

1 LEGAL SERVICES CORPORATION

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3 MEETING OF THE BOARD OF DIRECTORS

4 - - -

5 Rosslyn B Meeting Room
6 Ramada Inn, Rosslyn
7 1900 North Fort Myer Drive
8 Arlington, Virginia

9 - - -

10 December 9, 1977

11 - - -

12 The Board met, pursuant to Notice, at 9:00 a.m.,
13 Roger C. Cramton, Chairman, presiding.

14 - - -

15 BOARD MEMBERS:

16 MARSHALL J. BREGER

17 J. MELVILLE BROUGHTON, JR.

18 MARLOW W. COOK

19 RODOLFO MONTEJANO

20 REVIUS O. ORTIQUE, JR.

21 GLEE S. SMITH, JR.

22 GLENN C STOPHEL

23 SAMUEL D. THURMAN

24 PRESENT:

25 THOMAS EHRLICH, President

E. CLINTON BAMBERGER, JR., Executive Vice-President

STAFF MEMBERS:

Barbara Sard, Buck Hennigan, Charles Jones, Alice Daniel, Alan Houseman, Dick Carter, Ried Melton, Harriet Ellis, Tim Ayres, Hal Thomas, Henry Thompson, Charles Ritter, Pat Yogus, Andy Ezzell, Tim Butler, Kim Griffith, Leona Vogt, Lou Steadwell, Mary Bourdette, Steve Walters

ALSO PRESENT:

David Levy, De Miller, Bernie Veney, Randolph Kramer, Sara Beery, Esther Lardent, Phillip Scheide

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P R O C E E D I N G S

9:20 a.m.

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2
3 MR CRAMTON: The meeting of the Board of Directors
4 of the Legal Services Corporation will come to order. The
5 record will show that Mr Broughton, Mr Breger, Mr Smith, Mr
6 Cramton, Mr Erhlich, Mr Thurman, Mr Ortique, and Mr Stophel are
7 in attendance.

8 Mr Montejano is arriving in Washington via the "Red-
9 eye Special" from the west coast and should be here shortly.
10 There is still some uncertainty as to whether Mr Kutak will be
11 able to attend the meeting. He reported yesterday that he was
12 ill, and might not be able to make it.

13 There are some documents on the table before Board
14 members, and the President will --

15 MR EHRLICH: We passed out four documents for each
16 of the Board members. One is budget material, which Mr Stophel
17 will refer to when we get to the budget. The second is a let-
18 ter from Morris B. Abram concerning the situation involving
19 Jewish poor people in New York City, and my response to that
20 letter. He asked that it specifically be brought to the Board's
21 attention.

22 The third is a draft paper concerning the Corporation's
23 management needs, which we're now reviewing, and I hope Board
24 members will take back with them and then send us their com-
25 ments and suggestions on it. It is a basic document concerning

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1 the kind of information we'll need over future years.

2 And finally, the draft lease that we prepared for
3 our lease arrangements with the Woodward Building, and when we
4 get to that item on the agenda we'll refer to that in more de-
5 tail.

6 MR CRAMTON: The record will show that Mr Cook has
7 arrived.

8 The first item of business is the discussion and ap-
9 proval of the tentative agenda. Let me pass on to you several
10 requests that I've received from Board members and others about
11 the order of the agenda, and then the Board can decide whether
12 it wishes to approve the agenda in its present form or make
13 changes or alterations.

14 The first request is that Marshall Breger suggested
15 that items relating to conflicts between poverty groups within
16 the same community be discussed at some point today, rather
17 than tomorrow.

18 Mr Thurman has suggested that the item on investment
19 income that comes from the provision of legal services be taken
20 up while he is here, and he will not be able to be here tomor-
21 row.

22 Mr Loccriggio of the Hawaii program has sent a tele-
23 gram to me. -- he's not here today -- in which he asks that he
24 be allowed to address the Board this morning between 9:00 a.m.
25 and noon on the subject of the cost variation study in his

1 capacity as representative of project directors of Region Nine.

2 Now, there may be other matters of convenience or in-
3 convenience to Board members, and so on, in terms of the ar-
4 rangement of the agenda. You have the proposed agenda in front
5 of you and I would entertain a motion.

6 MR BROUGHTON: Mr Chairman, I have a suggestion for
7 an agenda item, and that is the subject of the role of the
8 Chairman, and that would involve and cover the matter of the
9 Chairman participating in decisions in the name of the Board
10 without the Board's -- prior Board participation, and also the
11 clarification as to the role of the Chairman and the President
12 so far as setting the agenda, and participation by Board mem-
13 bers so far as setting the agenda in advance of the meeting.

14 MR CRAMTON: Well I would be happy to add that item
15 to "5: Other Business," as a specific item, or if you wish
16 to --

17 MR ORTIQUE: That's two separate items, isn't it?

18 MR BROUGHTON: Well, I think it all would -- well,
19 you could call it two. I just want it on there, whether you
20 call it one or two, but "Other Business" would be perfectly
21 all right. I'm not suggesting it come at any particular point
22 in the meeting.

23 MR CRAMTON: There may be Board members that want
24 that discussed while they're here, and so on, and if they do --

25 MR BROUGHTON: I think the subject is overdue, so far

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1 as clarification is concerned, Mr Chairman.

2 MR CRAMTON: All right. The role of the Chairman,
3 under "Other Business," 5A.

4 Anything else?

5 MR SMITH: I move the adoption of the agenda.

6 MR CRAMTON: Is there a second?

7 MR STOPHEL: Second.

8 MR CRAMTON: Mr Smith has moved and Mr Stophel has
9 seconded the adoption of the tentative agenda. Is there dis-
10 cussion?

11 MR THURMAN: Do I understand that this matter with
12 reference to the use of investment funds will be put up early?

13 MR CRAMTON: Not unless you get unanimous consent for
14 that proposal.

15 MR THURMAN: Well, the problem --

16 MR CRAMTON: We'd reach it under your report of your
17 committee.

18 MR THURMAN: -- is this. We had it last night as a
19 part of the discussion. That was the discussion all last even-
20 ing.

21 MR CRAMTON: Well actually, on the agenda --

22 MR THURMAN: For my part --

23 MR CRAMTON: In the agenda it comes under the commit-
24 tee on appropriations and audit, which is early, it will be the
25 third item under the budget, the appropriations and audit. Do

1 you think that will be satisfactory?

2 MR THURMAN: I suppose we're going to get to it today.

3 MR CRAMTON: I would think so. I hope so.

4 MR STOPHEL: Our committee has no recommendation on
5 the proposed uses, although it's under our report. We'll re-
6 port on the status. It seems to me appropriate to open the
7 discussion at that time for it.

8 MR CRAMTON: At which time the committee on provision
9 of legal services could make a recommendation.

10 MR THURMAN: All right.

11 MR CRAMTON: Any further discussion relating to the
12 agenda? Mr Breger?

13 MR BREGER: Mr Chairman, I understand then that my
14 suggestion that we discuss the matter of conflict between pover-
15 ty -- here, the one of the President on the matter of conflict
16 between poverty groups, particularly regarding the New York
17 City situation, on today would have to be put by way of an
18 amendment, or --

19 MR CRAMTON: Or a request to the Board for unanimous
20 consent to have it at an earlier point.

21 MR BREGER: Well, I --

22 MR CRAMTON: Which you can do either way.

23 MR BREGER: -- request that.

24 MR CRAMTON: Mr Breger has requested unanimous con-
25 sent of the Board to move up to what point?

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1 MR BREGER: Any time on Friday, any time today.

2 MR STOPHEL: Why don't we start off with it? Let's
3 get it out of the way.

4 MR BREGER: I neither press that, nor oppose it.

5 MR CRAMTON: It's been suggested by Mr Stophel that
6 the -- that item be moved up to be the initial item. Is there
7 objection?

8 MR SMITH: Well, I'd want to know about how long it's
9 going to take, because we put it first the last time and it
10 took a disproportionate amount of time, and I think causes a
11 great deal of difficulty trying to get the rest of the agenda
12 in, then, because of that.

13 MR STOPHEL: I understand that this is a report from
14 the President. I would not expect the President to take all
15 morning with it.

16 MR SMITH: All right, but I just thought it would
17 lead in --

18 MR STOPHEL: Nor would the President expect to.

19 MR CRAMTON: Well, is there unanimous consent, then,
20 with that understanding?

21 (No response.)

22 MR CRAMTON: We'll put the items -- then 4(a) then
23 would come after Approval of Minutes at the head of the substan-
24 tive business.

25 With that taken as an amendment unanimously accepted

1 by the Board. We have the motion and second to adopt the agenda
2 da as amended.

3 Any further discussion?

4 (No response.)

5 MR CRAMTON: All those in favor of the adoption of
6 the tentative agenda, please say aye.

7 (Ayes.)

8 MR CRAMTON: Those opposed, no.

9 (No response.)

10 MR CRAMTON: The record will reflect that the Board
11 members unanimously supported the adoption of the tentative
12 agenda as amended.

13 We now come to the approval of the minutes of the
14 October 7-8 meeting. They have been circulated before you in
15 your book. Are there any corrections or amendments before we
16 entertain a motion for their adoption?

17 MR BROUGHTON: Mr Chairman, I have a question, and
18 that is: We have a transcript, of course. My questions re-
19 lates to whether or not statements that are submitted at Board
20 meetings by people appearing, which are asked to be made a part
21 of the record, become attached to the minutes?

22 The reason I ask that is that I had obtained through
23 the kindness of Ruth Felter, before the agenda book came out,
24 a draft of the minutes of the October meeting to which there
25 were several attachments, including the papers presented by Mr

1 Bellows and others. There were not attached to this a statement
2 by Mr Schick, who came down -- was not able to be here at that
3 time, but who did file a prepared statement, and it was asked
4 at that time that that be made a part of the record.

5 And Mr Langer was here, but Mr Schick could not come,
6 but did file a prepared statement. So far as -- I did not see
7 that paper attached to those that came with this attachment.
8 I'm just trying to get some clarification as to what actually
9 constitutes the minutes.

10 MR CRAMTON: Either the President or the secretary
11 should respond to that question.

12 MR EHRLICH: All materials submitted during the meet-
13 ing are in there, I think, unless the Board would wish other-
14 wise, attached to the minutes and considered part of the offi-
15 cial minutes of the Corporation.

16 We don't include them in the -- I mean of the tran-
17 script. We don't include them in the minutes. We prepare for
18 the Board, because they would have as many attachments to it
19 as you have of all your materials at the last meeting, but
20 there is the official minutes --

21 MR BROUGHTON: Well, the reason I ask, is some papers
22 were attached to the draft I got from headquarters, and some
23 were not.

24 MR CRAMTON: That was a draft of the transcript,
25 though, wasn't it?

1 MR EHRLICH: That should have been also.

2 MR BROUGHTON: Well, it was not in here, so I just
3 wanted to know if this could have a determination of what con-
4 stitutes the minutes of the --

5 MR EHRLICH: Well I'm glad you brought it to our
6 attention, and we normally would include all material presented
7 during the meeting as part -- as attachments, and I think it
8 should have been in this case.

9 MR CRAMTON: Attachments of the record, though, not
10 to the minutes.

11 MR EHRLICH: Yes, we would --

12 MR CRAMTON: We wouldn't encumber the minutes with
13 all of the documents necessarily --

14 MR EHRLICH: No, but in the official copy of the
15 minutes we include any documents --

16 MR CRAMTON: I see.

17 MR BROUGHTON: Well, I'm not suggesting that they
18 come with the agenda book. It would make it awfully thick,
19 but the draft I got ahead of time had some papers attached to
20 it, but did not have others, particularly that of Mr Schick
21 who was not here, but did send a prepared statement, and I just
22 want to make inquiry and have clarification of what constitutes
23 the official minutes of each meeting.

24 MR CRAMTON: Inadvertent omission.

25 MR EHRLICH: Yes, they should have been included with

1 that transcript.

2 MR CRAMTON: There is a typographical error on page
3 10, which I will pass along to the secretary, but anything --
4 any other suggestions or changes on the minutes?

5 (No response.)

6 MR CRAMTON: If not, I will entertain a motion for
7 their adoption.

8 MR BREGER: Just a --

9 MR CRAMTON: Mr Breger?

10 MR BREGER: -- point of inquiry, really, not having
11 the transcript in front of me. I would hope that the minutes
12 could be adopted subject to a review of the precis of the
13 transcripts of the statements of Mr Lewin and Ms LeBlanc, par-
14 ticularly the precis which states he suggested that such cases
15 should be handled on the basis of priorities.

16 Besides not being quite certain what that means, I'm
17 not certain that's what he said.

18 And secondly, Ms LeBlanc's point that there were sev-
19 eral separate corporations providing legal services in New York
20 City to which clients with conflicting interests can be referred,
21 and this has been done in many cases. Again, I'm not certain
22 that she in fact said that.

23 Without trying to jump into discussion, I'm not sure
24 that that is in fact the case, but I'm perfectly happy if some-
25 one would review the minutes as to the accuracy of those state-

1 ments and conform them, if in fact they are.

2 MR CRAMTON: Fine. Well, they are certainly consis-
3 tent with my recollection, both statements, of the discussion,
4 but I'm happy to have the secretary review them and make
5 changes. Would you want to hold action on the minutes until we
6 have further report at next meeting of those corrections, if
7 any?

8 MR BREGER: I'm happy to rely on the judgment of our
9 secretary.

10 MR CRAMTON: All right, the secretary has heard the
11 point, and we'll review the accuracy of those statements.

12 Is there a motion?

13 MR SMITH: I move the approval.

14 MR CRAMTON: Is there a second?

15 MR THURMAN: Second.

16 MR CRAMTON: Mr Smith has moved and Mr Thurman has
17 seconded the adoption of the minutes as circulated, subject to
18 the caveat expressed by Mr Breger, and the review by the secre-
19 tary of the statements of Mr Lewin and Ms LeBlanc.

20 All those in favor of the adoption of the minutes,
21 please say aye.

22 (Ayes.)

23 MR CRAMTON: Those opposed, no.

24 (No response.)

25 MR CRAMTON: The record will reflect that the Board

1- has supported the adoption of the circulated minutes.

2 We now come to the report of the President, item
3 4A, conflicts between poverty groups within the same community.

4 MR EHRLICH: Concerning the New York situation par-
5 ticularly, which is the one that the Board wanted treated first,
6 you have received a copy of the memorandum that I sent to you
7 dated November 28th, which encloses a report from our regional
8 director, Donald Grajales, concerning a meeting between Mr
9 Grajales, Rabbi Langer, Nancy LeBlanc, and Harold Brooks of the
10 CALS office.

11 That report reviews four major areas of concern:
12 Board representation, outreach activity, bilingual assistance,
13 and group representation. It seemed to me on the basis of that
14 report, and further discussion, that a good deal of progress
15 was made in that session, and indeed subsequently, as you
16 gathered, in fact the MFY Board has selected Mr Harold Jacob
17 to be a member of their board, which is one of the requests
18 that had been made.

19 Subsequent to that, I know that the MFY set up spe-
20 cifically a community education board, and Rabbi Langer has
21 expressed his pleasure at that, and that board is going to work
22 particularly in terms of medium materials to help insure ade-
23 quate translation of materials relating to legal services into
24 Yiddish.

25 There will also be another meeting which is scheduled

1 next Monday. It was going to be last week, but had to be post-
2 poned through no fault of any of the participants.

3 And as far as I can tell from both Nancy LeBlanc and
4 Rabbi Langer there's a good deal of momentum now toward dealing
5 with all of their problems -- not just the outreach and board
6 representation, but also the bilingual assistance and group
7 representation. That isn't to say that all concerns will sud-
8 denly disappear. I'm sure they won't. But I do think that we
9 all agree there is a fair amount of momentum and that that will
10 continue in the months ahead, and I've every reason to think
11 that they will be able to work out most of their concerns.

12 I'll be glad to respond to questions if you have them.

13 MR CRAMTON: Is there further discussion?

14 (No response.)

15 MR CRAMTON: Is it your intent to have only the New
16 York City situation discussed, or the general problem of con-
17 flicts between poverty groups? I'd assumed that it was the
18 entire item 4A that we were to take up at this point.

19 MR BREGER: Well, in order to solve our time con-
20 straints, Tom and I had a chat about this prior to the meeting
21 and I said I'd be happy to lay over the general discussion un-
22 til a time convenient to the Board.

23 MR CRAMTON: I'll be glad to go on with it.

24 MR BREGER: I was concerned that for -- I thought it
25 would be more seemly if we discussed this item today, rather

1 than tomorrow, but the rest of it we can put off till tomorrow,
2 at the pleasure of the Board members, because I know we have a
3 great deal to do today, and people may be leaving.

4 MR CRAMTON: It seems to me that we're into it, and
5 it would be good to discuss it now while we're there, and fin-
6 ish off item 4A entirely, so we don't cover the same ground to-
7 morrow.

8 MR BREGER: Right.

9 MR EHRLICH: If that's the pleasure of the Board, I
10 did meet last week with Mr Charles Jones and other representa-
11 tives of field services offices to discuss with regional direc-
12 tors -- and I've also done it with some individual project dir-
13 ectors as well -- the general issue of conflict among poverty
14 groups. Charles and I particularly pressed each of the region-
15 al directors quite hard to try to determine the kind of issues
16 they saw now and potentially in the future.

17 Of course, as they emphasized to us -- and all of
18 them emphasized this -- there are all sorts of kinds of con-
19 flicts within legal services. The most obvious is conflicts
20 for limited resources. Different individuals think different
21 priorities, for example, ought to be set, depending on their
22 particular views.

23 And the single unifying theme, it was that the role
24 of the program and its Board was to try to unify the poverty
25 community insofar as possible in working out conflicts, to set

1 priorities to the extent -- it wasn't possible to reach con-
2 sensus to set those priorities with a communitywide process,
3 but it involved all members of the poverty community, and that
4 in situations in which a conflict might occur, to make every
5 effort to insure -- to the extent it was possible -- that there
6 was representation for those not represented by a particular
7 program.

8 And they talked in general terms about three kinds of
9 conflicts: conflicts between individuals -- a husband and a
10 wife -- that's one we've talked about a good deal; the second
11 conflict, between an individual and a group -- one that was
12 suggested was conflict between a member of a particular native-
13 American tribe and that tribe, how that could be resolved; and
14 finally, the possibility of conflict between groups -- one that
15 was indicated was between native Eskimos and others in Alaska.

16 Most regional directors -- in fact, all but a couple
17 of them -- said that they did not, in fact -- and I pressed
18 them quite hard on this -- see the kind of conflicts that could
19 be called group to group or group against group conflict. All
20 of them agreed that the New York situation was a unique one,
21 and quite different from any of the others, and went on to in-
22 dicate that the conflict, to the extent it exists, for example,
23 between native Eskimos and others in Alaska, also was quite
24 different, not only from the New York situation, but from all
25 other kinds of situations.

1 And their strong view was there weren't many of those
2 situations. In fact, in terms of group to group, the only other
3 one that really emerged was this one in Alaska that was at least
4 incipient.

5 They said that there are such different types and
6 kinds of issues in potential conflicts in the broad sense that
7 one really must leave to the board of a program the basic judg-
8 ment about how to handle a particular problem, but they did
9 stress -- and I think it's important, because I know the Board
10 has emphasized it as well -- that it puts an extra premium on
11 the make-up of the local board to insure that that board really
12 is representative of the entire community, and not just a seg-
13 ment.

14 And that was one of the concerns, of course, that was
15 raised in the New York situation, whether in fact that board was
16 adequately representative.

17 And second, they stressed that there must be a high
18 premium on insuring that the board's decision-making procedures
19 with regard to priorities really do adequately reflect the
20 variety of views within the community. And they urge us in
21 terms of the staff, and the Board generally, to keep a watching
22 eye on both those issues -- board make-up and decision-making
23 regarding priorities -- as well, of course, as our continuing
24 emphasizing the importance of helping an eligible client who
25 can't be represented because of a conflict, where the program

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1 is already representing an individual, a husband or wife in a
2 divorce case, for example, to get referral service to the ex-
3 tent we possibly can.

4 But they came back again and again to say they didn't
5 see these kinds of conflicts -- certainly not analogous in any
6 way to the New York situation -- generally, and those that they
7 did see were sufficiently different types that their own view
8 was definitely they should be dealt with on a program-by-program
9 basis.

10 MR CRAMTON: You've heard the report of the President
11 on the conflicts between poverty groups within the same communi-
12 ty. Is there discussion? Questions?

13 MR ORTIQUE: I take it that this is an on-going pro-
14 cess, Mr President, and that it will continue and that from
15 time to time you'll be available to report back to us.

16 MR EHRLICH: Yes, and I do think the points that
17 were raised here about the Board's composition and priority
18 setting are the kinds that we ought to keep coming back to
19 again, and we will.

20 MR BREGER: Mr Chairman.

21 MR CRAMTON: Mr Breger?

22 MR BREGER: Well, I'm delighted, Mr Chairman, to
23 learn that the troubles that exist in some parts of the world
24 are not replicated throughout the country, and that this ques-
25 tion of conflicts between groups, at least, is a little more

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1 limited problem.

2 Of course we have continuing problem of conflict be-
3 tween individuals. Usually, though, as you know, the inequities
4 that might result from that sort of inability to represent a
5 husband, because the wife got to the legal services first, are
6 more limited.

7 It's easier to arrange for a referral in that sort of
8 case. It's a limited problem. -- divorce, as an example -- and
9 even if we're not able to arrange a referral a year later, six
10 months later, three months later, if the husband comes with a
11 consumer complaint, that complaint can usually be taken on,
12 taken care of without taking the risk of running afoul of the
13 code of professional responsibility.

14 My concern, as you know, has always been that in the
15 group conflict situation that is not always the case. Now for
16 one, the kinds of issues, complex impact litigation, class ac-
17 tions on both sides, are such that you usually can't simply get
18 on the phone and call up a friendly volunteer to spend an hour
19 or two and take care of this problem.

20 And secondly, because of the intimate relationship,
21 a "house counsel relationship," in quotes, that often exists
22 between a group and its legal services counsel, I might add a
23 relationship that's necessary for the first-class service that
24 we want our programs to give, it's often impossible for the
25 group that can't be served to come three months, six months, a

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1 year, two years later and say, "Help me out on another problem,"
2 because again, a program that did that would run the risk -- as
3 Morris Abrams eloquently points out -- of violating the legal
4 professions canon of professional responsibility prohibiting
5 conflicts of interest within the same legal services organiza-
6 tion.

7 And that leads me, I think, to a somewhat different
8 conclusion than I suppose the regional directors were led, and
9 I say this with a great deal of tentativeness, because I real-
10 ize that the regional directors have had much more experience
11 in the field and much more opportunity to think about the pro-
12 blem than I, but I'm not quite sure if we can say that if we
13 make sure that the board make-up is representatives of a commu-
14 nity, and if we develop rigorous comprehensive communitywide
15 procedures for setting priorities, that we can sit back and say
16 we've licked this problem in those areas where there is such
17 a problem.

18 Because for one, if by historical accident one group
19 has developed this house counsel relationship with Legal Ser-
20 vices, the other group -- in terms of group interests -- can't
21 come in, even at the point where you do get representative
22 boards, even at the point where you do develop rigorous and
23 comprehensive procedures for setting priorities.

24 And secondly, leaving the historical idiosyncrasies
25 aside, the decision to become house counsel for a group has so

1 many ramifications -- ramifications that may not even be reali
2 ized at the time -- so that two or three years down the pike
3 another group in the community may -- without it having been
4 realized -- find itself bereft of legal services.

5 And I guess my concern is that as much as we want and
6 desire and hope that problems of this sort can be solved within
7 a board, and be solved by setting up the local procedures, there
8 may come a time where in order to develop -- in order to spur
9 others to develop a creative approach or structure to solve
10 this sort of problem, that it may have to come through our
11 national staff, largely because a local program, once it has
12 committed itself, involved itself, become house counsel to one
13 group, will find itself in a situation where it's honor bound
14 not to look at the big picture, not to look at ways of insuring
15 representation for other groups, because of its proper duty to
16 zealously represent the group which it has taken on in this
17 house counsel relationship.

18 So I've been wondering if the Corporation has given
19 any thought to the sort of problem that I've described, and to
20 the possibility that insuring that a local board represents a
21 community, may not solve the sorts of ethical and policy problems
22 that I've been trying to describe to you over the last few
23 months.

24 MR ORTIQUE: Mr Chairman?

25 MR CRAMTON: Mr Ortique?

1 MR ORTIQUE: Marshall, I was of the impression that
2 because of the very nature of the problem that you describe,
3 that you recognize that it may be that there is no ultimate
4 solution to the problem, but that we must continue to work on
5 it and to do those things that will tend to assure that it
6 doesn't happen.

7 If you recall, at the last meeting I indicated to
8 you that it was very possible that we would have one poverty
9 group who wanted to disobey the then state law or federal law,
10 and the other poverty group that said no, I want my Constitu-
11 tional rights enforced.

12 And whether you have a house counsel situation or not,
13 I would suspect that you will ultimately have that conflict,
14 and I don't know how you resolve it if a group, if a board has
15 decided that it is going to attempt to enforce the rights of
16 a group that has been denied rights in the past.

17 On the other hand, the opposition is concerned that
18 you're about to take something away from them.

19 Those of us from the deep south, we have gone through
20 that. You know that this was a major area of conflict, because
21 as one group enjoys a right, another group will feel that
22 they're losing some right, and I think that the staff and the
23 project directors and other people have to work to try to give
24 the best representation we can, but there is no ultimate solu-
25 tion to -- I don't think we'll ever get to the point where we

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1 can say well there will be no conflict.

2 What I'm saying is that we do the best we can under
3 the circumstances, and I would like a continuing report indica-
4 ting what we are doing to alleviate the situation.

5 I --

6 MR BROUGHTON: Suppose -- let me this question, if I
7 may. Suppose you have a situation, like Mr Abrams refers to in
8 his letter, which I've tried to listen and read his letter too,
9 but on the third page, second paragraph, he refers to the fact
10 that "Jewish groups, such as the United Jewish Council of the
11 East Side and its 40-odd constituent agencies have not only
12 been denied the aid of legal services lawyers in pressing their
13 own cases, but ironically, they are often defendants in law-
14 suits brought by MFY on behalf of the Hispanic community."

15 Now, I don't know the nature of the particular litiga-
16 tion, but -- I suppose it's not a question of rights, but I
17 think one of the speakers at the last meeting said something
18 about some housing project situation.

19 Now, so then we have people who are down the line
20 staffed by grants from this Corporation getting involved on one
21 side of a case, that being the adversary side which has an in-
22 terest on the part of people who are at the same level of pover-
23 ty.

24 And as Mr Abrams points out, these people are lawyer-
25 less.

1 Now, what do you suggest on that point?

2 MR ORTIQUE: Let me respond. Let's take the --

3 MR BROUGHTON: It seems to me that's inherent to what
4 we're talking about.

5 MR ORTIQUE: That's right. Let's take that specific
6 incident, that housing project in an area of dilapidated hous-
7 ing, and under New York law or Oregon law or whatever state
8 law it will usually provide that if you tear down these shacks
9 and you rebuild a housing project, the people who were there
10 in the beginning would have the right to move back in, and to
11 have first choice.

12 And then if you develop a project, a housing project
13 or some public housing, and you do it with just one bedroom
14 apartments, you make it impossible for the types of families to
15 come into the -- come back into that area because they've got
16 six, seven, eight children, mother, father, and so forth.

17 If you do that, then by the very nature of your con-
18 struction you have denied them their right under the law that
19 guarantees that they will have an opportunity to move in.

20 Now, the -- whoever was denied that right goes to the
21 Legal Services office and says, "Look, state law provides that
22 I have a right to have access, but they have constructed this
23 in a fashion that I can't take advantage of the state law." The
24 other poor group -- maybe it's an elderly group, with just the
25 husband and wife, or single-family situation, single-person

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1 family. They can take advantage of it, so they suddenly are
2 moved in.

3 MR BREGER: We've been --

4 MR ORTIQUE: You have same conflict. Both poverty
5 groups deserve representation.

6 MR BROUGHTON: Well then it's a question of who gets
7 to the lawyer first.

8 MR COOK: Mr Chairman?

9 MR CRAMTON: Mr Cook?

10 MR BREGER: Could I just point out one thing more?

11 MR ORTIQUE: I was saying that would be difficult
12 to resolve, you see?

13 MR CRAMTON: Mr Cook has the floor, and then Mr Bre-
14 ger.

15 MR COOK: Mr Chairman, it seems to me that our fail-
16 ure to resolve any of the questions that are really proposed
17 presents the very reason that this Board is here and the very
18 reason that this Board seeks money from Congress. I think
19 you're getting way ahead of the real problem, Revis.

20 The real problem is, as a national legal service
21 Board, do we afford both of these groups legal representation
22 to see which one is going to win and which one is going to
23 lose, but at least they're both represented, and it seems to
24 me that what we're really talking about is the failure of this
25 Board to understand and realize that it ought to make a commit-

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1 ment to a contract study to determine whether there is in fact
2 a group of 200 and some odd thousand people in a major community
3 that are without representation, and if this can occur elsewhere
4 in the country.

5 It seems to me this would be a model study to be made
6 on a contract basis, to determine how we handle these things
7 now and in the future, and as going -- Mr Chairman, as you real-
8 ize -- you were there all day yesterday and I was there almost
9 all day yesterday -- we talked about many sums of money in our
10 present budget, reallocation -- I can see looking here on a
11 reallocation of \$100,000.00 for a training feasibility study.

12 Well what a training feasibility study's a value to
13 us if we're going to be faced with a situation of an organiza-
14 tion created by Congress, funded by Congress, that's not going
15 to fulfill it's first responsibility, and that's to try to the
16 best of its ability to see to it that people are adequately
17 represented.

18 Now, my only point in trying to cut across all of
19 this, and do as Glee Smith said to begin with, not spend too
20 much time, I would like to recommend to my own chairman of the
21 audit committee that we get some kind of a format for a contract
22 project to analyze the New York situation, to take our Presi-
23 dent off the hook of listening to his own people and his own
24 grant agencies in New York trying to defend their positions,
25 and analyze the position on a contract basis so that we can

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1 determine whether in fact this is the case, and if it is, what
2 do we do about it.

3 MR CRAMTON: Are you proposing research on this gener-
4 al policy matter?

5 MR COOK: Absolutely. Absolutely.

6 MR CRAMTON: Well, then I have a problem with it,
7 because you're talking about research to be done by a contract
8 that's clearly prohibited both in the Green amendment and even
9 more specifically prohibited under the present -- under the
10 statute as amended.

11 MR COOK: Well I'd like to --

12 MR CRAMTON: I think it would be a good idea, but
13 we've got to do it in-house. If it's general policy research
14 it cannot be done by a general contract.

15 MR COOK: Well I'm not sure it's general policy re-
16 search.

17 MR CRAMTON: You told me it was when I asked you the
18 question.

19 MR COOK: The question of what? Rephrase the ques-
20 tion.

21 MR CRAMTON: That it was research by contract into a
22 matter of general policy.

23 MR COOK: Well I just -- it's not a -- it's a matter
24 of whether we are in fact fulfilling the requirements under the
25 statute, and are you really saying that the fox has to look

1 after his own henhouse? Because if that's really what you're
2 saying, we'll never resolve this problem.

3 MR EHRLICH: If I might comment, I do think as a
4 general proposition we are really authorized to do -- choose to
5 do research through contracts on the delivery of legal services
6 and how to do it better.

7 I must say I do think in this particular case, from
8 all I've gathered from Rabbi Langer and from Nancy LeBlanc and
9 from the regional director, there is a good deal of momentum
10 going.

11 The one problem I must say I would worry a lot about,
12 with another effort moving into that, is all that would stop,
13 and there were -- as you read the report -- a good deal of
14 steps and movements. I frankly would be concerned that another
15 intervention at this time, Senator, might in fact waylay that,
16 and indeed, both sides have indicated -- indirectly to me, not
17 directly to me -- that there is some problem.

18 MR COOK: Well I must say under Morris Abrams' letter
19 of December the 7th, I just don't garner that there's as much
20 cooperation and as much great conversation going on seeking a
21 solution to this problem that you speak of, Tom. He is either
22 speaking totally and completely on his own, or he's not in
23 contact with anybody who is involved in the problem, and I
24 thought really that he kind of made himself a pro bono commit-
25 ment to see to it that this was his role, and if that's the

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1 case, certainly I don't garner from his letter that there's all
2 this great quest to resolve the problem, as easily as maybe the
3 staff of Legal Services may feel that there is.

4 MR EHRLICH: The letter only came in yesterday after-
5 noon, so I didn't get a chance to talk to him, but I did talk
6 to our regional direction yesterday.

7 MR BREGER: Well, if I can just add a gloss to that,
8 I think -- well --

9 MR CRAMTON: The record will show that Mr Montejano
10 has arrived.

11 MR BREGER: I think there's a lot that can be done,
12 that has to be done, and that is being done between the parties
13 to resolve this problem. I think one of the tremendous things
14 that the Corporation has done in the last few months is broken
15 a log jam of misconception and misunderstanding on both sides.

16 But I also think -- this is a judgment call. I may
17 be wrong about this -- but I also think that there's a certain
18 point at which all the goodwill in the world can't solve cer-
19 tain inherent and structural difficulties, and those inherent
20 and structural difficulties are the very concerns that Revius
21 adverted to, that is to say at present, for whatever reasons,
22 we are constrained under our present structure of delivering
23 legal services from representing both sides in a dispute.

24 At present we are constrained from serving as house
25 counsel for one group, and providing similar house counsel ser-

1 vices to another group which has conflicting concerns.

2 Now, I guess I would dissent from Revius to the extent
3 that I think that our job is to give all sides in a dispute
4 legal services, and to leave it up to the courts, which have
5 done a tremendous job so far, leave it in -- in vindicating and
6 expanding Constitutional rights, but give that job to the
7 courts and have our concern be that all poor people have access
8 to the courts, and I'm sure you agree there.

9 I don't think that the parties themselves, even if
10 they met daily with the best of good will, can achieve that
11 goal, because the code of professional responsibility prevents
12 them from doing so, and of course in our statute we're commit-
13 ted under our present structure of providing funds to the code
14 and where -- apply the code to a certain structure of the pro-
15 vision of funds, which means that at a certain point we have to
16 begin thinking about this problem at the national level, because
17 at a certain point we have to be saying we need creative ways
18 of developing structures that allow us to serve all poor peo-
19 ple.

20 And I have not known of the Senator's suggestion for
21 research before, but I must say that would be one of the ways
22 in which we could begin. We need option papers that tell us
23 how do we get around this problem, because at a certain point
24 the parties themselves can't, and I would hope that we would --
25 rather than wait until they come to us, throwing up their hands,

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1 we would begin beforehand to develop these option papers, and
2 develop a research strategy.

3 MR EHRLICH: No problem and no argument with that,
4 and no argument indeed if the Board chooses, with further re-
5 search, Senator Cook, either outside of the Corporation or with-
6 in the Corporation.

7 In general terms, all I was suggesting was in terms
8 of specific focus on the New York situation I think there may
9 be an issue, but in general terms you may be sure we have more.
10 In fact field services will press to develop material on this
11 issue and try to keep -- as you well put it -- ahead of the
12 matter.

13 MR CRAMTON: Mr Smith, Mr Ortique, and Mr Broughton.

14 MR SMITH: Well Mr Chairman, it seems to me that the
15 statement that Revius made earlier about a request that the
16 study and the work that's going into this, as reported by the
17 President, be an on-going study, and that it hasn't reached
18 a solution yet, and maybe an ultimate solution is not possible,
19 as Revius also suggested, but that the principal thing is that
20 we continue to work at it and try to prevent re-occurrence or
21 subsequent occurrences of similar problems, and very likely can
22 do so.

23 Marshall indicated a moment ago that he thought the
24 log jam had been broken as far as the staff moving into a thor-
25 ough study and analysis of the situation, and I agree with that.

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1 and it seems to me that the Grajales report, as amplified and
2 presented to us by our President, indicates that we are on the
3 way toward getting something done about this problem and finding
4 out what can be done, in fact, for certain.

5 I would feel that we should let the matter continue
6 for awhile before we take any drastic action. It seems to me
7 that the work that's being done by the staff is at a point
8 where it's just an on-going work with the principal foundation
9 being laid, and the work being completed will take a few more
10 weeks, maybe until our next meeting, and I think it would be
11 premature to staff that work or sidetrack it by authorizing a
12 study or doing something on the outside as a contractual arrange-
13 ment, because I feel certain that -- as our President indicated
14 -- any such move on the part of the Board would very likely
15 deter further work by the staff in the project that they're
16 already under way with.

17 And for that reason I would hate to see us take any
18 action to provide for any outside contractual study. I think
19 that I'm very well satisfied with the work that's under way now,
20 and I think we should give it time to develop.

