

ORIGINAL

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Transcript of Proceedings

Legal Services

Board of Directors meeting

Washington, D.C.

Saturday, 4 October 1975

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LEGAL SERVICES

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BOARD OF DIRECTORS MEETING

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Room 426
Marvin Center
800 21st Street, Northwest
Washington, D. C.
Saturday, October 4, 1975

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The meeting was convened at 12:42 p.m., Mr.

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Roger Cramton, Chairman, presiding.

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BOARD MEMBERS PRESENT:

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Mr. Roger Cramton

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Mr. Glenn Stophel

19

Mr. Rodolph Montejano

Mr. Glee Smith

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Mr. Robert Kutak

Mr. Samuel Thurman

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Mr. Revius Ortique

Mr. Marshall Breger

Mr. J. Melville Broughton, Jr.

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C O N T E N T S

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P R O C E E D I N G S

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

3 My eyeball appraisal indicates that we now have a
4 quorum.

5 The proposed agenda is before you for today's meeting.
6 And the first item of business is the adoption of the proposed
7 agenda.

8 MR. SMITH: Mr. Chairman, I move the adoption of the
9 proposed agenda.

10 MR. MONTEJANO: Second.

11 MR. CRAMTON: Is there discussion?

12 (No response.)

13 If not, are you prepared for the question? All
14 those in favor, please say, "Aye."

15 (Chorus of "Ayes.")

16 Those opposed, "No."

17 (No response.)

18 The agenda is adopted.

19 The second item on the agenda is approval of Draft
20 Minutes of September 8 and 9 of 1975. These minutes have been
21 circulated to members of the Board. You will find them at
22 Tab 2. They have also been made available in the form in
23 which they were sent to the members of the Board, to members
24 of the public.

25 Do you have amendments, changes, that you propose?

1 (No response.)

2 If not, is there a motion?

3 MR. THURMAN: I move approval.

4 MR. MONTEJANO: Second.

5 MR. CRAMTON: It has been moved and seconded that
6 the minutes of the third meeting of the Board of Directors
7 held on September 8, 9, 1975, be adopted as submitted. All
8 those in favor please say, "Aye."

9 (Chorus of "Ayes.")

10 Those opposed say, "No."

11 (No response.)

12 It is now 15 minutes after the appointed lunchtime.
13 Some of you may be getting hungry. The proposed agenda con-
14 tains a suggestion that the Board may meet in Executive
15 Session during a portion of the luncheon recess to discuss
16 one or more items. One item that has been suggested the
17 Board should discuss in Executive Session involves decisions
18 which have been made by the Transition Staff with reference
19 to the employment of particular personnel of the Office of
20 Legal Services.

21 A second item related to that is the current
22 status of collective bargaining negotiations or other dis-
23 cussions that are underway with union representatives.

24 Are there any other subjects and are there other
25 personnel matters which the Board may wish to discuss in

1 Executive Session?

2 MR. SMITH: Mr. Chairman, did you mention, or did I
3 miss it, the possibility of discussion of guidelines for
4 advisory council?

5 MR. CRAMTON: In the Executive Session?

6 MR. SMITH: Yes.

7 MR. CRAMTON: I am willing to add it if you think
8 appropriate. It is on the agenda for this afternoon's dis-
9 cussion. It is on the public agenda.

10 MR. BROUGHTON: At least the preliminary report.

11 MR. SMITH: It is on the public agenda, but I thought
12 we might want to discuss it briefly. Maybe not; maybe so.
13 I thought we might mention that we might.

14 MR. CRAMTON: You have these four items that have
15 been suggested as a possible Executive Session. Mr. Oberdorfer
16 is suggesting, and I must admit I had the same initial reaction,
17 under the existing By-Law provisions that we have under
18 consideration where we talk about compelling interest and the
19 like, whether the advisory council matter meets that criterion,
20 it is clear that the personnel items that are specified and
21 collective bargaining discussions that involve a certain degree
22 of confidentiality about your whole card and the positions you
23 might want to fall back to or are willing to fall back to do.

24 But this, of course, is a matter that is covered
25 by a two-thirds vote of the Board. And I would--

1 MR. SMITH: I am not pressing it; I thought perhaps
2 you just overlooked it and we should discuss it. But if you
3 don't want to, it is fine with me not to.

