

RETURN TO CORPORATION
SECRETARY ARCHIVES FILE

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MEETING OF THE BOARD OF DIRECTORS
of
LEGAL SERVICES CORPORATION

June 3, 1976
Cloyd Heck Marvin Center,
George Washington University
Washington, D. C.

Neal Gross
Court Reporters and Transcribers
Harwood, Maryland 20776
261-4445

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I N A T T E N D A N C E

From the Board of Directors of Legal Services Corporation:

- Roger C. Cramton, Chairman
- J. Melville Broughton, Jr.
- Marlow W. Cook
- Rodolfo Montejano
- Revius O. Ortique, Jr.
- Glee S. Smith, Jr.
- Glenn C. Stophel
- Samuel D. Thurman
- Marshall Breger

From the staff:

- Thomas Ehrlich, President
- F. Clinton Bamberger, Jr., Executive Vice President
- Charles E. Jones
- Tony Mondello
- Gail Higgins
- Jeanette Sisson
- Alice Daniel

Members of the public were also in attendance.

P R O C E E D I N G S

(12:05 p.m.)

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

4 The proposed agenda has been distributed to you.
5 In deference to the wishes of our member, Mr. Breger, who
6 will not be able to attend the meeting after about 4:30 today,
7 I would suggest that we go down the proposed agenda in the
8 order indicated until after Regulation 1611, which deals with
9 eligibility is taken up, and then we would interrupt the
10 discussion of regulations by then taking up the items under
11 Number 4, the Reports by the President. Then we can come
12 back with the regulations, if that is acceptable?

13 I would ask for a motion to adopt the proposed
14 agenda as orally amended.

15 MR. BREGER: So moved.

16 MR. CRAMTON: Is there a second?

17 MR. BROUGHTON: Second.

18 MR. CRAMTON: Is there any discussion?

19 [No response]

20 MR. CRAMTON: All those in favor say aye.

21 [A chorus of ayes]

22 MR. CRAMTON: Those opposed say no.

23 [No response]

24 MR. CRAMTON: The agenda as amended is approved.

25 The second item on the agenda is the approval of

1 the minutes of April 23 and 24. The proposed minutes are
2 attached. I have one question about them on page 11. I refer
3 you to the first full paragraph on the top of the page. It
4 does not, as our bylaws require, indicate if the voice vote
5 was unanimous, or if there was a division, what the division
6 was, and so I would ask that that be corrected to reflect
7 there that the vote was unanimous on the voice vote, or if a
8 voice vote was taken, that the division be recorded. Our
9 bylaws require that.

10 Are there any other amendments? The bylaws are
11 before you as item 2 of the agenda. Are there any other
12 suggestions or corrections?

13 MR. STOPHAL: The suggestion on the affirmative
14 action plan indicates that there was only one motion, an
15 action taken to delete one sentence of that plan. My
16 recollection of the discussion was that there were other
17 deletions, but unfortunately I didn't read these minutes
18 until I was on the way up here. I didn't have my copy of the
19 affirmative action plan which was sent to us before the last
20 meeting or the resolution that was adopted at that time, the
21 full resolution.

22 MR. EHRLICH: We will go back and check on that.

23 MR. CRAMTON: I think the other ones did not call
24 for formal motions but were proposed changes that were
25 accepted by Mr. White and the staff, and so essentially maybe

1 what we need is an additional sentence that just says, A
2 number of other suggested changes in language were accepted
3 by unanimous consent or something like that.

4 Mr. Bamberger?

5 MR. BAMBERGER: There were other changes that
6 involved the words of the plan themselves that were the
7 consequence of changes made in the resolution which was the
8 policy. The minutes did not incorporate those changes
9 because they were not changes in the resolution that was
10 before the board. However, they were incorporated in the
11 plans.

12 MR. CRAMTON: It may be that the addition of a
13 single sentence to the effect that a number of stylistic and
14 other conforming changes were adopted.

15 MR. STOPHAL: I would like that.

16 MR. ORTIQUE: I would like to follow up on that
17 suggestion. I do not find that we received a final version
18 of the plan as corrected and amended and so forth. I think
19 all of the board members should have that.

20 MR. EHRLICH: We will do that.

21 MR. CRAMTON: A copy will be circulated to the
22 members of the board. As I gather, it is a public document,
23 and in fact it should be send out and publicized for projects
24 and for others.

25 Are there any further suggestions or comments

1 relating to the minutes?

2 [No response]

3 MR. CRAMTON: Is there a motion for the adoption
4 of the minutes with the corrections or suggestions that have
5 already been made?

6 MR. BREGER: So moved.

7 MR. CRAMTON: Mr. Breger moves the adoption of the
8 corrected minutes. Is there a second?

9 MR. BROUGHTON: Second.

10 MR. CRAMTON: Discussion?

11 [No response]

12 MR. CRAMTON: All those in favor of the adoption of
13 the motion, please say aye.

14 [A chorus of ayes]

15 MR. CRAMTON: Those opposed no.

16 [No response]

17 MR. CRAMTON: The minutes are adopted.

18 Before we go to the reports of the committees, I
19 am informed that Mr. Cook's stomach is growling, lunch is
20 going to be ready shortly. It has been suggested that it
21 would be desirable for the members of the board to have a
22 brief executive session to consider two matters: one, a
23 vacant staff position which is in the process of being filled;
24 and the second is a report from the President and the General
25 Counsel on certain pending legal matters.

1 I would entertain a motion that we hold a brief
2 executive session limited to discussion of those matters
3 during our luncheon period.

4 Is there a motion?

5 MR. STOPHAL: Mr. Chairman, I move that we adjourn
6 for lunch and during the luncheon break have an executive
7 session to discuss those matters outlined by the chairman.

8 MR. CRAMTON: Is there a second?

9 MR. COOK: I second.

10 MR. CRAMTON: As you know, the holding of an
11 executive session requires a two-thirds vote of members of the
12 executive board. Are you prepared for the question?

13 MR. THURMAN: I'm a little worried because if that
14 doesn't pass, that means we don't have lunch.

15 MR. COOK: Having been the only source for the
16 lunch, I may vote against it.

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

18 [A chorus of ayes]

19 MR. CRAMTON: Those opposed no.

20 [No response]

21 MR. ORTIQUE: Excuse me just a moment.

22 MR. CRAMTON: Go ahead.

23 MR. ORTIQUE: Do you have a report for us on the
24 status of our other member?

25 MR. CRAMTON: Yes, I can make a report. Mr.

1 Ortique is inquiring about the current status of the
2 President's nomination of Roger Yurchuck of Columbus, Ohio,
3 to the vacancy on the board. This is for replacement of the
4 person who resigned. No hearing has been scheduled by the
5 Senate Labor and Public Welfare Committee on that nomination.
6 So, it has been essentially sitting.

7 I have had several conversations with Mr. Yurchuck,
8 and he has taken the position that it is not appropriate for
9 him to attend, even as a member of the public, until he is
10 confirmed. He hopes to be confirmed by the July meeting of
11 the board.

12 MR. BROUGHTON: Why has it taken this long? Has
13 his name not been up since the first of the year?

14 MR. CRAMTON: No, since February.

15 MR. BROUGHTON: That is four or five months.

16 MR. THURMAN: What does that indicate on the part of
17 the Senate?

18 MR. BROUGHTON: This board has really operated with
19 ten members for a very long time.

20 MR. COOK: Let's be fair about it. You are in 1976,
21 a political year. There are staff people up there who are
22 very cognizant of Legal Services, including some of the people
23 they work for. There are a lot of appointments being held up.

24 There was a gentleman who withdrew his name from
25 consideration for appointment for a major committee because

1 when he was taken up on the Hill to be introduced, he was
2 advised by the chief counsel of the staff that he was not up
3 there for any seven-year appointment. If he wanted one for
4 three months, he could have it, but that was all he was going
5 to get. So the gentleman went back to California.

6 I think this is what is going on. I would not get
7 excited about whether you are going to get your 11th member
8 between now and November because I think that is the way it's
9 going to be.

10 MR. CRAMTON: It is not a matter within our control.

11 MR. COOK: Not a bit. I am being realistic with
12 you.

13 MR. THURMAN: But what happens if he's not
14 confirmed before November?

15 MR. BROUGHTON: It's a non-political type board.

16 MR. COOK: If someone doesn't like the appointment,
17 he's going to stay up there, and nothing's going to happen.

18 MR. THURMAN: If he's not confirmed by November,
19 what happens?

20 MR. COOK: Well, the Senate is going sine die in
21 November and not coming back until January.

22 MR. THURMAN: And if his name's still before the
23 Senate in January?

24 MR. CRAMTON: It would have to be resubmitted.

25 MR. COOK: I would suspect that once you sine die

1
2 that all appointments, all bills, everything dies, and
3 everything has to be resubmitted in January.

4 So I think one would have to say that the majority
5 counsel on the respective committees have no intention of
6 filling the positions between now and November election time.

7 MR. CRAMTON: I'm not sure that that is the case.

8 MR. COOK: I am coming close though.

9 MR. THURMAN: That is one problem we do not have
10 to worry about.

11 MR. ORTIQUE: The only problem I have is that
12 tomorrow Breger won't be here, and you start beginning to
13 feel that you need your full strength so that busy people
14 can still meet.

15 MR. CRAMTON: I might inform the board and put in
16 the record that Mr. Kutak was unable to attend. We expect
17 a full complement for this afternoon. Mr. Kutak will be
18 here, and we expect a full complement with the exception of
19 our vacancy and Mr. Kutak, and we expect a full complement
20 tomorrow except for Mr. Kutak and Mr. Breger.

21 MR. BROUGHTON: On the matter of scheduling, I
22 can stay until 9:15 tonight, but I will not be able to be
23 here tomorrow.

24 MR. ORTIQUE: That is why I was repeating that
25 question.

MR. CRAMTON: I see.

1 MR. ORTIQUE: We have busy people.

2 MR. CRAMTON: Okay. As I recall, there was a motion
3 to adjourn for lunch. It was passed. We are adjourned until
4 2:00 o'clock.

5 [Whereupon, at 12:25 o'clock p.m., the board was
6 adjourned for a luncheon executive session, to reconvene at
7 2:00 o'clock p.m. the same day.]

8 MR. CRAMTON: The board will come to order.

9 We are ready for item 3 on the agenda, reports by
10 committees. First, the committee on Appropriation and Audit,
11 Mr. Stophal.

12 MR. STOPHAL: The committee met this morning to
13 discuss several aspects of our funding, auditing process, and
14 other matters brought before the committee. I'll make a
15 brief report so that if you have questions, staff members who
16 have participated in these activities are present and will be
17 delighted to answer them for you.

18 First of all, with regard to our supplemental
19 appropriation for fiscal 76, our supplemental appropriation
20 of \$4.3 million has been signed. Therefore, it is effective,
21 and we feel fortunate in that funding.

22 The status of our fiscal 77 appropriation request,
23 which you will recall was approximately \$140 million -- we
24 reported at the last meeting that the House Committee had
25 approved \$110 million, and that has been approved by the full

1 House Committee, and it's expected to go to the floor of the
2 House around June the 18th, as reported by Judith Riggs of
3 our staff.

4 The Senate Committee received testimony from our
5 Chairman and from our President on the 18th of this month.
6 There appears to be support in the Senate Committee for an
7 amount something in excess of \$110 million, perhaps as much as
8 \$130 million, but no mark-up date has been set for action by
9 the Subcommittee. Our staff expects that the full Committee
10 in the Senate will have this by around the 21st of the month,
11 June 21st, and that both houses may act on this matter by the
12 end of June.

13 That would mean that it would go to conference
14 some time in July. In view of the anticipated reduction below
15 our \$140 million request, our committee asks that the staff
16 prepare alternative allocations of funds, using three amounts:
17 \$110 million, \$115 million, and \$120 million, because we think
18 those are realistic figures, looking at \$110 million from the
19 House, the possibility of \$130 million from the Senate, and
20 assuming that there's going to be compromise in the conference
21 committee.

22 The other matters discussed -- only one will
23 require action by the board, and I'll leave that until last.
24 It has to do with the selection of an auditor.

25 The committee also discussed at some length the fact

1 that the staff will be meeting with representatives of GAO at
2 the request of GAO to discuss Legal Services -- that is,
3 necessity for Legal Services, the sources of funding for Legal
4 Services in the country, and this coincides with our view as
5 a committee that there needs to be an effort on our part to
6 assist and coordinate the functions of Legal Services across
7 the country. Toward that end, we want to do our part in
8 attempting to bring together in some reportable form and
9 understandable form all of the sources of funding of Legal
10 Services.

11 As all of us know, many agencies of government,
12 federal and state, are involved in free legal services, and
13 one of our services perhaps could be a more effective
14 coordination of these services to avoid any inefficiencies,
15 which none of us want. So this coordinating effort will be
16 commenced, and hopefully we'll have some reporting to make to
17 you later, better figures about this. Of course, we can get
18 from our own programs their sources of funding, but there are
19 many programs we do not even partially fund, so it would be
20 more difficult to get that information.

21 The committee, prior to its meeting, had requested
22 and the staff had sent us a report on our current staffing --
23 that is, by person, by compensation rate, and any member of
24 the board who would like that if you will simply see me, I'll
25 ask the staff to get you a copy of that.

1 They also gave us a report of all consultants who
2 had been employed by the corporation during the period up to
3 April 30, and these we simply wanted for review by our
4 committee, but any member of the board who would like them,
5 again, if you would let me know, we would be delighted to ask
6 Mr. Hennigan to send them to you.

7 One matter on the personnel: you will recall that
8 our projections on personnel were that for fiscal 77 through
9 the transition quarter, we would limit ourselves to 100, and
10 that during the next year, we would expect staffing of not
11 more than 140. But with our interpretation of the back-up
12 centers' questions and bringing some of those operations into
13 the corporation, this will require a revision upward of that
14 figure because we did not take that into account, and it is
15 now estimated that fiscal 77 will probably mean in the range
16 of 175 corporate employees, as contrasted with the project
17 140. We feel that this is totally appropriate in view of the
18 number of activities being brought under the corporation, but
19 it was discussed at the staff in our committee meeting that
20 the staff would simply report this to the staffs of the
21 appropriate committees of Congress so that they will be aware
22 of this change in our planning.

23 The only action required has to do with the
24 appointment of certified public accountants for the year to
25 perform the annual audit which is required by our statute.

1 Have each of you received a copy of the memorandum dated
2 June 3 from Mr. Bamberger relative to this matter?

3 MR. CRAMTON: A copy has been given to each member
4 of the board. It's a memorandum to the board from E. Clinton
5 Bamberger, Jr., dated June 3. Extras are available if
6 someone doesn't have it. Everyone appears to have it, and I
7 gather the resolution to which you are referring is on the
8 last page?

9 MR. STOPHAL: The resolution is on the last page.
10 I'll submit the resolution, and then we can have a discussion
11 on the methods of selection and the criteria for selecting
12 the one that has been recommended by the Comptroller of our
13 corporation, by the President and Executive Vice President,
14 and by your Audit and Appropriations committee.

15 The resolution is: "Resolved, that Price Waterhouse
16 and Company be and they hereby are appointed to act as
17 independent certified public accountants for Legal Services
18 Corporation for the fiscal year ending September 30, 1976."

19 Mr. Chairman, I move the adoption of this
20 resolution.

21 MR. CRAMTON: Is there a second?

22 MR. ORTIQUE: Second.

23 MR. CRAMTON: The motion is before you for
24 discussion. Perhaps Mr. Stophal will first outline the
25 procedure and the reasons the committee recommended the

1 adoption of the resolution.

2 MR. STOPHAL: You may recall that when we installed
3 our accounting system, invitations to bid were sent to what
4 are known as the "Big Eight" in the accounting world as well
5 as the next big eight, which made it sixteen of the larger
6 firms, and two minority firms. Price Waterhouse was the
7 successful bidder in that case. The original bid was for
8 \$55,000. Our Comptroller then came on board and negotiated
9 a contract not to exceed \$45,000, and the actual cost was
10 \$35,600.

11 In this case, the memorandum points out that those
12 who were interested in submitting proposals for our audit
13 were narrowed to two of the Big Eight, Arthur Andersen and
14 Company and Price Waterhouse and Company. The estimates of
15 the audit costs -- no firm contract at this point -- but the
16 estimates of the cost being within \$1000: \$7500 by Price
17 Waterhouse as an estimate, \$6500 by Arthur Andersen. The
18 actual cost will depend upon the amount of time actually
19 devoted to the project.

20 The Comptroller reported that in his view either
21 of the firms was well qualified to do the audit. There are
22 factors -- he was worked closely with the Price Waterhouse
23 people and believe he understands what they want well enough
24 that he can save money by having his staff personnel do a
25 great deal of the work preliminary to the audit and that this

1 will enable us to have an audit completed quickly and with the
2 minimum cost.

3 Another major factor in his decision in
4 recommending is the availability of the partner in charge of
5 the audit here in Washington, Mr. Malburn Gross, an
6 outstanding authority in the field of non-profit corporations.

7 MR. CRAMTON: Is there further discussion? Are you
8 ready for the question?

9 [No response]

10 The resolution is for the appointment of Price
11 Waterhouse and Company to serve as independent certified
12 public accountants for the corporation for fiscal year ending
13 September 30, 1976. All in favor of the resolution, please
14 say aye.

15 [A chorus of ayes]

16 MR. CRAMTON: Those opposed, no.

17 [No response]

18 MR. CRAMTON: The motion is unanimously carried.

19 MR. STOPHAL: I might just say one other thing, Mr.
20 Chairman. You were probably going to suggest that I mention
21 it. You have also been given a summary of obligations,
22 programs, and activities as of May 31st, 1976, a sheet that
23 looks like this [Indicating].

24 MR. CRAMTON: Copies will be handed around now to
25 members of the board.

1 MR. STOPHAL: The Audit and Appropriations
2 committee asked for this report, and the staff has worked it
3 up. I might say that this is a preliminary point to it.
4 It's very difficult at this point because of the method in
5 which we've adopted our budget, which we're now operating on,
6 and that was in a very hurried manner with few categories
7 actually well established. Hopefully, by September, we will
8 have a computerized program so that we can have this kind of
9 information very promptly and by budget categories that
10 probably will make more sense. They'll be more detailed.

11 But these categories that you have here on the
12 first page are broken down by the budget for fiscal 76 which
13 as you see is \$88 million: the obligations that CSA had
14 entered into for this fiscal year, the obligations we have
15 made during that period, and then total funds obligated --
16 that means contracts actually signed for those funds.

17 Then the fifth column is fiscal 76 funds available
18 to be obligated. Many of those are actually committed to the
19 extent that we know that the programs are going to need the
20 funds to operate for the period up to their next funding
21 application, but the contract has not been signed. Therefore,
22 they're not considered as obligated.

23 And the last three columns deal with the transition
24 quarter and show the budget of \$24.6 million: those funds
25 that are committed and then those funds that are available to

1 be committed. Mr. Hennigan explained to us that under
2 statutory authority we can obligate fiscal 76 funds up to
3 September 30, 1976, that the transition quarter funds may not
4 be obligated before June 30, but can be also obligated up to
5 September 30 of 1976.

6 Obviously, you won't have time to review this in a
7 great deal of detail, and Mr. Chairman, it might be that
8 board members might prefer to look at this overnight and have
9 questions answered on it tomorrow, unless someone does have
10 questions.

11 MR. MONTEJANO: Mr. Chairman, I'll have a question
12 probably tomorrow on the migrant program, but I'll hold that
13 until tomorrow. I'll check with the President first.

14 MR. CRAMTON: Does that complete the report of the
15 committee on Appropriations and Audit?

16 MR. STOPHAL: It does.

17 MR. CRAMTON: Thank you very much.

18 I neglected when we resumed after lunch to do two
19 things. First, to welcome our member Glee Smith, and the
20 record should show that Mr. Smith has joined us after our
21 luncheon break and is now in attendance.

22 I also neglected to report on the executive session
23 which the board held during lunch. The board did discuss
24 with the President several candidates that he has under
25 consideration for a vacant staff position, the position of

1 research director, and we also discussed several pending or
2 imminent legal matters in which the corporation may be
3 involved, and the discussion in executive session was
4 limited to those matters.

5 No action was taken on any subject.

6 That brings us to the next committee report, item
7 3(b) on the proposed agenda: report of the committee on
8 Provision of Legal Services. Mr. Thurman?

9 MR. THURMAN: We held a meeting this morning, and
10 I'll report to you what I reported there and also some of
11 the results of our deliberations.

12 I guess each committee tends to look upon its
13 committee as the most important one for the corporation. I
14 guess basic to the entire Legal Services Corporation is this
15 matter of how you deliver most effectively legal services to
16 the poor. Congress wanted us to do something about that, as
17 we all know, in section 1007(g) requiring us to make this
18 comprehensive -- and this is the language -- "comprehensive,
19 independent study of, A, the existing staff attorney programs,
20 and then, through the use of appropriate demonstration
21 projects, alternative and supplemental methods. And they set
22 forth five methods, including the staff attorney system.

23 I think the question that we're asked is this: are
24 staff systems the best for all client groups in all parts of
25 the country? You can say that with two exceptions, all the

1 systems in the country are staff systems, and the two that are
2 not are what you call judicare. We have no others in
3 operation at the present time. The one judicare one in West
4 Virginia is funded to the tune of something under \$1 million,
5 about \$850,000, which is a rather substantial program. The
6 other in Wisconsin gets something over \$300,000. But with
7 those two exceptions, everything else is a staff program, and
8 I suppose this means that those people engaged in a staff
9 program come to this with maybe some kind of a bias that that's
10 the way to deliver legal services, the best way.

