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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

MEETING

Washington, D. C.

Friday, 5 March 1976

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BOARD OF DIRECTORS

MEETING

Quality Inn
Thomas Circle
A-B Room
Washington, D.C.

Friday, 5 March 1976

The meeting in the above-entitled matter was convened,
pursuant to notice, at 9:15 a.m. Mr. Roger C. Cramton,
chairman, presiding.

MEMBERS PRESENT:

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

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MR. CRAMTON: The meeting will come to order.

We're expecting several other board members, but Mr. Stophel will not be able to attend because of an emergency involving his wife who had an operation for gallbladder; and he, unfortunately, will need to be in Chattanooga, Tennessee and will be unable to join us.

We are expecting Mr. Ortique and Mr. Cook.

The record should show that Messrs. Smith, Broughton, Montejano, Kutak, Breger, Thurman and Cramton are present now, and Mr. Ehrlich.

MR. KUTAK: Mr. Chairman, could we send a message to Glenn?

MR. CRAMTON: I think that would be very appropriate, and I will take it that there is unanimous consent for an appropriate message to be sent to Mr. and Mrs. Stophel.

Gentlemen, the first item on the agenda is the adoption of the agenda for today's meeting.

You have it before you.

What is your pleasure?

MR. THURMAN: I move adoption of the agenda.

MR. KUTAK: I second it.

MR. CRAMTON: Is there any discussion?

(No response.)

MR. CRAMTON: All in favor?

1 (Chorus of ayes.)

2 MR. CRAMTON: Oppose?

3 (No response.)

4 MR. CRAMTON: The agenda is adopted.

5 The first item on the agenda after the adoption is
6 the approval of the minutes of the meeting on January 22 and
7 23 held in Austin, Texas.

8 The draft minutes are before you.

9 What is your pleasure?

10 MR. KUTAK: I so move.

11 MR. SMITH: Second.

12 MR. CRAMTON: Are there any corrections or suggestions
13 for the proposed minutes?

14 (No response.)

15 MR. CRAMTON: Any discussion of the motion to
16 approve the minutes of the meeting on January 22 and 23?

17 (No response.)

18 MR. CRAMTON: All in favor of the minutes, please
19 say aye.

20 (Chorus of ayes.)

21 MR. CRAMTON: Opposed?

22 (No response.)

23 MR. CRAMTON: No nays.

24 The minutes are approved.

25 The next item on the agenda is the reports by the

1 three committee chairmen.

2 Mr. Stophel, as I've indicated, will not be able to
3 be here. Mr. Ehrlich, would you like to report in his stead on
4 appropriations and audit?

5 MR. EHRLICH: There is before the House Appropriations
6 Committee both the 1977 proposed \$143 million budget, and our
7 ~~15.3~~ supplemental budget for 1976.

8 We have been spending a great deal of time speaking
9 with individual members of Congress; and I'm grateful to
10 Marshall Breger who came all the way from Texas to meeting with
11 a group of Congressmen which was very helpful.

12 We are optimistic that we will get at least a good
13 share of what we think we need to do the job for the next
14 year.

15 But hta has been the primary focus of attention for
16 a number of us for the last months.

17 MR. CRAMTON: Thank you very much, Mr. Ehrlich.

18 Mr. Thurman, do you have some comments on behalf
19 of legal services?

20 MR. THURMAN: You're referring to the budget request
21 for fiscal 1977. You will note that we ask for a supplemental
22 request for money to a million and a half to setup the first
23 units for this study, and for fiscal 1977, ask for 1.2 million;
24 half for the cost of modifying the six existing programs, and
25 \$200,000 for research teams for programs whose present structures

1 remain unchanged and also setting forth their ways in which
2 we hope to go about this.

3 Of course, we have no approval as yet for either
4 supplemental request for 1977. We do not as yet have appointed,
5 I guess, Mr. President, our director of research.

6 MR. EHRLICH: Correct.

7 MR. THURMAN: But that individual will play a key
8 role on this study of alternative legal services delivery
9 systems.

10 Hopefully, we will be doing a good deal on this in
11 the very near future, but I have nothing really, other than
12 what was reported in the Austin meeting at this time.

13 MR. KUTAK: Mr. Chairman.

14 MR. CRAMTON: Mr. Kutak for the Committee on Regulations.

15 MR. KUTAK: Mr. Chairman, the Committee on Regulations
16 on February 21st in Santa Ana, California, and as it's most
17 important business, decided that it will continue to meet in
18 Santa Ana, California as we found there an environment that was
19 conducive to the most productive work, I tell you.

20 MR. THURMAN: You want to go into details on that?

21 MR. KUTAK: I'm going to advise the Board hereafter
22 and put you on notice when Rudy says he's going to have a few
23 friends over for dinner, beware; because we got the grandest
24 reception and the greatest opportunity to meet some wonderful
25 people from that part of the country.

1 I don't know if it's moved the legal program back or
2 moved it forward, but we had a lot of fun and Rudy, again,
3 on behalf of the Committee, I want to thank you for the incred-
4 ible hospitality.

5 MR. MONTEJANO: Our pleasure.

6 MR. KUTAK: We did not get the expected announcement
7 after that Rudy was running for governor, but we did have this
8 agenda before us, and we went through it.

9 We addressed four specific regulations that were in
10 draft form:

11 One on appeals on behalf of clients; and

12 The second on the outside practice of law.

13 These were only in staff form; and after some discussion
14 by the staff of their contention, they went--the staff is
15 working on it, and will submit a tentative form of regulation
16 to the Committee and consistent with agreed practice to each
17 member of the Board, probably in the next week.

18 At that time, they will be ready for circulation
19 and probably publication for public comment.

20 We also agreed to two other questions, two other
21 regulations, one on political activity. This is the
22 Hatch Act Regulation, and we, of course, as you might
23 surmise, focused on some very serious legal questions that
24 needed further research and will probably be ready for the
25 next Committee meeting.

1 Finally, we discussed the regulation on picketing,
2 and that sort of activity which is the subject matter of a law-
3 suit which the firm of Covington and Burling, as you know,
4 are handling for this firm, for this corporation.

5 We commented on it, but felt that we as a committee
6 should not--not to mention this Board as a board, should
7 really work in close coordination with counsel on that one,
8 because the case, of course, is moving forward.

9 We did, however, feel that to honor the commitment
10 to the court, we would have something out by the end of
11 that month, February; it was stated to the court in affidavit.

12 We did defer it to counsel and then authorized
13 the publication for comment only of the regulation that
14 Covington and Burling was working on in preparation for that
15 lawsuit.

16 We do plan to have a meeting of the Committee in
17 Kansas City, on April 2nd and 3rd. At that meeting, we would
18 like to review the four regulations I have just referred to
19 plus regulations on client eligibility, on recipient Board
20 standards, on fee guidelines, and on non-federal funds.

21 There is a total of nine regulations, gentlemen, that
22 we will review to bring forward, and hope to occupy most of
23 your attention, if not your time, at our next board meeting
24 which I take is scheduled for April 23rd.

25 Of course, before then, and immediately after our

1 board--Committee meeting on April 2nd and 3rd, a full set of
2 proposed regulations will be moved forward to the Board members
3 with our memorandum focusing on the legal issues, the topics
4 of concern and what questions we would solicit your response
5 to among ours and any others you would wish to.

6 Mr. Chairman, we are moving with all deliberate
7 speed towards an agenda of regulations for this Board to
8 consider at the April meeting, and that we are confident
9 we will have the Board briefed after our meeting of April 2nd
10 and 3rd on issues they would like to consider for that meeting.

11 MR. CRAMTON: Mr. Kutak, did you wish to make a state-
12 ment about the possibility of holding a Committee meeting?

13 MR. KUTAK: I did, indeed.

14 MR. CRAMTON: In connection with this meeting?

15 MR. KUTAK: That's as much as we know.

16 The corporation is going through its grant applications
17 and one of the things which was recognized was the high
18 priority or it was a need for regulation on application for
19 refunding, and what I'm going to ask the Committee to do is
20 meet--depending on the schedule of today, if we adjourn before
21 noon, probably do it after lunch; if we adjourn by dinner,
22 may meet this evening; but preferably I think we should hold
23 ourselves in readiness.

24 If I could, I'd like to ask Rudy and Glee to have a
25 meeting tomorrow morning, subject to the Board meeting at that

1 time, and would have the Committee meeting address to that
2 subject so we could get something to the Board and something
3 for publication in the future.

4 MR. CRAMTON: And we will give notice to the members
5 of the public who are in attendance here as soon as it's possible
6 to indicate when and where that Committee meeting will be held.

7 MR. KUTAK: We sure will.

8 MR. CRAMTON: Thank you, Mr. Kutak.

9 The next item is the report by the President concerning
10 two topics:

11 First, the grants to state and local governments
12 that require a special determination by the Board under Section
13 1006(a)(1)(A)(ii).

14 Mr. Ehrlich.

15 MR. EHRLICH: The Board has a memorandum from
16 Clint Bamberger spelling out the details of the matter.

17 In essence, when the Corporation came into being,
18 there were six grants which had been made to government
19 agencies.

20 Four of those legal services programs have terminated
21 the relationship with their government agencies and the grants
22 have been made directly to the programs.

23 There are now only two proposed grants which require
24 approval by the Board:

25 The Merced Legal Services Association, California,

1 which is a delegate agency of the Merced County Board
2 of Supervisors and the Legal Aid Bureau of Baltimore plan to
3 phase out its relationship with the Board of Supervisors over
4 a three month period, and that will be the term of the grant.

5 The arrangement in Baltimore which has existed
6 for the last decade contributes \$146,000 from the city. It
7 goes on for a nine month period according to the proposal.

8 The proposal, which you should have before you, on
9 the last page of the memorandum from Clint Bamberger is the
10 resolution; and I will now read the resolution.

11 ↘ Whereas, Section 1006(a)(1)(A)(ii) of the Legal
12 Services Corporation Act of 1974 provides that the Corporation
13 is authorized to make grants to state and local governments only
14 upon a special determination by the Board of Directors that
15 the services to be provided by the grantee will not be provided
16 adequately through a non-governmental arrangement; and

17 Whereas, the Merced Legal Services Association provides
18 services as a delegate agency with funds granted to the Merced
19 County Board of Supervisors; and

20 Whereas, the Legal Aid Bureau of Baltimore is a third
21 party contractor receiving funds from a grant to the Urban
22 Services Agency, an agency of the City of Baltimore, and

23 Whereas, the Board of Directors has determined that
24 the legal services provided by the Merced Legal Services
25 Association and the Legal Aid Bureau of Baltimore will not be

1 provided adequately through non-governmental arrangements,

2 Resolved, that:

3 1. The Board approves a grant to the Merced County
4 Board of Supervisors for a period of three months with a
5 requirement that subsequent grants will be made directly to the
6 present delegate agency, the Merced Legal Services Association,
7 or a successor non-governmental agency;

8 2. The Board approves a grant to the Urban Services
9 Agency, an agency of the City of Baltimore, for a period of
10 nine months. ↑

11 MR. CRAMTON: Do you move adoption of the resolution?

12 MR. EHRLICH: I do so move.

13 MR. CRAMTON: Is there a second?

14 MR. SMITH: Second.

15 MR. BROUGHTON: What is the first page of the
16 memorandum in reference to the six grants which had been made
17 to government agencies?

18 It is pointed out in--the first page of the memoran-
19 dum on the 25th of February, reference is made to facts
20 when the corporation came into being there was six grants
21 which had been made to government agencies and four terminated
22 relationships with their government agencies, and the grant was
23 made directly to the program.

24 What are those?

25 MR. EHRLICH: The other four?

1 MR. BROUGHTON: Of these four, have we acted on those?

2 MR. EHRLICH: Those have all been shifted directly
3 to grants of programs, so there is no longer an intervening
4 state or local government agency, and therefore, under the
5 statute, they can be made without specific--it only requires
6 Board approval when specific.

7 MR. BROUGHTON: These four were agencies that were
8 funded by local and out state governments?

9 MR. EHRLICH: Right.

10 MR. BROUGHTON: And the relationship between the
11 governmental entity or entities have been severed?

12 MR. EHRLICH: Right.

13 MR. BROUGHTON: And now picked up through a grant
14 of this corporation to, shall we say, project in that community?

15 MR. EHRLICH: Exactly.

16 " MR. BROUGHTON: What did that do budget-wise?

17 Was an adjustment made at that point so far as that
18 project?

19 MR. EHRLICH: There shouldn't be any budgetary impact
20 if funds are simply going through the local government directly
21 to the project; shouldn't be any impact on the project at all.

22 MR. BROUGHTON: But the same level of funding?

23 MR. EHRLICH: Yes.

24 MR. BROUGHTON: You say what formerly went to the

25 governmental agency first is now going directly to this particular

1 situation through the local project or does it have any
2 relationship to the local projects?

3 MR. EHRLICH: Now it is funding right to the project;
4 formerly it went via a government agency.

5 All we're cutting out here is the middle, the government
6 agency, as the statute suggests is an appropriate way to
7 the procedure.

8 MR. BROUGHTON: What are the four?

9 Do you have a list?

10 A VOICE: One is the West Virginia State plan through
11 the government. The other is a community action service of
12 New York which went through Human Resources.

13 I forgot the other two.

14 MR. EHRLICH: I'll get you the names of the other
15 two.

16 MR. THURMAN: I take it the Merced one is phasing
17 out in nine months and pretty soon we won't have any of these?

18 MR. EHRLICH: That's our hope, with the exception of
19 the Baltimore one.

20 MR. CRAMTON: Mr. Breger.

21 MR. BREGER: When they are phased out, what happens
22 to the matching grants if there are any from the local govern-
23 ment entity?

24 MR. EHRLICH: One of the things we want to be sure of
25 is that they are not lost.

1 MR. BREGER: Yes; and the Baltimore case is a prime
2 example; if it were stopped immediately, it might be lost.

3 So the purpose of the elongated temporary grant is
4 to attempt to effectuate some kind of method in which to
5 keep matching, local grants.

6 MR. EHRLICH: Yes.

7 MR. BREGER: Okay.

8 MR. BROUGHTON: Well, these that you listed, had they
9 formerly received any matching funds? Was that cut off?

10 MR. EHRLICH: As far as I know, there is no cutoff
11 of any matching funds by the process of going directly to
12 the project as opposed through governments in the four cases?

13 A VOICE: New York, I believe, contributed something
14 toward the aduit, and the people fel that in terms of the
15 handling it, the financial matters themselves versus going
16 through various city agencies and the controller would be
17 about a standoff, and CSA, I believe in talking about that,
18 decided it was sort of an even trade.

19 MR. BROUGHTON: How much money are you talking about?
20 Do you know the total?

21 MR. EHRLICH: For the two?

22 MR. BROUGHTON: Yes.

23 Let's say the four, just trying to get information
24 about this.

25 MR. EHRLICH: I see.

1 I can tell you what the two are.

2 STAFF: You want to know the amount of grants?

3 I'll have to get that for you.

4 MR. EHRlich: Those four, of course, have been worked
5 out.

6 MR. CRAMTON: I gather the policy being followed here
7 is one that reflects a statutory desire that legal services
8 be delivered on a community basis through an independent,
9 nonprofit corporation rather than a government entity; but
10 allows for the corporation to when it can't be done on any other
11 basis, prove it can be done by the government, by the government
12 agency, and what is being done in terms of funding grants,
13 try to create a nonprofit instrumentality which continues
14 to receive whatever local funds are being contributed, and
15 merely a kind of technical reorganization of the existing
16 project.

17 Is that correct?

18 MR. EHRlich: Right.

19 MR. ORTIQUE. So that we don't get into any problems
20 and we might certainly be concerned with this in the future,
21 that there is no guarantee that that pattern is going to
22 necessarily follow in terms of Baltimore; this corporation
23 is not guaranteed today that we will have a look at this again.

24 I wouldn't want the Board members to feel if we do
25 this this time, we may have to look at it another time, and

1 another time after that. And I'm concerned that we didn't
2 kill a program someplace just because it was operated by a
3 governmental entity by not having an opportunity to fund it.

4 So we say we would like very much or encourage
5 them to do otherwise, but if they don't, then we have th
6 opportunity to look at it and say its delivery of legal services
7 is most important, and therefore, we are--this corporation
8 will fund it.

9 MR. CRAMTON: Is there further discussion?

10 MR. THURMAN: I move the question.

11 MR. CRAMTON: Are you ready for the question?

12 All in favor of the resolution being adopted?

13 (Chorus of ayes.)

14 MR. CRAMTON: Oppose?

15 (No response.)

16 MR. CRAMTON: The resolution will be adopted.

17 I heard no dissenting votes.

18 MR. CRAMTON: The second item on which the President
19 will report has been with us since our very first days, the
20 interpretation and implementation of Section 1006(A)(3) of
21 the Legal Services Corporation Act.

22 Mr. Ehrlich.

23 MR. EHRLICH: You have a very substantial set of
24 materials sent to you for your homework, and first of all,
25 Mr. Polikoff's two volumes that he sent which includes the

1 17 individual support centers; and

2 Volume two which contains the full reports on each
3 one of the centers.

4 Then you have a volume that contains my own recommen-
5 dations, plus legal memoranda concerning some of the specific
6 aspects of those recommendations together with some letters
7 and other background material.

8 And finally, sent to the Board was a draft contract
9 that would implement the recommendations together with a draft
10 resolution which would state Board policy, and on the basis
11 of which, the resolutions were adopted.

12 The staff would proceed to implement my recommendations
13 and I hope I can consider that draft resolution now on the
14 table.

15 It is, I think, worth recalling that we moved into this
16 matter as a board in two stages:

17 The first stage which began last July when CSA
18 extended the grant to support centers from the original
19 termination date which was September 30, 1975 to March 31,
20 1976.

21 Chairman Cramton requested the Community Services
22 Administration to extend that date to June 30, 1976, but as you
23 will recall, CSA declined to do so.

24 When that request was declined, when it became
25 clear, in other words, that March 31 was and is the fixed

1 termination date, then the Board moved to consider the
2 matter on the merits.

3 Last November, against the background of a memorandum
4 that Mr. Oberdorfer prepared, a comprehensive study of all
5 centers and their activities was made.

6 A study was done under the direction of Mr. Polikoff.
7 He was chosen on recommendation by Mr. Oberdorfer because of
8 his experience and expertise in both private and public law
9 sectors.

10 We worked with the cooperation of the staff with
11 Tony Mondello and others on the staff, and with an advisory
12 panel in preparing the reports.

13 My own recommendations, which you have, are of course
14 based upon my own independent judgment, my own independent
15 evaluation of the act, and of its legislative history.

16 But before turning to those recommendations, and to
17 the draft resolution that I've suggested, we might find it
18 helpful to hear from Mr. Polikoff on his efforts on the
19 process he followed in coming up with the factual analysis
20 that he did.

21 He is here today.

22 As a suggestion, I'd go on to say that after he did
23 summarize those, if it makes sense to you, I could then review
24 with you quickly my own recommendation to the Board.

25 If it wishes, we could hear any public comment that

1 those who are here might wish to make before turning to our
2 own discussions of the matter.

3 Does that seem an appropriate way to proceed?

4 I don't know.

5 MR. CRAMTON: I think it sounds very appropriate, and
6 with the unanimous consent of the Board, I'll ask Mr. Polikoff
7 to come and address us.

8 MR. POLIKOFF: Thank you, Mr. Chairman.

9 MR. CRAMTON: Mr. Cook has now arrived.

10 We just are starting on the discussion of the backup
11 center issue, and Mr. Polikoff is going to summarize his
12 report and recommendations.

13 Mr. Polikoff.

14 MR. POLIKOFF: Thank you, Mr. Chairman.

15 I am embarking on a summary of an already too
16 voluminous document, and if I have an apology to make, it's
17 for not figuring out a way in a relatively short time period
18 that we had to do this, for compressing materials so to burden
19 you a little less with reading matter.

20 I'll try not to compound that error by over extending
21 a summary.

22 As I reviewed the report,--

23 MR. BROUGHTON: Could I interrupt to say I think that
24 the Board,--not speaking for the Board, but I for one do not
25 wish for you to feel rushed about this, and give just as full

1 an explanation as you feel necessary.

2 MR. THURMAN: I second that.

3 MR. BROUGHTON: So please don't begin by feeling that
4 you're trespassing on our time.

5 MR. POLIKOFF: All right. A

6 Thank you, Mr. Broughton.

7 As I reviewed this material, wondering what to emphasize
8 in a summary, I felt that my effort should be to try to give
9 you the flavor of the study in a way that the written word,
10 printed pages sometimes precludes; the human-interest aspect
11 of it, if you will, so you'll have a better feel for what that
12 process looks like. It is rather cold on paper.

13 First let me emphasize that I approached this study
14 without preconceptions. I had no previous relationship
15 to the corporation or the act.

16 I approached it as an intellectual inquiry. In that
17 spirit, the advisory panel was assembled; that is in the
18 spirit of intellectual inquiries.

19 As it turned out, I think this was more--the advisory
20 panel did, in fact, represent a spectrum of views.

21 The meetings that the advisory panel held, and
22 there were three of them, were true, free-swinging discussions
23 without preconception on their part.

24 The reflected, I think, an extremely apt employment
25 of conference techniques. This was particularly true at the

1 meeting of January 29th, and that date, all of the individual
2 study visits, on-site visits to support centers had been
3 concluded and each of the members of the advisory panel who
4 had assembled on that date now had some first-hand experience
5 with a support center, backup centers.

6 Each had advised a chairman of the study team, at
7 least one of the backup centers.

8 By design, I had not expressed any views of my own
9 at this stage as to the proper interpretation of the act, and
10 by design, I hadn't on that date put anything on paper with
11 respect to my views concerning what my recommendations
12 to this Board should ultimately consist of.

13 What the group assembled on January 29th, had before
14 it was kind of a summary prepared by the Mondello staff of
15 the materials that is included in the individual 17 study
16 reports.

17 There is categorized activity, factual listings of
18 activities, and starting early in the day, the meeting ran
19 until about 5 o'clock in the afternoon with sandwiches at the
20 table; so there wasn't even a luncheon break.

21 The group worked through the Mondello listing asking
22 itself the question now that we know what we know about the
23 centers, having visited them, what does make sense, and what
24 doesn't make sense in the statutory context in terms of
25 a reasonable understanding of the relationship of 1006(A) to

1 1006(1)(B), etcetera.

2 Present at that meeting were Tom and Clint and Lou
3 Oberdorfer, David Tattle, I think. They participated, but
4 virtually not at all; asked one or two questions.

5 The staff was present. The staff, that is Mondello's
6 staff, and they similarly participated virtually not at all, and
7 this represented, therefore, an exchange, an inquiry, if
8 you will, among these 10 people and myself and Marshall as to
9 the meaning of the statute as it applied to the individual
10 activities on that Mondello list.

11 We moved along without an effort to solidify conclu-
12 sions. It was my conception from the beginning that this report
13 was mine and mine alone; that I would bear sole responsibility
14 for it.

15 I didn't ask for votes. I had at no point viewed the
16 study as an advisory panel study rather than my study; and I
17 think that was made--I know that it was made explicit and the
18 group understood that.

19 So we didn't try to get any consensus at any point, but
20 it was nonetheless true that as we moved along the list of
21 activities, questions and issues for the most part, I would say
22 consensus emerged.

23 While I do not withdraw in any degree from the final
24 sentence in my report to you which says that the responsibilities
25 for the preparation of this report and for the conclusions and

1 recommendations it contains is, of course, solely my own.

2 I think you should be informed that I believe it to be
3 the case, repeating my caveat, no votes were taken; I believe
4 it to be the case with minor differences, only, this report
5 represents an essential consensus of view as it emerged from
6 the advisory panel meeting on the 29th of January, and as I
7 would say it was essentially confirmed when the report was
8 circulated in draft form, and again discussed with that group
9 at its final meeting of February 12th, another all-day meeting
10 in Chicago.

11 To summarize what I'm saying about the process,
12 this was not a one-man show, it was not an effort that was
13 begun or carried out with preconceptions.

14 I can say to you, I think, with complete candor
15 and honesty that it was an effort that was carried out on a
16 group basis but with single responsibility that was pursued
17 with intellectual integrity among people that approached
18 the task with seriousness and without preconceptions.

19 It was a group, having come to know them, which
20 I admired.

21 So much for the process, as we turn to the facts
22 that were disclosed about the centers as a result of the
23 individual on-site examinations.

24 I would like to emphasize the rather thorough
25 examination of written material at each center and where

1 by no means was limited to interviewing staff personnel.

2 One dominant fact emerged, and that was that although
3 a wide variety of activities were being carried on in the
4 centers, the bulk of the activities in all of them--all of the
5 substantive centers as those are defined in the report,
6 were activities that were responsive to the requests for
7 assistance on the part of what I'll call attorneys in the field.

