votes would then appear
16 and the appearance on the record would be that that entire day
17 had been taken up with that debate, when, in fact, it all
18 could have been accomplished in five minutes or less.

19 MR. BROUGHTON: When would those statements
20 be transmitted?

21 MR. COOK: They could have been given to the Clerk
22 after the vote, with the request to the Clerk that they would
23 be placed in the Record prior to the roll call vote on a
24 particular bill.

25 MRS. GREEN: To make it appear that this was done in

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1 the House. To make it appear as if the speech occurred
2 before the vote occurred.

3 MR. BROUGHTON: When would those be transmitted to
4 other Senators to say they were placed?

5 MR. COOK: The next day when they get the Record.

6 MR. BROUGHTON: They would be transmitted to other
7 Senators after the vote?

8 MR. COOK: The only way it is transmitted to other
9 Senators, if it is not given on the Floor. If you made it
10 on the Record or submitted it on a Friday prior to the vote,
11 roll call, the only way it would be transmitted to other
12 Senators would be for him to open it, the Congressional
13 Record, on Monday and read all those things. That is the
14 only transmittal to him. If he did not read them, there would
15 not be any transmittal at all.

16 MRS. GREEN: The reason I make a point of this, I think
17 you ought to consider that fact in determining what the legis-
18 lative intent or the legislative history is.

19 CHAIRMAN CRAMTON: Were some of the names of the
20 Senators you read, Senators who had participated in the
21 conference and managed the bill in the Senate and, therefore,
22 wholly apart from the time of the statement might have been
23 reporting the views of the Congress on the Senate side?

24 MRS. GREEN: Yes. I think two of those. However,
25 in Congress, no conference I have attended has been unanimous.

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1 There has been a difference of viewpoints. And the only
2 point I would make, unless the speech is given on the floor,
3 so that someone has a different view of the legislative intent
4 could challenge, and when they are put in the record, there is
5 no way of somebody else contradicting and saying that is not
6 the Congressional intent.

7 CHAIRMAN CRAMTON: Was Representative Hawkins a manager
8 of the bill and one of the House conferees?

9 MRS. GREEN: Yes. Congressman Hawkins gave
10 at least one speech on the floor. The only two who did not
11 give speeches and have been quoted in papers, are
12 Congressman Steiger, and Congresswoman Shirley Chisholm on the
13 House.

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1 CHAIRMAN CRAMTON: Could some credence be given
2 to views expressed on the floor by the House manager of the
3 bill, Representative Hawkins, as to what the meaning and
4 intent, according to the Congress, was, the language that
5 originated from you?

6 MRS. GREEN: I think that anybody who speaks on
7 the floor, that those comments, you have chance to challenge
8 them or say it isn't so or outvote them. Congressman Hawkins
9 was not the manager of the conference. At this point Mr.
10 Perkins was the manager, not Hawkins. Congressman Hawkins was
11 the manager on June 21st, not on July 16th, 1974, and to the
12 extent that he was one of the conferees, but it also should be
13 borne in mind Congressman Hawkins oppoed my amendment on June
14 21st, 1973, and at that time on the floor argued against it
15 saying he felt it would do this and this. And he was outvoted
16 by 269 -- I forget the number, but by a very substantial
17 majority.

18 MR. COOK: If Congressman Hawkins argued against
19 your amendment and set forth what your amendment would do if
20 in fact it passed, that particular debate should be given
21 credence. That would be an expression on his part of what
22 your language would so, and he was opposed to it, and the reason
23 for his opposition.

24 MRS. GREEN: That's right. The one who did not
25 agree with Congressman Hawkins were 245.

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1 CHAIRMAN CRAMTON: In July 1975, when the House
2 restored the legal services bill, Congressman Hawkins spoke,
3 and my understanding is he emphasized the same thing, the
4 quotes from Representative Quie, that is a distinction between
5 specialized litigation, which was permissible under the Green
6 amendment, but not client-related research training, think-tank
7 activities which were not.

8 MRS. GREEN: There would be a difference there, and
9 I think the record shows by votes what the Congressional intent
10 was. My amendment did not pertain at all to Section 1006(a)(1),
11 which is your project attorney.

12 Now, the project attorneys obviously could do any
13 specialized work that the corporation decides that they should
14 do.

15 CHAIRMAN CRAMTON: By project attorney, you mean
16 the staff attorney for any grantee or contract for the Legal
17 Services Corporation for a assistance. Whether or not he
18 specialized or generalized --

19 MRS. GREEN: (1)(a) says "The corporation to provide
20 financial assistance to qualified programs, furnishing legal
21 assistance to eligible clients, and to make grants to and
22 contracts with individuals, partnerships, corporations, and
23 non-profit organizations" and then it goes on to the next
24 part, and is separate, and "states and local governments."

25 If you go back to the definition, to recipients under

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1 (6), a recipient means any grantee, contractor, financial
2 assistance described in Clause 1 of Section --

3 CHAIRMAN CRAMTON: There is nothing that says the
4 program or grantee, the programs you refer to, the programs
5 furnishing legal assistance, who can be funded by grants or
6 contracts. They could be community based, statewide,
7 national, regional.

8 MRS. GREEN: I think that's not the intent of
9 Congress.

10 CHAIRMAN CRAMTON: A program for migrants who cross
11 state lines serving specific clients who were migrants and
12 eligible could not be served by grants.

13 MRS. GREEN: The Congressional intent under 1006(1)(a)
14 would be that those would be the projects where legal assistance
15 is given to an eligible client, a person who could not otherwise
16 afford to have the legal service and individual --

17 CHAIRMAN CRAMTON: The question I'm getting to is
18 the organization of the recipients' contracts. It has been
19 suggested it might be desirable to organize programs on a
20 statewide basis, to have the state of Florida have a statewide
21 program. What you're suggesting, that's not possible. It
22 has to be a community base program as distinct from a county-
23 wide, regional, or national program, and I don't find anything
24 in the language that says anything about local, state,
25 regional, or national. It leaves it open for the Legal

1 Services Corporation.

2 MRS. GREEN: I think the corporation can make a
3 determination on that. In the debate of the bill the 1006(a)
4 (1)(3) was generally considered as the backup centers that had
5 a regional or national impact.

6 CHAIRMAN CRAMTON: Is there anything in the
7 language that says that?

8 MRS. GREEN: The debate, I think, throughout said
9 under (3) they were doing these things which had a national
10 impact. That was not related just to an eligible client.

11 CHAIRMAN CRAMTON: Is it proper to refer to
12 legislative history if the language is clear?

13 MRS. GREEN: I beg your pardon? Is it what?

14 CHAIRMAN CRAMTON: To what extent is legislative
15 history relevant as against clear or plain language of a
16 statute? Why wasn't the language "backup center" used? You
17 have emphasized very effectively the use of the term "backup
18 center" throughout at the Congressional debate in both Houses.
19 That language is not found in the statute.

20 MRS. GREEN: I think it is similar -- the Green
21 amendment is not found in the statute, but everybody in the
22 House and Senate, and others have referred to 1003 as the
23 Green amendment. It is generally considered that way, and
24 the 1006(a)(1)(3) is generally referred to in both House and
25 Senate.

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1 MR. ORTIQUE: It seems to me we ought to keep in
2 mind one is substance and the other is procedure. On the
3 question of procedure, Mrs. Green, my concern is that we would
4 be quite specific, and I think that this corporation Board
5 ought to know whether it was a fact or not a fact that
6 President Nixon said in no uncertain terms that he would not
7 sign this bill without the Green amendment on backup centers.
8 That happened in July, which in my view would make a lot of
9 the legislative activities irrelevant because it was signifi-
10 cant what he wanted in the bill.

11 It would appear to me that that is either a fact or
12 it's not a fact. And if that is a fact, then certainly we have
13 got to attempt to determine what was really in the minds of
14 Congress up to the point that the amendment was added. You do
15 not agree with that?

16 MRS. GREEN: I respectfully would disagree on that
17 because I know of no legislation of any major consequence that
18 is not the result of conferences and work by both the legis-
19 lative and executive branches. Many bills, especially during
20 the LBJ years, the White House sent the whole bill to Congress.

21 Now, surely Congress had to consider what President
22 Johnson wanted, and the fact that Congress did consider what
23 President Johnson wanted in the bill does not change the
24 Congressional intent after the bill is written and becomes law.

25 MR. ORTIQUE: That's right. So that when you have

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1 a bill, though in this situation that had passed both Houses,
2 and the Congressional intent had been expressed in that bill,
3 and Green amendment was not there at the moment, and then the
4 President says I will not sign this bill, then it would seem
5 to me that a number of persons who may have been greatly
6 concerned about the salvation of the Legal Services program,
7 especially in the light of the legislative history that had
8 taken place, would be very much concerned that you don't lose
9 the whole thing at that particular moment.

10 It would appear to me that the legislative intent,
11 if one were to argue procedure, and I'm not sure I want to
12 entertain that. I am concerned more with substance. I am
13 concerned with what backup centers were doing that was
14 ineffective to poor clients. Poor clients to me is what this
15 is all about. If they were doing something ineffective, then
16 by God I don't want them to do that. If they were violating
17 the law, I don't want them to do that.

18 There are a number of things substantively I don't
19 want backup centers, staff attorneys, or anybody else to do on
20 behalf of the poor.

21 But I want them to have the very best quality legal
22 services that they can possibly get, and my impression is that
23 is what all these Board people want, and that's the oath that
24 they took. I can't help but say if the legislative intent at
25 the moment that that bill went across the street or down the

1 street, was that there would not be a Green amendment in it, and
2 the President said I will not sign without the Green amendment,
3 that that is a different situation from the situation where the
4 President signs over the bill which includes the Green amendment
5 and Congress takes it out, and he says put it back.

6 MRS. GREEN: The only comment I would make if I
7 may respond, Mr. Chairman, is that the Green amendment was in
8 the House version of the bill. It had been approved. Some
9 Senators quoted what Mr. Nixon would or would not do. The
10 Green amendment had been in the bill since June 21st, in the
11 House bill.

12 Now, when the Senate added it on July 16, they simply
13 were saying they will now agree with the House position.

14 CHAIRMAN CRAMTON: Mrs. Green, I apologize for
15 disrupting your statement. We would make more progress if we
16 heard her and then addressed questions to her. We do have a
17 number of people who want to be heard.

18 MR. ORTIQUE: I would like to ask one more question.
19 Is it not true, Mrs. Green, that it was not until June 21st
20 that you actually first offered up the Green amendment, and
21 that as a matter of fact your offering of that amendment took
22 place after the hearings had been held on the bill? That's the
23 impression I got.

24 MRS. GREEN: First, there were no hearings on this
25 bill, in the last year or the year before in that Congress. None

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1 at all on the bill that was brought before the House. They
2 said we had hearings in 1972 and 1971. However, there are
3 new members of Congress. Every new session of Congress has
4 new members that did not have opportunities to attend or know
5 what occurred in the hearings of previous years. There were
6 no hearings.

7 You say I did not offer it until June 21st. That
8 is correct. June 21st was the first opportunity I had to
9 offer it. It was the first time the bill was on the floor.

10 MR. STOPHEL: I have one brief question, and it
11 deals with interpretation. Let me assume a two-man law office
12 in Chattanooga, Tennessee. Let's assume that that program had
13 a client who had, for example, a housing law problem, couldn't
14 get into a housing project because of regulations, and he
15 wanted to take it to court, but the two-man law office could
16 not handle that litigation which might be substantial, and also
17 handle the other problems it had to deal with.

18 Under your interpretation of the amendment, would
19 it be possible for us to have an office in Atlanta, for example,
20 that had an expert in housing law who could assist the lawyer
21 in Chattanooga in trying that particular case for that parti-
22 cular client?

23 MRS. GREEN: The provision in the bill says the
24 corporation may do any kind of research, or training, or
25 technical assistance, any of the things that the backup centers

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1 could do, with one qualification, and this is the litigation.
2 But that's a separate qualification, and it doesn't nullify
3 my amendment. It puts a further limitation on it. The
4 corporation can do anything that they want to as long as it's
5 in house. If you want to have a regional office, if there is
6 a regional office in Atlanta -- let's say there is a regional
7 office. There's no reason that I know of that the corporation
8 can't say on an in-house basis, they can't do the research
9 or any of the things that the backup centers formerly did with
10 the exception of litigation, and I will come to that.

11 He couldn't come in as co-counsel assisting in the
12 trial.

13 From my standpoint they are prevented from doing
14 any litigation. I talked to some attorneys -- and I confess
15 I am not an attorney, and most of you people are.

16 There are some attorneys who say, and I have a
17 little problem with them, the law says they should not engage
18 in any litigation. Some would say they could provide, if you
19 set up an in-house regional office in Atlanta, that they could
20 provide a co-counsel to the specific lawyer in Chattanooga.

21 I think that you look pretty carefully at it because
22 Congress is going to be looking pretty carefully at what is done.

23 MR. STOPHEL: I have difficulty with that, too. I
24 see the need for smaller offices to have expert help. I am
25 asking if there is a way in the amendment to do this.

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1 MRS. GREEN: There is nothing in the bill which would
2 prevent a regional office in Atlanta, if the Corporation
3 decides it was in-house, providing the research, briefs and
4 technical assistance for the lawyer in Chattanooga.

5 Mr. Chairman, it seems to me the procedure which
6 I have outlined in the debate in both the House and Senate
7 does clearly establish the fact that the Congress intended
8 to put an end to all backup centers.

9 And in planning for this change in the law, the
10 colleagues with whom I was working, and I believe that the
11 Corporation, with members of the Board appointed by the
12 President, would maintain tighter control, would eliminate
13 the abuses which the members of Congress were very much
14 disturbed about and would exercise wise judgment in funding
15 certain projects.

16 On page H5096 of the Congressional Record, when I
17 offer my amendment, I say "I have two amendments, but
18 because one of them occurs on page 31 in another section,
19 and I am not able under our procedures to offer it at this
20 time, but to go in tandem, and they have one purpose, and
21 that is to stop the research and advocacy in the backup
22 centers across the land."

23 And I would again repeat, in that speech I
24 specifically referred and discussed at length the Harvard
25 backup center that had been the active counsel in the Detroit

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1 busined case. Then on H5100 in the give and take of that,
2 I said the following -- I had asked one of my colleagues
3 to yield and I said, and I was refuting someone who had
4 spoken on the amendment: "When he says this is great
5 research. The Detroit busing case, if the gentleman from
6 Detroit wants to back up and approve this kind of research"--
7 and this is a memorandum from the Harvard Center, which I
8 will read. This is the scheme in which we are co-counsel
9 with the NAACP on behalf of black and white children.

10 "Mr. Chairman, if that is the business of giving
11 legal aid to the poor, and that is the kind of research
12 center, and the (inaudible) from the gentleman from Detroit,
13 from the HOuse of Representatives, to approve that is
14 his privilege, but is not what I think is meant as legal
15 aid for the poor."

16 In it we discuss litigation. It was one of the
17 primary things of those who voted for my amendment wanted to
18 get the backup center of of the regualtion.

19 Let me take the actual bill that was before the
20 House. I have already mentioned this, that the 1006(a)(b)
21 was not in the house bill. When the managers of the bill and
22 the conference voted in both Senate and House, the backup
23 centers are out.

24 I am concerned a year and a half later the opponents
25 of the bill, and who did did not speak on the bill at all are

bw3 1 trying to say something else is meant. If I may refer to
2 the memorandum you have before you, the one by Hogan and
3 Hartson, on page 2, they argue that "The Corporation cannot
4 provide financial assistance in certain kinds of litigation
5 such as desegregation suits, Section 1007(b)(7) on
6 nontherapeutic abortions. (Sec. 1007(b)(8)) and selective
7 service cases Sec. 1007(b)(9) ," and political activities
8 and so on.

9 I have already mentioned that those prohibitions
10 in Section 7 do not refer to the backup centers at all.
11 They refer to 1006(1)(a) on page 3 in the Hogan and Hartson
12 memo, it says in summary, "We conclude that section 1006(a)(3)
13 permits the Corporation to continue functioning by grant or
14 contract those specialized litigation activities and other
15 specialized legal services to eligible clients not otherwise
16 prohibited."

17 From my standpoint, as the author of the bill, and
18 one who works with dozens of members of the House in designing
19 the bill, I think this is not the Congressional intent, because,
20 as I stated before, research is defined so as to include a co-
21 counsel relationship. I have already stated the intend of
22 all the people involved in drafting it, and I have mentioned
23 the rules of procedure in the House, that the amendment in
24 Section 7 did not apply to the backup centers and no one
25 could possibly infer that the busing amendment was proof

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1 that the Corporation could do litigation. Now, there are
2 other parts of this memorandum of Hogan and Hartson,
3 Mr. Chairman, which I take strong exception to, but I don't
4 know what your time is. If you want to refer to those later,
5 or if you have specific questions about them, I will be glad
6 to try to respond.