11 Well, we have to make a study to determine whether
12 that's true, if we can do so, or not. Now, at the last
13 meeting a proposal was made that we enter into an
14 arrangement with the Urban Institute, a non-profit research
15 corporation, to work with the corporation and to gradually
16 have more and more of this done in-house in setting up the
17 different kinds of demonstration projects and making a survey
18 of those and making this report to the President and to the
19 Congress by next July 14th, and I from the start have been
20 convinced that we aren't going to have a final report by then.
21 We will have as much done as we possibly can by that time,
22 and this is the kind of thing that could drag on and go for
23 some period of time if we don't really get moving on it.

24 There were two phases proposed. Phase number one
25 this board approved last time, and that was to established a

1 detailed program designed for the study, and the proposal we
2 have here under phase one is that letters be sent out -- and
3 they have been sent out as of yesterday by the President of
4 the corporation -- to a great number of interested groups
5 around the country asking for what they call concept papers,
6 "brief concept papers on approaches and methods that should
7 be considered" in this study of ours, this statutory study.
8 It says the papers ought to be brief, the description of
9 proposals for or likely problems with various delivery system
10 approaches.

11 In other words, we're asking people to send us in
12 their general views, their general observations, and I can
13 assure you from the contacts I've had with some of the Legal
14 Services groups, particularly up in my region, that they've
15 been doing a great deal of thinking about this. This is a
16 very important matter for them.

17 And then we are asking as many as possible to come
18 in with detailed, designed plans that would fit within one
19 of these five that Congress mentioned, or hopefully others.
20 Maybe others could be legal clinics, educational programs for
21 client groups, or hopefully others, or a combination. You
22 have in the material sent out to you on pages 15 and 16, a
23 chart, a flow chart there, a timetable as to how they hope to
24 accomplish this first phase. Then once the different design
25 programs, the winners so to speak, are determined, the ones

1 that we're going to implement with money, you then enter into
2 phase two, and you start the programs. There would be then
3 in phase two what's called the overseeing of the implementation
4 of the demonstration projects, and the arrangement for
5 collecting the necessary data, and then of course by next
6 July 14th, preparing a report to the President and the
7 Congress.

8 In connection with this material that's going out --
9 and I have to emphasize that this is preliminary. The drafts
10 are all preliminary, and they're being revised. They were
11 revised as a result of our conferences a week or so ago when
12 I was back here. They will be changed from time to time,
13 and we will send out some of the specific requests to groups
14 that want to enter the contest, so to speak, and send in
15 some of their designed programs. We have put together an
16 advisory panel. Now, I think you have in the appendix there
17 the names of the individuals who are at this time suggested
18 for the advisory panel. This, in the case of the board, comes
19 near the end here, Tab 2: Proposed Membership of Advisory
20 Panel on Legal Services Delivery Systems Study.

21 There are nineteen names there. I'd like to
22 discuss with you just briefly what we envisioned this panel
23 doing, how these were selected. For example: of the nineteen
24 here, three are the members of the board committee, Breger,
25 Ortique, and Thurman. We have two Legal Services Corporation

1 regional directors, Gilbert from Region VIII, Newman from
2 Region I. We have three from the Legal Services Corporation
3 projects around the country: Miller, Oberbillig, and Raider.
4 We have three from the National Clients Council: Hernault,
5 Veney, and Warness. And then also we have Sandra Dement from
6 the National Consumer Center. We have three from different
7 parts of the American Bar Association: one is Mr. Samuel
8 Brakel from the American Bar Foundation. We have Mr. Thomas
9 Greene who has been selected by the General Practices Section,
10 and they've shown about as much and as detailed an interest
11 in this as any group, and Mr. Greene represents them. They
12 in fact have selected Mr. Greene.

13 Then we have Mr. John Groves who is a member of the
14 ABA Standing Committee on Legal Aid to Indigent Defendants.

15 And then four other individuals to make up the
16 total of nineteen that you might roughly say are in the
17 research category: Mr. Baldwin from Syracuse Research, Ellen
18 Jane Hollingsworth who was at the Texas meeting, wasn't she?
19 She spoke there. She works at the University of Wisconsin,
20 the Poverty Law Institute; Earl Johnson, one of the most
21 knowledgeable individuals in the field of various methods of
22 study, both in this country and outside, who is with the
23 University of Southern California; and Jane Frank who is with
24 the Senate Judiciary Subcommittee on Constitutional Rights.

25 Those are the nineteen that you have listed here.

1 MR. BREGER: They're just proposed, are they not?

2 MR. THURMAN: Well, they have been asked if they
3 will serve.

4 MR. BROUGHTON: Is this the committee's
5 recommendation now?

6 MR. THURMAN: Yes.

7 MR. BROUGHTON: These names the committee has
8 gotten up. Is that right?

9 MR. THURMAN: That's right.

10 MR. BREGER: I don't think we voted on this.

11 MR. THURMAN: No, these are the names that I went
12 over very carefully when I was back here last week with the
13 staff, and I guess when I talked to Revius and to Marshall,
14 I told you about the advisory panel. We didn't go into any
15 names at that time I guess, did we? All right, so the only
16 one then on your board is the chairman of your committee that
17 has gone over these with the staff. And we want to make it
18 clear that we're certainly hoping to have other names
19 suggested to us.

20 It's a little uncertain at this time as to how this
21 advisory panel is going to be used: whether they're used on a
22 telephone consulting basis -- there's some thought that
23 perhaps at the appropriate time after a number of these
24 proposals have come in, a sufficient number, that perhaps
25 this panel, or as many as possible, ought to get together and

1 take a look at these proposals -- at least that once ought
2 to get together. But I'd like to open up for discussion here
3 your thoughts about this advisory panel.

4 I guess at the present time that, Tom and Leona,
5 the farthest we've gone is to ask as to their interest in and
6 their availability to be on this panel.

7 MR. EHRLICH: Yes, and most of them have said, Yes,
8 period. About one-quarter have said rather tentatively, Yes,
9 they are interested, but they want to see the scope of the
10 time commitment before saying definitely. But they are all
11 interested in helping. It's a question of --

12 MR. THURMAN: And they have been sent the same
13 material that the board has before it?

14 MR. EHRLICH: Correct, which is in draft and will
15 be revised and continue to be revised. They have received
16 this, as have a number of others who are interested in the
17 delivery of legal services and the study.

18 MR. CRAMTON: Would they be appointed as
19 consultants for this purpose, as receiving some compensation
20 or possible reimbursement for expenses?

21 MR. EHRLICH: They would receive reimbursement for
22 expenses. We didn't have in mind that they would receive
23 anything else.

24 MR. THURMAN: I don't think we were thinking of
25 that.

1 MR. CRAMTON: Is the appropriation subject to the
2 Federal Advisory Committee Act? If so, if this will be an
3 advisory committee within the meaning of that Act, the
4 requirements of that Act would have to be followed.

5 MR. EHRLICH: We didn't think we were. We'll check
6 to be sure of that.

7 MR. COOK: I raise one other question. I'm just as
8 fond as I can be of Janie Frank, but we have to file a
9 statement here that we have no problems of any kind with
10 anything that the board has taken up or functions of the
11 board, and I just wonder if we're going to pay expenses or
12 we're going to be considered as advisors, you've got the
13 problem of being compensated by two federal agencies in regard
14 to maybe Jane and maybe others out there. I don't know. You
15 better look at it carefully.

16 And secondly pertain to --

17 MR. THURMAN: Travel expenses? Or would it have to
18 be --

19 MR. COOK: Well, I don't know. I'm raising the
20 question because I don't want anybody to get in trouble, and
21 I don't want us to get into trouble.

22 I raise the further question that once a proposal
23 is made and submitted to the Congress, I would suggest that
24 it's got to go to the Senate Judiciary Committee, and I'm
25 just wondering if you don't have a problem if you have people

1 on the Senate Judiciary Committee that are going to be deeply
2 involved in an evaluation of this program that will then wind
3 up working on it as far the Judiciary Committee is concerned.

4 MR. CRAMTON: Legal Services is under Labor and
5 Public Welfare in the Senate, not Judiciary.

6 MR. COOK: Well, I'm not concerned about that, but
7 I'm talking about the significance of such a program being
8 presented and the evaluation of that program and obviously
9 an evaluation of that kind of program by reason of the
10 parliamentary procedures would be submitted to the Judiciary
11 Committee.

12 MR. CRAMTON: Mr. Smith.

13 MR. SMITH: I have a more basic question about it.
14 I appreciate some of the technical questions Marlow is raising,
15 and I share those.

16 But my basic question is whether we need an advisory
17 panel at all. I'm very inclined toward a great limitation of,
18 and in most cases not using at all, additional panels of this
19 type. Now, I don't know all these people -- I know several of
20 them and have great respect for their ability, but I just feel
21 like when we create these appendages of advisory panels and so
22 on, it's an unnecessary expenditure of time and an unnecessary
23 involvement that I don't feel is necessary.

24 We went into this contract with the Urban Institute
25 on the basis that they were adequately staffed to do the study.

1 We in our own board have the kind of input -- and in fact
2 three of these are members of our board -- we have the kind of
3 input that I would envision coming from this. I just hesitate
4 to create additional panels anytime.

5 MR. THURMAN: Well, along this line, let me just
6 continue with one more observation. Now, this morning in our
7 meeting Nevius held forth at some length, and I think with
8 telling effect, in which he said that he thought that we
9 ought to have a consultant that would consult with us and
10 some sort of outside observer who was knowledgeable ideally
11 in the field of delivery of legal services and in whom we'd
12 all have confidence, and that this fellow, I suppose, this
13 fellow or this woman, could be paid as a consultant, and the
14 question was raised this morning -- and I think Marshall was
15 correct when he says there's been no final action taken on
16 either the setting up of the panel or the individuals. These
17 are the proposed membership, and these are the names that we
18 went over with some care the last time I was back here.

19 So there is some feeling around that we probably
20 need and could use some kind of outside help.

21 MR. SMITH: Well, I can't share that feeling. I
22 think that's the point we should look at when we decide who
23 we are going to hire to do the study, and I feel that they're
24 in the position of really being a consultant, that
25 organization is. I don't think we need somebody to check on

1 them or watch them or supplement their work. If they're the
2 right person or organization to contract with, then we
3 contracted with them, and that's fine, but I don't share this
4 idea of proliferating.

5 MR. THURMAN: Well, now take for example this
6 Thomas Greene who has been corresponding with me at some
7 length about representing the General Practices Section. They
8 want to make very sure they have some input on this study.

9 MR. SMITH: Well, advise him who we've contracted
10 with, let him contact and give as much input as he wants to
11 give, but don't create an official position.

12 MR. ORTIQUE: I'll have to disagree with that
13 position. You're going to have people and groups from all
14 over the country who will want to have some inputs into this,
15 and it would appear to me that the only way to do that is to
16 set up within the scheme of things, within the proposal,
17 some type of group or body that is going to have some inputs
18 or give consideration to these. I certainly would not trust
19 for a moment a private group making the basic decisions that
20 are going to have to be made because we could just turn them
21 loose and say, Just go ahead and come up here with a package
22 and hand it to us. And then what are we going to do with that?

23 MR. SMITH: No, that input comes through us. We're
24 going to work with them all the time we're doing the study, in
25 our committee.

1 MR. ORTIQUE: There is nothing -- well, I shouldn't
2 say that. I don't feel that I need to be -- I've been here
3 since '64 in this type of thing, looking at or even suggesting
4 these alternative delivery systems. I certainly don't feel
5 that I can be an advocate for the judicare situation, and I
6 certainly don't think that I could state objectively the
7 position of project advisory groups. I certainly would not
8 take the responsibility to talk about how the clients
9 themselves feel. You call them advisory committees or call
10 them anything you want, you got to have some mechanism for
11 getting those things into the study, or else we won't need
12 the study at all.

13 MR. SMITH: I look at it as they already have two
14 avenues. They can be referred directly to the Urban
15 Institute, or they can come through us. But all those groups
16 you mentioned have two avenues now, one direct and one
17 through us. Why create a third one?

18 MR. CRAMTON: Tom?

19 MR. EHRLICH: The plan of the scheme, to
20 reiterate a bit, is this is a study done within the
21 corporation, by the corporation, for decisions about the
22 projects, about criteria for performance, whether we include
23 client satisfaction, for example. All those decisions are
24 made within the corporation.

25 What we have developed with the help of the Urban

1 Institute is a process for enabling us to go forward with
2 this study in the time needed and the care needed with the
3 technical assistance we now don't have, but will build up
4 over time.

5 Part of the study will involve making a large
6 number of decisions, as Sam has suggested. Which particular
7 projects and which particular places should be developed and
8 against what kind of criteria they ought to be reviewed. No
9 question -- and it was made clear at the last board meeting
10 by a number -- that a great many individuals and group want
11 to express themselves on these issues. We are as best we can
12 responding to the board's mandate of last May to insure that
13 there is a wide dissemination of what's going on and
14 engagement.

15 At the same time, it's clear that -- it seems to
16 us at least -- that there ought to be some group that could
17 advise the corporation in the sense that they would be
18 regularly called, sent papers, and would be expected to
19 respond -- not necessarily every time, but on a more regular
20 basis than the world at large. This group does include a
21 wide range of people, and it is solely to help the
22 corporation by giving advice. The only cost involved would
23 be the expenses to the extent they had meetings -- and that
24 is an expense -- but given the importance of the overall
25 project and the need to get different views on very key

1 questions, evaluating performance for example, it seemed an
2 effective way to do it, and while we will try to seek the
3 counsel of as many others at the same time as we can, this
4 group at least we know we can talk to. By "we" I mean the
5 corporation now, but the Urban Institute is there to help us
6 in that process. The decisions belong to the corporation.

7 MR. THURMAN: Just to legitimate all this
8 discussion around here, I'd like to just move the creation of
9 this advisory panel.

10 MR. BROUGHTON: A advisory council or this advisory
11 council?

12 MR. THURMAN: Well, let's first of all say "a," "an"
13 advisory council, similar to the one that I've described,
14 constituent members from various organizations.

15 MR. BROUGHTON: When will that become effective?

16 MR. THURMAN: Well, we haven't even had a second as
17 yet.

18 MR. ORTIQUE: I second it.

19 MR. THURMAN: Immediately, as soon as these people
20 would accept.

21 MR. ORTIQUE: Well, it wouldn't become effective in
22 my view until this group voted to implement phase two
23 because we don't need an advisory council.

24 MR. THURMAN: No, no, we're using them now as all
25 part of phase one to help select the programs that we're going

1 to be overseeing when you get down to phase two.

2 MR. EHRLICH: We need counsel, for example, on the
3 paper you received. I hope we will get it here. We have
4 already gotten some. But we will need it on a continuing
5 basis. Similarly, other material when what are called the
6 contact papers come back, various ideas for different kinds of
7 projects.

8 MR. ORTIQUE: All right.

9 MR. CRAMTON: And I gather the function of the
10 proposed advisory panel is really twofold: one, to advise the
11 staff and the committee and to bring input on matters they
12 have under consideration; and second, to perform a kind of
13 representative function of informing interested groups of what
14 the corporation is doing in this area so that they will feel
15 that they know what's going on. Is that a fair statement?

16 MR. THURMAN: Yes, I think so.

17 MR. ORTIQUE: Their own perspectives, making sure
18 that we have at least those perspectives involved in it. When
19 you look at the make-up of this committee, as I pointed them
20 out to you this morning, there are at least four obvious
21 perspectives within this committee, and I think that's
22 excellent. You've got the advocates of the judicare, strong
23 advocates of judicare. You've got the client-counsel
24 perspective. You certainly have the American Bar-General
25 Practices Section perspective, and there's one --

1 MR. THURMAN: You've got staff attorneys.

2 MR. ORTIQUE: -- staff attorneys perspective. Any
3 one of those will have very strong feelings about what
4 you're doing. There's no way for this board to express those
5 perspectives at this time, as uneducated as I suspect we
6 are, personally.

7 MR. CRAMTON: Mr. Smith?

8 MR. SMITH: Well, just briefly I want to make it
9 clear that while I'm opposed to the motion, and I'm opposed
10 to the creation of appendages of this type and consultant
11 positions and advisory councils and all of that sort of thing
12 which I've seen in other organizations proliferate much too
13 much -- I'm just generally opposed to the concept -- I do not
14 disagree with Revius or Tom about the need for all this input.
15 I just think we can get all this input without creating
16 another organization, and I think that this is an example of
17 other things that will come along, where we'll want lots of
18 input, but you don't need to create an intervening
19 organization just to get that input.

20 In some ways, in fact, creation of such a thing as
21 this is limited because while it might appear we've covered
22 all the organizations, there might well be some we've missed,
23 and by the creation we sort of exclude. I'd rather see all
24 those people with input contacted, see them all have their
25 chance for input direct through the Urban League or through

1 us, but I just don't like to create these additional panels.

2 MR. CRAMTON: Mr. Cook.

3 MR. COOK: Well, I can see we're going to have a lot
4 of discussion before we get down to the motion that is
5 paramount to this motion, but this motion apparently feeling
6 it necessary to make it first is now before us because I've
7 heard all kind of analysis so far around this table of what
8 we perceive an apparent study to be, and there certainly
9 isn't unanimity as to what one perceives the study to be when
10 we come to that particular motion.

11 The thing that bothers me about this is not only
12 those that you're being exclusive enough to include and those
13 that you will exclude, but also the fact that I feel that one
14 of the essentials of this thing -- and I hope you don't use
15 it as a crutch not to do it when the time comes -- and that is
16 to take any proposal that we have and have public hearings all
17 over this country, so that nobody is being excluded to
18 evaluate this and make their comments.

19 We're sitting here, and we're in the process of
20 discussing 50 state advisory councils. Well, there isn't
21 anybody from any state advisory council on here, and yet this
22 is going to have to be something that's going to fluctuate
23 from one end of the country to the other in regard to its
24 evaluation and how it's going to operate. We seem to feel
25 that, very frankly, that this is kind of a -- except for three

1 of our colleagues on the commission -- that it does
2 represent kind of an exclusive group that may have a
3 particular opinion in one bent that says, This is the kind of
4 program that's got to be here, and therefore this is the way
5 we do it.

6 I would hope that all of the people that Glee is
7 talking about and all of the people that you're going to talk
8 about will have a public forum to present their views, so that
9 these views can be presented to the Congress when we make this
10 report to them, and I just feel very frankly that this is
11 almost essential.

12 MR. CRAMTON: I will give the President the floor,
13 then Mr. Breger, then Mr. Broughton.

14 MR. EHRLICH: I don't want the notion of the panel
15 to get overblown. I don't really disagree with what Glee or
16 Marlow suggested in terms of seeking as wide as possible
17 diversity of views and insights we can possibly get, and we'll
18 do the very best we can on that. The group that's here is a
19 group that we would just go back to with a telephone call, do
20 a little more than just simply send out and say we would like
21 your material. I don't think it needs any kind of formal
22 mandate or sanction. That was the only idea behind it. You
23 just can't do that much with a large group. Even this group
24 is just about pushing it, that maximum.

25 But I assure you we will make every effort we

1 possibly can to reach out to as many different types and
2 groups as we can.

3 MR. COOK: I suggest you do it by telephone. If
4 you get nineteen people around a table to discuss the subject
5 matter, you'll never come to any conclusion.

6 MR. CRAMTON: Mr. Breger, Mr. Broughton, and then
7 Mr. Stophal.

8 MR. BREGER: Well, on one level I'm not sure what
9 the advisory council will go through except to the extent that
10 they're a sounding board that will get more thrown at them
11 than the general public.

12 On another level I'm sort of unhappy about one
13 element which is the following: it seems to me if we want an
14 advisory board, we ought to try to get the people -- look to
15 the people who we think will provide us with the most wisdom,
16 the best advice, rather than making sure that every interest
17 group is represented, although I can understand why every
18 interest group would want to be represented. I think we
19 should rely on our general policy of openness and our general
20 circulation of material to get input from all the different
21 institutional interest groups, and I have a feeling that this
22 advisory was set up for the purpose of including a number of
23 interest groups, rather than for the purpose of getting
24 ourselves the best advice que individuals, although every one
25 I know of on this list is certainly a high class person.

1 But I would think the stress in terms of advice to
2 us ought to be on the wisdom of the person as we perceive it.

3 MR. BROUGHTON: What I was planning to say was that
4 I did not think that a committee such as this would be
5 necessarily in conflict with your suggestion, which I agree
6 with, that this be given a lot of latitude and exposure as
7 far as opportunity to appear.

8 However, I do feel that if you are to have -- and I
9 think we should -- an opportunity to have expressions from
10 different groups and of course different expressions in this
11 entire area, then it seems to me that in order to have a
12 cohesiveness as far as moving that along, we do need some type
13 of a set, authorized committee, as opposed to maybe a general
14 invitation --

15 MR. ORTIQUE: To the world.

16 MR. BROUGHTON: -- that might get some response, but
17 perhaps you would get it limited just to one group, and as I
18 understand it -- and as I say, I am not necessarily by making
19 this statement saying that I agree or disagree -- but this
20 would appear -- and I don't understand that we're at that
21 point or that's involved in this motion -- should be the
22 panel.