8 Almost uniformly, I cannot recall any exception at
9 the moment, almost uniformly reports begin by referring
10 to the bulk of the activity being of this nature.

11 To illustrate the very first of the factual abstracts
12 relating to the 17 support centers, the welfare one so describes
13 that center's activities.

14 It says that approximately 20 percent of centers'
15 professional efforts is expended in response to inquiries,
16 primarily legal service, attorneys, all about lay advocates
17 seeking advise on specific client problems which were potential
18 or actual cases.

19 At these centers lawyers devote money and time
20 responding at length by letter. They receive and estimated
21 2,000 inquiries annually.

22 The review of files by attorneys reflects over 50 per-
23 cent of each of lawyer's volume of correspondence and reviewing
24 inquiries with legal services staff attorneys and paralegal
25 personnel.

1 Then, as you know from reading the reports, the
2 reports go on to elaborate the nature of those response, both
3 simple and complex ones; the handling of litigation directly
4 by the centers, either by joint participation with legal
5 service attorneys in the field or in the four instances of
6 direct representations of clients.

7 The reports then go on to describe the other activities.

8 Incidentally, add one sentence to what was said
9 about the nature of representation and activity, the reports
10 generally using the same format for convenience, then
11 describe the activities in the four categories, representation-
12 al activities, what I'll call counseling involving nonformal
13 proceedings and then three forms of activity that involve
14 formal proceedings:

- 15 1. Judicial;
- 16 2. Administrative; and
- 17 3. Legislative.

18 Moving beyond these counseling and representational
19 activities, then there's a variety of worked carried on in the
20 center.

21 It's not easy to summarize that because in these
22 12 substantive centers we are now talking about, different
23 things that go on. Some do things that others do not.

24 One thing that almost all centers do, not every one,
25 but almost all of them, is publish and disseminate a variety

1 of documentary materials unrelated to a specific case that is
2 not a pleading in a particular case, not a comment on a
3 particular proposal of agency regulations, but material
4 designed for dissemination to other legal services attorneys,
5 and not the clients.

6 This wide variety of documentary materials is
7 described in some detail in reports. It ranges from at one
8 end of the spectrum, specific packets of materials designed
9 to assist the center in performing its service, respond to
10 inquiries by attorneys in the field.

11 For example, a specific packet of material on the
12 legal issue of warranty of habitability that arises in a case
13 in the field time and time again, housing centers have found
14 it a convenient way to respond to those inquiries to prepare
15 a packet of materials on that specific subject.

16 A legal memorandum, a form of complaint could be used
17 in a case of warranty habitability, and like that's the one
18 end of the spectrum.

19 Essentially, this means responding efficiently to
20 a specific inquiry in the field.

21 At the other end of the documentary spectrum, so to
22 speak, say the housing center example, the housing center
23 prepared a three-volume, comprehensive analysis of housing
24 law problems.

25 That was circulated to all of the legal services

1 attorneys in the country and to others. It was a significant,
2 almost massive project.

3 It involved a considerable expenditure of time on
4 the part of the attorneys in the housing center, and was
5 obviously not responsive to the needs of any particular
6 client or any particular matter. It was what I'll call
7 a kind of generalized document intended for general distribu-
8 tion.

9 In between the two extremes of preparation of docu-
10 mentary materials is a wide range of other documents that
11 was prepared and distributed, some directly by the center, some
12 through the services of the national clearinghouse for legal
13 services in Chicago.

14 Reports describe those documents in some detail,
15 and when we move to the analytical part of my report, I
16 indicate my view as to how those ought to be classified in
17 terms of Section 1006(A)(1) and 1006(A)(3).

18 Essentially, we are referring to the precise language
19 of my letter to Tom. It constitutes my report that the basic
20 approach taken to classification of documentary materials
21 is that those are nothing more than an efficient way of
22 responding to inquiries from the field relating to particular
23 matters and are 1006(1)(A) activities, and those that fall
24 into the category of generalized distribution or preparation
25 of materials not so related to specific matters are 1006(A)(3)

1 activities.

2 Well, that last comment, the factual materials
3 leads me into the semi-final subject of the report, namely
4 the view that is stated there of the proper interpretation
5 of the statute.

6 I think that analysis speaks for itself. I find
7 it persuasive, myself. I find that although there are a
8 number of different approaches that have been suggested
9 and considered that for me, and I think I can say for the
10 advisory panel--I know I can say for the advisory panel,
11 because this was the bulk of our discussion on February 12th,
12 the interpretation that was suggested in my report reconciles
13 in the most satisfactory and intellectually adequate way the
14 provisions that need to be read together, and cannot, in
15 my judgment be satisfactorily and properly read in isolation,
16 one from another.

17 I found as I approached this task that it was
18 enormously difficult for me to satisfy myself as to the
19 meanings of 1006(A)(3) when all I was doing was focusing on
20 1006(A)(3).

21 When I broadened my vision and put 1006(A)(3) in the
22 context of the section in which it appears, I wouldn't say
23 things suddenly became clear; I didn't have any revelation,
24 but it became reasonably plain to me, and ultimately I became
25 completely persuaded that the statute essentially creates a

1 grant making organization, legal services corporation whose
2 primary function it is to provide assistance to grantees or
3 contracting parties whose primary function in turn is to provide
4 legal assistance.

5 1006(A)(1) is in that sense a critical section of the
6 statute, and the task of the corporation is to decide what
7 constitutes the provision of legal assistance to eligible
8 clients.

9 My report contains a recommendation on that, and
10 from that perspective, the proper understanding of 1006(A)(3)
11 in my judgment emerges.

12 That proper understanding is that 1006(A)(3) deals
13 with four specific activities that are not a part of providing
14 legal assistance to eligible clients, because that's what
15 1006(1)(A) talks about.

16 These four specific activities which are not
17 a part of providing legal assistance but are related, are to
18 be performed by the corporation itself.

19 The report suggests in a separate section what the
20 nature of those activities is.

21 Using the factual examples I just referred to, it's
22 clear to me that the three-volume compendium of materials
23 on housing law prepared by the housing center is 1006(A)(3)
24 activities; because it relates and the activities relate to
25 the delivery of legal services, but quite obviously, too, is

1 not a part of providing legal assistance to a specific client
2 in a specific manner.

3 It's by its very nature a document unrelated to a
4 specific matter intended for distribution.

5 On the other hand, when the same housing law center
6 provides to a requesting lawyer who is representing a specific
7 client a packet of materials on a very specific subject matter
8 where that lawyer has got a problem with the client dealing
9 with that matter, that clearly is a 1006 (A) (1) activity.

10 I might interject at this point an observation about
11 those four specific activities that is listed in 1006(A) (3)
12 as my report to the corporation notes.

13 It has been suggested, and subsequent to my delivery
14 of the report, Mrs. Green supplied a memorandum responsive to
15 the Hogan-Hartzen memorandum additionally stating this view
16 that 1006(A) (3) was intended to defund, to withdraw authority
17 for funding backup centers as they're called.

18 My report indicates I think under proper rules of
19 statutory construction, one can't in this respect go beyond
20 the unambiguous language of Section 1006(A) (3).

21 1006(A) (3) quite clearly and specifically speaks
22 of activities. It doesn't speak of entities. There's no
23 doubt about that in the statutory language.

24 As a lawyer, it is quite clear to me that the proper
25 interpretation of that section, therefore, is to find out what

1 those specific activities are that the section refers to and
2 the section cannot be read properly as referring to entities
3 as distinguished from activities.

4 Finally, in the last section of my report to the
5 corporation it states that once an interpretation of the
6 statute is adopted, whether the one suggested by me or by some
7 other, it's necessary to take certain steps to implement
8 that interpretation.

9 I make certain specific relations as to the mechanics
10 for doing that and those have been elaborated upon in Tom
11 Ehrlich's recommendations to you, and I think I needn't expand
12 on those.

13 Mr. Chairman, if I haven't reached my own requirement
14 of not saying more than is necessary, I hope I haven't
15 said less, in light of Mr. Broughton's admonition; I think I'll
16 stop there.

17 MR. CRAMTON: I think it would be helpful to have
18 the President put his recommendations before us, and then
19 questions that members of the Board have for Mr. Ehrlich or
20 Mr. Polikoff could be pursued at that point.

21 Would you maintain yourself in readiness?

22 MR. POLIKOFF: I'll stay right here.

23 MR. CRAMTON: Mr. Erlich.

24 MR. ERLICH: I did route recommendations made to the
25 Board in my own end analysis of the statute and legislative

1 history, as I said.

2 It is, of course, based on the factual analysis
3 that Mr. Polikoff and those who work with him did, and
4 I did satisfy myself fully about the integrity of the process
5 that they went through; the care and thoroughness with which
6 each one of those groups examined the facts and found out
7 what activities were and were not going on in each one of the
8 centers.

9 The recommendations that I sent to you, they include
10 first a proposed division of activities of the support
11 centers;

12 Second, a set of detailed control arrangements to
13 ensure full accountability and full control, both for
14 activities that are brought within the corporation and those
15 that would under those recommendations remain outside the
16 corporation, but under contract and the draft contract you
17 have, would implement those arrangements.

18 Third, and finally, a set of implementation procedures.

19 Let me review briefly each of those three clusters
20 of recommendations.

21 First, the division of activities would of course be
22 the division in the statute. No research would be supported
23 by the grant or contract unless authorized by Section 1006(A) (1)
24 (A); the provision in our statute which authorizes grants on
25 contracts to all of the legal assistant programs that serve

1 clients.

2 To the extent we would be talking about providing
3 legal assistance to eligible clients, to the extent we would
4 be talking about professional education or guidance activities,
5 to that extent and to that extent only, research would be
6 supported by grant or contract.

7 Otherwise, it would be brought within the corporation
8 if it were supported at all by the corporation.

9 Second, training; most of the training--we go
10 through those reports one by one and see that most of the
11 training now done by centers could not be supported by grant
12 or contract because it's just not part of providing legal
13 assistance to an eligible client.

14 It is related to that assistance, but not part of
15 providing that assistance.

16 Third, as to the technical assistance, it relates
17 to the office training, accounting techniques and like they're
18 now furnished by centers.

19 Again, this would be within the ambit of 1006(A)(3),
20 since it's not part of providing legal assistance to eligible
21 clients.

22 That, too, would be brought within the course to
23 the extent that it supported the corporation at all.

24 Fourth, the clearinghouse activities.

25 There is, of course, a comprehensive program of

1 clearinghouse activities, clearinghouse services now carried
2 on by one of the centers that, too, in my judgment is within
3 the ambit of 1006(A)(3).

4 They are a gray area in terms of the preparation
5 of occasional materials, but that basic program of clearinghouse
6 activities is clearly within it.

7 If one adopts that approach, a major share of
8 activities now carried on by support centers must be carried
9 on within the corporation, if they're going to be continued.

10 For those that are within the ambit of research,
11 research, in other words related to legal assistance, but
12 not part of providing legal assistance to eligible clients,
13 for that kind of research typified by the general analysis
14 of the cluster of substantive legal problems, but without
15 specific reference to eligible clients without having been
16 generated by eligible clients, I'd propose establishment
17 within our corporation of an institute of legal assistants
18 to promote scholarly analysis of substantively legal
19 problems.

20 For activities that are technical assistance
21 clearinghouse, I propose that the corporation be in complete
22 charge.

23 For those that could be continued through grant or
24 contract, I propose we shift entirely to contracts.

25 I propose tight controls through contractual

1 arrangement to ensure continued accountability.

2 Review in my recommendations each one of those
3 for aspects--first the legal assistance, what it might
4 look like in general terms, at least.

5 Second, the training and technical assistance, and
6 need for a separate office to maintain close supervision
7 and control of those aspects.

8 Third, the clearinghouse services, and finally,
9 the other support activities.

10 It did seem to me increasingly--in my discussion
11 with Marshall Breger on the issues, he did seem to put
12 his finger on a very important point; control is the key objec-
13 tive in that whole enterprise.

14 It was the key concern of Congress when it adopted
15 the statute. It ought to be a concern.

16 Arrangements are needed to assure corporation
17 control of all the activities under discussion, whether they're
18 done by corporation employees or under contract.

19 On that basis, the implementation would look like
20 this.

21 I propose the following steps:

22 First as to the clearinghouse, review the proposal
23 made here; it would be a notification to the clearinghouse
24 review that it's grant would not be renewed.

25 I see no reason, however, why the review should not

1 remain in Chicago, and substantial reason why it should stay
2 there in light of its size and facilities.

3 A senior member of the corporation staff should,
4 of course, have ultimate responsibility.

5 It seems to me the process of shift could
6 take place quite quickly.

7 A clearinghouse review suggested an alternative
8 which would be essentially a contract that the clearinghouse
9 review would remain private, but would be a contract for the
10 purchase of copies of the publication by the programs.

11 The provision of support directly by the corporation
12 to the programs for the purchase of clearinghouse reviews is
13 obviously in keeping that the corporation not, nor appear
14 to in any way undermine or limit the statutory provision.

15 The staff has discussed this proposal since it
16 just was heard, but the essence of the procedure I adopted,
17 at least, would be our plan with the thought that the proposal
18 that was just mentioned certainly could be considered.

19 Next to the training program, the Catholic University
20 and NLADA Technical Assistance Project, both of those in
21 my judgment should be notified that their grants will not
22 be renewed.

23 Their activities to the extent they're continued
24 will be transferred to the corporation.

25 I think for a number of reasons that are spelled out

1 it ought to be 90-day phase out grants.

2 On the advise of our counsel, that phase-out
3 grants for the orderly transfer of functions are appropriate
4 and not in violation of statutory obligation.

5 I think that those grants would ensure with a lot
6 of work, just as this project has been a lot of work, services
7 could be transferred within the corporation within the
8 necessary period.

9 Next to the Paralegal Institute; again, in my
10 view, the Institute ought to be notified immediately that its
11 grant would not be renewed; that the training activities
12 supported by the corporation to the extent to be continued
13 will be transferred to the corporation.

14 Again, I think a 90-day phase out grant is desirable.
15 Indeed, I think it is necessary for this and the two I talked
16 about previously.

17 I think it could ensure minimum disruption and
18 the maximum continued provision of essential services.

19 Finally, for other support centers, the contract
20 that you have received is not intended as the exact language
21 in all terms and detail; but is intended to give a notion of
22 the kind of control arrangements.

23 What I mean by continuing control is to ensure
24 that throughout the operations the corporation would be knowing
25 exactly what would be happening at each center.

1 I would suggest to you it would be appropriate
2 to continue the process of monthly reports to the Board from
3 the staff of activities at the centers for as long as you think
4 it desirable, so you can maintain your own continuing contact
5 with it.

6 To summarize, as a result of all those procedures,
7 four grants would be terminated:

8 Clearinghouse Review;

9 Legal Services Training;

10 NLADA Management Assistant Program; and

11 Paralegal Institute.

12 The clearinghouse would be transferred to the cor-
13 poration immediately, unless the arrangements that I mentioned
14 were worked out.

15 All other clearly identifiable 1006(A)(3) activities
16 would be transferred to corporat employees or consultants
17 within the 90-days which I think is the minimum time we could
18 do this, working as fast as we could to work these things
19 out.

20 That would be training, technical assistance,
21 publications, and so forth; and finally, the gray areas, to
22 the extent that they exist, all those other 1006(A)(3) activi-
23 ties would be identified, transferred to the corporation within
24 six months.

25 This would finally, and it seems to me a terribly

1 important point, give a chance not just for the factual
2 description which has been done, and I think superbly by
3 Mr. Polikoff and his staff, but also for evaluation.

4 The activity for a major effort to see to the
5 extent that reorganization is possible--the extent that
6 improvement is possible by way of efficiency and effectiveness
7 ought to not be because it is required in the statute, but
8 because it makes sense in terms of a sound allocation of
9 resources.

10 It would be my expectation that it would follow
11 an effort to see where the steps can be taken to make arrange-
12 ments more effective.

13 I think there are some through reorganization, and
14 other steps and we would intend to do just that.

15 MR. KUTAK: Mr. Chairman?

16 MR. CRAMTON: Mr. Kutak.

17 MR. KUTAK: To put the discussion, I guess, in some
18 formal fashion so the Board can focus on it, and to synthesize
19 what has been said by Messrs. Polikoff and Ehrlich may I move
20 the proposed resolution into consideration?

21 MR. CRAMTON: Please do.

22 MR. KUTAK: By the way gentlemen, and I think you
23 all have it. It's--

24 MR. CRAMTON: Attached to the proposed draft contract
25 and I think copies are available for members of the public.

1 MR. KUTAK: Resolved, that the Board of Directors
2 proposes to adopt the following standard for funding current
3 support centers after March 31, 1976:

4 Support centers will be funded pursuant to Section
5 1006(a)(1)(A) of the Act for the purpose of providing legal
6 assistance to eligible clients.

7 Support centers receiving such grants will be limited
8 to client counseling and representational activities, profes-
9 sional responsibility activities in accordance with the Code
10 of Professional Responsibility of the American Bar Association
11 and such "housekeeping" activities as are normally carried on
12 by law offices.

13 With minor transitional exceptions specifically au-
14 thorized by the Corporation, each recipient of such a grant
15 will be prohibited from engaging in any activities which
16 Section 1006(a)(3) of the Act requires the Corporation to
17 undertake directly, but not by grant or contract, namely,
18 research, training, technical assistance and information
19 clearinghouse activities that relate to but are not a part
20 of providing legal assistance to eligible clients under
21 Section 1006(a)(1)(A).

22 Resolved further, pursuant to Section 1008(e) of the
23 Act, that the foregoing be published in the Federal Register
24 for purposes of receiving public comment within 30 days from
25 the date of publication. ↗

1 MR. THURMAN: I'll second the motion.

2 MR. CRAMTON: The resolution before you is moved
3 and seconded; now open for discussion.

4 MR. BREGER: Mr. Chairman, I'm one of the people
5 from the pre-Watergate days; never have to take legal
6 ethics.

7 So I was just hoping you could clarify for me what
8 is meant by the professional responsibility activities in
9 accordance with the Code of Professional Responsibility.

10 I'm sure I support engaging in all activities, but
11 I'm just interested in knowing what they are.

12 I realize this suggests I'm derelict in my profes-
13 sional education.

14 MR. EHRLICH: I wouldn't suggest that you're derelict
15 in anything.

16 MR. COOK: I was going to ask Bob to give me
17 an explanation of that motion. Before you admitted your
18 dereliction of duties and responsibilities, I was going to
19 ask Bob if he would explain the motion he just made to
20 us in greater detail.

21 MR. EHRLICH: If individual lawyers and centers
22 are called upon, most obviously by the court, to take on a
23 case, on the criminal side you really don't have any choice,
24 called upon by their state or local bar group to engage in
25 activity as part of their profession.

1 Those are the kind that I intend it includes,
2 and I think Mr. Polikoff spells it out in his report in a
3 little more detail related to the professional.

4 MR. BREGER: Would they encompass enterprises which
5 would otherwise be forbidden, prohibited by statute?

6 MR. EHRLICH: They are not providing legal assistance
7 to eligible clients. In that sense, yes.

8 MR. BREGER: But in a sense of let's say desegrega-
9 tion, something like that?

10 MR. EHRLICH: Oh, no.

11 No case in that sense at all, unless a judge referred
12 to it.

13 MR. KUTAK: Mr. Chairman, on Marlow's comment, when
14 we all received the draft resolution reflected on what might
15 be increased in that reference.

16 Marlow, ont in anticipation of such a question, but
17 in contemplation of such a question myself, I would assume
18 that it would relate to Canons two and six of the Code
19 of Professional Responsibility.

20 I went back to review my Canons, which from time
21 to time my firm tells me I ought to do anyway, and really
22 focused on, I think, those two, although I'm not trying to
23 exclude the other seven, but was concerned with the obligation
24 to make legal counsel available, and certainly the concern
25 to represent a client.

1 MR. EHRLICH: The other areas are generally keeping
2 abreast one's own area of expertise which the canons at least
3 say one is supposed to do; continuing educational efforts
4 in that respect.

5 Mr. Polikoff's report on page 17 in the footnote
6 quotes ethical consideration from the Code of Professional
7 Responsibility that articulates that obligation.

8 MR. CRAMTON: Mr. Kutak.

9 MR. KUTAK: Fools rush in, I guess, where angels
10 fear to tread.

11 So with that preface, let me perhaps tell you how
12 I come out and then we see, because I know there are so many
13 other thoughts that need to be said.

14 Each of us--

15 MR. CRAMTON: Mr. Kutak. would you and other members
16 of the Board benefit by receiving some discussion from members
17 of the public before expressing your own views?

18 MR. ORTIQUE: Before you express your view, I have
19 a question.

20 I want to know--you're proposing that you take on
21 an enormous task in my view in terms of determining which of
22 these activities you are able to immediately move into the
23 Corporation, and which of them you cannot study further.

24 As a practical matter, let us suppose that your
25 efforts in doing this don't come at the end of the 90-day

1 period, or six-month period.

2 Will that matter be brought back to this Board
3 for further consideration or what would you propose?

4 MR. EHRLICH: The answer is yes.

5 It would be brought back to the Board if one or
6 more areas could not be handled within the period, and it's
7 frankly a very short period.

8 I view it as a full-time, nonstop effort for the
9 90 days to work out all of that.

10 We are not, as you know, overloaded with staff, but
11 nonetheless, I think we have an obligation in terms of
12 the statutory mandate to do this very quickly.

13 If one or more were not possible within the period,
14 it would come back, indeed. All events, in my own view,
15 are appropriate to report to the Board regularly, in all events
16 and keep in close touch; but it would need specific authoriza-
17 tion to continue.

18 MR. CRAMTON: I note--

19 MR. BROUGHTON: I was going to say that maybe the
20 court reporter, and maybe this member would like to take a
21 recess.

22 MR. CRAMTON: Mr. Broughton, that is precisely what
23 I was going to suggest. Coffee has arrived, and it seems like
24 an appropriate time for a 10 or 15 minute break, no longer.

25 Immediately after the recess, if the Board consents,

1 I will entertain brief comments from members of the public.

2 I think their comment should be addressed to the
3 recommendation of the staff which has been made available
4 to them within the last week or 10 days; have had lots of
5 opportunity for general discussion of the meaning and interpre-
6 tation of 1006(A)(3).

7 Members of the public have not had a chance to
8 address themselves the specific recommendations to the
9 President or to Mr. Polikoff's study, and I hope their comments
10 will not only be brief, but limited to that subject.

11 With that, we will now adjourn until quarter of
12 eleven.

13 (Recess.)

14 MR. CRAMTON: The meeting will come to order.

15 The Board would very much like to hear briefly from
16 members of the public who wish to express views on the recom-
17 mendations of the staff.

18 MR. COOK: Mr. Chairman, I'm wondering for the bene-
19 fit of the stenographer if they would identify themselves so
20 that she can get it all down.

21 MR. FRY: I'm Bill Fry, the Executive Director
22 of the National Paralegal Institute; and I would like to just
23 take a minute to talk about the report, recommendations in
24 connection with the Paralegal Institute.

25 You, no doubt, are aware that the legal services

1 people are watching what the Board does very carefully in
2 this instance, because this deals with a very important
3 matter for the legal services.

4 The recommendation of the staff, as I read it, purges
5 from the backup centers virtually every function that there
6 was objected to in the legislative history.

7 It seems, too, what is left is unobjectionable, and in
8 many cases, not a great deal is left.

9 In the case of the Institute, I'd like to suggest that
10 the purge goes even further and that functions that need not
11 be dropped are being dropped.

12 Let me just say a little bit about the Institute.

13 We were setup three and a half years ago, in order
14 to provide support services, design training materials,
15 and an assistant to the field, using paralegals.

16 Paralegals now number about 1,200 in legal services.
17 In some projects they provide 50 percent of the work that's
18 done, and I think they're generally conceded to be a very
19 important element of the legal services delivery system.

20 Setup since three and a half years ago, it was their
21 decision that a separate organization was needed because
22 paralegals really had to have a separate organization to
23 relate to and that the paralegals would benefit by having
24 their own separate, independent organization.

25 The process that you initiated as Mr. Polikoff reviewed it

1 started with an extensive study of the functions of the
2 organizations.

3 We at the Institute were visited by six people, two
4 of whom were experts in training and one in particular, a
5 national expert in paralegal training.

6 If you would look at the study team report, I
7 think you would find that the study team as a matter of fact
8 said much of that is not covered by 6(A)(3).

9 About 45 percent of the Institute's time is
10 devoted to developing training materials.

11 The study team with one dissent, a person
12 who was a staff member of the corporation, said that the
13 developments of materials is different, as a matter of fact
14 from training, as described in 6(A)(3).