21 I don't think it's had time to develop completely,
22 and I think it would be premature for us to cut it off or side-
23 track it or intercept it at this point, so I would like to see
24 us move on to another matter of discussion.

25 I think at this point the warnings and considerations

1 have all been raised. The concerns of the Board members have
2 been raised and the report of the President satisfies me at
3 this point that we should move on and see what happens by the
4 time of our next meeting.

5 MR CRAMTON: Mr Ortique;

6 MR ORTIQUE: Well, I sort of echo the sentiments ex-
7 pressed by Glee. It would seem to me that we ought to at least
8 wait until we get to the point where the staff reports to us
9 that we're not making progress, and -- because if parties are
10 really working together in seriously seeking a solution, their
11 solution will be much more acceptable than if an outside contrac-
12 tor comes along with "a solution" that favors one side of the
13 other and then we will really have a rift.

14 I would urge that we continue to work, that we con-
15 tinue to get a report, and that we make certain that we are
16 getting a report from both sides on the question.

17 And if we continue in that direction, my suggestion
18 would be that we do not at this time go into a study of the
19 problem independently of the staff.

20 MR CRAMTON: Mr Broughton.

21 MR BROUGHTON: I yield to Mr Breger, temporarily.

22 MR CRAMTON: Mr Breger.

23 MR BREGER: I thank you, Mr Chairman. I just have
24 to make two responses to your comments, Revisus, but in general
25 I think it was quite valuable, but I still somehow think that

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1 this problem is being misperceived.

2 It's not a question of two sides. It's not a ques-
3 tion of the Jewish poor against the Puerto Rican poor. It's
4 not a question of the Eskimo poor as against the Alaskan poor.
5 It's not a question of the Zuni poor as against the Hopi poor.
6 It's a question -- if there are two sides -- of the poor as a
7 whole against the Legal Services Corporation for failing to
8 develop the structures by which all poor people can be served.

9 And I think that as long as one continues to talk
10 about it as two sides within the poverty community, a solution
11 favoring one side as opposed to another, we'll never get to
12 reach a problem, because the only solution that can favor one
13 side as against another is a decision by this Corporation or
14 by its recipients that one group in the poverty community will
15 remain lawyerless.

16 Now that will certainly favor the adverse group,
17 which will have legal services lawyers, but I very much doubt
18 that anyone here would want that sort of solution. So if you
19 want to talk about solutions favoring sides, that's the only
20 solution that can favor any one side.

21 The kind of solution I think that we as a Corporation
22 want to work to is that all sides receive attorneys. And again,
23 I just have to reiterate the basic point, and we can have all
24 the fluff that we want, to be frank, in reports of people work-
25 ing together and talking together, and it's perfectly true that

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1 we've broken a log jam of misperceptions and misunderstandings,
2 but what can be done at the local level is very limited, and
3 we can fool ourselves or we can consciously use the fact that
4 people are talking as an excuse for further delay -- over two
5 and a half years -- but the plain fact is that if we're going
6 to get a solution to the problems of serving all of the poor,
7 where there is group conflict, it cannot come from the local
8 legal services office, which is honor-bound by the code of
9 professional responsibility, and properly so honor-bound, to
10 represent one of a group in a dispute.

11 We have to develop structures by which we can funnel
12 money to the side that is lawyerless, that has been lawyerless,
13 and as we continue to talk ~~and~~ in my view delay~~ing~~ they will
14 remain lawyerless.

15 I have to point out that the first complaint on this
16 matter came to our attention, came to this Chairman of this
17 Board's attention, more than two and a half years ago -- excuse
18 me, almost two and a half years ago. Since that time -- two
19 and a half years -- there have been many lawsuits brought, one
20 side, another side, many instances in which one side or another
21 side has desired access to legal services and have not been
22 able to receive them because of the present structure of our
23 program and the code of professional responsibility constraints,
24 and for two and a half years all we've managed to do is to
25 bring the parties together to begin talking in a context in

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1 which I think any independent observer would agree that there's
2 very little that they can talk about, because the problems have
3 to come from this Corporation, and I can only say that the
4 continued delay in meeting this problem has to be viewed by
5 the persons involved as a suggestion of a lack of desire to
6 meet the problems head on.

7 It seems to me that there are things that we can do
8 as a Corporation -- and Senator Cook has mentioned one of them,
9 get the facts, find out what's actually going on. There are
10 things that we can do as a Corporation. I've mentioned them in
11 numerous letters, in numerous memoranda to the Chairman, to the
12 Board. Create a working group to develop policy options, pro-
13 duce written staff reports on saying what are the various ways
14 of getting around the constraints of the code of professional
15 responsibility.

16 Failure to do these things, or failure to take up
17 Senator Cook's suggestion, can only be construed as an excuse
18 for delay for more than two and a half years -- it could carry
19 us out to three years, carry us out to four years. And it
20 seems to me that at a certain point we ought to be concerned
21 about the length of time which we've sat and done very little --
22 in fact, some might say we've done nothing -- about this pro-
23 blem, and try to deal with it, and not try to deal with it as
24 one side gaining an advantage over the other side, but that is
25 the exact misperception of the problem.

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1 Rather, try to deal with it with a concern about all
2 sides getting legal services.

3 You mentioned, Revius, one example of a dispute with-
4 in a poverty community, a dispute over the allocation of apart-
5 ments within a housing project. Now when I was law clerk to
6 Judge Frankel I worked on one aspect of that case, and I can
7 tell you it's extraordinarily complex.

8 The Second Circuit found it to be extraordinarily
9 complex. Three Southern District judges found it to be extra-
10 ordinarily complex. The ultimate solution was an agreement by
11 the parties -- a consent agreement -- which reflected the com-
12 plexity of the situation, the claim by both sides that they had
13 rights involved, a claim by both sides that they were being --
14 not receiving their Constitutional or their statutory rights.

15 I would only add that it is certainly true that there
16 were many instances in the past in the south where legal ser-
17 vices groups represented indigent clients against the state,
18 where legal services groups represented indigent clients against
19 powerful corporations and wealthy individuals in trying to get
20 the poor a vindication of their Constitutional rights.

21 The complex problem we have in New York is first of
22 all where you have legal services groups representing one group
23 of the poor claiming a vindication of rights against groups
24 which do not have the money to hire high-powered lawyers, and
25 who also feel that they have rights involved.

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1 And my view is that it's not a question of taking from
2 one side and giving to another, but it's a question of develop-
3 ing a structure by which all sides can receive adequate legal
4 services, and again -- not to take the Board's time any further
5 -- I reiterate, we've had this problem for two and a half years,
6 September 6th, 1975 the first letter on this subject written to
7 the Chairman of the Corporation, and since that time we haven't
8 done very much.

9 I think there are things we can do. I think Senator
10 Cook suggested some of them. I have tried to suggest others,
11 and I think it's high time we started to do those sorts of
12 things, and I thank you, and yield back to Mr Broughton.

13 MR CRAMTON: I'm not sure that your time isn't exhaus-
14 ted, Mr Broughton.

15 MR BROUGHTON: Well, I'll be brief. One thing, it
16 seems to me that rather than two and a half years this thing
17 has been going on for longer than that. Some of the older
18 hands -- maybe Mr Bamberger, who was director of the old pro-
19 gram -- you were very familiar with it -- can comment on that,
20 but I notice Mr Abrams says that the director of the MFY pro-
21 gram admitted that her program had never represented a Jewish
22 community organization in its more than ten years of existence,
23 which of course precedes the birth of this Corporation.

24 Now, I don't see any point in our saying "Well, we've
25 gotten them together, I think that's a good sign," and letting

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1 it go at that.

2 Now, this Board is not planning -- although I dis-
3 agree with him. I hope we make some change to that today or
4 tomorrow -- is not planning to meet again for ninety days, and
5 meanwhile you've got a festering situation that continues to
6 fester, although goodwill is being injected into it by the fact
7 that some of the adversaries are sitting around the table now.

8 I think Marshall has gone right to the nub of it, so
9 far as a decision by this Board as to a structural change, if
10 such can be done.

11 Now, what I would like to suggest is that rather than
12 we have a management consultant study -- and I would think that
13 somewhere in the dust-laden stacks of management consultant
14 reports relating to legal services there may have already been
15 such a study of this problem, back years ago -- but I'd like to
16 suggest that the Chairman of the Board appoint a fact-finding
17 committee of the Board -- I'm not suggesting this be going
18 around the staff, but a fact-finding committee of the Board --
19 to immediately -- a special committee, if you will -- to imme-
20 diately examine what structural changes, if any, we can make
21 that will resolve this problem.

22 If we see, well, their parties are talking, we come
23 up to March, there'd be nothing but more irritation by March.

24 The problem has been here. It's not going away. I
25 think we understand what it is, and I think we ought to get on

1 with it and determine if we can do anything, and if we can,
2 let's do it and not study it to death.

3 MR CRAMTON: Well Mr Breger's remarks refer in some
4 detail to the specific situation in handling or not handling
5 by the Chairman of the Board. I will not get into that except
6 to observe that the Chairman doesn't administer the staff and
7 the Chairman doesn't run the Board, the Chairman doesn't --

8 MR BROUGHTON: Well I've had correspondence. I'm sure
9 all members of the Board have.

10 MR CRAMTON: The Chairman -- these matters have been
11 brought to the attention of the Board many times. It's been
12 on Board agendas, there's been opportunity to discuss the --
13 both the specific situation and the general issue.

14 My own view is that it is not helpful for -- except
15 in extremely -- in situations in which essentially there's been
16 a staff failure -- for the Board to get into specific situations
17 of grievances, because otherwise we undermine our staff and we
18 prevent the effective requirements of responsibility --

19 MR BROUGHTON: Mr Chairman, I don't agree with that.
20 I don't think we undermine our staff.

21 MR CRAMTON: Could I complete my statement without
22 being interrupted, please?

23 On the more general problem, I do not accept the char-
24 acterization -- I don't think -- there may be other Board mem-
25 bers who don't accept it -- as essentially being a question of

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1 this problem has being -- as having a greater priority than all
2 other resource and policy problems that are facing the Board.

3 The question has always been: we've had scarce re-
4 sources. I mean is the issue one that we take the four million
5 dollars of investment income and set up a structure by which
6 certain groups that may have some problems getting representa-
7 tion are always represented, when there are just millions of
8 poor people we know are not getting adequate representation. Is
9 this the problem that has principal priority, the use of scarce
10 resources?

11 MR COOK: I hope the four million dollars doesn't stay
12 in the record, Mr Chairman, because nobody said such a study
13 would cost four million dollars. That's ridiculous.

14 MR CRAMTON: No, a structure that would provide re-
15 presentation on a regular basis for every group that has ever
16 sued would, I think, cost a very substantial amount every year,
17 but I don't want to get into the question of structure. It
18 seemed to me that Mr Breger suggested that somehow there was a
19 deficiency either on the part of the staff or the Board in
20 failing to act on this matter.

21 I would like to suggest that as far as I know no
22 motion or proposal has been made for the Board to act, as we
23 have not ever had a motion or a resolution. You suggested we
24 had delayed on Mr Cook's suggestion, which was just received
25 this morning, has not yet been put in the form of a motion.

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1 MR BROUGHTON: Mr Chairman, I'll make a motion.

2 MR CRAMTON: I would suggest that if you think some
3 action should be taken by the Board, you propose it and move
4 it, and if there's a second we'll discuss it and consider it,
5 and then vote on it.

6 MR BROUGHTON: I'll make a motion, Mr Chairman, that
7 this matter at the moment be temporarily displaced on the agen-
8 da, with the understanding we'll return to it before our meet-
9 ing adjourns tomorrow afternoon.

10 MR BREGER: I'll second that.

11 MR CRAMTON: You've heard a motion that this matter
12 be moved I guess to the end of the agenda. Now there is going
13 to be a problem in that Mr Thurman is not going to be here at
14 the end of the agenda, if it goes over until tomorrow.

15 MR BROUGHTON: I didn't say the end of the agenda, I
16 said it be displaced until later on in the agenda, and if you
17 want to take it up late this afternoon before Mr Thurman leaves,
18 I'm not opposed to that at all.

19 MR CRAMTON: I guess my feeling is that there's some
20 utility, while we're into it and have been discussing it, to
21 dispose of it now. Why go through it all again?

22 MR BROUGHTON: I thought -- I made the motion and it's
23 been seconded. I call the question.

24 MR CRAMTON: Is there further discussion on the mo-
25 tion?

1 MR SMITH: Mr Chairman, I'd offer a substitute motion,
2 in line with my previous comments, and that would be that the
3 discussion of this matter be terminated for this meeting and
4 we wait for a further report from the staff at the time of the
5 next meeting.

6 I think there's a serious misstatement of implication
7 in Marshall's comments a little bit ago that unless we did
8 something rather dramatic and intercede, where I think it would
9 be premature, and improper for the Board to intercede with an
10 on-going staff commitment and an on-going staff project, that
11 unless we did that it would indicate that we weren't paying
12 proper attention to it.

13 I think when we have discussed it, when Board members
14 have brought to the staff their particular concerns, and when
15 we have reports like we have from our President and from Mr
16 Grajales and others, indicating that progress is being made and
17 that the study of the problem and the possible solution is an
18 on-going study, and that the ultimate answer hasn't yet been
19 received, that within the framework of that ultimate answer
20 might be a restructuring of our programs, as Marshall was sug-
21 gesting, there may be other things that would be very worthy of
22 our consideration and adoption.

23 But I don't think it's a proper implication to say
24 that unless we intercede and do something dramatic now we
25 haven't given attention to it. I think we have. I think our

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1 staff is working on it. I think that the people involved in
2 the particular situation and the multitude of other people who
3 have potential problems somewhat similar can realize and should
4 realize from the discussion and the report of the -- progress
5 report of the staff that we're doing something.

6 MR CRAMTON: If I may -- it seems to me that this
7 essentially is a motion to table until the next meeting.

8 MR SMITH: Well, that's right.

9 MR CRAMTON: And is there a second?

10 MR ORTIQUE: I second it.

11 MR CRAMTON: So I understand it --

12 MR SMITH: Well I'd like to speak on the motion, be-
13 cause he just spoke at length on it, Mr Chairman.

14 MR CRAMTON: Yes, and he should not have and I should
15 have interrupted him earlier because my view is that these are
16 not discussable motions, that we vote.

17 MR SMITH: Well I'd like to discuss the motion.
18 There's not a question on it yet.

19 MR CRAMTON: Mr Smith?

20 MR SMITH: I would like to discuss it.

21 MR ORTIQUE: Did you make a motion?

22 MR SMITH: To table, right.

23 MR ORTIQUE: To table, until the next meeting.

24 MR SMITH: Yes.

25 MR ORTIQUE: I second it.

1 MR BROUGHTON: That's a substitute motion to my mo-
2 tion?

3 MR CRAMTON: As I think in proper parlance, it's a
4 nondiscussable motion, but because Mr Smith had commented --

5 MR COOK: I'd like to discuss the motion, Mr Chair-
6 man. I think according to Roberts' Rules you can discuss the
7 motion.

8 MR CRAMTON: All right, fine. Go ahead.

9 MR COOK: First of all, I'm rather amazed that all
10 this great in-depth study that the staff is doing. Our Presi-
11 dent gave us a verbal report. We didn't get a written report
12 from the President. We have a one, two, three, four, five,
13 and a half page discussion of one meeting in New York dated
14 October the 6th, 1977, and you're totally satisfied with that.

15 You're totally satisfied with one meeting in New
16 York and a verbal presentation to this Board by the President
17 that this staff is really working on this matter and this
18 staff is really going at it. And I'm amazed.

19 I really have to tell every member of this Board I'm
20 absolutely amazed that they would take this position, because
21 it just seems to me that all you're doing is slamming the door
22 on a situation that you just flat out do not want to face.

23 Now, it just seems to me that there are means that it
24 can be faced. For instance, I think you ought to be satisfied
25 and Charlies, I don't really mean to fuss, but there's a report

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1 in here on bilingual legal assistance survey, because we asked
2 about people that spoke various languages in the United States.

3 It says in here that all of these people down here
4 next to the bottom, that we have lawyers that speak that lan-
5 guage. We were advised at our last meeting there was one lawyer
6 that spoke Yiddish.

7 MR JONES: That's not true. There's a whole office -

8 MR COOK: How many?

9 MR JONES: -- of lawyers in New York with at least
10 seven who speak Yiddish.

11 MR COOK: All right, but you should put in here --

12 MR BREGER: That's factually incorrect.

13 MR COOK: You should put in here the number of people.
14 We would take this report and say okay, we've got all these
15 people, Samoan, Korean, Lakoda, Creole, Arabic, Hungarian,
16 there may be one in the whole country, but yet apparently we
17 would be satisfied with this kind of report.

18 MR JONES: There is a breakdown for each program in
19 the country which is not sent to the Board members, but which
20 we know would be made available to you, Senator.

21 MR COOK: Well, I have your report here in the book,
22 in the Minutes. Now the point I'm trying to make is do we just
23 not want to face this situation? Do we just really not want to
24 try to resolve it, and are we going to let it come back again
25 and again and again?

1 Because if that's the case -- you see, Mr President,
2 if you really want to know --

3 MR CRAMTON: We haven't passed down the motion yet.

4 MR COOK: -- the point, I would not have made the
5 motion, because there's no point to make a motion to try to
6 resolve a problem and have it defeated and have it in the
7 minutes of the meeting that you tried to resolve a problem and
8 that nobody on this Board really wants to resolve it. I think
9 that would really be kind of embarrassing for everybody who
10 voted against it, but that doesn't seem to be the case.

11 Now Charles, you know there's a problem in New York,
12 and you know that something ought to be done to resolve that
13 problem.

14 MR JONES: Senator Cook, it seems to me that if I may
15 make this comment --

16 MR COOK: Yes sir.

17 MR JONES: -- you're talking about two separate is-
18 sues. One issue is if there is a conflict generally between
19 poverty groups does the Corporation presently have a mechanism
20 to insure that each side has representation. Then we are talk-
21 ing about the situation that actually existed in New York, if
22 you will.

23 The reality in New York is that the Puerto Rican
24 community never sued the Jewish community. It sued the City
25 of New York's Housing Authority. When the Jewish community

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1 sought representation, representation was provided by another
2 legal services program in New York.

3 It seems to me if your motion goes to whether or not
4 the Corporation ought to be studying what ought to be done in
5 a situation where there are competing groups with conflicting
6 interests, I don't have any problem, except to point out to you
7 that we are presently looking at that in terms of our Delivery
8 Systems Study.

9 One of the models that we have funded deals with the
10 precise kind of situation not in terms of groups, but in terms
11 of conflicts with individuals, and what we have attempted to do
12 with that is to provide funding to lawyers from the private bar
13 to have -- through a Judicare program to provide representation
14 for the other side.

15 So it's not true that we are not looking at this
16 more generalized question. It is also not true, Senator, that
17 we have not looked at the situation as it presently exists in
18 New York, but I suggest that these two issues are being con-
19 fused.

20 MR COOK: That's correct.

21 MR CRAMTON: There is a pending motion, a motion to
22 table, and it seems to me some of the discussions relating to
23 the more general problem and not the issue that the Board ought
24 to face now, as to whether they want to discuss it further at
25 this point, at this meeting, or whether they want to finish it

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1 off now, or whatnot, and that motion is pending.

2 Is there discussion relating to the question of our
3 agenda for today and the important business that we have and
4 whether we want to devote more time to this, and so on.

5 MR BROUGHTON: Well, I have a question --

6 MR STOPHEL: I understand that if the motion to table
7 passes that this discussion will be terminated. Is that --

8 MR CRAMTON: Until the next meeting of the Board in
9 March.

10 MR STOPHEL: I just wanted to be sure I understood
11 the motion.

12 MR CRAMTON: The motion was to table this matter un-
13 til the March meeting.

14 MR BROUGHTON: You mean the substitute motion by Mr
15 Smith is that the whole thing be deferred until next time. My
16 motion --

17 MR CRAMTON: Until the next meeting of the Board.

18 MR BROUGHTON: -- was the main motion. You vote on
19 that first. The main motion is that the matter be temporarily
20 displaced on this agenda, to come back to this Board after furth-
21 er individual reflection, perhaps, for action, or decision. Or
22 maybe we do what Mr Smith wants to.

23 MR CRAMTON: Do you contemplate that the Board would
24 discuss the issue at lunch?

25 MR BROUGHTON: I imagine -- I'm suggesting that we

1 temporarily displace this, but put it back on the agenda later
2 in this meeting.

3 MR SMITH: Well I have some problems with --

4 MR STOPHEL: Well, the committee thought it might be
5 brought onto the agenda by a majority vote, because it's al-
6 ready voted adoption of the agenda, and my view is at any time
7 a Board members wants to put something out of place on the
8 agenda he can make a motion, and then by majority vote it can
9 come back on the agenda at that time.

10 MR BROUGHTON: Well, that's my motion.

11 MR STOPHEL: And as I understood your motion, it was
12 not that it come back on at a specific time, but that it be
13 brought back on by a vote.

14 MR BROUGHTON: During this meeting.

15 MR STOPHEL: Yes, whenever you're ready.

16 MR BROUGHTON: Yes, during the December meeting.

17 MR STOPHEL: I just wanted to be sure I was under-
18 standing what we were voting on.

19 MR CRAMTON: Well I personally am going to be reluc-
20 tant to have the Board discuss this question at lunch and then
21 return to it in public meeting, because I -- without a vote for
22 an executive session. The law is very clear, and the Sunshine
23 Act is even clearer. Any discussion by the Board -- we can
24 have informal discussions about Board business --

25 MR BROUGHTON: I'm not suggesting an executive ses-

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1 sion. I'm not in favor of that.

2 MR CRAMTON: I think we have to have an executive
3 session if we're going to discuss it informally, and then pre-
4 determine a public discussion of it --

5 MR BROUGHTON: Mr Chairman, in many respects --

6 MR STOPHEL: I think those who really care are going
7 to make a motion, Mr Chairman, I don't care if --

8 MR BROUGHTON: Let me --

9 MR CRAMTON: If that's the matter that they'd like to
10 privately confer for a motion, fine.

11 MR BROUGHTON: Let me restate my motion, and I'll be
12 very --

13 MR CRAMTON: That will be offered if Mr Smith's mo-
14 tion is defeated. Is that correct?

15 MR COOK: Well, Mr Smith can't make a motion unless
16 he made a motion, so all he has to do is restate the motion
17 that he made.

18 MR SMITH: I've already made a motion.

19 MR CRAMTON: He's made a motion.

20 MR COOK: I understand. His is a substitute motion,
21 that the whole matter be deferred until the March meeting.

22 MR CRAMTON: That's right.

23 MR COOK: Is that correct?

24 MR CRAMTON: That is the motion that is pending. Are
25 you prepared to vote on Mr Smith's motion to table this issue

1 until the March meeting.

2 MR BREGER: I have a question in regard to that, be-
3 cause as I understand it Mr Smith's motion is predicated on the
4 view that there has been staff work going on in regard to writ-
5 ten reports on this question. The Grajales report, which I
6 think is a very good document, as I understand it -- I don't
7 have it here --

8 MR STOPHEL: Mr Chairman, I'd like to raise a point
9 of order and let's get a vote on this motion to table. I don't
10 think it's debatable, and I think you're debating it, and let's
11 vote on it.

12 MR BREGER: I would just like to know what the staff
13 exactly is doing?

14 MR CRAMTON: Let's vote on the motion to table. Are
15 you prepared to vote?

16 (No response.)

17 MR CRAMTON: All those in favor of Mr Smith's motion
18 to table, please say aye.

19 (Ayes.)

20 MR CRAMTON: All those opposed, no.

21 (Noes.)

22 MR CRAMTON: We will have a division. All those in
23 favor of the motion to table, please raise your hands.

24 Mr Ortique, Mr Smith, and Mr Thurman.

25 All those opposed, raise your hand.

1 Mr. Montejano, Mr. Stophel, Mr. Broughton, Mr. Breger,
2 Mr. Smith, and Mr. Cramton.

3 Do you now have a substitute motion, Mr. Broughton?

4 MR. BROUGHTON: A substitute? Well I made the main
5 motion.

6 MR. CRAMTON: I know, but you wanted to amend it or
7 change it.

8 Mr. Broughton?

9 MR. BROUGHTON: My -- the main motion, which I under-
10 stand we're now voting on -- the substitute, if I understand,
11 has been defeated -- the main motion is that this matter be
12 temporarily displaced on this agenda, the December meeting,
13 to come back for Board discussion at some point during the
14 December meeting.

15 My purpose in making it is that we've had a bit of
16 discussion, we've had some suggestions, and I would like for
17 each individual member to reflect on what we've heard today,
18 the staff report, and then see if we can take some action on
19 it.

20 That's the motion.

21 MR. CRAMTON: Is there a second?

22 MR. COOK: I seconded that motion.

23 MR. CRAMTON: All right. You've heard the motion, are
24 you prepared to vote?

25 (No response.)

1 MR CRAMTON: All those in favor, please say aye.

2 (Ayes.)

3 MR CRAMTON: Those opposed, no.

4 (No response.)

5 MR CRAMTON: The record will reflect that Mr Brough-
6 ton's motion has been unanimously carried, and we will now move
7 on to the reports of the committee on appropriations and audit.

8 REPORT BY COMMITTEE ON APPROPRIATIONS AND AUDIT

9 MR STOPHEL: Members of the Board, the Audit and Ap-
10 propriations Committee, with all members present, plus the
11 Chairman of the Board, met yesterday from 10:30 until approxi-
12 mately 5:00 p.m. to discuss the matters that we have.

13 As you'll recall, at the last meeting the Board indi-
14 cated that it wanted to devote a substantial amount of time to
15 a discussion of the 1979 budget request. It will be impossible
16 for the Committee or the staff to lead you through every part
17 of that budget request, but we have asked that all department
18 heads, plus Mr Hennigan -- who is basically responsible for the
19 budget document -- be present today to answer any questions you
20 may have, having reviewed in advance of this meeting the budget
21 request.

22 Prior to getting into the 1979 budget we have several
23 matters that have been placed before you and that we would like
24 to report on as the Audit and Appropriations Committee.

25 The first such item is the report of Price, Waterhouse,

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1 and Company, independent auditors for the Legal Services Cor-
2 poration, which is before you. It is a clean opinion audit,
3 stating that the financial statement enclosed with this report
4 fairly presents the financial position as of September 30, 1977.

5 I would like to direct your attention briefly to one
6 of the accompanying schedules to the report, and you will pro-
7 bably want to read this perhaps more at your leisure, but it is
8 the statement of functional expenses which is page 3 -- they're
9 unnumbered pages, but it actually page 3 of the statistical
10 report, the first being the balance sheet, the second being the
11 statement of support revenue and expenses, the third being the
12 statement of functional expenses.

13 On this report is shown the breakdown by cost cate-
14 gory of the program activities and the supporting activities of
15 the Corporation staff, and I wanted to point that out because
16 it makes it easier to understand. That is grants and contracts
17 appears as a single line item at the bottom of that schedule
18 and is of course the major expenditure of the Corporation.

19 However, our staff is responsible for spending the
20 approximately \$7.1 million that is in the middle of the page,
21 and you will see that of that 7.1 million that the major three
22 items are salaries and benefits, consulting, and travel, and it
23 was pointed out that the travel item includes our conference
24 expenses, which is our training, and we spent almost a million
25 six in that category during the year.

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1 The auditors spent a great deal of time with our
2 committee and discussed several matters --

3 MR ORTIQUE: Would you mind me just commenting there,
4 please, Mr Stophel. I would suggest that in the future that
5 the staff put a star by their travel business and down at the
6 bottom of the page always make the statement that that does in-
7 clude conferences and that sort of thing, because when you look
8 at that travel item it scares you.

9 MR STOPHEL: I think we will probably just have them
10 write that in next year. It was brought up at our meeting and
11 discussd, and it will -- and you will see in the 1979 request
12 that these items again are substantial and we need to keep a
13 close eye on them and we've talked to the staff about that.

14 But you're exactly right, Mr Ortique.

15 The auditors discussed the report and other matters
16 at length with the Audit and Appropriations Committee, some of
17 which will be taken up at a later time: the lengthy discussion
18 concerning the discussion at our last Board meeting of the poli-
19 cy of rotating auditors, and this will be something that the
20 Audit and Appropriations Committee will come back to you with
21 a recommendation on that at a later time.

22 The documents that have been placed before you -- I'd
23 like for you to lay aside the top one, which is investment
24 status of October 13, 1977, because that is more of a current
25 document, and I would like to go through with you very briefly

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1 the other documents, the long--- the sheets that are printed
2 lengthwise on the paper, and just explain to you something about
3 what is here so that you can review these later to understand
4 what you're seeing.

5 As you know, each year we adopt a budget request, or
6 an appropriation request, actually. That budget is divided
7 into categories. Then at a later point we adopt an operating
8 budget.

9 This is the final revision of the operating budget
10 for the fiscal year we've just ended, because obviously in cer-
11 tain categories there were overexpenditures, in other categor-
12 ies there were underexpenditures, and we need to reallocate,
13 and so your Audit and Appropriations Committee has done just
14 that.

15 It does not require Board action, in our view, be-
16 cause the Board adopts the budget by major category, and there
17 were no shifts between major categories, and therefore the Audit
18 and Appropriations Committee took the responsibility for ap-
19 proving reallocations within categories. And I think that's
20 one of the things that we want to do before we leave the Board,
21 is to work with the staff in adopting guidelines for the acti-
22 vities of the Audit and Appropriations Committee, because I
23 think we need to do a better job of knowing what's going on
24 within categories and being able to report these to the Board,
25 so the first sheet is a final revision of the consolidated

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1 operating budget for 1977, and to give you the funds carried
2 forward to 1978, which is the budget we're just about to begin.

3 And on page 2, at the bottom, in the last column to
4 the right, you will see the carryover funds totaling \$8,700,000.

5 Now -- oh, well half of that, 4.4 million, is the
6 Reginald Heber Smith program. The contract was not signed
7 prior to September 30, which is the end of the fiscal year,
8 and therefore those funds technically carried over, although
9 they are committed.

10 Other funds are in similar situations. That is they
11 are committed -- at least morally, but not contractually.

12 The second sheet is a budget review work sheet for
13 the fiscal year just ending, and basically this adds to what
14 you just saw the balance as a percentage, which is column four,
15 and shows you the percentages of the balances and the categories
16 that were not spent during the year, therefore giving the car-
17 ryover.

18 The major item that had an overexpenditure about which
19 there was a good bit of discussion is in the clearinghouse oper-
20 ations with an overexpenditure of the line item. It was pointed
21 out to us by Mr Carter, under whose jurisdiction that falls,
22 that this resulted from basically taking over an operation
23 about which we had to just give a pure estimate of the expen-
24 ditures, and some other factors that caused this overexpendi-
25 ture of our estimates at the time.

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1 The third document is headed "Status of Fiscal 1977
2 Balances and Proposed allocations." And here too you will see
3 that of the balance of funds of 8,780,425, which is the left-
4 hand column on page 3, of those funds, those that are firmly
5 committed are in the column headed "Firmly Committed," 8,048,000,
6 and those available for reprogramming, 731,000 dollars.

7 The staff recommendations on that was accepted by the
8 Audit and Appropriations Committee, and these carryover funds
9 will be put in to the 1978 budget in the allocation manner that
10 has been presented by the staff.

11 The fourth item is one-time funds. You may recall
12 that the last discussion very much on this was at our Window
13 Rock meeting when we discussed one-time funds and the uses to
14 which they were being put, and this is a report item that if
15 you have a question about them after reviewing it, you can feel
16 free to call our President or any member of the staff that
17 worked in this area, and they'll be glad to discuss that with
18 you.

19 Then we come to the proposed revisions to the consoli-
20 dated operating budget for fiscal 1978. Now this budget began
21 October 1, as you recognize, and we're discussing now the opera-
22 ting budget that the staff will be working with, and I might
23 comment that there is a quarterly review by the heads of the
24 departments with the comptroller's staff and with Mr Hennigan
25 and with our President and the executive vice-president, con-

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1 cerning categories, and put into effect this year will be basic-
2 ally a catch-all reserve so that if it appears that there are
3 excess funds in a category they will be reallocated as reserve
4 and that reserve will be available to those categories with
5 expenditures where there is an overexpenditure, where a depart-
6 ment needs extra funds that were not programmed at the begin-
7 ning.

8 If there are any shifts within -- among categories,
9 major categories, that will come back to the Board. The Audit
10 and Appropriations Committee has asked the staff to give us a
11 level at which it would be recommended that the committee would
12 take action. That is, the staff will have certain flexibility
13 for reprogramming, but any amount over a certain amount, and
14 we have not decided that level, will need to come to the com-
15 mittee at one of these quarterly reviews, which will coincide
16 generally with our Board meetings.

17 I don't believe that there's a motion necessary on --
18 I would point out on page 3 of this consolidated operating bud-
19 get, fiscal '78, in column four, proposed allocations of invest-
20 ment income, that the million dollars that is placed there anti-
21 cipates anticipated action by this Board on a matter which has
22 not yet come to the Board, and that is the use of investment
23 income.

24 You'll see there under program development and experi-
25 mentaion a million dollars, and the footnote says proposals

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1 pending before the Board, so that this document will actually
2 be revised and will be changed, but that is something that the
3 Board will consider in just a few minutes when we get to the
4 investment income.

5 MR CRAMTON: Well, wasn't the million dollars approved
6 as part of the loan?

7 MR STOPHEL: This is not that million dollars.

8 MR CRAMTON: I see.

9 MR STOPHEL: Actually, in 1978 budget we're spending
10 268,000 of that million. In '79, 468,000, and in 1980, some
11 other amount, but the entire million does not occur in this '78
12 budget.

13 However, this gives you an analysis of the '78 operat-
14 ing budget, which is what we're going to be operating on, with
15 basic divisions under the field programs, and also on this sheet
16 you can keep up with this carryover that I told you about, the
17 8.7 million dollars that was carried over from '77 into '78 are
18 shown in column two.

19 Column one, of course is our appropriation of 205
20 million. You add the carryover, then you add the allocation --
21 the already approved allocation of investment income, which is
22 258,000, shown in column three, then proposed allocations,
23 which this Board will vote on today. And then the estimate of
24 other income, which is basically income from the clearinghouse,
25 which last year had \$35,000.00 worth of receipts, and other --

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1 items of other income.

2 And then the proposed operating budget, which totals
3 \$215 million, if a million dollars investment income is voted
4 for that fiscal year.

5 Any questions on that?

6 MR CRAMTON: Thank you for the report on the audit,
7 and also the status of fiscal year 1977 budget. We now come
8 to the third item, under your committee's report, status and
9 proposed use of investment income.

10 MR STOPHEL: The stop sheet that I asked you to lay
11 aside a moment ago is the investment status as of October 31,
12 1977, which reflects that cash temporarily invested at the
13 October 31 date is \$13.9 million. This of course includes the
14 carryover funds and other moneys that were available for invest-
15 ment at that time.

16 And at this point, before we take up the uses of the
17 investment income, and it is estimated, and you will see the
18 bottom line is that we would earn \$5,013,000.00 on the invest-
19 ment income, of investment income, of which we have allocated
20 a million, 90,000 dollars, leaving us a little less than four
21 million dollars to allocate.

22 That -- it is the recommendation of the Audit and
23 Appropriations Committee that we authorize the staff to extend
24 the contract with the investment advisors, which now expires
25 approximately January 27, for up to April 1, which will give

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1 them and us an opportunity by our March meeting to decide what
2 we're going to do with any continued investment.

3 For example, if we have a million dollars allocated
4 of investment income and we're only spending 268 of it, this --
5 in this fiscal year, should not the balance be reinvested? And
6 with these smaller amounts it is likely that the contract will
7 change substantially, but we would like to have the staff ex-
8 tend that contract to April 1 at a reasonable fee and that they
9 come back to us at the March meeting of the Audit and Appropria-
10 tions Committee first, and then to this Board, with a recommen-
11 dation on the continuation of the investment program relating
12 to current funds available for investment.

13 And Mr Chairman, I make that in the form of a motion,
14 that the staff be authorized to enter into such an investment
15 contract, extending not beyond April 1.

16 MR MONTEJANO: Second.

17 MR CRAMTON: It is so moved, and seconded by Mr
18 Montejano. Is there a discussion?

19 (No response.)

20 MR CRAMTON: Are you ready for the question?

21 (No response.)

22 MR CRAMTON: All those in favor of the motion to ex-
23 tend the investment contract until -- or through? -- April 1?
24 Until?

25 MR STOPHEL: Until April 1.

1 MR CRAMTON: Up to April 1. Please say aye.

2 (Ayes.)