23 But I think it is important that all groups be
24 represented and that those who agree to accept the position
25 be people who would show a considerable interest and would

1 demonstrate clearly that they would take responsibility
2 seriously and would go into it in detail and not just accept
3 it as a member of another panel.

4 And I think you could still accomplish what you're
5 talking about -- for example, appearances before state bar
6 associations. That could be a part of giving opportunity
7 throughout the country at some point.

8 MR. BREGER: I don't think -- do we have the time
9 for that?

10 MR. BROUGHTON: This may be too large a committee.
11 I have that question. I understand we are only --

12 MR. ORTIQUE: I'd like to get on the list of
13 speakers.

14 MR. BROUGHTON: The motion is only to having an
15 advisory committee.

16 MR. CRAMTON: Mr. Broughton referred to moving
17 things along, and I'm concerned about moving things along. Is
18 this a question which needs to be debated at much greater
19 length, or have the major viewpoints been stated, and are you
20 ready for the question?

21 MR. THURMAN: The question is should there be an
22 advisory panel.

23 MR. CRAMTON: To perform the functions indicated.

24 MR. BROUGHTON: Mr. Stophal is next on your list.

25 MR. CRAMTON: Well, he withdrew, as I recall.

1 MR. STOPHAL: Surprisingly enough, Marshall said
2 something that I was going to say, so I'll just let it go.

3 MR. BREGER: You should be used to that.

4 MR. STOPHAL: As a sounding board, I think that an
5 advisory panel is appropriate, but I think that all materials
6 really that flows into this project needs to come to every
7 board member so that we don't come to the thing with a
8 program lined up, and we have had our input prior to that. In
9 other words, what these nineteen people -- if it turns out to
10 be nineteen or fifteen or whatever it is, not just three
11 members of this board should have seen it, but all of us
12 should have seen it because otherwise we can't really make an
13 intelligent decision.

14 MR. THURMAN: But you've seen this.

15 MR. STOPHAL: I'm not complaining at this point.
16 I'm simply stating what I want in the future.

17 MR. COOK: The law says you're supposed to submit
18 that program, not these nineteen people.

19 MR. STOPHAL: And I don't think they're going to.
20 I think that they're going to be a sounding board, and that's
21 what you said that I thought was a good --

22 MR. THURMAN: I'm saying whether it should even
23 meet --

24 MR. STOPHAL: -- a sounding board for the comments of
25 the contracting party.

1 MR. CRAMTON: Is there further discussion on Mr.
2 Thurman's motion? Are you prepared for the question?

3 MR. COOK: One remark. I hesitate to vote on this
4 at this time until we take up the major study proposal, and I
5 just want that in the record because --

6 MR. BROUGHTON: Well, I would make a substitute
7 motion that we defer this --

8 MR. COOK: -- because I just feel we're putting the
9 cart before the horse, very frankly.

10 MR. CRAMTON: All right, why don't we go ahead and
11 consider the major committee proposal, and then come back to
12 this proposal, if that's a procedure that is agreeable?

13 MR. ORTIQUE: Let me just get one thing. As I
14 understood it, this board voted the last time to approve
15 phase one.

16 MR. CRAMTON: That is correct.

17 MR. ORTIQUE: The major proposal before us today is
18 phase two, is that correct?

19 MR. CRAMTON: Mr. Thurman is about to present the
20 committee's proposal, as I understand, if the procedure of
21 postponing the vote on the advisory council is postponed until
22 after we've reached the -- is that agreeable? Go ahead.

23 MR. THURMAN: You will recall the discussion at the
24 last meeting was to postpone a decision on phase two until
25 the September meeting, which was to be the first week or so in

1 September. Now, as I understand it, Roger, has this
2 September meeting been postponed until the middle of
3 September?

4 MR. CRAMTON: I think we're talking about the
5 following week, instead of the 8th or 9th.

6 MR. BROUGHTON: Yes, one week.

7 MR. THURMAN: One week, so you're talking about
8 3 1/2 months from now. Now, the question is if they proceed,
9 as they are now doing, with the proposal for phase one, and
10 that is to solicit from around the country from as many groups
11 as want to submit their design programs that come within at
12 least these five categories and hopefully others and that they
13 will be in the process this summer, either with or without an
14 advisory panel, of selecting from among the best of these --
15 and these may vary depending upon the parts of the country
16 in which they're going to be established -- at some point here
17 you're going to come to quite a marking of time before you're
18 really going to be able to get underway with anything. So
19 the thought was expressed, Well, could we take this up at the
20 meeting before the September meeting, and that meeting is the
21 July meeting, for you to make a definite decision on whether
22 we then say, All right, phase one is the end of everything,
23 and we won't proceed with phase two, or do we go ahead with
24 phase two and have the Urban Institute, together with the
25 corporation staff, go ahead and oversee these programs and get

1 the data on them and make the comparisons and prepare the
2 report for the coming year.

3 The July meeting hopefully is going to be at a
4 different level -- the July get-together, whether it's even an
5 official meeting -- but we're talking about things quite
6 different from just the day-to-day decisions that we're
7 entering into here.

8 So the question came up as to whether we shouldn't --
9 and I took this up with my committee -- give discretion to
10 your board committee to make the decisions on entering into
11 phase two as we go through the summer and these things come
12 in and we see what they look like. I don't see that there
13 will be really any other official meeting between now and
14 September.

15 MR. BREGER: Sam, I was wondering when it was
16 expected that we or some part of the board will be prepared to
17 vote on phase two? At what point will that become a relevant
18 question?

19 MR. ORTIQUE: As I understood it, Marshall, that an
20 option for this board is to give the final assignment or
21 decision about phase two to the committee. If that's not an
22 option --

23 MR. CRAMTON: I gather that that's being proposed.

24 MR. THURMAN: Let's put this on the table, then.

25 This is a motion: Resolved, that the board of directors

1 authorizes the board committee on Delivery of Legal Services
2 to approve part two of the contract between the corporation
3 and the Urban Institute dated April 30, 1976, on condition
4 that the committee is wholly satisfied that part one has been
5 performed by the Urban Institute in a wholly satisfactory
6 manner and that approval of part two is a sound and efficient
7 step in carrying out the corporation's mandate under the
8 Legal Services Act of 1974.

9 MR. BREGER: I was just again wondering at what
10 point in time -- in some time in the month of July, because
11 although I think that it's clear that the board can't follow
12 everything -- and when we talked about this, I agreed with
13 that fully -- I also at that point had wondered whether,
14 depending on if the time schedule was right, we might not have
15 to have another board -- we might not consider having another
16 board meeting, much as I hate the idea, within that 3 1/2
17 month period, if the board felt they wanted to take up that
18 issue, rather than saying it's September or nothing. There
19 might be a third ground which would be for the board to set
20 aside a time to deal with it at the time it has to be dealt
21 with.

22 MR. CRAMTON: Did this committee have a meeting
23 this morning?

24 MR. THURMAN: Yes.

25 MR. CRAMTON: And are you reporting the committee's

1 recommendation on the proposal?

2 MR. THURMAN: Not based on this. This is coming
3 really for the first time before the committee or the whole
4 group, based on this timing thing.

5 But let me state that the first thought was that
6 this should be done at the July meeting, and if you want to
7 do that at the July meeting, why fine.

8 MR. ORTIQUE: Mr. Chairman, why should we be fearful
9 of coming to grips with the basic question. I think once we
10 cross that bridge, all these other things will probably fall
11 in place -- and that is, does this board want to give to the
12 Urban Institute this job that the President tells us the
13 corporation is not capable of doing? And I think that is we
14 meet that issue squarely, if the President says we're not
15 capable of doing it in the corporation, I thought that was the
16 reason we decided to proceed last time.

17 MR. CRAMTON: Well what puzzles me is I thought we
18 were having a committee motion which is in the form of
19 delegating to the committee on Provision of Legal Services the
20 authority of making this determination at some appropriate
21 point when all the information is in on phase one. But Mr.
22 Breger and Mr. Ortique seem to be talking about different
23 proposals both directions. Mr. Breger is talking about the
24 board making the decision, perhaps in a special meeting, and
25 Mr. Ortique is talking about making the decision today about

1 phase two. Neither one of those proposals are the same
2 proposal that you're making. That's why I asked whether there
3 was a committee meeting and whether you had a committee
4 proposal, which I thought you were presenting.

5 MR. THURMAN: This is a proposal being made by me
6 to the entire board because the entire board is going to be
7 in on the action in any event.

8 MR. CRAMTON: I understand that, I just thought that
9 your proposal was supported by the committee.

10 MR. ORTIQUE: This proposal is supported by me.

11 MR. CRAMTON: You just want to go further.

12 MR. ORTIQUE: No, I want to get it over with today.

13 MR. THURMAN: If you want to know the formalities
14 on this thing, Mr. Chairman, I corresponded by telephone with
15 each of the members of my committee, and it's my understanding
16 that each one of them approved this being submitted to the
17 board today. Am I correct on that?

18 MR. ORTIQUE: Absolutely.

19 MR. BREGER: That's true. We just want to flesh
20 out the other alternatives, at least to the extent to which
21 when we discussed it, I agreed with the understanding that we
22 had the time frame problem. If we didn't have the time frame
23 problem, clearly we would all agree it would be best for the
24 board to make the phase two decision, and now I just wondered
25 whether we actually do have that time frame problem.

1 MR. SMITH: Mr. Chairman, this motion hasn't been
2 seconded, has it?

3 MR. CRAMTON: Yes, Mr. Ortique seconded it.

4 MR. SMITH: Okay, I was just going to second it.

5 MR. BROUGHTON: Mr. Chairman, I saw the letter that
6 Mr. Thurman sent out. It came with the agenda materials, and
7 it was confusing to me at one point seeming to indicate a
8 decision today and then later said, "The committee hopes
9 therefore the June meeting the board will authorize to act on
10 phase two of Urban Institute contract during the summer."

11 Now, I didn't know whether that meant to give the
12 committee authority, or the board would act or what, but I
13 think that --

14 MR. THURMAN: I said the committee hopes the board
15 will authorize us to act on phase two during the summer.

16 MR. BROUGHTON: You mean that the committee would
17 proceed to start up phase two of the contract, as opposed to
18 the board?

19 MR. THURMAN: That's right.

20 MR. BROUGHTON: Well, I would just like to say, put
21 in the record -- it was confusing, the timetable, and this is
22 from the transcript of the last meeting: "Mr. Cramton: 'The
23 motion by Mr. Ortique and seconded by Mr. Smith is to
24 authorize the President to enter into the proposed contract,
25 corrected, with the Urban Institute, subject to the provision

1 that the President report back to the committee on Legal
2 Services on September 9, prior to the committing of the
3 corporation to the second phase of the study. They would
4 enter into the contract, but the terms of the contract would
5 be revised so the Urban Institute will conduct the first phase
6 and work with the corporation on that, and we will have a
7 report from the President and the committee on Provision of
8 Legal Services toward the conclusion of that first four-month
9 phase as to whether or not it was desirable to go ahead with
10 the second phase. That would be considered by the corporation
11 at its September 9 board meeting.

12 "If the board decided to go ahead with the second
13 phase, they would immediately proceed with that second phase."

14 Now, that was motion that was eventually put and
15 adopted, and later at the time of the vote there was another
16 statement made by the Chairman: "There is no commitment to
17 phase two until after the September 9 board meeting."

18 MR. THURMAN: Oh, there's no question about that.

19 MR. CRAMTON: No question about that.

20 MR. THURMAN: This is just proposing an amendment to
21 what we did there and a change in view of what's happened and
22 what's likely to happen during the summer.

23 MR. COOK: What has happened?

24 MR. CRAMTON: The President is trying to explain that
25 if he can have the floor. Mr. President?

1 MR. EHRLICH: The timing problem, which when we
2 came into the board meeting last time looking toward a
3 discussion of the contract as a whole, the suggestion came up,
4 Let's have board approval of phase one, but not of phase two
5 was agreed. Very soon after the meeting when we looked at
6 the actual timing and saw a group of people from the Urban
7 Institute advising the corporation staff and board in phase
8 one, that that group could not be held together through the
9 course of the summer and into September. That was the major
10 problem.

11 The secondary problem was that in terms of getting
12 phase two underway in time to meet the deadline of getting the
13 report done -- and incidentally letting the contracts that
14 ought to be let under the supplemental appropriation for 1976
15 before the end of 1976 -- those three factors all pressed us
16 toward saying we ought to have a resolution by July.

17 Then the issue was, Well, why not the July meeting?
18 The board is going to meet them. The concern was then
19 raised, that's a meeting of long-range planning issues, looking
20 at what are our priorities, what the purposes are of Legal
21 Services, not on this kind of action item.

22 Then we have the proposal Sam just made: keep the
23 board members as a whole fully informed as to everything that's
24 going on, but in terms of authorizing entering into phase two,
25 on the ground that that's what the board had wanted at its

1 last meeting, give that authority to the members of the
2 committee. That's why we are where we now are.

3 MR. CRAMTON: Mr. Ortique?

4 MR. ORTIQUE: I want to clear this. First of all,
5 the chairman did discuss these options with us over the
6 telephone. He advised me that he was either going to or he
7 had discussed it with Marshall Breger. This was just one of
8 the options. At that point, I think the chairman's specific
9 words were: Would you approve our assuming that responsibility
10 if the board so desires? And you will recall quite clearly,
11 Mr. Chairman, that I said, If the board asks us to do that,
12 then I think we ought to assume that responsibility.

13 So that wasn't a decision of this committee to
14 recommend to this board that we assume the responsibility.
15 But if we were asked to assume the responsibility, because of
16 the time constraints that I understood the staff would have
17 and project people would have now in trying to do a job -- if
18 we were asked to assume that responsibility, we would assume
19 it. That was the extent of my approval.

20 I am not saying to this board that you want to give
21 up that authority or you don't want to give it up. I'm
22 saying that we ought to make a decision before September
23 because I can't possibly see how we're going to do the things
24 that need to be done and expect a proper report for that
25 \$400,000 that we're about to spend if we wait until September

1 to decide phase two.

2 Now, sure, I had reservations, as you recall, at
3 the last meeting about approving phase one when I knew that
4 phase two was really the part that we were going to have to
5 look at twice. But again because the staff insisted on time
6 constraints, and it was well documented, I said, Fine, let's
7 approve phase one, or you don't get the team to do the job.

8 But I continue to say that the basic question before
9 this board is, Does this board really want to go through with
10 that project? And if this board does want to go through with
11 that project, I think we ought to face up to that today,
12 rather than play games about this aspect or that aspect or the
13 other aspect of it.

14 MR. CRAMTON: Mr. Smith and then Mr. Montejano, and
15 then Mr. Breger.

16 MR. SMITH: Mr. Chairman, I just wanted to say that
17 I agreed with what people said that we should face up to it
18 and make a decision, and my feeling is that we made the
19 decision in the last meeting, the motion that he made and I
20 seconded which instructed the President to move forward with
21 the execution of the contract. I feel the most expeditious
22 way of keeping faith with that motion and moving ahead is the
23 resolution that's been proposed by Sam Thurman for this
24 delegation to the committee because of the time constraints
25 and the intended objectives of the July meeting and the fact

1 that the September meeting is too late and that we're not
2 planning to meet in August. I think this is by far the most
3 practical way, and I think it's consistent with the motion
4 that we adopted last meeting.

5 Now, what Mel Broughton read a while ago was just in
6 the nature of discussion apparently from the transcript --

7 MR. BROUGHTON: That was a repeat of the motion made
8 by Revius and seconded by you. The Chairman was repeating
9 the motion.

10 MR. SMITH: But it's not a part of the official
11 minutes of the action taken.

12 MR. BROUGHTON: It's part of the transcript.

13 MR. SMITH: But that's not the official action.
14 The action does not mention September. The action does not
15 any limit like that on it. The action only says that the
16 President through the committee on Legal Services shall come
17 back to the board before committing the corporation to the
18 second phase of the contract, and that's the motion that was
19 adopted. There was no mention of September in the motion.

20 MR. BROUGHTON: Well, I don't understand what you're
21 talking about.

22 MR. CRAMTON: He's talking about the minutes.

23 MR. COOK: It's transcripts of what was agreed. Are
24 we going to say that from now on we can't approve any minutes
25 until we get the transcript and we check the transcript against

1 the minutes?

2 MR. SMITH: The official minutes reflect the action.

3 MR. BREGER: Well, if the minutes are what count,
4 we're going to have to actually go through the minutes with a
5 great deal more care than we have until now.

6 MR. COOK: You know, I really have to tell you, now
7 Glee, you really kind of surprise me pretty seriously. All of
8 a sudden September the 16th is too late when we agreed that
9 September the 9th was early enough. Now, we're talking about
10 a seven-day delay. Now, somehow or other I can't see how
11 seven days is going to make us too late.

12 MR. SMITH: No, that isn't the point. The point is
13 September is too late.

14 MR. COOK: Well, we didn't seem to think so at our
15 last meeting.

16 MR. EHRLICH: And you're quite right, and we should
17 have. The reason I didn't think so is I didn't think of the
18 issue arising until at the moment the proposal was made. It
19 was only after the meeting that we worked through the
20 schedule, and in fairness we didn't think -- we did not go
21 through that schedule until after the meeting, so the issue
22 only arose on the spot.

23 MR. CRAMTON: Mr. Montejano and then Mr. Breger.

24 MR. MONTEJANO: Upon request, I yield to Mr. Breger.

25 MR. BREGER: I just want to point out that I too did

1 talk to Sam about this and was again under the feeling that we
2 were talking about varieties of options and agreed that this
3 was the approach that we ought to take due to the time
4 constraints, if the board felt it did not want to take up the
5 issue in July or else at another meeting in August or some
6 other time. I guess my point is the following: that it's
7 clear we have to deal with the situation before September.

8 There are two ways of dealing with the situation.
9 One is to give the power to do so to the committee, which I
10 admit is a pretty significant delegation of power by the
11 board to a committee; and the second would be to deal with it
12 at a board meeting, which may mean having a special board
13 meeting or may mean tacking it onto the July board meeting.
14 I just think that should be posed as the other alternative
15 that we would face in posing the question. The other board
16 meeting might be in August or could be tacked onto the July
17 board meeting.

18 MR. CRAMTON: Mr. Montejano and then Mr. Cook.

19 MR. MONTEJANO: If timing is a problem, and we don't
20 think it advisable to go to the committee, why don't we just
21 add on an afternoon session to the July meeting the Thursday
22 prior to the Friday. We'll spend a half day on corporate
23 matters. I'll make a motion which probably would be this
24 particular contract if timing is that much of a problem.

25 MR. CRAMTON: We can face that if the motion is

1 defeated. If the motion is carried, then we don't need to
2 face it.

3 Mr. Cook?

4 MR. COOK: Mr. Chairman, as I've told you, I really
5 have to go -- not out of any other attitude other than the
6 fact that I really have to. Whatever the decision of the
7 board is, that's all right with me.

8 I would want to remind everybody that it's always
9 been the attitude of almost everybody without any question
10 that the program for an alternative legal service was not
11 going to meet its deadline. We all felt that it was not. We
12 all felt that it was necessary to ask the Congress to extend
13 the time for the presentation of that program. I don't think
14 there has been any question about that in anybody's mind
15 around this table.

16 All of a sudden we seem to feel -- I don't think
17 there's been any question about that. As a matter of fact,
18 you've expressed that [Indicating Mr. Ortique] very firmly
19 that we could not meet that timetable, and to that extent it
20 really does bother me that somehow or other we want an
21 alternative, first, to authorize three members of the board to
22 enter into a contract because it wasn't the question of the
23 contract and the significance of time in relation to the
24 contract. It was a question about the fact that first we had
25 picked an individual facility without making any reference to

1 any other organizations throughout the country. There was a
2 question about a report as to the work they would do between
3 now and the September meeting.

4 Our whole attitude about this -- and all of a
5 sudden this seems to have been brushed aside, and we now say
6 that we're back to a timetable, that we're back to a timetable
7 that says we cannot wait until September, and it really is
8 rather distressing, very frankly, because I don't think there
9 is any question about the transcript of the meeting and what
10 the import and the impact of that particular meeting and that
11 particular discussion meant.

12 Now, if it's the decision of those here who somehow
13 or another -- and Mr. Chairman, I'd like to say that I'd love
14 to hear your remarks about it because you were in on this
15 discussion also, and I'm wondering whether it was a decision
16 that was made by the staff, at what point it was made.
17 Apparently, it had to be made very shortly after the last
18 meeting, almost immediately after the last meeting, because
19 the preparations -- you contacted both members of your
20 subcommittee [Indicating Mr. Thurman] to find out how they
21 felt about it and how to move up the schedule.

22 It seems to me that there had to be almost a
23 simultaneous agreement shortly after our meeting last month
24 that things had to be changed and that we had to change the
25 action of the board that took place. Now, very frankly, maybe

1 from now on when we pass these motions, it might be smart to
2 move that they be laid on the table, and then if you want to
3 change any dates, you have to get a majority to take them off
4 the table so you can change them.

5 But I must say to you that it does seem rather
6 strange that all of a sudden we want to meet the deadline that
7 everybody felt we could not meet, and now it's imperative that
8 we do meet, but when that was not the question about the
9 contract -- it was the question of the fact that somehow or
10 another we wound up with one agency to do it without any
11 reference to any other facility throughout the entire United
12 States, and I'm not going through all three yards of the
13 remarks that we made at the last meeting.