15 They then discussed in detail a number of other
16 functions which constitutes about 55 percent of the Institute's
17 activities beyond the development of training materials.

18 So that the study team with the one dissent I
19 mentioned, finds that the work of the Institute is with some
20 exceptions, generally outside of 6(A)(3).

21 The exceptions, as I understand them, would be
22 the things that have been discussed already.

23 The development of newsletters, certain kinds of
24 research, dissemination, general research materials, and
25 the operation of a clearinghouse, all of which as I understand

1 the recommendation, are for forbidden functions and I'm not
2 here to contest that part of the recommendation.

3 In his report on page 42, Mr. Polikoff paid a
4 compliment saying because of its special status in the para-
5 legal movement, and its obligation under substantial outside
6 contracts, the Paralegal Institute may present uniquely
7 troublesome questions in regard to the question of merging
8 into the corporation.

9 And I gather that we made a difference from all
10 the other centers in that respect.

11 At the beginning of our life it was felt that there
12 wasn't enough money within the fund for the entire range
13 of the paralegal to be done; so we were directed to try to
14 find out funds for working in the paralegal movement. And
15 to a certain extent, we've had success; the extent being
16 that we have now five grants and contracts from other
17 sources.

18 As a result, we are not in a position to close
19 down the Institute and to merge it as a functioning
20 activity within the corporation.

21 I take that to be one of the uniquely troublesome
22 problems that Mr. Polikoff refers to.

23 What I'm suggesting to you, really is that there
24 has been a difference between the fact finding study team and
25 the facts as found by the staff.

1 I spoke to President Ehrlich about this, and I
2 think he stands by his position, and I assume I have exhausted
3 my administrative remedies, and therefore, given the fact that
4 there appears to be a difference in the fact finding and
5 recommendations, given the fact that the Institute in contrast
6 to other centers that are recommended for merger is not in a
7 position to fold up its tents and given the recommendations
8 of the study team that the Institute's activity and experience
9 are unique and ought to be preserved, what I'm suggesting
10 is this.

11 That within the staff recommendation, there are
12 as I see it, three categories of functions that are clearly
13 to be terminated and that are to receive a 90-day termination
14 notice with a merger of those functions.

15 Then there's something that often is referred to as
16 gray areas. Those are the functions that need further
17 analysis, and further consideration.

18 Finally, there are the approved functions which
19 fall outside the three which I understand are recommended for
20 a year's funding.

21 It would be my request that the activities of
22 the Institute be put into that six month category so that
23 there would be further staff to analyze whether or not some
24 of the findings of the study team ought not to be followed
25 also because it is not in a position to be absorbed as a body

1 into the corporation.

2 I think the three month time allowed for merger
3 of these functions is concededly a very short time, and I
4 think the staff and the corporation will have to be very
5 brisk and very energetic to try to merge those functions
6 without dropping some by the wayside.

7 I think the problem we present may require more
8 time to resolve, just on the question of merging functions;
9 and in addition, I'd like to ask for more time for the
10 corporation staff to look at some functions and consider
11 whether or not study recommendations weren't correct.

12 MR. CRAMTON: Thank you, Mr. Fry.

13 MR. FRAY: Thank you.

14 MR. CRAMTON: I'd like to get on the record a letter
15 dated March 4, 1976 from the Chairman of the Subcommittee on
16 Courts, Civil Liberties and the Administration of Justice
17 of the House Committee on the Judiciary, Robert Kastenmeier.

18 The reporter has a copy, and we'll insert it in the
19 record at this point.

20 Dear Dean Cramton:

21 I am writing to you after consulting with the
22 Subcommittee on Courts, Civil Liberties and the Administration
23 of Justice to express the members' concerns that the present
24 support centers not be dismantled, while Congress is considering
25 legislation to allow the Legal Services Corporation the

1 discretion to provide support activities by grant or contract.

2 It is unfortunate that in his memorandum to the
3 Board, Mr. Ehrlich did not mention that Congress is actively
4 considering H.R. 10799, legislation which would give the
5 Board an option to fund some or all of the support centers
6 as they are presently structured.

7 H.R. 10799 has the unanimous support of the
8 Subcommittee which co-sponsored it, and was passed by the
9 Committee on the Judiciary on December 16, 1975.

10 The Committee report was filed on February 5, 1976,
11 and copies were distributed to the corporation. I expect the
12 bill will reach the floor within the next two weeks, subject
13 to a rule being granted.

14 Although I cannot predict what interpretation of
15 Section 1006(A)(3) will be accepted by the Board of
16 Directors on March 5 or 6, I hope that the orderly continuation
17 of support activities will not be disturbed by a quick re-
18 structuring of the existing system; but rather that the
19 present centers and personnel will continue in operation for
20 a reasonable period of time of at least 90 days while
21 H.R. 10799 is being actively considered.

22 Please convey the Subcommittee's views to the
23 Board members.

24 Sincerely yours, Robert W. Kastenmeier.

25 I have corroborated views to the members of the

1 Board, and Mr. Kastenmeier in absentia has made his views
2 known.

3 MR. THURMAN: Could I ask one question on that?

4 How does it tie in with the other H.R. that was
5 a different number?

6 MR. CRAMTON : A successor bill; the same legislation.

7 MR. THURMAN: I see.

8 MR. EHRLICH: We do have copies of the bill,
9 and of the committee report here.

10 I know all of the committee members were well
11 aware of this legislative proposal for quite a long time,
12 but if you're interested in the committee report or the
13 bill, it's here.

14 MR. COOK: Roger, did you testify on this bill or
15 the previous bill?

16 MR. CRAMTON: I testified on the bill--I think
17 it was the other number, but the same subject, the same bill.

18 MR. COOK: Had to be resubmitted?

19 MR. CRAMTON: Had to be resubmitted.

20 MR. BROUGHTON: That was H.R. 7005.

21 MR. CRAMTON: That's right.

22 It was exactly the same bill and the hearing was
23 held on 7055.

24 MR. THURMAN: It's interesting to look at some of
25 the other letterhead; some of the names became rather famous.

1 MR. CRAMTON: Mr. Veney, did you desire to
2 address the Board?

3 MR. VENEY: Thank you, Mr. Cramton.

4 I am Bernard Veney of the National Clients Counsel.
5 I just want to take a couple of moments of your
6 time.

7 I've read with considerable interest the Polikoff
8 study, and memorandum of your President, and I must say that
9 both have given very, very thoughtful consideration, although
10 I disagree with where they come out.

11 There are a number of things that I think must be
12 looked at, but I don't intend to comment on whether things
13 can be done by grant or contract, in-house or out-house.

14 I guess we have all come to certain conclusions to
15 that; we have certainly had enough material in preparation
16 to this thing.

17 The things I guess I would like to comment on, Mr.
18 Polikoff makes the comments which says that you're able to
19 do normal lawyering activities. I find that interesting.

20 How do you do normal lawyering in a highly abnormal
21 work in which the legal service attorneys must work?

22 You don't have law libraries;

23 Don't have experienced personnel;

24 Your average attorney is about a year or a year
25 and a half out of law school.

1 How do you do normal lawyering when you've got
2 more clients than you're ever, every going to be able to
3 handle?

4 How do you do normal lawyering when the area that
5 you're covering is separated by vast distances?

6 How do you do normal lawyering in any of these
7 circumstances?

8 I think you have to respond to that particular
9 question of normal lawyering.

10 I am persuaded by Mr. Polikoff's statement that he
11 cannot look at 1006(A)(3) in isolation; he must
12 look at it in context with other sections of the act.

13 I just suggest that he does not go far enough.

14 I must read 1006(A)(3) and other sections with the
15 entire act; the entire act which requires that you gentlemen
16 make sure that the client community receive the best possible
17 legal services.

18 This morning, Mr. Polikoff indicated some concern
19 about housing manuals that were distributed, and said
20 those had to come in-house.

21 I have no question about whether they come in-
22 house; that's for you to decide.

23 If you bring them in-house, will they be done at
24 the same high level of quality? Because that is what your
25 mandate is, gentlemen.

1 Your mandate is to see that the poor receive the
2 highest quality of legal services.

3 I know that you've read the history where people
4 have raised the question, well, why should the poor people
5 get better services than other people, because only the rich
6 can afford attorneys these days; why not the middle class?

7 I suggest that you not concern yourself with that
8 particular issue at this time.

9 I think you have an obligation to tell the Congress
10 in the future that you're finding a great many people are
11 requiring legal services who are not entitled under this act.

12 That obligation you do have. The question of
13 why the poor and not the middle class is certainly not the
14 issue at hand.

15 You are to provide services to the poor.

16 The other thing that strikes me is that in providing
17 the services to the poor, you seem to be in a dilemma caused
18 by wondering how an attorney a year, a year and a half out
19 of law school can handle complicated issues that have such
20 a great impact on poor people.

21 I give you the instance of the utility company
22 which chose to raise its rates.

23 Yes, they have a right to more money, and certainly
24 fuel costs would give us to understand why they ask for higher
25 rates, but do higher rates have to be granted at the expense of

1 the poor?

2 The individual Legal Service attorney was faced with
3 all the clients to handle. He can't handle that problem.

4 The individual Legal Service attorney faced with
5 all the problems that he has, he doesn't have enough expertise.
6 He must have very, very competent litigators available to give
7 him information.

8 I suggest to you that these attorneys do not have
9 the benefit of sitting around the Bar Association or the
10 country club; that is not where you find the Legal Service
11 attorney hanging out.

12 He may have to get the information about this kind
13 of case not from word of mouth, but by the publications
14 that comes from the actions of backup center litigators to
15 resolve the question.

16 I want to stop now, having said this, just hoping
17 that you'll make whatever decision you make against an
18 environment that says that you have got to make policy de-
19 cisions, and you have got to make sure that the staff implements
20 the decision which will ensure that purpose, not a particular
21 section is carried out, but the entire act is carried out, and
22 that the delivery of legal services to the poor is of the
23 highest quality you can afford.

24 Thank you.

25 MR. BROUGHTON: Two questions.

1 One on the--and I'm sure this was just an example
2 that you used; there are other examples that you could have
3 used, on the question of utilities.

4 A Legal Service trainee, of course, being concerned
5 about rate increases, and being a highly complex field,
6 that's a field that many rate lawyers, poor or otherwise, have
7 problems with, and that's true in North Carolina at least.
8 I assume it's true in other states.

9 We have made many strides in beefing up the Attorney
10 General's provision that the Attorney General intervenes in
11 the rates case in North Carolina on behalf of the using and
12 consuming public, rich, middle class, and poor alike.

13 I know very few organizations other than a mammoth
14 business that takes on a power company in a rate proceeding.
15 It really is beyond the capability of most lawyers.

16 That situation, as I stated, seems to me at least
17 as in North Carolina,--I know there are other examples, you
18 just used that one.

19 My other question was this:

20 You mentioned something about geographical
21 considerations.

22 If there were more funds made available to the local
23 projects throughout the country as far as facilities,
24 library facilities, more funds available for research at the
25 local office level, would you comment on that, what your

1 feeling is about that.

2 I wasn't sure what you said about that.

3 MR. VENEY: I used the utility rate case because
4 the state's Attorney General office either could not or
5 did not intervene. I don't know what the situation was.

6 But I do know the impact it was going to have on
7 the great many poor people of fixed incomes.

8 MR. BROUGHTON: A tremendous effect in North
9 Carolina.

10 MR. VENEY: It happens that the middle class gets
11 a side benefit, because the individual does not get charged
12 by virtue of the fact of whether they are poor or middle
13 class. All consumers win on this.

14 I don't mind the middle class getting side benefits
15 out of the poor. I really don't. That's not the problem.

16 MR. BREGER: Sort of like a trickle upper effect?

17 MR. VENEY: I'll go for that.

18 The second thing in terms of whether or not money
19 enough would be available, I just give you the state of
20 Georgia where you have attorneys for the statewide program
21 who travel on a circuit where they make appointments and
22 people know on the third Tuesday of a given month, the
23 attorney is going to be there.

24 I don't know what happens when he has to go to
25 ligigate a matter; the whole schedule is changed.

1 | I guess I give you the situation in the program
2 | in Mississippi where there are five offices, three of the
3 | five offices don't have libraries.

4 | You just don't have enough money and I would pre-
5 | dict, given the mood of Congress and the state of the nation,
6 | you're not going to have enough money to either put enough
7 | attorneys in to cut down the distances that have to be
8 | traveled; and you're not going to have enough money to allow
9 | you to provide libraries, not only in every office, because
10 | I don't really know if that's necessary, but within the
11 | proximity which would allow the attorney to handle it with
12 | a kind of ease and dispatch.

13 | Other things about libraries is if you provide
14 | libraries, the attorney but looks at the quality of the
15 | housing handbook that Mr. Polikoff was talking about earlier.

16 | The books in those libraries are not written for
17 | poverty attorneys. They really aren't, and you know from
18 | your own experience that they are written to sell to the
19 | West Publishing Company, and all the rest make a fortune.

20 | There are 2,000 attorneys in our programs. They're
21 | not written for them; they're written for the attorney
22 | who deals perhaps from the other side that our attorney is
23 | facing.

24 | The specific matters that are considered in such
25 | handbooks as the housing handbook are written from a

1 peculiar perspective and with a good knowledge of
2 the peculiar problems that are faced by the Legal Service's
3 attorney who works day to-day.

4 That's one of the reasons I objected to the normal
5 lawyering term that Mr. Polikoff used.

6 MR. BROUGHTON: You're saying that the situation
7 would improve so far as local assessability if there were
8 more funding at the local level for libraries and research
9 materials?

10 MR. VENEY: I can only address myself to the fact
11 that the statistics I think I've seen say that if this pro-
12 gram had \$350 million, then it could serve all the poor.

13 This body in its wisdom is asking for \$140 million.
14 The difference in \$140 and \$350 million, you're talking not
15 only about personnel, it must talk about support services, and
16 unless we come up with \$350 millions of dollars, I have to
17 say that I think that the backup centers and its functions
18 are going to be absolutely essential; and again, not making it
19 an in-house or out-house argument.

20 MR. BROUGHTON: Thank you.

21 MR. ORTIQUE: I'd just like to make one comment, and
22 I think it is inherent in our mandate to do this with some
23 consideration of what it's going to cost the people in this
24 country to provide these services.

25 Certainly we would have to consider that many of

1 the areas cannot develop 12, 15, or 17 support centers for
2 their activities.

3 It's much more feasible to do it with national
4 centers than it is with these individual developments of
5 libraries or development of sophisticated support activities
6 at various levels.

7 MR. BROUGHTON: The reason I asked, he mentioned
8 the geography, locally, and I was wanting him to expand
9 further as to his opinion if there was greater assistance or
10 funding locally, for libraries, and so forth, how that would
11 be as compared to the system going on where you have this
12 national center.

13 I have heard some --I'm not saying it's widespread,
14 in the field that some of the project attorneys do not feel
15 that the support centers may serve it's immediate area where
16 they are located, but may not get to at least rapidly,
17 activities and projects located some miles away.

18 MR. ORTIQUE: I certainly would like to underscore
19 this--

20 MR. BROUGHTON: As I said, this is not universal,
21 but I have heard it.

22 MR. ORTIQUE: No question about that.

23 But I would like ot underscore the statement that
24 Bernie made and that is that somewhere along the way, West
25 Publishing Company, and other companies that prepare materials

1 did not pick up this, the whole psychology of a poverty
2 law system; and that can only be developed by persons who have
3 that type of sympathy, really, in my view; and that is being
4 developed by these support centers.

5 That is a vacuum in the materials that are available
6 to lawyers throughout.

7 MR. BROUGHTON: Commerce clearinghouse valuable
8 or not?

9 MR. ORTIQUE: I'm beginning to receive them, and
10 the Commerce clearinghouse is reporting that much is already
11 there.

12 The development of the type of law that we've got
13 to provide for poor people may not yet be there.

14 MR. THURMAN: Talking about clearinghouse reviews
15 or poverty law reports?

16 MR. COOK: Mr. Chairman?

17 MR. CRAMTON: Mr. Cook.

18 MR. COOK: Bernie, let's get to the fundamental
19 question of the recommendations that have been made. You said
20 some you do not agree with.

21 That's what I'd like to hear about.

22 MR. VENEY: One would be that I seriously disagree
23 with the Paralegal Institute's recommendation. I have part
24 of the study team that studied the Paralegal Institute--I have
25 in my background training and experience and there is no way

1 that you can equate that matter with what the Paralegal
2 Institute is doing to what is normally phrased training
3 transfer of information; they're testing materials.

4 They are in fact not doing training; you can't put
5 something into the field until you've field tested it.

6 I suggest that the college textbooks are sent to
7 you for your review and use before, in fact, they are published
8 in large numbers so that they can be looked at.

9 I disagree with the timetable on the clearinghouse.
10 I do not know how immediately you are going to consider
11 whether all the members of the staff should be brought into
12 the corporation.

13 I don't know how immediately you're going to have
14 the functions carried over, and I guess I don't want to go
15 terribly much further into these, because I guess I have the
16 feeling, Senator Cook, that this body has had enough time
17 to look at the individual recommendations and I'm not the
18 person who should be making comments.

19 You've got a good study from Mr. Polikoff, I think,
20 and from Mr. Ehrlich; and the comments of a great many people
21 are available to you in both their reports and I suggest
22 that I don't want to go much further along that line.

23 MR. CRAMTON: Mr. Montejano.

24 MR. MONTEJANO: It doesn't come under training,
25 but some are being tested; isn't that the same as research?

1 MR. VENEY: Well, I see that as much as the
2 development and the instrument as would be the development
3 of any particular form or survey form.

4 I mean, I cannot envision the Corporation, for
5 example, taking into itself the development of the evaluation
6 of the program.

7 MR. COOK: As you develop and test, isn't that
8 research?

9 Really, what you want to see is viability.

10 MR. VENEY: That may very well be.

11 MR. MONTEJANO: Thank you.

12 MR. VENEY: Can I make one other comment at the
13 risk of taking too much time?

14 We are receiving the Commerce Clearinghouse.
15 I haven't read it.

16 MR. BROUGHTON: I haven't either.

17 MR. COOK: He's quoting you.

18 MR. VENEY: The thing about the Legal Service
19 attorney, he doesn't have time for litigation, all the
20 changes in the law coming down, all of the case load.

21 He simply cannot absorb it; simply cannot.
22 How can he tell what is important to highlight?

23 Enough said.

24 I thank you, gentlemen.

25 MR. CRAMTON: Mr. Craven.

1 MR. CRAVEN: I'm Thorn Craven, Director of
2 the Legal Aid Society, Winston, North Carolina.

3 Since the observation that Bernie made was the
4 utility rate case and Mr. Broughton has responded to the
5 Attorney General, I would just like to make a pertinent
6 observation.

7 The lawyers in Winston, Durham County have repre-
8 sented clients in North Carolina and intervened in rate
9 cases at the request of the client groups.

10 In both cases, the Attorney General of North
11 Carolina which does have a very elaborate public interest
12 in rate increases, I think neglected, or at least did not
13 put any emphasis on the interest of the poor client, but
14 without assistance of legal support agencies of the project,
15 social science research analyzed the incomes and utility
16 expenses.

17 Even if the citizens in Winston had come to us, we would have been
18 absolutely without instruction and advise and the leadership
19 of attorneys from the National Consumer Law Center who had
20 experience. We really wouldn't have known how to proceed.

21 The result of that intervention was that the
22 increase that was being sought was absolutely turned down
23 for all low-income users of less than 1,000 kilowatts per
24 month.

25 It was a terrific victory, I think, for the client

1 and the attorneys, and it would not have taken place without
2 that kind of assistance.

3 I just want to straighten that up and say that again,
4 the individual attorney who is in these situations, I think
5 until he has a question, doesn't know what he can get.

6 It's knowing that there is somebody to ask the
7 question to that's the important thing in this.

8 While maybe the attorneys have not used them,
9 or not satisfactorily, I think the resource being there
10 is such a valuable thing that none of these things can really
11 be lost or will be missed.

12 MR. BROUGHTON: What I'm talking about is the
13 Attorney General legislating that--for example, he would come up
14 to Washington and get a high-powered expert who will make
15 a study of the power companies from the proposal, then come
16 to testify on rates.

17 I'm saying it benefits all--

18 MR. CRAVEN: When we have the client--I think it
19 is important for him to come into the office. What can
20 we do about it?

21 In reference to the Attorney General, I think in
22 most cases it is a fairly meaningless one.

23 MR. CRAMTON: Pertaining to the recommendation
24 before us--

25 MR. CRAVEN: I only want to get into the utility--

1 MR. CRAMTON: You've straightened out the North
2 Carolina utilities.

3 MR. BREGER: The advise which you desire is
4 needed in regard to the rate cases would be impaired by the
5 institution of these recommendations?

6 MR. CRAVEN: I think any shifting is going to
7 impair it. I think changing things around is going to make
8 a terrible difference.

9 MR. BREGER: That difference will be--

10 MR. CRAVEN: I guess it is speculation right now.
11 I think it has been impaired for the past five
12 years because it has been under this kind of cloud. I can't
13 see how it could possibly aid us.

14 MR. COOK: I know we old people don't want change,
15 but don't put yourself in that category.

16 Let me ask a question.

17 You needed all that money for the support center
18 study, and I see that there are two locations in New York.

19 Now, where there are two distinct, fully implemented
20 library facilities, is there any savings in putting the two
21 subject matters together with a fantastic facility in one place
22 and see if it saves money?

23 There are five locations in Washington. If they
24 are different locations, is there anything that can be done?

25 There's one in Cambridge, one in Boston; could they

1 be brought together?

2 There are two at Berkley and two at Los Angeles.

3 I'm trying to find a way that we can get a budget
4 that we can look at and that we can be a little bit liberal
5 with in some regards at the level where it counts the most.

6 But what we're hearing is nothing ought to change;
7 nothing ought to occur. We should keep limping along; go to
8 Congress and ask for \$140 million and get 80.

9 It seems to me that we have got to find some way
10 of quit pulling at each other.

11 I look in here and read all of this and I read the
12 letters that come from Jack Javits and read those that come
13 from House members. They have all the same materials in them.

14 They all use the same way, and I'm wondering
15 who wrote those letters for the fellows; submitted them to
16 the staff to look at them quickly and sign them.

17 Then is seems to me instead of continually fighting
18 each other, we ought to get together and see where we can
19 make the amount of money we've got in the program work.

20 MR. CRAVEN: It hadn't been my impression that
21 the whole force of the act was devoted to cost deficiency.
22 I can't find in reading any of this where it is talking
23 about saving money.

24 It seems to me that it is restricting the quality
25 of legal services available.

1 We're restricting the ability of the attorneys
2 who work in my office to be able to adequately and fully
3 respond to requests which are real and which are made by actual
4 clients.

5 MR. BREGER: Could you clarify in which way it
6 would be restricted or attorneys would be restricted?

7 MR. CRAVEN: Continuing to receive Paralegal
8 Institute developments for us is the way in which we can
9 integrate through the paralegals who had never been exposed
10 to our office, and we had never been exposed to the paralegals.

11 Without the Paralegal Institute, we wouldn't be
12 able--we now have significantly shifted our entire administra-
13 tive representations to lay advocates who have gotten high
14 praises from the administrative law junction from the Social
15 Security Administration.

16 For instance, they are able to handle cases much
17 more quickly, effectively than we ever did as attorneys.

18 MR. BREGER: I'm not denying that the function
19 of the Paralegal Institute has, for example, been a benefit
20 to you, but I don't quite follow why any change in the struc-
21 ture would necessarily be harmful to a devine act, that this
22 structure was actually written in stone.

23 I say I think this is an artificial thing brought
24 about by certainly not cost effective considerations.

25 I can't see, for instance, why the Board doesn't

1 return to Congress and say we want this. This is a silly
2 restriction. We can't operate this way. There isn't enough
3 lattitude.

4 What I am saying is we ought to know that given
5 things make a great deal of difference to all of us, attorneys
6 and clients.

7 MR. CRAMTON: Thank you.

8 Anyone else who would like to address the Board?

9 MR. LORDEN: My name is Patrick Lorden from
10 Youngstown, Ohio.

11 I've been a lawyer for over 11 years; some as
12 a federal law clerk, some in private practice, some prosecu-
13 torial; for the last four years with the Legal Service.
14 For 20 years I was a foreman for the steel mill, U.S. Steel,
15 operating locomotives.

16 I appreciate what Mr. Craven has to say, providing
17 legal services to the poor ultimately takes place out in the
18 streets where the Legal Services attorneys meet with Legal
19 Services' clients in some fashion, whether it be advise,
20 whether it be litigation or what.