4 MR. STOPHEL: I think we ought to limit it because
5 I don't think we are going to be able to discuss fully things
6 that need to be discussed. I would like to hold it over.

7 It has been pointed out to me as Project Directors,
8 we are always 20 minutes after our schedule. So I would like
9 to move we recess until 2:30 which is ten minutes past our
10 20-minute late time, and during the luncheon break, we have
11 an Executive Session of the Board to discuss personnel matters,
12 advisory council relative to bargaining, collective bargaining,
13 agreements, and such other matters as you mentioned, having
14 to do primarily with personnel matters.

15 MR. BROUGHTON: Second the motion.

16 MR. SMITH: I might mention on that time point, I
17 have heard our Chairman explain that what he means by that is
18 we will not reconvene prior to that time, but it doesn't mean
19 it will not be after that time. That is so no one will be
20 taken by surprise.

21 MR. CRAMTON: You have heard the motion. Is there
22 discussion? The motion is to hold an Executive Session limited
23 by Mr. Stophel.

24 I gather there was a second from Mr. Broughton.

25 MR. BROUGHTON: Yes, I second it, sir.

1 MR. CRAMTON: Is there further discussion?

2 (No response.)

3 All those in favor of the motion say, "Aye."

4 (Chorus of "Ayes.")

5 Those opposed, please say, "No."

6 (No response.)

7 I think we have a two-thirds. What is the count?

8 MR. OBERDORFER: You have. The motion is valid.

9 MR. CRAMTON: Then, we will now adjourn for lunch.

10 And we will reconvene at 2:00. It is now 12:45.

11 How much time do we need?

12 MR. BROUGHTON: Why don't we say no later than 2:30?

13 MR. CRAMTON: We don't need more than an hour and a
14 half. Can't we say 2:15?

15 MR. ORTIQUE: Yes.

16 MR. CRAMTON: Reconvene at 2:15.

17 (Whereupon, at 12:50 p.m., the meeting recessed,
18 to reconvene at 2:15 p.m. the same day.)

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AFTERNOON SESSION

2:43 p.m.

MR. CRAMTON: The meeting will come to order.

The third item on the agenda is the Report by the Transition Staff on the Status of the Evaluation of Back-Up Centers. Several Members of the Board have expressed at prior meetings a desire to discuss in a general way the meaning of Section 10683 and as a way of informing the Staff that need to be so informed what the Board tentatively thinks on that subject.

Mr. Oberdorfer.

MR. OBERDORFER: Mr. Chairman, at the last meeting of the Board, there was adopted a resolution which stated that the Board concluded on the basis of reports made to it by the Staff, which reports in turn were based on consultations with informed and experienced lawyers, that it was almost impossible and certainly difficult to determine with confidence whether the Corporation can complete in time for Board action and implementation by March 31, 1976, the studies and consideration necessary to decide about possible alternatives for implementing Section 10683 of the 1974 Act, but that the Corporation believes it can do so by June 30, 1976.

And the resolution further resolved that the Board authorized the Chairman to inform the Director of the Community Services Administration of this conclusion, to take the

1 steps necessary to complete the requisite studies and con-
2 sideration as rapidly as possible and make appropriate law-
3 ful plans to continue those relevant programs in operation
4 until those studies and consideration are available for a
5 decision by the Board; and finally, to report to the Board at
6 each meeting concerning progress in this area.

7 Mr. Chairman, I am making this statement as the
8 Staff report required by that resolution for this meeting.

9 MR. CRAMTON: Before you do, let me interrupt to
10 do something which I intended to do at the outset of our
11 reconvening. I want to report what I should have reported
12 that the Board did, indeed, hold an Executive Session during
13 its luncheon period; that the Executive Session discussion
14 was limited solely to discussion of specific personnel matters
15 and to the receipt of advice of counsel on the pending labor
16 negotiations and no other subjects.

17 With that interruption of this topic, we now return
18 to you, Mr. Oberdorfer.

19 MR. OBERDORFER: Thank you, Mr. Chairman.

20 On September 11, the Chairman directed a letter to
21 the Director of CSA reporting the sense of the Staff
22 indications with respect to their task for solving the problems
23 which confront the Corporation by operation of Section 10683
24 and gently suggested that the businesslike, lawful solution
25 of those problems would be facilitated if the funding of

3
1 Back-Up Centers presently committed to March 31, 1976, could
2 be extended to the date June 30, 1976, which the Staff had
3 indicated and the Corporation confirmed would give everybody time
4 to do their work on this subject.