14 It is rather disappointing, very frankly, that all
15 of a sudden it's felt that a subject of this importance which
16 also goes to the contracting question should be brought up
17 and should be moved in this degree of haste.

18 MR. STOPHAL: We do have a problem from our
19 viewpoint, that is the budget committee, that any obligation
20 of funds must be done by September 30th, which is a new
21 requirement that we didn't consider.

22 MR. COOK: That's correct, but our meeting is on
23 the 16th.

24 MR. STOPHAL: Well, whether we could get contracts
25 ready by the end of the month is a problem.

1 MR. COOK: Well, I would suggest that if it's the
2 Urban Institute and we move it on the 16th, they could
3 probably put it in our hand on the afternoon of the 16th,
4 either before or after the meeting, all according to which --
5 when you'd like to have it.

6 MR. STOPHAL: We're talking about funding projects.

7 MR. COOK: I agree.

8 MR. STOPHAL: We're not talking about the Urban
9 Institute.

10 MR. COOK: I'm talking about this particular
11 contract.

12 MR. STOPHAL: No, we're talking about funding
13 projects, demonstration projects.

14 MR. THURMAN: With a lot of projects around the
15 country, demonstration projects.

16 MR. COOK: Well, are you ready and willing to make
17 the various appropriations from all of that so that we can
18 look at all of those figures, because you have now vested
19 into this argument a whole new phase, and that is the expense
20 of that along with this, so we're really talking about giving
21 to this subcommittee a far broader scope of commitment on the
22 part of this board way in excess of the \$400,000.

23 MR. STOPHAL: No, you're confusing two points.
24 Number one is who contracts for phase two with the Urban
25 Institute, and part of phase two is the establishment of the

1 demonstration projects.

2 MR. COOK: Correct.

3 MR. STOPHAL: And we haven't reached the question
4 of who approves the demonstration project grants. Normally,
5 those would simply be handled by the President, as are
6 operating programs, after we once approve the philosophy of
7 them, so I don't think we have a timing problem with regard
8 to that.

9 I like the idea of setting aside time at the July
10 meeting to hit the problem of the Urban Institute grant, with
11 the demonstration contracts to be worked out during the
12 interim with a report to be made to us at the September
13 meeting of, Here are the programs that we plan to fund under
14 this project.

15 MR. COOK: I have no objection to that. So the
16 decision on your phase two then --

17 MR. ORTIQUE: The only problem with that, Mr.
18 Chairman, if you don't mind -- the only problem that's
19 obvious with that is that the outline that we've got would
20 not permit that, as I understand it. Am I correct? The
21 outline that we have of the timetable takes up certain matters
22 that will be going on in the month of July, and certain
23 conclusions drawn in the month of July at a point prior to
24 the time that we meet. That's why I continue to say that we --

25 [Departure of Mr. Cook]

1 MR. EHRLICH: Excuse me. We could, in fairness,
2 hold off and do it at the July meeting. The timetable is
3 close then, but it could be done. The point about the July
4 meeting is that it's a meeting entirely devoted to long-range
5 policy issues, not to a specific proposal.

6 MR. ORTIQUE: Well, of course, the answer to that,
7 Tom, is that if the board decided it wanted to do this --

8 MR. EHRLICH: Oh, of course, no question. I'm
9 not saying you couldn't do that. Of course you can. It's
10 simply a question of whether or not --

11 MR. BROUGHTON: Well, is there any reason that we
12 could not decide this at the July meeting?

13 MR. ORTIQUE: I thought there was a time constraint
14 on that, but now he tells me there is none.

15 MR. BROUGHTON: Wasn't that what you were
16 suggesting?

17 MR. MONTEJANO: Yes.

18 MR. EHRLICH: As Sam said in his memo, the reason
19 in terms of not doing it in July was solely related to that,
20 which I do think has some merit, myself.

21 MR. MONTEJANO: My suggestion was that we do have a
22 separate meeting for corporate matters on the afternoon
23 before the Friday-Saturday session.

24 MR. THURMAN: You're talking about coming a full
25 day early?

1 MR. MONTEJANO: Half a day.

2 MR. CRAMTON: Some of us can't do that.

3 MR. BROUGHTON: Well, wasn't this a factor too --
4 I'm inclined to your suggestion, but as I understood Marshall
5 a moment ago and Sam earlier, since the April meeting, he has
6 been to Washington and called the two of you by phone. The
7 committee had its only formal meeting this morning since the
8 April meeting of the board, and I believe you said at some
9 point that this morning the committee made certain changes,
10 which I assume are perhaps an alteration of that which we had
11 in the book.

12 MR. THURMAN: Not really.

13 MR. BROUGHTON: If I misquote you, correct me.

14 MR. BREGER: I don't know if you're quoting me
15 correctly, but I think the case was that Revius had made a
16 new formal suggestion about hiring a consultant to the
17 committee, which was not reflected in this material, and I
18 think we had also had a range of discussions about -- correct
19 me if I'm misstating what occurred -- a range of discussions
20 surrounding the activities that the advisory council would
21 engage in, which were also unclear from the material.

22 MR. BROUGHTON: We didn't elaborate, but I did
23 recall you said that the committee did make some departure,
24 the extent of which you did not say, and I was trying to find
25 out what from the material furnished to us before this

1 meeting.

2 MR. STOPHAL: May I make two points, Mr. Chairman?
3 Then I'll include my remarks on this. Number one: I think
4 that the decision we're making -- and that is, as to the
5 specifications of test models -- is a decision that's going
6 to last a long time with us, so we're really doing something
7 that may shape the future of Legal Services in this country
8 in entering into this test model. I think therefore, although
9 I'd be delighted to have you three gentlemen make the
10 decision for me, if I'm going to stand the gaff, I'd sure like
11 to be able to cast my vote.

12 Secondly, by the last week of July the revised test
13 model specification will be prepared, according to chart, to
14 send to the advisory panel and to us for final comments, so
15 that we should really have pretty much completed the first
16 phase by that point, and I think that it's appropriate that
17 we make the decision at the July meeting. Thus concludes
18 my statement.

19 MR. THURMAN: Mr. Chairman, in view of the feelings
20 expressed around here, I would hate for this motion of mine
21 to go through with a divided vote, and I think we can live
22 with the July timetable. We discussed that when I was in
23 Washington, and the hope was that we could free up those two
24 days for discussion for broad-range kinds of things and hope
25 we won't spend the whole two days on this.

1 But I think you made some good points here, and I'd
2 like to, with the consent of my second, withdraw this motion
3 and make another one that has a timetable now of this July
4 23rd meeting, that the board at that time makes the decision
5 on phase two, assuming that we have before us the material
6 that is outlined in the time schedule.

7 MR. CRAMTON: Do you consent to withdraw the motion
8 and substitute this other motion?

9 MR. ORTIQUE: Yes, and I second it.

10 MR. CRAMTON: Is there discussion on the new motion?
11 If there is, I hope it will be brief.

12 [No response]

13 MR. CRAMTON: All those in favor of Mr. Thurman's
14 substitute motion, please say aye.

15 [A chorus of ayes.]

16 MR. CRAMTON: Those opposed no.

17 [No response]

18 MR. CRAMTON: The motion is carried unanimously.
19 Now, Mr. Thurman's other motion on behalf of the
20 committee is still pending, and that is for the appointment
21 of an advisory panel.

22 MR. THURMAN: And this advisory panel is something,
23 as mentioned before, that we hope to make use of
24 immediately, not wait until July on this. They will be
25 helpful after July as well, but also -- I envision this as

1 primarily an advisory panel that we contact by telephone,
2 and I think I'd like to get some of your views as to whether
3 there ought to be a meeting of this advisory panel before,
4 talk with Tom and Leona as to how they feel about that.

5 But to postpone that for a moment or two, it's just
6 a question now as to whether they should be assembled as an
7 advisory panel to function as described here.

8 MR. ORTIQUE: Do you so move?

9 MR. THURMAN: I do.

10 MR. ORTIQUE: I second.

11 MR. CRAMTON: Is there further discussion on the
12 question to create an advisory panel?

13 MR. MONTEJANO: I have a question. It should be
14 clearly understood by everyone, especially those on the
15 advisory panel, that they are advisory.

16 MR. THURMAN: That they aren't?

17 MR. MONTEJANO: That they are advisory. Sometimes
18 we tend to set up advisory panels, and if the ground rules
19 are not clearly laid out, somehow people on an advisory panel
20 feel that they are the ones who are going to make the
21 ultimate decision. It ought to be made extremely clear at
22 the very outset that the panel is for input and for feedback
23 and that they are advisory.

24 MR. SMITH: That's pretty difficult to do because
25 in spite of how explicit the act is about the authority, for

1 instance, of advisory councils at the state level, how
2 explicit our regulations were, I've still been contacted by a
3 number of them with an entirely different concept, in spite of
4 what the act says and what our regulations say.

5 MR. THURMAN: These are your state advisory
6 councils?

7 MR. SMITH: Right.

8 MR. EHRLICH: We'll do our best to make it very
9 clear, and given the range of diverse views on this group, we
10 can't expect them all to think that they will all have their
11 advice accepted.

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

13 MR. BROUGHTON: Let me ask you this: what would the
14 advisory council be expected to do, and how would we go about
15 in the interim as to what they would do and what they would
16 be speaking to? We deferred the question or the decision on
17 phase two until July. Now also, as I understand it from the
18 discussion, there's been no agreement as to the number of
19 members of the advisory panel. Have some of these people been
20 contacted and asked to serve?

21 MR. BREGER: Asked if they would be interested.

22 MR. CRAMTON: We have to call time for a few
23 minutes so they can change the tape.

24 [A brief recess was taken]

25 MR. CRAMTON: Is there further discussion?

1 MR. SMITH: I was just saying that if I were for
2 it, I would probably think that the motion should include a
3 maximum number.

4 MR. THURMAN: Do you think it's that vital?

5 MR. SMITH: Well, I think the whole concept is a
6 waste of time.

7 [Laughter]

8 MR. BREGER: You want to make it a delineated waste
9 of time.

10 MR. CRAMTON: Do you wish to suggest any --

11 MR. THURMAN: I would think that this be the
12 approval of the advisory committee to be appointed by the
13 President with any suggestions that members of the board or
14 others want to make to the President.

15 MR. STOPHAL: Well, the President has already
16 commented that he thinks nineteen is the outer limit of the
17 size, Glee, and I think we can count on his good judgment.

18 MR. SMITH: But smaller is acceptable.

19 MR. THURMAN: Isn't it obvious it should be a
20 nineteen-member committee.

21 MR. BREGER: There is some difficulty in the larger
22 only in that that pretty much limits it to people on this
23 list since we publicly stated the list. Why don't we make it
24 25?

25 MR. EHRLICH: That's not part of the motion, is it?

1 MR. BREGER: Well, it was just said to be made
2 part of the motion, which I don't think it should be.

3 MR. THURMAN: I have indicated to you what the
4 present thinking is of the names -- you've got them in here,
5 and the categories from which these names were drawn. If you
6 think there are other categories, other names, well I think
7 you ought to suggest them.

8 MR. ORTIQUE: Question, Mr. Chairman.

9 MR. CRAMTON: All those in favor of Mr. Thurman's
10 motion, please say aye.

11 MR. BREGER: What is the motion?

12 MR. CRAMTON: The motion is for the creation of an
13 advisory panel on the legal services delivery system study to
14 work with the committee on Provision of Legal Services and
15 the staff at their request, provide them with advice, to be
16 composed of members to be selected by the President after
17 considering suggestions by the board and the committee or any
18 others.

19 MR. STOPHAL: I know the question has been called
20 for, but did we establish that it's a reimbursement of
21 expenses basis?

22 MR. THURMAN: Yes.

23 MR. CRAMTON: Except of course some of them are
24 corporate employees.

25 MR. STOPHAL: I understand that, and they will be

1 serving as a committee function.

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

3 All those in favor, please say aye.

4 [A chorus of ayes]

5 MR. CRAMTON: Those opposed, no.

6 [A chorus of noes]

7 MR. CRAMTON: The motion is carried. We should have
8 a division in order to record the vote.

9 All those in favor, please raise your hand.

10 [A show of hands]

11 MR. CRAMTON: Montejano, Ortique, Breger, Thurman,
12 Stophal, and Broughton in favor.

13 Mr. Smith is opposed.

14 MR. SMITH: Mr. Chairman, I'd like to explain my
15 vote because it's the principle involved and not the particular
16 persons. It's my feeling that this kind of creation is
17 unnecessary now and in the future. I think the President can
18 and should call on people of this kind and could do it without
19 creating an advisory council. I think the committee and the
20 President both and the contracting party could all call on
21 these people for suggestions and lots of other people and
22 should do it, but I don't think we need to create formally
23 advisory councils to give them authority to do what they can
24 and should do anyway.

25 MR. CRAMTON: Thank you, Mr. Smith.

1 Does that complete the report of the committee?

2 MR. THURMAN: Yes.

3 MR. EHRLICH: May I make one point about the next
4 month-and-a-half and materials you will be receiving from
5 time to time concerning it. It does seem to me very helpful
6 to read it in the following light: this is a study by the
7 corporation. That's a very important point.

8 Point two is that we do not now have the staff in
9 my considered judgment to do the things that we've contracted
10 with the Urban Institute to do. I don't think we have it for
11 phase one or phase two.

12 Point three is the process we have outlined in the
13 report that you have obtained is a process by which we go out
14 into the community at large and seek proposals, seek ideas,
15 seek suggestions. We are not coming up with them out of
16 whole cloth from our own minds. We are going out to as broad
17 a group as we can and seeking those.

18 When you review the material that you receive,
19 review it in the light that these are proposals from people
20 coming from outside to us, and the purpose of the panel, of
21 course, is to give a set of considered judgments on those
22 proposals, to give us a way to be as sure as we can that what
23 is suggested makes sense or it doesn't make sense and why.
24 That's the process we're going to go through, and I hope at
25 the July meeting you will see that the materials that have

1 been brought together at that time will give us confidence to
2 go with the next phase.

3 Thank you.

4 MR. ORTIQUE: Can I just make my suggestion which
5 is a part of the report? If the staff determines whether
6 this is inappropriate -- and I'd like to know at the July
7 meeting -- why either the committee or I as a committee
8 member cannot request the staff to find a consultant on a
9 part-time basis who will give to me and other board members
10 who may need it advice and counsel as to what's going on in
11 all this business.

12 I'm just asking that that be done.

13 MR. CRAMTON: I'll tell you one reason why we have
14 not yet gotten into the situation of having staff for members
15 of the board, and I don't think we want to. We want to have
16 a staff of the corporation which board members use through
17 appropriate officers and particularly through the President
18 and not have individual board members have their own staffs
19 and end up having eleven staffs, each --

20 MR. ORTIQUE: No, I'm really not talking about one
21 for myself.

22 MR. EHRLICH: Subject to advice of counsel, could
23 not the corporation hire a consultant who would in turn be
24 available as part of his or her consultant service to comment
25 to individual board members?

1 MR. ORTIQUE: For the committee.

2 MR. EHRLICH: But it would be a corporation
3 consultant.

4 MR. CRAMTON: Oh yes, I don't think there's any
5 question about authority. The question that comes to mind is
6 a very serious question of wisdom.

7 MR. THURMAN: Which really is a rather key one.
8 We went on at some length this morning, and I think very
9 sobering thoughts here as to whether --

10 MR. SMITH: Well, it seems to me that the Urban
11 Institute when we contract to them that they're in the
12 position of being a consultant, and then we're talking about
13 hiring a consultant to either protect us from or explain to
14 us what the consultant we've already hired is doing.

15 MR. CRAMTON: That's what it sounds like to me.

16 MR. SMITH: And I don't know why we need a
17 consultant to explain our consultant.

18 MR. CRAMTON: Has the committee completed its
19 report?

20 MR. THURMAN: I think it has, Mr. Chairman, unless
21 someone thinks of anything else.

22 MR. CRAMTON: The next item is supposed to be a
23 report by the committee on Regulations, but Mr. Breger wanted
24 to reach the items in paragraph 4 before he has to leave, and
25 I suggest we go to that, and then come back to the regulations.

1 MR. BREGER: I'm in your hands.

2 MR. CRAMTON: You have until 4:30?

3 MR. BREGER: No, I have until 4:00 o'clock.

4 MR. CRAMTON: Well, then I think we'd better to go
5 item 4, Reports by the President, with unanimous consent.
6 We'll move to item 4, Reports by the President concerning
7 state advisory councils, regional organizations, and support
8 centers, and board members have some materials behind tabs 4
9 and 5 on these matters.

10 MR. EHRLICH: Briefly, on state advisory councils,
11 as you saw in my memorandum to you, governors in 46 states
12 have appointed advisory councils. We have also heard
13 yesterday that four governors of the states of Wisconsin,
14 Florida, Connecticut, and New York have reported that they
15 are now in the process of appointing councils, which leaves
16 Maine, Rhode Island, Puerto Rico, and the Virgin Islands, and
17 we are sending another reminder to those four, and I expect
18 action will come.

19 MR. SMITH: May I ask a question on that point?
20 I contacted you earlier because I've had contacts from
21 advisory councils, and I wondered: now that they are
22 appointed in 46 states, are you making pretty much
23 immediate contact with the chairman of each council or with
24 all members, sending a letter to every member of the council
25 saying, Thank you very much for doing this, and also saying,

1 Here are the responsibilities of the council, including the
2 Act, the regulations, including for the chairpeople some
3 comments about reimbursement of expenses.

4 MR. EHRLICH: The second item, which is the
5 regional arrangements, Charles Jones is here. Charles, why
6 don't you come on up?

7 MR. CRAMTON: Mr. Jones, will you join us, please?

8 MR. EHRLICH: You have his memorandum which has been
9 tabbed 5.

10 MR. CRAMTON: Mr. Jones.

11 MR. JONES: Mr. Chairman and members of the board,
12 I don't really have anything to add to the memorandum that
13 you have. I'd be glad to answer any questions that you have
14 concerning it. Those of you who have had an opportunity to
15 review it, the data which we requested at the time of the last
16 board meeting has been included. It's been reviewed very
17 carefully, and I think the memorandum of explanation indicates
18 the thought process that we went through.

19 MR. CRAMTON: Do you wish to propose a motion, Mr.
20 President?

21 MR. EHRLICH: Were it in my province to propose a
22 motion, I would, but --

23 MR. MONTEJANO: Is there a specific recommendation?

24 MR. CRAMTON: Yes, the recommendation is that the
25 corporation establish the nine regions spelled out in appendix

1 A --

2 MR. EHRLICH: Approve the plan.

3 MR. CRAMTON: Or approve the plan, as stated in the
4 memorandum and appendix A, a plan for nine regions with the
5 regional offices at the points or alternative places
6 indicated.

7 MR. BREGER: Does the plan include the location of
8 the regional offices?

9 MR. CRAMTON: As stated, it does for most of the
10 regions, but for Region IV it says Cleveland or Detroit; for
11 V it says Chicago or Kansas City --

12 MR. ORTIQUE: Cleveland, Detroit, or Washington.

13 MR. CRAMTON: No, you haven't substituted the
14 latest appendix A. There are two appendix As, one that we
15 got in the mail and a later one with the corrections.

16 MR. EHRLICH: It will not surprise you that I would
17 hope the board would move support and approval of this plan
18 rather than going through the details of the specific areas.

19 MR. CRAMTON: Do I hear a general motion --

20 MR. MONTEJANO: Mr. Chairman, I would move approval
21 of the staff recommendations.

22 MR. THURMAN: I'll second that.

23 MR. CRAMTON: You have before you for discussion a
24 motion of approval of the plan of regional organizations
25 stated in Mr. Jones' memorandum with the latest appendix A

1 attached. Is there discussion?

2 MR. MONTEJANO: I had reservations on this
3 obviously at the last meeting and after considerable thought
4 reviewed it and frankly tried to work out some personal
5 obstacles to it. But there's no perfect method, and there's
6 no perfect plan obviously, and it appears that the plan
7 presented is as good as can be conceived at this time, and
8 frankly I think it's a good faith attempt to try and
9 streamline the operation and make it more efficient and more
10 responsive.

11 Clearly, I think the plan would have no problem at
12 all except there are vested interests. We have vested
13 interests, and so people are going to have some objections to
14 it. But once you get past those -- which I think are
15 relatively minor objections -- and take a look at the plan in
16 its entirety, I think it's basically sound. I think it
17 deserves a trying, and if it doesn't work, obviously we have
18 assurances from the staff that they're going to go back and
19 add some modifications to it.

20 I would strongly suggest we go along and see if we
21 can't find a better way to make this move faster and more
22 efficiently.

23 MR. CRAMTON: Further discussion? Are you ready
24 for the question?

25 MR. BROUGHTON: Revius, how does it look to you?

1 Have you looked it over good?

2 MR. ORTIQUE: I've looked it over pretty good. I
3 think we've got those factors in there that we'll want to be
4 looking at what the staff does again and again, particularly
5 come next year, and those are the factors that we want to
6 weigh when we start talking about allocation of funds. That's
7 what I was getting at before, and that's what I'll be getting
8 at again.

9 MR. BREGER: I have one question, if I could. I
10 recognize the difficulty of blocking out regions and the
11 difficulty of blocking out places where to place the regional
12 offices. As you likely know, since you've probably gotten
13 many more representations than I have, there's been a lot of
14 concern in Texas about the fact that the regional office for
15 the region that encompasses Texas and in which Texas is the
16 largest state with the largest number of legal services
17 attorneys is being located in Denver.