21 That's what lawyers do and I appreciate what
22 the other gentleman says about abnormal lawyering.

23 We do abnormal lawyering as opposed to ordinary,
24 normal law-type things that lawyers do.

25 Most general practitioners deal in things like

1 divorce, probate, torts, those kinds of things.

2 The whole new area of law developed with Legal
3 Services--I don't have to tell you or these gentlemen about
4 it, about in transferring these activities, one of the activi-
5 ties mentioned would be training; and I'm in agreement with
6 the gentleman.

7 I don't have any problem with whether it is done
8 in-house or out of house or what, but I'd like to know
9 would training take place at this corporate level or whether
10 there would be a two-day seminar at Catholic University as would
11 be done by grant?

12 You don't train Legal Service attorneys or any
13 attorney by going to a two-day seminar who has people talking
14 to him that may not ever have been in litigation themselves.

15 You don't train lawyers in law school, not the way
16 we do it today.

17 Law schools traditionally teach how to read a case
18 book and how to read a case. That's a long way between
19 representing the client; that's a long way between the dynamics
20 of a jury trial

21 I think you ought to focus to some extent on how
22 we train Legal Services people that come out of law school
23 to be an attorney; anywhere, whether a private office or our
24 office.

25 The way I see it, as you train attorneys to be

1 litigators or advisors, you take a young attorney and he tags
2 along with another attorney, and it's like an apprenticeship
3 program.

4 You take him to court and he watches for a while .

5 It takes a specific kind of individual to take
6 someone along to train. You are going to be very intimate.
7 He will see you at your best and your worst.

8 Not everybody wants to train people in this
9 manner; and you have to develop a relationship with the
10 fellow that you're training.

11 What am I talking about? I've been there four
12 years and I've done this with several fellows.

13 They come along and go up to the Federal Courts
14 and stand up to a two or three judge panel or the United
15 States District Judge tells him he'd better shut up or he is
16 going to go to jail; some feelings of how he can go or
17 can't.

18 He's not going to learn this at seminars.

19 I think we have a Project Director, the Legal
20 Service Director for the field has been damned good in training
21 new Legal Service peopel coming on board.

22 Maybe he ought to be sent around to others; perhaps
23 you ought to be thinking about things like people could go
24 visit other programs for training purposes.

25 When you're training a man, you have--the person

1 doing the training, he's less productive at that time, has
2 to watch himself, think about malpractice, think about
3 explaining things to the other fellow in detail, things you
4 know intuitively and don't have to think when to object, but
5 have to teach the fellow; when to prepare a case for appeal,
6 when not to.

7 There is no other way I know of for training
8 an attorney. Maybe somebody else knows it; I don't know it.

9 I think by merely shifting two seminars to
10 Catholic University over to in-house, that's not going to
11 help people out in the field.

12 You can print all the books you want. That won't
13 help people in the field. That won't train people to become
14 attorneys.

15 You train people by becoming attorneys, teach
16 them in court.

17 A kid setting up a shingle by himself is flirting
18 with malpractice.

19 In Youngstown, we had more malpractice cases in
20 Ohio in the last year than ever before.

21 I don't say that as a shocker, or anything like
22 that, but it's something--maybe because there are no lawyers
23 around and they need the business, you know.

24 The public is reacting differently towards mal-
25 practice, but I really think training Legal Services attorneys

1 is very important and I think we should think how are we
2 going to do it; how to train people physically rather than
3 just transferring a function from one place to another.

4 How do you train them? I think a program should
5 be developed whereby experienced, qualified people train new
6 people whether they have to travel the country, whether they
7 have to travel the state.

8 You've got to train people coming out of school
9 all the same.

10 MR. CRAMTON: Mr. Cook.

11 MR. COOK: May I ask you a question?

12 You've had four years at the Legal Service in
13 Youngstown?

14 MR. LORDEN: Right.

15 MR. COOK: Now, during that four year period of
16 time, can you give us an evaluation, because I'm sure
17 you've run the gauntlet of legal services.

18 Can you give us an analysis of the input that
19 you've had from backup centers?

20 MR. LORDEN: An overview so to speak?

21 Sure, and I'll be candid about it.

22 From the clearinghouse review, I think it's
23 a marvelous operation. I'm sure it could be more sophisticated,
24 but it's a marvelous resource they have there.

25 You can just by reading the clearinghouse reviews,

1 which maybe would be improved with funds and staff. I think
2 they did a marvelous job, and it was a great tool in finding
3 unusual cases where if you had a problem with housing, you
4 could get a hold the clearinghouse and they'd send copies
5 of brief, which if you had a similar case would be a very
6 good negotiating tool, because many of the cases aren't on
7 record.

8 In order to get a case into West's Fed Sup, generally
9 it has to be recommended by the Federal Judge who wrote the
10 opinion.

11 So everytime a case is in front of the Federal
12 Judge, the reporters and fellows go around picking up things.

13 But we have had good help from the clearinghouse
14 and some other backup centers that we've aske about, we've
15 had cases involving denial of counsel, and a case involving
16 whether an indigent had the right to a free transcript of
17 testimony in a civil case; not a difficult case, just an
18 ordinary civil case, and the Supreme Court changed, as you
19 know, relying on the criminal case; took it all the
20 way up to the state system and the backup center response was
21 well, if you get it admitted, we will help you.

22 Well, that's not very much help after it's been
23 granted. Well, maybe that was help, maybe it wasn't.

24 MR. COOK: You're not the final source of informa-
25 tion?

1 MR. LORDEN: No, sir, no, sir.

2 Because we are understaffed, I believe the problem
3 is staffing. I think we want to help. I think that the
4 problem is staffing.

5 In our office, we have four fellows, four attorneys,
6 and we had something like 3,000 people last year, client
7 wise that's a lot of people; it's too many people with the
8 amount of requests from Legal Services all over the country.

9 I think they want to do the job, but as the man
10 says, I can't say it any better, we don't run a normal
11 Legal Services office.

12 It's abnormal; just a tremendous volume out
13 there to be served. And this gentleman knows, the same
14 people aren't poor all the time.

15 Som are, but we have a case, the other day
16 85 city, Youngstown employees were fired. We had a new elec-
17 tion and some new councilmanic people were appointed.

18 Everybody, I think, with the patronage fellows
19 went out for some reasons and we filed--tried to negotiate
20 somewhat, but filed an action in federal court, a pauper's
21 affidavit.

22 Are you familiar --most people don't know what
23 a pauper's affidavit is.

24 If you go to Popper's first to find that your
25 suit isn't specious; so once he allows it, it is almost like

1 a probable cause finding.

2 MR. COOK: Yes, but you handled that by yourself.

3 MR. LORDEN: Yes, sir.

4 MR. COOK: You didn't get any information from the
5 backup center in that regard; anything that you got from
6 the backup center, anything in the library already there as
7 a result of the backup center?

8 MR. LORDEN: No.

9 MR. COOK: Have you requested information relative
10 to that?

11 Is it available to you?

12 That's what I'm trying to get to.

13 MR. LORDEN: Publications we get, the publications
14 from all backup centers are a great help.

15 MR. COOK: All right.

16 MR. LORDEN: But in asking for help in specific
17 cases, we haven't been able to get it, and that's--

18 MR. COOK: That's what I wanted to know.

19 MR. LORDEN: The problem is staffing.

20 Thank you.

21 MR. CRAMTON: If there are no further comments, I
22 turn to Mr. Kutak who had the floor some time ago, it was
23 rudely seized from him.

24 MR. KUTAK: Mr. Chairman, each of us has studied
25 Section 1006(A)(3), each of us has considered the legislative

1 history of that section. Each of us has studied Tom
2 Ehrlich's analysis and his backup papers.

3 Each of us has studied Alex Polikoff's report,
4 and his background papers.

5 Each of us either heard or reviewed the testimony
6 of the witnesses that testified; and I know each of us has
7 done his homework and sincerely searched his own mind
8 as to what was mandated and within that mandate, what is
9 required.

10 When I went through that same process in prepara-
11 tion for this meeting, and when I tried to add it all up,
12 it seems to me that the analysis of the Hogan-Hartzen analysis,
13 of Tom Ehrlich's analysis, of Alex Polikoff's analysis,
14 and indeed, really the analysis of Mrs. Green, really when
15 it all comes down, with one exception, it balances.

16 That was the most surprising thing to me, for
17 I really didn't expect to see it this way when I initially
18 started this study.

19 Looking at the record, we have one kind of program
20 that can provide legal assistance to eligible clients, and we
21 can have more than one kind of legal program that provides
22 assistance to eligible clients.

23 In other words, there is a flexibility, there is
24 a multiplicity of forms that can be contemplated within the
25 language of 1006(A)(1)(A).

1 Just because we have up to now talked about a
2 program which is in the field called the neighbor, or this
3 traditional and standard Legal Service project, or program,
4 doesn't really mean that there's any exclusivity to that form.

5 If I could try to give you my own analysis, it
6 occurred to me of those ²⁵⁸~~2,550~~ offices we are like in many
7 respects offices of general practice; like the offices in
8 the state of New York, or the offices of our own in the
9 country.

10 They're providing every broad spectrum of legal
11 service for the poor. Some of them are doing divorce, some
12 of them are doing contracts, some of them are doing housing
13 or other normal needed legal service for the poor.

14 But this does not have to be the only kind of
15 law office that our law firm can endorse and sponsor.

16 They could also sponsor what we may call by saying
17 the same analogy, or holding to the same analogy, offices
18 of specialized practice; offices which we are all familiar
19 with and many of which, of course, existed in this town in
20 particular but in other large communities as well; offices
21 that are known to specialize in one or another discipline.

22 Of course, when you really look at the law and
23 you really look at the intent and you really look at the
24 need, you can see the logic and you are persuaded by the merit
25 of such an analogy that exists in a private law practice what

1 I may now call here a public law practice, and that is, of
2 course, essentially primarily to render legal service; legal
3 assistance to the poor, whether it be specialized or general-
4 ized; and that is just like we do in our private practice,
5 research to get prepared for those cases or train to develop
6 our young lawyers.

7 Obviously, that could be done by these law firms
8 whether they be generalized or specialized, whether they
9 be in the private or public sector.

10 That certainly in addition to training or research
11 and as all that it relates to the practice or as Alex Polikoff
12 so succinctly and so perspicaciously said, activities normally
13 carried off that we really see here an equation and that we
14 really don't see any arguments, very frankly, wonder whether
15 there is any argument, because there is--we should give our
16 corporation the same broad mandate to structure Legal Service
17 programs to do whatever they deem necessary, as long as it is
18 really to the service of the poor and the legal assistance
19 category or within the framework of the law, of course, which
20 I have just related; activities that normally are associated
21 with the practice of law.

22 I'm trying to say that I really don't know what
23 the shoutings are all about, because it seems to me what
24 incidentally, as Alex Polikoff really identified in his state-
25 ment that the backup centers which we once knew or once heard

1 about and once understood to be really as well documented,
2 really now what we are talking about today is really centers
3 of specialized law which are doing a number of activities
4 that relate to a specialized law practice.

5 But I told you earlier, all the analyses that we
6 heard with one exception that was made, there was almost
7 you could say a footnote to Mrs. Green's analysis.

8 She said, but remember, we really were intending
9 to get rid of backup centers and you recall the reply
10 to that that well, Congress intended it.

11 Why didn't they say so; and why didn't they use those
12 words in the bill?

13 The answer to that is obvious; at least
14 it came to me as I went through all this material. After all,
15 Congress isn't going to pass it, not going to say that.

16 The activities that it wanted stopped, or the
17 variety of activities that it wanted stopped, those activities
18 under 1006(A)(3) are now stopped and that does not in any way
19 disrupt the rendition of legal service for the poor whether it
20 be on a specialized or generalized level.

21 If we pursue the logic of Mrs. Green and we could we
22 could indeed go through what I consider to be formalistic
23 activity.

24 We could cause these backup centers that are
25 rendering legal service to cease and desist, only to turn

1 around and if we found them necessary, or if we found
2 them desirable to reconstruct them, but we as lawyers, it
3 seems to me, don't need to go through an idle motion if the
4 activity is justified, which is authorized.

5 If it is needed, it would be in the judgment of our
6 President and his people that that would be determined.
7 So what we are really dealing with, gentlemen, is the necessary
8 activity and if we recognize activities to be what they are,
9 related to rendition of legal service for the poor, then,
10 and this is in fact what we are doing as Mr. Polikoff says,
11 what degree will be pulled back.

12 We can go forward considering that all analyses
13 really balance out.

14 I submit that there are other concerns floating
15 around, but if we did not disband or did not dissolve, could
16 we be assured that backup centers which have backed up would
17 not reverse themselves?

18 The answer to that is already made very clear in
19 contractual relationships that Tom alluded to in the controls
20 that would be exercised by this Corporation, within, inciden-
21 tally, ethical constraints of the Code of Professional
22 Responsibility, and by the way, within the context of
23 the act itself, which clearly provides its own control.

24 In other words, as I really kind of reduce the
25 thing to its elemental form, it seems to me that what Tom

1 has urged and what Alex has documented and what the act
2 calls for, first of all makes sense in the aspirational
3 sense of what this Corporation is required to do; and that
4 is to ensure the provision of the best qualified legal
5 service we can for our constituents.

6 It is also responsive to our professional obligation
7 as lawyers and frankly, this Corporation's professional
8 obligation as a corporation.

9 Lastly, it really is responsive to what the
10 public and the context of the poor needs.

11 I really suggest that when I found the opportunity
12 to go through all that has been said and all that has been
13 done, this Board has been enormously helped to realize the
14 issue is not as complex or ominous as I frankly first thought
15 it to be.

16 I found that--I thought we had irresistible,
17 immovable force and objects meeting each other and very frankly,
18 we don't.

19 What I'm suggesting is that if we look at it in
20 its elemental form, what Tom had proposed to motion to do,
21 has consisted with the law and consisted with the phenomenon
22 that has been described and documented in the field by the
23 Polikoff study; and it is more important that it is
24 consistent with what is expected of us in the statute.

25 MR. CRAMTON: Mr. Thurman.

1 MR. THURMAN: Mr. Chairman, I really am not much
2 interested in what Senator Javits had to say and Representative
3 Perkins or anyone else.

4 Having taught legislative interpretation statutory
5 construction, you don't look to Congressional debates if
6 it is ambiguous, then look to the statute if you don't feel
7 it is ambiguous.

8 Now, there are quite a few sections in this
9 requirement that are ambiguous, no question about it in my
10 mind.

11 Section 1006(A)(3) pertains to activities that
12 has been said time and time again that it does not pertain
13 to an entity or organizations; any interpretation of 1006(A)(3)
14 with reference to research and that's a tough one.

15 The others really aren't that tough.

16 It pertains to the line project groups just as well
17 as it does to support centers, and if there are things
18 where research cannot be done by a support center then it
19 cannot be done by the line project groups, because it is
20 equally applicable there.

21 This couldn't have been the intent of Congress
22 that you couldn't do research with reference to the represen-
23 tation of clients.

24 The analysis at that point in the section pertains
25 to activities, not to entities equally applicable to both.

1 That couldn't have been the intent of Congress.

2 It seems, too, that they are basically the same,
3 as this is the only analysis I can come up with.

4 MR. CRAMTON: Mr. Smith.

5 MR. SMITH: I'd like to have a little time to think
6 about this; particularly the discussion brought to our
7 attention by Bob Kutak.

8 I'd like to move to recess for lunch; and during
9 the lunch from 12 until 2, the Board would engage in
10 executive session or perhaps personnel matters that you might
11 wish to add in particular with regard to this resolution.

12 MR. BREGER: I second that motion.

13 MR. CRAMTON: Well, we are planning to adjourn
14 at 12:30.

15 I wonder whether we can't continue the discussion
16 until then and adjourn at that time.

17 MR. SMITH: My only feeling is that we would
18 need to recess until 2:30, then.

19 I think having lunch and a discussion would take
20 two hours.

21 MR. CRAMTON: Let's continue the discussion for
22 another half hour, and then if there is a motion at that time
23 for executive--

24 MR. BREGER: I would second that motion, Mr.
25 Chairman.

1 MR. CRAMTON: All right.

2 It has been moved and seconded that the Board
3 adjourn at this point and reconvene at 2 o'clock and hold an
4 executive session in the meantime.

5 Let me suggest an agenda for executive session.

6 I think there are three items that it might be
7 wise for the Board to consider.

8 One is the President has suggested that he may
9 have some ideas about possible high-level personnel of the
10 Corporation that he would like to inform us of; get any
11 views we may have; certainly an appropriate suggestion for
12 executive session.

13 A second subject is in view of the likelihood
14 or possibility that there will be litigation concerning
15 whatever views we have on implementation of Section 1006(A)(3),
16 there may be some legal aspects of the Board's consideration of
17 Section 1006(A)(3), and its implementation which are appropri-
18 ate for executive session.

19 Do you accept that as a description of the matters
20 to be considered in executive session, which now voting an
21 executive session requires a two-thirds vote?

22 Is there a discussion on the motion?

23 (No response.)

24 MR. CRAMTON: Are you ready for question?

25 Those in favor of the motion, please say aye.

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(Chorus of ayes.)

MR. CRAMTON: Those oppose?

(No.)

MR. CRAMTON: Could I make sure?

Can I have a show of hands just to make sure?

(Show of hands.)

MR. CRAMTON: Mr. Cook is no.

MR. COOK: I cannot be at lunch.

MR. CRAMTON: You can still vote for an executive session.

MR. COOK: In talking about high-level personnel, I'd really like to have an opportunity to look at them and express myself at a later time.

MR. CRAMTON: The reporter will record that there is a two-thirds vote.

(Recess.)

AFTERNOON SESSION

2:20 p.m.

1
2
3 MR. CRAMTON: The meeting will come to order.

4 During the adjournment, the Board of Directors
5 held an Executive Session, limited to the two subjects
6 specified.

7 The discussion was with the President of the
8 Corporation on several matters concerning legal questions
9 concerning the implementation of any action the Corporation
10 might take pursuant to Section 1006(A)(3).

11 Some tried to go to other subjects, but the
12 Chairman steadfastly resisted while in Executive Session.

13 While I have the floor, I'll make a brief correction
14 of a statement I made this morning, that H.R. 10799 is identi-
15 cal to the earlier H.R. 70050 which the Corporation testified.

16 The first part of it is identical, differs only
17 in the so-called Wiggins Amendment. Section 2 is added con-
18 stituting 10 percent limitation of the amounts that could be
19 spent on support centers and the new inclusion necessitated
20 a new bill number.

21 So it is not identical, but very similar a bill
22 on which we testified.

23 Gentlemen, there is a resolution that has
24 been moved and seconded, I believe.

25 Was there a second?

1 MR. KUTAK: Oh, yes.

2 MR. CRAMTON: Moved by Mr. Kutak; seconded by Mr.
3 Thurman, which is before the Board for discussion and possible
4 amendment.

5 MR. BROUGHTON: Could I ask Mr. Thurman a question?

6 Did I understand you to say as far as the very
7 statutory sections are concerned and all we are discussion
8 that you had no problem about that; that you felt that was
9 sufficiently clear so as not to consider any of the legislative
10 intent?

11 MR. THURMAN: I was addressing myself really
12 to 1006(A)(3), and really specifically with reference to
13 one aspect of that, whether this really pertains to backup
14 centers.

15 I think it pertains to any one of the grants or
16 contracts that we make. That means all the line agencies,
17 all support centers, and if all are to be treated the same
18 and if it is construed that there can be no research,
19 why that pertains to the whole field.

20 It seems to me that the statute is pretty clear
21 on that point. All I was--

22 MR. BROUGHTON: You say line--

23 MR. THURMAN: The project groups; they're funded
24 by grants or contracts, and just the same as backup centers
25 are.

1 The statute quite clearly doesn't treat anyone
2 differently; doesn't say look, these people can do research,
3 but these can't.

4 Either they can or they can't do research. They
5 have all been treated the same under the statute.

6 MR. BROUGHTON: I'm still not clear as to your com-
7 ment.

8 Are you saying as you interpret this condition
9 that it does apply or does not apply so far as straight across
10 the board to all projects?

11 MR. THURMAN: I think all must be treated alike
12 because they are treated the same under the statute; the
13 project groups, 258 as well as the 17 backup centers.

14 Therefore, if we're to conclude that there can
15 be no research to anybody who receives grants or whom we
16 contract, that means nobody can do that research, with re-
17 ference to representing clients.

18 MR. BROUGHTON: You're saying that that would pro-
19 hibit research at the local level?

20 MR. THURMAN: I think so.

21 I see no reason why it wouldn't.

22 MR. MONTEJANO: Well, this thing has been researched
23 and generally with a particular file there is a distinction
24 there.

25 MR. THURMAN: Yes, making that distinction; but

1 I think you've got to treat the line project the same as
2 the backup center and if one can do it, the other can do it;
3 vice versa.

4 MR. KUTAK: For the legal assistants?

5 MR. THURMAN: Yes.

6 MR. BROUGHTON: Our statute has an extremely
7 broad interpretation on that; that I hadn't heard treated before
8 as such.

9 I may be misunderstanding what you say, but I
10 was struck by your statement this morning which you said that
11 you thought the statutes were clear and therefore, there was
12 no need to discuss what Senator so and so or so and so
13 felt about it; it was of no concern; didn't have any sig-
14 nificance.

15 It's been a long time since you made that, though.

16 (Laughter.)

17 MR. THURMAN: I prefaced the remark by saying
18 I think a lot of the sections here that are clear and
19 perhaps will have to turn to the legislative statement;
20 but with reference to this and more narrowly, with reference
21 to this, so far as distinguishing between backup centers or
22 support centers from line groups, there is no distinction;
23 because both are funded by grant-contracts.

24 So that means whatever activity one can engage in,
25 the other can engage in.

1 If one can engage in the research and representation
2 of a client, the other can, also.

3 I don't think I ever heard a suggestion that
4 project groups--leave groups out there that couldn't engage
5 in research to represent a client.

6 No one ever suggested that.

7 MR. BROUGHTON: I was wondering as to whether
8 that was what you are now saying as far as the meaning of
9 this.

10 MR. THURMAN: No.

11 I don't believe in any way that's reasonable that
12 the construction of the statute says they can't engage in
13 it.

14 If they can, so can the 17 backup centers.

15 MR. BROUGHTON: Are you saying then that you
16 agree that the statute is limited to them; only the four
17 entities referred to in the recommendation of the President
18 and not to the other projects?

19 MR. THURMAN: No.

20 I'm not sure that I follow you on that bill.

21 MR. KUTAK: Just the opposite.

22 Any backup center, Mel, that would be doing
23 specialized legal service for eligible clients could do
24 what any law office type function would require.

25 MR. THURMAN: That's line project.

1 MR. CRAMTON: (A) (1) (A).

2 MR. BROUGHTON: Going back to (A) (1).

3 MR. THURMAN: Yes.

4 MR. CRAMTON: If they're providing legal assistance
5 to clients.

6 MR. BROUGHTON: But you are not saying that (A) (3),
7 if it in fact does require that the work of the entitites
8 listed and other recommendations are brought in-house that that
9 should extend, say could not be conducted locally?

10 I'm now going back to (1) (A).

11 MR. THURMAN: I'm not sure that we're on the same
12 waive length, there.

13 It seems to me so elementary here that 1006(A) (3)
14 in no way distinguishes between backup centers, support
15 centers that are funded by grant or contract and any other
16 one out in the field that are funded by grants or contracts.

17 So whatever decision comes with reference to one,
18 I think has to come with reference to the same other.

19 My conclusion is research in representing eligible
20 clients is valid in both.

21 MR. CRAMTON: The research that's prohibited in
22 one on Section 1006(A) (3) in your view and Mr. Ehrlich's
23 view and Mr. Polikoff's view is--research is not a provision
24 of legal assistants, but is related to it.

25 MR. THURMAN: That's true with reference to field

1 operations as well as the backup centers.

2 MR. CRAMTON: That's right.

3 Does that answer your question?

4 MR. BROUGHTON: I think so.

5 I was confused as to what he meant by--I understood
6 you to take a position that the legislative intent in any of
7 this is not necessarily to the statutes--

8 MR. THURMAN: I hate to say--in fact, this is a
9 classic case; I'm going to use it in my seminar out to my
10 law school for statutory interpretation.

11 (Laughter.)

12 MR. THURMAN: It's a great case; could spend several
13 years on it.

14 MR. BROUGHTON: We are.

15 Are you now saying that the legislative intent
16 does have some bearing on this?

17 MR. THURMAN: Well, by this--

18 MR. BROUGHTON: I thought you were not concerned
19 with that. Whatever referred to anybody on that part, you
20 did not consider.