7 MR. STOPHEL: I would like to have the written
8 comments on that memorandum rather than go through them here.

9 Since I don't have that particular memorandum,
10 it might be very helpful to us to compare if it would be an
11 imposition --

12 CHAIRMAN CRAMTON: Would it be possible within
13 the next few weeks to provide us with the statements of your
14 difficulties with Hogan and Hartson?

15 MRS. GREEN: I would be very glad to do so.
16 Towards the end they say, "If we carry the argument to its
17 logical conclusion, Mrs. Green would not allow any of the
18 project attorneys under 1006 to do any research."

19 How can a lawyer carry on a case that -- it is
20 ridiculous on the face of it. It doesn't refer to that part
21 of the bill.

22 CHAIRMAN CRAMTON: Are there further questions for
23 Mrs. Green?

24 MR. BREGER: I have no questions, except to thank
25 her for taking the trouble to attend and to ask you,

1 Mr. Chairman, if the transcript of her remarks might be
2 provided to each Board member when they are transcribed,
3 and at least in advance of the next Board meeting.

4 CHAIRMAN CRAMTON: Why don't we, if it has the
5 approval of the members of the Board, take upon ourselves
6 to distribute transcripts of the statements of all the
7 people, those should speak this morning.

8 MR. STOPHEL: I agree with that. Prior to your
9 next meeting. Is that agreeable, Gentlemen?

10 MR. KUTAK: As your Chairman, who faces the
11 sobering task of writing a regulation on this issue,
12 I welcome that.

13 MR. STOPHEL: I want to follow up on your analogy
14 of a few minutes ago. You indicated you thought the
15 Corporation could have an office that would provide briefs
16 to a program attorney in another state, for example.
17 But I have difficulty with 1005. I am sorry. 1006(c)(1),
18 which says, "The corporation shall not itself participate
19 in litigation on behalf of clients other than the Corporation."

20 And I am concerned about the participating
21 legislation as to where the briefing is participation in
22 litigation. Do you have a comment on that?

23 MRS. GREEN: I consider briefing, and again, as a
24 nonlawyer, this is my view that technical assistance can be
25 provided by the Corporation and a brief, it seems to me, or

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1 doing research on other similar cases, or giving advice to
2 the active counsel, would be in order by in-house, an in-
3 house office of the Corporation.

4 MR. THURMAN: Further observation on that point,
5 Mrs. Green.

6 It seems to me you give a much broader interpretation
7 as to what the Corporation can do in some of the others.

8 In other words if the Corporation may provide
9 briefing services, or consulting services, and assistance
10 to the attorney in other ways, you say that is not a
11 violation in your opinion of the 1006(c)(1) provision.
12 There are many who feel that is representing clients, and we
13 as a corporation cannot do that.

14 MRS. GREEN: Could I refer you to the actual law
15 itself, and after the House language was restored, it says,
16 "The Corporation is authorized to provide directly..."
17 It eliminated the words "either direct or by grant or
18 contract." The Corporation is authorized to provide directly
19 for research in accordance with the provisions of Section 3
20 of the Legal Services Corporation Act of 1974, and I have
21 already said that the research included the litigation and
22 so on, if it were not for the other qualification of the
23 amendment and (b), training. The Corporation can provide
24 directly for training; and (c) information clearing house
25 activities relating to the provisions of legal assistance under

1 this title.

2 The Corporation can provide then for technical
3 assistance in connection with the provisions of legal
4 assistance to eligible clients.

5 MR. THURMAN: We in the legal profession would
6 not call it technical assistance. It would be very much
7 participating in the --

8 MRS. GREEN: The technical assistance was
9 definitely a part of what the Corporation could provide in-
10 house, but not by contractor grants.

11 MR. COOK: I want to ask one small question, and
12 do not want to impose on what you said. All I wanted to
13 ask was, it was my understanding that the backup center, as
14 a term, was not used in the original Act. That it was a
15 creature as a result of the latitude of statutory authority
16 in the first Act. That was the result of that latitude;
17 and, therefore, it became a phrase that was utilized.

18 But to amend the previous Act, or to change the
19 law, would have in no way necessitated using that specific
20 term, except in its generic term in its debate on the Floor.

21 MRS. GREEN: That is correct. It was not used in
22 the original Act. Many feel the backup centers went
23 beyond the authority that was in the Act, which is in this
24 section that I cited. But to the extent they engage in
25 things, whether or not they were wise, to that extent they

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1 only had the authority that stemmed from these sentences,
2 and so if we change these sentences that authority to do
3 those things is also prohibited.

4 MR. KUTAK: Going back to Mr. Stophel's example,
5 Mrs. Green, of the two-person office practices at Chattanooga,
6 by the description, it couldn't be his own, that needed some
7 assistance in this case that they felt profitable to pursue,
8 because a client had brought it to them, would the Atlanta
9 office, in giving some assistance in your minds be covered
10 by the phrase "technical assistance"?

11 Would you envision the kind of need that
12 Mr. Stophel's two-person had needed and was looking for,
13 because it was beyond their capacity? would it be appropriate
14 to come within the phrase, the meaning of the phrase as
15 contemplated by Congress as "technical assistance"?

16 MRS. GREEN: With the one exception of whether
17 co-counsel is -- I leave it to you people to decide.

18 In my own view, it would not. The Congressional
19 intent for allowing in-house training research, technical
20 assistance, is clear that they can do it.

21 There are two things that really Congress wants
22 to do. They want to get rid of all the backup centers. There were
23 some objections. In regard to an earlier comment, it was things
24 we felt they should not be back into. Wipe them out. No more
25 backup centers. Stop the funding.

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1 Congressional intent was not to allow the
2 backup centers to continue for a year and a half after the
3 bill is enacted. And, then, the second thing was when the
4 Corporation does these things in-house, was to put limitations
5 on the Corporation and hope they would use better judgment,
6 tighter control.

7 The backup centers, one of the main objections,
8 there were so many projects self-initiated by a particular
9 attorney in the backup center that had no relation, originally,
10 to the original client. They wanted to test the law.

11 Abortion is one. They felt very strongly on one
12 side of the abortion issue. I appreciate what you are saying.
13 I need only to try to link up Mr. Thurman's question with
14 Mr. Stophel's as to whether or not his need could be embraced within
15 the terms provided in the Act of technical assistance, or whether
16 you thought that was beyond the purview of this Corporation as
17 contemplated by the Congress.

18 My answer is, in my judgment, if it's an in-house
19 operation, if it's a Corporation office controlled by the
20 Corporation, they can provide the research, technical assistance,
21 the training mentioned in the law.

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1 MR. COOK: Would that be assisting counsel in
2 Chattanooga, in the two-man office?

3 MS. GREEN: In my judgment the congressional intent
4 was not to allow the corporation to engage in the litigation
5 itself as an act of counsel or co-counsel, but to provide
6 briefs, or the research, or to give them other instances
7 that were similar. I think the corporation could provide
8 that.

9 MR. STOPHEL: If the court said participation
10 in litigation would include providing a brief, we would be
11 on the horns of the dilemma. We would be told we couldn't
12 help in any way the small office. If we couldn't provide a
13 brief, what technical assistance could we do?

14 A brief is research that is done in preparation
15 for a specific case.

16 MS. GREEN: There would be other things that
17 could be done.

18 CHAIRMAN CRAMTON: Mr. Smith has a question.

19 MR. SMITH: There is a possibility that we run out
20 of the other comments. The Board would like to address
21 further comment to you and ask you to respond to other views.
22 If time permits, we would like you to do so.

23 MS. GREEN: I, fortunately, got a change in plans.
24 My time is at your disposal.

25 CHAIRMAN CRAMTON: Mr. Smith has a question for us.

1 MR. SMITH: Mrs. Green, I have a question that
2 troubles me. In reconciling positions, you earlier answered
3 our Chairman to the effect that Congressman Hawkins was the
4 floor leader of the bill and was on the Conference Committee
5 and participated in it.

6 Our Committee has a communication from Congressman
7 Hawkins stating that as a member of the Conference Committee
8 his understanding of the compromise that was reached, was
9 that the Green amendment would prohibit four specific functions
10 as far as contractual relations, and backup research, technical
11 assistance and clearinghouse information.

12 But, he goes ahead to say that:

13 "Although advocacy services, be they in
14 judicial, administrative or legislative forums,
15 were untouched by this provision, particularly
16 since those services may not be provided the
17 Corporation directly."

18 And he goes ahead to say:

19 "Thus, national legal centers specializing
20 on particular subject matter could continue to
21 provide advocacy functions in behalf of clients
22 on the local, state, and national level."

23 In sum, the Green amendment, as we understand it,
24 did not touch advocacy functions.

25 MR. BROUGHTON: In the interest of time, I handed

1 her, so she could comment, a copy of letter distributed this
2 morning.

3 MR. COOK: The best evidence of this is to ask
4 Congressman Hawkins if he would come before this Committee.

5 My staff wrote a lot of letters I didn't see. I
6 would like to know whether he sat down and dictated this
7 letter, whether having read it yesterday -- how did he get
8 aware? Who briefed him so he could be this precise on a bill
9 passed a long time ago?

10 MR. SMITH: You are talking about his motives.

11 I am asking for her comments on the statement he
12 has given us.

13 MS. GREEN: First, Mr. Hawkins opposed my
14 amendment on the floor, and in the debate he disagreed with me
15 on what I meant. He was outvoted.

16 When he writes this and says it does not include
17 litigation, I simply repeat what I said earlier. When I
18 offered the amendment I specifically referred to the litigation
19 in which the Harvard Backup Center was involved on the
20 Detroit busing case as an act of counsel, and said this is
21 one of the things we want to do away with.

22 It seems to me it was clearly my intent when
23 I offered that amendment; it represented the thoughts of a lot
24 of members of the house, that we did include litigation.

25 MR. SMITH: You are saying in effect you are

1 disagreeing with his interpretation?

2 MS. GREEN: That is correct.

3 CHAIRMAN CRAMTON: This is not directed to
4 Mrs. Green. Just as my colleague has invited Mrs. Green,
5 I would like at the next meeting, or subsequent meeting
6 we invite Congressman Hawkins, and Congresswoman Green.

7 I think there are several persons we need to hear
8 from on this matter.

9 MR. BROUGHTON: Mrs. Green, I refer to the
10 fact --

11 MR. ORTIQUE: All of this, as far as I am concerned,
12 is an educational process. I have but one objective. I have
13 stated that over and over again. I stated it the very
14 first time I met you. That was to provide the highest
15 quality legal services we are capable of providing for poor
16 people.

17 MR. THURMAN: Within the Act.

18 MR. COOK: Within the law is subject to interpre-
19 tation.

20 CHAIRMAN CRAMTON: I would like to thank
21 Mrs. Green to take time in her busy schedule to come from
22 Portland, Oregon, to speak so well, intelligently on such an
23 important matter, on a matter which is of great importance
24 to this Board and to the Legal Services Corporation and to the
25 poor clients served by the Legal Services office.

1 Thank you very much.

2 If there is time later, and you wish to respond or
3 add something further, in light of something that somebody else
4 has said, just let us know and we will do so.

5 MS. GREEN: If I may respond to the memorandum which
6 you have before you, and send that to you.

7 CHAIRMAN CRAMTON: We would like that in writing,
8 and it would be circulated to the members.

9 MS. GREEN: I would also like you to know I really
10 came here at the request of the Chairman.

11 I had a letter and didn't have a chance to reply to
12 him.

13 CHAIRMAN CRAMTON: I wanted to add that was after
14 Mr. Broughton had written to you.

15 I called Mrs. Green and added my personal invitation
16 that she come.

17 The Board has stated its preference to hear from
18 individuals who have not hitherto spoken. I would like to
19 call on Mr. John Brooks, who is a senior partner in Peabody
20 and Arnold in Boston; the immediate past president of the
21 Boston Bar Association, and currently president of the
22 National Legal Aid and Defenders Association.

23 I believe it is in that capacity he appears today.

24 Mr. Brooks, would you like to take that same
25 position.

1 MR. BROOKS: Thank you, Mr. Chairman.

2 I take the position physically, but not the same
3 position philosophically, as my predecessor, Congresswoman
4 Green.

5 I do thank the Board for the opportunity to
6 address you today, and as the new president of NLADA, I
7 hope and expect we can work constructively with you over the
8 next months and years in doing what both of us are dedicated
9 to, namely high quality representation for the poor.

10 I think on the issue before the House today, I have
11 just a few comments. I think there are others better prepared
12 to argue the technical questions of legislative history, of
13 technical interpretation of the Act.

14 I would be glad to get into that if the Board thinks
15 it can be of help. But what I propose for the moment, at
16 least, is just to make a few general observations, comments.

17 In the first place, I am not an expert in Washington
18 parliamentary procedure. I tend in my practice to look at the
19 statute to see what it means; if it is not clear, go to the
20 legislative history. I am doing this in this situation. I
21 read the Act and it looks reasonably straightforward.

22 I go to the legislative history. It seems extremely
23 confusing. Congresswoman Green has given a very thorough
24 exposition of what I frankly believe to be her side of the
25 story.

1 And I find I am not alone in that. .
2 Mr. Justice Frankfurter at one point -- and I wish I could give
3 you the citation, I will look it up if you need it -- said in
4 effect, if the legislative history is ambiguous, we must look
5 at the statute which seems to me what we ought to look at, the
6 statute.

7 As I look at the statute, I don't find the words
8 "backup centers" mentioned. The words "specialized law
9 office" are not mentioned.

10 The prohibition of the statute in 1006(a)(3), as I
11 read them, clearly refer to activities and not to institutions.
12 Not to organizations.

13 As we look at backup centers, we find that they are
14 engaged in different kinds of activities. Some are to a very
15 large extent directly related to the furnishing of legal
16 services to eligible clients. And I can't help speaking to
17 Mrs. Green's points on the Detroit case which seems to have
18 been the major issue, still is, I gather.

19 My understanding is that the Harvard Center
20 on Law and Education was specifically requested to assist the
21 Detroit Legal Services Office, which in turn was helping
22 eligible clients which had come to it for assistance, and I
23 believe that there was no question of eligibility as far as
24 the whole program was concerned.

25 What the local program did was call on specialists

1 who understood the law, were experts in this subject, to
2 draw on their expertise, their ability as specialists in this
3 field to assist in representing those clients in that par-
4 ticular case.

5 And we all know that in private practice that happens
6 frequently, there are lawyers who are called upon to
7 assist counsel in particular cases.

8 If I had an antitrust case, not being an expert
9 in antitrust, I certainly would go to some lawyer who was an
10 expert in antitrust to help me handle that case.

11 It seems only elementary that a legal services
12 lawyer should be able to do the same thing as Mr. Stophel
13 was so aptly pointing out in relation to that hypothetical
14 Chattanooga man, two-person office.

15 The problems, I think, in relation to what the Act
16 means, when applicable to specialized law offices, has to be
17 related to what actually is happening. If I am right, and I
18 believe I am right, that the Act points towards activities and
19 not to organizations, then it is essential to find out
20 essentially what activities are being carried on, how they
21 relate to the provisions of the Act.

22 Most of them, I believe, will be found to qualify
23 as eligible under the Act as now written. There may be some
24 which, on further analysis, could be found not possible to
25 carry on under funding of the corporation. But until that is

1 investigated, it seems to me the Board cannot take a
2 definitive position as to how to apply what seems to me, the
3 plain words of the Act. And even if that is determined, I say
4 this rather parenthetically, it seems to me there will always
5 be fuzziness as to the limitations on this subject, which can
6 properly only be decided by the Board with reasonable
7 flexibility in exercising its discretion.

8 I am referring to the legislation now in the
9 House of Representatives, formerly 7005, which is now House
10 1007(9), I understand, which seems to me essential to give
11 to the Board the flexibility of management and discretion that
12 it ought to have as responsible custodians and directors of
13 this Legal Services program.

14 Now, just one other comment on the authority for my
15 position on the meaning of the Act.

16 I started out with Felix Frankfurter, and I will
17 end up with Learned Hand, who responded to my office, in a way
18 which we thought we had pretty good legislative history, but to
19 our dismay he ended up by saying whatever they might have said,
20 they said what they said.

21 I think this is particularly applicable here to what
22 appears to be the language of the Act aiming at activities
23 which can be interpreted only by analysis of the fact.