18 I appreciate that people in different states
19 probably might want to have it in their state. I was just
20 wondering in deference to those concerns to find out why we
21 have located that in Denver.

22 MR. JONES: Well, in asking the question, I think
23 you have posed the answer. Short of having 50 regional
24 offices, one for each state and one with a location in each
25 state, obviously there will be people who will be dissatisfied.

1 Given the make-up of that region which Texas is in and which
2 Texas also represents the eastern extreme of that region, a
3 region which goes all the way to Arizona -- that is principally
4 the reason.

5 But in addition to that, one of the regional
6 directors who is presently a very effective employee of the
7 corporation is housed in Denver. I'm not sure, with all due
8 deference to Texas, that we could get him to move to Dallas.
9 We just moved him from one other location. He is there. He
10 is effective. He is providing services for the program in
11 that state. We had a likelihood of having a very fine staff
12 in that region which will be representative, and I think will
13 satisfy the aims of the program throughout that entire
14 region, and that's principally the reason.

15 MR. BREGER: Thank you.

16 MR. CRAMTON: Question? Are you ready for the
17 question?

18 All those in favor of the adoption of the proposed
19 regional organization, please say aye.

20 [A chorus of ayes]

21 MR. CRAMTON: Those opposed, no.

22 [No response]

23 MR. CRAMTON: I gather the plan is unanimously
24 adopted.

25 MR. JONES: Thank you.

1 MR. BROUGHTON: Thank you for your patience.

2 MR. CRAMTON: There was a third matter for reports
3 by the President, support centers.

4 MR. EHRLICH: Yes, as I have been mandated to do
5 at each of our meetings herewith my report on the status of
6 support centers, and both Dick Carter and Tony Mondelo are
7 here --

8 VOICE: Carter is on his way.

9 MR. EHRLICH: Carter is on his way if you have
10 questions to ask.

11 You will recall that at our April 23rd-24th meeting
12 I did report that Dick had arrived as head of the Office of
13 Program Support. He will direct the interrelated activities
14 of recruitment, training, technical assistance, clearinghouse
15 matters.

16 You will recall that the National Paralegal
17 Institute requested a hearing to review the preliminary
18 determination not to fund it by grant or contract beyond
19 June 30 of this year. That review process is proceeding in
20 full accordance with our regulations. We did hold two days
21 of hearings on the 13th and 14th. I gather those hearings
22 will resume again, and I want to be sure I avoid any
23 conceivable prejudice to those proceedings by stressing that
24 you should regard any statement I make in this report which
25 has any possible bearing on the Paralegal Institute or the

1 activities it's performed as being contingent on the outcome
2 of the proceedings.

3 Dick Carter has been very busy. He has interviewed
4 the staffs of the three support centers other than the
5 Paralegal Institute and notified those whether or not they
6 are offered employment with the corporation. Thus far
7 nineteen offers have been made to 30 persons who were
8 available for employment at the three centers.

9 He's also been very busy seeking talent from a wide
10 range of varying groups and programs as possible. He's
11 circulated written descriptions of all the positions they
12 know are necessary but as yet unfulfilled. The
13 organizational structure in which those positions fit was
14 developed in close consultation with Nelson Rios who is also
15 here, our chief of administration, with particular regard
16 for maintaining a uniform salary structure within the
17 corporation.

18 I think it's fair to say the directors and staffs
19 of those three centers have been very cooperative in
20 planning and accomplishing the activities such as moving
21 of training materials, library stocks, and the like, to
22 insure that that is done in-house by the 1st of July, the date
23 on which most of the newly hired personnel will arrive.

24 Second, as to the CCH and the Poverty Law
25 Reporter, after some negotiation we did reach an agreement on

1 a contract for the renewal of subscriptions for six months.
2 The contract is terminable if within four months of the May
3 7th effective date we inform CCH of the decision to
4 terminate.

5 That decision in turn will turn on our judgment as
6 to the value of the Reporter, actual programs in the field,
7 and the prospects of publishing under the corporation's
8 imprimatur a reporter document of at least equivalent value
9 to the programs.

10 Using the resources of the clearinghouse, the Bureau
11 of Social Science Research, and our own staff, with a good
12 many insights from others, we have designed a survey
13 questionnaire which will shortly be sent to every lawyer and
14 every paralegal and every program that we fund, and we expect
15 I hope by the end of the month to have the data necessary to
16 make a decision that we can go forward with.

17 In terms of the Reginald Heber Smith fellowship
18 program, you will recall my own strong sense, which was shared
19 I know by many on the board, that we do need to develop a
20 comprehensive, sustained, national recruitment job exchange
21 effort for Legal Services. We have renewed the grant to
22 Howard for a full round of recruitment for the class of 1977
23 so that it will have the time to develop this plan in
24 collaboration with Charles Jones of the Office of Field
25 Services. We made allocations to programs for the renewal of

1 second- and third-year fellows. The conditions of the
2 renewal grant provide for monitoring recruitment and
3 selections done by Howard to enable us to identify the best
4 way in which we can work together for that overall
5 comprehensive recruitment, so as I know the Reginald Heber
6 Smith program now ought to have, as well as we in the
7 corporation will have.

8 MR. MONTEJANO: On that point, several months back
9 I asked for a breakdown as to the number of chicano students
10 that the program had turned out in the last five years. I
11 guess I'm more interested at this point rather than past
12 history, I'd like to know what efforts are being done by the
13 particular school to attract more chicanos into the program?

14 MR. EHRLICH: We do have that, and I thought you
15 had it -- if you don't, I'll see to it that you get it -- the
16 breakdown of those that were chicano in the past years, and
17 further I'll get you the report on what is being done now to
18 try to attract more qualified chicano students.

19 MR. MONTEJANO: I'm not that interested at this
20 point any more on what's past history. I'm more interested
21 in what's going to happen in the future.

22 MR. EHRLICH: Okay.

23 In terms of our own publication and training needs,
24 those matters have been brought inside the corporation.
25 Obviously, the litigation support centers have been doing less

1 and less of that, and the burdens of these activities are
2 being assumed by Dick Carter in the Office of Program Support.
3 He's met with the litigation support center directors to
4 obtain their views, and we will be assessing the needs of
5 programs for future work in training and publications to
6 assure that the centers on one hand and the corporation in
7 terms of training and technical assistance are providing the
8 help that the programs need to meet the needs of their
9 clients.

10 When we turn to the thirteen support centers -- we
11 have not yet signed contracts with them. When we do, I
12 assure you that those contracts will establish the kind of
13 control and accountability that we discussed before. Tony
14 Mondello who is here is assisting me by dealing directly with
15 center directors on the contracts, and he is very optimistic
16 that by the time the month is out that he will have
17 negotiated contracts with the litigation support centers.
18 The process moved more slowly at first than I hoped, but now
19 the process is moving more quickly.

20 Meanwhile, Tony has reported a definite shift in
21 activities of the centers. Much more effort has apparently
22 been placed on counseling the litigation support and less and
23 less, of course, on the activities that are shortly to be
24 phased out altogether, and he's attempting to develop the
25 work schedules within the contracts to regulate those so-called

1 gray areas that we discussed to be sure that they can be
2 attended to in detail.

3 MR. BREGER: Mr. President, I have to excuse myself.

4 MR. CRAMTON: See you in Salt Lake City.

5 [Departure of Mr. Breger]

6 MR. EHRLICH: A number of you asked about
7 university affiliations -- weren't we spending more money
8 than perhaps we had to because seven of the centers are
9 affiliated with universities. We did write to the centers
10 asking them for a review of their relations with the
11 university and particularly whether or not we couldn't save
12 funds through a changed relationship or even a complete
13 dissociation. The reactions have been quite mixed.

14 One center says that in fact university
15 affiliation has resulted in substantial cost savings. Another
16 indicates that university affiliation is much too costly. At
17 least I'm convinced that this process will result in some
18 savings although in some cases it's clear that the
19 university affiliation is a very desirable one.

20 We talked about also the board's desire for
21 consolidation for purposes of efficiency. Tony has visited
22 the National Juvenile Law Center in St. Louis and the Western
23 States Youth Law Center in San Francisco with the purpose in
24 mind of discussing whether or not they might not be merged
25 for purposes of efficiency. His own current judgment is that

1 we shouldn't press for a merger now prior to a full
2 qualitative evaluation of the capabilities of both staffs,
3 in light of the new priorities that they have, and we will
4 have to face those issues as soon as Tony has the
5 opportunity to reduce his own thoughts to writing and focus
6 the issues.

7 Finally, in terms of more major consolidations,
8 we did write last month to our regional directors in San
9 Francisco and Boston asking them to explore the possibility
10 of consolidating support centers on the west coast and on the
11 east coast. At this stage, we're simply seeking information
12 upon which we might make a determination whether or not there
13 could be economies of scale by achieving a major consolidation
14 of the varying centers that are in California, on the one
15 hand, and New York and Boston on the other. We do not have
16 an answer at all in mind but can say, following the board's
17 urging that we explore those approaches, we are doing so.

18 Thank you. Yes?

19 MR. ORTIQUE: Are you in a position to report to
20 us as to the present status of the legislation on the
21 question of support centers?

22 MR. EHRLICH: The legislation, as you know, was
23 passed by the House, the so-called Kastenmeier amendment, not
24 by a two-thirds vote, but by a substantial majority. It is
25 now, as I understand it, in the Senate committee, and I've

1 heard at least of no movement on that front. I think Gail
2 Higgins may be here. With the board's permission, Gail, I'm
3 sure you know, is the staff person in charge of maintaining a
4 Washington brief on that kind of matter.

5 Do you know where it is, Gail?

6 MS. HIGGINS: Well, I know it's in the Subcommittee
7 on Labor and Public Welfare [Inaudible]

8
9 MR. ORTIQUE: Do you get the impression that they
10 may feel we've resolved the problem for them, and they don't
11 need to get into that ball of wax?

12 MS. HIGGINS: Well, of course I've only spoken to
13 somebody on the staff [Inaudible]

14
15 MR. ORTIQUE: No, I understood that.

16 MR. EHRLICH: Other questions, as I said, Tony and
17 Dick are here and available.

18 We only add then that we owe a substantial debt to
19 Tony Mondello for all his work leading up to this effort. I
20 will say and mean that without him we would not be in the
21 position we are, which is a long way toward achieving what
22 the board mandated at our meeting when we focused on this
23 issue.

24 MR. STOPHAL: Realizing it's very difficult to
25 assess what's going to happen in the future, but do you have

1 a sense that the dichotomy that we have established is going
2 to require sensitive monitoring to make sure that they're
3 living within the contract terms of dividing litigative
4 services?

5 MR. MONDELLO: Part of that will depend on what we work
6 out in scheduling, what programs are part of the contract.
7 We can't straightjacket them into telling us, We're going to
8 work on X number of cases or anything like that. We could
9 describe the work in more general terms.

10 But with the facility that Jones ought to have,
11 working through the regional offices, we ought to be able to
12 visit them as often as is necessary to see that they're doing
13 what they're supposed to. I don't anticipate any difficulty
14 there.

15 The one thing I have noticed about right now: they're
16 being extremely cooperative with us. Part of our submissions
17 we're still fussing about is we simply haven't come to terms
18 although this is after all ^{a consensual} (substantial) agreement. They're
19 aware of the existence of the corporation, its mission, and
20 so on, and they're fully aware now as a result of the palabr^{VER}
21 we've had that they must adopt more and more of the supportive
22 role that you wanted them to take, and I think that they'd be
23 willing to do that, and now what we're doing is working out
24 the basic terms.

25 I don't anticipate any difficulty whatever in

1 monitoring or any of the other evaluative exercise that we
2 have.

3 MR. CRAMTON: Thank you, Mr. Mondello.

4 Are there further questions?

5 [No response]

6 That completes item 4, and we now return to item
7 3(c), which is the report of the committee on regulations.
8 We have a number of draft regulations. Mr. Kutak, the
9 chairman of the committee, was unable to be here. The only
10 member of the committee who is here today and who was at
11 the May 28th meeting in Chicago is Mr. Montejano, and he
12 will present the report of the committee.

13 MR. MONTEJANO: Thank you, Mr. Chairman.

14 The committee met in Chicago last week in its
15 continuing effort to draft regulations. We have before you
16 several regulations for your review and hopefully approval.
17 We've had tremendous assistance, guidance, and support from
18 our general counsel, Alice Daniel, and her staff, and without
19 that I'm sure we wouldn't have progressed as far as we have.

20 If you'll take a look at your manual, you have
21 reference to certain sections, and from now on the format
22 will be that you will have the relevant part of the statutes
23 first. There will then be a comment as to the proposed
24 regulations.

25 MR. THURMAN: We have some replacements.

1 MR. MONTEJANO: Yes, we do.

2 The comments will stand. And then the proposed
3 regulation will come behind it. However, all of the
4 proposed regulations have been replaced, so if you will
5 refer to your replacement regulations instead of the ones in
6 the manual which was furnished to you last week, we will
7 proceed on those.

8 There are some questions and some issues which the
9 committee considers long-range policy. Some of them should
10 be discussed in depth. It is the suggestion and the hope of
11 the committee that instead of getting into long, long
12 discussions of some of these questions, especially on section
13 1611, that those particular in-depth discussions be deferred
14 until the July meeting since they do involve long-range
15 policy questions.

16 If, however, the board feels that these should be
17 discussed in depth this afternoon or tomorrow morning, we will
18 be happy to do so.

19 MR. THURMAN: What's one example of that that you
20 think is long-range?

21 MR. MONTEJANO: Our general counsel will show you
22 those points. If you actually take a look at the
23 supplementary memo of comment --

24 MR. CRAMTON: Memo of June 2 -- is in your
25 replacement part file.

1 MR. MONTEJANO: Those issues are drawn up for your
2 consideration right now and your attention. We feel,
3 however, that many of those ought to be deferred until the
4 July meeting. But again, if you feel this is stifling the
5 discussion, we would be glad to discuss them.

6 With that, Alice, you can proceed.

7 MR. CRAMTON: Perhaps one additional remark before
8 we turn to Ms. Daniel: it's my understanding that the
9 committee proposes that all five recommendations be published
10 for notice and comment in the Federal Register, but that
11 really they fall under two separate classes: 1611 in which
12 the corporation does not plan to take prompt action, but
13 plans to invite as broad public comment as possible and to
14 consider the policy issues at some leisure over the summer
15 and perhaps at a public hearing before the September board
16 meeting, and if possible, the committee might then propose
17 the revised regulation on eligibility at that time:

18 But the other four regulations, 1613, 1614, 1615,
19 and 1616, would be published for notice and comment, but then
20 the committee would like the authority delegated to it to
21 review the comments that come in during the comment period,
22 and if the comments do not raise substantial questions of
23 policy which need board consideration, that the committee be
24 authorized to put them into effect. Is that correct, Mr.
25 Montejano?

1 MR. MONTEJANO: Yes, and I believe that the
2 committee already had that ability.

3 MR. CRAMTON: I think it has to get it for each
4 regulation.

5 MS. DANIEL: At the last meeting the board
6 delegated that authority to the committee with respect to
7 the regulations that were proposed at the last meeting, and it
8 was the sense of the committee to ask for that same authority
9 at this meeting with respect to all regulations except 1611,
10 subject, of course, the board's wishes to have any or all of
11 them returned to the board.

12 MR. CRAMTON: We're starting on 1611.

13 MS. DANIEL: I'll start on 1611.

14 As you may recall, at the last board meeting we had
15 a fairly extensive discussion of some of the difficulty and
16 complexity that's presented by the question of attempting to
17 define "poverty," and we recognized that there is official
18 acknowledgement of the inadequacy of all existing measures.
19 But despite that, the corporation has a mandate from Congress
20 to get on with that as best we can, and the committee has
21 agreed on a regulation that should be proposed for
22 consideration by the board.

23 The statutory scheme of the Act contemplates a
24 partnership between the corporation and the local programs in
25 establishing maximum income levels for individuals eligible

1 to receive legal assistance. The Senate report indicates
2 that Congress contemplated that flexibility would be
3 essential because it would be impossible for the corporation
4 to set nationwide levels that would take into account local
5 cost of living differences, and the Act reflects that concern
6 of the Senate by requiring that the levels established do
7 take into account substantial cost of living differences and
8 also of urban/rural differences.

9 One of the things we discovered, as we referred to
10 in the last meeting, is that there is no definition of
11 poverty in current use that does take substantial cost of
12 living differences in different geographic areas into
13 account. The only way of taking those into account, therefore,
14 is to give recipients the responsibility for doing so.

15 The draft regulation proposes that the corporation
16 adopt the OMB poverty level as a national standard, but that
17 it give local programs the authority to deviate by no more
18 than 25 percent in establishing their own maximum income
19 levels. It is anticipated that deviations will occur in both
20 directions, both up and down. That was the experience in the
21 past under OEO and CSA. The income levels that were
22 promulgated were only guidelines, not regulations, and a
23 study of the practice indicates that in the northern and
24 midwestern cities where the cost of living is higher than the
25 programs did set maximum income levels that were above 100

1 percent of poverty levels, but that in areas such as the
2 South where there are substantial populations far below the
3 poverty line, that the limitations imposed by the recipients
4 on resources led the recipients to set their maximum income
5 levels below the poverty line. We anticipate that that kind
6 of sensible approach will continue.

7 We do not -- recipients are not authorized to
8 automatically set the maximum income levels at any point,
9 either above or below the poverty line. The regulation
10 requires the recipient to go through a process of analysis,
11 evaluation of his own resources, of the size of the poverty
12 population at or below different income levels, and of the
13 cost of living in the particular area.

14 I think that that particular approach is both
15 mandated by the statute. I must confess, though, that
16 although I now see that it is mandated by the statute, I owe
17 some thanks to the Office of Management and Budget for
18 bringing it to my attention. They were concerned, in meetings
19 we had with them, with any regulations that would automatically
20 go above the poverty line. They consider it a healthy
21 process and one that we should encourage to have local
22 programs, to require local programs to go through this kind
23 of assessment and analysis of local circumstances, and there
24 are two points in this regulation in which we do impose that
25 kind of responsibility on the local program.

1 The regulation provides for exceptions, three
2 situations in which the recipient may provide legal
3 assistance to a person whose income exceeds the maximum that
4 the recipient has established.

5 The first is one that is required by the statute
6 itself -- that is, the statute requires the recipient to take
7 into account a variety of individual circumstances in
8 determining a particular person's eligibility. Those
9 circumstances are enumerated in 1611.5(b), and they are --
10 some of these factors are mandated by the statute, and others
11 we have put in through the discussion with the committee --
12 seasonal variations in income, liquid net assets, fixed debts
13 and obligations, medical expenses, child care expenses
14 necessary for employment, age or physical infirmity of
15 family members, other factors related to financial inability
16 to afford legal assistance, or conversely, ability to afford
17 legal assistance, and priorities adopted by the governing
18 body.

19 So that for example, if a person walked into a
20 Legal Services office and announced his income that was
21 above the maximum that had been set by the recipient, the
22 recipient would not have to ask the person to leave promptly,
23 but might ask some further questions, and if those questions
24 revealed, for example, that the person had unusually high
25 medical expenses and that after deducting those medical

1 expenses, the person's income now appeared to be below the
2 authorized maximum, then the recipient would be authorized to
3 give legal services to that person, but would not be required
4 to do so.

5 Perhaps before going on with exceptions, it might
6 be worthwhile to point out to your attention that we do have
7 tables in here showing what the income levels are at 100
8 percent of the official OMB poverty line threshold and also
9 at 125 percent. According to information that was furnished
10 to us by OMB, 24 million people, or 12 percent of the
11 population, are included at 100 percent of poverty line.

12 Going to 125 percent would include 35 million, or
13 17 percent of the population. This indicates to me that
14 the kind of leeway that we're allowing may be just about right.
15 Referring to the American Bar Foundation study of the number
16 of people who are poor for the purposes of that study whose
17 legal needs were analyzed, the figure they came up with was
18 29 million people, and in other words, if we adopted a line
19 at 100 percent of poverty line, but gave programs the
20 authority to go above or below if necessary, it's quite
21 possible that the potential eligible population would be
22 somewhere around 29 million. And of course that's only the
23 potentially eligible population because there are other
24 criteria for receiving legal assistance besides the simple
25 one of income level.

1 In determining eligibility -- returning now to the
2 regulation -- a person whose income is below the maximum set
3 by the recipient might nonetheless be denied legal assistance
4 on the basis of the person's assets, as determined by the
5 recipient at the time of intake.

6 The other two exceptions that the committee has
7 proposed to be included are to permit legal assistance to be
8 given to persons whose incomes exceed the maximums set by the
9 recipient if the person is seeking legal assistance to obtain
10 or prevent the loss of benefits provided by a governmental or
11 private program for the poor, or if the person's income is
12 derived in major part from benefits provided by governmental
13 programs for the poor.

14 Again, these people are not automatically entitled
15 to legal assistance if they come within these exceptions.
16 The program would still examine the other factors listed
17 in 1611.5(b) that might indicate that other assets and so
18 on indicated that the person could afford legal assistance
19 from a private attorney and therefore should be denied help
20 from the Legal Services program.

21 MR. STOPHAL: That would permit them to represent
22 someone to prevent them cutting them off of food stamps
23 although the food stamps threshold is \$9800, say?