21 MR. THURMAN: Just again, really, on that point,
22 if everyone is prepared to acknowledge around here that
23 the line attorneys--if I can call them that, are entitled
24 to engage in research in representation of a client for all,
25 there's nothing that--that doesn't violate 1006(A)(3).

1 Section 1006(A)(3) doesn't require that you treat
2 backup centers any differently.

3 MR. BROUGHTON: You said something about the fact
4 that you felt that the statute--we could possibly restructure
5 all the backup centers other than just those which are covered
6 in the present recommendation.

7 As I understood, you and I made a note on it, but I
8 understood you to say that you did not feel at this point that
9 was necessary.

10 Is that fair?

11 MR. KUTAK: Not quite, Mel.

12 What I meant to say, that did not seem necessary
13 within the purview of a Board policy; that that could be left
14 into the hands of the President of the Corporation just like
15 I would think we are leaving it in the hands of our President,
16 rethinking each one of the 258 qualified programs.

17 He's not rubber stamping or taking in a blinded
18 way whatever is handed to him and say, I'm going to fund it.

19 He's rethinking the qualified programs.

20 I'm suggesting his hands should not be either tied,
21 or in no way forced to act with respect to these other qualified
22 programs, albeit the specialized legal service, rather than
23 generalized legal service.

24 He may want to restructure, may not want to.

25 He may want to consolidate, may want to proliferate.

1 MR. EHRLICH: I think that Marlow made a very
2 good point that I concur in completely.

3 If there are ways to bring about economies of
4 scales and efficiencies, we want to do it.

5 That point is not limited to centers, but since
6 we are talking about centers which may be doing that,
7 that's exactly what we propose to do as best we can.

8 I can't tell you whether they will be for sure,
9 but certainly can tell you that will be our intent, and our
10 aim..

11 MR. BROUGHTON: In that part of your recommendation
12 on page nine.

13 MR. EHRLICH: Yes, sir.

14 MR. BROUGHTON: Number three.

15 MR. EHRLICH: Yes.

16 MR. BROUGHTON: Where you say all other clearly
17 identifiable 1006(A)(3) activities will be transferred to
18 Corporate employees or consultants within 90 days, training
19 and technical assistance, publications, so forth; are you
20 saying as a matter to have before the Board and within
21 the framework and construction of backup centers other than
22 the four that you recommend be brought in-house to speak
23 as being under 1006, that their scale there is still left some
24 analysis as to whether there is any activities of the
25 remaining centers that need to be studied, need to be analyzed;

1 and it is possible there are some activities going on that
2 are within the purview of 1006(A) which has not been determined
3 as of this time?

4 Is that correct?

5 MR. EHRLICH: I believe the answer to your question--
6 let me state what the process would be to be sure I understood
7 your question.

8 The proposal is a two-step process for these other
9 centers.

10 Step one, which would be a 90-day step as articu-
11 lated in the contract, would be that there are some that
12 are called clearly identifiable as 1006(A)(3) activities.

13 Training is an obvious example.

14 To me it is obvious. I don't want to say that it
15 is. There isn't any argument; but in my view, that's where
16 it is.

17 Technical assistance publications referred to,
18 those would be brought in within 90 days. But I don't want
19 to say that there aren't also some gray areas.

20 There are bound to be in any issue like this; and
21 I didn't want to suggest that as to those that could be
22 funded for sure within the 90-day period.

23 That's one contract by its terms.

24 It has a second stage which is a six-month period
25 for those areas and during that period, that six-month period,

1 those areas will be identified, isolated to the extent
2 they were determined in this policy judgment to be within
3 1006(A)(3).

4 They, too, would be brought within the Corporation
5 if they are to be continued at all.

6 At the same time, picking up your point, Marshall,
7 and some others as well, during phase one and phase two,
8 the process of the evaluation as in terms of quality, in terms
9 of efficiency, how can we do things most efficiently and
10 effectively going forward.

11 To that extent, I assure you we can find ways
12 to do things more efficiently and effectively by reorganization
13 by bringing comparable functions together.

14 The example that Marlow used was the two libraries;
15 one could be enough if it would be helpful to consolidate
16 that. It may well be.

17 Clearly identifiable, it would be through within
18 90 days. The more complex and hard to work out ones might
19 take the six-month period.

20 But in any event, that would be a dominant desire.

21 Is that clear?

22 MR. BROUGHTON: Well, this is, as I understand,
23 what you are trying to do; and this is what you still have
24 left to do and to determine.

25 MR. EHRLICH: Oh, yes.

1 MR. BROUGHTON: Some gray areas, and there may be
2 some areas that are not gray areas.

3 MR. EHRLICH: There are some, but not necessarily
4 in this particular study.

5 I would not necessarily pick them up, and maybe
6 because of the time restriction. Indeed, the Polikoff
7 study recognized that they would be in--used some of those
8 areas; but I can't say that we will move as fast as we can
9 and deal with them as quickly as we can, for I don't think
10 that would be fair.

11 MR. CRAMTON: Is there further discussion?

12 (No response.)

13 MR. CRAMTON: Are there proposed amendments?

14 Mr. Breger, do you have an amendment?

15 MR. BREGER: Well, I was wondering if this agreed
16 upon point might be encapsulated in the amended language to the
17 effect that the Board might direct a Board committee or
18 possibly Legal Services to report on proposals for reorganiza-
19 tion of existing support which are mandated by Section 1006(A)
20 (3), but include the liberty of Legal Services to the Board.

21 MR. THURMAN: Are you so moving?

22 MR. BREGER: I suppose so.

23 Actually, I was wondering if it might be accepted
24 by, I think, simply institutionalizing what we have.

25 MR. CRAMTON: Well, my understanding of the present

1 posture is that the Board has taken a position that the backup
2 center matter is sufficient enough that it should be considered
3 by the Board, itself, after each meeting of the Board, and
4 so done this far, and I would wonder whether there is a more
5 preferable alternative in the form of the proposed resolution
6 which I understand means the President and the staff after
7 discussions with the organizations affected by the resolution
8 would report at each meeting of the Board about its implementa-
9 tion.

10 The Board would have ample opportunity to express
11 views to guide and the like; but leave the initiative to
12 conduct negotiations not on the part-time members of the
13 Board and the committee of the Board, but on the staff where
14 it seems to be a more proper line.

15 MR. MONTEJANO: Would the staff then come with
16 a specific contract for review and approval by the Board?

17 MR. EHRLICH: I would not think so.

18 In this sense, I believe that each one of these
19 agreements, that each one of the ~~senators~~^{centers} would have some
20 different kind of details.

21 With all deference, I don't think the Board wants
22 to get into the review and approval of each contract,

23 I think it's quite appropriate and helpful to anybody
24 to turn to your particular committee or all members in terms
25 of particular questions that you have in mind, and I'd be glad

1 of course, to do that on a particular basis, either this commit-
2 tee or another committee.

3 MR. CRAMTON: Mr. Smith.

4 MR. SMITH: I think with regard to Rudy's question,
5 the analogy was the same one made a while ago on local
6 projects.

7 I suggest to saying with regard to grants and
8 contracts with local projects that they be brought here only
9 when, as the two examples were this morning, were within a
10 certain section of the law requiring it; and when not within
11 sections of the law requiring it that the contracts here would
12 be negotiated after we've discussed the general form, just
13 the same as a local project grant would be approved.

14 But I had two questions.

15 1. Are we going to discuss proposed contracts in
16 some detail even though it will vary from support center
17 to support center?

18 Do you anticipate discussing a little bit as
19 to what might and might not be--

20 MR. CRAMTON: I would view it as open for discussion
21 now; part of the package of recommendations before the
22 Board.

23 MR. SMITH: My question is whether or not you
24 viewed that as something precluded or foreclosed from
25 discussion once adopted, or adopt the resolution, then discuss

1 the potential contract?

2 MR. CRAMTON: I'd be happy to do it either way; or
3 discuss it now before adoption of the resolution or discuss
4 it afterward.

5 MR. SMITH: I think an even large subject of the
6 discussion in the same context, whether before or after we
7 adopt the resolution, was the discussion of specific recommenda-
8 tions, implications in the Polikoff study with regard to the
9 16 or 17 support centers.

10 Should we discuss them individually before or
11 after the resolution?

12 MR. CRAMTON: What would you propose?

13 MR. BROUGHTON: Discuss them now; no other reason
14 than Mr. Cook said he would be back and would like to be here
15 for the vote.

16 MR. BREGER: I'd like to move my amendment.

17 MR. CRAMTON: Could we just complete this item
18 of procedure?

19 Mr. Smith has suggested that there are two
20 matters:

21 One involving the perhaps detailed discussion of
22 the proposed contract which should be postponed until after
23 a vote on the resolution.

24 Is that agreeable?

25 (No response.)

1 MR. CRAMTON: Now, considering the adoption
2 of the resolution for closing and discussion of details
3 of control that ought to be included in the contract.

4 We can treat that as an inseparable item which we
5 will take up after given the advise of the president on
6 the subject.

7 What about the second subject; that is the
8 discussion of the individual support centers?

9 That should take place while Mr. Polikoff is
10 here and either prior to the adoption of the resolution
11 or after?

12 What is your preference?

13 MR. THURMAN: Limit one hour to each backup
14 center; that should be about right.

15 (Laughter.)

16 MR. SMITH: There isn't a lot of discussion. The
17 report is pretty clear and the conclusions are pretty clear, but
18 I think just as an example, I have a question about the
19 Economic Development Law Project, and maybe some others
20 have questions about others.

21 But it seems to me and I thought maybe it might
22 be appropriate for a little Board discussion and some response
23 by both Tom and Alexander about whether or not the activities
24 of economic development law centers fall within the purview
25 of what is to be done by Legal Services Corporation or not?

1 Economic development, no matter how laudable
2 it might be, isn't directly legal service; and some of the
3 factors were brought out in the study of the particular
4 center.

5 I remember one example where a corporate client was
6 utilizing the service and had in-house counsel making a salary of
7 \$17,000 a year.

8 That doesn't seem to put that corporation in the
9 category of an indigent client in any sense of the word.

10 I think economic law is a laudable function, and
11 maybe Federal, I don't have the local leve, is laudable.

12 It probably should come through some other agency
13 other than Legal Services for the poor.

14 MR. ORTIQUE. I'd like to raise a mechanical
15 question.

16 It was my impression that the staff was going to
17 look at each one of these and have some additional information
18 and I certainly did not know that we are going to go into the
19 merits or demerits of each one of these that is included in--

20 MR. SMITH: I didn't mean to imply that we are
21 going to make a decision to cut off or continue anyone at
22 all.

23 I just meant to get a little more information
24 about the point I raised with regard to that center.

25 Other members might like others, but not making

1 any decision on any of them.

2 But the discussion solicited might be helpful
3 to the President and the staff in the decisions later that
4 they will make as to continuing.

5 For instance, I raised the point that I'd like
6 to hear some discussion on it. It just doesn't seem to me
7 that we are doing justice to the obligation to direct all
8 dollars possible into legal services for the poor if some
9 are in a function that really I don't view as being legal
10 service to the poor.

11 That's the point I want to make; discuss, not
12 that we decide it.

13 MR. ORTIQUE: Mr. Chairman, I just don't think
14 that it's fair to various centers that this type of discussion
15 is entertained by this Board at this juncture.

16 It would appear to me--

17 MR. SMITH: When would it be?

18 MR. BROUGHTON: Well, we have the gentleman who
19 is in charge of the study. Maybe at least to some extent
20 we could get some information.

21 I have two or three questions I want to ask him.

22 MR. BREGER: It certainly would be helpful in
23 understanding what's meant in encompassing--to go through the
24 system the way in which we begin to see how this resolution
25 would impact the reality on different entities that we're

1 talking about.

2 MR. ORTIQUE: You mean you are not talking about
3 descriptions at all or future operations at all?

4 You're really getting to the substance of the
5 adoption of this resolution; certainly that's what you're
6 saying, Mel.

7 MR. BROUGHTON: I'm trying to get some information
8 beyond what I have been able to read or maybe clarification
9 of what I've been able to read about some of the backup
10 centers.

11 Let me say this. In October, and we had before
12 us--I think this is the thing that leads to a lot of confusion;
13 certainly a lot of confusion in my mind that it was learned
14 that there was an evaluation made at the center just a short
15 while ago when we first started in this thing.

16 I had a copy of that which I brought to that
17 meeting; I don't know whether you--you may have left
18 that day.

19 Those evaluation studies were in big, individual
20 booklets, and I inquired as to the cost of this and the
21 purpose of it.

22 I think it was contracted out to some management
23 consultant firm; it cost about \$60,000.

24 I think that the Polikoff study group looked those
25 over to determine if that study would have any value so far

1 as its worth was concerned.

2 Later I inquired of Mr. Corbett as to what use
3 was made of that. If I recall his reply, if any use was
4 made of it, he said some members of Congress asked for and
5 received copies.

6 But my impression was the study made had been
7 put on the shelf to collect dust and that's the kind of thing
8 that concerns me about it.

9 We've had this study made; we could at least
10 ask some questions about it because apparently, there's no
11 one in this room, I think, that was connected with Legal
12 Services offices at that time, but that was the study made.

13 MR. CRAMTON: Mr. Smith has asked a question; would
14 like Mr. Polikoff to answer it.

15 I think we could move ahead if Mr. Polikoff could
16 be given the opportunity to answer the question.

17 MR. SMITH: I think the questions are relevant.

18 MR. CRAMTON: I think they are relevant, too, and
19 germane.

20 Would you like the question repeated?

21 MR. POLIKOFF: As I understood Mr. Smith, he
22 raises whether the study doesn't disclose economic development
23 projects; it may be representing ineligible clients.

24 MR. SMITH: Yes.

25 MR. POLIKOFF: Yes.

1 I think the answer does disclose, and although
2 I don't have a copy of the underlying report which says that,
3 I only have an abstract here with me, my recollection is that
4 the underlying report explicitly raises the question.

5 In my overall report to the Corporation, in para-
6 graph H, beginning on page 22, raises an even broader question
7 namely the statute as it bears a representation of groups,
8 generally.

9 It notes that while I more or less gratuitously
10 express my view that the statute does not preclude represen-
11 tation of groups and legislative history bears that out, that
12 the Corporation is obligated to promulgate guidelines,
13 obligated to representing not only the eligibility of
14 clients, but also the related subject of a priority in treatment of
15 clients; and that's the question of who is and who is not
16 eligible, including groups, ought to be dealt with in the
17 promulgation of those guidelines and therefore, my ultimate
18 answer to your question is that, yes, the study report
19 discloses and raises a question about the representation
20 of ineligibles by that particular study report center.

21 It recommends that that question be dealt with
22 generally, which, of course, would include that support
23 center by the promulgation of guidelines which the Corporation
24 is obligated, in any event, to promulgate under the statute,
25 representing both eligibles and priority of supplying legal

1 service to eligible clients.

2 I should add that the use of the term economic
3 development in connection with a corporation does not in my
4 opinion necessarily imply noneligibility; that is economic
5 development of a corporation generally consists of corporations
6 formed in disadvantaged neighborhoods whose members or stock-
7 holders are frequently poor people who live in neighbor-
8 hoods that under the statute are required to exercise control
9 over the corporation.

10 This is a kind of economic bootstrapping operation
11 which, for example, in Chicago, in the case of one of which
12 I'm familiar with it is a positive, self-development kind
13 of technique that the inter-city neighborhood has been
14 engaging in for several years to pull itself up by its
15 economic bootstraps.

16 There is no question in my mind that with respect
17 to the entity in Chicago that I'm familiar with, that
18 it would very likely qualify under any eligibility rules that
19 the Corporation might decide to promulgate, notwithstanding
20 its corporate form, because the stockholders are in fact
21 poor people.

22 I think they bought stock at one dollar per
23 share which for many of them was difficult to come up with; and
24 it is a local development corporation controlled by residents
25 of the neighborhood.

1 Thre are other such economic development
2 corporations, including the one that you referred to that
3 might not comply with eligibility promulgated by the
4 Corporation.

5 I think it's a separate and statutory mandated
6 step to issue, to prepare such regulation governing eligibility
7 and priority of service to a client.

8 MR CRAMTON: Does that answer you?

9 MR. SMITH: Yes.

10 MR. CRAMTON: I think next is Mr. Breger's
11 proposed amendment.

12 MR. BREGER: I have a question. I want to take
13 advantage of Mr. Polikoff while we have him, as much as I'm
14 sure he'd like to go back to Chicago.

15 MR. POLIKOFF: The weather is nicer in Washington
16 than in Chicago.

17 MR. BREGER: In regard to your discussion of
18 eligible clients, it would be useful to expand on that, at
19 least in the context of the Center for Social Welfare Policy
20 where you describe in footnote three some possible problems
21 that might result in the existence of organizational clients,
22 a broad base concern, which if it were the direct client of
23 the support center, it might result in the support center
24 engaging in acts which might otherwise be prohibited by the
25 statute.

1 MR. POLIKOFF: Footnote three, Marshall?

2 MR. BREGER: Yes.

3 It's page 45 of your memorandum of January 19,
4 book two.

5 MR. POLIKOFF: That's the basic study?

6 MR. BREGER: Yes.

7 MR. POLIKOFF: Well, I don't have that handy, but
8 I recall it.

9 The point is that, Marshall, it's a theoretical
10 point, but one that I call to the attention of the
11 Corporation in my report, and incidentally, it is not limited
12 in theory to representation of a group client; but could
13 arise from the request of an individual client as well as
14 from a group client.

15 It might be more likely to occur in a case of a
16 group client.

17 The potential or theoretical point is that--the
18 thrust of Section 1006(A)(1) as I at least have come to
19 know it in my ultimate view is the representation of
20 of individual eligible clients with respect to specific
21 legal problems.

22 Now, suppose a client, group or individual, comes
23 in and asks--he's eligible, no question of eligibility, and
24 asks for help of a very, very broad nature.

25 For example, an eligible tenant comes to the

1 housing law center and he says, look, I've all sorts of prob-
2 lems.

3 Day after day, I have a different kind of problem
4 with the landlord. I would like you to prepare for me a
5 three-volume comprehensive treatise on housing law.

6 (Laughter.)

7 Now, that would be in theory.

8 This is what the footnote raises, a theoretical
9 problem that would be in theory in representation of
10 an eligible client with respect to what he at least views
11 as a specific legal problem.

12 But I think it would violate the intent of the
13 statute, certainly the spirit; because it would result
14 in the production of the kind--precisely, if you will, the
15 kind of generalized, nonspecific type of law in my judgment
16 at least that is covered by Section 1006(A)(3) rather than
17 1006(1)(A)(1).

18 So what paragraph H of part one of my report to
19 the Board suggests is that that problem, which incidentally
20 I'm not aware of having occurred, at least not in any serious
21 degree, that problem similarly should be dealt with guidelines
22 respecting the eligibility of clients, and priority of
23 rendering services to client.

24 That is, the Corporation in dealing with that
25 subject, particularly the subject of priority might well decide

1 the cognizance of this theoretical problem at least, and
2 deal with what I'll call the general request from a client
3 as distinguished from the specific request to handle a particu-
4 lar legal problem.

5 MR. BREGER: So the difference as you see it
6 would turn to the general request of aid as opposed to
7 the request for a generally, specific matter?

8 MR. POLIKOFF: That's correct.

9 I doubt whether an individual or group--

10 MR. KUTAK: In fairness and practice, we have had
11 a specific client ask us for something kind of comprehensive
12 in nature.

13 A quick idea comes to my mind. The Blue Sky
14 memorandum which becomes a very comprehensive survey of law
15 in order to qualify an issue.

16 It turns into a nice healthy document, and it
17 has as--well, it comes out of my shop.

18 (Laughter.)

19 So, in other words, there are instances where it
20 could be legitimate--

21 MR. POLIKOFF: Of course the Blue Sky memorandum is
22 perfect. In a 50 state legal survey, there's no response
23 to very specific and precise legal problems.

24 The example I gave, the compendium of three volumes
25 of housing law, other types of requests, and I'm not suggesting

1 Bob, that the guidelines that the Corporation promulgates
2 could deal with great precision on this subject. I think this
3 is not susceptible to great precision, but certainly would
4 be possible to take note of the problem and address the
5 general language.

6 MR. KUTAK: I think we should really try to do
7 it by example in some sort of guidance.

8 MR. BREGER: Let me ask one other question on this
9 general point.

10 I suppose I should have done the toning up myself,
11 but how many backup centers have direct clients opposed to
12 acting on referrals and--either proportionately or in a number
13 of their activities related to direct attorney/client relation-
14 ships in which they are the attorney in that relationship
15 rather than a referral from a line--

16 MR. POLIKOFF: I'll answer the second question
17 first.

18 A relatively small portion of the time a backup
19 center is in direct representation. By far the large portion
20 of--this varies, of course, from center to center. I can't
21 pretend to be too precise. I haven't done toning up, either.

22 But the larger portion of it is in response to
23 requests, what I'll call field attorneys who are handling
24 specific matters.

25 On your first question, Marshall, I didn't do that

1 precise toning up, either. Perhaps I should have, but most
2 of the substantive centers,--we are now only talking about
3 those, and not nonsubstantive that I termed, most of those
4 centers, but not all, do engage in some small amount of direct
5 client representation not initiated by the Legal Services
6 Corporation, but comes because somebody, some client walks in
7 the door and asks for representation.

8 Some do not, for example, the Migrant Center, I
9 don't know whether it is policy or it just happens, but as
10 far as the study team discussions indicate, in every case
11 they engage in clients representation through a Legal Service
12 attorney in the field.

13 MR. BREGER: The Migrant Center never has done
14 it direct, all on referral?

15 MR. POLIKOFF: I could accept the word referral; not
16 talking about referral in the sense that it is normally used
17 in the legal fraternity?

18 MR. BREGER: No.

19 MR. POLIKOFF: Talking about a telephone call or
20 a letter from a field attorney who has a client, says, look,
21 I've got this problem. I need some help. Will you give me
22 some help.

23 The record indicates that it may take a variety
24 of forms:

25 It may be a responsive telephone call;

1 Maybe mailing of materials already prepared that
2 would be a relevant response;

3 Maybe the generation in the mailing of a legal
4 memorandum or legal opinion to that attorney; or

5 It may go all the way to active papers in the
6 representation of the client in the case of the litigated
7 matter to a formal appearance in court on his behalf.

8 The whole spectrum of responses occurs in most of
9 the centers.

10 MR. BREGER: One last thing, and then I'll stop
11 burdening you.

12 MR. POLIKOFF: No burden.

13 MR. BREGER: I guess it is unclear to me in that
14 I always thought before I read your studies that backup
15 and support meant what was engaging in backup to the line
16 attorneys.

17 On what criteria are the decisions made that
18 present support that have a direct relationship with a
19 client rather than one through a line Legal Services agency?

20 How does it come--

21 MR. POLIKOFF: It's not possible to answer that
22 question with generalizations that applies to everyone.

23 In some instances, one, for example, somebody
24 walked into the welfare center in New York to use the library
25 as a client.

1 He started talking to attorneys, needed some
2 help and had an important case, and they decided to take
3 the case.

4 In other instances, they get into active participa-
5 tion at the request of a Legal Services attorney or the
6 party in question, and become so active that it's agreed that
7 they shall take on the case.

8 In effect, they become Legal Services attorneys
9 for that client even though they weren't the originator
10 of it.

11 They reject requests for participation in--I
12 suppose the general answer to the question disclosed by the
13 reports is that they attempt to use the kind of criteria that
14 private law offices use with respect to the nature of the
15 matter presented .

16 MR. BREGER: This is one where someone walks
17 through the door; wouldn't they say go see the local Legal
18 Service first?

19 MR. POLIKOFF: Most of them do precisely that.

20 The Welfare Center, again, is another example.

21 It says by far the majority of the direct requests
22 for assistance are rejected and are referred to the local
23 Legal Services offices in the area.

24 So, most of them do that.

25 They do tend to view themselves as entities and

1 ought to reserve a very substantial portion of their available
2 legal time for the service function to be able to respond to
3 local legal attorneys' requests for assistance.

4 Obviously if they use the bulk of their lawyering
5 time in direct handling of their own cases, so to speak, they
6 wouldn't have this reserve time to service requests for a field.

7 So most of them tend to reject the bulk of requests
8 for direct assistance, not out of hand, but by referral.

9 MR. BREGER: Thank you.

10 MR. MONTEJANO: Mr. Chairman?

11 MR. CRAMTON: Mr. Montejano.

12 MR. MONTEJANO: So I can intelligently vote on the
13 amendment, the resolution goes to the transfer of certain
14 activiteis.

15 As a direct result of the resolution, it will result
16 in the termination of the project and the transfer of another
17 one.

18 If I'm wrong, correct me when I finish.

19 Number two, the resolution does not got to the
20 question of whether the remaining activity in the backup
21 centers would be continued, that would be a matter which would
22 be subsequently studied and resolved through resolution,
23 upon recommendation of the staff.