3 MR CRAMTON: Those opposed, no.

4 MR BROUGHTON: No.

5 MR CRAMTON: Mr Broughton appears to have voted no.

6 Let's have a division.

7 All those in favor, please raise your hand.

8 Mr Stophel, Mr Montejano, Mr Thurman, Mr Cramton, Mr
9 Ortique, Mr Cook, and Mr Breger.

10 All those opposed?

11 Mr Broughton.

12 The record will show that Mr Smith was temporarily
13 out of the room and did not vote.

14 The motion is carried on that division.

15 MR STOPHEL: Mr Chairman, I think that Mr Thurman
16 asked that at this point we bring up the question of the use of
17 the approximately four million dollars in investment income,
18 which the Board has not allocated, and therefore, before we go
19 into the '79 budget I would yield to him as chairman of the --
20 whatever chairman he is.

21 (Laughter.)

22 MR CRAMTON: I think that is appropriate. The Commit-
23 tee on Provision of Legal Services spent a good part of last
24 evening considering a proposed staff recommendations for the
25 use of the investment income, and we should go to that as the

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1 next item of business.

2 Before we do so, I would like to have us all take a
3 five-minute stretch, if I have your unanimous consent for that,
4 and -- but we will reconvene no later than five minutes from
5 now.

6 (Whereupon, a short recess was taken.)

7 MR CRAMTON: The Reporter tells me that apparently
8 some one of our clumsy Board members has immobilized the system
9 temporarily, but we're now back in action.

10 All right, the unfair characterization will be struck.
11 Some clumsy person has --

12 MR STOPHEL: Thank you very much.

13 MR CRAMTON: We're now ready to consider the item
14 under Committee on Appropriations and Audit, but which is in
15 fact the recommendation report of the Committee on Provision
16 of Legal Services relating to the proposed use of investment
17 income.

18 Mr Thurman.

19 STATUS AND PROPOSED USE OF INVESTMENT INCOME

20 MR THURMAN: I suppose it referred to the Committee
21 of the Provisions of Legal Services, because that was the use
22 going to be made -- the suggested use of the money.

23 You'll recall, we go back to the October meeting,
24 when there was some discussion as to how this approximately
25 \$5 million should be used. It was one-time money. It came

1 from the investment of the fiscal year 1977 appropriation, and
2 it seemed like a great opportunity to do something a little
3 different that couldn't normally or wouldn't normally be done
4 by the grants to the various programs around the country.

5 And at that time we made the decision to use one mil-
6 lion dollars of it for the forgiveness of loans on the part of
7 staff personnel, and I take it that's in the process of being
8 implemented.

9 But that leaves approximately \$4 million, plus inter-
10 est thereon, for use in possibly some imaginative way, and we
11 asked the staff to prepare for us a list of possible ways in
12 which this money might be used, and you have that before you,
13 the Board members, under the tab, "Investment Income."

14 And this is the latest revision of the proposal. I
15 think you can say that recognition is given here that it
16 one-time money. Some of these would be to be used in one year,
17 others over a period of two or three years, but there's no con-
18 templation there will be any money coming along to replace this.

19 The staff emphasizes here that these are to be used
20 to improve the quality of legal services and to be used in ways
21 that the present programs might be using the money they current-
22 ly have, but in all likelihood couldn't be doing it, and I'll
23 want to refer to that again in just a moment, because of the
24 demands on the program for the use of the current funds.

25 So I'm not going to go over these. We have nine of

1 them set out here. I assume that each one of us has read these.

2 We held a meeting last night for a couple of hours
3 and discussed solely this particular question. Clint Bamberger
4 presented this. This was prepared -- Tom and Clint with the
5 able assistance of Barbara Sard, and I think they have some
6 imaginative ideas here. They cover quite a range, from some
7 that you might call the very practical kinds of things that you
8 try some computers, down to some of the more service-oriented
9 suggestions here.

10 We had the opportunity to -- well, there were six
11 directors there last evening, and we heard from any one of those
12 that wanted to comment, and we had comments from some of those
13 in the audience as well.

14 Two of us -- Marshall Breger and I -- agreed that we
15 should present to the Board the recommendations of the staff,
16 which you'll find on page 3. On page 3 they recognize that --
17 it says now that we could come up with a listing, prioritizing
18 of these nine suggestions, but they didn't, they said that final--
19 ly I think the suggestions said that we invite solicitation for
20 grants.-- These go out to the country -- in all of the categories,
21 rather than ranking the categories and eliminating some or re-
22 stricting the funding resources for some.

23 And that is the proposal, as Marshall and I voted,
24 and I'll let Mr Ortique, the third member of the committee,
25 tell you in a moment or two just what his proposal was.

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1 I have here the resolution that comes as a recommen-
2 dation of two out of the three members of the committee -- if
3 you will pass these out.

4 I should mention at this point that our chairman, Mr.
5 Cramton, Dean Cramton, gave us some cause to reflect about
6 another possibility. His suggestion was that maybe we ought to
7 go in the direction of research of what is going on now that is
8 imaginative. We could do that cheaper and conceivably some of
9 the things suggested here are being done out there in the field,
10 and that we certainly ought to take a look at that.

11 My feeling on that was that these proposals that come
12 back -- and before they're going to be passed upon, they're
13 going to be gone over by the staff in conjunction with the
14 committee -- the Board's Committee on Provision of Legal Ser-
15 vices.

16 And I might mention that there will probably be a
17 change in the personnel of that committee within the rather near
18 future, but that the Board will maintain a look-see possibility
19 by having the staff work in conjunction with the Board, and that
20 if some proposals came back and they were proposals to do what
21 in effect is being done by other programs around the country,
22 why I'm certain that there will be no approval given to doing
23 exactly that same thing.

24 The thought is that if some of these proposals come
25 in and they are imaginative, it would seem that they would im-

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1 prove quality, this is an opportunity to do it, and these are
2 going to be ones that can be replicated.

3 Mr Ortique had a different idea that he suggested
4 last evening, and Revius, do you want to present that?

5 MR CRAMTON: I -- why don't we have the motion and
6 the motion seconded to get out on the floor, and then we can
7 have general discussion of it when you've completed your re-
8 port.

9 MR THURMAN: Let me read the motion.

10 Be it resolved that four million dollars, plus inter-
11 est accrued thereon, of the income from the investment of the
12 fiscal year 1977 appropriation is allocated for the purpose of
13 making grants for the purpose set forth in the memorandum to
14 the Board of Directors November 26th, to wit, -- and then he
15 sets forth these nine that you will find, these are the headings
16 on pages 1, and 2. Do you want me to read those, Mr Chairman?

17 MR CRAMTON: No.

18 MR THURMAN: In continuing consultation with the Com-
19 mittee on the Provision of Legal Services.

20 MR CRAMTON: Would you consider one change. IAS's
21 the report of Mr Stophel has indicated, the unallocated portion
22 is a little under four million, and would it be better to just
23 say "the unallocated portion of the investment income, plus
24 interest accrued thereon," to make it clear that it's the re-
25 maining unallocated portion that you're now allocating, and not

precisely four million

1 precisely four million dollars.

2 MR THURMAN: That's what we have in mind.

3 MR CRAMTON: Is that acceptable?

4 MR THURMAN: Yes.

5 MR CRAMTON: Is there a second?

6 MR MONTEJANO: Second.

7 MR CRAMTON: A motion has been made by Mr Thurman and
8 seconded by Mr Montejano, and is now available for discussion.

9 MR ORTIQUE: Mr Chairman, my concern last evening,
10 that this list is not exhaustive in the sense that every propo-
11 sal must fit exactly into the description that we received yes-
12 terday evening. Now with that understanding I have no problem
13 so long as we have a continuing commitment to the evaluations
14 and to ultimately the -- my goal of standards.

15 And I would have no objections to the resolution.

16 I want to make it clear that if we get no proposals
17 for any one of these categories, that we might go out looking
18 for proposals to fit these categories, but rather that these
19 are suggestive of the types of categories that we're looking
20 for in experimentations.

21 Is that not correct, Mr Bamberger?

22 MR BAMBERG: Yes.

23 MR CRAMTON: Perhaps the two of you might come up so
24 that if the Board has questions about the program you could
25 respond to them.

1 MR BREGER: I'm sorry, Mr Chairman, I had thought that
2 we would be making at least solicitations or I guess what's
3 called in the trade "Requests for Proposals" in these areas.
4 We wouldn't simply be sitting back and waiting for people who
5 know about the fact that we have four million dollars to give
6 out to write us.

7 MR CRAMTON: Mr Bamberger?

8 MR BAMBERGER: We will invite proposals on all of
9 these categories.

10 MR STOPHEL: I would like to discuss briefly the
11 entire concept of allocating funds at this time for these nine
12 categories, even if they are open, and broader categories are
13 discussed.

14 In each budget we leave discretionary funds, which
15 are basically discretionary with the staff -- about a million
16 and a half in the proposed budget, as I recall -- that are to
17 be used in various and sundry ways, sometimes one-time funds,
18 sometimes in special needs cases, and so forth.

19 I think that there's something to be said for this
20 Board establishing these funds, which are one-time in the pur-
21 est sense of the word, in a sort of Board discretionary fund,
22 to which we could invite use -- proposed usage by staff in spe-
23 cific programs or by anyone who would be notified of the avail-
24 ability of these funds, but that this Board -- as it did with
25 the million and 90,000 dollars -- lay out the parameters and

1 make the decisions.

2 This is a unique opportunity, and I hesitate to see
3 us just kind of throw this out there in demonstration grant
4 projects that I just don't believe we're going to get any long-
5 range benefit from.

6 We've got 38 demonstration programs under way. That
7 is requiring an awful lot of study, and it's going to require a
8 great deal more study in determining what we learned from them,
9 and I hesitate for us to create more demonstration programs
10 during this period of time, in particular, and I just hesitate
11 to see us rush in here and allocate four million dollars which
12 never comes back to us -- that is, we never look at it again --
13 because these grants will be made just as in the routine course
14 grants are made in our organization.

15 And while I hesitate to -- I would not review details
16 of things. I think you could get a solicitation -- have a soli-
17 citation of ideas with some criteria being set forth that: num-
18 ber one, it affects the quality of the delivery of legal ser-
19 vices. We don't want it to go out just to expand services to
20 another group of people. That's what our budget is designed
21 to do; that it be something that is more or less unique and
22 will attempt to establish a principle, such as our million and
23 ninety, which is supposed to help us to retain attorneys, which
24 we have identified as a problem; and that it would be something
25 that we would be able to look at, keep up specifically with,

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1 and of course have to have detailed reviews from time to time.
2 We would receive summaries of these applications and pass on
3 the concepts as they are proposed.

4 I agree that the nine ideas are good, and I made a
5 statement last night that if I had to vote for putting it in I
6 would select one of these and pour most of the money into it,
7 because I see as a problem our getting the private bar involved.
8 I think that that is the major untapped resource available to
9 us, and that if there were innovative programs to do that, I
10 think it would serve us in the long range, long after any of us
11 are here.

12 But for that reason I really do not favor doing it
13 at this time, allocating this at this time and just sending out
14 another solicitation for more demonstration programs that then
15 don't come back to us. They're just granted in the usual course
16 of the operation.

17 MR CRAMTON: Any further discussion?

18 MR THURMAN: Do you --

19 MR CRAMTON: Mr Thurman?

20 MR THURMAN: I was just wondering if the President
21 has a comment on that.

22 MR EHRLICH: We did plan to plan to have continuing
23 consultation with the Committee on Provision of Legal Services
24 concerning these both in the design of the solicitations, in
25 reviewing the proposals that come back, and in the future stra-

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1 tegy in terms of review.

2 It did seem to us that while we would have continuing
3 reports to the Board as the year progressed about the progress
4 of this effort, it was important to have a group of the Board -
5 or at least it would be helpful to have a group of the Board
6 with particular responsibility.

7 We thought in terms of the discussion at the last
8 Board meeting that the Committee on Provision of Legal Services
9 was the one that seemed the most appropriate for that, and that
10 was the aim.

11 We'll say, as I indicated last night, the major focus
12 over the past two years has been a terrible one, has been pro-
13 vision of what we call minimum access, some chance to use the
14 legal system on the part of all poor people. We're not quite
15 there yet, but we're getting a good deal further than we were
16 at the outset.

17 There is a danger, and it's one that program director
18 after program director has echoed, that in the rush to do that
19 we smooth the edges, we not give a chance for innovative ideas
20 in the world of legal services to move. It's one that I've
21 been guilty of, and others I'm sure on the Corporation staff
22 have. This seems to me the major chance, and these cluster of
23 proposals were designed around that thesis.

24 There really are important things we can learn, not
25 by the kind of detailed research study that we have for the

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1 delivery system -- you're quite right about that. But that we
2 will keep close tabs on these projects and their results and
3 will have a chance to find out a good deal of what is the poten-
4 tial of legal services, which I think is basically an enormous-
5 ly exciting one.

6 That's the theme of this, and that's what -- I think
7 that there is a good chance of doing, and I must say that it is
8 a chance that has been echoed over and over again over the past
9 year as these proposals were developed and suggested by vari-
10 ous client groups and program groups in the field.

11 MR CRAMTON: Mr President, last night you suggested
12 that if this proposal were accepted that a portion of the funds
13 -- perhaps as much as ten percent -- would be reserved for use
14 for research on legal services, and not the full approximately
15 four million in demonstration projects. Is that correct?

16 MR EHRLICH: That certainly is true. It would be our
17 expectation -- and it is in the material, it may not be ade-
18 quately stated -- it's the previous proposal, and it's again in
19 the materials, the next to last page of this document, would
20 propose to reserve ten percent of the moneys appropriated --
21 in other words, approximately \$400,000.00 -- for just the kind
22 of research effort that you were discussing at some detail last
23 night.

24 MR CRAMTON: One more question, and then -- what per-
25 iod of time is contemplated for the expenditure of these funds?

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1 I gather it would take time to solicit proposals. Some of the
2 items seem to talk about grants that might extend over two or
3 three years. What time period do you contemplate that: one,
4 proposals might be solicited; two, commitments made; and three,
5 funds expended?

6 MR BAMBERGER: Well, we contemplate an expenditure
7 over -- through fiscal 1980, through three fiscal years.

8 MR CRAMTON: Three fiscal years. And could you give
9 any rough guess as to the apportionment over those three fiscal
10 years of the -- what you would guess now would be likely to
11 result?

12 MR BAMBERGER: Well, we made a projection for the first
13 year that sounded --

14 MR CRAMTON: It just all depends on the quality of
15 the proposals received, and --

16 MR STOPHEL: If we had a request in for a million
17 dollars for this year and a million dollars for next year, if
18 we're going to allocate the entire four, you would probably
19 put it one, one, and two, or one, one and a half --

20 MR BAMBERGER: If you're going to have any proposals
21 the first year, I think it depends entirely --

22 MR STOPHEL: Well I don't think we're going to rush
23 into it. We're going to put the money out there, regardless.
24 I think the money will be spent in two years, and we'll be com-
25 mitted for the balance of it, then.

1 MR EHRlich: What we can do -- and it may be helpful
2 -- is underscore -- the plan is to design a solicitation, to
3 come back with the committee and review that, and my own frank
4 feeling is, by the time that happens, we send them out, get
5 them back, it won't be the end of fiscal year '78, but it well
6 may be closer to it than the beginning, and while I think it
7 will be a three-year effort, I think it may well move into 1981,
8 but we will review with the committee -- and the committee ob-
9 viously may want to bring to the whole Board each step of that,
10 so you'll see exactly what is happening and what is going to
11 happen before it happens.

12 MR CRAMTON: Mr Thurman?

13 MR THURMAN: Well Glenn, are you suggesting that you
14 would want these brought back to the entire Board? It seems
15 to me that gets a little impractical, Having it come back to a
16 committee of the Board seems to me about as good as we can do.

17 MR STOPHEL: I don't -- as I said, I'm not particu-
18 larly concerned about that, at what point it's reviewed, al-
19 though a summary of proposals is not at all that difficult to
20 do, to have in review, because we're more -- I'm not particular-
21 ly concerned with the details and how many people are involved
22 in the project and how much line items are, but I am concerned
23 about the concept, because I see this as an opportunity for
24 this Corporation to do something unique, unusual, in a form
25 that can be replicated, hopefully in other areas, and can help

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1 us move forward.

2 I just get the feeling that with this kind of proposal
3 that we're just moving it into another area of here are some
4 funds that can be spent on some demonstration programs, and
5 during the past several years -- not just on this Board, but in
6 my experience with the previous method of operation of demonstra-
7 tion grants, -were ways to spend money, in many instances, and
8 I just don't like that feeling.

9 MR THURMAN: Well they don't have to be, and it seems
10 to me that they have as an objective the very things you talk
11 about, that these be rather unique, something not being done
12 at the present time, something that can be replicated if they
13 appear to be good, and it seems to me we've got the controls
14 here for seeing that the Board keeps its hand in this.

15 Let me ask you, do you have a substitute, something
16 quite different for the use of this money, other than what
17 we're suggesting?

18 MR STOPHEL: No. No, as a matter of fact, I think
19 we're a little premature, and that's my suggestion, is that we
20 ought not do it at this time, and let's say --

21 MR THURMAN: Let's husband this further and --

22 MR STOPHEL: Husband it. I think that with our staff,
23 which is an excellent staff, and with the people who review
24 what this board does in some detail, that there will be ideas
25 for -- in broad concept for the use of these moneys, and there-

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1 fore I just feel that we ought to slow down as far as allocat-
2 ing this additional four million dollars that we have. -- we
3 have used up one-fifth of our investment income -- in a program
4 that I feel will be helpful to us, in the long run.

5 I just think the other four million we ought to move
6 a little slower on.

7 MR CRAMTON: Well how slowly?

8 MR STOPHEL: You can earn \$200,000.00 on this money
9 in this fiscal year. That's a pretty good nest egg.

10 MR THURMAN: Nothing further this coming year, then.

11 MR STOPHEL: I don't know. It may come up next Board
12 meeting that there's something that the staff has identified
13 as being real good. I doubt that if you ask the staff -- well,
14 in their memorandum they say all of these are good, and we're
15 not really locked into any one, and we'll invite solicitations,
16 if we can say to your committee, for example, we don't have to
17 accept any of the solicitations.

18 I wouldn't object to saying to the community at large
19 we have four million dollars which the Board is reserving for
20 broad projects that are toward quality, not increasing minimal
21 access, but are towards improving quality, we would invite
22 solicitations -- we would invite proposals for the uses of
23 those funds, but then that we move slowly in making those
24 grants.

25 MR THURMAN: Well they -- as I understand it, that

1 is really the intent of this.

2 Now, as to moving slowly, that may be a matter of
3 degree here, but it is the invitation of proposals that they're
4 talking about here, and it seems to me that's the best way to
5 come up with more specific ideas as to how we ought to use this,
6 isn't it, to have these proposals submitted by those that are
7 out in the field?

8 MR STOPHEL: It may be, but during the next several
9 months, for example, you're going to be extending the grants of
10 everybody, plus in the new budget that we have, a great deal of
11 expansion money that we're going to be giving -- we're going to
12 be giving out grant after grant after grant in the next several
13 months, that are new programs.

14 I just feel that these are going to get locked into
15 that same kind of thing. I would just prefer to wait until
16 March -- or perhaps even a later meeting -- to allocate these
17 funds.

18 MR CRAMTON: I think you two gentlemen have adequately
19 expressed your views. Some other Board members may want to
20 speak to their position.

21 MR COOK: Mr Chairman.

22 MR CRAMTON: Mr Cook?

23 MR COOK: Mr Chairman, just a kind of question out
24 of frustration, because we've gone over it many times. I kind
25 of want to echo a great deal of what Glenn has said, and the

1 reason that I want to do it, because it was stated this morn-
2 ing that we presently have 38 on-going studies of one kind or
3 another, and we have no idea how many of those 38 would almost
4 match or mesh right into these nine categories.

5 And yet, I don't think there's any question about the
6 fact that within a very short period of time this money is
7 going to be gone -- as it should be, because it should be util-
8 ized. I don't know why we just didn't put it into our general
9 fund and allocate it according to our budgets as it was needed.

10 Certainly, anybody else that makes money on invest-
11 ments in a corporate structure puts it into a cash structure
12 and utilizes it.

13 I said it one time, that I thought it would be one
14 of the most delightful things to establish the Legal Services
15 Corporation Trust, that it could really be used for remarkable
16 things, for now and into the future.

17 That's not very practical, at least from the stand-
18 point of the feelings of the Board, but we know that within the
19 framework of agencies in the federal system that the study
20 things have studied everything to death, and I'm afraid that's
21 exactly what we're going to pursue and it's just kind of a
22 shame to see four million dollars worth of research sitting on
23 shelves again and I don't think there's any question about the
24 fact that that's what happens.

25 MR CRAMTON: I think if you attended the meeting last

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1 night you would have discovered that your trust fund notion
2 did get some support at that meeting, Mr Cook.

3 MR COOK: Well, the point of it is -- I'm delighted
4 that it did, Rog, very frankly, because you know, I look at
5 Legal Services as being a permanent facility in this community,
6 in the United States. It -- at present time its library facili-
7 ties are very limited. It's of a very small nature. I think
8 the first thing we could have done is say all right, what does
9 it take to have the finest facilities that a -- the National
10 Legal Services Corporation ought to have? And see to it that
11 it's done.

12 And that could come out of this, this one-time funds,
13 and then set up a library fund out of this to see to it that
14 all those facilities were maintained.

15 Yet, I don't think anybody in the field or anybody
16 within the framework of what we're talking about, would make
17 that kind of recommendation within these nine categories.

18 So I just have to feel that we can come up with the
19 nine categories or we could come up with 29 categories, but I
20 just have a horrible feeling that it's all going to be gone
21 very shortly, and we're going to all say to each other, "Where
22 in the world did it go, and why?"

23 MR CRAMTON: Mr Broughton?

24 MR BROUGHTON: I was able to attend the meeting last
25 night, and with all due respect to those participating, I had

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1 a feeling of -- there was still -- there's no certainly, really,
2 about this, on the discussion last night, and it seemed to me
3 that a lot of what is contained in this resolution which is be-
4 fore the Board is often nebulous and a gray, fuzzy area. I'd
5 like to ask Mr Thurman what is meant by continuing consultation
6 with the committee? What do you envision that to be?

7 And what is the committee's role, from now on, if
8 this resolution is passed, so far as the expenditure of this
9 four million dollars, and beyond that, what is the Board's
10 role?

11 That's not clear at all to me.

12 MR THURMAN: Well, I would suppose the committee
13 would meet at appropriate times after they get back the propos-
14 als that they are eliciting.

15 MR BROUGHTON: Would the committee pass on the propo-
16 sals, or just ratify staff action after the fact, or what?

17 MR THURMAN: That has yet to be worked out, Mel. I
18 would suppose that we would follow what the Board wanted us to
19 do.

20 MR BROUGHTON: Well, I'm really asking this in good
21 faith, Sam, because I assumed that in putting this in here
22 that the committee gave some consideration to what is meant by
23 a consultation, and I think that is -- to me, at least, that's
24 a -- the committee at least considers that to be a vital part
25 of its resolution that it's recommending, and I was just trying

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1 to clarify what that means and what the responsibility of the
2 committee would be.

3 MR THURMAN: Well, I would think it would mean really
4 a genuine meeting and consultation, and I don't know that we
5 can specify it any further.

6 MR CRAMTON: It was stated at the meeting by Mr Bam-
7 berger that the staff would work with the committee to develop
8 criteria on at least two of the things that these reports speak
9 about: one, what is the quality of -- how do you judge the
10 quality of proposals in terms of this unleashing of new ener-
11 gies, and new ideas and so on; and the second is that replica-
12 bility or transferability -- that is the record that they will
13 leave to be used by others, and that would be an on-going pro-
14 cess in which the staff would work with the committee to devel-
15 op criteria on the questions.

16 That was -- I'm just reporting what I heard last
17 night. Is that correct, Mr Bamberger?

18 MR BAMBERGER: Yes.

19 MR BROUGHTON: Well, what further role would the
20 Board have if the Board adopts this resolution? and the staff
21 proceeds in consultation with the committee?

22 MR CRAMTON: I assume we would get periodic reports
23 from the committee in which they would spell out their experi-
24 ence on it, the applications that had been -- proposals that
25 had been received, the criteria that were developing, their

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1 actions or proposed actions in passing on those, and that the
2 Board would be free at any time to take up the matter themselves
3 and to consider the criteria and the like.

4 MR BROUGHTON: Well, I mean is this after the fact?
5 After they make specific grant -- dollar grants or --

6 MR CRAMTON: That's unclear as it's stated now.

7 MR ORTIQUE: Mr Chairman?

8 MR CRAMTON: Mr Ortique.

9 MR ORTIQUE: It seems to me that we really -- as I
10 appreciate -- and I'm a member of the committee -- as I appre-
11 ciate what this resolution says, and I'm certain that I need
12 clarification if this doesn't say this, now, that the staff
13 will in consultation with the committee develop the criteria
14 before any grant is made.

15 I assume that that's basic. That if there is -- if
16 the committee and the staff are at odds I thought that the Chair-
17 man was saying to us last night that the chairman of our commit-
18 tee would then go to the Board and give the Board a try at what
19 was being suggested, that the staff was not being given a free
20 hand to go ahead and do anything.

21 Now it seems to me that no matter what we adopt in
22 this resolution -- and I'd like to be clear that before any
23 grants are made or before any invitations are issued, that this
24 committee will work with the staff in developing the criteria
25 for the applications that will be made, and in effect, Glenn,

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1 it is my appreciation, and that's why I said at the outset in
2 response to Sam's invitation for me to comment, that in my view
3 we were -- even though we were saying this would be the use of
4 the availability of this money, that in effect it was in un-
5 appropriated, unallocated funds.

6 MR STOPHEL: That's my problem with it. We are spe-
7 cifically allocating for the purpose of making grants. My sug-
8 gestion is that we give the staff the sense of what you are
9 saying, but that we not make an allocation at this time.

10 We are allocating four million dollars for the pur-
11 pose of making grants.

12 MR THURMAN: Would you feel happier, Glenn, with this
13 if there were limits, say, that during the coming year they al-
14 locate, one, two million, that we make the decision at this
15 point to spread it out over a longer period of time, as you
16 have suggested?

17 MR ORTIQUE: I don't think that's the suggestion that
18 Glenn is making at all. Glenn is saying let's not allocate --

19 MR STOPHEL: Yes.

20 MR ORTIQUE: -- it as such, that the money is there,
21 it's available, and I don't know how you -- what language you
22 use to say that it's there but it's not there. That's the only
23 thing that --

24 MR CRAMTON: I think Mr Stophel is arguing against
25 the adoption of the motion by the Board, and I think his argu-

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1 ments are reasonably clear.

2 MR BROUGHTON: Well, let me make this comment. Grants
3 -- and part of this I think was back to what Mr Stophel was
4 saying, and we'll get to this later and I hope there'll be a
5 lot of searching questions about it. I think the staff would
6 welcome them. But in the proposal for fiscal '79, there is
7 -- the staff is recommending the question of independent consul-
8 tant projects that management administration will increase from
9 \$399,000.00 to \$704,000.00, and I hope all of you have been
10 over this.

11 And then you get over the Program Activities, and the
12 same line item, Independent Consultant Project, for 945,000, to
13 two million 46 thousand.

14 Clearly if the Board adopts that with that item in
15 it are we engaged in duplication, or do we know what they are
16 doing? I don't.

17 And are we engaging in duplication, over what is
18 proposed here with respect to the four million dollars?

19 MR CRAMTON: Mr Breger?

20 MR BREGER: I would like to respond to --

21 MR CRAMTON: You will be next.

22 MR BREGER: I will yield to --

23 MR CRAMTON: All right, Mr Ortique?

24 MR ORTIQUE: It seems that there is another side of
25 the coin, Mel, and that is that I certainly would like to make

1 certain that we don't decide to put this four million dollars
2 into the general fund, because I think that if we -- it repre-
3 sents to me special money, and I want something good to come
4 out of it.

5 Now, I'm satisfied that if the Board has a hand in
6 making sure that the criteria is properly established before
7 any grant is made, then I find that to be more satisfactory than
8 for someone to be in a position to look at these four million
9 dollars and say let's budget that as a part of the general fund.

10 MR BROUGHTON: I see what you mean.

11 MR THURMAN: I think it would be a little sad if this
12 just got lost in the big general fund that we have here. This
13 is just a unique opportunity to do something different now.

14 MR CRAMTON: Mr Breger.

15 MR BREGER: I have no doubt that if we spend another
16 six months, another year, thinking about how to use this four
17 million dollars we would come up with a more refined set of
18 concepts, and I have no doubt of that, that once you come up
19 with that more refined set of concepts this Board will then
20 approve the use of that money.

21 I also think that if we move ahead now with the con-
22 sultation between the staff and the committee the concept will
23 be refined, hardened, made more precise, as the solicitation of
24 proposals are developed.

25 The end result will be substantially the same, and

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1 we'll end up -- we'll want -- we'll decide as a Board that we
2 want to end up making grants in order to have a trigger of lever-
3 age effect to induce an encourage private attorneys to do pro
4 bono work. We'll end up making grants to concern ourselves
5 with paralegals.--we've already done that -- to concern our-
6 selves with the career development of staff attorneys -- we
7 have a similar responsibility for paralegals.

8 We'll end up concerning ourselves with improving ac-
9 cess to legal services by special groups with special needs --
10 like the handicapped -- we'll find out what their needs are and
11 how we can solve their problems.

12 We'll end up doing substantially the same work.

13 My concern is that we'll have spent a year before
14 going out and using that money to do good, and I think we ought
15 to take into account the time constraints here.

16 I think the important fact is that there are a lot
17 of people in the legal services community, a lot of people in
18 the private bar, a lot of people in the community generally,
19 with a lot of ideas, a lot of things that they could do, would
20 want to do, which they would need some seed money, some trigger
21 money, some help from us in formulating proposals, and I think
22 there's a lot of important things that can be done through this
23 process that we would find much more difficult to do through
24 the process of a line item in the budget, through the process
25 of developing a national policy, through the process of taking

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1 into account the need to spread a good idea out throughout the
2 country.

3 And it seems to me important and valuable that we have
4 a good idea, a pot of money, in the areas of -- that we're talk-
5 ing about, The areas that we're talking about cover a reason-
6 able -- may not all, but a reasonable number of the terrific
7 needs that we have in the legal services community, and a rea-
8 sonable number of the areas where we can with some small infus-
9 ions of money do hopefully important things to meet that need.

10 So it seems to me that if we view this four million
11 dollars as an opportunity to do good things with small sums
12 without having to go through the extensive and cumbersome pro-
13 cess of deciding to put -- develop a national policy on an is-
14 sue -- for example, a national policy regarding involvement of
15 private attorneys, national policy regarding preventive legal
16 education -- then we can sit back and see if good ideas come to
17 us, to put an emphasis on the quality of the ideas, and rather
18 than spending a substantial period of time refining our concept,
19 actually put that money to work presumably -- hopefully -- doing
20 good, and making contributions to a people who are in terrific
21 need.

22 If what we were talking about -- and I suppose here's
23 where I may add a caveat from the Chairman -- was putting all
24 the money into research, I could say wait, wait because the only
25 targets that are going to be improved will be the pockets of

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1 academics already on salary.

2 But when we're talking about putting the bulk of this
3 money into service, and using it as a trigger and leverage ef-
4 fect for service, I think it would be bad if we spent a lot
5 more time -- six, eight months a year -- thinking about it and
6 refining it, when we could put the money to good work.

7 MR CRAMTON: Mr Smith?

8 MR SMITH: Mr Chairman, it seems to me that the com-
9 mittee has done a good job of analyzing the staff's proposals,
10 and giving consideration to them, as perhaps some of the best
11 potential -- nine potential usages of the money for enrichment
12 and improvement purposes. I think part of Mr Stophel's problem
13 in this is the fact that the resolution is worded so that it
14 constitutes an allocation at this time, and more or less limits
15 it to nine specific categories.

16 On the other hand, it seems very obvious that the
17 staff needs a commitment from us that as they are developing
18 criteria with the committee and working on these proposals that
19 we will allocate it.

20 It seems to me that we should amend this resolution
21 to reach both -- reach an accomodation for both points of view
22 so that it didn't constitute an allocation, but a commitment
23 that it will be allocated, and from what I understood from
24 Revius's comments, as a member of the committee, there was an
25 intent in the committee that actual allocation -- even though

1 this said "is allocated," that the actual specific allocations
2 would still come back for Board action after the staff and the
3 committee had developed criteria and guidelines for certain
4 usages.

5 So I was thinking that we might -- I would like to
6 propose an amendment that would clarify it along these lines.
7 I would move that we amend by striking the four million, which
8 had already been suggested, and maybe is a part of the princi-
9 pal motion now, and changing that to "unexpended balance," and
10 then moving the next clause down to the end of -- after the
11 word "appropriation" so it would read, "Be it resolved that the
12 unexpended balance of the income from the investment of the
13 fiscal 1977 appropriation, plus interest accrued thereon," and
14 then substitute the words, "Will be" instead of "is" -- "will
15 be allocated for the purpose of making grants for -- " strike
16 the word "the" and make it "improvement and enrichment pur-
17 poses." So it's "making grants for improvement and enrichment
18 purposes set forth in the memorandum to the Board of Directors
19 of November 22nd, 1977, to wit:" and then name the nine, but
20 after the naming of the nine and before taking up the last
21 line, add, "and other purposes for which criteria and guidelines
22 are developed and proposed by our staff in continuing consulta-
23 tion with the Committee on the Provision of Legal Services."

24 So that it would name the nine, but it would still
25 leave it open for additional. It would make it plain that the

1 staff would continue to work with -- in consultation with the
2 committee, but it would also make it plain that it's just a
3 future commitment to allocate when we get the specific proposals
4 back as a result of the work by the staff and the committee.

5 And in that case, we have given the necessary indica-
6 tion on the record so that the staff and committee know that
7 we're committed to doing something, but we haven't made the
8 actual allocation. We still retain that authority until we
9 see what the specific uses are.

10 So I would propose that comprehensive amendment.

11 MR BREGER: Can I borrow that and copy it in on mine?

12 MR CRAMTON: Is that acceptable to the mover and the
13 seconded?

14 MR THURMAN: Well, I think that reflects the conclu-
15 sions arrived at last evening. I don't see that there's really
16 anything inconsistent in that language.

17 MR CRAMTON: Are you willing to accept the language?

18 MR THURMAN: I am, yes.

19 MR CRAMTON: What about you, Mr Montejano?

20 MR MONTEJANO: Does this mean, Glee, that moneys are
21 -- if not in fact, they are earmarked for this particular pur-
22 pose and what we're saying now is that we're not going to spend
23 it tomorrow morning, we're going to leave it open as to possi-
24 ble additional areas under this resolution, however, for this
25 particular purpose.

1 MR SMITH: That's right, enrichment and improvement
2 purposes, as I indicated in one portion of the amendment, so
3 that it makes it plain we're not intending to just dump it into
4 the general budget, we are going to reserve it for purposes
5 within the intent here.--

6 MR MONTEJANO: Of this resolution.

7 MR SMITH: Right.

8 MR MONTEJANO: Now, would this give your committee,
9 Sam, and also the staff, the ability to move forward --

10 MR SMITH: That's my intent, solicity-- that's my in-
11 tent, because it indicates our intent to hear their proposals
12 and then to go ahead, and we have made the commitment that we
13 will allocate it as -- when we approve the projects they pro-
14 pose, specifically.

15 MR MONTEJANO: In fact, is there any real difference
16 between the original motion proposed by Sam and your particular
17 motion? Is the end result really going to be the same? Is it
18 just a question of how we get there?

19 MR SMITH: Well, hopefully the end result will be the
20 same, but it spells out in the resolution the answers to some
21 of the questions the Board members were reserving about have
22 we just written the check for the four million now and left it
23 up to the committee or staff, which they said wasn't their in-
24 tent, and this spells out it isn't the intent, and at the same
25 time gives a commitment, I think, to the staff and the commit-

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1 tee that when they go ahead that we're committed to putting the
2 money in this general area of enrichment and improvement.

3 MR CRAMTON: The reason I asked the mover and the
4 seconder as to whether they accepted it, it seems to me the
5 motion to amend was totally consistent with the purpose of the
6 motion, and in fact merely added on some of the gloss of the
7 President and Mr Bamberger --

8 MR THURMAN: And Mr Stophel too.

9 MR CRAMTON: No, I'm not sure it's consistent with
10 Glenn's position, but --

11 (Laughter.)

12 MR CRAMTON: Mr Hennigan wants to --

13 MR HENNIGAN: Mr Chairman, with yours and with Mr
14 Stophel's permission I would like to ask some questions about
15 the committee's role on displaying this in the budget request
16 that will go forward to Congress in January.

17 My understanding of the resolution on its face is
18 that the funds probably will not be shown as a line item allo-
19 cation in the budget. They would be shown in the section of
20 the budget where we describe total funds available, and we
21 would describe it as investment income to be allocated at the
22 direction of the Board of Directors.