5 That resolution, the Board recommendation and that
6 resolution, were based so far as the Staff is concerned
7 explicitly and so far as the Board's resolution is concerned
8 implicitly unless it is made explicit by incorporation by
9 reference of the things that the Staff had written on the
10 legal premise which is still to be tested, of course, that
11 when the Congress finally passed and the President signed the
12 Legal Services Corporation Act in 1974, the Congress and the
13 President meant what that Act said -- namely, that the
14 Corporation is authorized to provide -- and I am quoting from
15 Section 1,681A -- financial assistance to qualified programs
16 for providing legal assistance to eligible clients and to make
17 grants to and contracts with defined entities.

18 And then it identifies all kinds of entities that
19 can be parties to those contracts for the purpose of providing
20 legal assistance to eligible clients under this title and to
21 make such other grants and contracts as are necessary to carry
22 out the purposes and provisions of this title.

23 One of the purposes stated in Section 1,001 was
24 purpose two which was based on the declaration that there is
25 a need to provide high quality legal assistance to those who

1 would be otherwise unable to afford legal counsel and to
2 continue the present vital legal services program.

3 And there was a declaration that providing legal
4 assistance to those who face an economic barrier to adequate
5 legal counsel will serve the best ends of justice.

6 Our assumption which we are arranging to have tested
7 by analysis and study is that based in part on the testimony,
8 the oral testimony, and written submission by Carl Eardley,
9 the former Deputy Assistant Attorney General of the Civil
10 Division, that in order to provide high quality legal assistance,
11 it is appropriate and, indeed, necessary that those lawyers
12 who are head-to-head with individual clients on a one-to-
13 one basis have access at some place from some direction to
14 what are referred to as specialized legal services or legal
15 assistance for the purpose of cracking hard problems, in
16 dealing with them, presumably those problems being the
17 problems of eligible clients.

18 And so far as the legislative history is concerned,
19 we think, as we said at the last meeting, that the application of
20 the plain language of the statute, the application of the
21 legislative history to the question of where in the complex
22 of activities now funded by OLS and sooner or later to be the
23 responsibility of the Corporation are there the appropriate
24 specialized legal services which can be deployed lawfully to
25 cause the continuation or improvement of the high quality

1 legal services which the statute commands the Corporation
2 to provide? And we don't know where that specialized service
3 should be located.

4 We also know that the statute, the Green Amendment,
5 requires the Corporation to undertake directly and not by
6 contract a number of other activities -- namely, research,
7 training in technical assistance, and service a clearing-
8 house for information, and that those particular things,
9 whatever they are, are to be done in the Corporation and not
10 by grant or contract.

11 We perceive from the preliminary material that we
12 had available at the last Board meeting that there is a complex
13 factual functional investigation necessary to identify and
14 plan the separation and possible separation out, possibly
15 implementation, in order to carry out this statutory mandate.

16 And to that end, Mr. Chairman, the Staff has in
17 this interim made arrangements to engage the services of a
18 very distinguished lawyer who has had rich experience as a
19 litigator, a corporation lawyer, and having been a partner
20 in a distinguished law firm with a very rich and exciting
21 practice, withdrew from the practice a few years ago as a
22 private practitioner and undertook what has been euphemistically
23 described as public interest law activities.

24 And as an employee of an organization in Chicago
25 entitled, "The Business and Professional Men for the Public

1 Interest," I speak of Alexander Polikoff whom I am going to
2 introduce. I want to say almost by way of disqualification
3 of myself in this selection, although I hope it doesn't
4 vitiate any contract we have, Mr. Polikoff has been a client
5 of mine in the past both in a pro bono matter and also in
6 a very complex, interesting, exciting, business and big league pro-
7 fessional matter involving a tax problem of a large corporation.
8 He was in the Chicago law firm of Schiff, Hardin and Waite
9 for 17 years before he went into the public sector so to
10 speak.