24 I understand the Board has commissioned a study
25 headed by Mr. Polikoff, to arrive at the answers to exactly

1 these questions:

2 What are the backup centers doing?

3 How do they fit into provisions of the Act?

4 Incidentally, I want to get a little information on
5 my own as to who Mr. Polikoff was, and whether he could be
6 trusted with his job, and to back up the Board's judgment,
7 but my well-placed friends in Chicago give him about as high a
8 rating as one could ask for.

9 So I know the Board felt that way. I now
10 independently feel that he is totally capable and equipped
11 of doing exactly the kind of objective job here that the Board
12 ought to do, and I know wants to do.

13 I just want to conclude again with a reiteration
14 of what you are all about, what NLADA is all about, which is to
15 provide quality legal services, high-quality legal services
16 to the best of our ability within the limitations of the Act.
17 But let's not forget what the initial, what the major direc-
18 tives of the Act are in that regard, including the provisions
19 as to high professional standards of the lawyers in the
20 programs and the overriding objective which is to provide
21 equal justice to the poor so that they will feel a part of our
22 legal system, a social system, and not excluded from it.

23 Thank you, Mr. Chairman.

24 CHAIRMAN CRAMTON: Are there any questions for
25 Mr. Brooks?

1 MR. BROUGHTON: Mr. Brooks, you understand, I am
2 sure, there is disagreement with your statement as to the need
3 for providing services for research as a part of a whole
4 commitment to quality services to the poor.

5 I think the question you indicated is how it has to
6 be done in light of the Act. Is it your position, so far as
7 the Act is concerned, as is now written, that the Board must
8 take over research, training, clearinghouse information,
9 and that the question of Board participation, litigation,
10 or providing backup centers funds is subject to question
11 or is there a difference of interpretation?

12 MR. BROOKS: My position on that is that research
13 is an essential part of litigation in the ordinary course of
14 events. But I think there are two kinds of research; abstract
15 research which might be on a different plane; then case -
16 oriented research.

17 But case-oriented research in itself is a broad
18 area, and any private practitioner does a certain amount of
19 background research, keeping up with cases, attending
20 PLI sessions, continuing legal education sessions to keep
21 himself in good shape, and he calls on experts who do that in
22 the normal course of practice.

23 I think so far as it can be equated at least to
24 what would happen in private practice in that regard, there is
25 no question in my mind but what that can be done under the

1 statute as it is now written by grants or contract, because
2 it is directly related to litigation with the local programs
3 or regional programs.

e 8 4 I make no distinction. I should say a program
5 offering clients' services directly to clients, be they
6 regional, national or local.

7 To the extent the research is related to that kind
8 of case practice, it seems to me that it can done, should
9 be done by grants, or contract. Research in relation
10 to methods of delivery of legal services, generalized research
11 to some extent, I think could be extinguished if it is
12 not directed to client-oriented activities.

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1 MR. BROUGHTON: As I understand the position in
2 NLADA in support of a Kastenmeier amendment, which is now
3 before Congress, which would in effect amend the so-called
4 Green Amendment, is that --

5 MR. BROOKS: That is correct, and I would like to
6 make clear my feeling on that.

7 I feel that the scope of the Act, as written, is
8 reasonably broad to provide funding for at least most of
9 what the back-up centers do now.

10 On the other hand, there has been very serious
11 doubt expressed. Ms. Green has been eloquent on the subject
12 this morning as to what she believes the Act now means,
13 which would be contrary to my position on it, and the
14 position I hope the Board will accept.

15 And in order to clear up that amendment, possible
16 objections to the Board carrying out its mandate under the
17 Act, it seems to me it would be very helpful, if not essential
18 for the orderly conduct of the Board's business, to have the
19 so-called Kastenmeier Amendment passed and adopted as well
20 as the point which I alluded to before: the fact that here
21 we have a representative or sponsor board which was not in
22 existence when the original Legal Services Corporation was
23 adopted.

24 Nobody knew who the President was going to appoint,
25 whether it would be a bunch of radicals or conservatives, or

1 a balanced group.

2 Now that is known, it seems to me the Congress is
3 in a much better position to trust the Board than they might
4 have felt they were back when. And the Board, in my opinion,
5 ought to have that discretionary authority. They don't have
6 to fund any back-up centers. They don't have to fund any
7 activities if they feel it is contrary to the Congressional
8 intent, contrary to the public interest.

9 But they have the discretion and it can, I believe,
10 avoid a great deal of unnecessary argument and possible
11 sniping of the Board.

12 MR. BROUGHTON: In other words, you are suggesting
13 that the benefit from the Kastenmeier Amendment would be to
14 clear this up. Is that what you are saying?

15 MR. BROOKS: Yes, that is essentially my opinion.

16 MR. BROUGHTON: Actually, that would be an act of
17 proposal which amends or repeals the Green Amendment before
18 the Green Amendment is actually considered by this Board in
19 light of the directive from Congress.

20 MR. BROOKS: Certainly it does. If it didn't have
21 some effect like that, it wouldn't be necessary to constitute
22 an amendment to the Act.

23 On the other hand, in form it is an amendment. In
24 form it is a repeal, if you like, of the Green Amendment.
25 In substance it is, to my mind, putting the responsibility

1 where it belongs, in the hands of a responsible board who
2 can control it and, as Ms. Green said, ought to control this.

3 MR. BROUGHTON: I appreciate you coming.

4 Thank you.

5 MR. BREGER: I was wondering under your rendering
6 of the Green Amendment, are there any activities which the
7 back-up centers now engage in which you would agree to be
8 proscribed, and if so, what would those activities be?

9 MR. BROOKS: I can answer that only this way:
10 My impression is -- and I don't want to be understood as taking
11 a firm position on it -- but I believe that the clearing house
12 activities would be something that would be at least possible,
13 let's say, under the Act as now written because they do not
14 relate directly to client activities.

15 There is a portion of clearing house activities
16 which I think can be deemed to be directly client-related.
17 So I hesitate to rule out that, and I think that is the kind
18 of thing that the study will bring out far more clearly than
19 I can with my general knowledge of back-up centers.

20 But they will pinpoint these things, I believe,
21 in such a way that the Board can exercise far better judgment.

22 CHAIRMAN CRAMTON: Are there further questions for
23 Mr. Brooks?

24 (No response.)

25 CHAIRMAN CRAMTON: Thank you very much for coming

1 down from Boston and giving us your views. We very much
2 appreciate it.

3 At our last meeting it was scheduled to hear
4 J. Lawrence McCarthy, the former Acting Director of Legal
5 Services.

6 Unfortunately, we were not able to hear him last
7 time. Not because of his inability to attend, but the Board's
8 ability to be present when he was in attendance.

9 Mr. McCarthy, we are delighted to have you with
10 us today. Proceed as you wish after identifying yourself.

11 MR. MC CARTHY: Thank you, Mr. Chairman, and
12 members of the Board.

13 I regret I was unable to meet with you a month or
14 so ago, or when you were first constituted as a Board and
15 requested me to appear. I was, as you said, at one time the
16 Acting Director of this program, and sometimes when modesty
17 deserts me, I am pleased to think that if people replaced
18 me were one had failed, perhaps if people having to bear
19 the stress and strain that goes with the animal known as
20 legal services.

21 There was a lot of fun, and it so bettered and it
22 made me more charitable of those who opposed me, and more
23 suspicious of my friends.

24 I am originally from Boston, and in politics there
25 is an old saying that nobody wants to hear the monkey when the

1 organ grinder is in the room.

2 Ms. Green has given such a comprehensive and a
3 brilliant exposition of the legislative history, in accordance
4 with the position I take, I would like to adopt her remarks
5 to the extent it is legitimate to do so, and say I agree the
6 intent of Congress was to identify back-up centers as
7 entities, not in terms of sophisticated distinctions as to what
8 they were doing, but as entities in and of themselves.

9 When the question was before Congress, the issue
10 was a volatile one. It was one about which many people felt
11 great passion. There were subtle distinctions such as
12 lawyers like to entertain.

13 I notice in the Washington press there is a great
14 debate going on as to the standing of lawyers, whether they
15 should all be skilled. These were not addressed by the
16 Congress. What was addressed was what the back-up centers were
17 doing, whether or not they ought to be continued.

18 I would like to speak very briefly on that. I am
19 going to suggest what I regard, with some modesty, a solution
20 to the problem of co-counsel, at least one as I see it.

21 As I remember it, and I hope you will check me
22 on this, that the back-up centers styled themselves as
23 back-up centers on their own motion, so to speak. They were
24 funded under Section 232 of the Economic Opportunity Act,
25 and as I remember the grants as they came in, the ones that

1 I saw, they boasted with legitimate pride about the good work
2 they had done in litigation activities. They were considered
3 by the Office of Legal Services as groups which did high-level
4 legal research and a good deal of co-counsel work.

5 Indeed, in the conference report, one of the
6 original conference reports which was filed, the back-up
7 centers are defined as people who provide co-counsel work.

8 The term "research" is given that extension. As
9 Ms. Green has said and as I well remember, it was the
10 litigative activity of the back-up centers which called it to
11 the attention of politics who engaged in the reform of the
12 Act so that at the time the question confronted the House
13 and later on, as I hope I can demonstrate briefly, when it
14 confronted the Senate at the ultimate moment, the back-up
15 centers were seen as groups which engage in high-level and
16 litigation, specifically the busing case and the authority
17 for funding the back-up centers was regarded as, properly,
18 a section of the Economic Opportunity Act.

19 I will leave to your consideration the extensive
20 discussion which Ms. Green made about the intent of the
21 legislation when it passed through the House, but there are
22 two or three matters which I would like to call to your
23 attention about the restoration of the Green Amendment.

24 After I left the Office of Legal Services, 1973,
25 and returned to private practice, I followed the development

1 of this Act with considerable interest, and I noted that
2 when the Senate passed its version of the Legal Services
3 Bill, that it did not retain the Green Amendment.

4 I also observed the Administration at that time
5 was showing considerable reluctance in accepting the
6 conference rule which also would have dropped the Green
7 Amendment.

8 I went personally to the White House, a very
9 interested citizen at that time, because I believe the
10 statute essentially was a good one. I believe it was one
11 that ought to be adopted. I believe it could be adopted if
12 the back-up center provision of the Green Amendment was, in
13 fact, restored, and I suggested a strategy by which this
14 could be brought about.

15 I claim no paternity for this. I was interested
16 in reading in the paper -- and since it has been published
17 in a number of places -- that the White House did contact a
18 number of leading members in the House on the Republican
19 side, and suggested the restoration of the Green Amendment
20 would be the price that would have to be paid for Presidential
21 signature.

22 At this point, I would like to call to your
23 attention a statement made by Senator Javits in connection with
24 explaining this to his colleagues. I don't think anyone
25 needs to say anything on behalf of Senator Javits. He is

1 certainly a man whose presence in the Senate has made itself
2 felt over many long years, whose preparation and intellectual
3 brilliance is well known even among those who disagree with
4 him. When he speaks, I think we should listen.

5 I have a lot of papers here, and if I look through
6 them I would like to refer to a statement by Senator Javits
7 on July 16. He said, "We have a letter, Mr. Taft, Mr. Nelson
8 and myself, a copy of which is on the desk of everybody,
9 signed by Messrs. Nelson, Taft and myself, reading in part
10 as follows: 'The undersigned sponsors of the Legal Services
11 Bill have received assurances from the Administration that
12 the bill will be signed into law by the President if the
13 authority to make grants and contracts for back-up centers
14 is dropped, leaving intact the authority for the corporation
15 to undertake back-up research and support of activity directly
16 through its own employees in the House bill.'"

17 I would like to underscore, if I may, the authority
18 to make grants is withdrawn, and contracts, is withdrawn from
19 the corporation. He was challenged by Senator Curtis who
20 suggested -- who said, "The first information that I got
21 was that while there were some ideas pointing towards the
22 signature or approval of this legislation, it was not
23 positive yet. The matter would be under consideration till
24 it was laid on the President's desk. That is a distinct
25 feeling I have. Upon completion, there would be many who

1 "SENATOR JAVITS: May I explain that. May I differ
2 with the Senator. I think it has everything to do with the
3 powers and scope of their work. For this reason, I am agreeing
4 with the established situation. In this case, the centers have
5 been working with law schools and they have a certain type of
6 approach. What is left here is simply our in-house operation
7 like those of any law firm, and that is what the House of
8 Representatives intended for and what the administration has
9 indicated will be signed."

10 MRS. GREEN: Mr. Nelson said just prior to
11 that, that what the agreement was on was the final compromise
12 of the bill, which would be that upon the bill's return to the
13 House the managers of the bill there will move to contour in
14 the Senate amendment with a further amendment to substitute
15 the text of the conference agreement with the exception of the
16 authority to make grants and contracts for backup centers which
17 would be eliminated. I say that there would have been amuse-
18 ment, consternation, but certainly disbelief in the Senate if
19 at that time, July 16, '74, if they could have foreseen on
20 December 12, 1975, a serious discussion going forward that
21 there was authority to continue to fund backup centers as
22 they were perceived by the Congress at that time. At least
23 so it seems to me.

24 That price that was paid for you gentlemen to be
25 here at a board, was that the backup centers would be

1 eliminated root and branch. Let me say in my own defense,
2 that was not my private position. As a lawyer, I always
3 recognized the need for co-counsel activity. But I was not
4 a member of Congress, and with one exception, neither were
5 you. As lawyers, I don't think we can substitute our judgment
6 for the clear intent of the Congress even though it appears to
7 reach a draconian result which we may not like.

8 The previous gentlemen, Mr. Brooks, I think -- the
9 previous speaker said legislative oversight is the way to
10 approach these questions. And if I may say again, one of the
11 things that has gotten the Executive in trouble is to appear
12 to disregard the intent of the Congress. If the screaming
13 United States senators decide to eliminate authority to make
14 grants and contracts to backup centers, I suggest we consider
15 that as the final word until Congress has spoken. It was not
16 my private position, and as a matter of historic interest, I
17 recall pulling from my files a regulation promulgated by the
18 Office of Legal Services of general difficulties that need not
19 be referred to at this time.

20 It is very clear that a lawyer, over-matched in the
21 courtroom, representing a poor person, needs and indeed must
22 demand quality representation, and there is nothing offensive,
23 nothing nefarious, and nothing sinister in providing co-counsel.
24 I think you can do it. I think you can do it now under the
25 present statute without any reference to the backup centers,

1 and I make bold to suggest them both: the first is that
2 portion of the statute which refers to making grants or con-
3 tracts to ensure quality representation. One member of the
4 board -- I am not sure which one -- asked what would happen
5 in a two-man law firm where you needed heavy assistance in a
6 particular kind of case. Could it be done from a statewide
7 operation in Atlanta, Georgia, or whatever. I think it clearly
8 could, but I think more than that it lies within the province
9 of the board to make a contract with a lawyer, a retainer
10 with a lawyer who is an expert in the field to assist as co-
11 counsel in the case to provide quality presentation for poor
12 persons.

13 I have no difficulty with that. I see it as clear
14 and concise at the present time with Congress to provide.

15 I suggest another field where co-counsel activity
16 can go forward, and I confess this may be somewhat less
17 perfect grounds, but as far as I remember, and indeed one
18 forgets a lot of law, I always thought it was black letter law
19 that a corporation was a separate entity, independent of the
20 people who work for it.

21 For example, federal law and, indeed, most state
22 laws, prohibit corporations from making contribution, but they
23 don't prohibit people who work for the corporation from making
24 contributions. The statute refers, interestingly, to the
25 corporation itself. That pronouncement, to my way of thinking,

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1 means a lawyer shall not himself participate in litigation on
 2 behalf of the client other than the corporation. I think
 3 this means what it says. It means that the Legal Services
 4 Corporation of the United States versus HEW, versus the
 5 Commonwealth of Massachusetts, or versus Joe Smith, is something
 6 you would not do.

7 I am not offended at all by seeing attorney so and
 8 so of the Legal Services Corporation entering an appearance
 9 as co-counsel properly admitted in any stage of the case in
 10 any court, state or federal. I have no difficulty with that.
 11 I think it is acceptable from a classic legal definition of
 12 corporation, and is separate and distinct from its members.

13 I suggest under either of those heads you gentlemen
 14 -- with either of those fountainheads, you gentlemen can
 15 find the way to solve the problem of co-counsel.

16 Let me suggest one other matter. I don't hold
 17 myself out as an expert. I looked, for the sake of interest
 18 the other day, at the most recent edition of the Consumer
 19 Protection Act, and I notice language in there which said
 20 that the Consumer Protection Act, when it goes to court, must
 21 appear in its own name. I suggest to you, as a tune just to
 22 harmonize by, it would come out this way in this statute;
 23 that is two peices of legislation were dragging along at the
 24 same time.