24 MS. DANIEL: Right, but they would not have to make
25 that decision. They could make that decision, right.

1 The regulation imposes some strict limitations on
2 the representation of groups of clients. The statute does
3 authorize the representation of groups, but there are
4 particular problems that are presented by them, particularly
5 to insure that the groups really do meet the financial
6 eligibility requirements because sometimes individuals who
7 cannot separately afford legal assistance can by banding
8 together afford to hire a private attorney.

9 Therefore, on page 4 of the regulation 1611.5(d),
10 we set forth the particular eligibility requirements that are
11 imposed on groups. The groups must be primarily composed of
12 persons eligible for legal assistance under the Act or must
13 have as its primary purpose representation of the interests of
14 persons in the community unable to afford legal assistance.

15 The reason that we've put this in alternative form
16 is that it's possible that a group of clients might form a
17 non-profit corporation which has no members, and therefore
18 you could not determine eligibility by looking at the
19 membership of the corporation, but in that case the primary
20 purpose of the corporation would be a crucial question.

21 In addition, two members or representatives of the
22 group must establish their own eligibility, and further the
23 group must show that it lacks and has no practical means of
24 obtaining funds to retain a private counsel.

25 MR. STOPHAL: If a lawyer was able to establish that

1 he was eligible, then they could be qualified? It says two
2 members or representatives of the group, and if they hired a
3 lawyer who was eligible under the poverty guidelines, then
4 they could be represented?

5 MS. DANIEL: Well, I think what we have in mind as
6 representatives, there was thinking again of the non-profit
7 corporation situation where the officers might be deemed
8 representatives rather than to be members. I'm not sure that
9 I follow the direction of your question.

10 MR. CRAMTON: The example was proposed of an
11 economic development corporation which doesn't have members
12 that is attempting to advance the interests of poor people in
13 a particular community, and then two members of that
14 community who were eligible poor who were officers of that
15 economic development corporation could serve as representatives
16 who would fulfill the obligations.

17 MR. STOPHAL: I'm a little concerned about the
18 selection of representatives in those situations because
19 anybody that the group designates to be a representative--
20 and since they don't have membership, there could be
21 absolutely no relationship. They're simply eligibility
22 qualifiers, and I'm not sure how to handle it. That's why
23 I kind of --

24 MR. CRAMTON: You could say, or representatives if
25 there are no members, and we originally started, you see,

1 just with two members, and then people came to this example
2 in which there are no members of the group in a technical
3 sense, and we wanted some language to accomplish that. But
4 that was thought of as representatives when there are no
5 people who can be characterized as members.

6 MR. MONTEJANO: The word "representatives" was not
7 put in for the purpose of increasing the scope of the group,
8 nor was it put in to create that certain class of quote-
9 unquote representatives. It was put in because it was an
10 acknowledgment that sometimes a group will not have members
11 as such.

12 MR. STOPHAL: I'm somewhat familiar with this,
13 having served as the chairman of a local board, and we were
14 contacted by a number of groups who wanted representation,
15 and it's a very difficult question because we'd have two
16 churches that would band together to form a daycare
17 association, for example, to take care of children of
18 working mothers, a very worthwhile effort. But then the
19 question is, to what organization do you look to determine
20 eligibility of the group that is formed for eligibility under
21 your guidelines? Obviously, they have the funds to operate
22 on. They can do all kinds of other things. Should they not
23 devote a part of their funds to legal services instead of
24 being furnished free legal services?

25 It's a real difficult question and one that is not

1 are not most concerned about is subsection (4), some positive
2 information that shows that the group lacks and has no
3 practical means of obtaining the funds to retain private
4 counsel.

5 Originally, (3) was put in as what we thought might
6 be a way of safeguarding or insuring that this really was an
7 organization of poor people, but it may be that that's not a
8 very effective way of doing that and that although (4) is a
9 little vague, at least it does direct the attention of the
10 recipients to the kind of concern that Glenn mentioned, that
11 we really want to look at, say, a situation where two
12 churches will band together, that a program might look and
13 say, Well, why can't churches hire the lawyer? Why are we
14 paying for it?

15 MR. STOPHAL: Another situation I'm thinking of was
16 a zoning proposition where a petition for zoning in order to
17 permit apartments was going to be put into a minority
18 community that was primarily single-family dwellings. But
19 right adjacent to that community was a middle-class
20 community of also single-family dwellings, so they got
21 together and said, let's go, and they came to the organization
22 and wanted free legal services. Now, probably a majority of
23 the people -- I don't know whether they would meet our
24 guidelines or not, but they're close, and you could find some
25 representatives, I think.

1 So I think you're idea of taking (3) out might be a
2 good move.

3 MR. MONTEJANO: I agree.

4 MR. SMITH: I'd so move in fact, and we'd renumber
5 (4) as (3) for the reasons I previously mentioned, plus the
6 things that Alice and Glenn have developed. I think it is an
7 awkward and ambiguous criteria really.

8 MR. MONTEJANO: If you delete (3) --

9 MR. CRAMTON: -- less ambiguous. I like it because
10 it seems to me that it does provide some inditia in each
11 case that's solid, that there is at least one or two eligible
12 clients who are there. I just worry that (4) is such a
13 vague requirement that in fact never will be met.

14 MR. SMITH: Well, (1) and (2) insure that there are
15 clients there -- (1) says primarily persons eligible to
16 receive services, and (2) --

17 MR. CRAMTON: I know, but you can have -- those are
18 very slippery words, and you can have a group concerned about
19 ecology that has a list of John D. Rockefellers and so on as
20 members, but the majority of its members are poor people,
21 and still they'd be eligible under (1). (3) was really the
22 only check against that.

23 MR. EHRLICH: (3) wouldn't stop it.

24 MR. CRAMTON: Well, except -- (4) is really the
25 only check, but (3) at least you do know there are at least

1 two eligible clients there.

2 MR. EHRLICH: Don't you know that by (1) also?

3 MR. SMITH: You know that by (1).

4 MR. ORTIQUE: You can have as few as two. Under (1)
5 you would have the larger group.

6 MR. EHRLICH: Assuming it has more than three
7 members.

8 MR. SMITH: I think the insurance you're talking
9 about is included in (1) and (4) together.

10 MR. MONTEJANO: I agree. I really do.

11 MR. CRAMTON: Have you moved to --

12 MR. SMITH: I move to delete (3) and renumber (4)
13 as (3).

14 MR. MONTEJANO: Second.

15 MR. CRAMTON: And Montejano seconds the motion.

16 Is there further discussion on the matter.

17 MR. BROUGHTON: About (4), this is?

18 MR. SMITH: Delete (3).

19 MR. CRAMTON: Delete (3) and renumber (4) as (3).

20 All those in favor of the proposed amendment,
21 please say aye.

22 [A chorus of ayes]

23 MR. CRAMTON: Those opposed, no.

24 [A chorus of noes]

25 MR. CRAMTON: The amendment is carried, and the

1 regulation will be published with (3) deleted and (4)
2 renumbered as (3).

3 MS. DANIEL: Now, 1611.6 is fairly straightforward.
4 It's a direction to the recipients to adopt as simple a
5 method of determining eligibility as possible. The former
6 procedure adopted or subject to approval by the corporation,
7 and of course the eligibility information has to be preserved
8 for audit by the corporation.

9 Subsection (b) states that if there is substantial
10 reason to doubt the accuracy of eligibility information, a
11 recipient should make appropriate inquiry to verify it in a
12 manner consistent with the attorney-client relationship. We
13 don't want to turn our lawyers into welfare investigators. On
14 the other hand, there may be times when it is really
15 essential that a program ask a few more questions than appear
16 on the standard form, and that's the kind of thing that's
17 contemplated here.

18 If a client should become ineligible through
19 change of circumstances, recipients are required to
20 discontinue representation if the change in circumstances is
21 sufficiently stable for the client to obtain private legal
22 assistance, and if this continuation would not be
23 inconsistent with the attorney's professional responsibilities.

24 Now 1611.8 is a section dealing with priorities and
25 is one of the sections that will be necessarily discussed by

1 the board in July as it comes up in relation to several of the
2 topics on the agenda. It's one that stirred a lot of
3 discussion in the committee's meeting in Chicago. As
4 presented to you here, the regulation requires recipients to
5 adopt procedures for establishing priorities in the
6 allocation of resources.

7 The primary reason, of course, for asking
8 recipients to think about priorities at all is because we
9 realize that our resources are too limited to satisfy all the
10 legal needs of the financially eligible population, no
11 matter what eligibility level we choose. Therefore, choices
12 are going to be made. They can be made either rationally
13 through a process of priority determination, or they can be
14 made irrationally through chance and happenstance. We
15 recommend reationality.

16 I mentioned earlier that there were two points in
17 this regulation in which recipients are given the
18 responsibility for a kind of real hard look at themselves and
19 their communities and their clients for an assessment of
20 what they're doing and whether it makes sense in terms of the
21 purposes of the Act and the people who are served. One is in
22 the initial decision of what income level to chose, and the
23 other is with respect to the question of priorities.

24 At the meeting in Chicago, there were some visitors
25 at the meeting who thought that this section should really be

1 dropped and should await determination by the corporation of
2 nationwide priorities. The committee rejected that view for
3 two reasons.

4 One is that the statute does require some
5 establishment of priorities. The second is that the
6 committee was of the view that it would be premature and
7 perhaps impossible for the corporation to now attempt to
8 establish priorities on a nationwide basis. As Bob Kutak
9 said, he liked this approach because he's always in favor of
10 home rule, and what this asks the local recipients to do is
11 to look at a number of factors: their own resources, the size
12 of the financially eligible population, the availability of
13 other sources of legal assistance in any particular category
14 of cases or matters, the urgency of particular categories of
15 legal problems presented by clients, and the general effect
16 of the resolution of a particular category of cases or
17 matters on persons least able to afford legal assistance in
18 the community served.

19 If I may add a footnote that was not discussed
20 particularly at the committee meeting but I've been thinking
21 about since the action with this -- I think that asking the
22 recipients to look at the availability of other sources of
23 legal assistance in particular categories of cases and
24 matters is a particularly salutary thing to do for a number
25 of reasons. One would say in the obvious case, if there is a

1 divorce clinic or something like that available in your
2 town, then the recipient doesn't have to use its resources in
3 that way. It seems to me that the recipient would read this
4 as an invitation to think about ways of developing
5 arrangements with the private bar and perhaps to look at
6 certain categories of cases or matters that could very well
7 be handled by the private bar and encourage them to do so as
8 a way of kind of shifting the load a little bit from Legal
9 Services programs.

10 MR. CRAMTON: I am reminded that there was a
11 division on the amendment, and I failed to ask the members
12 of the board to identify their votes. So if we could have a
13 record vote on that amendment -- all those in favor, please
14 raise your hand.

15 [A show of hands]

16 MR. CRAMTON: Smith, Montejano, Stophal, Broughton,
17 and Thurman in favor. And opposed was Ortique. That's
18 just to clear up the record.

19 MR. MONTEJANO: Mr. Chairman, if we have no further
20 comment on proposed regulation 1611, I would move adoption.

21 MR. ORTIQUE: Your motion is approving for
22 publication.

23 MR. MONTEJANO: Only for publication now. The
24 committee is tentatively considering the possibility of
25 having public hearings on this matter. I do not anticipate

1 that the committee would really take final action on the
2 proposed regulation until, as Mr. Cramton said, sometime in
3 September.

4 MR. CRAMTON: There's no request for a delegation
5 of authority.

6 MR. MONTEJANO: No.

7 MR. CRAMTON: This matter will return to the board.
8 There very probably will be a public hearing held by the
9 committee before it returns to the board, and our only desire
10 now is to publish something that will get a larger public
11 comment on it.

12 MR. MONTEJANO: The committee feels that there is a
13 need for input. It is an important issue. Some issues will
14 be discussed, and I think should be discussed, in July by the
15 whole board, and again we feel the need for further input
16 between now and then by the general community clientele.

17 MR. CRAMTON: In that connection I might mention
18 that at the committee meeting on May 28th in Chicago, of the
19 issues discussed in Ms. Daniel's memorandum, there was a
20 division among the board members who attended on at least two
21 of those issues. One of them is whether we ought to follow
22 the suggestion of Leonard Goodman and adopt the party line
23 100 percent and not allow deviation of 25 percent in each
24 direction. There was one of the board's members present who
25 took that view.

1 And then a second question had to do with one of
2 the authorized exceptions -- that is, to automatically make
3 eligible a person a major part of whose income was derived
4 from governmental programs for the poor, even though the total
5 income was well above the maximum income level -- the point
6 being there the point raised by the OMB in their response that
7 many of these programs are either cumulative or the limits
8 are set much higher than for our purposes may be relevant.

9 So I just mention those because those are among the
10 question which are going to be open in July and which the
11 board will want to consider later.

12 MR. MONTEJANO: There was certainly division on
13 several of these issues, but the recommendation of the
14 committee is unanimous for adoption at this time for the mere
15 purpose of publication.

16 MR. CRAMTON: Publishing for notice and comment.

17 MR. MONTEJANO: So we can encourage comment between
18 now and when the board takes final action.

19 MR. ORTIOUE: With reference to the item that has
20 been stricken, could that be footnoted so we could find out
21 what people seem to -- having struck that, and obviously some
22 members of the committee are not present here, and we won't
23 get the benefit of their reaction as to why it was in there,
24 and now it's out.

25 MR. SMITH: There's only one member absent.

1 MR. ORTIOUE: Okay.

2 MS. DANIEL: Just a comment: the regulation does not
3 make a person who receives benefits from other programs
4 automatically eligible. What it says is that the person
5 would be excused from automatic ineligibility, and the program
6 would still have to go through the process of looking at other
7 factors, so that the person would not be rendered ineligible
8 solely because he or she was above the --

9 MR. CRAMTON: They would have to look at other
10 factors. A program would be free to exempt from automatic
11 ineligibility for the fact that the person's income comes
12 from other governmental programs. They would not need to,
13 but they could.

14 MS. DANIEL: Well, 1611.5, determination of
15 eligibility, really implies to every case of every potential
16 client. That is, all 1611.5 I believe was intended to say --
17 perhaps it's not clear here -- is that if a person comes in
18 the door who is within these exceptions, you don't have to
19 turn the person out the door without making further inquiries,
20 and without 1611.4 the person's annual income would be the
21 only factor that we would look at.

22 This says you can let them in the door and sit down
23 and ask further questions.

24 MR. CRAMTON: But you don't need to ask further
25 questions.

1 MR. MONTEJANO: Needless to say that there was a
2 divergence of views on some of these issues. For that
3 reason; among others, we would like to get some public
4 comment.

5 MR. STOPHAL: I think we'll want to consider the
6 one just above that too also, the one that takes out of
7 automatic ineligibility the mere fact that they're seeking to
8 obtain or prevent the loss of benefits provided by
9 governmental programs. I think we'll want to get comments on
10 that.

11 MR. MONTEJANO: Yes.

12 MR. STOPHAL: I'm not proposing to remove it at
13 this time, but I'll be interested in comments. And also on
14 your definition of gross annual income, how you actually
15 determine that, for what period of time do you take his
16 income, for one month and annualize it? Isn't it really an
17 annualized income and not an annual income you're talking
18 about.

19 MR. MONTEJANO: We covered that point too.

20 MR. STOPHAL: I thought you probably did and that
21 there would be other comments, so therefore I'm not going to
22 raise it today.

23 MR. MONTEJANO: We're not locked into this
24 proposed regulation at this time, but we really need something
25 that we can put out to the public and have comment upon, and

1 then we can as a board digest all of the issues.

2 MR. STOPHAL: It's a very difficult regulation, and
3 what we must I think face is that the majority of the programs
4 out there are simply going to take what we publish, and that's
5 going to be their guidelines. They are not going to take the
6 time to really dig in and do a lot of the things that we say
7 you really ought to do. They just don't have the time nor
8 the inclination to do it, and so we need to be very careful
9 that what we say here is what we are willing to live with when
10 we go out and evaluate them and find out what their guidelines
11 are, we ought not be surprised if it's simply what they find
12 in our regulations.

13 MR. MONTEJANO: Call the question.

14 MR. CRAMTON: Is there further discussion on this
15 particular regulation at this time?

16 [No response]

17 MR. CRAMTON: If not, I will put the question. All
18 those in favor of publishing 1611 for notice and comment in
19 the Federal Register, please say aye.

20 [A chorus of ayes]

21 MR. CRAMTON: Those opposed, no.

22 [No response]

23 MR. CRAMTON: It is done.

24 On to 1613, restrictions on legal assistance in
25 criminal proceedings. I think we'll go until 5:00 tonight,

1 and then break until tomorrow morning.

2 MR. THURMAN: Do you plan on meeting all day
3 tomorrow?

4 MR. CRAMTON: I think we'll be through by noon,
5 unless something comes up that I don't anticipate.

6 MS. DANIEL: Section 1007(b)(1) of the Act
7 prohibits use of corporation funds to provide legal
8 assistance with respect to any criminal proceeding. An initial
9 question we faced was whether we can define the term
10 "criminal proceeding" in a uniform way or whether to leave
11 the term to be interpreted with reference to varying state
12 and federal laws.

13 The committee decided in favor of a uniform
14 definition for a number of reasons. One is that the term
15 appears as part of a provision dealing with other issues such
16 as fee-generating cases, and there of course we did feel that
17 it was essential to define our terms. An advantage of
18 defining the terms is that when we begin to monitor the
19 programs for compliance, we will know what we expect them to
20 comply with.

21 There really isn't that much variation in the
22 definition of criminal proceedings. The chief concern is
23 with those minor infractions that the committee regards as
24 civil in nature that are punishable by no more than a fine.
25 These are things perhaps such as housing, sanitation law,

1 traffic law violations. They are treated as civil in some
2 states and in the monopenal code, and the ABA recommends their
3 removal from criminal codes.

4 Because we believe they are basically civil in
5 nature, we think that we could give representation in such
6 cases without violating the prohibition against representation
7 in criminal proceedings, and as a matter of policy we think
8 that the fines can be so burdensome to a client of a Legal
9 Services program that programs should be authorized to
10 represent clients who do face a fine.

11 Whether a program may choose to provide
12 representation in that category of cases is of course another
13 matter, and here again it's a question of a program's
14 priorities, so all that this regulation would do is to say
15 that representation in such cases is not prohibited, but it's
16 not required either.

17 We also felt that it was necessary to identify the
18 time at which a criminal proceeding begins, and we have
19 defined it as basically -- a criminal proceeding is a
20 proceeding that follows a formal complaint, information, or
21 indictment, charging a person with an offense punishable by
22 death, imprisonment, or jail sentence, but does not include a
23 misdemeanor or lesser offense tried in an Indian tribal court.

24 We put this exception into the definition on the
25 basis of the legislative history that has a definite statement

1 by Congress indicating that they did not intend to prohibit
2 representation of Indians charged with misdemeanors in tribal
3 courts.

4 You also have before you a memorandum from
5 Wisconsin judicare that was sent to us this week. The head
6 of Wisconsin judicare came and made a very eloquent
7 statement before the committee asking for additional
8 exceptions, and the exception that he urged the board to
9 consider is that legal assistance should be provided to defend
10 in a criminal proceeding when the defendant is a Native
11 American charged with an offense involving hunting, fishing,
12 trapping, or gathering fruits of the land and the defense
13 asserted involves treaty rights. John Wiley, the head of
14 Wisconsin judicare, made a very compelling argument to us
15 about the special nature of the kind of legal issues that
16 arise in these cases where there are disputed treaty rights,
17 about the very unique place of hunting, trapping, and fishing
18 to the culture of Indians.

19 The committee was of the view that -- it was my
20 sense that the committee would have liked very much to have
21 been able to accept the recommendation made by Mr. Wiley, but
22 felt that the terms of the statute just didn't permit it, and
23 the legislative history does not mention this kind of thing
24 either.

25 It was stated by the committee that this is the sort

1 of thing that might be taken into account and perhaps that the
2 corporation might want to at some time in the future ask
3 Congress for an amendment of the statute that would permit
4 representation in these kinds of cases. I know I'm not doing
5 justice to Mr. Wiley's argument, which was quite persuasive,
6 but not persuasive enough to overcome the committee's feeling
7 that the statute barred this kind of representation.

8 MR. MONTEJANO: I think on that point it should be
9 made clear that we felt that as a board and as a corporation
10 we should take that specific recommendation to Congress, either
11 in conjunction with other recommendations for modifications
12 of the statute, or possibly even to take this one issue to
13 Congress ahead of time, so I think the staff ought to give
14 that some consideration.

15 MS. DANIEL: If the board wishes, it shall be done.

16 There's a very narrow exception to the prohibition
17 against legal assistance with respect to criminal
18 proceedings, and that is basically when it's part of an
19 attorney's responsibilities as a member of the bar. Therefore,
20 legal assistance with respect to criminal proceedings is
21 authorized pursuant to a court appointment made under a
22 statute or a court rule or practice of equal applicability to
23 all attorneys in the jurisdiction. And as a protection
24 against imposition by courts on our programs, it is added that
25 representation in such cases is subject to a determination by

1 the recipient that representation in those cases is consistent
2 with the recipient's primary responsibility to provide legal
3 assistance to eligible clients in certain matters.

4 The basic reason for this exception is that in many
5 jurisdictions there is no public defender program, and all
6 attorneys practicing in the jurisdiction are expected to help
7 out in representation of criminal defendants since the state
8 does have an obligation to appoint counsel for indigents in
9 those cases.