23 MR CRAMTON: No, I think not. It would be allocated
24 in the -- it would continue to be allocated, because, as Mr
25 Smith said in response to Mr Montejano's question, it would be

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1 earmarked, but it would be indicated that it would be earmarked
2 for this purpose and allocated for this purpose, but the pre-
3 cise grants ~~are~~ within the general parameters very broad -- would
4 be determined at a subsequent point.

5 MR HENNIGAN: I'm clear on that point. Does that mean
6 that the entire amount then would be shown in fiscal year '78
7 or '79 over the two years of --

8 MR CRAMTON: Over the three years, is Mr Bamberger's
9 suggestion.

10 MR HENNIGAN: Three, as the case may be.

11 MR BREGER: Mr Chairman, I'm --

12 MR CRAMTON: Well can I -- do we have a motion that's
13 going to be seconded and we're going to vote on it, or are the
14 mover and seconder going to accept the amendment?

15 MR BROUGHTON: Well let me ask this question. What's
16 the difference, Mr Smith, when you say take out the figures and
17 you put in "unexpended -- " what are you --

18 MR CRAMTON: That is the question that I raised. We
19 have -- because we've committed one million ninety thousand,
20 and we have just a little over five million, the reference to
21 precisely four million then is inaccurate. We have somewhat
22 less than four million, plus the interest that's going to earn,
23 which means that it's going to be probably up above four mil-
24 lion, and I wanted to get away from mentioning a specific amount
25 because in fact it's not a specific amount.

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1 MR SMITH: But it's tied down --

2 MR CRAMTON: The unexpended balance.

3 MR SMITH: It's tied down, Mel, by being specifically
4 the unexpended balance of the income from the investment of the
5 fiscal '77 appropriation. It's not exactly four million, but
6 it's close to it.

7 MR STOPHEL: Well, unexpended is not technically cor-
8 rect.

9 MR EHRLICH: Unallocated.

10 MR CRAMTON: Unallocated, all right, unallocated.
11 We'll substitute that.

12 Mr Smith's amendment has been accepted by the mover
13 and the seconder and is now the main motion before us.

14 Mr Breger.

15 MR BROUGHTON: Well now wait a minute. You threw
16 your -- no discussion on the main motion?

17 MR CRAMTON: Well, the main motion has been amended
18 by consent of the mover and the seconder. It's been changed.

19 MR BROUGHTON: It's an amendment to the main motion,
20 is that it?

21 MR CRAMTON: That's right. It's been adopted, and
22 it is now --

23 MR BROUGHTON: But only on the main motion -- on the
24 amendment?

25 MR THURMAN: It hasn't been adopted. It's before the

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1 Board.

2 MR CRAMTON: The main motion is before the Board for
3 discussion.

4 MR BROUGHTON: Yes. Has the amendment been adopted?

5 MR CRAMTON: Yes.

6 MR BROUGHTON: Of Mr Smith?

7 MR CRAMTON: That's right.

8 MR THURMAN: Wait, it hasn't been adopted, it's up
9 for consideration.

10 MR CRAMTON: They've accepted it. The mover and se-
11 conder have accepted the change in language.

12 MR BROUGHTON: It's not been adopted by the Board.

13 MR CRAMTON: No.

14 MR COOK: That's not adopted by the Board. It's the
15 pending motion.

16 MR CRAMTON: It's the pending motion. It's before
17 us for consideration.

18 MR COOK: Mr Smith's is the pending motion.

19 MR CRAMTON: It is the pending motion. It is the
20 business which is now before us.

21 MR BROUGHTON: You mean the main motion that this
22 recommendation be adopted.

23 MR CRAMTON: The Smith -- the recasting of the Thur-
24 man motion is now before us for action.

25 MR BROUGHTON: Well, I -- the question's been called?

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1 Is that why --

2 MR CRAMTON: No, I'm waiting for further discussion
3 on the merits.

4 Mr Breger.

5 MR BREGER: Yes, I'm in what may be my normal posi-
6 tion, but at least at the moment I'm a bit confused. As you
7 know, I had originally made the Thurman motion at our committee
8 meeting last night. It seems to me to be substantially differ-
9 ent from the Smith substitute and so substantially different
10 that it would be helpful to me to get a sense of the staff
11 views on it.

12 It seems to me that the Smith substitute is the exact
13 -- unless I misread it -- is the exact motion which this Board
14 defeated in October, because this Board said we do not want to
15 simply say here is four million dollars or three hundred, nine
16 hundred, three million nine hundred and ninety-nine thousand
17 dollars, and now let's give it out to good work.

18 Now we wanted to tell the staff, "Give us the speci-
19 fic categories, not merely enrichment, but give us the specific
20 categories where we want to make grants for good works."

21 In October we told the staff, in essence, "We don't
22 want to give you four million dollars just to give out for any
23 good idea, we want you to come back to us and say 'here are the
24 classifications of ideas where we think we can have the biggest
25 triggering effect, the biggest leverage effect, make the most

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1 impact,'" and it seemed to me that the Thurman motion, the
2 motion which I brought to the committee last night and was
3 passed by the committee last night, followed that direction of
4 the Board in October.

5 So I'm at a bit of a loss, because I've heard a view
6 here that the Smith and Thurman motions are the same. It seems
7 to me radically different, and they seem to me radically dif-
8 ferent in that the Smith substitute says that this money -- we
9 don't mention how much, but this money will be given to the
10 staff to be allocated with consultation with the Board on these
11 nine items and other enrichment items, which basically mean a
12 grab-bag effect.

13 MR CRAMTON: Except that item one is so broad that
14 it's a grab-bag anyway, so --

15 MR BREGER: Well, we have --

16 MR CRAMTON: -- we have to address ourselves as to
17 how inconsistent that is.

18 Well, I don't want to get into a parliamentary wrangle.
19 If the Board would prefer to have a vote on this Smith motion,
20 I would be delighted.

21 MR BREGER: Well I --

22 MR CRAMTON: Do you want to withdraw your -- the ac-
23 ceptance of it?

24 MR THURMAN: No, I think that it's a Smith gloss on
25 what we had in mind. Now Mr Montejano --

1 MR STOPHEL: Well let me tell you the way I see the
2 difference. Adopting your motion is just like adopting the
3 budget, and it's an operating budget that the staff implements
4 under the broad categories we adopt.

5 That would be the sense of your motion.

6 The sense that I see of the Smith motion is that when
7 it comes back to this Board for allocation I can vote to knock
8 out any allocation to any one of these categories. We have not
9 got to that point.

10 I'm not favor of putting money in all nine of these,
11 because --

12 MR CRAMTON: In other words, it's a shift to the ways
13 it will be allocated that --

14 MR STOPHEL: So if it comes to an issue-by-issue
15 vote, I'll vote against putting any money in some of these
16 categories. I'll probably be alone in doing so, but I've got
17 that right.

18 MR BROUGHTON: No you won't.

19 MR STOPHEL: But I think that that is the sense -- as
20 I see it -- in the difference in his motion, which is that the
21 funds will be allocated to some or all of these, and I'm not
22 against soliciting proposals in all the areas. I may be con-
23 vinced differently. But if I had to vote today I would not
24 vote that we allocate four million to be spread as the staff
25 and your committee choose among these nine categories, because

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1 I am not in favor of devoting funds -- and let me tell you why.

2 I think that some of these things are to be taken
3 care of out of our budgeted funds, our appropriated funds.

4 We're required by statute to do some of them. I'm not in favor
5 of putting these specific funds behind that money.

6 MR CRAMTON: Well this gets into the discussion that
7 I had with Mr Hennigan about --

8 MR BROUGHTON: That's the point I was trying to make
9 a minute ago. I think that this is just as broad and to me
10 just as vague, as to what we're doing. I think you are giving
11 a blank check to the staff. And maybe that's just what some of
12 you want to do. Maybe that's what Mr Smith's philosophy is.

13 MR STOPHEL: Well, I'm willing to --

14 MR BROUGHTON: We've still got items that we have to
15 consider during this meeting, so far as the '79 budget proposals
16 are concerned.

17 MR CRAMTON: I guess I think it would be simpler,
18 given the --

19 MR BROUGHTON: And I think they should be considered
20 in connection with what you're talking about here.

21 MR CRAMTON: -- confusion about the significance of
22 the changes, if you withdrew your acceptance of the Smith lan-
23 guage and we had a separate vote on his amendment.

24 MR THURMAN: I don't know how that advances us at all.

25 MR CRAMTON: Well, it -- at least the Board has an

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1 opportunity to decide between the two of them, whereas other-
2 wise it won't.

3 Apparently there are some Board members who think
4 this makes a great deal of difference, and there are others
5 that don't -- that think it's totally insignificant, and I don't
6 know how to determine that, other than by them voting it, so
7 let's vote on that.

8 MR BROUGHTON: I make a motion that the matter be
9 tabled until after we take up the '79 budget.

10 MR CRAMTON: I do not hear a second to that motion.
11 We have a motion to table. All those in favor of the motion
12 to table please say aye.

13 (Ayes.)

14 MR CRAMTON: Those opposed, no.

15 (Noes.)

16 MR CRAMTON: We'll have a show of hands. All those
17 in favor, please say aye.

18 Broughton, Breger, and Cook -- and Stophel.

19 All those opposed?

20 Montejano, Thurman, Cramton, Smith, and Ortique. The
21 motion to table fails.

22 I would like to have a vote on the Smith amendment
23 and then come -- if that carries then it will be the main mo-
24 tion. If it doesn't, we're back to the Thurman language and
25 we vote on that.

1 MR COOK: Parliamentary inquiry, Mr Chairman. Didn't
2 the mover of the original motion accept the Smith proposal,
3 and therefore the only amendment that is presently before the
4 Board is the Smith proposal, which was accepted as a substitute?
5 So therefore, we don't really have the Thurman language any
6 more.

7 MR CRAMTON: Well, we have never been fussy about
8 parliamentary procedure, and because we're a small group and
9 we try to operate in a sense of considerable --

10 MR COOK: Well I don't disagree with you. I just
11 hate to see it used when it's advantageous and not used when
12 it's not advantageous.

13 MR CRAMTON: No, this allows the Board to make a
14 choice about the language, which some people think is signifi-
15 cant and some of them don't.

16 MR STOPHEL: Well, the simple solution is we can vote
17 on the Smith language, which is what you're suggesting --

18 MR CRAMTON: That's right.

19 MR STOPHEL: -- anyway, and if it passes, then it
20 passes. If it fails then we can go to whatever Dean Thurman
21 wants to suggest.

22 MR THURMAN: That's correct. That's exactly correct.

23 MR CRAMTON: Are we prepared to vote on the Smith lan-
24 guage?

25 MR BREGER: Mr Chairman, I'd be grateful to hear the

1 views of the staff, principally Mr Bamberger and Ms Sard, on
2 how they understand --

3 MR BROUGHTON: And I think we ought to give the public
4 an opportunity, Mr Chairman.

5 MR CRAMTON: Well in deference, I think I would ask
6 the President to say whether he has any -- sees any difference
7 between these two formulations, and what that difference is, if
8 he can detect it.

9 MR EHRLICH: No, I can't. It seems that a number of
10 Board members that they would like to see some criteria developed
11 in terms of the solicitation for proposals, and at least an
12 analysis of proposals that actually came back before decisions
13 are actually made to say yes, that proposal is going to be
14 done.

15 And that's what I think the difference is. In fact,
16 for what it's worth, my expectation was that you were going to
17 do that anyway, but if you want to be sure, that is the way to
18 be sure. I have no problem with that at all, and we'll follow
19 just that procedure and I think Mr Smith's amendment makes that
20 very clear.

21 MR BREGER: I'm sorry. My -- again it would be help-
22 ful to me to get a sense of the way in which the staff views
23 the differences. It does seem to me that the Smith proposal
24 says we're not limiting ourselves to these nine categories.
25 We're giving money to any one who has a good idea that meets

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1 with staff approval.

2 Now maybe I'm wrong, but that's how I understand it,
3 and that's what I'm trying to get a sense of.

4 MR SMITH: It says it has to come back to us for
5 approval. It says will --

6 MR BREGER: But we can give money to anything, not
7 merely to the nine categories.

8 MR SMITH: But we still have the final say-so. We
9 haven't given it to anything yet at all.

10 MR STOPHEL: Yes, the other uses, in my view, if we
11 came up with a building tomorrow that we wanted to move into
12 for a million and a half dollars, and there were five of us who
13 agreed to do it -- heaven forbid -- we could do it.

14 MR ORTIQUE: What do you mean, "Heaven forbid"?

15 MR STOPHEL: That the five of us could agree on it.

16 MR ORTIQUE: It seems to me that --

17 MR CRAMTON: Is there further discussion on this
18 Smith language? We've gone on about this for a very long time,
19 and it seems to me --

20 MR ORTIQUE: I move the previous question.

21 MR CRAMTON: Do you want to speak first, Mr Monte-
22 jano? Mr Montejano hasn't had an opportunity to address this
23 question. I think really everyone else has.

24 MR MONTEJANO: Really, for my -- hopefully, for clari-
25 fication, I think it's necessary to establish a sense of direc-

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1 tion. I think it's necessary to earmark funds. I think it's
2 clear the Board can frankly do anything it wants with any of
3 the moneys any time it wants to do it, but once we earmark the
4 moneys I think this gives us a sense of direction, the staff a
5 sense of direction, and the field a sense of direction that we
6 are moving in this direction, and we're not going to change from
7 that direction unless there are very, very strong, compelling
8 reasons.

9 And if we don't take that particular action, then
10 we're just putting the money up for grabs, and it will be up
11 for grabs, and I think that we'll be lost, frankly, and we
12 won't get any return on it all.

13 We as a Board I think have to establish that parti-
14 cular question. For gosh sakes, let's give the sense of direc-
15 tion to the staff and the field, that we intend to use this
16 money for special purposes, primarily for these purposes, and
17 there may be others just as good.

18 Now, if we don't do that I think we're really defeat-
19 ing the purpose of the investment income, and the one-time shot
20 to hopefully improve the quality of services across the coun-
21 try.

22 Marshall, I really think it's imperative that we label
23 this money, that we earmark this money and we give our sense of
24 direction to ourselves and to the staff and to the field. If
25 we do not, I think we'll be doing ourselves an injustice.

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1 MR BREGER: I couldn't agree with you more, which is
2 why I suppose that I have a lacunae in thought, but it still
3 seems to me that what we had done with the original motion and
4 the original nine proposals was say we're going to use this
5 money for improvements that will make impacts in these nine
6 areas -- admittedly broadly conceived, but still these nine
7 areas as flushed out in the concept papers.

8 And what the Smith substitute is saying, we're going
9 to use these moneys for enrichment generally, which seems to
10 give open season for anyone in who has a good idea from Alabama
11 to Alaska to come in.

12 MR CRAMTON: I think it's been pointed out in three
13 different ways. Are you prepared to vote?

14 MR BREGER: Mr Chairman, I want to ask --

15 MR CRAMTON: I think the issues are under --

16 MR BROUGHTON: Mr Chairman, are you going to give the
17 public an opportunity to be heard on this?

18 MR CRAMTON: I haven't seen anyone seeking attention,
19 and I'm prepared to have us vote on this question.

20 All those who -- are you prepared to vote on the Smith
21 amending language, which is now before us? Do you want him to
22 read the language again?

23 MR BROUGHTON: I do.

24 MR CRAMTON: All right, read the language again.

25 MR SMITH: As amended, the resolution would read, "Be

1 it resolved that the unallocated balance of the income from the
2 investment of the 19 -- fiscal year 1977 appropriation, plus
3 interest accrued thereon, will be allocated for the purpose of
4 making grants for improvement and enrichment purposes as set
5 forth in the memorandum to the Board of Directors of November
6 22nd, 1977, to wit: the nine categories remain the same, but
7 add the language, and other purposes for which criteria and
8 guidelines are developed and proposed by our staff in continu-
9 ing consultation with the Committee on the Provision of Legal
10 Services."

11 MR BROUGHTON: Not the Board, but the committee?

12 MR SMITH: It says, "for which the guidelines and
13 criteria are developed and proposed by the staff in consulta-
14 tion," that doesn't mean enacted. Proposed, the proposed --

15 MR CRAMTON: It says "will be allocated."

16 MR BROUGHTON: Who takes action, Glee, the committee
17 or the staff or the Board? Does the Board get a shot at it?

18 MR SMITH: Sure, because we haven't allocated any-
19 thing. It just indicates a future earmarking. We haven't done
20 it.

21 MR ORTIQUE: The Board will get a shot at it the first
22 time.

23 MR CRAMTON: Are you prepared to vote on the Smith
24 amendment?

25 (No response.)

1 MR CRAMTON: All those in favor of the Smith amend-
2 ment please say aye.

3 (Ayes.)

4 MR CRAMTON: Those opposed, no.

5 (Noes.)

6 MR CRAMTON: All right, we'll have a show of hands.
7 All those in favor, please raise your hands.

8 Stophel, Montejano, Thurman, Cramton, Smith, Ortique.
9 Those opposed?

10 Mr Broughton and Mr Cook, and Mr Breger did not vote.
11 Mr Breger abstains.

12 The Smith language is now before you. Is there furth-
13 er discussion?

14 (No response.)

15 MR CRAMTON: I thought we adopted it as an amendment.
16 We went back to a separate vote on it.

17 All right, that was what I had proposed that we do,
18 and it seemed to me that the Board accepted that. We now have
19 the --

20 MR COOK: You know that they didn't accept that, but
21 that's all right.

22 MR BREGER: Could I please change my vote to no?

23 MR CRAMTON: Before we have the second vote I would
24 like to say that I'm going to vote against the amended motion.
25 I expressed my views and my doubts about the utility of demon-

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1 stration projects last night. I won't go into that at length.
2 again.

3 I happen to think that there are some other needs in
4 which this one-time money -- the investment income -- might
5 better serve in the immediate period ahead. The one possibili-
6 ty is our space needs and the building problems. A second pos-
7 sibility is the possible creation of a trust fund in conjunction
8 with private foundations to continuing -- to continuous support
9 research on the delivery of legal services.

10 I think we ought to preserve our options, and I par-
11 ticularly think so because frankly this is a lame-duck board
12 which should not dispose at this late date in its history of
13 this one-time resource that's not going to be available again
14 to the Corporation.

15 And although I much prefer the Smith language to the
16 other language, because it does give our successors -- five of
17 whom will be nominated very shortly and probably six more by
18 next summer -- an opportunity to pass on this question before
19 it's too late, it prejudices that discussion because once you've
20 earmarked things a tremendous burden rests on anyone who wants
21 to change.

22 So I'm going to vote against the motion, and I state
23 my reasons now.

24 MR BROUGHTON: Mr Chairman, would your statement be
25 consistent with Mr Stophel's comment that in the meanwhile the

1 four million can be of course invested in --

2 MR CRAMTON: Oh, of course, we would invest it and
3 utilize the income as it's allocated by the Board on the recom-
4 mendation of the staff, from income.

5 MR STOPHEL: The sense of your discussion is the
6 point at which I began, and that is that a no-vote on the mo-
7 tion means that nothing is done with these funds at this meet-
8 ing. Unless another motion comes before the Board.

9 MR CRAMTON: That is correct.

10 Well, is there further discussion on the Smith lan-
11 guage of the main motion?

12 (No response.)

13 MR CRAMTON: Are you prepared to vote?

14 (No response.)

15 MR CRAMTON: All those in favor, please say aye.

16 (Ayes.)

17 MR CRAMTON: Those opposed, no.

18 (Noes.)

19 MR CRAMTON: We'll have a division. Those in favor
20 please raise your hand.

21 Mr Smith, Ortique, Thurman, and Monetjano.

22 Those opposed?

23 Broughton, Cook, Stophel, and Cramton.

24 What's the vote?

25 SEVERAL VOICES: Four to four.

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1 MR CRAMTON: Four to four. The motion is defeated,
2 and the matter will come up, I guess, at the March meeting, "un-
3 less there's a substitute for it that the Board desires to --

4 MR STOPHEL: Well, it will come up in a sense in our
5 discussion on the budget in that we have to decide how these
6 funds will be shown in our budget, in our appropriation request,
7 and that's the point Mr Hennigan was trying to make awhile ago,
8 that we may have a line item that we will have to identify for
9 them.

10 Our agenda indicated you were going to break for lunch.

11 MR CRAMTON: Yes. It's 12:15, the Board is going to
12 lunch in Shenandoah D, which is on this floor. We were not --
13 there's been no request for an executive session and there will
14 be no executive session at lunch.

15 The Board members should turn right at the elevators.
16 It's on this floor. We will reconvene in -- no later than 1:15,
17 in one hour.

18 (Whereupon, at 12:15 a luncheon recess was taken.)
19
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21
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25

AFTERNOON SESSION1:25 p.m.
1:25 p.m.

1
2
3 MR CRAMTON: Will the members of the Board assemble?

4 During the Board's informal luncheon session some mem-
5 bers of the Board expressed a degree of confusion about the
6 structure and meaning of the two votes that we took shortly be-
7 fore adjournment.

8 Those votes which resulted in a tie, and therefore
9 the motion not carrying, leaves us in a situation to do said
10 Mr Stophel?

11 MR STOPHEL: Well, as you have said, because of the
12 misconceptions of some as to what we're voting on, and the fact
13 that it came up in the vote as a tie, I do believe that we re-
14 consider the motion made by Mr Thurman as amended by Mr Smith.

15 MR CRAMTON: So the motion that's now before us --
16 is there -- let's see, this is -- is there a second?

17 MR BROUGHTON: Mr Chairman, you're not intending to
18 leave the impression that all members of the Board were conced-
19 ing, are you?

20 MR STOPHEL: Let's not debate that one.

21 MR CRAMTON: Is there -- the motion to reconsider has
22 been supported. The motion is now -- we have to take a vote on
23 the motion to reconsider. Is there discussion?

24 (No response.)

25 MR CRAMTON: All those in favor of the motion to re-

2 1 consider, please say aye.

2 (Ayes.)

3 MR CRAMTON: All those opposed, no.

4 (No's.)

5 MR CRAMTON: The motion to reconsider I think has car-
6 ried, but we'll have a division. All those in favor of the
7 motion to reconsider, raise your hands.

8 Stophel, Montejano, Thurman, Cramton, Smith, Ortique,
9 Breger.

10 Those opposed? Broughton and Cook.

11 MR BROUGHTON: Mr Chairman, I question also the par-
12 liamentary procedure that you're following now. I'm not that
13 familiar with the rules, but I don't understand that there was
14 a prevailing side, as the vote ended up, it was a four-four
15 vote.

16 MR CRAMTON: But the Chair has ruled that there was --
17 that Mr Stophel was the prevailing vote, because his vote
18 helped defeat this motion, and therefore he is eligible to make
19 a motion to reconsider.

20 The motion to reconsider has carried, and we are now
21 reconsidering Mr Thurman's motion -- as amended by Mr Smith.--
22 Is that correct?

23 MR THURMAN: That's correct.

24 MR CRAMTON: Is there further discussion on the -- on
25 Mr Thurman's motion as amended by Mr Smith?

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3
1 MR COOK: May I merely make a point, because we had
2 discussed this informally, that in all fairness -- and I will
3 vote against it and the Smith motion will pass. I will not
4 make a long dissertation on it, purely and simply because I
5 made the inquiry -- as you'll remember, Mr Chairman -- whether
6 you could first vote on the Smith substitute and then on the
7 Thurman motion, purely and simply because when you turned and
8 asked Mr Thurman if the Smith language would be a substitute
9 for his language, in effect there was only one motion to be
10 made, and that was the language on the Smith -- that was the
11 vote on the Smith language, and that did prevail.

12 So I give up what I give up purely and simply because
13 parliamentarily it was correct that the vote really was on the
14 Smith language, which was the substitute for the Thurman mo-
15 tion, and the only thing really that was eligible to be voted
16 on by the Board. At least that's the way I perceive it to be.

17 So I give up what I give up very difficultly.

18 MR STOPHEL: The matter is up for reconsideration,
19 however. I feel that we should defer both until we have gone
20 into the budget, because we must decide on our budget request,
21 how much of this four million we show in '78, '79, and '80,
22 Otherwise, all four million go into our budget appropriation
23 request as a 1978 allocation, which I don't believe is any-
24 body's intent, and I think that in order to flash this out we
25 need a fuller discussion of what is in the budget in the way of

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4 1 developmental or experimental moneys.

2 MR CRAMTON: I wonder whether we couldn't vote on
3 the motion now before us, subject to the allocation that in the
4 1979 budget being deferred for consideration.

5 MR COOK: Mr Chairman, I wonder if there can't be
6 adequate language put into Mr Smith's motion which would pro-
7 vide that it be subject to allocation within the '79 budget,
8 so that we would know that we have to face that matter and we
9 have to properly allocate it. Glenn, is there anyway we could
10 do that in advance, or are we kind of laying ourselves open?

11 MR STOPHEL: You know we have to submit our appropri-
12 ation request in January, -which is before

13 MR COOK: Yes.

14 MR STOPHEL: -- which is before a Board meeting or a
15 committee meeting.

16 MR CRAMTON: I'm willing to handle it either way. To
17 defer this vote until after we discuss the '79 budget, or to
18 make the vote now on the condition that the allocation into the
19 '79 budget will be discussed when we consider the '79 budget.

20 MR THURMAN: Let's do it that way.

21 MR BROUGHTON: I had suggested earlier on that we
22 defer this until we discuss the '79 budget, but that was --

23 MR SMITH: But can't the principle be established
24 by adopting this motion and then the detail come up when we
25 discuss the budget, and it be consistent with the principle

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1 established by this motion, Glenn?

2 MR STOPHEL: Yes.

3 MR CRAMTON: Is that agreeable? Are you prepared to
4 vote on the Thurman motion as amended by Mr Smith?

5 MR THURMAN: I call the question.

6 MR CRAMTON: All those in favor of the motion, please
7 say aye.

8 (Ayes.)

9 MR CRAMTON: Those opposed, no.

10 (Noes.)

11 MR CRAMTON: The -- may we have a show of hands. All
12 those in favor of the Smith motion as amended -- Thurman motion
13 as amended by Smith. Stophel, Montejano, Thurman, Smith, and
14 Breger.

15 Those --

16 MR ORTIQUE: And Ortique.

17 MR CRAMTON: And Ortique. I didn't see your hand.
18 And those opposed? Cramton, Cook, Broughton. Six
19 to three.

20 Well, that completes that item of business.

21 The next part of the Committee on Appropriations and
22 Audit Report is the allocation of fiscal year 1978 budget. Mr.
23 Stophel.

24 MR STOPHEL: No, this is the 1979 budget request.

25 MR CRAMTON: Oh, we did the '78 allocation?

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6 1 MR STOPHEL: Yes.

2 MR CRAMTON: All right, fiscal year 1979 budget re-
3 quest.

4 MR STOPHEL: I hope that the Board members have taken
5 the time between November 21, or whatever it was you received
6 the materials, and now to review the 1979 budget request mater-
7 ials in detail, because, as I indicated earlier, the Audit and
8 Appropriations Committee spent a great deal of time, and al-
9 though we asked a large number of questions, I'm quite sure that
10 there are many, many items that may involve policy decisions of
11 one degree or another that are in the materials to be submitted
12 to Congress.

13 However, so that we might lay the framework for how
14 the budget is put together, I think that I'll ask Mr Hennigan
15 to explain to you the procedure that is followed, which basic-
16 ally starts with 1978 and then proceeds into a request for
17 1979, then we'll point you to a couple of tables in the materi-
18 als that I think will highlight the areas with which we should
19 be most concerned.

20 Mr Hennigan.

21 MR HENNIGAN: Thank you. The first point I would make
22 is that the budget request to Congress specifically is for an
23 appropriation of a set amount, but it is put in context with
24 the total funds that the Corporation expects to have available
25 for the fiscal year in question.

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7
1 For fiscal year 1979, you may have noticed in the
2 budget that we have allowed for allocation of investment in-
3 come for a small amount of donated services and a small amount
4 of other income.

5 In the document before you you will notice that the
6 total budget for that year is forecast for 305.6 million, al-
7 though the request for the appropriation is only 304 million,
8 and the reason I mention this, as you go through the budget you
9 will notice occasionally in an individual or line item that it
10 says "appropriation for other income."

11 MR ORTIQUE: Say that again, slowly.

12 MR HENNIGAN: The budget request for the Congress is
13 for a specific amount of appropriated funds, but the budget we
14 refer to the Congress shows not only the amount that we are
15 requesting, but other funds that we expect to have budgeted
16 that year.

17 MR THURMAN: What page are you on, Buck?

18 MR STOPHEL: Let's look at page 28 for a minute.
19 We'll get to the charts I was about to discuss with you, and
20 perhaps we can start at that point. Page 28 of the materials
21 is an expense analysis by activity and object class with the
22 division here being management and administration and program
23 activities.

24 And keep in mind that the largest part of our budget
25 is in grants and contracts, which is a single line item, and

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8
1 the last item on the page. And if you will look at what Mr
2 Hennigan was referring to over under totals, 1979 total, at
3 the bottom of the page, is \$305,643,000.00, and the difference
4 between our appropriation request and that sum is made up of
5 the donated services and the investment income.

6 Am I correct?

7 MR HENNIGAN: Yes, that's correct. And as Mr Stophel
8 has pointed out, we deal with both grants and contracts. Bet-
9 ter than ninety percent of the total is in grants and contracts,
10 and somewhat less than ten percent is in money for funds expen-
11 ded directly by the Corporation. I'll have a little bit more to
12 say about that.

13 We develop our estimates on two tracks. First, for
14 the grants and contracts we go directly to the purposes we have
15 in mind, such as to expand legal services, to provide for com-
16 petitive salaries in field programs, or to conduct demonstra-
17 tions on ways of delivering programs.

18 We estimate those amounts either by formula, as in
19 the case of the field allocations, or in terms of what seems
20 to be a reasonable amount of increase or decrease in the case
21 of those items that are not subject to formula, such as the
22 delivery system demonstration grants or the national support
23 centers.

24 For the direct expenses, those that the Corporation
25 in effect does, where it accomplishes an activity or buys a

9
1 good or service directly, rather than through the intermediary
2 means of a grantee or contractor, we go through a more compli-
3 cated process of recurring the estimates.

4 In those cases we have to think in terms of exactly
5 what we will spend the money on -- personnel compensation,
6 travel, rent, communications, and the like. This estimating
7 process is done through 25 odd cost centers, nine of which are
8 the regional offices; the rest are the major divisions of the
9 headquarters program.

10 So if you think of -- if you look at the page that
11 Mr Stophel referred you to, on page 28, where you have object
12 class and about ten to twelve classification, and if you think
13 rather than the four or five columns that are shown running in
14 the vertical of 25, you can have some feel for the amount of
15 numbers that we have to bring together in a summary display for
16 you.

17 So what you're really seeing, in many cases, is a
18 synthesis of many pieces of activity in the Corporation expressed
19 in terms of how we actually plan to use the money or what we
20 will purchase with it.

21 Although the grant and contracts account for a little
22 better than ninety percent of the money, and the direct expen-
23 ses for just a little under ten percent, it takes just about
24 as much time to estimate each, because direct expense area is
25 a much more complicated estimating process, because of the many

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1 bits and pieces involved.

2 That process on the direct expenses involves more
3 than myself -- the comptroller's office and the director of
4 administration. My function is to set totals, to work with the
5 President of the Corporation on a personnel ceiling that seems
6 reasonable, and then to participate in the process, and I think
7 my role towards the end of this is usually to make speeches
8 that get it down, you know, constantly trying to keep this
9 within limits.

10 You might turn briefly to the structure of the budget
11 document itself. The first twenty-odd pages are the narrative
12 statement where we summarize the two-year plan and the status
13 of it as we referred it to Congress in the last budget request,
14 and then we proceed to point generally where we expect the
15 future activities of the Corporation to go.

16 In effect, this is an appeal for funds to finish the
17 minimum access plan and to establish the threshold for the
18 further development of legal services to the poor through the
19 vehicle of the Corporation.

20 Then the document begins to go into some traditional
21 standard budgetary details, appropriation language, various
22 displays called program and financing, a summary table of the
23 kind that Mr Stophel referred you to, and then we reach a sec-
24 tion of the budget where you begin to take each line item and
25 offer -- hopefully -- factual explanations of what is happening

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11 1 there and what you intend to use the money for. And this is
2 what is called basically the detailed justification portion of
3 the budget.

4 And the document simply charts from the \$304 million
5 figure and threads out down through the justification section,
6 item by item.

7 You'll find that the detailed justification puts lan-
8 guage next to all language on each of the items on the line
9 sheet.

10 I might point out that the document before you is
11 basically the first working draft of the '79 budget request,
12 mainly to get everything in. There are tables that are still
13 incomplete. We just received the auditors' figures and we'll have
14 have to recast some of the funding amounts, not in a serious
15 way, but to make it consistent with the certified figures from
16 the auditors.

17 We'll be going through a second draft immediately af-
18 ter this meeting, mainly to adjust it for accuracy and to bring
19 parts in balance. Some seem more than they should, and others
20 less. They will be in your final draft, and I expect will be
21 ready just about the end of the year, which is the last time
22 before we send the document to printing, so we are some distance
23 from the final product here.

24 MR STOPHEL: I will start, I think, with the overall
25 view on pages 28 and 29, which is basically a breakdown of what

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12 1 Mr Hennigan's referred to as direct expenses, that is those ex-
2 penses for headquarters and regional offices.

3 The heading, "Management and Administration," which
4 inadvertently does not have a subtitle, and you may want to
5 add it, which is \$7,799,000.00 under 1979, which is the second
6 column that I'm referring to. It covers all of our headquar-
7 ters and regional staff, except at headquarters it does not
8 include the activities under Mr Carter -- Dick Carter -- and
9 Mr Houseman in the Research Institute.

10 Those two activities are dealt with on page 29, in
11 detail, and is spread among support operations, which is the second
12 second column of the research, and the total of those two col-
13 umns will total the amount of program activities. Be sure you
14 understand that. Management and Administration deals with all
15 expenses at headquarters and regional staff, except support op-
16 erations at Research Institute.

17 MR HENNIGAN: Mr Stophel, excuse me. Field opera-
18 tions is also included in program operations.

19 MR STOPHEL: It is? Okay. All three of them,
20 Charles Jones, Dick Carter, and Alec Houseman are in the pro-
21 gram activities.

22 MR ORTIQUE: I'm troubled again by the travel figures.
23 They've doubled it, and under field operations it -- whatever
24 the word for five times it, is whatever it is.

25 MR STOPHEL: Let me explain, and this was a question

1 phrased yesterday, and it's something I think we need to dis-
2 cuss, but let me explain the way the figure was arrived at by
3 the staff.

4 The -- everything below personnel compensation and
5 employee benefits is a factor of those items. That is, they
6 took the 1978 personnel and fringe benefit costs, and if travel
7 and transportation was two percent of that in 1978, then per-
8 sonnel costs for 1979 were estimated at two percent and became
9 travel and transportation.

10 MR CRAMTON: That's not the case with travel and
11 transportation, though, because the increases are much larger
12 than that.

13 MR STOPHEL: Then we'll get into that as to whether
14 that's true or not, but that's the way it was explained. Am
15 I right?

16 MR HENNIGAN: That's correct.

17 MR STOPHEL: Okay. So we can deal specifically with
18 these operative classes, which deals with the total of the
19 operative classes, of course, as a percentage of our total bud-
20 get is not great, but is the one thing that we have direct con-
21 trol over. That is, it is our staff, that is spending these
22 moneys.

23 Why don't we go down those categories, if we might.
24 We have representatives of the Comptroller's office, which is
25 responsible for pulling together all of these, and Mr Hennigan,

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14 1 who has overall responsibility for the budget preparation,
2 who can respond to our questions on these matters. Is that all
3 right?

4 MR CRAMTON: Mr Hennigan, what about the transporta-
5 tion item? It shows 100 -- 113 percent increase, even though
6 the increase in the number of employees is 24 percent, and why
7 is it that travel and transportation is going to be -- needs to
8 be more than doubled from '78 to '79?

9 MR HENNIGAN: First, before the two gentlemen beside
10 me answer, and Mr Stophel, may I mention at this time the cor-
11 rection that we've made in the budget?

12 MR STOPHEL: Yes.

13 MR HENNIGAN: I reported to the committee yesterday
14 that I had made an error of double counting which occurred on
15 the second page of the detail sheet, the one labeled "Expenses
16 from all Sources for Program Activities." The column labeled
17 "Evaluation" is, in effect, a slicing out from the field opera-
18 tions of the portions of expenses which are expected to be
19 used for field monitoring, and I was not clear in my communi-
20 cations with the Comptroller's Office, and they thought that I
21 was going to take it out after they gave me the figure. I
22 thought they had taken it into account.

23 Consequently, we double counted it, so the Field
24 Operations Column is one million dollars higher for 1979 than
25 it should be. The subtotal for it should be 3,288,000.00,

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15 1 rather than 4,288,000.00, as shown to you.