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25 The Consumer Protection Agency, controversially

1 were to have been given this power, but the Legal Services
2 know they are not going to get it. That may explain why no-
3 where in the debate or corporation reports that I have read,
4 is there any explanation why this appeared in there.

5 I will try to abbreviate my remarks. I intend to
6 close at this point and offer myself, my availability, for
7 any questions.

8 Simply to summarize: I believe that you are
9 mandated to eliminate those entities which were known as
10 backup centers at the time the law was passed. It was the
11 clear intent of Congress, and it was the price that was paid
12 to bring you here. I don't see it worthwhile and wholesome
13 that co-counsel activities need to be eliminated because of
14 that.

15 I thank you for your attention.

16 MR. ORTIQUE: Mr. McCarthy, I certainly did not
17 raise this question with Mrs. Green because she is not an
18 attorney. Doesn't it bother you, sir, that if this corporation
19 wants to hire counsel, or wants to engage the counsel that is
20 necessary to aid and assist, that there would be some problems
21 with the client-attorney relationship out there in the field?

22 MR. MC CARTHY: No. As I understand the relation-
23 ship of co-counsel, when I have been involved in a co-counsel
24 situation, the primary relationship would be between the
25 attorney who had the case. I would hope you would see that

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1 the the lineup project attorney always retained the privileged
2 relationship. The co-counsel relationship is a difficult one.
3 We know, as lawyers, that primarily the relationship should
4 be to the lawyer who has the case. I know that it is a
5 difficult one, and I am not going to pretend any of us has
6 succeeded in solving that.

7 MR. ORTIQUE: Suppose this corporation wants to
8 determine that they are all experts in the various fields of
9 houseing, health, old age assistance, and that sort of thing,
10 and wants to identify them and wants to say to the attorneys
11 in the field, we have got these persons and they are engaged,
12 is that counsel at the local level free to make a selection on
13 behalf of his client to provide the very best type of service,
14 or is this a conglomeration of judgment up here in Washington
15 making that selection for him?

16 MR. MC CARTHY: If I understand your question
17 correctly, it represents the classic situation we are up
18 against in that program. The free choice of the client is
19 inhibited when you provide him with a list. That is true with
20 the staff attorney system.

21 I am going to agree with you. If I interpret
22 your question correctly, it does involve that question, and
23 it is a serious ethical problem, but it is there and I am not
24 going to deny it.

25 MR. ORTIQUE: Your position is either we get the

1 statute amended or we live out the backup centers.

2 MR. MC CARTHY: It may be a draconian result, one
3 you don't like. It may not be one you like. But that is the
4 price that was exacted, and one that Congress paid.

5 MR. THURMAN: I share your concern about the
6 inability of the young field attorney out there, very often
7 inexperienced in these programs, getting co-counsel, and it
8 seems to me if he is going to practice law in the 20th century,
9 he should be able to get some assistance.

10 Your suggestion bothers me, the suggestion that the
11 corporation can hire an attorney to go out and help him.
12 Corporations can only act through individuals. They cannot
13 act among themselves. It seems to me that he runs squarely
14 prohibition that the corporation cannot represent clients.

15 MR. MC CARTHY: I respectfully disagree. The
16 corporation can, in providing quality service, make a contract
17 with any state project. That is the way I read the Act. I
18 am suggesting that would be --

19 CHAIRMAN CRAMTON: If research training and technical
20 assistance, and clearinghouse information is included, why is
21 not a grant and contract for furnishing, somebody the corpora-
22 tion has contracted to furnish, that litigation that you say
23 is prohibited under research, training and clearinghouse
24 activities?

25 MR. MC CARTHY: I grant you, if we allow ourselves

1 to think that the only time that lawyers have ever done
2 research or co-counsel activity was through a function of
3 backup centers, what you say has backup force. I disagree
4 with that. I know my lawyers have always performed these
5 co-counsel activities and they were not backup centers.

6 MR. BROUGHTON: Are you suggesting in your judgment
7 under the statute, or at least in your opinion, this corpora-
8 tion could, in effect, provide, as part of its staff, so-called
9 in-house lawyers, perhaps trained in certain specific areas,
10 and do frequently involve the poor, and that those lawyers
11 could be available to help a local project attorney who got
12 involved in a case that was beyond his experience and beyond
13 his ability, we'll say, to handle without some specialized
14 help?

15 MR. MC CARTHY: Frankly, I agree with that com-
16 pletely. That is my interpretation. I have no difficulty
17 with that interpretation.

18 MR. BROUGHTON: Would you extend that to the point
19 that that type of service could be maintained by this corpora-
20 tion on a regional or even local basis throughout the country
21 if that was determined to be necessary to provide these sup-
22 port services for the project?

23 MR. MC CARTHY: I would want to think about that.
24 That gets very close to what the theory was, and what the
25 thinking was behind Mrs. Green's amendment. I guess I lean

1 towards saying that it probably should be to deal faithfully
2 to the spirit of the statute as I read it. It would have to
3 be something that is centrally located, like the Department
4 of Justice. I know it still maintains a number of litigation
5 specialists in Washington who fan around the country to do
6 work. That would be the way I think the philosophy of the
7 statute would lead me.

8 MR. BROUGHTON: Are you familiar with this type of
9 service so far as it -- for example, the U.S. attorneys in
10 Live Oak, California, where I live, does it have access to
11 research, say, in bank research? The Justice Department in
12 Washington may have a catalog in some way that they can draw
13 on.

14 MR. MC CARTHY: To the best of my knowledge it does.
15 I don't have any personal experience in that area. When I
16 was acting director we did meet and talk with a Mr. O'Connor
17 from the Department of Justice who maintained this shop in
18 the Department of Justice and went into a good deal of detail
19 about how he worked it. I think it was in Washington, and it
20 did go out around the country and was available for specialized
21 research, and litigation. These lawyers would sit down at
22 counsel table.

23 I don't suggest either that there is an exact
24 parallel. I believe the Attorney General of the United States
25 can override the local -- I don't think you can do that

1 because of what the Congress has provided.

2 MR. STOPHEL: You recognize your definition of
3 co-counsel differs from that of Mrs. Green's.

4 MR. MC CARTHY: Yes.

5 MR. STOPHEL: Her interpretation is -- as you and
6 I say, when we get co-counsel, we want him to do everything,
7 even hold our hand. But in her interpretation he can do
8 everything outside the court, but not in the courtroom.

9 MR. MC CARTHY: What I regard as a classic legal
10 interpretation. If someone should show me legislative history
11 to the contrary, I would bow to it. That is where I stand.
12 I don't regard it as a very -- I don't think co-counsel would
13 be an issue you would hear much about.

14 CHAIRMAN CRAMTON: Are there further questions?

15 (No response.)

16 If you are wrong, and Mrs. Green is right, that
17 co-counsel are specialized litigation assistants, and cannot
18 be provided in either of the two forms you mention, or by
19 corporate employees itself or by means of grants or contracts
20 to law firms, or grantees, then does the Act need to be
21 amended?

22 MR. MC CARTHY: Yes.

23 CHAIRMAN CRAMTON: You would say an effective legal
24 service could not be carried on if Mrs. Green's amendment is
25 accepted?

1 MR. MC CARTHY: I have taken a good deal of personal
2 abuse for what I regard as a rather moderate to conservative
3 position that I took on the program, and I am going to back
4 away from it now. Most definitely in those cases where a
5 lawyer needs expert help, he ought to get it. It is ridiculous
6 for a poor person to come into the courtroom and get a dreadful
7 result because his lawyer doesn't understand the case. I am
8 as offended about that as anything.

9 As a practicing conservative --

10 CHAIRMAN CRAMTON: If the court agrees with the
11 Green interpretation, you would support either the Kastenmeier
12 amendment or some other amendment.

13 MR. MC CARTHY: Some other amendment means some
14 other which authorizes co-counsel or litigation assistance.

15 MR. MC CARTHY: So long as I would draw it up
16 myself.

17 CHAIRMAN CRAMTON: Are there further questions for
18 Mr. McCarthy?

19 (No response.)

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1 CHAIRMAN CRAMTON: The meeting will come to order.
2 The next person who is scheduled to address the
3 Board in relation to Section 1006(a)(3) of the Act is
4 Eli Spark.

5 Mr. Spark, would you introduce yourself, and then
6 address the Board.

7 MR. SPARK: My name is Eli M. Spark, and I live
8 in Washington, D.C., and didn't have to come from Boston. I
9 was admitted to the New York Bar in 1929, so that I think I
10 am probably the oldest practitioner of the law in this room,
11 or very close to it. And I represent the traditional era of
12 the Bar in that respect.

13 I practiced law for 20 years in New York with
14 firms like Wile, Gotshal, and Mandes (?); Goodell, Hoffman
15 and Spark; and Wegman, Spark and Burke for 20 years, and since
16 1949 I have been a law professor, so I have been in legal
17 education all that period.

18 I am now referred to by the authorities as a
19 professor emeritus at the Catholic University of America
20 where I last taught, but I am a professor. I have a right
21 to tenure. We won't debate that. That remains to be threshed
22 out.

23 Partly, it relates to my views on such things as
24 what you are discussing this morning, the meaning and
25 implication of this Act, and the Legal Services Program.

1 I speak to you both as a lawyer and as an active
2 practitioner for many years, and as a legal educator with
3 vast experience in this country and in other countries all
4 through Latin America where I have been a full flight
5 lecturer, for example, where they have the tradition of social
6 services to be rendered by law school graduates before they
7 get their degrees, and where their poverty is enormous by
8 comparison with the worst poverty we have in this country.

9 So I have some notion of what the rest of the
10 civilized world thinks is the appropriate function of legal
11 assistance to the poor. I speak to you also as a taxpayer
12 who has to pay the bill for this ongoing activity which is
13 called Legal Services Program, but which covers, I should
14 point out to you, a great many things, and always has, that
15 are not remotely related to legal services program.

16 And I speak also as someone who has personally
17 done a lot of free legal work over the years as a lawyer and
18 as a counsel, and who has had people in his firm who did
19 free legal work over the years in the traditional manner for
20 specific clients on specific matters.

21 At the outset, let me say that if there is one thing
22 I do know something about, it is the law of evidence which
23 I have taught since 1949. And I know something about
24 interpretation of words. And I know something about doctrines
25 like the practical construction which people put on a

1 document or contractor, statute or anything else.

2 And I know that words that have meaning that they
3 take on in the context of existing tradition and history.

4 On this business of back-up centers, I happen to
5 have clipped back in 1974 a piece from the Washington Post.
6 It is dated Thursday, July 11, '74, headed "Deal Made on
7 Legal Services" by Spencer Rish (?), Washington Post staff
8 writer.

9 It gives us the meaning that ordinary people,
10 readers of the Washington Post, and reporters for the
11 Washington Post, understood to be in this statute, and in the
12 Green Amendment.

13 And I just want to read you a few snatches from it
14 to get the point. "Senators Javits and Taft, two of the
15 senior Senators, told the Senate they had assurance from the
16 White House that if the provision for funding 15 legal
17 back-up centers is dropped, the President will sign it. The
18 Senators have certain finances which are described to provide
19 research and development model briefs, give guidance, and
20 sometimes furnish seasoned attorneys and professors to help
21 the often inexperienced lawyers in court.

22 "A conference report on the bill permitting back-up
23 centers is already approved by the House, but would be judged
24 in favor of a new bill excluding back-up centers. Calling
25 the back-up centers hotbeds of social activism, the House

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1 initially excluded them from the new bill, but then bowed in
2 accordance and permitted them in the Senate report.

3 "Senate Conference, however, was then informed
4 that the bill faced a certain veto unless the back-up center
5 was stricken. Convinced that they couldn't override a veto,
6 they agreed yesterday to drop the back-up centers. The
7 compromise requires the Senate to kill an existing conference
8 report that allows back-up centers and send the original back
9 to the House for new language."

10 And so it goes.

11 So much for what was understood to be the meaning
12 of the words.

13 If I may say so, my notion of the term "back-up
14 center" -- and I spent approximately 6 months in 1973 as the
15 Acting Director of the Program Development aspect of the
16 Office of Legal Services at the request of Allan McKay, and
17 Howard Phillips, so that I know something of what the
18 activities are for which funding is furnished through these
19 grants from the public tax money and the uses made as compared
20 with what is authorized by the statute and contemplated by
21 the Congress.

22 My notion of the back-up center is that it is an
23 entirely erroneous term. It nowhere appears in any statute.
24 It wasn't intended to appear in any statute because it
25 misdescribes what they do. They are not back-up centers.

1 They are up-front centers. They have served as litigation
2 promotion and encouragement centers, and if I may use some
3 not frequently heard words these days, they are champerty
4 and maintenance centers. As they actually function, they
5 promote the bringing of litigation.

6 No society can be ridden with litigation about
7 everything in the world. A stable society requires a legal
8 system in which people will, for practical reasons, work out
9 adjustments to situations and solve their problems with the
10 help of legislation and decent courts.

11 What the back-up centers have been doing in fact,
12 if you want to call them that, are such things as publishing
13 legal volumes containing materials hard to come by for the
14 ordinary lawyer on welfare rights, and on things of that kind.

15 They have paid Catholic University between \$1
16 million and \$2 million for adequate training of so-called
17 lawyers who would have been staff lawyers, and handled these
18 matters in local law offices. I don't know that any taxpayer
19 who thought his contributions in the tax for this program
20 were being used to benefit a particular institution identified
21 with a particular individual who first gave this program
22 the cast it had under the old Economic Opportunity Act, would
23 approve of that.

24 That money has been used for such things as
25 creating law schools, the Antioch Law School. Whoever heard

1 of giving a million and a half dollars to help start a law
2 school which would train people who, if they ever got
3 through and passed the Bar, would become poverty lawyers?
4 They have supported programs like the Regis and Cleo, the
5 Regis to provide a kind of aristocracy among lawyers, and
6 Cleo to provide access to law schools or by definition,
7 unqualified law students, unqualified applicants for admission
8 who could not otherwise receive it, and given three year
9 grants.

10 I made a study of the Cleo program, and I don't
11 have all my data with me. But I can give you a lot of
12 statistics about how little that has accomplished. This
13 program in the best tradition of the legal profession was
14 intended to be in its initiation, it seems to me, a means
15 whereby the poor individual client, who would normally
16 turn probably to someone local individual practitioner with
17 his grievances but couldn't afford to pay him, would be
18 able to do so and not have to worry about paying him.

19 It was not intended to create a class of poverty
20 lawyers, numbering several thousand, who make a career of it,
21 and the class of poverty law administrators who make a
22 career of it and the class of professors who supplement their
23 earnings by acting as assistants and counselors and flitting
24 back and forth between law schools and so-called backup
25 centers, spreading the gospel of the new life in which they

1 engage.

2 It was intended to do that on the whole program
3 of staff attorneys as an incubus, it seems to me, was put
4 upon it originally. That never belonged there and was put
5 there by people who had that conception of doing good, that
6 conception of activism, but query whether promoting litigation
7 and creating people earning their livelihood out of creating
8 tensions and class fights of one kind or another is what
9 Congress ever had in mind, whether that promotes the general
10 welfare or tranquility or anything else.

11 And I might add it seems Mr. Justice Frankfurter
12 thought of such things as judicial restraints. A sensible
13 judge knows that while courts may be able to issue decrees
14 and judgments, they are not supposed to do it except in
15 certain kinds of situations, and not to take the whole world
16 for their horizon and get to work on redoing it, and painting
17 it all golden.

18 Now, it seems to me that this whole notion that
19 staff lawyers need assistance, that conceals 99 percent of
20 what is done by the back-up centers. It is a very different
21 kind of thing altogether. The notion that staff lawyers
22 need assistance is false unless you are prepared to say
23 staff lawyers are incompetent, and are hired as incompetents.

24 A lawyer, given a license to practice law, is
25 answerable in damages for malpractice. In 20 years of my

1 practice, in substantial firms in New York, I don't think
2 we had occasion to engage counsel more than five times, and
3 two of those times, I am frank to say, were because of
4 counsel's close standing with the judges in particular
5 cases.

6 Now, nobody said that the ordinary poor client
7 is supposed to have a legal staff like General Motors, or
8 IBM. He is supposed to be able to get a lawyer, and nobody
9 said the taxpayer should pay for a legal staff like that of
10 IBM or General Motors.

11 These organizations have grown so big, one like
12 the Western Center, for example, which is a conglomeration
13 that has an enormous program. When Theodore Texlaw was
14 removed as the Director of the Legal Services Offices, he
15 turned up the next morning, I believe, as an employee at
16 Western Center, a grantee of the Office of Legal Services.