24 Then I heard, number three, that certain issues
25 such as eligibility of client priority will be best approached

1 through regulations, meaning committee reports.

2 It's my understanding--

3 MR. EHRLICH: Let me treat the three questions
4 one at a time, because I think there is--my understanding
5 wasn't the same as some of that.

6 Of the four centers you're talking about termina-
7 tion or transfer in total of:

8 The training program;
9 The clearing house review;
10 NLADA; and
11 The Paralegal Institute.

12 MR. KUTAK: Correct.

13 MR. EHRLICH: Point two is assuming the Board
14 adopts the resolution along the lines proposed, the staff
15 will go forward as rapidly as possible to negotiate agreements
16 with the other centers along the lines of the model, with
17 the understanding that individual variances occur and some
18 are not known with precision at this time.

19 That contract is a two-step process that Mel
20 and I discussed this morning.

21 MR. MONTEJANO: At that point, is it anticipated that you would
22 come back to the Board and recommend that some or all of
23 the activities of certain backup centers be terminated alto-
24 gether?

25 For example, he brings up the economic backup

1 center.

2 Is it conceivable--not that one in particular, you
3 could come back and say no, we looked at it and feel we really
4 don't need this type of activity within the Corporation?

5 MR. EHRLICH: We would expect to report to the
6 Board--

7 MR. CRAMTON: At each meeting.

8 MR. EHRLICH: At each meeting, until you tell me
9 to stop it.

10 But I would not expect the Board would vote, because
11 they would view these as matters of policy on any particular
12 agreement.

13 MR. POLIKOFF: If I could just interject an
14 illustration.

15 The underlying reports raise a question of needless
16 duplication between two support centers, both in the juvenile
17 field.

18 I would, in fact, strongly suggest the consolidation
19 of the two support centers.

20 MR. MONTEJANO: But voting the resolution in
21 the affirmative does not mean necessarily that you are approving
22 carte blanche of all the backup centers, does it?

23 (Chorus of nos.)

24 MR. EHRLICH: I think the general consensus of
25 the Board members is that every possible effort will be made

1 to reorganize for the purpose of efficiency or, and possibly,
2 to eliminate it.

3 MR. ORTIQUE: The question of elimination or con-
4 solidation will be presented to this Board for the purpose
5 of action.

6 Is that correct or not?

7 MR. CRAMTON: No.

8 For discussion and possible action.

9 MR. EHRLICH: Yes.

10 Obviously, if the Board wants to act on any, it
11 can act.

12 MR. ORTIQUE: What guarantee then does that backup
13 have that it is not going to be eliminated at the staff,
14 left without having an opportunity to appear before this
15 Board to participate in its demise?

16 MR. EHRLICH: I think if you have a situation
17 where any program,--and I really think this is a generic
18 problem--comes to the Board about its particular situation,
19 you have the Board dealing with a particular program and I
20 would respectfully suggest to you that that would be a terribly
21 difficult position for the Board to get into, dealing with
22 particular programs as opposed to policy.

23 But that's my own view and I think a view--

24 MR. SMITH: The answer to both by adoption of this,
25 in fact, we are delegating to your staff and to you, in

1 particular, authority to expand the contract and consolidate
2 or eliminate functions of any support.

3 MR. EHRLICH: Subject to the continuing overview
4 of the Board.

5 MR. SMITH: Right; but not requiring the interaction
6 of the Board; only subject to continuing oversight?

7 MR. EHRLICH: But understanding that the action
8 will be consistent in general terms with these recommendations.

9 MR. CRAMTON: We have a recommendation from the
10 President which is the basis for the resolution. If the
11 the resolution is approved, the President will implement
12 the resolution in accordance with the recommendation.

13 There will be a report at each Board meeting
14 until further notice of his proceeding in the implementation.

15 Any change or departure from what we learn will
16 be a discussion for the Board.

17 Is that right?

18 MR. EHRLICH: Yes.

19 Rudy has a third point.

20 It's true that there are some issues in client
21 eligibility, one of them that affects not only support
22 centers but every single program.

23 It is an issue that affects the entire range of
24 Legal Services programs. It cannot be, of course, resolved
25 in isolation, but I think Alex is absolutely right.

1 It is one of the issues that has to be dealt with,
2 and the resolutions are completely highly sensitive to it.

3 MR. SMITH: I have another question that I wanted
4 to ask you, Tom, about what might be one of the guidelines
5 which you were using and I guess used the Economic Law
6 Center.

7 Again, not to indicate any prejudice in it, but
8 in fact, one of the reasons to me in my own experience is in
9 that area there are lots of sources of federal, state and local
10 combinations.

11 I was just wondering, one of the guidelines in that
12 area I think shows that it's funded about 60 percent from
13 sources other than ours, and 40 percent from the Legal Service.

14 If in your evaluation of what functions they
15 perform related to their total production of direct relevance
16 to Legal Services, you might well consider or be considering
17 reducing funding.

18 Instead of contributing 40 percent, contribute
19 25 or some other figure, depending upon the total production
20 in relationship and relevance to our objectives.

21 Is that correct?

22 MR. EHRLICH: Yes, exactly.

23 You stated it the way I hope I would have stated
24 it.

25 MR. SMITH: Thank you.

1 MR. CRAMTON: You are making an amendment which
2 I don't think was seconded.

3 It really hasn't been articulated.

4 Mr. Breger, you wish to come back and--

5 MR. BREGER: Right, both are true.

6 (Laughter.)

7 MR. BREGER: It was not seconded nor articulated.

8 MR. THURMAN: Other than that, it's in good form.

9 (Laughter.)

10 MR. BREGER: I suppose I would have some slight
11 disagreement with the proposal that Tom put forward, although
12 my disagreement in no way touches any complete and full
13 faith I have in the approach you are taking in making the guide-
14 lines.

15 But it seems to me that although divided up
16 properly, the policy of implementation, that is a very
17 complex business to decide what is general policies and kind
18 of different questions of law and questions of fact, and that
19 is a huge gray area of application.

20 At least the questions of what activities fall on
21 one side, 1006(A)(3) or another side, if we chose to accept
22 your general recommendations are vital questions for this
23 Board.

24 I think we have on our own responsibility as
25 Board members the responsibility of meeting them and hopefully

1 meeting them in the form of responding to your recommendations
2 on each, when you have concluded making those recommendations
3 on each particular support center.

4 Similarly, I think the question of reorganization
5 for the purpose of improving delivery of legal services
6 generally is also one of the duties that we have to meet, al-
7 though it certainly contains significant questions of
8 implementation.

9 So, I would make the following proposed amendments:

10 That by August 31,--is that six months from now?

11 No.

12 What is six months from now?

13 MR. EHRLICH: From the first of April?

14 MR. BREGER: Yes.

15 MR. EHRLICH: September 30.

16 MR. BREGER: By September 30, the President will
17 recommend to the Board a proposed list of which specific
18 activities presently undertaken by each support center are
19 prescribed by Section 1006(A)(3); and

20 Secondly, I would add an amendment that the Board
21 of Directors shall, and I choose this committee of the
22 Legal Service together with the staff to report to the Board
23 at each meeting proposals for reorganization which are
24 not mandated by Section 1006(A)(3), but which will improve
25 delivery of legal services to the poor.

1 The effect of both amendments in my view is to
2 highlight the importance of the Board's involvement in
3 these vital decisions and to further highlight the fact that
4 our concern here is the responsibility of the reorganization
5 of the support center mechanism, generally.

6 I think that that amendment will hopefully
7 develop those things.

8 MR. ORTIQUE: Mr. Chairman, I don't want--

9 MR. THURMAN: Is there a second on this?

10 MR. CRAMTON: I have not heard a second as yet.

11 MR. MONTEJANO: Do you mean activity prohibited
12 by the statute or those activities which the Corporation deems
13 that should no longer be carried on by the center?

14 MR. BREGER: The first amendment goes to the
15 statute, says that the President shall report to the Board
16 as to what he has concluded, activities prescribed by the
17 statute, discrete activities for each discrete support
18 center.

19 The second amendment goes to what I view as
20 reorganization outside the statute which would be for purposes
21 of improving legal services and that would go to the purpose
22 of the question of policy.

23 MR. MONTEJANO: Second.

24 MR. CRAMTON: Is there a second.

25 MR. MONTEJANO: I'll second it.

1 I'd like to hear some input.

2 MR. ORTIQUE: I think mechanically, Marshall puts
3 me in an impossible position, because now he's giving some
4 policy directives to the president to be carried out in
5 an anticipation of some other action that has been taken, maybe
6 for one and not the other.

7 MR. BREGER: I'm not sure I follow you.

8 MR. ORTIQUE: I think if you separate them and
9 not make amendments to this implementation, the resolution
10 now before us, I have no problem.

11 MR. EHRLICH: Separate the motion.

12 MR. BREGER: So that you don't have to vote on
13 them.

14 MR. ORTIQUE: At least have a choice.

15 MR. BREGER: I understand.

16 Well, in that case, I'm willing to sever them
17 and make them subsequent motions and you can take them at what
18 point is best, before this or after the vote on this; that
19 doesn't matter.

20 MR. MONTEJANO: I accept that.

21 MR. BREGER: I take your point.

22 MR. CRAMTON: So the amendment is withdrawn for
23 the time being?

24 MR. BREGER: Yes.

25 MR. CRAMTON: Mr. Broughton.

1 MR. BROUGHTON: Mr. Polikoff, in connection with
2 your working with you and the panel, and in discussions that
3 you have set forth, attached to the report, I take these
4 things center by center, did you go into the question of control
5 to the extent of say physical control heretofore existed
6 between the Corporation or its successor, OLS and the
7 individual backup centers?

8 MR. POLIKOFF: No.

9 We did not.

10 MR. BROUGHTON: I think Mr. Ehrlich said something
11 about that down in Texas.

12 Some indication that there may be some physical
13 tightening necessary, and I didn't know to what extent it
14 went.

15 Am I recalling correctly?

16 MR. EHRLICH: Two points are useful by-products,
17 useful to the Corporation quite apart from everything else in
18 terms of sound operations.

19 One is setting up that part of our management
20 information system that deals with finance and financial
21 controls.

22 I think there were some insights that were gained
23 from looking at these programs. So it has been helpful in
24 building out that program.

25 That was the first point.

1 The second one, and the controller is here. Maybe
2 he will elaborate on them in terms of how to best set up that
3 operation.

4 The second part relates specifically to the univer-
5 sity; the fact that some centers are tied with two universities,
6 the question of overhead for universities; specifically, the
7 question of whether or not it is possible to minimize extra
8 charge because the centers were part of it.

9 MR. BROUGHTON: One reason I wanted to follow
10 up, I noticed the discussion of Harvard Center, 54 percent
11 of the grant--

12 MR. CRAMTON: No; personnel cost, I think, and
13 then not even all that; total amount.

14 MR. CORBETT: I haven't seen it for some time, but I
15 believe it used to be 54 percent of personnel cost.

16 MR. EHRLICH: There were some more reductions, but
17 the essential point was the substantial amount of overhead
18 to the university; that is correct.

19 MR. POLIKOFF: One of the study reports I recall
20 specifically recommended that the relationship of the universi-
21 ty, I think in Colorado, be severed because no advantage was
22 being obtained from the relationship. I interpreted
23 your question to be a little more broadly reported as Tom
24 indicated may well suggest lines of inquiry with respect to
25 this kind of a relationship where the overhead figures seem

1 large and that's one of the matters that the Corporation
2 undoubtedly will want to look into in the forthcoming period.

3 I answered your question negatively because that
4 was not a fact explored about which judgments were made
5 by study teams.

6 MR. BROUGHTON: I understood that, but I
7 started from a comment that Tom made in Texas, and I had read
8 that as far as Harvard is concerned, I'm not familiar enough,
9 but I understand--

10 MR. THURMAN: That percentage goes up. I'm not
11 saying you can't justify it. The university presents quite
12 a case, but it's a costly item.

13 MR. BROUGHTON: Which way are you saying it is
14 costly?

15 MR. THURMAN: For the Board in this case.

16 MR. BROUGHTON: Is that pattern about the same,
17 Mr. ^{Corbett} ~~Calvert~~, or something developed steadily through the
18 years?

19 MR. CORBETT: The patterns here have actually
20 gone out in funding centers on an independent basis and
21 most cases if we could not obtain the new direct cost that
22 would run under 30 percent, we thought they might cost the
23 program up to 30 percent to go on the outside for administra-
24 tive costs.

25 So, we did transfer a number out of university because

1 of higher costs.

2 We were not allowed to dicker with the university
3 because of the issuance of OMB that said you will take
4 the audit rate of the university.

5 So if we fund it through the university, we had
6 to accept their figure.

7 MR. CRAMTON: We're not subject to restriction,
8 however, nad we are free to bargain.

9 MR. BROUGHTON: That was a restriction in effect
10 before this adoption of this law. Is that correct?

11 MR. CORBETT: Because we were at that time under
12 the direction of OMB in regard to the activities, occasionally
13 we would be able to persuade the university ot contribute
14 something, but generally if we funded through the university,
15 we stuck with their rate.

16 MR. BROUGHTON: You had no negotiating?

17 MR. CORBETT: Very little; could not adjust
18 their official rate. We would try to persuade the university
19 to contribute something "voluntarily."

20 MR. EHRLICH: As I recall, the only other
21 centers connected with the university is in Berkley. The
22 rate is much more.

23 MR. CORBETT: That was an off-campus rate that
24 was negotiated, I believe.

25 MR. BROUGHTON: That's not true; there's Antioch.

1 MR. CRAMTON: Antioch is a different type of
2 arrangement. That's not under consideration here.

3 MR. BROUGHTON:- All right.

4 MR. THURMAN: How about the one at USC, the senior
5 citizens? Is that free now?

6 MR. CRAMTON: I think this would be a good time
7 to take a short break, and I do mean a short break. The one
8 this morning went on too long.

9 Let's break for 10 minutes.

10 (Recess.)

11 MR. CRAMTON: The meeting will come to order.

12 Mr. Thurman.

13 MR. THURMAN: Mr. Chairman, I'm wondering if it
14 isn't time to consider the possibility of taking a vote on
15 Mr. Kutak's motion.

16 MR. CRAMTON: I'm prepared to.

17 MR. BROUGHTON: I have some other questions and
18 comments.

19 MR. CRAMTON: Mr. Broughton.

20 MR. BROUGHTON: I might mention this.

21 I asked the young lady to call Mr. Cook to make
22 inquiries. His secretary said he may be back. I notice
23 he left his material.

24 She understood him to say he was under the impression
25 that the discussion was not in to vote on.

1 MR. CRAMTON: I don't know where he got that
2 impression.

3 MR. BROUGHTON: I simply bring that to the
4 Chairman's and the Board's attention.

5 MR. CRAMTON: I'm delighted that you called and
6 told him we were proceeding.

7 MR. BROUGHTON: He may appear, but that was the
8 message the senator gave. But you're not attempting to
9 end the discussion.

10 MR. THURMAN: We wouldn't want to do anything
11 premature.

12 MR. BROUGHTON: Since you don't want to do
13 anything premature, I ask you this question.

14 (Laughter.)

15 How do you consider--what is the purpose of this?
16 If we adopt this resolution, where would we be?

17 MR. THURMAN: I guess we've taken the attitude
18 here, and this was Roger's testimony before the Board that
19 we ought to go ahead and do what we feel should be done with
20 the act as it is presently written.

21 I think that's what we're conscientiously trying
22 to do.

23 Now, I'm not just saying, well, let's just
24 wait and if they pass we won't have to fuss with it.

25 I think we ought to go right ahead, Mel.

1 MR. BROUGHTON: No.

2 That wasn't my question.

3 I was asking your opinion as to what you felt
4 the meaning of the amendment was. What we would do if
5 it is adopted in light of the Kastenmeier resolution.

6 MR. KUTAK: Mr. Chairman, I would hope that after
7 the resolution is behind us that we could look at it afresh
8 because frankly, all the Kastenmeier bill does--of course
9 it does two things, is to really say the Board can have this
10 discretion, this option. It's another flexible alternative,
11 and my recommendation to the Board would be because I think
12 the Congress is entitled to our views and indeed inviting
13 our views and indeed would need our views, would be to discuss
14 the desirability and then act on an appropriate motion to
15 communicate to the full committee to say what we think about
16 it, the amendment.

17 I hope what it would simply do, and all it
18 does is give us some more flexibility, and it would certainly
19 not change the substance and the thrust of what we have
20 done here today which is--

21 MR. BROUGHTON: We haven't done anything, yet.

22 (Laughter.)

23 MR. KUTAK: Excuse me.

24 What is proposed to be done with the motion on
25 the table, and that is of course as Sam says, consistent

1 with the legislation under which we are governed, but I think
2 we would forego an opportunity if we would not encourage
3 the consideration of an amendment to the bill that would give
4 this Board greater flexibility if it so chose to use it
5 as the bill in the interest of both economy and efficiency
6 and to have this further opportunity.

7 But that's, I think, an entirely separate issue
8 and one which we should independently consider separate and
9 apart from the action.

10 MR. CRAMTON: Mr. Ehrlich and then Mr. Smith.

11 MR. EHRLICH: That seems to be a very sensible
12 procedure; and a delegate from the Subcommittee is here in
13 the audience.

14 I see some desirability if the Board so choses
15 after this discussion and comment can go in any way it choses
16 on the amendment which does provide more flexibility, at
17 the same time recognizing the obligation to terminate at the
18 end of this month, we can phase out grants of course, continuing
19 on the possibility of legislation might eventually occur.

20 So I think that the procedure is very sound.

21 MR. CRAMTON: Mr. Smith was next.

22 MR. SMITH: I just wanted to comment on Mel's
23 question about premature action, because I agree with the
24 admonition that it should never be premature.

25 I think the area is not only acting premature, and

1 I think it's a pretty good analogy problem with any practicing
2 lawyer faced in advising a client.

3 We can't base your advise for action on perspective
4 legislation , we have to take action under existing legislation
5 because perspective is very speculative and if the Kastenmeier
6 bill passes, we may have to change the amendment, repeal
7 or do whatever else it might demand.

8 But for the present, under the existing law, I
9 think action is required in some way; can't delay any longer.

10 MR. CRAMTON: Mr. Broughton.

11 MR. BROUGHTON: The Kastenmeier Amendment in your
12 judgment is introducing the bill, and now the committee
13 I understand has approved an effort to repeal the Green
14 Amendment?

15 MR. SMITH: I think probably so, but it's far from
16 being a fact. It isn't even an act.

17 MR. BROUGHTON: I'm only asking your opinion, whether
18 they repealed the Green amendment.

19 MR. SMITH: As far as I understand, it was, yes.

20 Again, I think we have to deal with discharging
21 our responsibility as the existing law, as far as implementing
22 whatever we do.

23 Our president may want to wait a little bit to
24 consult. I think that would be a decision for him. As
25 far as our decision, we have to make it now.

1 MR. BROUGHTON: I was asking the question, the
2 background of the Kastenmeier amendment, as I understand
3 your feeling is that it is an effort to repeal the Green
4 amendment.

5 MR. CRAMTON: When I testified, Mr. Broughton,
6 there were at least a number of members of Congress at that
7 particular hearing who phrased in terms of desire to clarify
8 the Green amendment.

9 They thought the Corporation was faced with a
10 very difficult situation in which the language was unclear
11 and the legislative intent was unclear and confused the
12 confidence in the Corporation and its board.

13 They thought that the Corporation and the Board
14 ought to be given the discretion in this area to do what
15 the Corporation thought was appropriate in terms of support
16 services.

17 Now, you can phrase that if you want as repealing
18 the Green amendment or clarifying it or lots of different
19 ways.

20 But I guess my own view is along Mr. Smith's
21 line that we have a responsibility to carry out the
22 language of the statute, and we may or may not desire at
23 some point to express views on pending legislation to
24 amend the Legal Service Corporation Act.

25 You have declined thus far to express a view

1 buy if you and others want to, you can; but it seems to me
2 we ought to do it separately and face up to the question
3 now of what it is that the Kastenmeier act means; what
4 obligation it places under us right now.

5 MR. BROUGHTON: But people supporting the Kastenmeier
6 amendment--up to this point four people voted against the
7 Green amendment.

8 MR. CRAMTON: It was unanimously reported by sub-
9 committee and only one--

10 MR. THURMAN: Twenty-three to six.

11 MR. CRAMTON: Twenty-three to six; and I don't have
12 a lineup of people wherein the Congress earlier supported
13 it now with the 10 percent limitation.

14 For example, Mr. Wiggins supported it, I think
15 spoke in favor of the Green amendment previously. So I would
16 not characterize it solely as being a bill proposed and sup-
17 ported by opponents of the Green amendment.

18 Mr. Thurman was suggesting that suggestion be re-
19 lated, I think, to the resolution before the Board and possible
20 amendment of it.

21 MR. KUTAK: Mr. Chairman,--

22 MR. MONTEJANO: Excuse me, if you bring up the
23 point of amendment, I would like to submit a minor amendment
24 to the resolution.

25 It would come in at the end of the resolution,

1 Section 1006(A)(1)(A) and it would read:

2 A support center may accept funds from other
3 sources provided, however, that the Board of the Corporation
4 reserves the right to disapprove the receipt of funds for
5 activities which are inconsistent with the act or with
6 the rules and regulations, guidelines, and instructions or
7 directives of the Corporation.

8 MR. KUTAK: That is the language of the contract,
9 isn't it?

10 MR. MONTEJANO: Yes.

11 The contract only has "activities which are
12 inconsistent with the act." I have added, "or with the
13 rules and regulations, guidelines, and instructions or direc-
14 tives of the Corporation."

15 MR. CRAMTON: Do you really mean the Board, that
16 is everytime a community chest wants to give a support center
17 five dollars, it requires a formal action of the Board to
18 approve it?

19 Or wouldn't the staff have some discretion
20 authority?

21 MR. BREGER: I don't think the intent--

22 MR. CRAMTON: Well, that's literal language.

23 MR. BREGER: I'm not sure whether it is literal
24 language.

25 MR. MONTEJANO: It has a right to disapprove, which

1 would not require--.

2 MR. CRAMTON: Would you read it again?

3 MR. MONTEJANO: A support center may accept funds
4 from other sources provided, however, that the Board
5 of the Corporation reserves the right to disapprove the receipt
6 of funds for activities which are inconsistent with the act
7 or with the rules and regulations, guidelines, and instructions
8 or directives of the Corporation.

9 MR. THURMAN: Rudy, what, we want to treat
10 the support centers differently from the local programs?
11 Because they may accept, and often do accept funds. As I
12 understand, they are not under this restriction.

13 MR. MONTEJANO: The point really is to make clear
14 that we certainly welcome outside funds, number one.

15 MR. THURMAN: But not too much.

16 MR. MONTEJANO: We want to ensure that
17 the Corporation reserves the right to oversee how these
18 funds are used in terms of the activities if the activities
19 called for, for example, are contrary to the statute.

20 Then I think the Corporation seriously should
21 consider whether or not funds ought to be accepted.

22 This does not mean the Corporation will not accept
23 them. It means the Corporation has the discretion.

24 MR. CRAMTON: I did not hear the second.

25 MR. BREGER: Yes.

1 MR. CRAMTON: Mr. Breger seconded it.

2 MR. THURMAN: Mr. Ehrlich's contract seems to
3 flush out that. That would be one of the details; don't
4 have the resolution. Isn't that enough?

5 MR. MONTEJANO: It could be considered enough,
6 except it doesn't cover the guidelines of the Corporation,
7 number one, and we thought it might be possible to highlight
8 this particular point.

9 We could modify the contract language and of
10 course, that would suffice.

11 MR. ORTIQUE: When you talk about the regulations
12 committee, what "we"?

13 MR. MONTEJANO: Regulations approved by the
14 Board.

15 MR. ORTIQUE: No.

16 You say "we" thought we ought to highlight, or is
17 that editorial?

18 MR. MONTEJANO: Mr. Breger and I met this morning
19 on this issue.

20 MR. CRAMTON: Mr. Smith, then Mr. Ehrlich.

21 MR. SMITH: I would just like to say I think it
22 may be contrary to just highlight a particular thing. It
23 raises a red flag unnecessarily.

24 I think as long as it's worded as I understand it
25 to be worded that we reserve the right to disapprove that, it

1 really should be left to the implementation in the proposed
2 contract and left to the administrative decision and admini-
3 strative regulation.

4 I think if there were any extreme cases and I would
5 only anticipate in extreme cases we would want to bring it
6 up to be disapproved by the Board anyway under the language
7 in the resolution.