2 The practical effect of that is to bring the travel
3 costs in field operations immediately above for 1979 down from
4 1,155.00 to 555, and that in turn would bring the figure on the
5 preceding page, the summary page for 1979, for travel and
6 transportation, into the totals, down to 7455.

7 That error is reflected in several other parts of the
8 field operations, but I don't think they are of immediate in-
9 terest. I will bring them up if we come to them.

10 MR STOPHEL: Well, let's correct the figures on page
11 28 to reflect that change. I'm sorry I didn't go into that. I
12 overlooked it.

13 This is basically a million-dollar addition error,
14 so that the Committee was faced with the decision to decrease
15 the budget by a million dollars, or do we put this in somewhere
16 else? Well, the -- if you'll recall, the proposal which you
17 have before you was that programs receive a five percent cost-
18 of-business adjustment, inflation adjustment, which was recom-
19 mended to us by the staff that that be changed to 5.5 percent,
20 five and a half percent, and that would use up the million dol-
21 lars, that the total overall budget be left as it is.

22 That was accepted by the Committee.

23 But now let's look at the -- page 28, and I'll give
24 you the changes.

25 Over under "Program Activities," under 1979, the

16

1 first line changed from 4 million 647 to 4 million 367.

2 MR CRAMTON: Where are you?

3 MR STOPHEL: On page 28, the --

4 MR CRAMTON: Which column?

5 MR STOPHEL: -- fourth column from the left, "Program
6 Activites, 1979." Shouldn't that be exactly 300,000?

7 It should be 4 million 347, instead of 4 million
8 647.

9 MR ORTIQUE: Four, 347.

10 MR STOPHEL: Four, 347.

11 The fourth item down -- did you get that change? The
12 fourth item down, "Independent Consultant Projects," instead
13 of two million 46 thousand, should be one million 996.

14 "Travel and Transportation," instead of 7080 should
15 be six million 480.

16 And the subtotal, instead of eighteen 261 should be
17 seventeen 261.

18 Then over under totals, 1979, the first one, instead
19 of seven 623 should be seven 323.

20 "Independent Consultants," instead of 2750 should be
21 -- I can't read your writing.

22 MR HENNIGAN: 2700.

23 MR STOPHEL: Two million, 700. Reduce it by 50,000,
24 right.

25 "Travel and Transportation," instead of 8055, should

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17 1 7455.

2 And the subtotal should be -- instead of eighteen,
3 261, would be 25, 060.

4 MR HENNIGAN: That's because we brought a subtotal
5 that wasn't added in over this.

6 MR STOPHEL: Right.

7 MR CRAMTON: Well, that changes the precise figures
8 that -- so instead of 113 percent increase on travel, it's a
9 hundred percent increase on travel.

10 MR HENNIGAN: The reason I raise---

11 MR CRAMTON: But still the question is why the hundred
12 percent increase?

13 MR STOPHEL: I'd like to --

14 MR HENNIGAN: I raised it, Mr Chairman, because it
15 significantly distorts the field operations by a factor of two.

16 MR STOPHEL: A factor of two.

17 MR HENNIGAN: The reason that number is not in propor-
18 tion to the personnel compensation number is because program
19 support is in there, and the training sessions that they had,
20 they have travel, which approximates ninety percent of their
21 budget, and the travel for those training conferences is in
22 that line.

23 MR CRAMTON: And is it clear that the amount of trav-
24 el -- that the size of the training program is going to increase
25 in that order of magnitude?

18

1 MR HENNIGAN: They have significant plans. I really
2 can't speak to the numbers, but they have plans to really in-
3 crease the amount of training that they're going to be doing
4 over the next couple of years.

5 MR EHRLICH: I do think we can put more clearly than
6 we have exactly what that is, so it doesn't mislead -- as I
7 think it has now -- that what we're essentially talking about
8 is training, or an essential component of training. Dick Car-
9 ter can develop more fully, we do have quite an extensive and
10 very important training effort, and it's obviously essential
11 to get people to where they will be trained and the trainers
12 there as well.

13 MR STOPHEL: I think also an item that needs explana-
14 tion is the independent consultant project, because, as I re-
15 call, the staff stated to the Committee that that was not indi-
16 vidual consultants, but was where we were retaining firms as
17 consultants. Am I correct?

18 MR YOGUS: Those are projects that the staff has
19 entered into, and they -- because of the expertise of indepen-
20 dent firms, we hired them to do the work for us.

21 MR BROUGHTON: Well, could you give some examples of
22 that, please.

23 MR YOGUS: An example of -- well, let's take '77,
24 for example.

25 MR BROUGHTON: Well, let me see if I've got my figures

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19

1 right. If we go to "Management and Administration," we haven't
2 made any -- what you're saying is '78 is still -- was 399 --
3 independent consultant profits, 399,000. This is at the head-
4 quarters level, right?

5 And then you -- what you're proposing for -- in the
6 '79 budget is an increase to 704,000 in the headquarters level.

7 MR RITTER: Okay.

8 MR BROUGHTON: Now, are you saying that some of these
9 are on-going projects?

10 MR RITTER: Some of them probably will be on-going
11 projects, or are on-going projects.

12 MR BROUGHTON: That are already committed.

13 MR RITTER: I'd like to go back to a statement Mr
14 Stophel made, and that was that the '79 budget is a factor of
15 the '78 budget, so some of the projects in '78 will be carried
16 over to '79, but again, this number is not precise, because we
17 haven't had a chance to go through the process that we normally
18 go through to refine the budget, and I don't know -- I'd like to
19 to take an opportunity, I guess, and let Mr Yogus explain to
20 you exactly how we developed the '78 budget, and we will do
21 this same process for '79 and refine it.

22 MR BROUGHTON: Well, let me ask this overall ques-
23 tion, then. As far as the figures that in -- on page 28, we've
24 noted the corrections that Mr Hennigan gave us.

25 Are you saying, then, that all of those figures are

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20
1 essentially estimates?

2 MR YOGUS: Those are our best --

3 MR HENNIGAN: That's all they can be at this time,
4 sir, they were --

5 MR BROUGHTON: Well I understand that, but what I'm
6 saying is that they are estimates -- and we'll say "best esti-
7 mates" -- based on the consideration of the staff.

8 At what point in the budget process -- for example,
9 when we go to Congress, now, are there going to be any more re-
10 fined at that point than they are now?

11 MR HENNIGAN: Slightly, but not a great deal. It
12 will be very difficult to refine these with any precision pro-
13 bably until about next July when we will be well through fis-
14 cal year 1978 and have a much better sense of how fiscal year
15 1979 is going to look when we get itno it.

16 At that point we will have our appropriation, hopeful-
17 ly, and will come back to you with more refined estimates, and
18 we cannot say with confidence, "This is the way it's going to
19 go," but we'll be able to say with much more confidence than
20 we can now.

21 MR BROUGHTON: Well, if you go before the Committee,
22 though, and a Congressman should ask you -- or inquires that
23 your consultant service estimate calls for a much greater expen-
24 diture in fiscal '79 than has been the case in fiscal '78, what
25 is your answer?

21

1 MR HENNIGAN: The basic answer -- and I would -- it
2 would depend on which area. You know, this is made up of the
3 sum of eleven different pieces in the Corporation, but based on
4 the growth of the Corporation's business activities -- and
5 again, assuming appropriation of \$304 million -- and a level of
6 activity of approximately 400,000 in 1978 -- that the best esti-
7 mate we can make is -- and allowing for inflation and other
8 factors that we may meet -- approximately 700,000 for that pur-
9 pose in 1979.

10 And then we can show, if they want -- and I believe
11 we have the information here -- exactly how that 700,000 is
12 made up by different parts of the Corporation.

13 And at that point you begin to explain each piece of
14 it.

15 MR BROUGHTON: Well, does it automatically follow
16 that if you increase your staff, you increase your activities?
17 that you likewise increase the use of outside consultants?

18 MR YOGUS: Sir, let me explain --

19 MR BROUGHTON: I mean is that automatically --

20 MR HENNIGAN: Not automatically, no.

21 MR YOGUS: Let me explain the process that we went
22 through. I think it will be helpful. As Mr Stophel explained,
23 we had about twenty -- 22 cost centers defined in the Corpora-
24 tion. That's the major divisions and the regions. And when
25 we started this process it was in September. We started before

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22 1 the end of the year, of course, to get the information out. We
2 had actual figures for previous year through September at that
3 time, and we split those up by cost centers into a number of
4 categories, divided much more finely than the categories you
5 see here. These are summaries.

6 We used the historical information, and based on the
7 staff that was on board at that time we projected if there were
8 no increases what it would cost to conduct those activities for
9 the next year. That was the first component of the estimate.

10 The second component of the estimate was forecasting
11 the future. We looked at the increase in personnel and we went
12 division by division and went over this with the division direc-
13 tors, determined how many authorized staff they had to come on
14 board in '78, and the cost for those.

15 In items like travel, the regions do substantial
16 amount of the travel, and last year they had an objective to
17 visit each program four times. We went through our files and
18 analyzed what it would cost per trip for each region, and it's
19 different, because they have different areas to cover. We
20 determined what their objective was for the next year, and it
21 was four visits again, so we calculated their travel cost based
22 on that.

23 We went through this whole process for program sup-
24 port in addition. The big increases in program support reflect
25 the big increases in the training. I believe one particular

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1 training cost, for instance, for new attorneys was going to in-
2 crease five or six times. I believe there were nine held this
3 year. In '78 there will be 39 held, so the costs go up. But
4 we did for each division go through that detailed process to
5 come up with the '78 estimate.

6 The '79 estimates, then, were a factor from '78,
7 based on the number of new programs we anticipated would be on
8 hand. We developed basically ratios and applied that in '79,
9 because that's the best we could do at that point.

10 MR CRAMTON: Gentlemen, if I might interrupt at
11 this point, and put a suggestion to you: I don't know how much
12 longer we're going to go on the budget, but I think it is going
13 to take a considerable amount of additional time before we fin-
14 ish it. We're not near to the conclusion.

15 We do have a number of people, including four people
16 from Delivery System projects who came in from out of town,
17 and could be here this afternoon to report on that item to the
18 board. I had a general understanding with them that we will
19 try to get to them by two o'clock, and in any event complete
20 that this afternoon.

21 I would like to ask the Board for unanimous consent
22 to move from the budget item to the report of the Committee on
23 Provision of Legal Services and the Delivery System Study and
24 Project Reporting System, and then when we complete that item,
25 go back to the budget.

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24 1 Do I have unanimous consent for that?

2 MR MONTEJANO: Yes.

3 MR CRAMTON: And also, Mr Thurman is not going to be
4 here tomorrow. He has to leave at 5:00, another reason for
5 considering his report now, rather than later.

6 With unanimous consent we'll excuse you and come back
7 to you later. Thank you very much, and we'd like to -- will
8 you --

9 MR THURMAN: I have one question before we get into
10 that. I would like to move that the matter with reference to
11 the preparation of the agenda be taken up right after we take
12 care of the Delivery Systems Study. Can you put that to a
13 vote?

14 MR CRAMTON: Well, I don't think it needs a vote. If
15 there's no objection, Mr Thurman apparently wants to participate
16 in that discussion. He won't be able to if it goes over till
17 tomorrow. All right, with unanimous consent we'll consider
18 that item after the Delivery Systems Report.

19 Would you proceed with the Delivery Systems Report,
20 Mr Thurman.

21 REPORT ON THE DELIVERY SYSTEMS STUDY

22 MR THURMAN: Yes. My presentation here is going to
23 be brief. I endeavored -- apparently some had felt that the
24 Board needed to be better informed, but I think we've had good
25 reports from our staff. I've endeavored to bring you up to

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1 date on what's been going on here, and I recommend certainly to
2 your serious reading and consideration -- if you haven't already
3 done so -- the materials under the tab, "Delivery Systems Study
4 Report," and these give you a -- I think a pretty good over-
5 view of the entire study, with special emphasis on the Project
6 Reporting System.

7 You also have handed out to you here in the gray
8 pamphlet here the material on the management information needs
9 of the Corporation. I don't have to remind you that we didn't
10 have much choice about making a study of this nature, that Con-
11 gress, under Section 1007(g) mandated this, and that it was
12 primarily to make a study of ways to involve the private bar
13 and to compare those ways, those demonstration projects, with
14 the staff programs which have been, with very few exceptions,
15 full-time staff.

16 Now, we did have, I guess, when we took over, three
17 programs that had been heavily -- where the private bar had
18 been rather heavily used. You -- as many referred to them as
19 Judicare programs -- those in Wisconsin, West Virginia, and
20 Montana.

21 But we now have the study with the two different
22 rounds of demonstration projects, 38 different ones. Fifteen
23 of these you might describe -- sometimes you have a little dif-
24 ficulty in describing just as to the exact nature, but I think
25 we can rather accurately state that fifteen are Judicare pro-

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26 1 jects.

2 Six are pre-paid projects. Now these are over the
3 two-year span, now. Eight are in terms of contracts with pri-
4 vate firms. Two, legal clinics; six pro bono clinics; and one
5 voucher, which is I think rather being phased out, and we aren't
6 trying to replicate that.

7 All of the Round One projects, the nineteen, which
8 have been going now almost a full year, have been serving cli-
9 ents and the latest figures I got were something between six
10 and seven thousand clients that are being served there.

11 Sixty of the staff projects have been picked up. By
12 means of comparison, they were randomly selected.

13 The -- of the sixty that we are using for some statis-
14 tical comparison, twelve of them are getting the brunt of the
15 work here. They're the ones that are going to be intensively
16 analyzed. And so you might say that we have 98 projects, in
17 all, of the 300-some-odd projects and programs in the country,
18 38 demonstration, and 60 staff programs.

19 Now, the Advisory Panel which has met five times, and
20 has done I think a very, very good job in keeping track of this,
21 decided early on, after some discussion, that they would try to
22 use four performance criteria. These have been referred to
23 frequently. They are cost, quality, client satisfaction, and
24 impact on the community.

25 We have an interim report to Congress. The law as

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27 1 passed, signed by The President in 1974, said that there was a
2 report made by July 1977, and that interim report -- which is
3 all it could be -- was made, and I would say the comments we've
4 had have been good, comments from members of Congress, comments
5 from others in the community.

6 The Advisory Panel has been kept informed on the DSS
7 -- as this has come to be known -- and they've been given the
8 materials that are supplied to the Board. They've been asked
9 in all instances to comment, at least on the major documents,
10 and certainly on the report that was made to Congress.

11 Now, the agenda today -- and I could tell you a great
12 deal more about that, but I think we want to get into the high-
13 lights of the program.

14 Leona Vogt is here to tell you more about the DSS and
15 Frank Jones to tell you more about the PRS, Project Reporting
16 System. He -- incidentally, I recommend that you read all
17 these, and particularly I think Frank has made a very effective
18 presentation.

19 MR JONES: Charles.

20 MR THURMAN: Pardon me, Pardon me, Charles. I apolo-
21 gize.

22 MR JONESE: That's all right, John.

23 MR THURMAN: I used to have --

24 (Laughter.)

25 MR THURMAN: Charles, confused by another famous

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1 Jones. Well, I know, we have the two Jones in mind, but Charles
2 has made a very -- I'm going to compliment you now, Charles.

3 MR JONES: Thank you.

4 MR THURMAN: -- a very effective presentation of what
5 the PRS is all about, and that's under your tab here on the
6 Delivery Systems Study.

7 Now, we have four representatives with us today from
8 the Round One demonstration projects, and they're going to
9 describe their almost complete first-year operations, and I
10 think you'll find that the four that have been picked are pret-
11 ty representatives of different kinds of delivery systems stu-
12 dies.

13 I'll mention the names of these. There's Randy Kram-
14 er, who is going to tell us about pre-paid. There's Esther Lar-
15 dent, who is going to tell us about a pro bono program; Sara
16 Beery of a contract with private lawyers; and Phil Scheide on
17 the Judicare.

18 So I am postponing for the time being the presenta-
19 tion by Leona and by Charles until after these four are through.
20 Some of these have to get planes, and Leona and Charles aren't
21 going anywhere. So --

22 (Laughter.)

23 MR THURMAN: Except to move back a few steps there
24 from where they are seated at the present time.

25 But Leona and Charles are here to fill us in on the

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29 1 DSS and the PRS.

2 First of all, then, we'll have Randy Kramer. Randy,
3 if you'd come up here.

4 Randy also has given us a brochure here which tells
5 us more about the Norwalk -- Norwalk is just Los Angeles. It's
6 a part of Los Angeles. Maybe they call it a suburb, but --
7 he's with the law firm of Barnett, Jones, and Seymour, and the
8 firm is providing prepaid legal services for what I understand
9 is something like 700 families under policies that have been
10 purchased from Midwest Mutual Insurance Company.

11 Randy, we'll give you ten minutes, and then ask you
12 what questions we have in mind.

13 MR CRAMTON: Welcome, Mr Kramer, go ahead.

14 STATEMENT OF RANDOLF KRAMER

15 MR KRAMER: It's a pleasure to be here. We are one
16 of the --

17 MR THURMAN: I promised to mention that he didn't get
18 beat up by a client, or anything. He had some kind of a motor-
19 cycles accident, or something of that nature.

20 MR KRAMER: On Thanksgiving Day.

21 We are one of the only private law firms that has a
22 demonstration project. We are a profit-making law firm -- or
23 at least we hope to be -- and we entered into our association
24 with the government with some fear and trembling, hearing about
25 Washington bureaucracy.

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30 1 Let me say first that we found the Legal Service Cor-
2 poration to be very understanding of our problems in setting up
3 the project, and we found their attitudes towards this study to
4 be very open and really experimental in finding out what works
5 best.

6 Our law firm was started in 1970. It was started by
7 a group of lawyers who shared a common belief. The belief was
8 that middle-income people -- not lower-income people, but middle-
9 income people -- were being denied adequate legal services,
10 denied because of the very high cost of lawyers' fees, and from
11 the inception of the firm we entered into programs and projects
12 which would make legal services more available to middle-income
13 people.

14 These included programs in the area of group legal
15 services, and we have presently contracts with groups including
16 labor unions, employer groups, credit unions, serving over
17 100,000 people, which reduced the cost of legal services to
18 middle-income people.

19 And we also, since 1973, had been involved with Mid-
20 west Mutual Insurance Company, a private insurance company of-
21 fering a policy of prepaid legal insurance.

22 Now, prepaid legal insurance, if you're not familiar
23 with it, is a program or is a concept which views lawyers' ser-
24 vices very similar to those of doctors' services. When a client
25 comes to the lawyer, instead of billing the client directly,

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31 1 the attorney bills a third party insurance carrier. The policy
2 prepared by Midwest Mutual covers over ninety percent of the
3 needs of the average middle-income person, and the lawyer bills
4 at a rate somewhat lower -- perhaps twenty or thirty percent
5 lower -- than the average rate charged by lawyers in the commun-
6 ity.

7 We believed that we could apply the same principles
8 of client service to lower-income families that we had been
9 applying for years to middle-income families, and our project
10 was designed to purchase a policy of prepaid legal insurance
11 for lower-income families in our area, and service them in very
12 much the same way that we did our middle-income families.

13 Let me emphasize one very important aspect of our
14 project. None of the attorneys in our project is on salary.
15 We receive legal fees only for those services we deliver. If
16 we do not deliver the service, we do not get any fees.

17 And let me say also that the central or the most im-
18 portant finding I'd like to give to you today is that our idea
19 that we could service lower-income families similarly to our
20 middle-income families, has been found to be true. Our experi-
21 ence in serving Legal Service Corporation clients has been
22 very similar to those we've had in servicing middle-income cli-
23 ents.

24 There have been some differences, and perhaps those
25 are what you might be interested in.

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1 We found that lower-income families tend to be more
2 distrustful of lawyers and of the legal system than middle-in-
3 come families do, and this is illustrated by the fact that when
4 we started our project we had a very difficult time interesting
5 families in participating. In other words, they did not really
6 want to be part of the project. They were not interested in
7 having lawyer's services.

8 Eventually, in July, we were able to -- July of '77 --
9 we were able to sign up our full complement of families, but we
10 realized from the first that if we merely sat back and waited
11 for people to contact us, when they needed services, our program
12 would not be successful, so we entered into a very, very vigor-
13 ous program of outreach in preventive law.

14 And the materials in the brown folder, which you all
15 have in front of you, you will see some examples of the work
16 that we've done in developing ways to reach out to the communi-
17 ty and get them involved, find out what their legal problems
18 are.

19 MR BROUGHTON: Do you have a particular page in mind?

20 MR KRAMER: That's the brown folder.

21 MR BROUGHTON: Either the page is covered -- oh, I
22 beg your pardon. Thank you.

23 MR KRAMER: There's an index there too.

24 We've also been very interested in the area of pre-
25 ventive law. There's a tendency, I think, for all of us who

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1 have been lawyers to realize that people come to you at the very
2 last moment, when their problem is so serious that it takes a
3 great deal of work to solve it. We've been encouraging our cli-
4 ents, through preventive law, to come to us at the earliest
5 stage of their problem and perhaps before the problem even be-
6 gins.

7 Yes?

8 MR BREGER: I take it your insurance carrier causes
9 no problems in regard to your seeking people to come in for
10 preventive advice.

11 MR KRAMER: Not at all. In fact, it encourages us,
12 by paying us specifically for conducting preventive law inter-
13 views, and we believe there's some incentives in a prepaid pro-
14 gram for this kind of preventive law work that doesn't exist in
15 other kinds of models.

16 We try to get people to come in, as I was saying, at
17 the earliest possible stage. For example, if somebody is --
18 we encourage people to recognize those events that tend to en-
19 gender legal problems, such as a death in the family, such as
20 signing a major contract for a house or a car. We like to look
21 at those papers before they sign, so they don't get into a sit-
22 uation where problems will occur.

23 And the statistics, the results of our work have been
24 encouraging, so far. In the booklet you will find a statistical
25 summary which shows that over seventeen percent of the families

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34 1 that have -- were initially signed up in the program have come
2 to us with legal problems, and this is only with about seven
3 full months of operation of the project.

4 MR THURMAN: Are these largely Chicano?

5 MR KRAMER: Predominantly, yes. Predominantly non-
6 English speaking. And we have in claims and pending claims
7 over \$25,000.00.

8 MR THURMAN: Do you all speak Spanish?

9 MR KRAMER: No, we have staff who speak Spanish, and
10 some of our lawyers do as well. We have translators on the --
11 in the firm at all times.

12 We have, in addition to the claims and statistical
13 information, we had just in dollars obtained for our clients
14 over \$30,000.00 in direct cash benefits. This includes insur-
15 ance policies they did not know they had to right to collect
16 on. We've saved houses for people, and I could go into many
17 different examples of individuals who have been helped by our
18 program.

19 But I think it's also important -- and I guess I
20 should finish with this -- to explain why we think the concept
21 of prepaid legal insurance is important for Legal Services Cor-
22 poration.

23 First of all, we feel that prepaid legal services is
24 an excellent management tool. It allows a provider of legal
25 services -- such as Legal Services Corporation -- to decide

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35 1 exactly what services they wish to provide to clients, and
2 exactly how much they want to pay for them.

3 Secondly, it allows the mechanism of private enter-
4 prise to work by encouraging competition among private insur-
5 ance carriers and among private attorneys to give to the most -
6 to be with the government for the best contract from the point
7 of view of the taxpayer.

8 And secondly, -- and this is more personal, coming
9 from California. We come from a conservative Republican area.
10 The politicians in our area have been traditionally against --

11 MR THURMAN: Mr Montejano hasn't told us about that.

12 (Laughter.)

13 MR MONTEJANO: I keep telling them differently.

14 MR KRAMER: The junior Senator from our area, Senator
15 Hayakawa, voted against the Legal Services Corporation appro-
16 priation because he felt -- and we disagree strongly, as I
17 said, from our experiences -- that he thought Legal Services
18 Corporation was a bunch of paper-shuffling bureaucrats, and I
19 think that prepaid legal insurance defeats that kind of criti-
20 cism, because it allows the government to get for every dollar's
21 worth of expenditures the maximum amount of legal services.
22 And we feel for that reason prepaid legal insurance has a very,
23 very important role to play in the future of legal services to
24 poor and middle-income people.

25 MR STOPHEL: What are your criteria for family involve-

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36] 1 ment? Is yours the same as our staff attorney program?

2 MR KRAMER: Exactly the same.

3 MR EHRLICH: That's true for all of them, then?

4 MR KRAMER: Yes.

5 MR MONTEJANO: On that same thought, are all of the
6 people you serve under this program people who would be eligible
7 for legal aid assistance?

8 MR KRAMER: We use the same criteria --

9 MR CRAMTON: As the Los Angeles program in the area.

10 MR KRAMER: -- as the program in the area.

11 MR MONTEJANO: What kind of a relationship, then, do
12 you have with the local legal program?

13 MR KRAMER: Well, we've found them to be tremendously
14 helpful to us in areas that we have not had much experience,
15 and I'm speaking specifically now of areas like government bene-
16 fits. They provided us support in handling these type of pro-
17 blems which we really have not -- that's one area, for example,
18 that type of case that we have not had with our middle-income
19 clients. They've been very, very helpful in that area.

20 MR CRAMTON: So you sometimes refer cases to them, or
21 draw on their expertise and --

22 MR KRAMER: We can fully cover those cases --

23 MR CRAMTON: You handle them, but you draw on their
24 expertise.

25 MR KRAMER: We draw on their expertise.

37

1 MR BREGER: I want to focus on that point, because
2 one of the arguments that's often used for increased participa-
3 tion of the private bar in programs in the legal aid area is
4 the fact that many of the problems are of a sort which private
5 attorneys have not had experience with, and the belief that
6 since they haven't had that experience they couldn't do a good
7 job.

8 I'm wondering how much of the newness of the problem,
9 the difference of the problems, have added to the extra amount of
10 work you have to put in, and the relationship that your lawyers
11 find with your own time allocation, the work you usually do,
12 and the new sorts of problem you face when you get into the
13 legal aid area.

14 MR KRAMER: Well, I'd like to refer you to the group
15 statistics we've collected, and I believe that's on the third
16 -- fourth page of my report, and as you'll see, of the hundreds
17 of claims we've handled, only fourteen have involved -- well,
18 really, eighteen have involved areas where -- in which we have
19 not had experience. Those have been in the area of government
20 benefits, and some immigration problems that we would not
21 ordinarily have taken.

22 MR BREGER: Did that surprise you?

23 MR KRAMER: No, it does not. I thought that that
24 would be the appropriate percentage.

25 Now there may be some differences in our particular

38 1 client group, and the reason is that the Mexican-American com-
2 munity in our area is very proud, and really does not choose --
3 except at the direst necessity -- to participate in welfare or
4 in AFDC. They're very independent, and they own a great -- a
5 great deal of them own their own houses, for example. So it
6 may be more true of our area than of others, so maybe our ex-
7 perience is not totally representative.

8 MR THURMAN: I wonder if I could temporarily just
9 call a halt now. Will you be able to stay longer?

10 MR KRAMER: Sure.

11 MR THURMAN: And then when we're through with the
12 four of them we may have some questions.

13 You've got a fascinating program here, and I think
14 this is very helpful to us, to look through this and see what
15 some of the figures here.

16 MR STOPHEL: I'd like to ask one more --

17 MR BREGER: Could I ask just one more question?

18 MR STOPHEL: You indicated that none of the attorneys
19 is on salary. Is yours just an expense-sharing arrangement, or
20 is it a group partnership where the funds go in -- that is, do
21 attorneys share only in their own clientele?

22 MR KRAMER: I meant no one is on salary from this
23 project.

24 MR STOPHEL: I understand. Okay. That's better, thanks.

25 MR BREGER: Could you explain how -- what the figure

39 1 of \$600.00, "Aid to Outside Attorneys," means?

2 MR KRAMER: Yes. When someone comes in for a divorce,
3 we cannot -- we can only represent one party, but the insurance
4 company pays the legal expenses of both parties, the husband
5 and the wife.

6 MR CRAMTON: It's a conflict of interest situation.

7 MR KRAMER: That's right.

8 MR BREGER: So that when you have a conflict of inter-
9 est in regard to individuals you will go out and find another
10 attorney who can take on that job without interfering with the
11 code of professional responsibility.

12 MR KRAMER: Well, we do not like -- we feel -- it may
13 be conflict of interest even to choose another attorney, bec-
14 cause we might have a tendency to choose someone who we feel
15 comfortable dealing with. We prefer working with our local
16 lawyers referral service, and we find it works well with the
17 local bar, because it spreads good relations about this project
18 itself.

19 We use the same procedure for fee-generating cases.
20 We work exclusively through the lawyers referral service.

21 MR BREGER: And there's a set fee that your office
22 will pay. I guess that's what that \$600.00 is --

23 MR KRAMER: Yes.

24 MR BREGER: -- a collection of those set fees that
25 they'll pay to private attorneys to represent individuals in

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40 1 conflict of interest cases.

2 MR KRAMER: Yes.

3 MR THURMAN: Randy, we'll be back at you in a few
4 minutes, now. If we could call on Esther Lardent.

5 Esther is the director of the Volunteer Lawyers Pro-
6 ject of the Boston Bar Association, and this project's a pro
7 bono one. It's the only such -- the only program of this kind
8 that's funded in Round One.

9 I understand that you currently have something like
10 300 volunteer attorneys on your panel. I might mention that
11 Esther worked previously for the ABA section of Individual
12 Rights and Responsibilities.

13 MS LARDENT: Thank you.

14 MR THURMAN: We're pleased to have you here.

15 STATEMENT OF ESTHER LARDENT

16 MS LARDENT: The impetus for the Volunteer Lawyers
17 Project was a report prepared under the auspices of the Boston
18 Bar Association, which is called the Action Plan for Legal Ser-
19 vices. That report made two very critical findings about the
20 provision of civil legal needs of the poor in Boston.

21 It found first that the existing providers of civil
22 needs -- that is the staff attorney program in Boston -- failed
23 to meet all the needs of people who were eligible for legal
24 services.

25 The report also found that a substantial proportion

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41 1 of private bar attorneys who were surveyed were willing to pro-
2 vide pro bono assistance to indigent clients, and our project
3 was developed to bring those two groups -- the clients with un-
4 met needs and the attorneys with services to provide -- togeth-
5 er.

6 At this point we now have approximately 400 private
7 attorneys who have volunteered to accept up to five cases a
8 year. It's a very gratifying response from the private bar.

9 They perform these services on a wholly pro bono
10 level. We only reimburse them for extraordinary out-of-pocket
11 expenses, and we represent clients in the full panoply of civil
12 cases. The four primary areas -- domestic relations, housing,
13 consumer, and governmental benefits. We also found that with
14 the inclusion of private bar expertise we are capable of repre-
15 senting people with rather unusual problems who possibly could
16 not find assistance in the public bar.

17 For example, insurance problems, immigration problems,
18 and we can help those people as well.

19 We have a central administrative office with two at-
20 torneys -- myself and one other staff attorney -- two para-
21 legals, and two support people. Our function essentially is to
22 screen applicants for legal assistance to determine whether or
23 not those applicants are financially eligible and whether or
24 not they do have a legal problem which would make a referral to
25 a private attorney reasonable.

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42 1 We then attempt to do what we term an intelligent
2 referral. We've found that in some cases an intelligent refer-
3 ral is not necessarily a referral to a private attorney. In
4 some cases we provide in-house advocacy. In cases in which people
5 come to us with a fee-generating case or are over income we
6 will refer them to the local bar referral services.

7 We also provide a service in linking up client and
8 attorney by matching a client with an attorney who has indica-
9 ted an interest in the problem area that the client has brought
10 to us. We try to do this in a way that's not disruptive for
11 the private attorney. --we take into consideration the demands
12 of their private practice, --and that is as facilitative as
13 possible for clients.

14 For example, we try to make appointments for clients,
15 because we know that private attorneys are often difficult to
16 reach. Many of our clients don't have their own telephones,
17 and dealing with the receptionist in a large law firm can be
18 daunting for some of our clients.

19 When we began we did substantial outreach to inform
20 clients of our services, and selected a number of target com-
21 munities, areas that have traditionally been under-serviced by
22 legal services or that do not have their own neighborhood legal
23 services offices, as areas that we would concentrate in.

24 We have found that because of the situation of legal
25 services in Boston right now, in which many of the neighborhood

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43 1 offices are closed to intake, or open only to emergency cases,
2 that we have in effect become a provider for all of Boston.

3 We try to maintain the target area concept, and some
4 association with community groups by continuing outreach in
5 those specific areas, and we as well send out intake people
6 in to do one day of intake in community agencies in those areas.

7 Another very important function that's developed as
8 the project has grown is the provision of technical assistance
9 to attorneys. In many instances, the cases that come to us are
10 not routine, in any way, and they involve areas of law that may
11 be unfamiliar to private attorneys. We have on an ad hoc basis
12 provided assistance for those attorneys. We have developed
13 packets, for example, in the areas of leased housing, unemploy-
14 ment compensation, supplemental security income, which we send
15 out to an attorney when we refer clients.

16 When we have a particularly young or inexperienced
17 attorney we often bring that attorney into our office so that
18 we can work with that person directly on the case to see how
19 much assistance they'll need.

20 The ad hoc assistance has been, I think, a helpful
21 part of our program, and it's helped us to restructure our
22 priorities. We feel that one of the most important things we
23 can do now as an office, in addition to screening the clients,
24 is to provide more substantial and systematic training to the
25 attorneys who have volunteered.

44 1 Obviously this provides a benefit to attorneys who
2 volunteer. It ultimately benefits our target population, and
3 that is the clients, so that in the early part of 1978 we are
4 -- we have established a series of four three-hour training
5 programs in the four basic areas of civil law that most of our
6 clients come to us with problems in. We prepared a manual of
7 approximately 1,000 pages of material which is going to be made
8 available to all of our attorneys, and we're subsidizing their
9 attendance at this program.

10 In reviewing the past year to determine how success-
11 ful the projects have been, we found that what we've been able
12 to do as a unique pro bono project is to make the concept work.
13 That is, clients who come to us, they do come downtown and seek
14 our services.

15 In addition, we have found that when attorneys indi-
16 cate to us that they will accept cases, that they do honor the
17 commitment and accept cases from us.

18 We've also found that we have been very important
19 this year as a supplement to the traditional legal services
20 program. In instances in which neighborhood offices have been
21 compelled to close, we developed a close relationship with the
22 staff attorney programs and they refer cases to us so that the
23 people in that neighborhood are not deprived of legal assist-
24 ance.

25 We've also found, as I indicated earlier, that be-

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1 cause of the special expertise of the private bar in areas such
2 as bankruptcy, immigration, and insurance law, we can also pro-
3 vide services that the public bar cannot provide, or in fact,
4 in immigration cases, we've become very close to the provider
5 of all of those services for the city of Boston.

6 Some of the issues that still remain after a year of
7 operation are -- probably first and foremost, the problem of
8 quality of services provided. We do not pre-screen the attor-
9 neys for the panel. They are practicing attorneys who have
10 signed up for our program and we accept their self-certifica-
11 tion as to the areas of practice that they feel comfortable
12 with.

13 And at this point we really don't know -- except on
14 a very ad hoc basis -- how well, in fact, those services are
15 being provided.

16 We've tried to overcome that problem by maintaining
17 close relationships with both clients and attorneys so that
18 clients contact us if they're having difficulty with their at-
19 torney; attorneys contact us if they're beginning to feel that
20 they're really trying to do something that's out of their level,
21 so that we can either assist them or re-refer the case.

22 In addition, I think that the training and the tech-
23 nical assistance that we provide also helps to insure quality.

24 We hope, then, in the very near future to begin a
25 more systematic study of the level of services provided, and I

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1 think that's a very important question that still has to be
2 answered about pro bono programs.

3 Another problem that we found is that there are cer-
4 tain kinds of cases that do not seem to be amenable to referral
5 through a pro bono program.

6 The first kind of case is an emergency case of any
7 sort. We found that people in the private bar do have the obli-
8 gations of their own practice, and do not react very well when
9 we try to refer a case to them that has less than a week waiting
10 period. Very often they simply can't react to that. They're
11 committed, they can't respond, and what we've done is to work
12 out an arrangement with the neighborhood offices so that if a
13 case slips by our initial telephone referral system we can re-
14 fer that emergency person back to a neighborhood office where
15 they can receive assistance.

16 In addition, if the situation is only temporarily an
17 emergency, either the other staff attorney in the office, may go
18 in with the client to obtain temporary orders, and we can then
19 refer the case as a standard case.

20 The other area that we've had some difficulty with
21 is the area of governmental benefits. Private attorneys obvi-
22 ously do not have a great deal of expertise in those areas.
23 They're reluctant to take cases, and we have very few -- approx-
24 imately fifty of the 400 attorneys who've signed up -- who've
25 agreed to accept cases in those areas.