17 My predecessor in the Office of Program Development
18 had written letters soliciting a job with Western Center
19 because that was a better racket than working in headquarters
20 where they had been trying to put rational limits on what
21 had once started out with aid.

22 I don't agree a person should get a lawyer for
23 every damn thing under the sun. Not remotely. Not one in
24 a thousand. Not even if he can afford the lawyer. It would
25 be a terrible society if 10 in 100 resort to law every time.

1 We must try to find a stable responsible society
2 and not one that is at war with itself constantly, and
3 constantly has instigators and suppliers, recruiters and
4 so forth.

5 Now, you have heard from the President of the NLADA.
6 I knew of the NLADA half a century ago. The NLADA then was a
7 lot of respectable Wall Street and corporate lawyers who
8 couldn't spend their own time doing what now is called
9 pro bono work, and so they supported organizations which
10 raised funds.

11 They supplied funds to the Legal Aid Society of
12 New York and so forth to be able to have that kind of thing
13 done for them.

14 Poorer lawyers, perhaps, did not contribute funds,
15 but volunteered services from time to time to do this sort
16 of thing. That was what they once did.

17 For the past many years, my observation of the
18 NLASA is simply that it is simply a labor union of poverty
19 lawyers, career poverty lawyers window-dressed with a few
20 distinguished fellows who still think the same thing is going
21 on that used to go on 50 years ago.

22 Well, it is no secret that it doesn't, and they
23 get fortunes of money from the Office of Legal Services and
24 from your corporation for so-called technical assistance
25 to these grantees.

1 If you need some technical assistance about the
2 way your law office is run, and you are a single practitioner,
3 you think it over and do it, make some decision.

4 If you are a firm, some of the partners get together
5 and do it, and figure out what ought to be done. Or your
6 managing attorney does it.

7 If you are a Bar Association, and they have some
8 activities, the group as a whole, the committees on it get
9 together and do it. They don't go out and hire somebody
10 that runs enormous conventions in Florida with travel monies
11 paid out of public funds indirectly, if not directly, to
12 entertain the trade union of poverty lawyers.

13 I think this is an utter disgrace resulting from
14 misinterpretation from the word go. The initial commencement
15 of the so-called Office of Legal Services under the old
16 Economic Opportunity Act, I respectfully suggest to you that
17 you scratch that and start all over again and look at this
18 from the point of view of the profession, the legal profession,
19 practitioners, professors, et cetera, and think what the
20 objective should be. And then don't let's look for ways to
21 figure out how to turn around the corner of what Ms. Green
22 very obviously said, and everybody knew she was saying, and
23 continue the same old, damn part they had before which resulted
24 in practically killing this program.

25 There are some kindly men like Jim Kilpatrick and

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1 some others who buy on faith the notion that everybody ought
2 to have access to a lawyer. You know what the medical
3 profession has done with this, everybody ought to have access.
4 You try to find a decent doctor who knows what the hell is
5 wrong with you, and who you can afford to pay if the insurance
6 doesn't cover his bill.

7 This is providing a lawyer for the average poor
8 client. All of a sudden the poor client is entitled to 22 law
9 professors and a couple of thousand poverty lawyers, and
10 hundreds of thousands of dollars of the public money to be
11 used in making a point about welfare rights, or something of
12 that kind.

13 Now, that is about all I want to say. If I
14 haven't made myself entirely clear, I did not anticipate
15 speaking here this morning. I thought I ought to pass this
16 along to you.

17 I add only this.

18 My view as a legal educator is that these activities
19 have dreadfully impaired the quality of legal education and
20 the law schools. And we don't train lawyers to do the kind
21 of things we used to train them to do. We train them to
22 be public activists, largely. There is some group in the
23 student body that will not buy that, of course. The great
24 bulk used to buy it on the waves of the anti-Vietnam and
25 waves of other things.

1 I would like to stop having the waves, and lets
2 have a profession, decent, respectable, and honorable, and
3 personally responsible man for man, not through groups with
4 mighty clubs and taxpayers' funds.

5 MR. THURMAN: Are you familiar with the code of
6 professional ethics?

7 MR. SPARK: Yes.

8 MR. THURMAN: Are you familiar with the code that
9 subjects attorneys to discipline if he does not avail himself
10 of getting assistance where he himself may feel that is
11 necessary?

12 MR. SPARK: Yes, sir, I am.

13 May I ask, are you familiar with practice in a
14 small town, as in Georgia or in Florida, where the 6 or 8
15 lawyers in town all cooperate with one another every case
16 they have? Two of them are on opposite sides of the case,
17 but the four fellows in the same building around the corner
18 with the one guy, and they are cooperating with the other
19 guy every time because a lawyer should know where he hasn't
20 got adequate competence and should get help.

21 But who gets this kind of help for the ordinary
22 average lawyer? Does everybody hire Bailey and Neisner and
23 so forth? This is a preposterous situation. You have people
24 whose names are call words in these areas because of their
25 function in so-called back-up centers which I say are

1 litigation promotion and encouragement centers. That is
2 what they are. And we ought to --

3 MR. COOK: The remark that Dean Thurman made that
4 all the grants we received, we receive originally, are all
5 anticipatory. The budgets are made out well in advance of
6 technical assistance, and are all done in advance. They are
7 then made available.

8 I think we should go to the code of professional
9 ethics, as it also applies to us, and we look at our
10 creation of those things, whether they will or will not on
11 occasion be effective.

12 We were asked yesterday to consider an entirely
13 new field that we have neglected. And certainly it should be
14 given consideration, but I don't think anybody can say we have
15 neglected any code or standard, although the individual
16 who was here yesterday said that the programs in the past have
17 neglected them. Maybe he is right, but I think the
18 distinction one has to make, do you create the giants before
19 the fact or do you attempt to live within those rules and
20 regulations after the fact occurs so that the adequate
21 representation that you talked about can be presented?

22 I think that also has to be taken into
23 consideration.

24 MR. SPARK: If you are asking my reaction to that,
25 you have a lawyer's observation internally in the Office of

1 Legal Services indicate that these are independent, ongoing
2 entities that provide careers and distinction and public
3 facilities and income for a lot of people who would like to
4 have them continue merrily on their way, but all things must
5 end, including good things.

6 MR. BROUGHTON: You mentioned a statement when I
7 was out of the room when you started, that the grant of
8 funds, OLS funds, to the training program at Catholic
9 University -- you gave some figure, and did I understand --

10 MR. SPARK: It runs in the total of one half to
11 two million dollars.

12 MR. BROUGHTON: As I have tried to become
13 acquainted with various programs there and elsewhere in the
14 country, in the past, that was a training program, is that
15 correct?

16 MR. SPARKS: It was supposed to be a program for
17 training staff lawyers. The fact of the matter is that the
18 great bulk of that money, as I understand it, was earmarked for
19 transportation, airplane rides back and forth to Catholic
20 University.

21 The University very happily took its usual overhead
22 charge on the total amount of each grant, although the bulk
23 of the money was subsidy to airlines and to Catholic
24 University.

25 I don't keep saying "in my judgment" and "if I'm

1 right." It is just not my style.

2 I include it in my comments, however.

3 If I have a wrong premise, I don't have to be
4 apologetic.

5 MR. BROUGHTON: What is the relation with Antioch?

6 MR. SPARK: Antioch was founded with, I believe,
7 a million and a half dollars from OEO plus a little money
8 from other sources, plus some study made of a hundred thousand
9 by some others of the feasibility of having a new law school
10 which would combine teaching of law with the practice of law
11 with the actual clinical work from the word go.

12 I don't know how much additional grants it has
13 had since then. It has had continuing grants. Although in
14 my position from OLS, I was about to recommend it be
15 refused extension.

16 Everybody is battering down the doors of law
17 schools because PhD's can't get jobs, and there is no draft
18 to worry about. I have never heard of a law school financed
19 by the taxpayers, except Howard, in the sense that the many
20 persons on its budget have been paid by taxpayers.

21 MR. BROUGHTON: Has it been operating as a private
22 law school?

23 MR. SPARK: Private law school that grants
24 enormous scholarships and fellows and pays outrageously high
25 salaries to its law professors. Each teacher has something

1 to do with litigation. And there is a civil war going on from
2 the newspaper with armed guards around --

3 MR. BROUGHTON: Is it an accredited law school?

4 MR. SPARK: It was provisionally approved within
5 one year. Many solid, respectable law schools have trouble
6 getting approval after three years of operation even on a
7 provisional basis, but this was a part of a certain wave of
8 certain points of view about how the law should be used to
9 make the society, and I don't think funds of this corporation
10 or funds of the Office of Legal Services should be used for
11 that purpose or were ever intended by the Congress to be used
12 for that purpose.

13 My last comment was that "legal research" is
14 usually done, in professional law offices, by the lawyers
15 in that office or else by young law students and clerks not
16 admitted to the bar as yet, and they also all work on briefs.

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1 CHAIRMAN CRAMTON: Ms. Roisman.

2 On my list I have only two people
3 who have asked to address the Board, and they have spoken.
4 I don't know if Mr. Ray has spoken on this issue. Ms. Roisman
5 spoke briefly at some earlier meeting. I hope there will
6 be time for Ms. Green to comment or add anything futher before
7 we adjourn.

8 MR. BROUGHTON: Is Mr. Ray going to speak? As I
9 understood the brief -- and I read it -- it came with a
10 covering letter from him on behalf of the projected advisory
11 group.

12 CHAIRMAN CRAMTON: Mr. Ray is listed, and I don't
13 know whether he is the official representative of the group
14 in place of Mr. Delare on this issue today. He is the one
15 to answer that question.

16 First, we will hear from Ms. Roisman.

17 MS. ROISMAN: My name is Florence Roisman. I am
18 appearing as a spokesperson for the Organization of Legal
19 Services backup centers.

20 There are only two things I want to say because,
21 as Mr. Broughton has said, we have made presentations to the
22 Board in writing and in oral form before. I don't want to
23 take the Board's time to repeat anything.

24 The first thing I would like to say is to respond
25 to the suggestions that Mr. McCarthy made about ways in which

1 the Corporation could do litigation in-house. If I under-
2 stand him correctly, he made two suggestions: One was that the
3 Corporation could make contracts to have litigation done by
4 outside attorneys; and the other was that the prohibition in
5 Title VI b(c) (1), which speaks to the Corporation, for some
6 reason, does not apply to the employees of the Corporation.

7 I want to say one sentence. With respect to the
8 first of his arguments, it is contradicted flatly by
9 Section 6 (a) (3), which doesn't say anything about backup
10 centers, but does say something about grants and contracts
11 to perform certain functions. It says the Corporation may
12 not, by grant or contract, provide certain functions, one of
13 which is research. How that can be read to allow contracts
14 with private lawyers or private firms, which it cannot be
15 read to allow a contract to a university or law school,
16 escapes me entirely.

17 Secondly, the discussion as to what a corporation
18 cannot do, its employees can do, I want to point out three
19 things. It is my understanding a corporation can operate
20 under and only through its employees.

21 If you look at 1006 (c) (1): "The Corporation
22 shall not itself participate in litigation."

23 It does not say "litigate." It does not say be
24 listed as co-counsel. It says "participate in litigation."

25 The second thing I want to read, because it is long,

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1 can be summed up as legislative advocacy. In (c)(2), the
2 statute specifically distinguishes -- or includes, I should
3 say, the phrase, "personnel of the Corporation," in its dis-
4 cussion of what the Corporation may or may not do.

5 So if there could be a matter of general law,
6 any suggestion that what a Corporation is prohibited from doing
7 in the rendition of legal services to eligible clients,
8 employees of Mr. Ehrlich may go out and litigate as president
9 of the Corporation, although the Corporation may not do it in
10 its own name, I think the language of 1006(c)(2) would rebut
11 any suggestion that that would be consistent with the statute.

12 That is all I want to say about Mr. McCarthy's
13 suggestion.

14 I want to say one other thing. I was struck when
15 Ms. Green spoke. By her observation, it is of questionable
16 use to listen to the opponents and cite them with authority
17 with respect to the meaning of something. I want to point
18 out that several of the people from whom the Board has heard
19 this morning at great length are opponents, not only of backup
20 centers, or the performance of certain functions, but of the
21 Legal Services program.

22 Ms. Green voted against the Legal Services bill
23 when it included her amendment, on the final vote, when it
24 included the Green Amendment. Ms. Green was reported as
25 voting in opposition to it.

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1 With respect to Eli Spark, with whom I serve on
2 the law school faculty, I speak not as a spokesperson, but as
3 a former associate, of professor of law, and one active in the
4 society of law teachers, that he has been in an
5 opponent of an effective national legal services program, as
6 I suspect his presentation made clear.

7 If the Board were interested in a parade of
8 distinguished professors of law, in which number I do not
9 count myself, the association of lawyers and association of
10 law schools could provide a limitless supply of witnesses in
11 that capacity.

12 If there are any questions, I would be glad to
13 answer them.

14 CHAIRMAN CRAMTON: Do you have questions for
15 Ms. Roisman?

16 MR. COOK: My only remark up to this point -- all
17 of the material that all of us on the Board have received,
18 almost without exception, has been to rebut what every
19 inference there may be in the Green Amendment, whatever
20 exclusivity there may have been within the confines of the
21 Green Amendment, and I think it is incumbent upon us to do
22 ourselves the service of hearing Ms. Green as well as have
23 all of the memorandum and all of the briefs that we have
24 received up to this point.

25 MS. ROISMAN: I hope I was not suggesting we should

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1 hear Ms. Green. I was interested, myself, to hear her.

2 MR. COOK: I just want to make the point clear, it
3 is very apparent in some of the memoranda we receive that we
4 did not hear the remarks, or the remarks were not quoted to
5 us of Carter Kings, chairman of the committee, the remarks of
6 Congressman Quie, the remarks of other members of the House,
7 but somehow or other, the depth of that research was con-
8 fined to remarks that were more in tune to the philosophy
9 of those who were making the presentation than to give us a
10 full and complete overview of the entire debates.

11 MS. ROISMAN: I appreciate the fact that the
12 Board has had before it several different analyses. The
13 project advisory group has submitted one. Hogan and Hartson,
14 which is your own staff presentation, performed what I see
15 as an objective, and certainly dispassionate analysis of an
16 extensive legislative history.

17 What strikes me about the legislative history, taken
18 as a whole, is this: I don't have any doubt that Ms. Green
19 wanted to end backup centers. It is perfectly clear to me,
20 as a lawyer, that the Green Amendment, Section 1006 (a) (3)
21 of this act does not accomplish this result. I think I under-
22 stand why, and I think the reason is that many of the people
23 in Congress with respect -- I have to include Ms. Green --
24 who were involved in the drafting of that legislation and of
25 that section, in particular, didn't know what the backup

1 centers did. They didn't understand the functions that the
2 backup centers performed. There were not hearings held, as
3 Ms. Green has already told you. There was never any descrip-
4 tion, extensive or otherwise, presented to anybody in
5 Congress about what the 16 very different institutions that
6 we lump together by calling them backup centers do. There
7 were specific things that many people in Congress objected
8 to, and they were told by other members of Congress that that
9 is what the backup centers did, and the legislation was put
10 in terms of those functions and prohibited the funding of
11 those functions by grant or contract.

12 But I don't know what your study is going to show,
13 but my guess is, based on what I know about the 16 different
14 backup centers, is that study will show that virtually all that
15 the centers do is not the sort of thing that is prohibited
16 by 1006(a)(3).

17 MR. BREGER: Ms. Roisman, how do you understand the
18 statement of Senator Javits to other Senators in July of 1974
19 that the price under which then President Nixon would sign
20 this bill of enacting new law would be the removal of
21 authority to fund backup centers?

22 MS. ROISMAN: I think there are a couple of things
23 that are interesting about those comments, one of which it
24 is terribly important to remember. I think that the Green
25 Amendment, when it was originally introduced, it was

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1 originally introduced a year and a half before the legislation
2 was effected, and again, as Ms. Green herself pointed out
3 this morning, some very dramatic changes were made in the
4 legislation outside of the House and long after the Green
5 Amendment was introduced.

6 One of them was a prohibition of the Corporation
7 engaging in litigation. It may have made sense on Day One,
8 at the beginning of the year-and-a-half-period when the
9 Green Amendment was first introduced, to say research in-
10 cluded co-counsel activity. It doesn't make sense to do that
11 when you are dealing with a statute that --

12 MR. BROUGHTON: You refer to the Hogan and Hartson
13 memorandum. You are talking about the latest one of October 31
14 that you have seen?