10 The other exception is when professional
11 responsibility requires continued representation of a
12 juvenile pursuant to the next section, and we'll get to that
13 perhaps in a few minutes. I'm not sure. What we were
14 concerned about here is a situation in which an attorney
15 undertakes to represent a juvenile in juvenile court, and the
16 court then waives jurisdiction so that the case can go into
17 an adult court and becomes a criminal proceeding. The
18 attorney-client relationship has been established and under
19 the code the attorney's obligation of course is to the client
20 and not to the court.

21 Therefore, under the section referred to here, the
22 attorney is asked to make a good-faith effort to withdraw
23 from the case, but is authorized to continue representation
24 unless relieved by the court.

25 MR. ORTIQUE: Unless relieved by the court. Doesn't

1 he have a professional obligation to continue the
2 representation in that type of situation?

3 MS. DANIEL: Perhaps I didn't express it as clearly
4 as I should have. Section 1614.6, which is the last page of
5 the juvenile regulation states that if a criminal
6 proceeding arises out of a case, proceeding, or matter with
7 respect to which a juvenile has received assistance
8 authorized by this part, an attorney should make a good-faith
9 effort consistent with professional responsibility to
10 withdraw from representation in a criminal proceeding, but
11 may continue to provide representation unless removed by the
12 court.

13 Of course, if professional responsibility prevented
14 the effort or the effort could not be made, it would be
15 consistent then and the attorney would not be under any
16 obligation.

17 MR. ORTIQUE: Well, my only concern is that "unless
18 relieved by the court." Once his professional responsibility
19 is established under the code, then it would seem to me --

20 MR. STOPHAL: In our situation, Revius, if you go
21 to juvenile court, it's a civil proceeding. If he is
22 certified to the criminal court as an adult, he's tried as an
23 adult, then the entire proceeding there becomes a criminal
24 offense. The two types of matters are so distinct that it
25 would be appropriate for a Legal Services attorney to ask the

1 criminal court for permission to withdraw on account of our
2 prohibition against representation in criminal matters, and
3 the court would then make the decision as to whether it's to
4 the benefit of the recipient, the client, that that be done
5 or not.

6 MR. ORTIQUE: If the lawyer determines that his
7 professional responsibility dictates that he must remain in
8 this case, then I don't think that the lawyer would be
9 appropriate in saying, Look, court, you decide whether I
10 ought to stay. Once it's established clearly that his
11 professional responsibility dictates that he stays, that's
12 persuasive, it seems to me.

13 MS. DANIEL: Perhaps this is a drafting flaw that
14 should be clarified. I think that it was the committee's
15 understand that if the attorney determined that it was
16 inconsistent with professional responsibility to withdraw,
17 then he wouldn't ask the court to relieve him.

18 MR. ORTIQUE: Okay, fine, all right.

19 MR. MONTEJANO: That's the way we meant it.

20 MR. ORTIQUE: You see what I'm saying.

21 MR. MONTEJANO: I see what you're saying.

22 MR. CRAMTON: It says "consistent" -- should make a
23 good-faith effort. If he's very early in the case, and he
24 knows that because it's been switched to the adult court and
25 a private attorney can not only be appointed but paid --

1 must be appointed -- and there's nothing special about his
2 handling it, then consistent with his professional
3 obligations, he can ask the court to relieve him and should.
4 That's what I think it says.

5 MR. ORTIQUE: What about appeals?

6 MR. CRAMTON: Why don't we hold the juveniles for --
7 we're still on 1613.

8 MR. STOPHAL: We're on criminal right now.

9 MR. MONTEJANO: I would move adoption of the
10 proposed regulation 1613 for publication and further request
11 authority from the board to go ahead and give final approval
12 to the regulation, unless the board felt it was necessary to
13 come back to the board.

14 MR. CRAMTON: After consideration of all publicly
15 filed comments.

16 MR. MONTEJANO: Yes.

17 MR. SMITH: I second.

18 MR. CRAMTON: Is there discussion on the motion
19 with respect to 1613?

20 MR. SMITH: It is the same motion that we made on a
21 number of regulations at the past meeting?

22 MR. CRAMTON: That's right. It contemplates that
23 the committee will consider all comments that are filed by
24 members of the public, that it will make the decision if the
25 comments do not raise substantial policy questions that should

1 be returned to the board. It has authority to give final
2 approval to the regulation and to publish it in the Federal
3 Register as the regulation of the corporation, effective 30
4 days later.

5 Is there discussion? Are you ready for the
6 question?

7 [No response]

8 MR. CRAMTON: All those in favor of the motion,
9 please say aye.

10 [A chorus of ayes]

11 MR. CRAMTON: Those opposed, no.

12 [No response]

13 MR. CRAMTON: The committee has the authority
14 requested.

15 (5:00 p.m.)

16 Juvenile, 1614.

17 MS. DANIEL: The Act contemplates that juveniles
18 will be represented by the Legal Services program, but imposes
19 a number of restrictions that are intended to prevent the
20 Legal Services program from providing legal assistance for a
21 juvenile when doing so would create or exacerbate conflict
22 between parent and child.

23 The regulation tends to follow in a fairly faithful
24 way the restrictions of the statute. There were not too many
25 difficult issues of interpretation of policy presented here.
We made clear that legal assistance may not be provided to a

1 juvenile in a criminal proceeding, as that was defined in
2 the previous part, unless the requirements of the previous
3 part had been met.

4 Subject to that exception and subject to a further
5 exception that's set forth in 1614.3(c), which deals with a
6 situation in which a juvenile has a right to appointed
7 counsel under the decision in In Re Gault, and here it was
8 the thought of the committee that as a matter of allocation
9 of resources corporation funds should not be used to relieve
10 governmental agencies of their financial responsibilities,
11 that in cases in which a juvenile has a right to appointed
12 counsel should be paid for by the state. We say that Legal
13 Services programs should not represent the juvenile, except
14 pursuant to a statute or court ruling of equal applicability
15 to all attorneys in the jurisdiction, or at the request of a
16 court if reasonable compensation is provided to the
17 recipient for furnishing assistance.

18 In other words, it might be that a particular
19 jurisdiction does not have equal applicability, and it might
20 be that many attorneys in the jurisdiction are reluctant to
21 take these kinds of cases, and so we were receiving a greater
22 number of requests than the average lawyer. In that case, we
23 want to make sure that our program was not being taken
24 advantage of, and so we required that the Legal Services
25 program be compensated for the assistance provided.

1 And the third situation in which the program may
2 represent a juvenile is at the request of the juvenile or the
3 juvenile's parent or guardian if no other counsel can be
4 obtained.

5 In general matters, a program may represent a
6 juvenile at the written request of the parent or guardian of
7 the juvenile, or at the request of the official agent of the
8 court or the jurisdiction. Here we follow the statute.

9 The statute indicates that there are certain
10 situations in which a juvenile may be represented without that
11 kind of request. Those are ones involving child abuse or
12 neglect, cases to determine legal custody or guardianship,
13 those in which the court has jurisdiction under statutes that
14 are known colloquially as "kin statutes"; cases involving
15 institutionalization -- all of these you will notice are
16 cases that either do not involve any conflict between parent
17 and child or involve situations in which the parent-child
18 relationship has already broken down so completely that
19 providing legal assistance is not likely to make things worse,
20 but perhaps to make them better.

21 There is one interpretation that we did make, and
22 that's in subsection (b) of 1614.5. When judicial action --
23 the statute provides that legal assistance may be provided to
24 a juvenile to secure or prevent the loss of benefits or
25 services, or to prevent the imposition of services against the

1 will of the juvenile, provided that no juvenile action is
2 commenced against the parent or guardian of the juvenile.

3 Here it was our view that what Congress meant was a
4 non-institutional guardian. The legislative history is
5 explicit in that situation in saying that it is a non-
6 institutional guardian that's referred to, and the
7 interpretation is also provided by another subsection of the
8 provision dealing with juveniles that specifically authorizes
9 a case against institutions -- in other words, that the
10 concern that we may have about the parent-child relationship
11 or about the child-guardian relationship, where there is a
12 human guardian, those kinds of concerns don't apply when you
13 have institutional guardians, and where perhaps the real
14 concern is to make sure that the institution is carrying out
15 its legal responsibilities.

16 And here the final section is the one we've just
17 discussed on the continuity of representation.

18 MR. MONTEJANO: Mr. Chairman, I move adoption of the
19 proposed regulation 1614 for publication and comment, and I
20 further request authority for the committee on Regulations to
21 give final approval to the regulation after the comment
22 period, unless there are substantial policy questions, at
23 which time it would be brought back to the board.

24 MR. THURMAN: Second.

25 MR. ORTIQUE: I'd like to amend the motion to delete

1 that portion which gives the final authority to the committee,
2 because of my concerns about continuing representation of
3 juveniles. And further, I have some questions about section
4 1614.5, and I'd like to have some time to think it over and
5 have the opportunity to come back and have some comments. If
6 I should discover that I don't have any concerns, that it's
7 all cleared up in my mind -- that's 1614.5.

8 MR. MONTEJANO: The amendment is acceptable.

9 MR. CRAMTON: Then the committee would have to come
10 back to the board with this one.

11 MR. MONTEJANO: Yes.

12 MS. DANIEL: I guess there are two things involved
13 here in terms of the representation. One is the attorney
14 would make his own decision whether to seek permission from
15 the court to withdraw. But then beyond that, of course, if
16 the attorney did decide that it was appropriate to withdraw,
17 that the attorney can't do so without the approval of the
18 court, as I understand it, once in the case.

19 MR. SMITH: If I understand this proposed
20 amendment correctly though, it isn't to put it back in the
21 category of 1611 where it would be posed for comment only and
22 not be final adoption. It is in this category of the one
23 we approved before where it is final adoption, but with the
24 idea that if comments raised questions, it would come back to
25 the board.

1 MR. CRAMTON: We're not at the stage of final
2 adoption of anything of these because we have to go through
3 the statutory notice and comment rule-making procedure,
4 which we haven't done yet.

5 MR. SMITH: Except the motion that we just passed
6 on 1613 was tantamount to final adoption. It delegated the
7 authority --

8 MR. CRAMTON: Delegated the authority to the
9 committee to consider comments and to make necessary
10 revisions unless larger policy questions were raised to come
11 back to the board.

12 MR. STOPHAL: Revius, what about just submitting
13 comments to the committee during the 30-day period and
14 convince them that there is a policy question, and they'll
15 bring it back to the board as a matter of routine.

16 MR. SMITH: I'm sure the committee would honor that,
17 and then if as you anticipated a while ago that you satisfy
18 yourself anyway during that period, we would have it ready
19 for final adoption.

20 MR. ORTIQUE: No problem, all right, as long as I
21 make certain that I get the opportunity to raise my questions.

22 MR. SMITH: If your suggestions and comments to the
23 committee are such the language of the motion made by Rudy was
24 such that if the committee determines they should bring it
25 back to the board, they will do so, and certainly if the

1 committee felt that you weren't satisfied, I'm sure the
2 committee would bring it back to the board.

3 MS. DANIEL: May I say we have been soliciting
4 comments from the public on our recommendations. I have been
5 duplicating them and sending them to all members of the
6 Reuglations committee, and with respect to this regulation
7 on juveniles, I will send all of the comments to Mr. Ortique
8 as well, and he could decide then on the basis of that what
9 recommendation to make to the committee.

10 MR. CRAMTON: Members of the board will note that
11 selectively also the committee is forwarding to you comments
12 that it thinks raise policy questions that the board ought
13 to consider -- for example, the memos on eligibility that are
14 attached, the Wisconsin judicare memorandum expresses a
15 policy question which was considered by the committee, but the
16 committee thought it important that the board receive the
17 material on that, and I'm sure they will continue to operate
18 in a fashion that flags the important question for us.

19 Are you ready for the question on 1614, legal
20 assistance to juveniles?

21 Yes, Mr. Veney?

22 MR. VENEY: I would like to ask the board to
23 consider striking the sentence in 1614.3(c) as it reads: "At
24 the request of the juvenile or parent or guardian of the
25 juvenile if no other counsel can be obtained." I would like

1 to see you consider striking "if no other counsel can be
2 obtained."

3 I realize exactly what that does. It opens up a
4 large area so that the juvenile or parent or guardian can
5 come in and request that the program represent the juvenile.
6 I happen to think that In Re Gault may be a fine decision
7 that may lead to some very wonderful things happening in the
8 criminal courts around representation, but not for
9 juveniles, and I don't come to this conclusion lightly. I
10 think it's one of the more important questions in poverty
11 centers not being addressed by the public defender program.
12 Very clearly the defenders may be excellent criminal lawyers,
13 but they do not have the confidence of the community that our
14 programs have. They do not have the feel for the social
15 agencies that is necessary when you're talking about
16 sentencing juveniles. They enjoy the status in many
17 communities of being part of the enemy, rather than being part
18 of the community and looked upon as being helpful.

19 So for many reasons I would encourage you to strike
20 at least that sentence if not that whole section (c) because
21 that's really just a policy decision. The policy decision is
22 being formulated that says, Look, this is in a way a fee-
23 bearing case because in point of fact compensation can be
24 granted by the courts or the state should be providing that
25 and we shouldn't be picking up here for the state.

1 If the other state agencies were doing it well, I
2 wouldn't be rising to it. But they're not, and I'd like to
3 ask that you consider striking that.

4 MR. THRUMAN: But isn't Congress telling us that we
5 have to do this?

6 MS. DANIEL: These are not criminal cases, as long
7 as they occur in juvenile court, so the prohibition against
8 representation in criminal proceedings wouldn't apply.

9 However, it would still be subject to the
10 prohibition against representation in fee-generating cases.
11 I think that we could make a change here that would take Mr.
12 Veney's concerns into consideration -- that is, in an area
13 where there is a juvenile public defender program, but it's
14 inadequate, then perhaps there might be a request from the
15 parent or guardian, and we would say that the program could
16 give representation if no private counsel can be obtained,
17 so still because it's a fee-generating case, it would have to
18 be the attempt to find adequate private counsel. But if that
19 attempt failed, then we would have satisfied both our fee-
20 generating case regulation and this notion that the primary
21 responsibility rests with the state.

22 MR. ORTIQUE: As a practical matter, can that happen
23 in juvenile court? I'm trying to think of a type of case that
24 would raise that in juvenile court.

25 MS. DANIEL: Which particular issue?

1 MR. ORTIQUE: The question of there being no private
2 counsel, and yet be a fee-generating case.

3 MS. DANIEL: In some jurisdictions, there's no
4 juvenile public defender, so the state satisfied its
5 obligations under Gault by making appointment of counsel.
6 And then we would say that appointment has to be pursuant to
7 statute or the court rule of equal applicability or request
8 that the court compensates us.

9 But in a jurisdiction that there is a juvenile
10 public defender, then subsection (3) might have prevented
11 representation because it would not be true that no other
12 counsel could be obtained, and Mr. Veney says that because
13 some of these juvenile public defender programs are really
14 no more than token efforts, that there should be some leeway
15 to permit representation. And I suggest that we could provide
16 that leeway by amending that section to read, "Legal
17 assistance may be provided at the request of the juvenile or
18 a parent or guardian of the juvenile if no private counsel
19 can be obtained."

20 And the method of determining that no private
21 counsel can be obtained would be the same method that applies
22 in any fee-generating case where the program itself where the
23 program itself would attempt to refer to private lawyers, and
24 if they turned the case down -- in other words, they would be
25 asked, would you represent this juvenile either without fee

1 or by request of the court to appoint you.

2 MR. MONTEJANO: Still, however, the discretion of
3 attorney's representation would be with the program. In other
4 words, the program would not have to furnish representation
5 merely because it was asked to do so.

6 MS. DANIEL: Right, that legal assistance may be
7 provided, not must be required.

8 MR. CRAMTON: And that proposed change would also
9 run the risk of getting into the fear which underlay
10 paragraph 2 where the Legal Services programs might turn out
11 to be doing a great deal of uncompensated juvenile defender
12 work, even though the state has an obligation to provide
13 counsel., which is the policy question which was discussed at
14 great length by the committee and resulted in this
15 particular formulation.

16 MS. DANIEL: Correct.

17 MR. CRAMTON: Mr. Veney does raise an important
18 policy question. It was considered at considerable length
19 by the committee, and he's inviting the members of the board
20 to consider it. I guess the view of what the committee is
21 asking is to have the board accept that position of policy,
22 and presumably unless the committee has a change of heart, it
23 would not bring it back.

24 MS. DANIEL: Does the board want to consider that as
25 it appears before them where it says no other counsel, or does

1 it want to consider it with the amendment that says no
2 private counsel?

3 MR. MONTEJANO: I'm amenable to your proposed
4 amendment. I agree that the juvenile problem is a very
5 serious problem and a very real problem and a very dominant
6 problem in these communities.

7 MR. STOPHAL: Let me be sure I understand this
8 thing we're talking about is an eligible client from the
9 eligibility guidelines in a non-fee-generating case, and he's
10 a juvenile, is that what (c)(3) is supposed to cover?

11 MR. CRAMTON: No, we're talking about an eligible
12 client who is a juvenile who is involved in a matter which is
13 subject to In Re Gault and therefore he is entitled -- the
14 state is constitutionally required to provide representation,
15 and they're done so through a juvenile public defender but
16 that is inadequate.

17 MR. THURMAN: It's fee-generating in that sense. I
18 mean, someone else will pay for it, and that's been our
19 philosophy that if someone else will pay for it, why, we
20 shouldn't.

21 MR. MONTEJANO: I'm not even sure you're talking
22 about the qualifications of the public defender program. You
23 are talking about probably a Legal Services program which was
24 more sympathetic and understanding and probably has more
25 support from the community and therefore more confidence from

1 the community in terms of representing a juvenile.

2 MR. STOPHAL: Well, that's exactly what happens in
3 our situation. We don't have a public defender for juveniles,
4 but private attorneys are appointed in juvenile court, and it
5 just happened that a couple of Public Services attorneys
6 became the experts in juvenile law, and they could have
7 stayed in juvenile court all day and all week.

8 MR. MONTEJANO: This was our primary concern. I
9 don't think we were -- those appointments --

10 MR. ORTIQUE: Those appointments are with
11 compensation.

12 MR. STOPHAL: Not at that time. They probably are
13 now, but at that time the juvenile court had no funds to
14 provide payment, and it was part of the attorney's duty.

15 MR. MONTEJANO: Our main concern was that at some
16 point the Legal Services program could become a juvenile
17 defender program, and then the question of allocation of
18 resources does come up.

19 MR. CRAMTON: I'm kind of bothered by knocking out
20 the word "other" and substituting the word "private." It
21 does seem to me that it substantially changes the section
22 from what the committee agreed to. Why don't we wait and
23 have comments on that, and have that question considered by
24 the public. If it raises a major policy issue, then we can
25 bring it back to the board.

1 MR. MONTEJANO: Fair enough.

2 MR. STOPHAL: I would like to receive any comments
3 on that subsection, just for my own edification.

4 MR. CRAMTON: And that's the whole reason for
5 publishing it is in order to get --

6 MR. SMITH: We're ready for the motion, and I
7 understood that Nevius withdrew his amendment and is
8 depending on the confidence of the committee.

9 MR. CRAMTON: Is there further discussion?

10 [No response]

11 MR. CRAMTON: Are you ready for the question? The
12 question is on 1614, publication of that for notice and
13 comment with authority in the committee to pass on the
14 comments or to bring it back to the board. All those in
15 favor, please say aye.

16 [A chorus of ayes]

17 MR. CRAMTON: Those opposed, no.

18 [No response]

19 MR. CRAMTON: 1614 has been -- will be published
20 for notice and comment.

21 Next, prohibited civil representation, 1615.

22 MS. DANIEL: This regulation implements a
23 subsection of the same part of the statute dealing with
24 restrictions on representation in criminal matters and
25 carries it over to restrict certain actions challenging

1 criminal convictions. The only substitute change from the
2 statute that was made was to add the word -- the statute
3 prohibits attacks on convictions that are brought against
4 either officers of the court or a law enforcement official.
5 Most if not all of actions challenging convictions are
6 brought against the custodian of the convicted person, and
7 without adding such persons to the defendants -- the list of
8 defendants against whom actions are prohibited, this section
9 would be meaningless, would have no effect, so the committee
10 did add to the statutory listing a prohibition against an
11 action against a public officer who has custody of the
12 convicted person.

13 Except for that change, the regulation pretty much
14 follows the statute.

15 MR. MONTEJANO: Mr. Chairman, I therefore move
16 adoption of the proposed regulation 1615 for publication,
17 notice, and comment, and again request the authority for the
18 committee to give final approval to the proposed regulation
19 after the comment period, unless there are raised substantial
20 questions of policy, at which point it would be brought back
21 to the board.

22 MR. SMITH: Second.

23 MS. DANIEL: I forgot to say that 1615.3 is not in
24 the statute itself. Here again we've carried over the same
25 kind of limited exception that we had in the restrictions on

1 criminal proceedings and juvenile proceedings, permitting
2 legal assistance in actions challenging criminal convictions.
3 when the conviction resulted from the criminal proceedings in
4 which the defendant received representation from the
5 recipient under the authority of our regulations; or, again,
6 where the representation was pursuant to a court appointment
7 under equal applicability, and once again, subject to the
8 determination by the recipient that such representation is
9 not inconsistent with the recipient's primary responsibility
10 to provide civil assistance.