8 I would anticipate any occasion that is extreme
9 or even very extreme at all that they would be brought to
10 the attention of the Board by any member under the general
11 oversight authority which we always retain.

12 I would much rather prefer leaving it to administra-
13 tive control within the framework of the contract subject
14 to our general oversight authority which allows us to bring
15 it up any time we feel there is any kind of abuse or problem,
16 anything that would need discussion.

17 I believe that that would be the best position
18 to leave it in. I think otherwise we would be involving
19 ourselves with too much detail by the terms of this resolution.

20 MR. THURMAN: That reflects my thinking on that.

21 MR. CRAMTON: I might add, paragraph three of the
22 contract does require that the contractor comply with all
23 rules and regulations and other issues of the Corporation.

24 Then the other specific provision that deals with the
25 approval of funds is obtained from outside.

1 Mr. Ehrlich.

2 MR. EHRLICH: I don't think we're really in dis-
3 agreement on the desirability of this kind of control of the
4 Corporation; I think not in terms of specific Board approval.
5 But I would urge in all frankness that it be left to
6 the contract.

7 We can't have that language; we've got to have
8 another kind of language. But that's conceivable to me and
9 it seems to me given the time pressures and the oversight
10 that the committee, if it is a committee, is going to maintain
11 I really would suggest that is the kind of language that is far
12 more appropriate for the contract arrangements than for a
13 resolution which could create difficulties in terms of having
14 to come back to the Board for clarification as to an issue.

15 MR. CRAMTON: Is there further discussion on
16 the motion?

17 MR. BROUGHTON: Mr. Chairman, I'd like to make a
18 statement before they vote.

19 MR. CRAMTON: The motion to amend has been made
20 and seconded. It is now before us for discussion and as soon
21 as the discussion is concluded on that motion, I will call for
22 the question.

23 MR. ORTIQUE: On the amendment?

24 MR. CRAMTON: On the amendment, any further amendment
25 and any further discussion.

1 MR. BROUGHTON: Let me then make this statement,
2 if I may.

3 MR. CRAMTON: We have an amendment.

4 MR. BROUGHTON: I could hold that until later.

5 MR. CRAMTON: I think the discussion should not be
6 limited to the motion to amend.

7 MR. BROUGHTON: All right.

8 MR. CRAMTON: Are you ready for the question?

9 MR. KUTAK: Rudy used the words that the function
10 of the amendment was to highlight the language in what would
11 otherwise be found in the contract.

12 But the language in the contract is different
13 in one respect that it used the word Corporation rather than
14 Board.

15 Frankly, I would dread to think that this thing
16 escaped the Board's consideration unless the Corporation
17 really thought it would be an administrative thing.

18 If your intent was to just pickup the language
19 of the contract, but to translate the interest as a policy of
20 the Board, I would think you would want to use the word
21 Corporation rather than Board.

22 I would raise that as to whether or not you would
23 want to so amend.

24 MR. MONTEJANO: This had been tought about in depth,
25 and it had been concluded that specific language of the Board

1 would be appropriate.

2 However, if it raises the types of problems that
3 I have heard this afternoon, I then so move.

4 MR. ORTIQUE: Mr. Chairman, I'd like to raise the
5 possibility that the public might wish to have something to
6 say about this.

7 MR. BROUGHTON: I have no objection.

8 I'm not filibustering for Mr. Cook's arrival, but
9 we did set aside a date.

10 (Laughter.)

11 We did just set aside today and tomorrow.

12 MR. SMITH: I would say on that point that it
13 seems nobody has disagreed with this idea. The question
14 is the resolution of the contract, and therefore the substantive
15 idea of whether such provision really is not a matter for
16 public comment.

17 MR. CRAMTON: The motion to amend which I gather
18 would add a new sentence at the end of the resolved paragraph,
19 the single paragraph that would read-- would you read the
20 amended form?

21 MR. MONTEJANO: Yes.

22 A support center may accept funds from other
23 source provided, however, that the Corporation reserves the
24 right to disapprove the receipt of funds for activities which
25 are inconsistent with the act or with the rules, regulations

1 guidelines and instructions or directives of the Corporation.

2 MR. CRAMTON: Is there further discussion on the
3 merits of the amendment?

4 Are you ready for question?

5 All in favor please say aye.

6 (Chorus of ayes.)

7 MR. CRAMTON: Those oppose?

8 (Chorus of nays.)

9 MR. CRAMTON: The motion is defeated.

10 MR. KUTAK: Mr. Chairman, to pick up the technical
11 language of Tom Ehrlich, may I read the resolution?

12 MR. CRAMTON: The president is circulating a
13 draft that has a number of changes of a technical nature not,
14 I think, going to the substance of the resolution.

15 Why don't I read that, because the members of the
16 public have not had an opportunity to see it.

17 ↘ Resolved, that the Board of Directors proposes to
18 adopt the following standard for funding current support
19 centers after March 31, 1976:

20 Support centers may be funded pursuant to Section
21 1006(a)(1)(A) of the Act by contract for the purpose of
22 providing legal assistance to eligible clients.

23 Support centers entering into such contracts will
24 be limited to client counseling and representational
25 activities, professional responsibility activities in

1 accordance with the Code of Professional Responsibility of the
2 American Bar Association, and such "housekeeping" activities
3 as are normally carried on by law offices.

4 With minor transitional exceptions specifically
5 authorized by the Corporation, each recipient entering into
6 such a contract will be prohibited from using Corporation
7 funds for activities that Section 1006(a)(3) of the Act
8 authorizes the Corporation to undertake directly but not by
9 grant or contract, namely, research, training, technical
10 assistance and information clearinghouse activities that relate
11 to but are not a part of providing legal assistance to eligible
12 clients under Section 1006(a)(1)(A).

13 Resolved further, pursuant to Section 1008(e)
14 of the Act, that the foregoing be published in the Federal
15 Register for purposes of receiving public comment. ↙

16 MR. THURMAN: Mr. Chairman, I was the one that
17 moved to bring this to a vote. I'm a little concerned if
18 Mr. Cook does have an understanding that this is to go
19 over to tomorrow that he is not here.

20 This is an important decision, one I'd like not to
21 delay any further. I wonder if we can't contact Mr. Cook
22 directly, not just his secretary.

23 MR. CRAMTON: Well, will you call his office and
24 tell him we're about to reach a vote on this matter it seems,
25 and would he be present to vote.

1 MR. BREGER: I agree that it would have been
2 reasonable to understand our agenda to mean that we were not
3 going to vote on this issue until tomorrow morning.

4 MR. CRAMTON: I don't think such assumption would
5 be reasonable. When I was asked how long the meeting would
6 tak, I said some time between two hours and four days.

7 It seems to me, depending on how many amendments
8 were proposed or how the discussion went, we might have been
9 through either very quickly or proceed at great length.

10 It seems to me the Board members have an obligation
11 to be informed about the progress of the Board meeting and
12 be prepared to vote when other Board members have reached
13 a point to vote.

14 I assume you are all in readiness to be here tomorrow
15 if necessary.

16 Is there further discussion on the motion?

17 MR. KUTAK: May I move for recess temporarily
18 to receive word from Mr. Cook?

19 MR. CRAMTON: I haven't heard Mr. Broughton's
20 view yet, and other members have not stated.

21 MR. THURMAN: Why don't we start expressing your
22 views on this, Mel?

23 MR. BREGER: I'll second the motion.

24 MR. CRAMTON: We are informed that Mr. Cook is on
25 the way.

1 I think we should proceed with our discussion.

2 MR. BREGER: I second the motion to recess.

3 MR. CRAMTON: Is there discussion on the motion?

4 (No response.)

5 MR. CRAMTON: All in favor say aye.

6 (Chorus of ayes.)

7 MR. CRAMTON: Oppose?

8 (No response.)

9 MR. THURMAN: We haven't had coffee for half an
10 hour,

11 MR. CRAMTON: We'll stand adjourned for 10 minutes.

12 (Recess.)

13 MR. CRAMTON: The record will show that Mr. Cook
14 has arrived.

15 Mr. Broughton, you were about to express your
16 views which you hope might persuade Mr. Cook.

17 MR. BROUGHTON: Mr. Chairman, or somebody, for the
18 benefit of Mr. Cook, could you just state where we are in
19 the discussion?

20 MR. CRAMTON: We have spent the afternoon discuss-
21 ing the support center resolution and several proposed
22 amendments to it. The text is before you.

23 We are now in the situation of considering perhpas
24 other possible amendments or discussing the merits of the
25 resolution.

1 There has been a great deal of discussion about
2 its implementation in which the president has indicated that
3 implementation would involve a contract along the lines of the
4 draft contract which was earlier submitted and would involve
5 the various actions that are recommended in his memorandum
6 and report to the Board.

7 MR. COOK: Thank you, Mr. Chairman.

8 MR. BROUGHTON: Mr. Chairman, I just simply want
9 to say we're at a point of a vote on basically the
10 proposal of the recommendation of the president, as it may
11 or may not be amended subject to further discussion.

12 I would like to just briefly say that first of
13 all, I have tried to go through all we have had handed us
14 since this Board organized on this particular subject.

15 We all recognize, of course, we have much to
16 read and much to consider, and all of this has indicated to me
17 from the beginning that there was a considerable degree of
18 uncertainty about the meaning of the so-called Green amendment.

19 We considered back in the fall, you recall, what
20 point we should go ahead and meet this issue.

21 Earlier the Board had extended its request for
22 the funding situation that it be extended to March. The
23 request to June 21, of course, was denied.

24 So we are at the point of making decisions and let
25 me say about the Kastenmeier amendment, there was in no way

1 anything indicative that we should not make a decision on
2 the recommendation. It is, of course, before us at this time.

3 The various discussions that we have had, the
4 various memorandums that we have had on people who have
5 approached the subject very diligently and I think very
6 honestly indicate that there has been some uncertainty as to
7 the meaning of the Green amendment.

8 We come to a recommendation which I'm sure as it
9 has been indicated today, that does not meet with the satis-
10 faction of or happiness on the part--particularly those who have
11 been involved in the particular process.

12 We have had the memorandum to project groups, and
13 a memorandum to others.

14 We have had, of course, the very thorough analysis
15 of Mr. Polikoff and his points with which he approached this
16 and those who worked with him.

17 I have remained, however, concerned about--I give
18 this brief background that there has been uncertainty. It has
19 not been clear.

20 If it was clear, we would have moved on this
21 in the summer, July or August, perhaps.

22 I do think that because of the uncertainty we have
23 been through and we have seen, torturous, legal gymnastics,
24 and I don't apply that to anybody, but we have been through that,
25 think, in all candidness.

1 Some of that may be because of the desire of some
2 people perhaps to see things in the Green amendment that may
3 not be there.

4 Mrs. Green was not personally known to me; never
5 laid eyes on Mrs. Green until the moment she appeared, although
6 I had been in contact with her as a member of the Board, and
7 followed up by the Chairman with a suggestion to appear.

8 We had all of this dicussion, of course. What
9 does the Green Amendment mean?

10 It was felt and I think we received here and gave
11 her a great deal of time. But we had at that point, at least
12 as I saw it, a great deal of uncertainty of what it meant.

13 So Mrs. Green is the author of the amendment,
14 although she siad in her testimony, and later her written
15 response it came to be known as the Green Amendment because
16 she, as a member of a group of a number of Congressmen who
17 have been involved in this was selected as to individual to
18 present this amendment.

19 Mrs. Green, as we all know, at that oint had been
20 a member of Congress for some 25 years. She came before our
21 Board; she came as a retired Congresswoman who had not
22 retired voluntarily; and from the knowledge from the file,
23 I considered to be a very commendable record as a member of
24 Congress and a lady who was very diligent and responsible in
25 her legislative assignments.

1 I will not attempt to summarize all that Mrs.
2 Green discussed with us. She was subjected to questioning
3 by the members of the Board.

4 My own feeling was that I felt Mrs. Green was
5 quite aware of all that was involved in this, and that was
6 not something that had been gotten together for her to come
7 before us, but that she was intimately acquainted with the
8 whole legislative history of that and had been directly
9 involved upon its inception until the time it was resolved in
10 July, 1975.

11 I cannot ignore the very positive statement
12 she made with respect to legislative history.

13 For example, in her memorandum in response to both
14 House amendments, February, I believe, she made reference
15 to a statement in the memorandum about the fact that the
16 word "backup center" was never used.

17 Maybe that would eliminate some of the uncertainty,
18 but nevertheless, proceeded to document the facts that this was
19 known clearly to the members of Congress but that it was
20 discussed in those terms.

21 Members of Congress during debate, and of course
22 of the discussion had before them copies of each of the backup
23 center's funding figures or each backup center and the like.

24 She emphasized throughout her testimony, and again
25 in her written response, two things:

1 One, that Congress was concerned about backup
2 centers from the standpoint of activities, Mr. Thurman,
3 but also from the standpoint she emphasized, perhaps not
4 to the extent that she did with her other approach, she
5 emphasized also concern that Congress had with respect to
6 funding the amount of money to be spent, and concern about
7 the question of waste as far as the taxpayer's funds were
8 used through the backup centers.

9 Now, I have no documentation of audits or anything
10 like that. I'm not suggesting in any respect, and Mrs. Green
11 was not suggesting that this involved anything other than per-
12 haps as she indicated a waste, a lackness; nothing from any
13 statement she made on funds not being handled as far as
14 anybody misappropriated funds, none of that, but as we have
15 heard all of this discussion, and as we have come to the point
16 where we still are not certain as to some of the activities
17 of some of the backup centers, as illustrated by recommendations,
18 recommends that Tom Ehrlich further study it to determine
19 what activities fall within the meanings of 1006(A)(3).

20 It indicates to me at least Congress did have
21 good reason to be concerned about the way this phase of
22 legal service had been handled in the past.

23 It also indicated to me whether or not there is
24 a better, more effective way to do this at the same time we
25 meet our obligation or as members of this Board to serve the

1 poor, who are, of course, the subject of this Act.

2 Nothing I've said nor said previously should in
3 any way be interpreted as any denegation with respect to
4 that.

5 But I do in good faith feel that we have before
6 us a situation for discussion that is clear, at least in my
7 mind, what Mrs. Green said that was all about what Congress
8 wanted to be done.

9 On that same subject, we had letters that came in;
10 some before the summer meeting, some after. We had some
11 from members of Congress who are just a few blocks from where
12 we're meeting now.

13 But I think it's significant that Mrs. Green who
14 had intimately been involved in it, came all the way from
15 the west coast to Washington to appear before this Board for
16 that one purpose, only.

17 I thought she documented her case well. I think
18 she went through it at length. She reviewed certain documents
19 which she had access to at that time, and I think her further
20 statement, her written statement she made was done well, and
21 responded, I think, fully to the interpretation.

22 Now you say we had other letters, other comments, from
23 members of the staff and members of Congress; but only one
24 so far as I know has been before this Board, and that happens
25 to be the lady whose name goes with this amendment.

1 Much more significant, the member of Congress
2 who's been before us and who is as I emphasized, intimately ,
3 directly, and extensively involved in all of the discussions
4 that were intended by this amendment.

5 As I say, we have conflicting legal opinions,
6 conflicting discussions as to the meaning of this amendment,
7 and I think when you have that as we have had, and as I said
8 if we hadn't had it, we could have solved this thing the day
9 we organized this Board.

10 But I do think when you have had that, when you
11 see cases as we see now and have seen, I mentioned a moment
12 ago the question of the evaluation reports made in 1973 and
13 utilization or lack of utilization of those reports, clearly,
14 Mr. Chairman, gentlemen, Congress has a basis for a concern.

15 I think that there has been something lacking,
16 and I think that was a clear concern of Congress.

17 Now you can say, well some people voted for
18 the Green Amendment, tried to kill the bill; some people
19 voted for the Green bill and voted against the bill, itself.

20 I'm not trying to get into all that. The fact
21 is that the Green Amendment passed the House. And of course,
22 we have heard that this was necessary in order to get
23 President Nixon to sign the bill. That was the price that
24 had to be paid in order to get the bill.

25 But I do emphasize and state for my position my

1 concern, and I hope I have, I have tried; I come
2 back with the concern that I do express here and the feeling
3 based on all that I have read and try to do so objectively that
4 Congress intended that the effect of the Green Amendment
5 goes beyond that what appears in the recommendation .

6 Thank you, sir.

7 MR. CRAMTON: I gather you're opposed to the pro-
8 posed resolution, the grounds stated in your position which
9 you believe is inconsistent with the statute in legislative
10 history.

11 MR. BROUGHTON: Right.

12 MR. SMITH: Just briefly, I felt in the beginning,
13 last summer and last fall when we were discussin the inter-
14 pretations, various interpretations of 1006(A)(3) that there
15 was some ambiguity and some confusion and some diversity of
16 opinion.

17 The more it is discussed, in particularly in the
18 last few days and the last few weeks with the availability
19 of the Polikoff study and proposals made to us by our personnel,
20 I think it's been simplified and we may be overstating the
21 simplicity, it seems to me, though a lot of the original
22 confusion has been eliminated by recommendations that Mr.
23 Polikoff made and recommendations of ours in that my first
24 impression last fall when discussing it seemed to be that maybe
25 were were looking to legal opinions and other opinions of

1 Board members for ways to circumvent the intent of this
2 particular provision.

3 But now as you look at it in light of the study
4 and recommendations, I don't think there's any circumventing
5 involved.

6 I think, in fact, 1006(A)(3) really is not
7 ambiguous. I agree with the comment made this morning or
8 early afternoon by Sam Thurman that in interpreting the statute,
9 the only time you look to a lot of outside input is in the
10 way of discussion in committee and legislative record.

11 If you read A-3 carefully it says to undertake
12 not by grant or contract the following; and it enumerates
13 research, training and technical assistance.

14 The proposed resolution offered specifically
15 follows that; doesn't circumvent in any way. It follows
16 the clear language of A-3 as being things that any support
17 center which we contract would be prohibited from doing.

18 Earlier in that same section, 1006, we are specifically
19 authorized to contract for services and so it seems to me that
20 the result of the study and the result of the resolution would
21 be, if adopted, would be to follow very specifically 1006
22 totally. Not just A-3, but in total, including exclusions
23 mandated by A-3.

24 For that reason, it doesn't seem to me that it
25 really is ambiguous; not really subject to a great diversity

1 of opinion, but the resolution right down the line is with
2 the language of the total section as to inclusions and exclu-
3 sions.

4 I think that once we adopt the resolution, if we
5 do, the president has then the clear basis for following out
6 this section, again in total with the Polikoff study, a good
7 basis for doing things brought out in earlier discussions for
8 evaluating every support center involving a support contract
9 with an individual support center making sure it is doing it
10 in the outline of the statute that we're mandated to do; and
11 not doing anything prohibited by the statute.

12 A contract goes with each support center, and it
13 prohibits doing anything which we cannot do and should not do.

14 Therefore, it seems to me the resolution should
15 be supported and the president given the green light to
16 carry out this section.

17 MR. CRAMTON: Mr. Kutak.

18 MR. KUTAK: Mr. Chairman, I'm saying my last words
19 on this pending resolution. Therefore, in addressing the
20 impact and meaning of Section 1006(A)(3), I think it's impor-
21 tant that we realize that we are not dealing with abstract
22 ideas.

23 We are dealing with people, people who are
24 dedicated to the delivery of a certain kind of service and to
25 a certain kind of people who need it.

1 The Polikoff study, in my mind does more than
2 document the practice that certain support centers are engaging
3 in today.

4 I think when it's read as thoughtfully as it
5 was prepared, it portrays a remarkable portrait of service;
6 service which parenthetically is hard service.

7 Those lawyers who have worked in those support
8 centers, and frankly, those people who have been the recipients
9 of the service that they have rendered are clearly not looking
10 for something that was easy, and are not looking for someone's
11 thanks.

12 But I would submit that by adoption of the resolu-
13 tion, we are in some small way, maybe as a footnote, but in
14 a way that the record, I think, would be entirely deficient
15 without paying some recognition to that service, and now are
16 simply trying to redirect that service so that it continues
17 to serve the poor in a way that is consistent with the law
18 and with the Code of Professional Responsibility.

19 I feel as one who has somehow found myself in
20 the position of carrying the motion and not expecting to, that
21 I would like on behalf of the Board to thank Alex and his
22 staff, to thank the Corporation and its staff, to thank
23 Hogan-Hartzen and many others who have helped in documenting
24 a very important service and spelling out a very important
25 definition to our service.

1 Mr. Chairman, I think I sense the appreciation, and
2 I am so bold as to advance the opinion that regardless of
3 how the vote does turn out, we should not go without that
4 recognition to those people who have served so well in
5 these services.

6 MR. CRAMTON: Is there further discussion?

7 (No response.)

8 MR. CRAMTON: Are you ready for question?

9 MR. MONTEJANO: Question.

10 MR. CRAMTON: All those in favor of the adoption--

11 MR. ORTIQUE: Mr. Chairman, I propose that this
12 be a roll call vote.

13 MR. CRAMTON: What we've usually done is vote by
14 a show of hands, voice vote, and if there's any division,
15 call for a show of hands.

16 Is there an objection to that procedure?

17 MR. ORTIQUE: I object.

18 I have asked that the Chair acknowledge each
19 Board member present and have them vote in turn.

20 MR. CRAMTON: Is that procedure satisfactory?

21 (Sure.)

22 MR. CRAMTON: All those in favor of the support
23 center resolution should pronounce then aye when I call your
24 name, or yes, and those opposed, no.

25 MR. CRAMTON: Mr. Thurman?

1 MR. THURMAN: Aye.

2 MR. CRAMTON: Mr. Breger?

3 MR. BREGER: Aye.

4 MR. CRAMTON: Mr. Kutak?

5 MR. KUTAK: Aye.

6 MR. CRAMTON: Mr. Broughton?

7 MR. BROUGHTON: Nay.

8 MR. CRAMTON: Mr. Smith?

9 MR. SMITH: Aye.

10 MR. CRAMTON: Mr. Montejano?

11 MR. MONTEJANO: Aye.

12 MR. CRAMTON: Mr. Cook?

13 MR. COOK: No.

14 MR. CRAMTON: Mr. Ortique?

15 MR. ORTIQUE: I am sure that the Board members
16 have had a concern about my participating in a vote on this
17 question.

18 I'm sure, also, that the Board members know that
19 I have served and continue to serve as a director of the
20 National Legal Aid and Defenders Association and the National
21 Senior Citizens Law Center and of the Antioch School of
22 Law.

23 But there has been and continues to be some question
24 about my participation in the decision regarding these
25 support centers.

1 I have consulted with three attorneys. I have
2 reviewed in my own mind my legal position and I'm convinced
3 that technically I have every right to participate in this
4 decision.

5 However, so that the record may clearly reflect that
6 there was the concern and so that the record might reflect
7 that out of an abundance of caution, we did not participate
8 in this decision as we did not participate in the vote on
9 the Montejano Amendment.

10 I respectfully abstain.

11 MR. CRAMTON: I would add that if it had been
12 necessary for me to cast a vote, I would have voted in favor
13 of the resolution.

14 With my vote counted, I have six in favor, two
15 opposed and Mr. Ortique abstaining.

16 I gather the next business is to consider Mr.
17 Breger's amendment.

18 MR. BREGER: Yes.

19 There were two amendments which had been seconded,
20 but in deference to Mr. Ortique, had been severed and placed
21 on the agenda as subsequent motions.

22 I will reread them, and I think we may be able
23 to proceed with some dispatch in regard to them.

24 I'll read them as one motion rather than two.

25 → Resolved, that by September 30, 1976, the President

1 will proceed to list the position the President has undertaken
2 on each support center, prescribed by Section 1006(A) (3).

3 Resolved, that the Director will request the
4 Chairman to appoint the committee to report to the Board
5 at each meeting on proposals for reorganization of existing
6 support centers which are not mandated by Section 1006(A) (3),
7 but which will include delivery of services to the poor. ←

8 MR. MONTEJANO: Second.

9 MR. CRAMTON: Mr. Montejano seconded the recommen-
10 dation.

11 It's before you for discussion.

12 MR. THURMAN: You have two elements of this.

13 MR. BREGER: Yes.

14 I can again sever this motion into two. I didn't
15 think it was necessary.

16 MR. CRAMTON: No, no.

17 MR. BREGER: The first requests the president's
18 report to us in six months, approximately, seven months, I
19 guess with specific activities presently undertaken that he
20 considers to be prescribed by Section 1006(A) (3).

21 This is to allow us to be specifically aware of the
22 concrete decisions as to what activities fall on one side
23 or another of that part of the statute.

24 The second set arranges for the committee on
25 service to report at each meeting on the proposal for

1 reorganization of the centers which are not mandated
2 by the section, but we considered to be valuable and construc-
3 tive and efficient in and of themselves.