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47 1 What we've done is to try to limit our intake in
2 those areas and to indicate to our referral sources that we
3 simply are incapable of the high volume of practice.

4 We've also tried to work with the attorneys who do
5 receive those cases, and we've found that we have a very high
6 rate of success in terms of outcome in, for example, supplemen-
7 tal security income cases, unemployment compensation cases,
8 cases where we have good manuals that we can provide to the
9 attorneys, and information that we can provide, and assistance.

10 We also provide -- and this is quite important in
11 view of our population -- translation services as well. Two of
12 the people in our office are Spanish-speaking. Some of our
13 attorneys are Spanish-speaking, but we've found that fifteen to
14 25 percent of our clientele at any given time are people who
15 are Spanish-speaking and who are not fluent in English, so that
16 we either arrange for a translator or have someone from our
17 office go with the client to hearings and to interviews with
18 the attorneys.

19 I think that the other problem with government bene-
20 fits cases is that very often they require advocacy, rather than
21 the representation that private attorneys feel comfortable
22 with. What we have done with that problem is to attempt to
23 take those cases only at the level of the administrative hear-
24 ings, so that there is some kind of formal procedure that we
25 can explain to attorneys so that they feel comfortable in deal-

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48 1 ing with clients there.

2 What we hope --

3 MR THURMAN: I think maybe if you could conclude now
4 in a minute or two, why then we can get a chance to ask ques-
5 tions later.

6 MS LARDENT: All right. What we hope to do in the
7 next year is to continue some systematic training activities
8 in the general areas that I've mentioned, and in more specific
9 areas as well, as the needs of our panel grow.

10 We also hope, obviously, to increase our panel, since
11 with the limitation of five cases per attorney the number of
12 attorneys who are actually taking part in this program greatly
13 increases our ability to help clients.

14 MR THURMAN: Do you ever get the impression that your
15 clients are put down pretty low in priority, so far as being
16 taken care of by the attorneys concerned?

17 MS LARDENT: We haven't found that to be the case,
18 and we've asked clients to contact us if they feel that they're
19 having trouble locating their attorney, for example, if the
20 attorney doesn't return phone calls. That has really not been
21 the case. I'm sure that that may be happening in one or two
22 instances, and we're not being told of it.

23 We find that for the most part the attorneys treat
24 their clients as they would any other client, and we encour-
25 age that. We encourage the development of a strong attorney-

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49 1 Client relationship.

2 MR THURMAN: Anybody have any questions right now?

3 MR STOPHEL: Are the private attorneys reporting back
4 to you? I assume that you have some sort of reporting back
5 from them after they have handled a case. Are you finding any
6 difficulty in getting those reports?

7 MS LARDENT: Well, we're in the middle of developing
8 a systematic system for reporting back. What we have now is
9 initial disposition data that indicates that the attorney has
10 agreed to represent the client, or that they gave advice only
11 and resolved the case in that way, or that the client did not
12 contact the attorney.

13 What we do is to review any cases in which anything
14 less than representation is provided to determine whether that
15 seems to be appropriate to us, and to contact both the attorney
16 and the client if there seems to be any question about initial
17 disposition.

18 Obviously we need a -- we're developing a more system-
19 atic reporting system.

20 MR MONTEJANO: Do most of your attorney volunteers
21 come from larger law firms, or the individual practitioners?

22 MS LARDENT: We've done a profile of the 400 attorneys
23 and we found that they come from really every portion of the
24 private bar. We have substantial people from the large firms.
25 We also have people from small firms and sole practitioners.

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1 We have as many people who have been practicing more than
2 twenty years as we have people who have been practicing less
3 than two. So it seems to be a fairly equal distribution of the
4 private bar.

5 MR THURMAN: We certainly appreciate your coming
6 over here. I guess I have a personal hope that we could repli-
7 cate what you're doing now in more cities in this country.

8 MS LARDENT: Well one of the things --

9 MR CRAMTON: It's a very impressive program.

10 MS LARDENT: Thank you. One of the things that I'm
11 very pleased about is the fact that there are so many new pro
12 bono programs in the Round Two Delivery Project, and I'm sure
13 we'll find that this kind of program -- while I don't think it
14 can stand alone -- offers a very meaningful supplement to staff
15 attorney programs.

16 MR THURMAN: Can you stay a few more minutes --

17 MS LARDENT: Yes sir.

18 MR THURMAN: -- in case we have some questions.

19 Sara Beery is the project director of CRLS. This
20 provides services to eligible clients in a number of counties
21 in the northwestern part of Colorado. CRLS is a staff-attorney
22 program, but it's operating a contract model. I understand
23 you have -- what? -- twenty attorneys from quite a number of
24 different offices that serve clients under contract arrange-
25 ment with you. If you could maybe give us a little more detail.

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51 1 we'd appreciate it.

2 STATEMENT OF SARA BEERY

3 MS BEERY: Thank you. I'm on the staff of Colorado
4 Rural Legal Services, and I would not characterize myself as a
5 project director. Colorado Rural --

6 MR THURMAN: Did I demote you, or promote you?

7 MS BEERY: Promote, I think. CRLS conceived of the
8 contact project that we are now operating as an integral part
9 of our statewide staff program. The staff program has eight,
10 I believe, rural neighborhood offices serving a basically rural
11 population. The staff lawyers do a lot of circuit riding.

12 The northwest quarter of the state, the area between
13 the Continental Divide and the Utah border, is the type of
14 geographic area that does not lend itself at all to a central
15 staff office or to circuit riding by full-time staff attorneys.
16 The thought was that a cooperative effort between private firms
17 contracting with our program and serving clients in local com-
18 munities was the best way to serve the poverty population in
19 that area.

20 Our experience this year has basically been success-
21 ful in terms of the appropriateness of the model for the type
22 of population area we serve.

23 We have twelve different law firms or offices. I
24 should not say "firms," because some of those are satellite of-
25 fices of the same law firm, nineteen different lawyers who are

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52 1 under contract with us to serve our clients.

2 The referral system operates through a toll-free WATS
3 line phone in our staff office. Clients call us. The basic
4 intake procedure is done through the phone. Financial eligibili-
5 ty for the services is determined then, and a basic understand-
6 ing of the legal problem.

7 Then the client is referred to usually whichever of
8 the private firms is physically closest to the client, and
9 therefore most accessible.

10 The client from that point calls the law office,
11 makes his own appointment, and the private attorneys are hand-
12 ling our cases just as they would any other private practice,
13 with the exception that they bill us and we pay them, rather
14 than the client does.

15 In the first eight months of operation we found
16 several facts we did not anticipate. One was that we have what
17 seems to us to be a very high rate of ineligible persons con-
18 tacting us, seeking services. We reject over fifty percent --
19 about 56 percent, last count -- of the people who call us.

20 To many of those people we can provide a referral ser-
21 vice. We use the state Bar Association's referral service to
22 a great extent. It operates very similarly to ours, for people
23 who are able to pay at least an initial consultation fee.

24 We have opened over the eight months 219 cases. The
25 largest number that any one law firm is handling is about twenty.

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53 1 I would like to emphasize two -- what I consider per-
2 sonally the two most important characteristics of our project.
3 I am not certain that these would be true of all contract models,
4 but it certainly affects the way the contract model works for
5 us.

6 One is the socio-economic results of the geographic
7 area. It's 18,000 square miles. If I make a monitoring visit
8 and my role is to act as the coordinating attorney for this
9 project -- if I make a visit to these law offices it takes at
10 least four days just basically to get there and talk to each of
11 the attorneys.

12 That simple fact, of the distance and the type of
13 terrain, has a lot of implications for us. For our clients it
14 means that some of them are still eighty to a hundred miles
15 away from the nearest contract attorney. Some of them will
16 call in, will be found eligible, will be referred, and never
17 show up at the attorney's office because they just can't get
18 there, particularly at this time of year.

19 It also has considerable impact for the type of prac-
20 tice, and for -- that the private attorneys are in, and for
21 their relationship with our program.

22 Bar associations in our area are basically inactive,
23 and I think it would be fair to say that the attitude of the
24 local bar associations towards the legal services project has
25 been primarily one of being benignly passive towards us. They

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1 have been supportive in terms of responding to our requests for
2 their support, but they have not initiated much. They do not
3 meet as associations. Therefore, our relationship is not with
4 the bar as an organized unit, but with the individual attorneys.

5 The other I think prime characteristic of our project
6 is its simplicity, and my personal belief is that this is what
7 the contract model has to offer to the Legal Services Corpora-
8 tion and to clients in this type of area.

9 Basically, they are provided with legal representa-
10 tion, just as anyone else would be. The clients and the attor-
11 neys see the legal services establishment as being two people,
12 myself and the paralegal who does basically the intake work.

13 Such a problem as dealing with clients complaints or
14 keeping track of clients satisfaction is a very personal thing.
15 A client might call us and say -- well, most recently one called
16 us and said, "I don't think you ought to pay this guy. He
17 didn't do a good job for you," the client was telling us, and
18 went on to specify why she did not think that we should pay a
19 full fee to her lawyer.

20 The personal contacts with the lawyers have turned
21 out to be one of the strongest aspects. It's definitely a sym-
22 biotic type relationship. We provide them -- most of them be-
23 ing one or two-person law firms without library resources in
24 very small towns, we provide them with a backup function which
25 has been helpful to them beyond just simply their serving of

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1 legal services clients, and they in turn of course provide us
2 with particular types of expertise.

3 We have found that our experience in each of the
4 communities differs. There are some areas where we have been
5 unable to find any firm that was able, because of the size of
6 their practice and the demands of their practice, to contract
7 for us. They simply were not interested. Clients from those
8 areas we have to refer tremendous distances, and we're not hap-
9 py with that situation.

10 We frankly don't see any particular solution to that
11 problem, other than to utilize outreach workers as intake inter-
12 view people. To some extent, where clients cannot physically
13 get to a lawyer's office, we contemplate now having a VISTA
14 volunteer or a CETA employee on our staff who will be able to
15 go physically to the client's home, if necessary, and act also
16 as an investigator for the private attorney.

17 MR STOPHEL: How do you determine the fee? Does the
18 attorney simply bill you, or do you do any investigation? Is
19 this part of your contract?

20 MS BEERY: We have -- we started out with the thought
21 that we would negotiate contracts individually with each law
22 firm participating. As it happened, all but one of the firms
23 pretty much accepted our form contract. We pay an hourly rate
24 of \$25.00 an hour, which is about \$15.00 less than the going
25 rate in the community.

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1 There was only one instance where we negotiated a
2 specific fee schedule that is higher than with the other firms,
3 and this is in the area around Aspen, Colorado, I think for pro-
4 bably obvious reasons. We're paying them less than their pri-
5 vate clients do, but a lot more than we're paying the others
6 contract attorneys.

7 We basically -- well, 55 percent of our cases have
8 been family law cases. We do have a fee schedule for those
9 cases, particularly non-contested ones, and it ranges from
10 \$125.00 for the absolutely most simple divorce case, up to
11 \$250.00.

12 The other area in which we have a fee schedule is
13 bankruptcy, but our experience has been that we have very few
14 of those cases.

15 Most other things are paid on an hourly basis, yes
16 sir.

17 MR BREGER: Do you have any speculation as to why you
18 have such a substantial proportion of family law cases, or al-
19 ternatively, why you may not have high proportions of other
20 sorts of cases?

21 MS BEERY: Well, I have several theories. One of
22 them I think is simply the function of it being a new legal ser-
23 vices program, and it's been my experience, working with staff
24 programs in the past, that this is often typical of a new of-
25 fice.

1 It's a recognizable legal problem. Everyone knows
2 you have to go to a lawyer for a divorce, right? So that's one
3 thing that it's obvious a lawyer can do for you.

4 Secondly, the area -- another geographic factor that
5 we are the energy impact area. This is the coal-mining, oil
6 shale part of Colorado, and many of these communities are just
7 beginning to undergo the type of disruption that transient popu-
8 lations and economic development -- totally unplanned, in most
9 instances -- creates, and this causes family pressures and I
10 think that has an impact too.

11 We have found that there are types of cases we antici-
12 pated getting, that we don't. Part of this I think is the re-
13 sult of the type of psychological isolation that people in rural
14 areas are subject to.

15 For example, the State Hearing Examiner, who handles
16 most of the welfare appeals, told me just a few days ago that
17 since he started operations he has been routinely advising any-
18 one who appeals a denial of welfare benefits to call our toll-
19 free number. We have yet to get a single call.

20 People are suspicious of government agencies. They
21 are reluctant to ask for help. They are not -- they are not
22 joiners, just like they're no active bar associations in these
23 local areas, there are no active any kinds of groups that advo-
24 cate for their membership, and people just -- I think as the
25 other people have told you -- don't seek out legal assistance

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58 1 unless it's just an absolute necessity.

2 MR CRAMTON: One question. How have been the dealings
3 of your program with the delivery systems study personnel, in
4 terms of information reporting, the paperwork, the kind of
5 general -- the project reporting.

6 MS BEERY: Well, I would rather speak in terms of,
7 you know, internally within our project, what our experience
8 has been. And I think it is not unfair to say that the project
9 reporting system has had a negative impact on operations, for
10 several reasons. I tried briefly to summarize.

11 MR BREGER: I'm sorry. Is this on your staff pro-
12 gram, or on this aspect of --

13 MS BEERY: I'm talking about our demonstration pro-
14 ject. None of our staff project is involved with the PRS.

15 MR BREGER: Thank you.

16 MS BEERY: Except me. The -- we have had private
17 attorneys tell us -- who are presently contracting with us --
18 that they find it a pain in the neck, but they are willing to
19 go along with the paperwork involved because they have a small
20 caseload, but they have said -- and I'll quote one of them --
21 "I think that the Corporation is making a big mistake if they
22 think that private practitioners, at least in the type of prac-
23 tice that people have in our area, are going to be interested
24 in contracting with Legal Services to handle these cases if
25 the degree of paperwork continues and if the caseloads get lar-

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1 ger.

2 MR CRAMTON: I hope you tell them that they're guinea
3 pigs for science in the future, and that once we get the infor-
4 mation and have some data maybe we can make some reports and
5 maybe get along with a lot less information.

6 MS BEERY: They are hopeful, but they are also sus-
7 picious of the government.

8 I think that the second thing that we've found with
9 the PRS is that the system is designed so that the provider of
10 the services is really the only person who can meaningfully
11 record what he or she does, and most of the attorneys are not
12 willing to do this paperwork themselves, they delegate it to a
13 secretary.

14 In most of the offices they maintain time and billing
15 records for us exactly as they would for their private clients,
16 and someone at the end of the month transposes information from
17 their billing records to the Project Reporting System forms.

18 MR THURMAN: And that doesn't fit your PRS very well?

19 MS BEERY: It -- I think it leads to a lot of guess
20 work, and I also have found that most of the attorneys will not
21 vouch for the accuracy of anything other than the time that's
22 on there.

23 We have emphasized time because we ask them to sup-
24 port each billing, and they bill us on a monthly basis. They
25 support each billing with a copy of the time spent, recorded on

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60 1 the PRS Form.

2 MR CRAMTON: So I gather it raises a question in your
3 mind about the accuracy of some of the other data, other than
4 just the billable time.

5 MS BEERY: I am basically confident that the time is
6 accurate, because I --

7 MR CRAMTON: But the other data may not be.

8 MS BEERY: Right.

9 MR THURMAN: Well, thank you very much for telling --

10 MR CRAMTON: Rudy wants to --

11 MR THURMAN: Go ahead.

12 MR MONTEJANO: With all of those great distances in-
13 volved, how do you meet your bilingual needs?

14 MS BEERY: We've not had a very systematic way of
15 meeting that. As it happens, the Spanish-speaking population
16 we serve are concentrated in very limited areas. They are pri-
17 marily in two or three towns. And we have found that there are
18 translation services available on an informal basis there.

19 We do not have any Spanish-speaking attorneys. The
20 attorneys, however, are very conscious of this as a need and
21 a problem, and they often will tell us that they know -- you
22 know, a person will call in to make an appointment, and they're
23 aware that a Spanish-surnamed person, or whoever talked with
24 them on the phone -- if they think there might be a language
25 problem, the private attorney will call us, and if they don't

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61 1 have a suggestion about someone who might help translate, they
2 will ask us to find someone.

3 We have had at one point a translator come over from
4 Denver at the request of the client and the attorney to work
5 with the lawyer.

6 MR THURMAN: You know, it sounds a little as though
7 it's easier to get attorneys maybe if you pay them nothing,
8 than if you pay them \$25.00 an hour, based upon this.

9 MS BEERY: Not in rural Colorado.

10 (Laughter.)

11 MR CRAMTON: That's different from Boston.

12 MS BEERY: Yes. We have -- let me just tell one small
13 war story. We had one instance where our contract attorney had
14 filed a domestic relations case and then another legal services
15 program was trying to get representation for the other side.

16 They contacted us and I went to the local bar asso-
17 ciation -- and which happens to be the most active bar associa-
18 tion in the entire area -- and we had no success at all in get-
19 ting through the bar association someone to handle the other
20 side on a pro bono basis.

21 We do not really have a solution for that problem yet.
22 It has not come up very often, the conflict situation.

23 MR THURMAN: Well, we appreciate very much your com-
24 ing, and if you can stay around a little bit longer we would
25 appreciate it.

62 1 Is Phil Scheide here? We now have what's I guess a
2 pure Judicare program in the rural areas, called the Northwest
3 Minnesota Legal Services Project, some 22 counties, as I under-
4 stand it, in that part of Minnesota.

5 Phil should bring to this program a good deal of ex-
6 perience. He was a -- I believe a deputy director of a West
7 Virginia Judicare program, and you've been in Minnesota how
8 long now?

9 MR SCHEIDE: Since this program began, about a year
10 ago.

11 MR THURMAN: All right, you go ahead and tell us some-
12 thing about it.

13 STATEMENT OF PHILLIP SCHEIDE

14 MR SCHEIDE: Thank you, Mr Thurman.

15 I think the members of the delivery system study have
16 found, and I have found as the year has progressed, that a lot
17 of the models that are being tried out are more similar than
18 different. And as I go on I think you will find that a lot of
19 these characteristics of our program and a lot of the problems
20 we've encountered are very similar to what Sara just described,
21 so I will try to maybe highlight some of the differences.

22 The fundamental difference is that we brought a pro-
23 ject into being in an area where there had been no organized
24 legal services before. It covers an area of 23,000 square
25 miles, which is a predominantly rural area. Like Colorado, it

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63 1 is also isolated.

2 The -- it's also the forest area in the state of
3 Minnesota, with about eighteen percent of the population being
4 below the so-called poverty threshold.

5 So with this background we had -- and we still have
6 -- a great deal of outreach to do, a great deal of raising of
7 awareness and consciousness as to not only what our program is
8 and what it can do, but what the legal services movement is
9 all about in the first place.

10 Our Judicare panel is presently composed of 162 attor-
11 neys, and they're in all of our 22 counties, except one.

12 MR BREGER: Excuse me, can I ask how many attorneys
13 there are your part of the country? I'm trying to get a sense
14 of what proportion have joined in.

15 MR SCHEIDE: Yes, I was coming to that.

16 MR BREGER: Sorry.

17 MR SCHEIDE: We have about eighty percent of the at-
18 torneys practicing in the area, just 200, and of that 160 -- in
19 turn, about eighty percent of them have taken some cases in the
20 first eleven months of our operation.

21 Like I said, these are in all the counties except
22 one, and that is in an extremely isolated area in the northern
23 reaches of our territory.

24 Our intake is done not through a toll-free line, but
25 through local community organizations. We have about sixty

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1 places throughout our 22-county area where people can enter our
2 system. These are through community action program offices and
3 satellite offices and outreach workers. They are also through
4 welfare departments and also the senior centers, nutrition
5 sites that serve the needs of the elderly population.

6 This fact that clients enter the program in a signi-
7 ficant number through the welfare system itself raises some
8 problems, as you might anticipate. We found that like Colorado
9 a very small number of our cases have been welfare types of
10 matters. We can't specifically say that they're being pre-
11 screened out, but we have some suspicions along that line.

12 And as far as the other elements of our caseload,
13 we're running about 45 percent domestic relations, about 12
14 percent housing, maybe 12 percent consumer, and the rest mis-
15 cellaneous.

16 Another feature of our program is that we have been
17 able to attract some supplemental funding through title three
18 of the Older Americans Act, and also through the Minnesota Bar
19 Foundation.

20 Probably the thing I would point to as the most sig-
21 nificant feature after a year, or the most significant success,
22 is the fact I've still got a job and we're still in business.
23 There were a great many people at the outset of the year that
24 thought we couldn't run much of a legal services program being
25 funded at the level of \$10600 per poor person, but we have man-

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65. 1 aged to serve more clients than we anticipated; about 800 in
2 all will be served in 1977, probably 500 or 550 of those under
3 the LSC grant.

4 We also have had almost uniformly excellent coopera-
5 tion from the private bar in the area, not only in terms of the
6 fact that eighty percent of them have enrolled and so many have
7 taken cases, but also, for instance, in the fact that we haven't
8 really experienced difficulties in the emergency situation.
9 We've been able to get the attorneys to take cases on an over-
10 night or next day basis.

11 In terms of the problems, I pointed one of them out,
12 of course, and that was the fact that we rely on welfare depart-
13 ments and some of the other social service agencies in the out-
14 lying areas to do intake. Not only does this possibly lead to
15 the conflict situation I referred to, but it also may mean that
16 there's not a real sensitive intake process, and that we're not
17 really getting at some of the legal problems that are out there.

18 This again is hard to document, but based on some
19 conversations and my impressions I would say --

20 MR MONTEJANO: Specifically who performs this intake
21 process? Are they lawyers? Paralegals? People trained by your
22 office? Or volunteers?

23 MR SCHEIDE: Well basically, neither, or none of
24 those. They are outreach workers and social workers, case work-
25 ers.

66 1 AS far as training --

2 MR MONTEJANO: Employed by somebody else.

3 MR SCHEIDE: Employed by somebody else, and doing it
4 for us strictly on a volunteer basis.

5 MR MONTEJANO: Do you have any training sessions for
6 them?

7 MR SCHEIDE: Yes we do. We -- I went around at the
8 outset of the program year and tried to provide some training
9 to them. We have supplemented that on an ad hoc basis through-
10 out the year, and I'm going out again next month. And then of
11 course through written transmittals we try to keep them ad-
12 vised, but it's hit and miss.

13 MR MONTEJANO: Are they involved only at the initial
14 stage? Or do they continue on the file, not as an attorney,
15 of course, but on a somewhat informal but yet personal basis?

16 MR SCHEIDE: Really, they're just involved at the
17 outset. After we receive the intake form from them the refer-
18 ral is made to the private bar, and they really are not advised
19 by us of the outcome, and I don't think they do follow up that
20 much.

21 I might point out also that our fee schedule is at
22 \$20.00 an hour, which is maybe a cross between Sara's contract
23 and pro bono, because it's probably less than fifty percent of
24 what the attorneys are charging in the area. Some fees are
25 subject to a set schedule, and that might be -- make a little

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1 more than fifty percent.

2 MR THURMAN: And you have eighty percent of the at-
3 torneys signed up?

4 MR SCHEIDE: Yes.

5 MR STOPHEL: What was going -- you said you were --
6 you initiated the program. What were these folks doing before
7 you got there for legal services? Does the organized bar have
8 any legal aid committee, or otherwise, that's supposed to be
9 handling these cases?

10 MR SCHEIDE: The four District Bar Associations had
11 varying levels of referral services of volunteer programs. They
12 were not very well developed.

13 There was also about \$20,000.00 in title twenty money
14 that was funneled through social services departments, and es-
15 sentially it ministered on a Judicare basis in some of the lar-
16 ger counties. And that is still going on. They're supplement-
17 ing us.

18 MR BROUGHTON: Do I understand that you -- this is
19 primarily a rural area. You say there are --

20 MR SCHEIDE: Yes it is, we have --

21 MR BROUGHTON: -- twenty-some counties? 23,000 square
22 miles?

23 MR SCHEIDE: Yes.

24 MR BROUGHTON: It's pretty spread out in the -- are
25 there any one county that has what you'd say is a really large

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68 1 population, or are the lawyers predominantly rural lawyers?

2 MR SCHEIDE: They're really predominantly rural. We
3 have only one community that's over 12,000 in population. We
4 have three in about the ten or 12,000.

5 MR BROUGHTON: And you say that prior to this program
6 each of the district bars had some type of referral system for
7 people who were unable to pay for legal services.

8 MR SCHEIDE: Might, and that didn't necessarily mean
9 it was done pro bono. Sometimes there'd be a negotiated fee
10 coming out of that referral. Yes sir.

11 MR BREGER: Excuse me, are your supplemental funding
12 from I guess the Minnesota Bar Foundation and the Office on Age
13 Aging also for your, quote, "Judicare," activities?

14 MR SCHEIDE: Yes, it's the same panel, the same ad-
15 ministrative mechanism for that. Just the criteria are some-
16 what different.

17 MR CRAMTON: What is your response to the question I
18 put to the Colorado representative about the PRS and the data
19 gathering and so on?

20 MR SCHEIDE: As of this point we haven't had any sig-
21 nificant defections from the panel, or significant loss of
22 enthusiasm from it. I guess, in candor, we do view PRS as another
23 obstacle to overcome in making our program a success.

24 Another aspect of your original question to Sara, I
25 feel that we have really benefitted from the people on the

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69 1 Delivery Systems Study task force. They've allowed us to make
2 some adaptations in the originally designed PRS format to ac-
3 commodate some of our individual situations, and that has helped

4 MR CRAMTON: So you share Mr Kramer's view that they
5 have been generally quite open and flexible in terms of working
6 out problems as they came along.

7 MR SCHEIDE: They have. There's a problem in our area
8 in that some of the attorneys don't even -- do not keep time
9 records, especially in matters like divorce. They just don't
10 keep them at all. So this is something new to them in these
11 areas.

12 MR BREGER: Do you -- or rather, do your attorneys
13 find that there's a problem when they get a government benefit
14 case, an unemployment case, welfare case? Do you have backup
15 resources to assist them, or are there people who say, "I won't
16 take that sort of case. I'll only take a divorce, because I
17 know about divorces"?"

18 MR SCHEIDE: We don't have any resources as backup,
19 and this is one of the problems with our program. We need
20 someone to give some technical assistance in these matters.
21 The -- like I say, we have had a few welfare cases. The results
22 are mixed in those individual cases. We don't necessarily know
23 how many times a client is going to an attorney with a welfare
24 problem and being turned away.

25 We do conduct follow-up on our clients, but it's not --

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70 1 it can't be a hundred percent thorough.

2 MR BROUGHTON: Do you know whether the attorneys in
3 the program use the services of either you or any of the sup-
4 port centers that are set up in specialty areas? That is the
5 support centers that are financed by this --

6 MR SCHEIDE: Right. To my knowledge, there have not
7 been any use. They're aware of their existence, but I have not
8 had any requests coming through me for their services.

9 MR BROUGHTON: Among the client-- I mean the clients.
10 I'm not certain about how much contact you have from a certain
11 point on, but do you know or have you heard of general ques-
12 tions as far as the poor people who are being served under this
13 program as to their satisfaction or lack of satisfaction so far
14 as this is concerned?

15 MR SCHEIDE: We've spotted that in two ways. First
16 of all, on a subjective level from my perception I think the
17 client satisfaction has been very good. The somewhat tarnished
18 image of the bar has been refurbished in a lot of cases, and
19 it's gotten very little negative feedback.

20 The second level is the fact that there are virtually
21 no client organizations or client groups in that area which
22 can assist us in monitoring this type of thing.

23 MR THURMAN: Phil, I thank you for coming here.

24 MR SCHEIDE: Thank you.

25 MR THURMAN: It's been very educational. I have just

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71 1 distributed to the other members of the Board this map showing
2 where the nineteen Round One demonstration projects are located
3 in the country, the capital D, and we've heard from four of
4 those this afternoon.

5 The small d's reflect the Round Two -- nineteen Round
6 Two demonstrations projects.

7 The big C are the twelve that are doing -- where we're
8 doing the in-depth comparison studies on the present staff pro-
9 grams, and then the stars indicate the other 48, where we're
10 not requiring quite as much information.

11 I think it's a little unfortunate that the Board
12 doesn't get an opportunity to hear from more than four, but
13 these give you something of a random sample of the different
14 kinds of programs. We have heard others in the advisory panel,
15 and there have been some interesting afternoons spent in listen-
16 ing to these, and I think it's --

17 MR. BROUGHTON: Right, and very helpful.

18 MR. THURMAN: I think at this point if we could call
19 back Charles and Leona -- I don't know which of you two would
20 rather go first, first about the Delivery Systems Study or the
21 Project Reporting System.

22 STATEMENT OF LEONA VOGT

23 MS. VOGT: I think, Mr Thurman, the best approach
24 would be just if I give an overview of what's been going on
25 for the year, and then Charles will talk a little bit about

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1 the Delivery Systems Study.

2 MR THURMAN: Now you all know Leona Vogt, I'm sure.
3 I don't have to introduce here, or either Frank or Charles
4 Jones. We will have Charles later.

5 Leona, go ahead.

6 MS VOGT: Materials which we've prepared for you
7 which were in the black book described several things. One,
8 the analysis that is planned for the Delivery Systems Study,
9 the Round Two demonstration projects that were selected, and
10 some -- with some emphasis on the Project Reporting System as
11 it was originally designed.

12 As Mr Thurman explained to you earlier, the Delivery
13 Systems Study is testing alternatives as well as supplemental
14 approaches to the delivery of legal services to the poor. We
15 wanted to learn at least about the feasibility of implementing
16 some of the models that Congress identified, as well as a pro
17 bono models and legal clinics the Corporation added.

18 You've heard something already about the feasibility
19 and some of the difficulty in implementation of especially
20 brand-new programs. In addition, again we're going to look
21 at four areas of performance: cost, quality, client satisfac-
22 tion, impact.

23 The Delivery Systems Study has two primary aspects of
24 operation. One is the provision of services through the demon-
25 stration programs, which we've heard some about, and obviously

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1 the existing staff programs.

2 The other aspect is learning about the actual provi-
3 sion of service through the data collection and analysis.

4 The data collection processes have been underway for
5 several months. You have heard about the Project Reporting
6 System. There are actually five data collection systems that
7 are being used in the analysis in the four performance areas.
8 One is what you've heard about, the Project Reporting System,
9 which was designed primarily to provide cost information for
10 the Delivery Systems Study, as well as supporting descriptive
11 information about the operations of the program.

12 Second is the peer review assessment, which is to
13 provide quality information.

14 Third is client satisfaction survey, and a fourth is
15 impact analysis.

16 The fifth is the on-site data collection, which is
17 done, which is to support the analysis of the four measurement
18 criteria. Also to look at some of the feasibility and practi-
19 cality issues.

20 The Project Reporting System and the on-site data
21 collection have taken place, and the on-site data collection is
22 being used first of all to support the report to Congress, the
23 appendices to the report to Congress, provide it some start-up
24 information. The on-site data collection will also be used to
25 produce case studies of individual operations so that at a

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1 minimum there will be descriptive information about approaches
2 taken and the case studies will be used to support the overall
3 analytic structure for what we call the integrated analysis,
4 the relationships of the cost, quality, client satisfaction,
5 and impact.

6 We have two data collection contractors at this point.
7 One is Abt Associates the other is Group Operations, and they are
8 are responsible mainly for the development of the measurement
9 system for the cost analysis through first the Project Reporting
10 System and the on-site analysis and all the data processing.

11 Abt Associates, in addition to working on the imple-
12 mentation of the statistical reporting system, is doing the
13 analysis for the case studies, and this is identifying the indi-
14 vidual project factors that need to be analyzed in order to
15 determine whether the model variants are the strongest deter-
16 minants in performance, defined by the four performance meas-
17 ures.

18 MR STOPHEL: Would you mind telling us something about
19 those two organizations? I hope it's possible to ask questions
20 as we go, because I'll forget it if I don't.

21 Who are Abt Associates and Group Management, or what-
22 ever that is?

23 MS VOGT: Group Operations.

24 MR STOPHEL: Group Operations.

25 MS VOGT: Abt Associates is a consulting firm in Cam-

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1 bridge, Massachusetts that has done a lot of its analytical
2 work for social services programs, mainly government programs.
3 The people that -- who are working heavily on the contracts
4 were involved in housing allowance experiments, and so they are
5 very familiar with the types of data collection that we are
6 involved in, which is experimental programs, on-site analysis,
7 reporting -- statistical reporting systems, and so forth.

8 Group Operations, Inc, which is a data processing
9 firm in Washington, and it has worked mainly in the social sci-
10 ences areas and does a lot of analytic work on social services
11 programs.

12 MR STOPHEL: Is this the first time we've had those
13 two as consultants during this, as far as you know?

14 MS VOGT: Yes.

15 MR STOPHEL: Thank you. I apologize for interrupting
16 you.

17 MS VOGT: In the next several months we are going to
18 solicit contracts for the other measurement systems. One, the
19 quality assessment peer review; second, client satisfaction
20 survey; and then the impact analysis.

21 In the development of these measurement systems you
22 might recall that we had field tested measurement systems that
23 were developed under OEO. Those systems will be going through
24 revision with the contractors with representatives from the
25 field, and then we will collect data to be used in the inte-

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76 1 grated analysis.

2 The other point that I just wanted to mention was that
3 we did provide you with a paper that was the recommendation for
4 a performance management system, which was produced under the
5 Urban Institute contract, and the memo from Tom indicated that
6 if you have any comments or questions or observations we would
7 like to have them by the end of the year.

8 This is a draft document. It is to be discussed by
9 the staff and will be used for some forward planning purposes
10 at a later date.

11 MR STOPHEL: I think I'm about two years late asking
12 the question, but I am concerned from the time when I was the
13 Chairman of the Local Board and had some reviews, that this
14 impact thing always gave us a problem. It seemed that our con-
15 cept of what we were doing and the Washington concept of what
16 we were doing coincided down to that point.

17 We were doing a pretty good job of doing what we were
18 doing, but we just weren't doing what they thought we ought to
19 be doing.

20 I'm wondering about if that's not what we're getting
21 into when we say "impact." I can see cost and client satisfac-
22 tion and the other things, but what is the concept of impact as
23 it relates to providing legal services to individual clients?

24 MR ERLICH: Having spent a good deal of time on just
25 that issue, and worrying about it, I wonder if I might --

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77 1 MR STOPHEL: I would be delighted.

2 MR ERLICH: -- respond.

3 We heard from a number of those in legal services --
4 some in demonstration projects, some in the staff attorney pro-
5 grams. The three measures -- cost, quality, and client satis-
6 faction -- didn't, in their view, represent the sum of what
7 they thought they were contributing to their program, and so
8 we said -- as you'll see in the materials that are distributed
9 -- if you think that those are not sufficient and you would like
10 to state goals at the outset of a particular period that you
11 think you're going to achieve, please do state them, and state
12 how we'll be able to measure the progress towards them, and we
13 will at the end of the period look again to see that.

14 They are not -- there's no question about it -- the
15 kind of quantitatively measurable reference that can be added
16 to cost, quality, and client satisfaction, whatever the dangers
17 of purely quantitative analysis in those first three, and there
18 are substantial dangers. But in this fourth one, it can't be
19 quantified.

20 But in fairness to the programs involved, both demon-
21 stration and staff attorneys, it did seem to us appropriate to
22 say that you ought to have the chance to articulate those as an
23 impact that is not measurable by these other three, and that's
24 all we're saying in this effort.

25 Some will say, "Over time we intend to produce in

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78 1 terms of legal services," and we're talking only about the role
2 as lawyers, and their role in terms of legal services, "we think
3 we can produce these results, or at least we'll try."

4 And that was the effort.

5 MR STOPHEL: Maybe I do misconceive the point at
6 which we are. Maybe I'm not two years late, but I really
7 thought those four criteria were agreed on by the Advisory
8 Panel and by our committee before we ever made a demonstration
9 grant, and now I'm finding that the demonstration grant people
10 suggested that impact was a proper measure.

11 MR ERLICH: No, I said people said from all over. We
12 did agree early on on those four, but as we talked about what
13 did impact mean, it seemed to us that that was over and over
14 again, what was desired to include as a component of our over-
15 all evaluation.

16 It does seem to us fair that if someone says we can
17 seek a goal that isn't measurable there, and show some progress
18 toward it, that ought to be reflected in some way, whatever one
19 thinks of the merits of that.

20 MR JONES: It was one of the measures that the Advi-
21 sory group came to. The difficulty was one, in defining what
22 -- defining it in a way that everyone would understand it, and
23 then the second difficulty is how do you measure for it, and
24 the kind of thing that Tom talks about, the goal setting and
25 the objective setting, if you will, and trying to measure to

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79 1 see whether or not the defined goals or objectives of the pro-
2 gram are met, was the other process.

3 So it was a process that the advisory committee got
4 involved in. The impact was one that was selected at the same
5 time that the other three were selected.