15 MS. ROISMAN: That is the only one I have seen.

16 MR. BROUGHTON: Page 3. I don't know whether you
17 have a copy. At the bottom of Page 3, this statement is made:
18 "Research, training, technical assistance, and clearinghouse
19 activities not directly related to the provision
20 of legal services to eligible clients can be undertaken by
21 the Corporation itself, but cannot be funded by grant or
22 contract."

23 Do you agree with that conclusion?

24 MS. ROISMAN: I am looking at Page 3, and what I
25 see is a direct quotation of 1006(a)(3).

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MR. BROUGHTON: No. The bottom of the page. That is the sentence I just read.

MS. ROISMAN: I have to give you two answers.

I, myself, think -- personally think -- that that is a more narrow reading of the statute than the statute requires. I am not sure that Olesbuck has an official position. I suspect if it does, this is not an unreasonable interpretation of the statute. I think it is important to emphasize that I do, and I think this is an Olesbuck position -- disagree with some of the specific lines that are drawn in the memorandum.

For example, as I understand the Hogan and Hartson position, it is that model briefs, model pleadings, I think those are the expression, that are used can be done in-house by the Corporation staff.

I don't think that is consistent with the statute because the statute prohibits the Corporation from participating in litigation, and every model I have seen, every model pleading I have ever seen, is a real brief and real pleading.

Litigators need help from litigators, and they don't want help from social scientists or from researchers or from people who have never been before a judge and don't know how to argue a case. I don't know from whom one can secure effective assistance in litigation, if the only place to which one can go is a corporation for which no litigator will work.

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1 MR. BROUGHTON: Thank you.

2 MR. COOK: I didn't feel that I got an answer to
3 Marshall's question about how do you view Senator Javits'
4 comments when he said there will be no funding of backup
5 centers? This was an affirmative statement. After that point
6 there was a discussion in the House, and the remark from
7 Mr. Perkins was that this eliminates the funding of backup
8 centers. What does it mean to you? Not in relation to
9 when the Green Amendment came on or came off. I am talking in
10 terms of finalization of this language.

11 Spencer Rich is the Washington Post reporter on the
12 Hill. We all know Spencer. He probably knows every lawyer
13 in Javits' office. He is a sharp reporter, and he wrote an
14 article. The deal is this shall not be funded. He got it
15 from staff people.

16 What did it mean to you when you read it?

17 MS. ROISMAN: What it meant is what Senator Javits
18 understands to be a backup center, and what Spencer Rich,
19 whom I do not know, understands to be a backup center, cannot
20 be funded under 1006(a)(3), and what Senator Javits and many
21 other people in Congress understand what is a backup center is
22 clear --

23 MR. COOK: Whatever they considered to be a backup
24 center, then at that stage they intended that particular
25 definition of backup center would not be funded.

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1 MS. ROISMAN: We know from the legislative history
2 what they understood them to be. They understood them to be
3 roving think tanks.

4 MR. COOK: What you are asking us to do is take
5 into consideration what you consider to be the proper defi-
6 nition of backup centers and look at those in the light of
7 their necessity for the advancement of this program in your
8 mind, and not what was considered to be the role of backup
9 centers, as it evolved in the debates in the House and on the
10 Senate floor.

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1 MRS. ROISMAN: No, Senator, I wouldn't agree
2 in characterizing my position that way. The legislation and
3 the statute nowhere uses the term "backup centers."

4 1006(a)(3) prohibits the function. I believe
5 many of the people actively involved in Congress with that
6 legislation believe those were the functions that backup
7 centers perform.

8 I also believe that if there had been hearings, and
9 if there had been an understanding that backup centers to
10 a very large extent, perform the function of providing legal
11 assistance in litigation to specific eligible clients who have
12 specific problems, I believe if that information had been
13 available, it wouldn't necessarily have made any difference
14 in the way the language came out because what the language
15 prohibits is the performance of the function.

16 MR. COOK: I know Mary Poppins can't fly, but I
17 saw a movie and she opened an umbrella and she did.

18 They debated backup centers. Whether or not they
19 had the proper knowledge is not for you and I to question
20 at this stage of the game. They debated backup centers and
21 the language in those remarks, and from substantial members
22 of Congress, who normally know about legal services, made it
23 very clear that at that time, in those terms, backup centers
24 were not to be funded.

25 You say they did not use the name backup centers in

1 statute. They did not use it in the statute that agree
2 created backup centers.

3 You didn't say, all of a sudden, show me the
4 previous statute where backup centers --

5 MRS. ROISMAN: I can't show you the previous statute
6 which created a legal services program, because we all know
7 there wasn't one.

8 I think I am not making my point, and I would like
9 to try one more time.

10 From reading legislative history, I am clear that
11 Mrs. Green and those who were associated with her in this
12 endeavor, understood that backup centers did a certain thing,
13 that they were roving think tanks, that they made up problems
14 and went out and looked for clients in whose behalf to
15 deal with those problems.

16 The legislation was written to prohibit that being
17 done by grant or contract. In fact, I think that when one
18 looks at what in fact the 10 centers do, and I think the Board
19 has taken a very responsible step in commissioning a study
20 by people who haven't been involved in the program to look
21 at exactly that, what the functions are.

22 Based on my knowledge of what centers do, I am
23 confident what that study is going to show, is that
24 if any part of the backup centers' activities is of the nature
25 that Mrs. Green and her colleagues thought it was, it is a

1 very, very, very small part.

2 I think that the study is going to show that the
3 bulk, the greatest bulk by far of the time, money and efforts
4 that is spent by the staff of the backup centers, is spent
5 on rendering legal assistance to specific clients who have
6 specific problems in specific situations. It is the
7 most classic direct kind of lawyer assistance.

8 I have worked in one way or another with the
9 Legal Services Program, and mostly with the field program, not
10 with backup centers, since 1967. The reason I have that
11 confidence what the study will show, is because lawyers never
12 had the luxury of being involved in roving think tanks. Most
13 of us wouldn't want to do that.

14 He wants to litigate and work with real people with
15 real problems.

16 If we were given the budget, no responsible person
17 could make that judgment. When you are faced daily with people
18 in desperate need, you deal with those problems. You don't
19 go looking for other problems to solve.

20 CHAIRMAN CRAMFORD: Are there any further questions?

21 MR. BREGER: One more point which I think will
22 help me understand your view.

23 I gather it is your belief that Senator Javits
24 et al, had in mind a functional definition of backup centers,
25 and they didn't like certain specific functions that they

1 understood backup centers to be engaged in, and it was just a
2 kind of misnomer of nomenclature that we are using the term
3 backup center rather than addressing the particular functions.

4 If the Congress had addressed specific structural
5 entities, the center of law and education, for example, and
6 talked about them as institutions, which they didn't like, I
7 take it your view would be that was because Congress misunder-
8 stood the functions they were, in fact, engaged in.

9 MRS. ROISMAN: I am not at all sure I understand
10 your question.

11 MR. BREGER: I gather it is your view there were
12 certain functions as roving think tanks, that was upsetting
13 Congress, and if Congress had named each backup center and
14 said we want to withdraw from each specific center, rather
15 than talking generically, your view would be what Congress
16 meant, they would draw the funds from backup centers.
17 If backup centers engaged in other functions it was not
18 Congress' intent to --

19 MRS. ROISMAN: If I understand -- I don't think I
20 understand your question now any better than I did before.

21 Congress, in the statute -- I am not saying look
22 at the statute and let's pretend Congress saying something else.

23 The statute talks about something, that function
24 that cannot be performed by grants or contract. That statute
25 was based on what it was backup centers did, that they went

1 out and fermented legal activity when there was no basis for
2 it, and it was a roving think tank activity.

3 I thought John Brooks' quotation from Frankfurter
4 was very good. I think you can deal with the history. You
5 don't have to go back and deal with the legislative history.

6 If you go back and look at the history, you will
7 see that people in Congress were concerned about a bugbear
8 that in my judgment, doesn't exist.

9 CHAIRMAN CRAWTON: Mrs. Poisman, Mrs. Green and
10 Mr. McCarthy have stated in their view the performance of
11 1006(a)(3) was to eliminate backup centers root and branch.

12 If that view were to be accepted, it would be
13 important to determine what is a backup center.

14 Is the Antioch School a backup center?

15 Is the Catholic University Training Program?

16 What about Western Center on Law and Poverty?

17 I raise the question because Spencer Rich refers
18 to 15 arms in the Washington Post article, that Professor
19 Spark spoke of. You spoke of 16. If these were specific
20 organizations described to be eliminated rather than activities
21 and functions being performed by any grantee or contractor,
22 then we would have a very difficult problem identifying who
23 these backup centers were that could not be funded, and how to
24 go about making that determination.

25 MRS. ROISMAN: I don't know.

1 In general, the list is taken to be 15, and I think
2 the difference between 15 and 16, two of them are located
3 at the University of California, Berkeley.

4 As I understand, the studies you have commissioned
5 are going to study those 16. I have not previously understood
6 the Antioch Law School was considered a backup center.

7 The Western Center had not, and I did not -- what
8 your question suggests to me is that if you look at it in
9 terms of the kind of analysis that Mrs. Green and
10 Mr. McCarthy have suggested, you are going to have to look at
11 278 separate grants -- I think that is the right number --
12 the total number of legal services grants that are now
13 outstanding from CSA, because every one of those grantees, I
14 am confident, performs research. I certainly hope every one
15 of those grantees performs research because every legal service
16 lawyer who has a client is professionally obligated to perform
17 research.

18 So, if you are going to read the statute literally,
19 you have to go to every one of those local programs, and you
20 are going to have to prohibit them from engaging in research.

21 If the Green research was right, you would have to
22 prohibit them from engaging in litigation. 1006(a)(3) does not
23 talk of national regions. It talks about programs. It doesn't
24 distinguish national programs from any other kind of program.

25 CHAIRMAN CRAMTON: Any other questions for

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1 Mrs. Roisman?

2 (No response.)

3 CHAIRMAN CRAWFON: Thank you very much.

4 I have no more people who have asked to speak.

5 Bernard Veney. I hope you can make your remarks
6 brief.

7 Mr. Bernard Veney, director of the National Clients
8 Council.

9 MR. VENNEY: I guess I just don't understand what
10 we are doing. I am not an attorney and I can't interpret the
11 law. Not about even to try.

12 I heard of the Draconian, and the price we have to
13 pay and I compare that with the first part of the statute which
14 says you will provide quality service to the poor.

15 I guess the business you are about is providing the
16 leader that tells us how you are going to do that in the
17 face of other sections of the Act.

18 I have got to apologize to the Board. I was in
19 very sharp disagreement with the Board about the study. I
20 now see the wisdom of the course of action you have decided
21 upon, because it is clear to me that listening to the attorneys
22 today, the help is needed. But I don't envy your task.

23 The gentlewoman from Oregon, Mrs. Green, I have read
24 so much of the material that I have come to respect your
25 opinion so highly, I use the term very highly, the gentlewoman

1 from Oregon.

2 The Community Corporation has been very clear in
3 the area of accountability of institutions. They have always
4 insisted, if my memory serves me correctly, that
5 institution costs not exist for their own purpose.
6 They had to exist to serve the needs of the client community.
7 They had to be accountable to the client community.

8 I do not understand how the function brought in
9 house would be accountable to the client community. I know
10 there were errors. I am sure there are horror stories that
11 can be told about backup centers and whatever they are.

12 But, clearly we now have that as history, and I
13 think you gentlemen can in fact, act on that past history.
14 I think you have the wisdom to guard against the mistakes of
15 the past. And I don't know where you are going with this.

16 I can see you with the difficulty of trying to
17 provide training in house for every area of specialty that
18 poverty attorney in the field office gets into.

19 Technical assistance is going to be delivered by
20 people who have no litigation experience, or limited litigation
21 experience, or no recent litigation experience, to people in
22 fact who have to litigate every day. That is like my coming
23 to you and telling you how to try a case, or teach a law school
24 class.

25 I just suggest to you that you have settled upon a

1 wise course of action, the study. I suggest that this
2 discussion around who did what to John, when it is the
3 congressional intent, to my way of thinking, was get rid
4 of this bill, get it before the White House in a form that will
5 allow it to be passed, that, to me, sounds like the
6 congressional intent.

7 If you have got to pay the price and go through
8 the draconian result, gentlemen, I ask you to exercise the
9 leadership and take a clear, fresh look at what you need to do
10 to provide to the client community, in a form accountable
11 to a client community, those things that go to make up the
12 delivery of appropriate, adequate legal services.

13 CHAIRMAN CRAMTON: Are there questions for
14 Mr. Veney?

15 (No response.)

16 CHAIRMAN CRAMTON: Thank you, very much.

17 Mr. Ray?

18 MR. RAY: Before I do, let me compliment
19 Mrs. Green. Although I don't share her conclusion, I thought
20 her presentation was one of the most lawyerlike, and I use
21 that in the best meaning, to advance a particular point.

22 The two points I want to make, Mr. McCarthy this
23 morning described the mood of Congress when these amendments,
24 including the amendment in question, was passed, as an
25 impassioned mood, and so it was.

1 It is unfortunate that Congress did not undertake
2 the kind of study which the corporation has committed
3 itself to, and we support that study, because it seems
4 apparent there was a gap between the knowledge of various
5 member sof the Congress and the intent. And that gap is
6 demonstrated when we start discussing the meaning of the
7 section involved.

8 It becomes clear, I think, that you have to
9 deal in terms of functions when you analyze the backup centers,
10 because if the language had instead read, for example,
11 "there shall be no backup center," that would reach the point.

12 If the point that was disturbing Congress was
13 what those backup centers were undertaking by their perception,
14 then you could create some other entity, give it another label
15 and have it do exactly the same thing the backup centers were
16 doing.

17 You have to deal in terms of functions. And if you
18 do, then obviously it is imperative that you study the
19 functions of the backup centers, or support groups, or whatever
20 you want to call them, to determine how they fit within the
21 law.

22 MR. COOK: Are you telling me if a Congress passes
23 a law tomorrow, as of Monday there is not going to be an
24 Agriculture Department, that everybody is going to say they
25 didn't know what that meant, and all the allied functions

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1 they didn't really mean, and they could continue?

2 MR. RAY: That is entirely possible.

3 The Agriculture Department, as we know it, would
4 cease to exist in this instance.

5 Backup center is a meaningless term unless it is
6 interpreted.

7 One gentleman who spoke earlier, Professor Spark,
8 indicated that if his premises were incorrect, then much of
9 what he had to say would fall.

10 I will tell you that his premise --

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MR. COOK: Are we going into the statement, are we going to say that Congress, henceforth, should not write a statute because it's meaningless? It has totally defined -- it has got to give an absolute definition of our functions? I must say to you there is not a library in the largest firm or the biggest university in the entire nation that is going to hold the statute.

MR. RAY: Not at all, Senator. You can take the Act as written and give it very real meaning. If you do, then it would seem to me that the major activities of the backup centers, as I am familiar with them, would be something that this corporation could proceed to do by grant or contract because they are --

MR. COOK: I can buy that. Just exactly what you have said.

MR. RAY: I think we are saying let's look at the statute.

MR. COOK: You're saying the statute and backup centers in regard to the functions that they actually perform, not the function that somebody assumed they perform.

MR. RAY: But the Act was written in terms of functions. And I have to conclude that it was those functions.

MR. COOK: There were enough people on the whole, during the course of the debate, and during the course of time those particular pieces of legislation were under consideration,

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1 that at least for many of the people who spoke in regard to
2 that subject matter, they shouldn't and they couldn't plead
3 that they were unfamiliar. And I think there's got to be
4 some people in this room that's got to agree with that.

5 MR. RAY: Doesn't it become apparent the majority
6 of those who opposed them, an entity working on abstract
7 provision in a non-client oriented way?

8 In any event, let me proceed to the second point.
9 Within what you deem the law to provide, within what you
10 believe the corporation can do, we submit that the intelligent
11 and responsible thing to do is have entities which are
12 providing the support kind of activities and co-counsel kind
13 of activities that we think provides the overwhelming majority
14 of what we think backup centers do know.

15 We can do a better job if we have that kind of help.
16 There are presently 132, a majority of the legal services
17 programs in this country, the field programs, which are funded
18 at a figure under \$50,000. Clearly, almost by definition
19 those are small programs, and they simply lack the capacity
20 to be able to mount daily the sort of expertise that a backup
21 center can provide.

22 MR. COOK: What comes first? The chicken or the
23 egg? Can I give you the argument if we didn't have the
24 backup centers we would give the agency far more money and far
25 more lawyers?

1 MR. RAY: It could follow as a management propo-
2 sition. I would submit to you the backup center would be a far
3 better way to spend the money so it can look to a group of
4 people working together, so that you don't need to have one
5 consumer expert in this legal services law firm who has to be
6 the expert, and have nobody else in that firm off of whom he
7 can place his ideas of a particular problem.