11 MR. CRAMTON: It's my recollection of the committee
12 discussion of this regulation that this regulation was not
13 conceived to prevent serious policy issues, unlike the one
14 on juveniles that was conceived -- or the one on the Indian
15 conditions that is bound to raise a significant policy
16 question.

17 Is there further discussion on 1615? All those
18 in favor of publishing 1615 under the arrangements mentioned,
19 please say aye.

20 [A chorus of ayes]

21 MR. CRAMTON: Those opposed, no.

22 [No response]

23 MR. CRAMTON: 1615 will be published for notice and
24 comment.

25 Attorney hiring, 1616.

1 MS. DANIEL: Section 1007(a)(8) of the Act requires
2 a recipient to solicit recommendations from the local bar
3 before filling staff attorney positions and to give
4 preference to qualified local applicants. The regulation
5 draws upon part 1607, governing bodies, by requiring
6 recipient to seek recommendations from other appropriate
7 groups, as well as from the local bar.

8 We have also gone beyond the statute by requiring
9 the recipient to apply these procedures when filling any
10 attorney position, not just staff attorney positions, as that
11 term is used in the Act.

12 The regulation requires the recipient to establish
13 qualifications for attorneys and enumerating the qualifications
14 that might be appropriate to a particular attorney position --
15 we drew upon the qualifications that are established for
16 attorney members of governing bodies, for state advisory
17 council members, and from 1006(b)(6) of the Act that requires
18 legal assistance to be provided in the principal language
19 other than English used by significant numbers of eligible
20 clients in a given area.

21 The regulation makes clear what the committee
22 believes is implied by the statute, that local applicants
23 need be given preference only when they are equally qualified
24 with non-residents.

25 MR. STOPHAL: I'm concerned about the straightjacket

1 of "equally qualified." That's just such a difficult term to
2 interpret.

3 MR. CRAMTON: Got any other?

4 MR. STOPHAL: I had put the word "substantially" in
5 front of it just as a modifier, and I don't like it either,
6 but I guess in my experience of hiring lawyers over the past
7 ten or twelve years I've only had one occasion where we had
8 two men that we thought were really just basically equal in
9 the priority of hiring, and so this concerns me just from the
10 view of a local program being attacked on applying our
11 regulation, holding up -- if they hire an outsider, for
12 example, somebody is going to say, Well, I applied, and I'm
13 equal to him.

14 I don't know how you get around that, but maybe
15 somebody in their comments will tell us.

16 MR. CRAMTON: But isn't that made worse by the
17 language you add because that implies that even though there's
18 some discrepancy, and the local resident is somewhat less
19 qualified, he still has to be preferred, whereas the language
20 now allows them to say, the mere fact that the outsider is
21 better is enough.

22 MR. BROUGHTON: I think you've got to leave it as
23 a judgment factor, really when you get down to it.

24 MR. CRAMTON: That's where this tries to be.

25 MR. STOPHAL: Well, see the statute says that you

1 give preference to qualified persons who reside in the
2 community we serve, and I think that if you asked me about
3 my interpretation, I'd say yes, if you have a qualified
4 individual apply for the job, and he's a local resident, he
5 is to get preference.

6 MR. CRAMTON: Doesn't the legislative history,
7 Perkins' statements, indicate --

8 MR. STOPHAL: Now Roger, where the law says
9 something, let's take the law.

10 MR. CRAMTON: Yeah, I know, but it doesn't speak
11 right out in terms of this.

12 [Laughter]

13 MR. CRAMTON: It says, give preference to qualified
14 individuals who reside in the community to be served.

15 MR. BROUGHTON: Equally qualified in your judgment
16 as between the two of them may be different from what Revius
17 would --

18 MR. STOPHAL: Roger made a very good point when he
19 asked me what I would substitute, and I admit that I don't
20 really have anything at this point. But I may during the
21 30-day comment period. I may come up with something that will
22 help us. I'm simply concerned that we not put a restriction
23 on hiring that's going to simply create problems for our
24 local programs when they start in their hiring process, and I
25 think that this is a possibility.

1 MR. CRAMTON: Mr. Miller is trying to get
2 recognized. Do I have unanimous consent to call on him?

3 [No response]

4 MR. CRAMTON: Mr. Miller?

5 MR. MILLER: On a slightly different point, the
6 change from statutory language which uses the word "staff
7 attorney" to plain "attorney" may pose -- along the lines of
8 Mr. Stophal's notion about not making it harder on our
9 recipients -- may pose additional difficulty. I'm not sure.
10 The example of aging grants, or Title XX grants, or other
11 funding sources which make part of the salaries of an
12 attorney in the program, this may impose additional imposition
13 on the hiring of that attorney than might otherwise attach,
14 or is not intended to attach under the statutory language.

15 MR. CRAMTON: That's included in 1616. You can
16 include those requirements in the qualifications for that
17 position.

18 MR. MILLER: I'm saying that you're imposing a
19 set of requirements on attorneys that are hired with other
20 funds.

21 MR. CRAMTON: As long as they're partially engaged,
22 at least, in spending Legal Services money.

23 MR. MILLER: Right, and the Perkins amendment, the
24 statutory language, "staff attorney" focuses on attorneys who
25 are full-time Legal Services Corporation funded attorneys, so

1 that you're actually going beyond statute, beyond what the
2 legislation intended.

3 MR. STOPHAL: We would have to define "staff
4 attorney" if we went into that.

5 MR. MILLER: It is in other places. "Staff
6 attorney" is a term --

7 MR. CRAMTON: But in this context, Perkins and
8 others use "staff attorney" to mean any attorney working for
9 a Legal Services project, if you look at the legislative
10 history.

11 MS. SCHWARTZ: "Staff attorney" is defined in the
12 Act itself.

13 MR. CRAMTON: Well, but it's also used very
14 loosely and with somewhat different meanings at different
15 places in the Act and all of Perkins' talk about what he was
16 trying to accomplish and so on clearly, it seems to me -- if
17 we interpreted that so that the mere fact that a program had
18 a public defender side or got some kind of funds from
19 outside, that they just didn't have any staff attorneys;
20 therefore, they were never subject to the notice with the bar
21 and so on and the preference for local residents, I think we
22 could be justly accused of reading a provision out of the
23 statute that Congress took very seriously.

24 MR. THURMAN: We've changed the statute here. The
25 statute just says all you give preference to qualified persons

1 in the community. You strike that first phrase, and all that
2 you say is the recipient shall give preference to a qualified
3 applicant residing in the community. That would conform with
4 the statute.

5 MR. CRAMTON: But that's impossible to administer,
6 and that isn't what was intended.

7 MR. EHRLICH: You're interpreting what that means
8 by the same regulation --

9 MR. STOPHAL: We're interpreting ambiguous
10 committee reports by what the law says.

11 MS. DANIEL: The statute didn't define what is
12 "qualified," and we don't really either except that we think
13 that the language that says give preference to qualified
14 applicants in the community does suggest that there should
15 be some sort of qualifications established, and I think that
16 in some sense that that's probably a good policy anyway to
17 articulate what the qualifications might be.

18 In response to Mr. Miller's concern, the section
19 does say, "The recipient shall establish qualifications for
20 individual positions for attorneys providing legal assistance
21 under the Act" and that the qualifications may include,
22 among other relevant factors -- and then we enumerate them.
23 And the notion was that for different positions, there might
24 be different qualifications.

25 For example, in a community where there is a

1 substantial number of Spanish-speaking clients, but there are
2 also English-speaking clients, some of the positions might
3 have as a qualification facility in Spanish, but we wouldn't
4 insist that all attorneys in the program speak it. So that if
5 there were funds coming from other sources that suggested
6 that certain qualifications were appropriate or others should
7 be added to qualify for that money, there is room to do so.

8 MR. STOPHAL: In the section 1616.3(e) --

9 MR. CRAMTON: It should be (f) actually, but --

10 MR. STOPHAL: Should it be (f)? Although I'm
11 delighted that the committee changed the first draft where it
12 required that all of these criteria be included and not
13 permits them to be included, I really think that the (f) is
14 inappropriate for regulations, the cultural similarity with
15 the client community. I frankly feel that that creates an
16 additional problem for the local program in interpreting what
17 you're talking about, and in the hiring of attorneys that's
18 something they may want to consider, but I don't think that
19 we ought to include it in our regulation.

20 I move we delete subsection (f).

21 MR. CRAMTON: Is there a second?

22 MR. BROUGHTON: Second.

23 MR. CRAMTON: Mr. Broughton has seconded Mr.
24 Stophal's motion.

25 MR. ORTIQUE: It doesn't make it mandatory though.

1 It says it may include, but doesn't say it has to include.

2 MR. MONTEJANO: It does pose a problem sometimes
3 when -- let's take the Spanish-speaking situation -- when you
4 have someone who has a facility in Spanish but essentially
5 does not come from the same ethnic or cultural background. In
6 your facility in Spanish may not indicate success in dealing
7 with that community. In fact, they may come from a totally
8 different type of background, which will create some
9 difficulties in dealing with that community. These type of
10 programs have to obtain the support of the community to be
11 able to function well.

12 MR. STOPHAL: I think the recipient is better
13 qualified to determine that than I and you, though.

14 MR. MONTEJANO: Right, but I think they should be
15 allowed to put that kind of a qualification on a particular
16 slot if they feel necessary.

17 MR. CRAMTON: Well, there's nothing in the
18 deletion of it that would prevent them from taking it into
19 account. They just wouldn't be under the kind of pressure of
20 this list of items of maybe feeling that they had to include
21 it as a qualification. It's true, it says may. But isn't
22 this covered also by "knowledge and understanding of the
23 legal problems of the poor, by the ability to communicate with
24 those persons" -- and finally by point 6 which is the equal
25 employment opportunity. They've got to conform to the

1 affirmative action program of the corporation.

2 MR. ORTIQUE: Well, I've got some problems with 6,
3 but we haven't come to that yet.

4 MR. MONTEJANO: I don't disagree, but if I agree,
5 then why not delete all of them because therefore the program
6 ought to have total flexibility in doing as it wishes in its
7 hiring program.

8 MR. EHRLICH: For what it's worth, I really would
9 urge that we not exclude it. A good many client groups I've
10 talked to have been concerned about this problem. It is not
11 going to solve the issue for any particular program to
12 include it or exclude it. I realize that.

13 But it is saying, I think, we are aware of the
14 problem. It's a real problem. It is a concern and a
15 legitimate concern, and to the extent we are suggesting that
16 at the very least the programs consider this -- not that they
17 shall establish, but they at least consider it, and I think
18 that's the most a kind of listing like this might do, just
19 raise it for consideration, and I do hope, myself at least,
20 that programs do consider having this factor as well as the
21 others.

22 MR. STOPHAL: I think it just creates an
23 exclusionary factor that permits you to have mediocrity if
24 you want to.

25 MR. CRAMTON: Mr. Veney has asked to be recognized.

1 With unanimous consent, we will hear from Mr. Veney.

2 MR. VENEY: I'd just like to encourage you to keep
3 that, and I'd like to give you two examples as further
4 encouragement.

5 One is the conflict that arises between the Puerto
6 Rican community and the Cuban community in Miami, and if you
7 don't jog the memory of co-workers so that they think about
8 situations such as that, they may inadvertently just presume,
9 as you were saying, that if you put a Spanish-speaking
10 attorney there, it's going to be enough. There really are
11 some very basic differences.

12 And I give you one other example: how is the New
13 York lawyer perceived in Chattanooga, the slick-talking,
14 fast-talking, fast-moving attorney? He is looked upon with
15 something less than comfort by that community, and it takes a
16 certain amount of knowledge of community ways. Again, I've
17 done just a little bit of work in Appalachia, enough to know
18 that I can't work in Appalachia. I'm just not hooked in
19 enough to the mores of the people.

20 For those reasons I would urge you to think about
21 keeping just the reminder -- it's not mandatory, just a
22 reminder that there are cultural differences -- healthy
23 communication through recognition of cultural differences
24 would be salutary.

25 MR. MONTEJANO: Really, it falls right in line with

1 the statutory mandate that you give preference to local
2 attorneys, and this is one of the major reasons, that you're
3 going to have people who understand the community, who are
4 able to work with the community, and can gain the confidence
5 and support of that community, and I really think it's just
6 a natural spin-off of what the statute makes very clear.

7 MR. THURMAN: Why don't we vote?

8 [Laughter]

9 MR. CRAMTON: All those in favor of Mr. Stophal's
10 motion, please say aye.

11 [A chorus of ayes]

12 MR. CRAMTON: Those opposed.

13 [A chorus of noes]

14 MR. CRAMTON: The motion is defeated narrowly. A
15 show of hands -- all those in favor, please signify.

16 [A show of hands]

17 MR. CRAMTON: Stophal and Broughton. Those
18 opposed?

19 [A show of hands]

20 MR. CRAMTON: Smith, Montejano, Ortique, and
21 Thurman.

22 MR. MONTEJANO: Mr. Chairman, I would move adoption
23 of proposed regulation 1616 as presented.

24 MR. THURMAN: I think Revius has got a problem.

25 MR. MONTEJANO: I'm sorry.

1 MR. ORTIQUE: I have a problem with 1616.6. As I
2 read this, and correct me if I'm wrong, but that provision
3 takes into account something less than what we what we have
4 adopted as governing our employees. I'm talking about the
5 corporation's employees. I don't see any reason why
6 recipients ought to have any greater leeway than we have in
7 our own corporation.

8 MR. MONTEJANO: Would it be satisfactory just to
9 delete that section altogether so we would then rely upon
10 the corporate policies already in effect?

11 MR. THURMAN: How do they read? Do they pertain
12 to covering other than our national staff.

13 MR. STOPHAL: Buddy, I don't agree at all. If our
14 affirmative action plan has to adopt the Washington, D.C.,
15 code, which we discussed last time, I do not want to impose
16 that on every recipient organization.

17 MR. THURMAN: This is pretty tight here, isn't it,
18 Revius?

19 MR. CRAMTON: Well, what difference does it make?
20 In what way is it different?

21 MR. ORTIQUE: It says, "And shall take account of
22 the need for affirmative action to ensure equal employment
23 opportunity." I feel strongly that we ought to state
24 specifically that there shall be an affirmative action program.

25 MS. DANIEL: If we struck the word "further" and

1 say "shall take affirmative action to ensure equal employment
2 opportunity."

3 MR. CRAMTON: Yeah, that's better.

4 MS. DANIEL: Strike the words "account of the need
5 for."

6 MR. CRAMTON: They're just surpluses anyway.

7 MS. DANIEL: Right.

8 MR. THURMAN: That makes it neat.

9 MR. STOPHAL: I agree with it.

10 MR. MONTEJANO: That's what we meant. It's not
11 what we said.

12 MR. CRAMTON: With that change agreed to
13 unanimously --

14 MR. ORTIQUE: I'm going to have to get somebody down
15 in Chattanooga to introduce my resolutions.

16 MR. CRAMTON: Are you prepared to vote on 1616?

17 MR. STOPHAL: So moved.

18 MR. CRAMTON: You don't need to. It's been moved
19 and seconded. All those in favor of publishing 1616 for
20 notice and comment with the committee being delegated to
21 consider the comments, and if no substantial policy questions
22 are raised, to promulgate a final regulation. All those in
23 favor, please say aye.

24 [A chorus of ayes]

25 MR. CRAMTON: Those opposed, no.

1 [No response]

2 MR. CRAMTON: 1616 is --

3 MR. THURMAN: Amazing what they'll delegate to your
4 committee, but they won't to ours.

5 MR. MONTEJANO: I'd like to again thank our general
6 counsel, Alice Daniel, for just an outstanding job. She and
7 her staff have really helped the committee in really
8 significant ways, and that's one of the reasons why we get
9 delegation of approval.

10 MR. SMITH: That's right because we didn't get that
11 delegation until she joined the staff.

12 MR. MONTEJANO: Right.

13 [Laughter]

14 MR. CRAMTON: Item 5 on the agenda, authorization
15 under 1006(a)(1)(A)(ii) for a continuation of grant to Merced
16 Legal Services Association.

17 MR. EHRLICH: You have, I believe, the memorandum
18 from Charles Jones and a proposed resolution. As you gather
19 from the memorandum, additional time is needed to work out
20 the arrangements for a direct grant, and it is expected that
21 no more than three months will be needed, and a resolution
22 which will simply continue the authority of the preceding
23 resolution is therefore requested, and it will be through
24 adoption of this resolution.

25 MR. STOPHAL: That would be an extension of three

1 months?

2 MR. EHRLICH: Correct.

3 MR. STOPHAL: I move the adoption of the resolution
4 as presented there.

5 MR. MONTEJANO: Second.

6 MR. CRAMTON: Do you have a copy of the
7 resolution? We would like the full text embodied in the
8 record. It has not been read in detail, but that is the
9 resolution that is before the board.

10 [The full text of the resolution referred to follows]

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

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

21 "Whereas, the Board of Directors has determined
22 that the legal services provided by the Merced Legal Services
23 Association will not be provided adequately through non-
24 governmental arrangements; be it

25 "Resolved, that:

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

6 MR. CRAMTON: Is there a discussion? t

7 [No response]

8 MR. CRAMTON: All those in favor of the adoption of 's
9 the resolution, please say aye.

10 [A chorus of ayes] r a

11 MR. CRAMTON: Those opposed, no. aff

12 [No response]

13 MR. CRAMTON: The resolution is adopted.

14 We now come to the designation of a permanent le.
15 corporate secretary, and you've received the memorandum of at
16 Mr. Bamberger to the Board of Directors.

17 Would you like to present this matter? is

18 MR. EHRLICH: Fine. I think the memorandum spells
19 out the authorities under the bylaws of the secretary. There
20 is with it a resolution that now that Charles Jones is here --
21 and I'll thank the acting secretary of the corporation who can
22 be relieved with appropriate thanks, I hope, and that Charles,
23 who I think is a well-qualified person to serve in that role
24 would take over.

25 MR. THURMAN: I think we owe a very, very hearty

1 had it, but I'm just wondering most corporations do have an
2 assistant secretary for such occasions when the secretary's
3 signature would be necessary, but the secretary would be
4 unavailable and so on, and maybe we've needed on all this
5 past year in fact. So I'm thinking about that question also.
6

7 MR. CRAMTON: We'll take this under advisement.

8 MR. SMITH: I would move the adoption of this
9 resolution then.

10 MR. MONTEJANO: Second.

11 MR. CRAMTON: The resolution is that Charles E.
12 Jones be and hereby is appointed and so on. Do you have the
13 text of that?

14 THE REPORTER: Yes.

15 [The resolution referred to follows]

16 "Resolved, that Charles E. Jones be and he hereby
17 is appointed Secretary of Legal Services Corporation, to
18 hold office at the pleasure of the Board of Directors and to
19 receive such compensation as shall be fixed by the Chairman
20 of the Board of Directors, or his designee."

21 MR. CRAMTON: Discussion?

22 [No response]

23 MR. CRAMTON: All those in favor of the adoption of
24 the resolution, please say aye.

25 [A chorus of ayes]

MR. CRAMTON: Those opposed, no.

1 [No response]

2 MR. CRAMTON: The resolution is unanimously
3 adopted.

4 We have a resolution which has been circulated
5 which expresses in the formal fashion the views that have
6 just been more informally expressed -- that is, the text of
7 the resolution thanking Mrs. Sisson for her service as
8 Acting Secretary, and I would like to move the adoption of
9 that resolution in which we formally express our gratitude
10 and appreciation.

11 MR. STOPHAL: Mr. Chairman, since you relied so
12 heavily on her during the transition period, I think you
13 ought to be given the privilege of making the motion.

14 MR. CRAMTON: I have made it.

15 Discussion?

16 [No response]

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

18 [No response]

19 MR. CRAMTON: Thank you very much.

20 [The resolution referred to follows]

21 "Whereas, Jeannette Sisson has served as Acting
22 Secretary of the Legal Services Corporation since August 4,
23 1975; and

24 "Whereas Charles E. Jones has now been appointed
25 Secretary;

1 "Be it therefore resolved, that the Board of
2 Directors of the Legal Services Corporation shall, and hereby
3 does express its gratitude and appreciation to Jeannette
4 Sisson."

5 MR. CRAMTON: The next item is item 7, proposed
6 schedule of future meetings.

7 [There followed a lengthy discussion of meeting
8 dates, after which the President announced a tentative
9 schedule formulated by the body.]

10 MR. EHRLICH: Could I just read quickly this list
11 as I have it just to be sure?

12 The first one which is agreed is September 17 and
13 18.

14 The next one is November 4 and 5, Thursday, and
15 Friday.

16 Next is January 14 and 15, Friday and Saturday.
17 March 10 and 11, Thursday and Friday.

18 May 13 and 14, Friday and Saturday.

19 July 7 and 8, Thursday and Friday.

20 MR. CRAMTON: We're going to revise the two-day
21 schedule of the July meeting so that a portion of the two-day
22 schedule is devoted to that one issue.

23 MR. EHRLICH: We are scheduled to meet on the 23rd
24 and 24th, which is a Friday and Saturday. A portion of that
- 25 time will be devoted to the delivery system study and the

1 other to the discussion of the broad topics outlined in my
2 memorandum to you, and I know each of you will be working
3 with someone on the corporation staff to develop a
4 discussion agenda for the discussion that you're particularly
5 involved with.

6 MR. CRAMTON: Is there any further business?

7 If there is no objection, we will be adjourned.

8 (Whereupon, at 6:00 o'clock p.m., the meeting was
9 adjourned.)
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