4 The point of this proposal is do these materials
5 highlight--it is our view and hopefully the Board will
6 agree that we are engaged not in narrowly cutting according
7 to the statutory language solely, but rather a complete,
8 overall of the support structured in order to create mechanisms
9 which will provide the best delivery of services that we
10 are able.

11 MR. CRAMTON: I have several questions.

12 First the word "presently" in the first sentence.

13 What time is that speaking of?

14 Does it speak as of now, whenever the resolution
15 passed, speak of it as of September 30th?

16 Then for the president, it seems to me, to
17 report to the Board on activity which is prescribed in
18 Section 1006(A)(3), it has already been discontinued by
19 organization pursuant to the contract entered into.

20 Then I don't understand the reference to the Chairman
21 appointing a committee.

22 MR. BREGER: In answer to the first question, you're
23 correct, sir. The language says by September 30th the
24 president will report his decision.

25 As to the second one, I'm perfectly willing to

1 change the language; and to the third, I ask the Chairman
2 to appoint a specific task force if that would be easier for
3 the president.

4 MR. EHRLICH: I think, Marshall, having discussed
5 this matter with you on an informal basis, there's no problem
6 in terms of what's going to happen as I understand it.

7 You can be sure that I would carry out the
8 Board's wishes.

9 There is a September 30 date mentioned. I think
10 that's fine, but it's an operational matter and each meeting
11 when something has happened, at least, there will be a
12 reference to this matter.

13 If nothing has happened, we'll say that.

14 The process of negotiating contracts to go forward,
15 continuing to report, and maybe the end of this process, a
16 longer range version of the kind that we have discussed that
17 I hope will emerge and be of more comprehensive reporting is a
18 very essential part, and that will continue.

19 The other part seems to be quite appropriate in
20 terms of formulating arrangements to stay in close touch
21 with the Board through its chairman of one of the committees;
22 in this case, the Committee on Legal Services, to the extent
23 that proposals came to the Board having come through that
24 committee.

25 I think, frankly, it is to be expected that the

1 staff would draft those proposals in the first instance for
2 the Board; but having to go through the committee.

3 I think we're in agreement on that kind of a
4 thing. It seems perfectly sound to me.

5 MR. BROUGHTON: Mr. Thurman, as I understand
6 your amendment it provies that the Board be involved in this
7 so-called Thurman Committee.

8 I raise the question as to whether that committee
9 is not going to have a rather busy time with the responsibility
10 it has fully to the voter and leadership it takes in this
11 whole area of altering methods.

12 From the meeting in Austin, there's a lot of work
13 cut out for that committee.

14 I'm not objecting, simply raising that question.

15 That was one concer that I had in this whole
16 area just disposed of, whether we can do this a better way;
17 make more money available to those that this program is set
18 up for.

19 MR. BREGER: The suggestion, Mr. Broughton of
20 which committee should be detailed this responsibility was
21 made not at my suggestion, Mr. Thurman's suggestion, Mr.
22 Smith and the president.

23 I for one would be perfectly willing. My concern
24 was totally fixed on a conduit as to the Board's responsibility
25 for official consideration or issuance.

1 MR. CRAMTON: Am I correct that in the absence
2 of this motion, the president would be obligated to
3 report at each meeting of the Board on the progress being
4 made and implementation of the report and resolutions now
5 being passed?

6 And if questions of policy are thought to be impor-
7 tant by the president or by members of the Board who hear
8 a report, it would be the obligation of the full Board to
9 consider and discuss this, including reference to any committee?

10 MR. EHRLICH: Yes.

11 MR. CRAMTON: Is there discussion on the motion?

12 MR. SMITH: Mr. Chairman, I think the preliminary
13 discussion, if I may suggest this, have one committee
14 working on the problem rather than a separate task force
15 recognizing there is a big load before them.

16 Nevertheless, this would be in line with that
17 same responsibility that relates to the legal services,
18 how reorganization of support centers might effect it.

19 I would adopt such a resolution to coordinate it
20 under one committee dealing with the delivery of legal services
21 so it wouldn't be two different committees.

22 But if we adopt the resolution, I think they would
23 be perfectly willing to have it there.

24 I really don't think we should possibly adopt
25 such a resolution, because I think it just amounts to

1 mandating on the record something that is going to naturally
2 happen anyway.

3 As your question to Mr. Ehrlich brought out, one of
4 the things we will be doing is reporting this anyway, and
5 when they report it regularly, if they propose reorganization
6 of support centers, all of them or a few of them, whatever,
7 if it has any legal implication, I would assume it would be
8 picked up by the committee and brought into their overall
9 consideration of recommendations with regard to delivery.

10 So it seems to me that the resolution is perhaps
11 unnecessary because it is going to happen anyway.

12 MR. CRAMTON: Further discussion on this motion?

13 (No response.)

14 MR. CRAMTON: All in favor of the motion, please
15 say aye.

16 (Chorus of ayes.)

17 MR. CRAMTON: Oppose?

18 (Chorus of nos.)

19 MR. CRAMTON: The motion is defeated.

20 It was stated earlier that there would be opportunity
21 for some discussion of contract provisions.

22 Is this an appropriate time for consideration
23 of provisions in the contract?

24 MR. BROUGHTON: Mr. Chairman, before you do that,
25 and I don't know that you want to be in order; but Mr. Stophel

1 who is not here, should he like to make a statement for
2 the record as to the backup resolution if--you may want to
3 make it appear as they do in Congress, either before or after
4 the vote, I don't know.

5 But seriously, if he would like to make a statement,
6 I suggest that he be allowed to do so, if he wants to file
7 a written statement.

8 MR. CRAMTON: If he wishes to make a statement
9 at the time that we're considering at the next meeting the
10 minutes of this meeting, he may do so; and get anything on
11 the record that he wants.

12 As you're aware, the bylaws prohibit proxy
13 votes.

14 MR. BROUGHTON: I understand.

15 MR. EHRLICH: I did talk to Glenn. I asked him
16 specifically if there was anything that he would like to
17 pass on.

18 He did say not only did the bylaws not allow
19 proxy votes, which you believed in, but he expressed again
20 his regret in not being here.

21 MR. CRAMTON: Do you wish to take up the provisions
22 of the contract of this client and not concrete, but in
23 general terms?

24 MR. EHRLICH: I make a general point that I heard
25 a number of comments, some of which have been helpful. I hope

1 nobody feels as they heard them that they couldn't pass
2 them on. That would be very helpful.

3 MR. THURMAN: This contract is a tight one, as
4 I think it ought to be. You've got a lot of restrictions
5 in here.

6 You may get some of the directors resigning, I
7 don't know.

8 MR. ORTIQUE: I don't know if the directors will
9 resign; just stay and fight. That's all.

10 It appears to me, though, that any discussion
11 of this contract would be premature, Mr. Chairman; because
12 there is obviously the necessity for the staff to look at
13 each one of these programs and each one of the programs will
14 be preserved and will make sure that the contract or the
15 program doesn't do violence to the principles enunciated
16 in our resolution.

17 Now, I think that the staff has a tough situation,
18 but I don't think we ought to second guess them or try to put
19 them in a straight jacket.

20 I think we ought to give the staff a free hand
21 to do certain things and when they get ready to present
22 something to us that we have indicated to them that we want
23 to hear from them, then everyone will hear from them.

24 MR. SMITH: I think earlier this afternoon I was
25 the one who discussed the contract, asking for a before or

1 after vote on the resolution.

2 And I think your decision that it would be after
3 was good, because it wouldn't be any point in discussing
4 it if we didn't adopt the resolution.

5 But in raising the question of whether we should
6 discuss it, I didn't mean to invade the province given the
7 president to negotiate these contracts.

8 I recognize that it will probably vary in some
9 detail from one contractor to another, and certainly he should
10 have that freedom.

11 In fact, I don't think I have anything further
12 to add to the points that have already come in in discussion
13 of the resolution.

14 Certain points were brought out as being appropriate
15 for the contract and not the resolution; and those covered
16 points were of concern to me.

17 I still feel as I did previously that if somebody
18 had any ideas to offer, propose, not that they would attempt
19 to write or even dictate how it should be written, but
20 just had an item to take into consideration, it might be
21 appropriate to make them.

22 I think all the ones that I had have already been
23 made.

24 MR. CRAMTON: Do the Board members have further
25 points which they wish to make concerning the proposed draft

1 contract?

2 (No response.)

3 MR. CRAMTON: If not, let me raise on other matter
4 on the support centers. That question is the matter raised
5 by Mr. Kutak and to a certain extent by Mr. Broughton of the
6 pending legislation.

7 It has been suggested that the Board should now
8 address itself to the merits of the so-called Kastenmeier
9 bill.

10 I do not know whether the Board wishes to take this
11 matter up now or not, but Mr. Kutak suggested that he
12 wanted to.

13 Do you so desire?

14 MR. KUTAK: I fell I've spoken an awfully lot
15 today.

16 MR. BROUGHTON: We'll hear you one more time.

17 MR. KUTAK: Well, the posture of the bill is
18 that reported out of committee, it is now ending a rule.

19 I'm sure that the debate would be instructive
20 if there was some communication from the Board as to what
21 its preference would be on this matter.

22 I look at it simply in the light that you have
23 expressed it, and so did Lee, that it merely is a way to
24 provide flexibility, not in any way to direct the action of
25 the Board.

1 Therefore, it would be helpful.

2 I would think it would be important, however, that
3 the collective wisdom of this body indicate whether or not
4 such an action would be timely.

5 I would hope that it could make such communication,
6 because I think it would strike Congress, perhaps as being
7 not incongruous, possibly curious that it would be a silent
8 piece of legislation fighting effecting its own operation.

9 MR. THURMAN: Any idea when this will come to
10 a vote?

11 MR. CRAMTON: Mr. Ehrlich.

12 MR. EHRLICH: The staff member, ^{Gail H} Dale Wiggins,
13 who has been handling this on behalf of the Subcommittee is
14 here.

15 I'd answer the question, but she certainly here.

16 MS. WIGGINS: I don't know.

17 We understand that we can go to the Rules
18 Committee. It is expected to go to the Rules Committee on
19 March 11 and ask for a rule which may be heard on March
20 16th, which means that we may be on the House floor sometimes
21 after that.

22 MR. CRAMTON: Similar legislation has not been
23 introduced in the Senate? No hearings in Senate?

24 MS. WIGGINS: No.

25 I'm not sure.

1 I think the Senate will be ready to act as soon
2 as the bill--

3 MR. CRAMTON: On the basis of the House action
4 and the House hearing?

5 MS. WIGGINS: That's correct.

6 MR. THURMAN: Mr. Chairman?

7 MR. CRAMTON: There's been no motion or proposal.

8 If a Board member wishes to make a motion or a
9 proposal, now is an appropriate time.

10 MR. THURMAN: Mr. Chairman, I agree with Bob.

11 It's a little analogous, this piece of legislation.
12 Shouldn't we advise them as to what the decision was here today?

13 MR. BREGER: Might write a letter, instruct the
14 Chairman to write a letter informing the committee of our
15 decision today.

16 I so move that we do that. I think it's a very
17 good point.

18 MR. CRAMTON: What purpose does that serve?

19 It's not related to the question before the House
20 and Senate. It says that what we're doing is proceeding
21 under the existing statutory language.

22 MR. THURMAN: It tells them how we've interpreted
23 their language.

24 MR. BROUGHTON: I think the forthright position is
25 to vote whether you advise the committee to favor this bill

1 or not.

2 MR. CRAMTON: That's what I was suggesting that
3 we have a motion on.

4 MR. KUTAK: I so move, Mr. Chairman.

5 MR. SMITH: I was going to say I don't feel that
6 it's necessary at all. We're charged with the responsibility
7 of carrying out laws that exist, not telling them how to
8 write the law.

9 If they make the change, we'll carry it out; if
10 not, we'll carry it out as it exists; and I think that's
11 our responsibility, not to tell them how to write it.

12 MR. CRAMTON: We're not telling them. They've
13 asked for our view.

14 MR. SMITH: Have they asked for our view?

15 MR. CRAMTON: Oh, yes.

16 They asked repeatedly.

17 The committee has asked for the Legal Service
18 to give its opinion a number of times. They have expressed
19 very considerable dismay because they have received no views.

20 MR. COOK: The committee or the sponsors of the
21 bill?

22 I think that is a little different, because the
23 sponsor of the bill is asking for our views is one thing. If
24 the committee is asking for our views, that may well be another
25 thing.

1 It just seems to me that what you're getting
2 yourself into is which side you're going to lineup on. What
3 ultimate effect is that going to have on us?

4 We have already got a law. Do we live under that?

5 If we believe we've got a larger need to change,
6 maybe we ought to look into the whole thing and make specific
7 legislative recommendations.

8 But it just seems to me that what you're being asked
9 is will you favor the position of the sponsors of the bill
10 so that position can be utilized in moving the bill through
11 the Rules Committee.

12 MR. KUTAK: In response to Marlow's point, what
13 is it?

14 MR. ORTIQUE: Yes.

15 I think he raises a good question.

16 The chairman is asking us to give our views or
17 is it the sponsors that want emphasis on their position?

18 MR. CRAMTON: The letter which I received is from
19 the Chairman of the Subcommittee of that jurisdiction and
20 the sponsor of the bill at the hearing.

21 I was repeatedly questioned by people on both
22 sides of the aisle with considerable dismay, and the evidence
23 is in the report of the hearing if you want to read it by
24 people on both sides of the aisle as to why it was that the
25 Legal Service Corporation was unwilling to express a position

1 on this.

2 I'm attempting to answer that question.

3 MR. KUTAK: I made a motion, but did not get a
4 second.

5 MR. SMITH: As I stated a little bit ago, we
6 are charged with the responsibility of carrying out the laws
7 that exist.

8 If they change the laws, we will carry them out
9 as they cahnge. I don't think it is up to us to tell them
10 how to write--

11 MR. THURMAN: Shouldn't even tell them what we've
12 done?

13 MR. BROUGHTON: Second.

14 MR. CRAMTON: You second the bill?

15 MR. BROUGHTON: I second it.

16 MR. CRAMTON: We have before us a motion to
17 support--there are three positions. We can say:

18 We don't object to the bill and we would find it
19 not unwelcomed to have the added flexibility but don't support
20 it;

21 One other way we could say we support it; and

22 The third option is to say we oppose it.

23 Which do you propose?

24 MR. KUTAK: Mr. Chairman, I would really like to
25 have the time to visit with my colleagues on this.

1 I think it is an important issue. I think it is one
2 that does, as Senator Cook observed, does have some difficult
3 ramifications.

4 It seems clear to me now as I think it is a simple
5 motion, but it is a complex question; and I just wonder
6 whether or not it wouldn't be better to have somebody get
7 me out of my parliamentary box in asking--

8 MR. COOK: Ask him to withdraw his second.

9 MR. BROUGHTON: No, I haven't seconded any of
10 your motions. You haven't seconded any of mine.

11 (Laughter.)

12 MR. CRAMTON: In fact, that second made him
13 suspicious.

14 MR. SMITH: The problem with the motion, Mr.
15 Chairman, it might pose as dilemma for several others as
16 it does for me.

17 For instance, if I were inclined to want to
18 convey support for the bill, but inclined to vote against
19 the particular resolution because I'm opposed to the principle
20 on the principle I just expressed, I move to table the motion.

21 MR. MONTEJANO: Second.

22 MR. CRAMTON: It has been moved and seconded to
23 table the motion until the next meeting of the Board or
24 indefinitely?

25 MR. SMITH: Until somebody moves to take it up.

1 MR. CRAMTON: All in favor say aye.

2 (Chorus of ayes.)

3 MR. CRAMTON: Oppose?

4 (No response.)

5 MR. CRAMTON: It is tabled indefinitely.

6 Do we have further business?

7 (No response.)

8 MR. CRAMTON: The next item on the agenda is
9 the future meeting schedule.

10 We had made a tentative decision to meet on
11 April 23rd and 24th here in Washington.

12 MR. EHRLICH: Correct.

13 MR. KUTAK: Or in Omaha.

14 MR. EHRLICH: I do remind you that the Saturday
15 date does create some logistical problems. The added
16 expense vis-a-vis the Corporation in terms of reporters
17 who charge a higher fee.

18 MR. CRAMTON: Then I think we'd better stick with
19 the date of Friday and Saturday, April 23rd and 24th; and if
20 we can have a one-day meeting, fine.

21 In the meantime, we ought to be prepared to go over
22 until Saturday.

23 Do we wish to make any comments on the meeting
24 dates after that?

25 MR. EHRLICH: We had a tentative agenda.

1 June 3 and 4;
2 July 23 and 24;
3 September 9 and 10;
4 October 28 and 29; and
5 December 3 and 4. ↗

6 MR. CRAMTON: Will the members of the Board
7 save those dates on their calendars?

8 It's June 3 and 4, which is Thursday and Friday;
9 July 23 and 24;
10 September 9 and 10;
11 October 28 and 29; and
12 December 3 and 4.

13 We hope not all of those dates will be necessary,
14 but would like the Board members to reserve them on their
15 calendar.

16 MR. SMITH: I want my chairman to announce whether
17 the meeting is tonight or tomorrow.

18 MR. CRAMTON: Now let's get to the items under
19 other business.

20 Mr. Kutak.

21 MR. KUTAK: Mr. Chairman, I would like to ask if
22 I could, if my colleagues would like to meet at 9 o'clock
23 tomorrow morning or--

24 MR. MONTEJANO: That's fine.

25 MR. CRAMTON: The Committee on Regulation?

1 MR. KUTAK: I would like to announce that a meeting
2 of the Committee on Regulation will meet tomorrow morning in
3 this room at 9 o'clock.

4 The purpose of which is to take up specifically
5 the regulations that relate to--

6 MR. CRAMTON: You can meet in the offices of
7 the Legal Service Corporation.

8 MR. KUTAK: Meet in the office of Legal Services
9 Corporation on proposed regulations on applications for re-
10 funding and such other business as may come before the meeting.

11 MR. EHRLICH: I should have mentioned that I'm
12 trying to formulate a proposal that we hold the summer
13 meeting around the time--around August instead of July.

14 There are some problems, I think, with some
15 members of the Board.

16 MR. CRAMTON: Mr. Broughton seeks to be recognized.

17 MR. BROUGHTON: I'd like to mention this in the
18 form of a motion that under Section 1005(a) of the Act, it
19 states that Board shall appoint the president of the
20 Corporation, so forth and such other officers as the Board
21 determines to be necessary.

22 I would like to move, sir, that the Board cause
23 for provision of that Act declare that the ~~posi~~tion of
24 general counsel be an officer of the Board.

25 MR. THURMAN: That would carry with it the

1 obligation to involve us in a greater extent of the
2 selection.

3 MR. BROUGHTON: That's correct.

4 MR. CRAMTON: In accordance with the bylaws.

5 Is there a second?

6 MR. COOK: I'll second it.

7 MR. CRAMTON: It is moved and seconded that the
8 person that serves in the capacity of general counsel be
9 an officer within the meaning of the statute of the bylaws,
10 thereby requiring a Board approval of the person recommended
11 by the president.

12 Is there discussion on the motion?

13 MR. THURMAN: Is there a second?

14 MR. CRAMTON: Yes.

15 Mr. Cook seconded it.

16 MR. THURMAN: Is there a special reason why you
17 single out this particular appointment as to others?

18 MR. BROUGHTON: Mr. Thurman, I feel it is a very
19 key position, and I think that is extremely important.

20 We do have the authority under the statute.
21 I'm not suggesting that we get into the process considerably,
22 but I do feel that we would be in a position of having
23 to express approval to who an individual might be.

24 MR. THURMAN: I'd be interested in the viewpoint
25 of the president on this.

1 MR. ORTIQUE: I'd like to ask for question and
2 make a comment.

3 It is my understanding that with reference to
4 all major appointments and offices that the president would
5 advise us of the candidates' names and would invite our
6 comments; and that we could as a matter of fact, express
7 our position that it was our desire to know the names of
8 such persons who were candidates for these major offices.

9 Now, if this motion fails, will that policy
10 be continued?

11 MR. CRAMTON: Mr. Ehrlich?

12 MR. EHRLICH: I have tried to and will continue
13 to try to as I did to some extent today, consult with
14 the Board on terms of potential applicants for positions
15 and, of course, we continue to do so.

16 I think that's an appropriate way, myself, to
17 proceed.

18 MR. ORTIQUE: Having answered my question, I'd like
19 to strongly urge that we not favor this motion on the
20 basis that it seems to me that since the time we adopted
21 that, we have expressed to the the president great faith
22 in his ability to develop a staff.

23 Secondly, that we would be saying to him that this
24 person is the person that we the Board wish.

25 I've always been of the opinion that if the

1 top officer in any organization fails to function that you've
2 got to face up to the question of whether you're going to
3 fire the top officer.

4 I would urge further that even if we were inclined
5 to support this motion that I would like to see a description
6 of the function, duties, and so forth for this individual.

7 I want to be in a position to know whether as
8 a member of the Board I want to take that responsibility or
9 leave it where it is.

10 MR. COOK: I would like to speak to the motion,
11 if I may, Mr. Chairman.

12 I would hope that the president of this Corporation
13 would want the approval of the Board for his general counsel.

14 He's going to be at every meeting that we're going
15 to be at. Looks like he's going to have to work very closely
16 with us.

17 I've listened to talk of the responsibilities.
18 You've just approved a resolution which is going to call
19 for negotiating on the part of the Corporation.

20 Outside of your approval of sums of money, you
21 do not have the slightest idea what they are.

22 You have no problem with saying that that is a
23 matter of fact. That's a long dissertation. But expressing
24 the attitude that if you were not very cautious as you are
25 that you would have been in favor of that resolution.

1 Now you're asking to make the general counsel
2 an officer of this Corporation. I see nothing wrong with
3 it and I would hope the president of the Corporation would
4 see nothing wrong with it.

5 I would like to pose the question to the contrary.

6 When Sam asked him how he felt, I would ask him
7 what serious objection he would have to submitting nominations
8 of general counsel to this Corporation for approval of the
9 Board.

10 MR. THURMAN: Since we don't meet again until,
11 I take it, the end of April; take the point of general counsel,
12 how do we handle this mechanically, if this motion is approved?

13 We have to wait until the next meeting? That
14 would be seven or eight weeks.

15 MR. CRAMTON: Is there further discussion on
16 the merits?

17 MR. COOK: I would like to have a real answer to
18 that.

19 MR. CRAMTON: On that one comment there were
20 several objections made in the discussion of specific
21 people in Executive Session this noon which Mr. Cook was
22 not present.

23 MR. COOK: That has nothing to do with the merits
24 whether you're going to have or whether you consider general
25 counsel of this Corporation would under normal circumstances be

1 considered one of the officers within the framework of
2 this facility.

3 It seems to me that you would consider him in this.

4 MR. EHRLICH: The concern I raised was comparability
5 concern of other people of the Corporation. I hope you
6 understand that concern, whatever weight you will give to it.

7 Of course, I do have a time concern, too, among
8 everything else.

9 MR. CRAMTON: Is there further discussion of the
10 motion?

11 MR. SMITH: I think I agree entirely with Mel.

12 This is a very important position, in fact, one
13 of the very key positions that does not necessarily mean the
14 person should be designated an officer.

15 In most corporations, general counsel isn't an
16 officer by virtue of being general counsel.

17 He may also be an officer, but the fact is general
18 counsel, I don't think calls for him to be an officer.

19 It seems to me that the discussion Marlow and
20 Mel both put forth isn't so much directed toward having him
21 be an officer as far as being an officer and the responsibilities
22 are concerned as it is having him be subject to selection by
23 the Board rather than selection by the president.

24 I think our president has been very responsive
25 thus far as far as his input to the Board members. Not only

1 this position, but lots of other key staff; many I think
2 are considered almost comparable.

3 But nevertheless, he has been very responsive
4 to suggestions made and I'm sure he will continue to do so.

5 MR. CRAMTON: Further discussion of the motion?

6 (No response.)

7 MR. CRAMTON: Ready for question?

8 All in favor say aye.

9 (Chorus of ayes.)

10 MR. CRAMTON: Those opposed, no.

11 (Chorus of nos.)

12 MR. CRAMTON: There is a division. Should we
13 have a show of hands?

14 All in favor please raise your hand.

15 (Show of hands.)

16 MR. CRAMTON: Mr. Cook and Mr. Broughton.

17 All oppose?

18 Mr. Montejano, Mr. Smith, Mr. Kutak, Mr. Breger
19 and Mr. Thurman.

20 Is there further business?

21 (No response.)

22 MR. CRAMTON: If not, we stand adjourned until
23 April 23rd.

24 (Whereupon, at 5:30 p.m., the meeting was adjourned,
25 to reconvene on 23 April 1976.)