6 MR STOPHEL: That's what I thought, and we defined it
7 as the group benefit achieved as a direct result of legal acti-
8 vity engaged in by a grantee of the Corporation. The group is
9 always assumed to mean the poverty community at large, or an
10 identifiable segment of the poverty community, and of course
11 we've had a great deal of discussion recently about the fact
12 that the poverty community is not really a mass at all, and we
13 define a program that really was having a tremendous impact in
14 one way, but was just tearing the rest of the community apart.

15 And I'm afraid of that measurement.

16 MR ERLICH: I think that's true. In fairness, that
17 paper, which is a discussion paper, not a Corporation paper,
18 the one that we submitted to the Congress, which is quoted on
19 page 25 and 26 of the materials in your book, indicates that
20 this criterion was designed to meet concern expressed by some
21 that the other three performance criteria may not adequately
22 reveal the full scope of benefits to the poverty community.

23 And at the outset of the reporting period a grantee
24 describes those benefits, what steps they will take, and at the
25 end the grantee reports on the resources allocated, and so

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1 forth.

2 That was the Corporation position in terms of its
3 report to Congress, and at least, unless the Board urges other-
4 wise, what we propose to do.

5 MR CRAMTON: And the Board discussed that criteria.

6 MR THURMAN: We advised the panel --

7 MR CRAMTON: It isn't as though it's a new one. I'm
8 not sure we know what it means, but how it should be measured
9 -- but we certainly have talked about it.

10 MR STOPHEL: That's why I prefaced my remarks by say-
11 ing I'm probably two years late, because I didn't know what it
12 meant then, and I still don't know what it means, and therefore
13 the unknown is always a question mark in my mind, and I'd just
14 as soon go to something I know about.

15 MR THURMAN: The advisory panel had about -- and my
16 recollection is -- some fifteen criteria that we tossed around
17 during that afternoon, and then we finally took a vote, and
18 my recollection is that the cost, the quality, and the client
19 satisfaction were the first three, and this one was the fourth
20 one, and we decided we were going to use four of them.

21 I guess we decided to define them later.

22 Leona, did you have --

23 MS VOGT: Not now. Charles, do you have --

24 MR THURMAN: Charles, tell us about the PRS.

25 MR JONES: Okay, be delighted to. Spent a lot of

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81 1 time on the PRS recently.

2 STATEMENT OF CHARLES JONES

3 MR JONES: One of the first conversations I can remem-
4 ber having with Tom Ehrlich was about the Delivery Systems Stud-
5 y. Of course it was required by the Act, and we talked about
6 it in general terms.

7 It seemed to me to make sense, and Tom initiated the
8 conversation, that the Delivery Systems Study would properly be
9 under the Division of Field Services, that we had the responsi-
10 bility for the monitoring and evaluation of the Corporation
11 delivery system, whatever it might happen to be, as well as for
12 providing of funds to it.

13 It seemed to me particularly useful to have it there
14 because we do have a concern about some of the issues that you
15 discussed earlier this morning in an entirely different context.
16 That is how one delivers services where there are competing in-
17 terests in a community, how one delivers services pursuant to
18 some of the things that we discussed this afternoon, in more re-
19 mote areas where you have the great land masses with very few
20 people, where even circuit riding isn't very practical. And
21 we have other problems that we can only conceptualize about at
22 this particular moment -- some of the areas in Alaska where
23 there are even larger land masses and even fewer people, and
24 the terrain is virtually impassable, except by airplane and then
25 only at certain times during the year.

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82 1 So it seemed like a natural thing to us. When we
2 began the study, we intended to make the data collection as
3 cost-effective as possible, and therefore we combined at least
4 two objectives. One was the design of the data system or PRS
5 for the DSS analysis, with a test for the data utility for
6 grantees that were going to be using the system. That is,
7 feeding the information back to the programs so the programs
8 could make management choices and decisions based upon the
9 data. That would help them in the management of their opera-
10 tion.

11 There were -- it became apparent all too quickly that
12 we were having some problems in terms of communications. The
13 Corporation, I think, moving responsibly and reasonably in its
14 approach, began having meetings with representatives of the
15 twelve programs that -- staff attorney programs, as well as
16 other, concerning the use of the data.

17 As Tom suggested yesterday when he talked to the
18 Audit and Appropriations Committee, when the issue was raised,
19 legitimate concerns were raised by programs. They wanted to
20 know how the information that we were seeking to get related to
21 the study, because there is no question about it -- you've
22 heard some of the people refer to the response of private at-
23 torneys -- it is burdensome. Anytime you seek to collect data,
24 when you're going to try to get cost data, when you're trying
25 to get data that gives you a fairly complete picture of what is

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1 happening within a program, it means somebody has to do it,
2 somebody has to collect it, and any firm I've been in, where
3 I've had to collect time that wasn't one of the more pleasant
4 experiences.

5 Of course the motivation was different. I knew that
6 my paycheck at the end of the month was dependent upon my re-
7 porting my time and reporting it accurately as I could, and if
8 there was any error, that the firm profits might be affected,
9 and therefore the amount of money I took out of that firm would
10 be affected by it.

11 You don't have that motivation in legal services, and
12 the motivation that we have in legal services is one that we
13 deliver a good product to the client, and whatever you may say
14 and however you may come down on it, certainly one can argue
15 that anything that takes you away from that work means that you
16 have less time to do it.

17 And I think, as I suggested, that legitimate concerns
18 were raised.

19 We have gone through the system now with the represen-
20 tatives of the program. We've met with representatives of the
21 Project Advisory Group, the National Clients Council, in the
22 DSS program some six times over the past three months to work
23 out their concerns, to explain to them so that they understand
24 and so that they come along with us willingly and hopefully
25 with some enthusiasm.

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1 We have resolved the major problems that those groups
2 had with the PRS. We intend to move quickly now with the re-
3 vised system for the staff attorney projects, revision we be-
4 lieve -- as do they -- have considerably reduced the data col-
5 lection burden on the projects, and have met the confidential-
6 ity concerns that people raise.

7 However -- and this is clearly important to us, be-
8 cause of our mandate under the act -- they have -- the changes
9 have not affected our ability to make the kind of analysis that
10 we have to make so that we can have a study that can be sup-
11 ported, a study that can be defended.

12 We're confident now that the revised system will per-
13 mit us to get out adequate cost data for the Delivery Systems
14 Study. We can -- our intent always was to assess the system as
15 we went along, to throw out those parts that were ineffective,
16 that were not as efficient as others. We intend to continue
17 that planning process. We intend to continue the assessment of
18 Phase One of the PRS, and based upon the feedback that we re-
19 turn from the project -- who are using the system, -- and our
20 analysis of the data system where changes or appropriate changes
21 will be made.

22 We've lost some time, but I think we've all learned
23 a lot.

24 I feel confident that we're going to continue to have
25 problems as we go along, but I think we've set up a mechanism

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1 now so that we can work with these problems, so that we can
2 have a system that meets the need for the Delivery System Study
3 and one that all of our projects can support.

4 End of story. I hope a happy conclusion.

5 MR MONTEJANO: Have you taken any action to eliminate
6 or reduce some of the burdens of the paperwork on the people
7 in the field?

8 MR JONES: Yes. Yes. That's what all this meeting
9 over three months was really about, when you come right down
10 to it.

11 MR STOPHEL: Where physically is the data accumulated,
12 that is assuming it becomes a computerized program? Where is
13 the computer?

14 MR JONES: The data is sent to our group ops, to the
15 contractor that you asked about earlier, who then feeds the
16 data into the computer.

17 MR STOPHEL: They're in Washington, D.C.?

18 MR JONES: Yes they are.

19 MR STOPHEL: And they're leasing computer time? Or
20 do they own their own computer?

21 MS VOGT: They use Litton Industries, and they use
22 their hardware and, you know, they are just the service bureau.
23 We use their personnel, and Litton's equipment.

24 MR STOPHEL: Have you sold the accessibility to the
25 information outside the Corporation? Or is there control?

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1 MR JONES: Yes, there is a control.

2 MS VOGT: Group Operations has very, very detailed --
3 which we certainly can share -- contract confidentiality speci-
4 fications that they have to meet through their data control and
5 management procedures all the way through, not just the Group
6 Operations personnel, and through Litton personnel, but through
7 their keypunch personnel. Each individual person who has access
8 to the data has to sign a statement of assurances of the confi-
9 dentiality of the data.

10 In addition, the contractor has a hundred thousand
11 dollars damages clause to protect the data, and so far we have
12 -- and we do monitor the confidentiality procedures and we also
13 ask for a requirement and we have checked on the requirements
14 of getting compliances with federal or with Department of De-
15 fense, which happens to be the most difficult security clear-
16 ances, with Litton Industries, and we feel assured that they
17 have met all of the requirements that we have set down.

18 MR JONES: The other important thing to keep in mind
19 is that there is no identifiable data concerning a client, that
20 is no specific data that you -- we don't send client names, and
21 one of the issues had to do with a number that if a very de-
22 tailed and complicated process was gone through could perhaps
23 be traced back to a name. That problem has been eliminated, so
24 that there is not even a possibility of that kind of informa-
25 tion being traced back to a particular individual.

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87 1 Even if they broke into the office and got at these
2 files, there would be no way that they could trace the informa-
3 tion that would be in our computer back to any individual.

4 Of course if they broke in the office and got the case
5 file, they wouldn't need the information in our computer.

6 MR BROUGHTON: Mr Chairman, we have been going for
7 over three hours. The court reporter, I think, needs a break,
8 and I know I do.

9 MR CRAMTON: We may be --

10 MR BROUGHTON: I don't think you realize, she has to
11 do a lot of talking to this thing, and as I say, we've been
12 here --

13 MR THURMAN: I was just going to say, Mel, if we are
14 through then we would --

15 MR BROUGHTON: I'm not trying to -- but I think five
16 minutes would help everybody.

17 MR CRAMTON: I think we may be able to finish this
18 particular item, and then we reach a natural break.

19 MR THURMAN: Then we could excuse these people who
20 have planes to catch, or do we want them to stay on till after
21 our break? That's the question.

22 MR CRAMTON: No, we'll go on for a couple of more
23 minutes. One --

24 MR BROUGHTON: I ask you again. I think that she --

25 MR CRAMTON: She nodded to me that she could go on

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1 for a short period and --

2 MR BROUGHTON: All right.

3 MR CRAMTON: -- we'll -- she's very patient.

4 The former attorney general -- a former attorney gene-
5 ral of the United States has had some very hard things to say
6 about the Corporation and the PRS. Have his observations been
7 considered, and are they --

8 MR JONES: We considered them. Most of them were
9 there when he said them.

10 MR CRAMTON: You view it as rhetorical overkill?

11 MR JONES: I'm not going to characterize it. Perhaps
12 our President, who sat next to him when he made his speech,
13 would like to characterize it.

14 MR CRAMTON: But you think that the -- essentially
15 the charges are not justified.

16 MR JONES: I think that it would be safe to say that
17 the Attorney General knew very little about our data collection
18 system, or wouldn't have made the statements that he made.

19 MR CRAMTON: Well I just wanted to make -- I think
20 that the Board members have seen the speech. I saw some earlier
21 remarks in connection with the ^{CALS} ~~Kets~~ 10th annual reunion.

22 MR BREGER: Who made this?

23 MR JONES: I think the important thing to keep in
24 mind is --

25 MR CRAMTON: Clark, and since it may be called to the

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1 attention of Beard members, it might be a good idea to circulate
2 the -- to the Board members just so that they could know what
3 kind of misinformation is circulating around.

4 MR BROUGHTON: What was his statement?

5 MR EHRLICH: In essence Mr Clark urged that any -- I
6 don't want to mischaracterize it, but as best I can recall, in
7 fairness, he said that there is a danger of any kind of informa-
8 tion gathering process, because it can encroach upon a variety
9 of kinds of civil liberties, on the one hand, and the ability
10 of those in legal services to exercise their own best judgment
11 on how to deal with their own clients.

12 I don't think, in fairness, that it was substantiated
13 by the facts then, and certainly we've come a long way in terms
14 of working through the kinds of problems that we faced, and as
15 any new enterprise, they are bound to be a good many of those,
16 and I think myself those with whom we've worked are well satis-
17 fied now that we have a sound basis for going ahead.

18 MR CRAMTON: Mr Breger?

19 MR BREGER: Well, I've not been following this situa-
20 tion carefully, although I guess, like every Board member, I've
21 had intimations of unhappiness a few months ago from people in
22 the field.

23 I was wondering if there were any comments from the
24 audience and feelings from the representatives regarding the
25 present state of PRS.

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1 MR JONES: De Miller is here. He was the chairman.
2 He attended --

3 MR CRAMTON: I gather he's heard about the subject
4 before, from the few conversations I've had with him.

5 MR MILLER: I'm not going to say anything dramatic.
6 I think Charles is accurate in his statements about the process
7 we've gone through, that we were trying to work through the ob-
8 jections, and I think at this point the people who have spent
9 a lot of time on it in the projects over the last couple of
10 months were very hopeful that the thing would work out, and
11 were very positive about the process.

12 MR CRAMTON: They feel better about it than they did
13 several months ago.

14 MR MILLER: Yes.

15 MR CRAMTON: Anything else? Or have we completed --

16 MR STOPHEL: I want to ask Miss Vogt a question.
17 You've lived with this study and this idea of us looking into
18 the various kinds of delivery systems that have been suggested
19 that are maybe in the future that are not yet even conceived,
20 and we have gone from -- when this Board took over I suppose we
21 were spending \$71 million a year in staff programs, and in the
22 coming year we'll be spending somewhere in the neighborhood of
23 almost \$200 million for the staff program.

24 Does it give you any concern as a researcher -- and
25 hoping that you'll come out with something definitive in the way

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1 of identifying what delivery systems are best, that we will have
2 gone that far in one kind of delivery system.

3 That is, suppose you came up as a researcher with
4 data that indicated that it should be more in line with 50-50
5 in various kinds of systems? How do we back out once we're in
6 that far?

7 MS VOGT: I think the more -- maybe a way of approach-
8 ing that would be to talk about the dissemination process that
9 is planned, that first of all, you know, as Mr Ehrlich said
10 before, the one-year contracts with grantees, but planning so as
11 to make sure that the findings from the Delivery Systems Study
12 are shared with local communities, with local programs, and that
13 maybe some of what is learned is just to learn about a modifi-
14 cation of the program to improve operations, but it is quite
15 possible, as you heard from at least one staff attorney program
16 today, that there are modifications that do not have to mean
17 total reallocation of resources in a local community.

18 But what we hope is that the power of the information
19 will stand on its own, and that, you know, everything is in a
20 state of flux as it appears, I think, with the additional
21 moneys.

22 I think just as a researcher it seems that what we're
23 hoping is that we will have information that will shed light on
24 effectiveness of approaches for local communities, you know, to
25 use.

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1 MR STOPHEL: I guess the one additional factor is
2 that we'll have a 4,000 person pressure group in place, that
3 number of attorneys and staff attorney programs.

4 MR CRAMTON: I think it's going to be 7,000, but --
5 I'm not sure the characterization is correct, but the numbers
6 is -- you underestimate the numbers.

7 MR STOPHEL: Self-made pressure group.

8 MR THURMAN: Well, are you suggesting, Glenn, that
9 those 4,000, or how many, are all opposed to the use of the pri-
10 vate bar?

11 MR STOPHEL: Not at all. No, I'm suggesting that each
12 of us is inclined to want what we now have. There is a great
13 pressure for status quo among all of us, and I think this is
14 where we're going to find ourselves a year from now, when and
15 if -- and I'm not talking about us as individuals with this
16 Board -- will find itself, when and if we finish this study,
17 and we have concluded that the best approach is the one where
18 you've got a component of this and a component of that and then
19 perhaps a third component of something else that will be con-
20 ceived later, but somebody's got to go.

21 And I think we're going to find the same resistance
22 to change that we had in the northeast with the merger aspect
23 where it was our best judgment that these factors should be
24 used, and we had groups saying, "We're not going to do that,"
25 and -- only multiplied, many times.

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93 1 MR JONES: Yes, part of what drove me to Washington
2 in the first instance was my optimism and my belief that in
3 this instance we really don't have a program for attorneys, we
4 have a program for poor people, and that I think that -- as
5 Leona suggests -- that the information clearly indicates that
6 under certain circumstances a particular kind of thing is going
7 to work best.

8 I really believe this, or I would not say it to you,
9 that our clients -- and indeed the attorneys who work in our
10 program now -- aren't going to have that kind of resistance. It
11 just seems to me that we all share a common goal. Most of them
12 for all these years have worked for wages that have clearly
13 been inadequate, when you compare them to wages paid by the pri-
14 vate bar, and I think that -- you know, if tomorrow, God willing,
15 there was no more poverty and no more need for poverty lawyers,
16 I think we could walk away from it on the same basis, and I
17 really feel confident that that will happen, if in fact that
18 occurred.

19 MR STOPHEL: I hope and trust you're right, because
20 I think the program deserves our fullest support. That's why
21 I'm involved in it, and trust that that will be true and that
22 we will do what we think is best for the clients, those people
23 who need legal services, rather than for ourselves.

24 MR CRAMTON: Well, I think that completes this item,
25 and then let me close it with just a personal expression of

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94 1 thanks on behalf -- to Leona Vogt and the Delivery Systems Stu-
2 dy, and to our visitors who came here from all over the country
3 to make these interesting and provoking -- provocative -- pre-
4 sentations.

5 I think that all of us think that a very important
6 piece of research and demonstration is underway, and we will
7 learn a great -- a very great deal out of it, and we very much
8 appreciate the skill and effort and enthusiasm brought to it.

9 Thank you very much.

10 We'll take a five-minute break.

11 MR THURMAN: Let me just -- one moment -- be sure and
12 thank again the four reporters we had here, Randy Kramer and
13 Esther Lardent and Sara Beery and Phil Scheide. We couldn't
14 have had better and more articulate and more knowledgeable
15 people. We appreciate your coming.

16 MR CRAMTON: I really mean five minutes, because
17 we've got a lot more things to do.

18 (Whereupon, a short recess was taken.)

19 MR CRAMTON: Will the members of the Board resume
20 their places.

21 The quality of our deliberations sometimes suffers if
22 we go on for too many hours, and we will have reached that
23 point by 5:00 p.m., so the plan is to adjourn at about 5:00
24 p.m., an hour from now, or thereabouts, if we can finish up.
25 An item might go a little longer than that, but to adjourn at

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1 about 5:00 p.m. and reconvene at 9:00 a.m. tomorrow morning --
2 promptly -- in order to complete the agenda for this meeting.

3 MR THURMAN: Do you really think the quality could
4 deteriorate?

5 (Laughter.)

6 MR CRAMTON: I will let the public judge.

7 MR THURMAN: Well, I think we've got their response.

8 MR CRAMTON: My understanding is that the next item
9 on the agenda, having completed the report of the Committee on
10 Provision of Legal Services, is Item 5A, the item that Mr
11 Broughton proposed this morning having to do with the role of
12 the Chairman.

13 MR STOPHEL: I think it reverts to me. We haven't
14 finished the budget yet.

15 MR CRAMTON:: No, but he asked -- Mr Thurman asked for
16 unanimous consent that this item be considered today while he
17 was here, and he got that unanimous consent, as I understand
18 it, and it's going to be taken up today. It's got to be con-
19 sidered now.

20 MR THURMAN: We got unanimous consent by a close
21 vote.

22 MR CRAMTON: No, it received unanimous consent, and
23 we did alter the agenda. Am I not correct?

24 MR THURMAN: I think so.

25 MR CRAMTON: The record should also -- I don't know

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96 1 quite what the issue is. I'm going to let Mr Broughton present
2 it.

3 MR STOPHEL: Did you ask for unanimous consent that
4 that be moved to a specific place on the agenda?

5 MR CRAMTON: To the end of today's agenda so that it
6 would be considered today, before Mr Thurman left. At Mr Thur-
7 man's request. He requested it.

8 MR BROUGHTON: It was my understanding Mr Thurman
9 wanted to be here for that, so --

10 MR CRAMTON: That's right. He requested it.

11 MR BROUGHTON: I didn't make any particular time in
12 my suggestion, Mr Chairman.

13 MR CRAMTON: I'm not trying to pull a fast on anyone,
14 Glenn, maybe this -- this did occur, and there was unanimous
15 consent.

16 MR STOPHEL: As we said, sometimes our deliberations
17 deteriorate.

18 MR CRAMTON: Before I get to that, the record ought
19 to reveal that Mr Cook left the meeting after the vote on the
20 use of investment income, and before the report on the Delivery
21 Systems Study, and has not returned.

22 Mr Broughton, the floor is yours. Before I do that
23 I would say that because this item appears to involve my
24 stewardship, it seems inappropriate that I participate or main-
25 tain the chair, and I've asked that -- I've asked Revius if he

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1 would preside while this matter goes on.

2 MR BROUGHTON: All right, Mr Chairman, all I'm trying
3 to do is to seek some clarification at this time, which I feel,
4 for one, that we do not have, as to the relationship of the
5 chairman and the Board in certain areas.

6 In the past few months, at least, we've had two situa-
7 tions in which the Chairman has stated that the Board got in
8 after the fact, and I'm not going -- I'm not suggesting these
9 be redebated.

10 Number one was the Bakke decision, which the Chairman
11 was privy to before any member of the Board was, and the Board
12 came in and --

13 MR THURMAN: I don't think they can hear you, Mel.

14 MR BROUGHTON: And the Board got in the matter after
15 the fact, that is after the brief had been filed.

16 The second was of course the Bamberger request which
17 again the Chairman was privy to and it and which came to us
18 after the Chairman had given his approval of it, at least his
19 letter expressed his approval, and we know again when that got
20 to us. I'm not redebating that. That was decided.

21 And lastly, I think we've had confusion with respect
22 to how we go about setting an agenda. The participation in
23 setting the agenda, so far as members of the Board are concerned,
24 we had considerable confusion at the October meeting in connec-
25 tion with the setting of the New York matter.

1 The Chairman was at the outset very much opposed to
2 it and so expressed it in a memorandum, and then he referred
3 to the fact that since four Board members -- and I'm not quoting
4 this directly -- had indicated an interest he would go ahead
5 and do it, albeit very reluctantly.

6 This last time I expressed myself verbally in a let-
7 ter. We had the Chairman changing the meeting time from a
8 two-day meeting to a one-day meeting. I'm not debating the
9 merits of whether that was a good decision or not, but the
10 memorandum I got about it -- which all Board members got --
11 stated that we should make our travel schedules accordingly,
12 with a one-day meeting in mind.

13 Now he later published a further memorandum in which
14 he used the word "overreaction," and I don't think I overreac-
15 ted, for one. I did respond to him. I called him. And I
16 said to him then what I later -- he asked me to do in writing.
17 And my recollection of the windup of the October meeting was
18 that we had devoted a considerable amount of time to the bud-
19 get, which we had not yet completed, of course, and that we
20 had considerable amount of time as far as the discussion which
21 has just been completed about the Delivery Study, two items
22 which I feel are of tremendous importance to the Board and to
23 the legal services program in particular.

24 And so I'm not trying to engage in the role of a cen-
25 sor, but I do bring these matters in good faith before the

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99 1 Board and I think that we should have some understanding from
2 this point on.

3 Number one is as to how we go about setting the agen-
4 da, what are we talking about -- four members of the Board hav-
5 ing to make a request, or two, or what? But it's been confus-
6 ing to me, and I'd like to get it clarified.

7 MR ORTIQUE: Well, you seem to have mentioned three,
8 in my view, three different matters. One has to do with wheth-
9 er we -- whether the staff determines the submission of a
10 brief in a matter without the Board having decided that it
11 wanted to do that. The other is to where does the jurisdiction
12 lie in terms of top executives having leave, with or without
13 the Board approval.

14 MR BROUGHTON: Well it relates really, I think, to
15 what I'm talking about so far as the Chairman is concerned. In
16 those two cases the Chairman was privy to those decisions, and
17 I take it at least gave tacit approval to those decisions be-
18 fore they got to the Board.

19 Now I think you can parallel those two situations.

20 And the third thing related to -- and I understand
21 the by-laws say that the Chairman and/or president, or the Chair-
22 man together, fix the agenda. I think there's been confusion,
23 particularly recently, as to what role or what is his obliga-
24 tion of the Chairman so far as requests from Board Members who
25 would like an item on the agenda.

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100 1 MR ORTIQUE: Fine. I think what you're suggesting --
2 why don't we take that one first --

3 MR BROUGHTON: All right.

4 MR ORTIQUE: -- with reference to the agenda. Are you
5 asking that we reconsider that bylaw, or are you -- do you want
6 to make a suggestion as to --

7 MR BROUGHTON: Well I think -- it's a suggestion.

8 MR ORTIQUE: -- the privilege of the Board?

9 MR BROUGHTON: I think that if a Board member has an
10 item that he would like on the agenda, even though the bylaw
11 may literally say the agenda is to be established by the Chair-
12 man and the president, or both, I think that a request by a
13 Board member is sufficient -- and it's sufficiently in advance
14 of the meeting, should be received and should be put on the
15 agenda without all of the scurrying back and forth that we
16 seem to have had.

17 MR ORTIQUE: All right. All right, Glee.

18 MR SMITH: Well, I would very much disagree with that
19 last position, as I've served on Boards -- as I'm sure you have
20 -- for 25 or 30 years, and I've never served on one, in a legis-
21 lative body or any other group, where any member could put any-
22 thing on the agenda. You'd have absolute chaos.

23 I think our bylaw is perfectly consistent with recog-
24 nized procedure that the president, chairman, fix the agenda,
25 because they have to schedule the witnesses, they have to judge

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1 the time that's going to be required. They have to make the
2 plans to get the most important things first and get everything
3 done within the time limits of a particular meeting.

4 But -- and I -- so I think it's very consistent with
5 our bylaws the way they are. They're exactly the way that
6 every organization I've ever served on has been.

7 Now, in that context I think that the president and
8 the chairman should receive requests from members and consider
9 them carefully, but the fact that they turn them down I don't
10 think should mean that a member has cause to say, "Well, I de-
11 mand that it be on the agenda." I think that the discretion of
12 the chairman and the president has to be guaranteed, because
13 for one thing, as I mentioned, the fixing of the agenda and the
14 getting of the job done within the time limits.

15 But another very important consideration is that I
16 might want something on the agenda, and if I could just make
17 the request and be assured that therefore it would be on, and
18 I could cause people to come in to appear on that, it might be
19 that I'm all alone in that, and I don't think it's fair at all
20 that other members of the Board who think that it's an improper
21 item for the agenda should have to have my witnesses appear and
22 have my item on the agenda.

23 I think that the matter of putting it on the agenda,
24 if it's going to be done by a member other than the chairman or
25 president, needs to be a matter for decision by the Board.

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1 As Mr Stophel mentioned this morning, every time we
2 convene, the agenda that's presented to us, as prepared by the
3 president and the chairman, is a tentative agenda, and at that
4 time, if the Board members want to add something or want to
5 have something deleted, it's subject to discussion and we can
6 make a change. But we're then making a change with discussion,
7 and by a decision of the Board, and we're not letting every in-
8 dividual Board member be able, unilaterally, to place items on
9 the agenda, which would create absolute chaos.

10 MR BROUGHTON: Well, in response to what you said,
11 you say if you wanted this you perhaps would want to bring wit-
12 nesses. You certainly wouldn't bring witnesses in then try
13 to -- and not know until you've got here that morning whether
14 you're going to on the agenda or not.

15 I'm talking about some advanced contact, some system.

16 MR ORTIQUE: Well, I think you'd have to --

17 MR BROUGHTON: Which I don't think we have now.

18 MR SMITH: If it requires witnesses, I would say
19 you'd need to bring it up, then, as a matter of putting it on
20 the next, up-coming meeting, because I certainly don't think
21 that we should be entitled, each individually, to schedule wit-
22 nesses and put items on the agenda, because we could easily
23 have a situation where we have ten or eleven people, all with
24 the particular things they wanted on the agenda. It would be
25 an impossibility.

1 MR BROUGHTON: Well, I'm suggesting, Mr Smith, that
2 if I feel -- and I would have enough for the time of the Board,
3 I would hope, and I would think the same of you and other mem-
4 bers of the Board -- that I would not frivolously suggest an
5 agenda item, and that I would give it sufficient thought, as
6 you would.

7 MR ORTIQUE: Well, the Chair is going to ask that we
8 not engage in dialog. Present your idea, and I recognize Mr
9 Breger.

10 MR BREGER: Thank you, Mr Ortique.

11 I must say I'm a bit confused by all this. I suppose
12 as someone who was involved in this brouhaha about at least the
13 number of agenda items, it seems to me that as -- if the posi-
14 tion is the one which Mr Smith suggests, which I take it Dean
15 Cramton accepts, if a Board member wishes to place a resolution
16 for action on the agenda at the Board meeting, and the Chairman
17 does not wish to have that resolution put before the Board for
18 a vote up or down, it would take a majority of the Board --
19 that is to say a majority of the Board members present -- to
20 vote for a discussion of that issue.

21 So that that -- or a discussion of that resolution.
22 So that therefore, only resolutions which in a predetermined
23 fashion would be carried could even be placed on the agenda for
24 discussion, if that resolution did not meet with the approval
25 of the Chairman.

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1 Now even the -- I don't suggest we look to the Supreme
2 Court for all of our procedural rules, but even there if a case
3 is going to be discussed they don't take less than a majority
4 to have it accepted for review, and it would seem to me, with
5 the errors in our regulations, we ought to -- or bylaws -- we
6 ought to revise them.

7 It seems to me to be a problem, if the only way a
8 Board member can have an item -- or rather a resolution -- put
9 on the agenda for an up or down vote is to beforehand have a
10 majority that he needs to carry the day on that issue.

11 I just have one or two more questions, which again I
12 say confuse me, because I've not had the privilege of serving
13 on a lot of boards. I may not fully understand the responsi-
14 bilities and the role of a board member.

15 In the Chairman's memorandum of November 23 he sug-
16 gests that it is idiosyncratic to request staff documents prior
17 to a meeting. Again --

18 MR CRAMTON: Would you read the whole sentence,
19 please, rather than taking one phrase out of context.

20 MR BREGER: I'll go through each of them. "Requests
21 have gone to the manner in which an issue was framed, the pre-
22 paration of staff documents prior to a meeting, the point in
23 the agenda at which an item should be considered, the amount of
24 time that should be devoted to it. I do not believe that a
25 detailed and idiosyncratic requests of this sort are consistent

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1 with the framing of an agenda by the president and chairman in
2 accordance with the broader range of considerations of effi-
3 ciency and importance of this factor in the central business."

4 Again, I would have thought that if a Board member,
5 who of course carries -- for better or worse -- the responsibi-
6 lity of decision made by the Board, needs and wants to see the
7 staff documents, or have information prepared for him so that
8 he can vote intelligently on an issue, he ought to be able to
9 procure that information, and that that sort of request, again,
10 should not require a majority of the Board.

11 Whether it's viewed as idiosyncratic or not, I don't
12 know. At least in my own view, given the request that items in
13 the agenda should be considered on a Friday rather than a Satur-
14 day in instances where there was a great deal of concern by the
15 religious Jewish community about those items, is less idiosyn-
16 cratic than a concern for religious tolerance, a concern for
17 religious tolerance that I assume that the Board -- at least
18 the majority of the Board -- adhere to, and that one of the
19 virtues or vices of our pluralistic society is that sometimes
20 efficiency gives way to tolerance.

21 Whether the other items are idiosyncratic or not, I
22 can't speak to, but the main point I'm trying to understand is
23 that it's unclear to me if in order to get staff documents, or
24 in order to place an item on the agenda, or in order to ask for
25 a vote on a question, a Board member ought to have a majority

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1 of the Board voting with him on those matters, if the Chairman
2 doesn't want to put the items on the agenda, I think that's
3 something worth discussing.

4 MR ORTIQUE: Do you want to make the suggestion so
5 that we could -- with reference to the current bylaws. As I
6 understand, the current bylaws say the president and the chair-
7 man have the responsibility for fixing the agenda. Now that of
8 course can have an A, B, and C under it. But thus far we don't
9 have any A, B, or C under it.

10 MR BREGER: No, I'm really -- I'm requesting clarifi-
11 cation of that, if the situation is the one as I described. Is
12 that correct?

13 MR BROUGHTON: Well I'd like to --

14 MR CRAMTON: Mr Chairman?

15 MR BROUGHTON: -- ask this, Mr Acting Chairman. Are
16 you saying that because the bylaws say, as they do, that they
17 do not negate any request from a Board member, are you saying
18 that the Board member who wants to put an item on the agenda
19 is left to a vote the day we meet, as to whether or not an item
20 goes on the agenda?

21 MR ORTIQUE: I don't think that we've reached that
22 issue. I think that up to this time we were operating under
23 the rule that the Chairman and the President sets the agenda.
24 Then all of this came about because there seems to have been
25 some resistance to placing an item on the agenda, and I think

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1 that we -- by the Chairman -- and I think that it's up to this
2 Board to say under what circumstances we will have an item
3 placed on the agenda, other than by the chairman and the presi-
4 dent.

5 MR CRAMTON: Mr Chairman?

6 MR ORTIQUE: Yes, Mr Cramton.

7 MR CRAMTON: May I describe briefly what I think has
8 been the current practice of this individual, acting in my
9 capacity as Chairman of the Board.

10 The president and I have usually conferred between
11 Board meetings, and well prior to a Board meeting, about issues
12 that should be included on the agenda for the following meet-
13 ing. Some of those were suggested by the timetable of the Cor-
14 poration -- such as the necessity to get in an appropriation
15 request -- some of them were indicated because there was an
16 agreement at the former Board meeting that the subject should
17 be discussed, just as there was an agreement last time that the
18 PRS problem be ventilated at this meeting.

19 Some of them were suggested because of the ripening
20 of work of committees, and an indication that committees would
21 have a report. Some are suggested by the president, stating
22 that he has matters which he would like to present to the Board,
23 and others have been suggested by individual Board members.

24 An item has never been excluded from the agenda that
25 was suggested by an individual Board member. The one situation

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1 that has caused difficulty in the last two meetings involves
2 the situation in which the request went far beyond the placing
3 of an item on the agenda. There was always willingness to in-
4 clude a report by the president on the New York situation, and
5 to allow the Board to take whatever action it wanted when that
6 item was reached in the agenda, and there was always the oppor-
7 tunity to raise it under the other business item in the agenda,
8 but the request went far beyond placing an item on the agenda.

9 They wanted to determine the time on the agenda, the
10 amount of time that would be devoted to it, the precise format
11 of staff preparation and the framing of the issue and the like,
12 and at least I felt that -- and I think the president felt the
13 same way, although he can speak for himself -- that if the --
14 that those requests went really too far in terms of impinging
15 our freedom to make decisions about the order in which items
16 ought to be considered, and which items were essential, and the
17 like.

18 Now, when we get to Board meetings, the position that
19 Mr Breger's taken is totally unrealistic in terms of -- or
20 totally fails to reflect how this body has behaved during the
21 two years of experience, demonstrated time and time again to-
22 day.

23 We come to a meeting, we have a tentative agenda.
24 What happens? Somebody that -- it's convenient because they
25 want a particular issue discussed earlier or later, or because

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1 we're going to have outside visitors that are going to be here,
2 ask unanimous consent to have the agenda changed to meet that.
3 As far as I know, unanimous consent has never been denied by a
4 member -- by the Board to a member's request to be inconvenienced
5 in that respect.

6 You all know that. That's the way we behaved from
7 the very beginning. It's the way we behaved on at least three
8 or four occasions today. If unanimous consent were to be denied,
9 to a change in the agenda, then what Mr Smith said is correct.
10 It would require a majority vote. It would have required a
11 majority vote, for example, if a member of the Board had ob-
12 jected to Mr Thurman's request to have this item which we're
13 discussing now considered today, rather than tomorrow.

14 And if it had failed in getting a majority vote, it
15 would have been discussed tomorrow at its place on the agenda
16 that had been approved.

17 Now, it seems to me that's very reasonable, and I'm
18 not at all defensive about the way I have behaved in conjunc-
19 tion with the president in the framing of issues. In fact, the
20 criticism that I get from many members of the public, and some
21 members of the Board, is that the chairman and the president,
22 if anything, the chairman in conducting the meetings, has been
23 far too patient and lenient in terms of allowing changes in
24 conveniencing individual board members in situations where the
25 business of the Board and the business of the Corporation as a

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1 whole may have been adversely affected.

2 I'm willing to take that criticism, and I have, but
3 I object to the alternative criticism that somehow I've dic-
4 tated how this Corporation has handled its affairs and preven-
5 ted matters from being heard by this group and by the public,
6 which individual Board members wanted heard.