8 You can have several consumer experts in one
9 place and do a lot more in the given expertise. Also it would
10 seem to make sense from the standpoint of the most efficient
11 and economical way to spend the taxpayer's dollar because we
12 can both provide a higher quality of work, and we can do it
13 by making our given resources in the field go a lot further
14 if we have that kind of support.

15 MR. COOK: Our whole debate here is if we had to
16 make up our minds whether or not we give money to the backup
17 centers. Let the staff make a motion, and somebody makes a
18 countermotion, and we can vote on that. The significance of
19 these remarks, these are essential and we need them. The
20 significance of the input that I feel this Board is desirous
21 of, is to lay the establishment of a determination based on
22 this law whether we can or whether we can't. Not whether they
23 are or are not essential. Not whether they are or are not
24 the desire of this Board to find, but whether, as the law is
25 written, this Board has the authority to continue this type of

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1 program. That is what we ought to address ourselves to.
2 Whether we are talking about the little law corporation in
3 central Florida, and whether it meets the necessity, there is
4 no question about that. But whether that necessity is
5 essential or not. The determination of this Board is whether
6 or not we can.

7 MR. RAY: And that's indeed what I address myself
8 to first, Mr. Cook. But having made that determination, what
9 I simply said then was, that within the bounds of what you
10 deem can be done by law, we would hope that your essential,
11 strong sense would be to create backup centers, to do the
12 job we believe they are doing now, and certainly objectives
13 are important for this corporation in deciding what it should
14 do.

15 CHAIRMAN CRAMTON: Any questions?

16 MR. BROUGHTON: I would like to ask you the same
17 question I asked Mrs. Roisman about the statement in the
18 Hogan and Hartson memorandum, the last sentence on the
19 bottom of page 3: "Research, training, technical assistance,
20 and clearinghouse activities not directly related to the
21 provision of legal services to eligible clients can be under-
22 taken by the Corporation itself, but cannot be funded by grant
23 or contract."

24 I will not answer you on behalf of P.A.G. but my
25 own opinion. I think if the words fo Section 1006(a)(3) are

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1 to mean anything, it is probably that, yes.

2 CHAIRMAN CRAMTON: Mrs. Green, would you like to
3 add anything further to the record?

4 MRS. GREEN: I really hesitate at the time of day.
5 First of all, in Section 1001, at the beginning the
6 purpose of the Act, it "shall provide the best possible
7 service to the eligible clients that cannot afford attorneys."

8 That was the purpose of the amendment which I
9 offered and others offered. We felt that these purposes would
10 be better served and more money would indeed go to eligible
11 clients.

12 Now, to some specifics. I really am concerned here
13 about several things. One, I just heard it said that
14 Congress only considered the functions of the backup centers.
15 I think I made it abundantly clear before that we were in favor
16 of doing away with the backup center, the entity of it.

17 I did not bring the complete list of backup centers.
18 When we debated that in 1973, the list of the backup centers
19 was available to every member of the House. And I assume they
20 were available to every member of the Senate. They were there
21 by entities and by name and location. We were in two things:
22 because we believe that that great deal of money was being
23 wasted and that it should go instead to eligible clients, we
24 wanted to cut out the waste, and one of the ways was to do away
25 with the backup centers.

1 It seems to me the debate is clear. We were
2 concerned about some of the functions, and we put it in the
3 hands of the corporation because we recognized that some of
4 the functions should be carried on if you were going to give
5 the best service.

6 The corporation composed of people appointed by the
7 President, and confirmed by the Senate, would use better
8 judgment, and would cut out the function that at the present
9 time serve the poor of this nation. We can provide the list
10 of backup centers if that's what you wish.

11 Mr. Broughton, I believe, asked about a particular
12 backup center. My recollection is on the list, that the
13 Catholic University is a training center. The National
14 Defenders League is a backup center that gets hundreds of
15 thousands of dollars.

16 They have changed it from technical assistance to
17 legal assistance. The name has been changed. We recognize,
18 when we offered the amendment, we were stepping on toes. The
19 people who were going to lose a million dollars a year were
20 not going to make an amendment. Sure, you make enemies.
21 Everybody doesn't love you when you fight for a piece of
22 legislation. If you cut out a million dollars in the budget,
23 you do it. In terms of grantee programs, I believe Mrs.
24 Roisman, you would have to go to 278 grantee programs and
25 find out whether or not they did research. Apparently -- at

1 least I hope to the Board I made myself clear, if not to
2 Mrs. Roisman. My amendment does not go to 1006(a)(1) which
3 provides for the attorneys, the 2298. It in no way eliminates
4 the research that can be done by a project attorney, a
5 recipient as defined in the definition, who is serving an
6 eligible client, and there would be no reason why the corpora-
7 tion would have to go out and examine every one to see if they
8 are doing research.

9 You might want to go out and see if they are doing
10 a good job. I believe I heard Mrs. Roisman correctly when
11 she said that I introduced my amendment about a year and a
12 half ago. If I'm in error in what I said, please correct me --
13 And that is -- that many dramatic things had happened since,
14 and one of them was the change in the corporation was not to
15 engage in litigation.

16 If you study the bill that was before the House,
17 and I have it in front of me, on June 21st 1973, the provision
18 on page 24(c)(1) says "the Corporation shall not participate
19 in litigation on behalf of clients other than the corporation."
20 It was in the bill. It was not added a year later, and therefore
21 made a difference in the amendment when the House voted upon it.
22 It was there. .

23 In terms of state, the Congress didn't know what they
24 were doing in talking about backup centers and roving think-
25 tanks, nothing could be further from the truth. We had the

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1 list of them. We had their locations, their names, the amount
2 of money they were getting each year, and in most cases we
3 had some of the things they were doing so Congress had a pretty
4 good idea of what backup centers were.

5 I have heard people say what is a backup center? The
6 language is ambiguous. Where in the bill they are talking
7 about it if they are not talking about it 1006(a)(3)? There
8 has to be something. All the members of Congress didn't pull
9 it out of a hat, backup centers, and nothing in the bill gave
10 authority to them or referred to them.

11 There have been some other comments, if I may take
12 just a moment, Mr. Chairman, to defend myself, I guess. My
13 ego long ago stopped being bruised, as I am sure the Senator's
14 did. But it has been said today that I voted against the
15 legal services bill even when my amendment was in it. It was
16 not said I voted for the legal services bill when my amendment
17 was in it, and I voted for it on July 16 when the House
18 adopted it on July 16, when we were forced to consider the new
19 compromise, and when I said earlier there was absolutely
20 nothing before us.

21 The Senate passed it an hour previously before it
22 came to the House. There was nothing written for us to look
23 at. It was a procedural objection I made. I said I cannot
24 vote for something that I cannot see what I am voting on. I
25 think I established it in spite of the speeches being circulated

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1 by the organizations who are going to lose some money if the
2 bill is passed. There is an inference that somehow, if I
3 understand what was being said, the corporation ought to wait
4 until the Kastenmeier or some other bill was disposed of in
5 one way or another to clarify the language.

6 May I suggest that first the House bill, when it was
7 passed by the House, said that the various provisions would
8 be dated from the time bill was enacted. The final law said
9 from the time the Board had its first meeting. There is a
10 difference of several months. It is almost a year and half
11 since the bill was enacted, and I think the House action is
12 there is some urgency about this and let's get on with this.

13 I think it is a bit iffy to base your Act on whether
14 or not the Kastenmeier bill is passed. One Jerry Ford from
15 Michigan strongly supported my amendment on June 21st. At
16 that time he was the majority leader in the House.

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1 MR. COOK: Could the theory on that basis,
2 wait and make up your minds after the Kastenmeier bill
3 has been approved, and in the meantime fund everything.

4 MS. GREEN: When there is waste, and when
5 money goes to other than eligible clients, poor people,
6 that can't afford services, it is a question of how
7 long you let this go on.

8 CHAIRMAN CRAMTON: On this point I may add
9 the corporation has been entirely clear that it is going
10 to act very promptly on this question, and that the
11 existing grants to what are all back-up centers, run out
12 on March 31 of next year. Before this corporation funds
13 any activities after that, there has to be a demonstration
14 and conviction that it can legally do so.

15 Ms. Green?

16 MS. GREEN: I don't know that I have other
17 points. I probably had -- I think the action by the
18 Congress clearly intended to do away with back-up centers
19 and was concerned about both entities, but also to be very
20 sure when the corporation takes over it looks at the budget.

21 CHAIRMAN CRAMTON: If you are willing to
22 answer questions, some straight point might come out that
23 way.

24 MS. GREEN: I would be very glad to.

25 CHAIRMAN CRAMTON: On further reflection on

1 hearing Mr. McCarthy's views, to what extent do you think
2 his views concern the provision of co-counseling either as
3 I understand it by grants to law firm, by the law firm
4 to provide specialized assistance to staff attorneys, or
5 by means of its own staff attorneys?

6 To what extent are those views consistent
7 with your views of what is meant in 1006(a)(3) and the
8 other provision of the Act?

9 MS. GREEN: The only part I have trouble
10 with, with Mr. McCarthy's views, would be in the corporation
11 and I am not sure whether he said to contract with a lawyer
12 to be a co-counsel with the corporation or employees of
13 the corporation would go out and be co-counsel.

14 CHAIRMAN CRAMTON: It was my understanding,
15 and I am subject to correction, that he gave two alternatives,
16 each of which he thought were permissible under the statute.

17 Is that a correct statement that he thought
18 there were two alternative functions that should be performed,
19 one by a grant to a lawyer or law firm to assist a legal
20 services attorney, and the other by a staff attorney hired
21 by the attorney who could not, apparently, appear in court
22 but could participate in the litigation by writing briefs and
23 the like?

24 MS. GREEN: If it does not involve being an
25 active counsel in the court, I would have no problem with

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1 that.

2 I do not think the planning prohibits the
3 corporation from providing all kinds of in-house research
4 technical assistance, and I include the briefs, or having
5 a batch of briefs, or researching it out, or anything
6 else that they need to provide.

7 But the thing that has bothered the
8 Congress is that in the back-up centers you had attorneys
9 who initiated, individually, suits, and that was one of
10 the things they wanted to put a stop to.

11 I think the corporation would have to be
12 extremely careful in doing this, and to write in enough
13 safeguards.

14 CHAIRMAN CRAWTON: I gather from implication that
15 the grant or contract to a law firm to assist a staff attorney,
16 you think would be prohibited by the section.

17 MS. GREEN: I am not a lawyer, so maybe I
18 underestimate this.

19 CHAIRMAN CRAWTON: I think you are a good lawyer.

20 MS. GREEN: It seems to me the co-counsel
21 business has been magnified way out of proportion. There
22 were lots of things Congress was far more concerned about in
23 terms of abuses and funds being siphoned off, so they didn't
24 go to the poor guy and the government financing one-sided
25 suits.

1 The Detroit case is an example of it.
2 Who was the eligible client?

3 Someone made the statement -- I believe
4 the gentleman from Boston -- that the Harvard Center was
5 asked to be the co-counsel out there. Who asked them?

6 Is NAACP an eligible client? A person who
7 cannot financially afford to hire a lawyer?

8 Is the government to provide that one on
9 one side of controversial question?

10 That is very much divided.

11 So I think this co-counsel business is
12 really exaggerated and I would think the corporation could
13 resolve that, and it would seem to me if the corporation
14 provided for the primary counsel, all of this back-up
15 center, that that might well be sufficient, and not be
16 in the contract.

17 You might have a provision that the attorney,
18 the project attorney, who is serving an eligible client,,
19 could request additional funds to hire an expert in that
20 particular area as the occasion deemed if it were a complex
21 case. I would think it could be taken care of within the
22 framework of the law.

23 MR. BROUGHTON: As I understand you, the concern
24 of Congress lay in two areas: one, Congress had before as its
25 understanding of functions that had been going on; and,

1 secondly, Congress' impression as far as waste, which has
2 been taking place in the backup center program and the feeling,
3 as I understand you to say, that money could reach more
4 poor people in other ways than is the case as far as that
5 which was being appropriated by grants to these centers
6 throughout the country.

7 MS. GREEN: It is exactly right. It was
8 precisely the reason that these funds would serve --

9 MR. BROUGHTON: Would reach more?

10 MS. GREEN: We were concerned about the waste
11 of money and the abuses which we felt were very rampant.
12 I am not speaking for myself.

13 There were dozens of us that worked on this
14 before it was ever over. There was widespread interest in
15 the Congress about what backup centers were doing. Then we
16 wrote in the provision in providing functions it would
17 exercise diligence.

18 CHAIRMAN CRAMTON: I want to thank you for
19 the help and guidance you provided. I know you are able to
20 wrestle with it intelligently.

21 MS. GREEN: I thank you for allowing me to come
22 before you.

23 MR. THURMAN: You have, I regret, Ms. Green,
24 withdrawn your name to be on the Board?

25 MS. GREEN: For the last month I have been

1 traveling in Mainland China. When I was in Peking I
2 never thought of the Legal Services Corporation.

3 (Laughter.)

4 I enjoyed it, and I have never had a regret,
5 although I am certainly keenly aware of the responsibilities
6 and of the pressure groups pressing upon you, and I wish
7 you well.

8 CHAIRMAN CRAMTON: At this point, before
9 turning to the corporation staff to report on the backup
10 centers, I would like to put in the record, so it is there
11 without reading the letter hand-delivered to me this morning
12 by Augustus Hawkins, Chairman of the Education and Labor
13 Committee of the House of Representatives, Equal
14 Opportunities Subcommittee.

15 Congressman Hawkins is purporting to express
16 his views concerning the meaning of Section 1006(a)(3).
17 Just so it is in the transcript. And I give a copy to the
18 reporter.

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1 December 11, 1975
2 Roger Crampton, Chairman
3 Board of Directors
4 Legal Services Corporation
5 733 Fifteenth Street, N.W.
6 Suite 700
7 Washington, D.C.. 20005

8 Dear Mr. Crampton:

9 It has come to my attention that the Board of Directors of
10 the Legal Services Corporation is now considering the
11 difficult question relating to the so-called "back-up
12 centers." It is my understanding that the Corporation's
13 Board is seeking to determine the precise intent of Congress
14 when the "back-up center" compromise was reached, and the
15 Board is undertaking a study of the best methods to
16 implement that Congressional intent.

17 Insofar as I chaired the subcommittee that marked up the bill;
18 since I was the House floor leader of the bill; and since I
19 participated in the Conference that worked out the final
20 legislative settlement on this issue, it may be helpful for
21 your deliberations if I set forth my understanding of the
22 "back-up center" compromise that was reached in Conference.
23 Towards that end, I have asked my staff to assemble the
24 appropriate legislative materials so that a detailed analysis
25 can be provided to you. I expect that this analysis will be

1 completed within two weeks and I will send it to you soon
2 thereafter.

3 Briefly, pending the lengthier analysis, my understanding
4 of our compromise was as follows. We prohibited the
5 Corporation from giving grants or contracts to perform
6 four specific functions: (1) research; (2) technical
7 assistance; (3) training; and (4) clearinghouse of
8 information services. All of these functions are to be
9 provided in-house (by the Corporation), and the precise
10 meaning of these functions was to be derived after careful
11 study. All advocacy services -- be they judicial,
12 administrative, or legislative forums -- were untouched by
13 this provision, particularly since those services may not
14 be provided by the Corporation directly. Thus national
15 legal centers specializing on particular subject matters
16 could continue to provide advocacy functions in behalf of
17 clients on the local, state and national level. In sum,
18 the Green amendment -- as we understood it -- was to be
19 strictly construed and all functions not clearly and
20 specifically set forth in that provision would continue to
21 be provided through grant or contract.

22 I hope to have my analysis before you soon. In the meanwhile,
23 I am pleased to note that the Corporation Board will continue
24 to prepare its own field study of the back-up centers so that
25 the intent of Congress is properly and effectively implemented.

1 CHAIRMAN CRAMTON: Mr. Polikoff?

2 MR. POLIKOFF: Thank you. I will attempt to
3 be very brief.

4 Let me first try to state, because I think
5 you should know, the attitude, philosophy with which I am
6 approaching the task that the Corporation assigned to me
7 at its last Board meeting.

8 The principal component of that task, as I
9 view it, is to provide you with factual information as to
10 what is going on in the back-up centers, what the activities
11 are that are being carried on in those so-called back-up
12 centers.