7 They have heard a great deal about the situation in
8 New York, Mr Breger, and apparently they will continue to hear
9 it, and they've heard a great deal about conflicts between seg-
10 ments of poverty groups, and it's an important issue, and we
11 will probably continue to hear about it. And I do not pretend
12 to take the authority to squelch the discussion of important
13 subjects.

14 MR ORTIQUE: Mr President, did you have any comments
15 that you want to make at this time?

16 MR EHRLICH: Well only this, perhaps. The Board, of
17 course -- and I speak now in behalf of all the staff, but most
18 particularly myself -- the Board of course is our boss. The
19 Board hires and fires the president, and sets the policy, and
20 it is our job to see to it that we carry out the Board's wishes

21 MR THURMAN: We only have hired, so farfar

22 MR EHRLICH: Well, I hope it remains that way.

23 We do try, seriously, and we have tried to respond to
24 your requests. When individual Board members have requested
25 materials we try to respond as quickly and effectively as we

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1 can. Sometimes we explain the problem in providing a particu-
2 lar item in the form or in the timeframe requested, but I think
3 that almost without exception all members of the Board, at one
4 time or another, have made some request and we've sought to
5 respond to them, because I think it's absolutely right that you
6 must be in a position to do your jobs, and it is our job to put
7 you in that position.

8 And on the whole I don't see, over the past two years,
9 any significant problem in our relations, and I myself would
10 hope we could continue as we have in the past with the under-
11 standing that we would do just that, that if the Board will
12 work as a collegial group I would hope very much you would look
13 not to the past, but to the future, and say that we will con-
14 tinue to operate, as I really think we have in the past, in a
15 way that has recognized that each of us individually has an im-
16 portant responsibility, but collectively we have the most im-
17 portant.

18 You do have to have some arrangements, but the ones
19 we have I think on the whole have worked satisfactorily. Some-
20 times there's disagreement about substantive issues, but I
21 really think the procedures that have been developed and that
22 work, with some understanding on all our parts, and they well
23 may not have been adequate ones on the part of myself or the
24 staff in individual cases, but with that kind of understanding
25 we'll be able to deal with any kinds of issues that arise,

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1 along the arrangements that we've had before.

2 It seems to me unfortunate to try to specify yes, it
3 takes so much to do so many members to raise such and such an
4 issue, when in fact that problem really hasn't been -- in terms
5 of the total two and a half year effort we've had -- been a
6 significant issue. I hate to see the Board divided on that
7 kind of thing, when the important thing is the cohesion of the
8 future of legal services.

9 MR ORTIQUE: Does anyone wish to suggest that we
10 should consider a change in the bylaws?

11 MR SMITH: I'd like to offer one more reason why I
12 think we shouldn't.

13 MR ORTIQUE: Well, if no one thinks there ought to be
14 a change, I don't think we need to entertain that any further.
15 The suggestion has been made, and the Chair rules, that there's
16 no action to be taken at this time on the matter, and that it's
17 been aired, and that's that.

18 Now, with reference to --

19 MR MONTEJANO: Excuse me, Revius. I think you -- the
20 specific question you raised was any change in the bylaws.

21 MR ORTIQUE: Yes.

22 MR MONTEJANO: But that may not answer the question
23 of method of operation, and the issue in my mind is still
24 whether or not an individual Board member has the privilege of
25 having a matter placed on the agenda, unilaterally, through the

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1 Chairman, of course, or whether it's going to take a vote of
2 a majority of the Board, or whether, it has to be set at the
3 previous meeting.

4 I think that is up in the air, and bylaws or not, I
5 don't think the --

6 MR ORTIQUE: I think the Chairman indicated that he
7 would consider to respect the request of an individual to have
8 a matter placed on the agenda.

9 MR CRAMTON: If the Chairman or President were to be
10 given discretion in terms of the amount of time to be devoted
11 to it, the form it was to be presented, the placement on the
12 agenda, and the like, but if issues go to the fact that it has
13 to be considered between 2:00 p.m. and 4:00 p.m. on a particu-
14 lar day, and to take up those two hours, and it has to be pre-
15 ceded by a certain kind of staff investigation, that the staff
16 thinks that they may not be in a position to do at that parti-
17 cular time, and there's other business that may be more impor-
18 tant at the particular meeting, then I think our view is that
19 if you want to have

20 MR BROUGHTON: Well Mr Chairman, that's --

21 MR CRAMTON: -- that kind of regime, a unilateral re-
22 quest of a single Board member --

23 MR BROUGHTON: What I'm trying to say, Mr Chairman --

24 MR CRAMTON: -- that the bylaws need to be amended.

25 MR BROUGHTON: That's where I think you are taking

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1 unto yourself a decision as to whether a Board member's request
2 is going to be honored, or not, and relating it to the time,
3 the subject matter, and so forth, because like in the -- your
4 original response to the Breger request at the October meeting,
5 you know, in reading your memorandum you very strongly objected
6 to the thing being on the agenda, and then you used the ex-
7 pression, "since four members ... you very reluctantly did it."

8 Well, that doesn't make for a good relationship, in
9 my opinion, so far as trying to get something on there. I
10 don't think the Board members should have to go through all
11 that -- if he is proceeding in good faith.

12 MR ORTIQUE: The thing is -- go ahead, Tom.

13 MR EHRLICH: With all deference, what I was simply
14 going to suggest is I think over the past two and a half years
15 really it has worked, on the whole, quite well. We've tried to
16 respond to requests. We'll do it in the future. If you see a
17 kind of problem come up in the future I'd urge you to deal
18 then. I don't think you need the kind of detailed rule that
19 says it takes X members, because when you look back over the
20 past two years I don't really think there have been problems,
21 and I think it will just be more procedure and less substance
22 if we do other than proceed on the basis we have, which is,
23 as I've said -- I think each member of the Board, you are our
24 boss. If you think that something ought to be on the agenda,
25 we'll make every possible effort to put it on and to do it in

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1 a way that satisfies your own interest and what you perceive as
2 the importance of the issue.

3 And on the whole I really think that's been done, and
4 I'm sure it will continue to be done. If the particular kind of
5 question comes up in the future, I'd urge you to deal with it
6 then.

7 MR MONTEJANO: Revius, again following up, I concur
8 with Glee that there be no change in the bylaws, and I think I
9 concur with you also that the position has been raised, and has
10 been aired, and any possible misunderstandings I think probably
11 have been clarified, and I again concur with my president here
12 that let's look to the future and go on.

13 MR BREGER: I would like to associate myself with the
14 president's remarks as well.

15 MR ORTIQUE: All right, as long as are in agreement
16 that we are not proposing any changes in the bylaws, I think
17 we ought to move to the other two matters that have been brought
18 up.

19 One has to do with executive leave, and I think that
20 you have to --

21 MR BROUGHTON: You didn't -- the question was --

22 MR ORTIQUE: Whether the Chairman should --

23 MR BROUGHTON: -- the Chairman should participate in
24 decisions without --

25 MR ORTIQUE: -- participate in the decision --

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1 MR BROUGHTON: -- the Board's knowledge.

2 MR ORTIQUE: -- in such a decision. I think that the
3 president, or my appreciation of the relationship of the presi-
4 dent to this Board is that everybody below the position of
5 president is under the president, and I think that the question
6 of the participation of the chairman in a decision about leave
7 for Mr Bamberger is a matter that the president should explain.

8 Would you give us some enlightenment?

9 MR CRAMTON: But first on that, let me explain my
10 participation, because Mr Broughton's statement is factually
11 incorrect.

12 The president raised the question having to do with
13 Mr Bamberger's Australian trip because he thought that since
14 some compensation would be received -- largely in reimbursement
15 for travel -- it fell within the statutory provision that re-
16 quires approval of the Board of outside compensation of offi-
17 cers.

18 That got me and the Board in the question of whether
19 or not we would approve the outside compensation. I talked
20 with the president about it, and it seemed to me that the pro-
21 posed trip was in the best interests of Mr Bamberger and in the
22 best interests of the Legal Services Corporation, and I for-
23 warded to the Board my view on it and asked the Board to take
24 a position.

25 Now, if you think asking the Board to express a per-

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1 sonal view on a matter is making a decision yourself, I think
2 you are seriously mistaken.

3 Now I know you argued before that the time was short
4 and you had only a week or ten days before Mr Bamberger left
5 the country --

6 MR BROUGHTON: Well, it was the same with --

7 MR CRAMTON: -- to express a view, and so on, but
8 that does not fairly represent my action, which was before --
9 well before Mr Bamberger left the country, to inform the Board
10 of what was in prospect and say that this item was going to be
11 on the agenda for the next Board meeting, and that I thought we
12 should approve it, and any Board member who opposed it should
13 let me know.

14 I received a response only from you, and I concluded
15 from that something which seemed to me proper, that other Board
16 members had no objection to it.

17 MR EHRLICH: I might comment generally about the way
18 in which we tried to communicate in terms of the Board members.
19 Perhaps I did say that we made a mistake in not coming to the
20 whole Board before filing the Bakke brief, and that's not the
21 only mistake that I and the staff members have made, but it
22 is one that we will not make again.

23 One thing I would like to say is that in general terms
24 we have tried to keep the Board as fully informed as we can.
25 There are all sorts of issues -- for example, budget -- that

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1 will affect -- we would go first to the chairman of the commit-
2 tee, sometimes just to inform him, sometimes to inform him and
3 ask whether we should inform other members of the committee or
4 other members of the Board.

5 We do the same thing with the committee on regulations,
6 the same with the committee on provision of legal services.

7 We do try to keep the Chairman of the Board as fully
8 informed of as much that's going on and we do seek counsel on
9 those matters that might or might not be of interest to the
10 Board, and it seems to me only proper that we look to one per-
11 son on the Board as having the role of that kind of continuing
12 relationship on the part of the particular committees, and
13 incidentally, on the personnel front, the chairman of the com-
14 mittee on personnel as well as that whole committee.

15 Similarly with the bill, it well can be that we have
16 done inadequately the communications with Board members. Some
17 have suggested we provide you too much, some on a particular
18 issue, too little. The important thing, of course, is that
19 we're learning about the kinds of relationship, the kinds of
20 things you are interested in and want to know.

21 We'll say we will make the best judgements we can
22 about the kinds of things that ought to -- and the way they
23 ought to -- and if ever you think something should have come,
24 make that clear. We'll do our best the next time to see to it
25 that it does.

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1 One example of course was the Bakke case. In the
2 other case that you referred to, as our chairman indicated, I
3 informed him because it seemed to me a question of judgment as
4 to whether or not in fact within the statute Board approval was
5 required.

6 I myself thought -- and continue to think -- whenever
7 it's a close question, it ought to go to the Board. I'd rather
8 err on that side, rather than the reverse side. I went and
9 asked him, that was his judgment too. He said it's not free
10 from doubt, but better to be sure. That was the process of
11 consultation. You know the timing issue involved in it, and
12 why it came at the time it did.

13 MR ORTIQUE: Does any other member of the Board have
14 any comments to make?

15 MR SMITH: Mr Chairman, I'd like to just briefly say
16 something for the record, since the way in which this matter
17 arose on the agenda and the initial discussion made it appear
18 that there was some dissatisfaction with the way the chairman
19 and the president may have been arranging the agenda, and the
20 way --

21 MR ORTIQUE: Well, we've concluded the agenda today.

22 MR SMITH: Well, I'm speaking about the total item
23 on the agenda.

24 MR ORTIQUE: All right.

25 MR SMITH: And the exercise of executive authority

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1 and authority by the chairman.

2 I just -- I want the record to show that I for one
3 feel that there's been no abuse of authority in any of these
4 categories, and in fact that consistent with proper executive
5 prerogatives for the operation of a Board of this kind, I think
6 the actions have been proper by the president and by the chair-
7 man.

8 I think proper consideration has been given to re-
9 quests. I would hate to see us leave this meeting with the
10 feeling that the conclusion was that any request of any Board
11 member to put an item on the agenda meant that that item auto-
12 matically went on, because it overlooks the opposite side of
13 that point, that a Board member might have an equally legiti-
14 mate feeling that an item should not be on the agenda, and you
15 may wonder why that is, and I think I've had a lot of experience
16 with local boards -- education, city councils, and state boards
17 and national now also -- and I find that there's always a temp-
18 tation on the part of board members, because of constituent
19 pressures, to get beyond what should be the thrust and responsi-
20 bility of a board, and get into administrative matters and
21 board discussions.

22 And I think the negative of a board member conscient-
23 iously thinking that something shouldn't be on the agenda
24 should be given equal consideration with the affirmative posi-
25 tion of the board member who thinks it should be.

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1 And therefore, I think that the consideration that
2 the president and the chairman have been giving has been proper,
3 and I feel that they've done an excellent job of arranging our
4 agenda, and also exercising authority between meetings.

5 MR ORTIQUE: I just want to say that the Chair felt
6 that we had concluded the matter of the agenda.

7 MR SMITH: I thought we were going to --

8 MR ORTIQUE: No, no. It's still the -- I want to
9 raise the question that you brought as to -- the president has
10 indicated that as a matter of filing of initial briefs that the
11 president understands that this is not a matter for the Board
12 to decide. Is that satisfactory to you?

13 MR BROUGHTON: Well I want to look at those items,
14 because I think that the Board, unless the bylaws say they
15 shouldn't be, should be canvassed at the same time as the chair-
16 man. And in this situation the chairman had access to this
17 information long before the Board members.

18 MR ORTIQUE: Are you proposing any change? You're
19 satisfied with the president's declaration that before the
20 Corporation will file an amicus brief --

21 MR BROUGHTON: I'm not talking about that, I'm talk-
22 ing about any area in which the Board is expected to act as a
23 Board, that it be made privy to that simultaneously with the
24 chairman.

25 MR OMTIQUE: I see. That's a different estimate. It

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1 strikes me as being different, in other words, in the consulta-
2 tion process between the chairman and the president you're sug-
3 gesting that when that consultation takes place --

4 MR BROUGHTON: If it's not a --

5 MR ORTIQUE: Oh, do you have any reaction to that?

6 MR THURMAN: I'm not sure I understand that, Mel.

7 This is anything that the Board has to act upon we've got to
8 know about it simultaneously with the Chairman?

9 MR BROUGHTON: All right, the letter, for example, th
10 that's the letter that went to Mr Cramton with a copy to the
11 Board members. We'd have gotten it much sooner on the Bakke
12 brief if Mr Cramton was advised before the board was, and that
13 was a letter to the Board, rather than to Mr Cramton and the
14 Board, saying that we are contemplating filing of it, and
15 that's all I'm saying.

16 I just want to know --

17 MR EHRLICH: I think I understand the concern.

18 MR BROUGHTON: And whether I --

19 MR EHRLICH: And I will do my best --

20 MR BROUGHTON: -- vote to approve or not is a matter
21 I have to make my own independent judgment on, but I do want
22 to know and be brought up to a point where in those two situa-
23 tions one was after the fact and the other was just days away.

24 MR EHRLICH: I think I understand the concern, and
25 will do my best to try to keep you and other Board members in-

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1 formed, and I think you're saying "better informed" than you
2 were.

3 I don't think I can say, frankly, that each time I
4 ask a question to the chairman or to some other board member --

5 MR CRAMTON: Or a chairman of a committee.

6 MR EHRLICH: -- or a chairman of a committee, to have
7 to communicate that issue to every other board member. Other-
8 wise, you're all going to be swamped.

9 But I do hear the concern. I do have clearly in
10 mind the two particular issues that you're troubled by, and will
11 do my best and will ask you at the next board meeting whether
12 in fact we have kept you informed to the degree that you would
13 like, and will make every effort to do that.

14 MR ORTIQUE: Any further discussion of the matter?

15 MR CRAMTON: I'd like to make one very brief comment,
16 which I hope won't be misunderstood. Just as --

17 MR ORTIQUE: Think it over carefully.

18 (Laughter.)

19 MR CRAMTON: Just as these comments imply that the
20 chairman and the president ought to give greater deference and
21 trust to the feelings and views of individual board members,
22 I hope that individual board members will give some degree of
23 trust and deference to the views and responsibilities of the
24 staff and the president and the board, because we're pulled in
25 a lot of different ways by a lot of different board members,

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1 sometimes we get requests from four Board members, and they're
2 pointing in diametrically different directions, and whether it's
3 fixing the agenda or arranging committee meetings or arranging
4 the time which the Board meets or committees meet, and so on,
5 sometimes all of the inconsistent desires can't be met, and
6 somebody has to decide, and they have to decide in a situation
7 in which we're not all sitting in a room like that and can be
8 consulted.

9 This is all I suggest, a little mutual trust, a little
10 mutual trust.

11 MR ORTIQUE: I turn the Chair back over to the regul-
12 ar chairman.

13 MR CRAMTON: Well I would now ask the wishes of the
14 Board as to whether after this busy day you want to go back
15 into the budget, or whether you -- it's now quarter of 5:00 --
16 whether you prefer to adjourn -- we were planning to adjourn
17 about 5:00.

18 MR BROUGHTON: Mr Chairman, I'd like to raise one
19 question before we adjourn, while we're talking about Board
20 meetings. What is our status so far as whether we will have
21 a meeting or not between now and March? I have written and
22 sent a copy to all the Board members a letter in which I ex-
23 pressed two thoughts. One was that I thought that would be
24 going a long time between meetings, and secondly, that if there
25 were no members coming to the Board between now and March, and

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1 that remains our next meeting, and I thought that meeting should
2 be held in Washington, with these new members coming on Board,
3 rather than in California, because of accessibility to the
4 staff, and so forth.

5 Before Mr Thurman has to leave, or before we adjourn
6 for the afternoon, I just ask how we stand on number one,
7 whether we can have a meeting between now and March, and second-
8 ly, will the March meeting be in Washington or California.

9 MR CRAMTON: As requested by Mr Broughton, I did cir-
10 culate the Board and sent them a questionnaire poll about wheth-
11 er they wanted to meet between now and March, and only two Board
12 members expressed a desire to hold a meeting.

13 The second question was -- I asked all Board members
14 about convenient dates, and listed a whole series of dates,
15 and the largest date to get as many as four Board members was
16 I think one Friday in January, the 14th of January.

17 But I'm very open. If the Board wants to meet be-
18 tween now and March, fine. What are your wishes?

19 MR ORTIQUE: May I raise a question, please, before
20 you -- even if you ask me, I'm not going to tell you where I
21 got the information, but is it official that the new nominees
22 -- the names have been sent over to the Senate as of sometime
23 this afternoon?

24 MR CRAMTON: I have been told by the president that
25 the -- the President of the United States has announced his

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126 1 nominations. Now whether they've gone to the Senate or not,
2 that even takes a day or two more, and I assume that they may
3 -- there's a possibility that they won't be considered until
4 the next session of Congress.

5 MR EHRLICH: Our office received a call this after-
6 noon that the President had signed those.

7 MR ORTIQUE: Well, you know at noon that Marlow Cook
8 was of the opinion that if they left the -- that the President
9 did make the decision that every effort would be made to get
10 the Senate to agree at sometime before Christmas.

11 MR CRAMTON: Well, no, he said if Senator Cranston
12 really wanted to make a big issue out of it, and they weren't
13 concerned about the Lance fallout, and so on, it would be pos-
14 sible for them to do so, but you know, we don't -- we have no
15 crystal ball, and I think we ought to assume that the nomina-
16 tions are not going to be confirmed until the end of January,
17 at the earliest.

18 MR SMITH: Mr Chairman?

19 MR CRAMTON: Yes.

20 MR SMITH: I think, as your poll indicated, it would
21 be very difficult to try to get a meeting with our whole Board
22 between now and March, and I don't know that it's strictly
23 necessary. We had arranged the agenda of meetings, the schedule
24 of meetings. I do agree with Mr Broughton that I feel that the
25 March meeting particularly with the point in mind that the new

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1 members are going to be on board, at least known, and probably
2 will attend if not actually be sworn in and attend officially.
3 I agree with him that we should hold the March meeting in Wash-
4 ington.

5 MR BROUGHTON: Mr Chairman, I think while Mr Smith
6 is agreeing with me we ought to adjourn.

7 (Laughter.)

8 MR CRAMTON: It seems to me that that makes very good
9 sense. Is there a sentiment for holding the March meeting here
10 in Washington? We merely had tentative plans to consider San
11 Diego or some western site, in part because some Board members
12 had thought it would be useful to be exposed to legal services
13 people in different parts of the country occasionally, and I
14 still think that, but this is a special --

15 MR BROUGHTON: I agree with that, but in light of the
16 new members I think it might be good to meet in Washington.

17 MR CRAMTON: That's right, it would be more appro-
18 priate.

19 MR BROUGHTON: Were it not for that, I might say go
20 right out there.

21 MR SMITH: I agree with that. I think it might be
22 more appropriate after the first meeting of the new Board mem-
23 bers.

24 MR CRAMTON: Well, if there's no disagreement with
25 that we will -- the Board will plan to meet again in March.

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1 Now there is one item that is related to these mat-
2 ters of legislation, and so on, in which we have a member of
3 the staff, who may not be able to -- or may prefer to make the
4 report today, and I would like to do that if we could, before
5 we adjourn.

6 MR STOPHEL: Mr Chairman, I was just going to suggest
7 that the items we cover this afternoon -- and we can release
8 our people who want to work on budget this afternoon -- can
9 go on, coming back tomorrow morning to close up budget.

10 MR CRAMTON: Right.

11 MR STOPHEL: But that we handle the legislative re-
12 port, and that we handle the regulations which are primarily
13 for submission for publication, and that we handle those, be-
14 cause I believe we can get those handled this afternoon, which
15 will also release a couple of staff people who will not have
16 to return tomorrow.

17 So I would agree with your suggestion to go to the
18 legislative report.

19 MR CRAMTON: Yeah, I'm less -- I was a little less
20 confident on the regulations. I thought some of them might
21 take some time. But let's start with the legislative report,
22 and we will not do anything more on the budget today. We will
23 start with the budget tomorrow morning at nine o'clock.

24 We have the General Counsel, Deputy General Counsel,
25 and Mary Bourdette from the Office of Governmental Affairs.

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1 Mary, tell us about the amendments to the Legal Ser-
2 vices Appropriation Act.

3 REPORT OF MARY BOURDETTE

4 MS BOURDETTE: Okay. I'll try to be brief, because
5 as you know there were many, many ammendments to the act. Let
6 me highlight some of them.

7 First of all, we reported last night, the conference
8 report was adopted by the House on Wednesday by a vote of 236
9 to 110. There were very few, if any, problems in the adoption
10 of the conference report.

11 Hopefully, although it's not for sure, we will have
12 the conference report adopted by the Senate next week, but it's
13 problematic.

14 The authorization level in the conference report is
15 205 million for 1978, and such sums as may be necessary for
16 1979 and '80.

17 As you know, the Green amendment, the general restric-
18 tion concerning the Corporation's ability to conduct by grant
19 or contract, research, training, technical assistance, and
20 clearinghouse, was generally removed. However, there were two
21 minor restrictions added in this area: one, you cannot use
22 more than ten percent of our funds, of our annual appropriation
23 for those purposes by grant or contract.

24 In addition, there was an amendment offered in the
25 Senate which was adopted by the conferees restricting us by

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1 grant or contract to conduct broad general or legal policy re-
2 search, unrelated to the representation of eligible clients.

3 That is of course very vague. It will be difficult
4 to define.

5 The desegregation prohibition remains in the act with
6 a minor amendment declaring what is implicit in the current
7 law, that in fact Legal Services attorneys may provide advice
8 to eligible clients on this issue about -- generally about
9 their rights and their responsibilities, and can certainly re-
10 fer clients to another attorney.

11 That was a compromise between the House and Senate
12 position.

13 The -- another compromise was worked out in the con-
14 ference on membership on the Board. The membership now, the
15 appointments shall be made so as to include eligible clients --
16 in the plural -- and be generally representative of the organ-
17 ized bar, legal services attorneys, and the general public.

18 The collateral attack issue, which I think was one of
19 the Board's amendments, was adopted, so that questions about
20 eligibility cannot be brought up in the initial proceedings in
21 which a legal services attorney is representing a client.

22 Rather, such questions shall be referred to the Corporation
23 for review and disposition.

24 Also included in the final version was the amendment
25 also suggested by the Board that legal services attorneys not

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1 be appointed by the Board on different terms than appointments
2 made in the private bar.

3 The political activities -- staff attorneys now will
4 track the Hatch Act, and as with Corporation employees and state
5 and local employees, with specific declaration, however, that
6 staff attorneys could not be candidates for partisan political
7 office.

8 That was added because there is some chance that the
9 Hatch Act will be amended to allow partisan political candidacy.
10 They did not want that allowed for staff attorneys.

11 There was a new section added in conference requiring
12 the Corporation to conduct a special needs assessment on the
13 special problems of access and legal problems of particular
14 groups -- native Americans, limited English-speaking clients,
15 veterans, migrants, and persons in sparsely populated areas
16 with adverse weather conditions and problems of transportation.

17 The restriction on private funds, which was -- had
18 been in the act, which we asked to be deleted, remains in the
19 act, however. There were a number of other amendments, and
20 I'll be glad to answer any questions.

21 You did receive the conference report, and, as I say,
22 hopefully it will be adopted by the Senate next week.

23 MR CRAMTON: Thank you so

24 MR STOPHEL: I appreciate the work done by Mary and
25 the others in that office, keeping us current on the status of

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1 the act from time to time. These are very helpful, the pre-
2 sentations that come to us in letter form and otherwise.

3 MR WALTERS: I would be prepared to review quickly
4 for the Board, if you wish, some of the possible changes to the
5 regulations that might be necessary as a result of the changes
6 in the act.

7 MR MONTEJANO: I don't think that will be necessary.

8 MR WALTERS: Fine.

9 MR MONTEJANO: Thank you very much, but the answer
10 is no. We could hear that at some other time with new Board
11 members.

12 MS DANIELS: Steve has prepared a memorandum on that.
13 I'm sure he'd be glad to send that to the members of the Board.

14 MR MONTEJANO: Fine, why don't we just send a copy
15 of the memorandum.

16 MR WALTERS: Fine.

17 MR CRAMTON: My own preference would be to adjourn at
18 this point and --

19 MR MONTEJANO: If we could, Mr Chairman, we just have
20 a minor clarification of the bylaws, and then merely have two
21 proposed regulations on termination and suspension for publica-
22 tion and comment.

23 I think we're not finally approving the proposed re-
24 gulations, this is merely for publication and comment, so if
25 we could take that, it should take just a couple of seconds.

1 Steve?

2 MR CRAMTON: Are you going to present the report of
3 the committee in Mr Kutak's absence, Mr Walters?

4 MR WALTERS: Yes, I'll run through --

5 MR CRAMTON: All right.

6 MR WALTERS: -- the provisions that are before the
7 Board now.

8 REPORT OF COMMITTEE ON REGULATIONS

9 MR WALTERS: The first item is a proposed amendment
10 to Section 1601.29 of the bylaws. If the Board members will
11 recall, at the last meeting several amendments were adopted
12 clarifying the power of the President to appoint and determine
13 compensation for the officers of the Corporation with consul-
14 tation by the Board.

15 The Committee on Regulations, in light of some con-
16 cerns expressed during the discussion of those amendments, went
17 back at its November meeting, reviewed the various amendments
18 that were adopted at that time. They recommend that those
19 amendments remain in effect, that they not be reconsidered.
20 They have proposed the amendment to Section 1601.29 of the
21 bylaws, that you -- that is in your Board materials, and the
22 amendment simply conforms the time for appointing officers to
23 the previously given powers of the President to appoint and
24 determine compensation, makes clear that the President may be
25 appointed for more than one year, since his appointment still

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134- 1 is made by the Board.

2 It provides then that the other officers, the ones
3 appointed by the President, would be reappointed annually in
4 September for the next ensuing fiscal year.

5 MR MONTEJANO: Mr Chairman, I would move approval of
6 these proposed amendments.

7 MR CRAMTON: Is there a second?

8 MR SMITH: Second.

9 MR CRAMTON: By Mr Smith. Is there discussion on the
10 proposed bylaw change?

11 (No response.)

12 MR CRAMTON: We have given the proper notice for
13 amendment to the bylaws?

14 MR WALTERS: Yes we have.

15 MR CRAMTON: So that technically the bylaws have been
16 followed in terms of the amendment.

17 MS DANIELS: Yes.

18 MR STOPHEL: And the changes, as I understand it, are
19 to make sure that the President's term can be longer than a
20 year, which was a question that came up, and the second point,
21 that all other officers do come before the Board for reappoint-
22 ment in September.

23 MR WALTERS: That's right.

24 MR STOPHEL: Of each year.

25 MR WALTERS: The President will be appointing them

135 1 in September after consultations with the Board.

2 MR SMITH: The President appoints them under our
3 amendment that we adopted last time. The President appoints
4 them after consultation with the Board, the other officers.

5 MR WALTERS: But this bylaw insures that that consul-
6 tation will take place annually, in September.

7 MR SMITH: Okay.

8 MR CRAMTON: And I gather that would not necessarily
9 require a Board meeting in September.

10 MR WALTERS: No.

11 MR CRAMTON: I ask that question because the bylaws
12 at present constitutes talk about a quarterly Board meeting
13 in October --

14 MR WALTERS: Yes.

15 MR CRAMTON: -- and the committee might be consulted
16 in September and then a report to the Board in October.

17 MR WALTERS: That's right. No formal Board action
18 would be required. Consultation is --

19 MR CRAMTON: The appointment would take place --

20 MR WALTERS: That's right.

21 MR CRAMTON: -- either before or after.

22 MR WALTERS: That's right.

23 MR CRAMTON: Is there discussion on the amendment?

24 (No response.)

25 MR CRAMTON: Are you ready for the question?

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1 (No response.)

2 MR CRAMTON: All those that favor the publication of
3 the amendment ---

4 MS DANIELS: The adoption.

5 MR CRAMTON: -- the adoption of the amendment, please
6 say aye.

7 (Ayes.)

8 MR CRAMTON: Those opposed, no.

9 (No response.)

10 MR CRAMTON: The record will reflect that the bylaws
11 have been substantially --

12 MR STOPHEL: I would like -- I apologize for not
13 being as familiar with those that I had voted against last
14 time, but I think that the sense of some of those I voted
15 against is not in line with all of this, and therefore, rather
16 than voting against this particular amendment, with which I
17 have no concern, I will abstain on that.

18 MR CRAMTON: Why don't we have a show of hands so the
19 secretary can get the vote correctly.

20 All those in favor of the adoption of the bylaw please
21 raise your hand.

22 Mr Montejano, Mr Cramton, Mr Smith, Mr Broughton, Mr
23 Breger, and Mr Ortique.

24 All those opposed, no one, and Mr Stophel is abstain-
25 ing.

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1 Part 1606 is next.

2 MR WALTERS: Yes. As the Board members will recall,
3 last January a proposed revision of Part 1606, relating to the
4 denial of refunding, was published for notice and comment in
5 the Federal Register, following the New Orleans Board meeting.
6 Further proceedings on that proposed regulation were held in
7 abeyance, given the fact that the authorizing legislation was
8 in process and there were some proposed changes to Section 1011
9 of the act, which that regulation implemented.

10 We -- the committee is now coming to the Board with
11 a revision of -- further revision of Part 1606 that accomplishes
12 two things. First, it adopts the requirement of an independent
13 hearing examiner that is adopted in the new authorizing legis-
14 lation. Second, it includes termination -- proceedings to
15 terminate a grant, as well as proceedings to deny refunding,
16 and it was the view of the committee that those two types of
17 proceedings were sufficiently similar that similar procedures
18 would apply.

19 And the recommendation is to publish this further
20 revision of Part 1606 in proposed form for notice and comment.

21 MR MONTEJANO: Mr Chairman, I would move the approval
22 of the recommendation.

23 MR CRAMTON: Is there a second?

24 MR SMITH: Second.

25 MR CRAMTON: Mr Montejano's moved and Mr Smith has

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1 seconded the publication of the proposed regulation dealing with
2 termination and denial of refunding for notice and comment. It
3 will return to the Board after the notice and comment period
4 has expired and the committee has had an opportunity to consider
5 the comments, and I assume it will be back.

6 Is there discussion?

7 MR ORTIQUE: Yes, I would just ask that if serious
8 disagreement, is that prior to the Board meeting those of us
9 who are not on the committee will be given notice of that seri-
10 ous disagreement.

11 MR MONTEJANO: That has always been the understanding
12 and the procedure.

13 MR CRAMTON: I have a question about the meaning of
14 point four, grounds for termination.

15 MR WALTERS: Yes.

16 MR CRAMTON: How -- in what situation does it apply,
17 and how far does it go? For example, in some of the hypothe-
18 ticals that Mr Stophel put about a change in policy which moves
19 toward mixed staff attorney, private bar funding of legal ser-
20 vices, and therefore required a reduction in the funding of a
21 large group of programs. Does this notion -- does this provi-
22 sion prevent that policy from taking effect?

23 MR WALTERS: What it would prevent the Corporation
24 from doing would be terminating existing grants that were made
25 before the policy came into effect. When those grants came up

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1 for renewal then the application for refunding would be denied
2 on the basis of that policy.

3 The notion was that there are equities in terminating
4 a grant that don't exist when there's denial of refunding.

5 MR CRAMTON: I assumed that that was the meaning, but
6 I think an ambiguity arises because in point two, under the
7 definitions provision, and again in point three, there's a re-
8 ference to current grant or contract, where here it just says
9 "the grant," and it might be interpreted as implying that the
10 grant you got five years ago can never be reduced in amount
11 because -- on a policy ground because it is not just the cur-
12 rent grant, but a prior grant that is included here.

13 MR WALTERS: Well, I -- if we added that the current
14 grant was made or the current contract was entered into, would
15 that clear up the ambiguity?

16 MR CRAMTON: We'd have to ask the committee if these
17 reflect on the question, because this is among all of our re-
18 gulations one that is most likely to be involved in litigation,
19 and we ought to look at it from the point of view of what loop-
20 holes or openings are there for attorneys to interpret in a
21 way that we don't mean it to be interpreted, because it's to
22 their tactical advantage, and we've got to, I think, look at
23 this one in Holmes's bad man view and see whether it will hold
24 up.

25 MR MONTEJANO: I think the point's well taken, and

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1 it ought to be amended accordingly.

2 MR CRAMTON: Is there further discussion?

3 (No response.)

4 MR CRAMTON: Are you ready for the question, which is
5 the publication of this proposed regulation for notice and com-
6 ment?

7 (No response.)

8 MR CRAMTON: All those in favor, please say aye.

9 (Ayes.)

10 MR CRAMTON: Those opposed, no.

11 (No response.)

12 MR CRAMTON: The record will reflect that the Board
13 has unanimously supported the publication of this regulation
14 for notice and comment.

15 Part 1623, dealing with procedures governing suspen-
16 sion of financial assistance. Mr Walters.

17 MR WALTERS: This is a new regulation. The Corpora-
18 tion has not previously had a regulation governing suspension
19 of financial assistance.

20 The essential features are described in the comment.
21 Essentially, it prohibits suspension for greater than thirty
22 days, and it provides the procedures for a show-cause proceed-
23 ing as required by section 1011 of the statute when it is pro-
24 posed that financial assistance be suspended for a period of
25 less than thirty days.

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1 And the committee would recommend that it be -- again
2 be published for notice and comment.

3 MR CRAMTON: Do we have a motion, Mr Montejano?

4 MR MONTEJANO: Yes, Mr Chairman, I would move approval
5 of Part 1623 for notice and comments.

6 MR SMITH: Second.

7 MR CRAMTON: You've heard the motion. It's been
8 seconded by Mr Smith -- to publish the suspension regulation
9 for notice and comment, to be reconsidered by the committee,
10 and to come back to the Board at a later date.

11 Are you ready for the question?

12 MR MONTEJANO: Question.

13 MR CRAMTON: All those who favor the adoption of the
14 motion, please say aye.

15 (Ayes.)

16 MR CRAMTON: Those who are opposed, no.

17 (No response.)

18 MR CRAMTON: The regulation will be published in the
19 Federal Register for notice and comments to return to the
20 Board at a later date with the committee's views.

21 Does that complete the report, Mr Montejano --

22 MR MONTEJANO: Yes, Mr Chairman.

23 MR CRAMTON: -- of the committee on regulations?

24 MR MONTEJANO: Thank you so much Miss Daniels and
25 Mr Walters.

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MR WALTERS: Thank you.

MR CRAMTON: We -- if by --

MR BREGER: I move we adjourn.

MR CRAMTON: We'll recess until tomorrow morning at 9:00 a.m., here in this room.

(Whereupon, at 5:15 p.m. the meeting was recessed until the following day.)

C E R T I F I C A T I O N

This is to certify that the attached proceedings, in the matter of the Meeting of the Board of Directors of the Legal Services Corporation, held on 9 December 1977 in Rosslyn B Meeting Room, Ramada Inn of Rosslyn, 1900 North Fort Myer Drive, Arlington, Virginia, were had as herein appears and that this is the original transcript thereof.

Neal R. Gross

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