13 It is obvious that the second aspect of
14 the task which, as I read the Board's action last
15 November, involved a recommendation concerning the application
16 of the statute to those activities is going to require
17 more sensible recommendations, some ultimate assumption or
18 judgment, or conclusion respecting an interpretation of the
19 statute.

20 I had been naive to think that one could avoid
21 the necessity of doing that. But I want the Board to know
22 that at least as I view the proper way to go about this
23 attempt, I am deliberately avoiding any effort to deal with
24 the knotty legal problem at the threshold.

25 As is evident by the views you have heard today,

1 there are a large number of people who are available to
2 the Board to express opinions on the legal question. And I
3 could see that my task is not to be among those, for at
4 least a temporary period, and it is in that framework
5 and that context that I am going to report to you what
6 we have done so far; and as I said, I will be very brief.

7 I did want you to understand that that
8 philosophy or attitude has influenced the steps which I am
9 now going to report to you about.

10 First of all, we have put together a small
11 staff of Corporation people headed by Tony Montello, whom
12 you know, to assist in the study.

13 Second, and, incidentally, that Corporation
14 staff, among other things, is collecting, has to a large
15 extent already collected all of the available information
16 concerning the activities of the back-up centers from every
17 source we can turn to.

18 So that whether it be useful or not, eventually
19 when we finish there will be one place where the Corporation
20 Board members and staff can go to find what extant documentary
21 material exists about the back-up centers.

22 Secondly, we have assembled a panel, called
23 them an advisory panel, of nine lawyers scattered
24 geographically across the country to assist in the factual
25 analysis and in making recommendations to the Corporation.

1 I meant to look up the word "motly"
2 before I came here.

3 My recollection of the dictionary
4 definition is that it has something to do with the
5 kinds of assortment of a collection of people not
6 brought together by any clear principle, as a result
7 of any application of the clear principles.

8 If that has any relation to the dictionary
9 meaning, it applies here.

10 This group of people had what I view as time
11 constraints to supply the Board with this type of
12 recommendation. And to provide the Board with
13 recommendations by February 16, is an apparent study
14 conducted with time limitations that I have begun to
15 understand as being the task.

16 They are more serious as I go about the
17 task.

18 Under that time constraint Mr. Oberdorf
19 and (inaudible), whom neither of us knew personally, and
20 without such things as prior relation to legal services,
21 or absence thereof, present position in the profession,
22 our principal concern was to identify people who could
23 be called and get on board quickly, who one of us knew to be
24 sound responsible professionals who could be relied upon
25 whatever the task.

1 I have a list here. I won't bother to read it.
2 If any Board member wants the list, it is available in type-
3 written form or if someone would like the list, I would
4 respond.

5 CHAIRMAN CRAMTON: It is after Tab 4 of our
6 book. A distinguished group of lawyers with long and
7 varied professional experience.

8 I think that is a fair characterization, and
9 it helps to modify, however inappropriately, the motly.

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1 MR. COOK: Under you list of support center
2 studies is the National Legal Aid and Defender Association
3 management assistance program. It's been indicated here this
4 morning that it is now been called the management assistance
5 program rather than technical assistance program.

6 I certainly would hope in the evaluation of these
7 things you make an evaluation of previously submitted grant
8 applications so that we do not find ourselves in a position
9 where somehow or other this Board, and heaven only knows when
10 we have a Board meeting, they give us this much (indicating)
11 before we get started.

12 I would hope that an evaluation of the statute
13 we would not find a lot of programs given different names so
14 that we can get down to the gist of what we mean by technical
15 and management. There are two others, the legal services
16 training program, Catholic University. Is there any question
17 about the fact that the question of the statute deals with
18 training and technical assistance?

19 We are a clearinghouse for information and there is
20 an applicant, the national clearing house for legal services
21 in Chicago. Obviously, all those things are not going to fit
22 within the realm of those specific words. I would hate to
23 think we are going to be so naive to change a word when the
24 services and performance is what it was about.

25 Indeed, one of the things in further answer to your

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1 question, one of the things that Tony Montello's staff has
2 done in a preliminary way, is to prepare a document, what we
3 call support center preliminary profile of one of 16 support
4 centers. For our purpose, we are calling them 17.

5 out in Berkley, there are 2 essentially separate
6 centers that are carried in a single location. 17 preliminary
7 profiles which are designed to be factually straightforward
8 and don't depend on labels. Those have been circulated to
9 study teams.

10 The contents to you, the way we go about defining
11 the factual information to supply to the Board has evolved
12 the following way: we are going to have, we in fact do have,
13 17 separate teams. One teams goes out and studies, and we use
14 the word "study" rather than the word "evaluation."

15 Each one of these 9 persons on the list has agreed
16 to be the chairman of one or more of those study teams. 2
17 other persons, occasionally perhaps 3, will constitute the
18 full team membership.

19 The second is a legal services lawyer and the third
20 is a staff member, Tony Montello's staff are members of the
21 Corporation. Each of those study teams is to have the
22 additional services of 2 consultants.

23 I am not sure the terminology is important. A
24 person available to the study team to bring supply it with
25 needed perspective.

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1 One is a representative of a client. Somebody who
2 can bring to bear the study team's deliberations in that
3 perspective; and the second is an outside person, a lawyer
4 more likely than not, who has some expertise in the
5 specific subject matter that the study center works in.

6 For example, in the case of the housing projects,
7 we want the study team to have available to it for interpre-
8 tive purposes or whatever, the assistance of somebody with
9 knowledge about the field of housing.

10 These teams, 3 persons, sometimes 4, if they are
11 going to be 2 staff members, using the 2 consultants, are
12 actually going to go out and visit, and that week 3 of them
13 have gone out to visit individual support centers and the ques-
14 tion arises what are they going to do when they get there.

15 We have prepared, and in this respect it is pri-
16 marily Patton and myself, a document called "Guidelines for
17 Support Center Teams." That too, incidentally, is available
18 if the Board should want copies of it. It is a short document.
19 It will be made available. I don't intend to read the whole
20 thing, but I will tell you -- let me try, Mr. Chairman, to
21 move very quickly and then respond to question.

22 The guidelines that were distributed to the study
23 teams focus primarily upon factual description. The initial
24 task assigned to the study team is to list each type of
25 activity carried on by the support center. And it gives some

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1 examples.

2 Secondly, it asks the study teams to state the
3 center's reason, or reasons for undertaking that activity,
4 the origination, the source of the matter as it now is in the
5 support center's document, so to speak.

6 After that primary task is completed, the
7 factual description and analysis which is to be conducted by
8 examining files and talking to personnel inside and outside
9 of the support center, the study teams are then asked to make
10 a pass at applying the statute, 1006 (a) (3), to the activi-
11 ties as they have identified them.

12 The theory of that, which is stated in the guide-
13 lines, is that the Logan and Harston memorandum states that
14 application of 1006 (a) (3) should be to what the activities
15 really are out in the support center world, and should emerge
16 from, or arise out of a factual understanding of what is going
17 on and not impose upon it from the outside, so to speak. That
18 is what it directs the study team to do.

19 Finally, it is asking them to comment on a couple
20 of questions you can read in the guidelines. On the basis of
21 that document in supplying each of the study teams with a lot
22 of background information, which is in this black notebook,
23 which the Board members have had, but which the study teams
24 have not had, includes copies of the Legal Services Corpora-
25 tion Act.

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1 We had a meeting last Thursday to which all of
2 the study team chairmen -- and we discussed this guideline
3 document for 2 or 3 or 4 hours. I think it was closer to 4
4 than 2. We were certain we had flushed out all the questions
5 that the study team members might have about what their tasks
6 were.

7 I think it was a good discussion. It was at that
8 point I became persuaded we had flushed out and selected a
9 fine group of fine people.

10 Commencing Monday of this week and continuing
11 today, in the case of one support team, these 16 teams with
12 their marching orders and whatever understanding they obtained
13 from the in depth discussion we had last Thursday are going
14 out to do this task. That is going to take about 5 weeks.

15 The book there is a schedule of the visits to each
16 support center. The schedule calls for each team to have
17 concluded that study of a support center, and to have pre-
18 pared in draft form a report about its responsiveness to
19 these questions by the middle of January. At that time I
20 envision we will have two further meetings with this group
21 of fine persons.

22 The first one towards the end of January will be
23 a meeting at which everyone will now have 16 or 17 report
24 centers. We will come together on the basis of those reports,
25 and the knowledge now gained and preliminarily explore the

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1 kinds of recommendations that ought to be made to this
2 Corporation.

3 On the basis of that meeting a draft of such
4 recommendations will be prepared for which I will be primarily
5 responsible. It will be circulated to the 9 persons, and they
6 will then reassemble a final time for the purpose of discussing
7 the draft recommendations.

8 On the basis of that final meeting, I'll prepare,
9 and hopefully deliver to you no later than February 16th, the
10 final recommendations what your resolutions of last month
11 directed me to submit to you.

12 In a brief summary, leaving out a fair amount of
13 detail, that is the progress report, Mr. Chairman, on what
14 we have done to date.

15 CHAIRMAN CRAMTON: Thank you.

16 MR. BREGER: Thank you for your excellent descrip-
17 tion of your proposed activities. After you are engaged in
18 empirical investigation of what is happening out there, do you
19 intend to apply any specific definition of research and/or
20 litigation under 1006 (a) (3) to what is happening out there?
21 Are you going to use the Hogan and Hartson memorandum as the
22 basis for making determinations, and defining what is research,
23 and what is litigation?

24 MR. POLIKOFF: Yes, tentatively. The guidelines
25 say explicitly, Marshall. Maybe I'll read from the guidelines:

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1 "The Hogan and Hartson memorandum does not define the phrase
2 'non-client oriented,' and suggests that definition and appli-
3 cation of the phrase must be arrived at within the framework
4 of a careful description and analysis of the activities of
5 support centers. (pp. 26, 29) The above request in effect
6 asks study teams to engage in the process referred to in the
7 memorandum."

8 We are not imposing any definition of statutory
9 language upon the study team, but asking them to draw out
10 of their factual analysis if they can.

11 MR. COOK: I hope we are not getting ourselves into
12 a position -- what value is this going to be when you get done
13 if you are using definitions that this Board as a whole have
14 not agreed to?

15 You have gathered information from the respective
16 centers. You have a memorandum in front of you that refers
17 to specific definition of resource and specific definitions
18 that have been drawn from the Hogan and Hartson memorandum
19 that has not been subject to a total scrutiny by this Board
20 and accepted or rejected by this Board.

21 MR. POLIKOFF: I can comment briefly: we have
22 tried, and I think succeeded, Senator Cook, in there on 2 dif-
23 ferent pages, in stating completely the function and describing
24 factually what is going on in the support centers from the
25 application of any legal definition or analysis of these

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1 activities.

2 Whatever the Board's ultimate resolution of what
3 I call the legal question may be, it should have, as a result
4 of this study if it is done the way it should be done, a
5 factual and objective description of activities being
6 carried on, that is not included in any way --

7 CHAIRMAN CRAMTON: I think Mr. Ehrlich was next,
8 and then Mr. Breger.

9 MR. COOK: Mr. Breger yielded to me.

10 MR. BREGER: I look forward to this empirical
11 study to learn what is happening out there. We have seen today
12 that there are at least some ambiguity in how we might define
13 research, narrowly or expansively, and how we might define
14 litigation.

15 I was wondering if it might not be possible when
16 you move to the second step, the legal analysis stage, that
17 you might provide us, and I know it is some extra work, and
18 it might not provide us with alternate analyses, depending
19 on alternate definitions, but so we can have laid out before
20 us the Hogan and Hartson definitions of research and litiga-
21 tion, and how that would apply to the fact at hand, and some
22 alternate definitions of research and definitions on how that
23 would apply to the fact at hand.

24 I think that may be tremendously helpful to us when
25 we have to bite the bullet on this issue in February. I don't

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1 know if that is possible, Tom.

2 MR. EHRLICH: The most important thing is finding
3 out in fact what is going on. That is being done in a
4 thorough professional way. The Board's job is to judge what
5 the law means, and to the best of our ability to provide the
6 law to what is going on in fact.

7 At the Board's discussion at the last Board meeting
8 we adopted a hypothesis without suggesting it was a defini-
9 tive Board's view, and I think no one has suggested it should
10 be. We'll have another meeting next time in January and per-
11 haps we ought then to focus on that legal definition.

12 We do think, though, it would be unfortunate to
13 obscure the main point of what is going on in Mr. Polikoff's
14 enterprise, which is what is going on in those centers. Not
15 the legal analysis.

16 MR. BREGER: I am willing to withdraw my request.
17 We can, in drawing upon, if not through Mr. Polikoff, our own
18 staff, determine alternative analyses that would depend on
19 alternative definition.

20 MR. EHRLICH: The extent to which that is possible,
21 before Mr. Polikoff's study is done, I am not clear. But
22 certainly we can discuss the legal issues involved which I
23 suspect most Board members have the same views.

24 CHAIRMAN CRAMTON: My own personal view, we
25 received a great deal of information today. We already have

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1 a lot of information relating to what the Act means, and I
2 would think that it is desirable to address that question
3 directly and have that as a major item on the agenda for the
4 meeting which we plan towards the end of January. If it were
5 to turn out that it was adopted, the meanings were adopted,
6 then the character and relevance of certain kinds of inquiries
7 would change.

8 On the other hand, if it were a narrow interpreta-
9 tion it may make relevant certain types of factual inquiries
10 that may not be so relevant. It seems to me in the near
11 future, January 23, 24, we are going to to be forced as
12 we are likely to be, on what Congress intended and what the
13 language means, and that perhaps it would be appropriate to
14 make that a major item on the agenda for that meeting, not in
15 terms of a public discussion, but in terms of a discussion
16 of views among the Board.

17 MR. BREGER: I agree with you fully. I had some
18 slight concern that we might by accident set in stone certain
19 understandings of the statutory language.

20 CHAIRMAN CRAMTON: Are there any more comments
21 or questions directed to this subject?

22 MR. COOK: I move we adjourn.

23 CHAIRMAN CRAMTON: Item 7 on the agenda is dealing
24 with reports from the president on certain matters relating
25 to the acquisition of personnel.

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1 MR. EHRLICH: As some Board members know, we are
2 proceeding with the search for finding a senior staff of
3 the Corporation. We are proceeding on the basis of a full
4 open search. We have contacted as many groups, individuals
5 and organizations as we possibly could to seek out the very
6 best people for the jobs we do have in that connection.

7 Further, a draft of affirmative action plan has
8 been developed. Board members have a copy at tab 5 of their
9 materials. One Board member has already suggested that the
10 draft seems, in his view at least, much too long, and it is a
11 long one. It will be worked over by all who are interested
12 in it. We have copies here for those in the audience who
13 have never seen it. We'll try to shorten and tighten and work
14 it out as members of the Corporation staff have a chance to
15 comment on it before it is put into final form.

16 CHAIRMAN CRAMTON: The final item of business is
17 discussion to consider future meeting dates of the Board.
18 At the last session, the last meeting of the Board, we
19 tentatively agreed to meet in Austin, Texas, on Thursday,
20 Friday and Saturday the 23rd and 24th of January.

21 I gather that plan is still consistent with the
22 desires of the Board.

23 MR. SMITH: In that regard, would somebody --

24 CHAIRMAN CRAMTON: Members will be informed about
25 hotel arrangements and plans will be communicated to you in

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1 the very, very near future. We need not make our own reserva-
2 tions in Austin, Texas.

3 We will be meeting beginning in the afternoon of
4 the 23rd and extending to the 24th. I think because of the
5 importance of the subject matter, we will be addressing one
6 of the issues we talked about at great length, and members
7 should plan to be available all day on the 24th; that is
8 a Saturday.

9 I think we ought to tentatively agree on the
10 following dates. February 27th and 28th have been proposed.
11 This would be a meeting, a substitute for the first meeting
12 in March, the meeting in March that is provided in the bylaws.

13 MR. SMITH: I think the reason is when we adopted
14 the bylaws it was agreed the general public would know always
15 there are four times a year we might have special meetings.
16 That is the reason I wondered if we wanted to start off with
17 the public convenience as well as our reason.

18 CHAIRMAN CRANTON: The justification in this
19 instance is that we were going to complete a report and pro-
20 pose action on the backuo center in February. If we did so
21 at the February 27th or 28th meeting, it would leave a month
22 for phasing an activity that had to be relocated before the
23 grants ran out.

24 MR. SMITH: The reason given is understandable. I
25 would hope we do not make a precedent of it and try to stick

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1 with the other.

2 CHAIRMAN CRAMTON: I like the idea of sticking
3 with our quarterly date.

4 MR. BREGER: May I move that we adjourn?

5 (Whereupon, at 1:50 p.m., the hearing was
6 adjourned.)

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