11 As I said, he was a private counsel and a litigator,
12 corporation counselor for the City National Bank in Chicago.
13 He represented the Northwest Mutual and Prudential Life
14 Insurance Companies. And probably the pinnacle of his career
15 was the representation of Bill Veeck in connection with his
16 majority stock interest in a corporation known as the Chicago
17 White Sox.

18 It is my pleasure, Mr. Chairman, to introduce Al
19 Polikoff. And just so you can see his face and how he puts
20 the ball over the plate, he will tell you a little bit about
21 what he has in mind in undertaking this commission for the
22 Corporation.

23 Mr. Polikoff.

24 MR. POLIKOFF: I think, Mr. Chairman, a little
25 disclaimer would be in order -- namely, that I had absolutely

1 nothing to do with the headlines in the Chicago paper this
2 morning to the effect that Bill Veeck has repurchased the
3 Chicago White Sox at least tentatively.

4 Lou called me an embarrassingly short time ago so
5 that I am not as informed as I would like to be about the
6 issues that are before the Corporation for examination and
7 ultimate decision. He has stated them in a way that I
8 endorse, involving as I now understand them not only questions,
9 but factual questions.

10 And in a very tentative way, what Lou and Staff
11 and I have discussed as a procedure is something along the
12 following lines: the 16 Back-Up Centers would be individually
13 evaluated, admitting that the time frame for the decision is
14 a short one. Nonetheless, it seems to us essential to look
15 at each Back-Up Center individually. They are different in
16 size, nature of function, and personnel. And a single con-
17 clusion may well not be applicable to all of them.

18 That presents a question of mechanics. How in a
19 very few months can a thorough examination of 16 disparate
20 organizations be conducted? The tentative and preliminary
21 answer is not to try to do it with a single small group of
22 people. And I have in mind, therefore, the selection of what
23 I am tentatively referring to as a panel of eight distinguished
24 lawyers from around the country, each of whom will agree to
25 serve on an evaluation team respecting two of the Back-Up

1 Centers.

2 Those individual lawyers as chairmen of an evaluation
3 team would be supported by some Corporation Staff, four or
4 five perhaps full-time personnel, to be located here in
5 Washington. And the evaluation teams would include the
6 designation of the respective chairmen on the local Legal
7 Services lawyer and probably another distinguished attorney
8 who is a specialist in the area in which the Back-Up Center
9 focuses-- housing law, welfare law.

10 The panel would operate on the basis of evaluation
11 guidelines prepared in tentative and draft form by myself in
12 conjunction with the staff I referred to and outside con-
13 sultants, but would meet and approve those basic guidelines
14 before they began operating and in each instance would modify
15 the general evaluation guidelines as appropriate to the
16 particular center to be evaluated.

17 Evaluation would include, of course, not only
18 careful examination of extant written material concerning
19 the Center and the Center's work product but interviews on
20 site with Center personnel, Legal Services lawyers, and
21 clients served by the Center.

22 The end product of this stage of the work program as
23 presently envisioned would be 16 different reports on each
24 of the Centers. The panel would then reassemble in conjunction
25 with myself and the Corporation Staff would prepare a

1 comprehensive report based on the 16 individual reports and
2 based on two other examinations to have proceeded concurrently
3 with the 16 individual examinations.

4 One of those would be a careful look into the legal
5 questions, statutory interpretation questions, that Louis
6 referred to.

7 And a second would be what I will call the structural,
8 managerial problems inherent in coming up with a recommendation
9 to this group as to a sensible, rational, delivery system
10 in light of what is going on in the field as disclosed by the
11 report on the 16 Back-Up Centers and in light of the flex-
12 ibility or the constraints that are imposed upon the Corporation
13 by the existing statute.

14 And if that process is rational and if it works
15 well, we would at the end of roughly a five-month period as
16 presently envisioned submit a report to you for your con-
17 sideration.

18 Lou, is there anything you want to add to that?

19 MR. OBERDORFER: I did want to add one thing. One
20 of the reasons why I thought Alex would have particular con-
21 tribution to make to this is this statute requires the
22 Corporation to assume a number of responsibilities directly
23 that are now engaged in by contract. And it looked to me
24 by looking at it that from a legal point of view and a manage-
25 ment point of view, the action to be taken to implement those

1 provisions of the law-- that is, to bring research, to bring
2 clearinghouse, to bring technical training, into the Corpor-
3 ation-- as a legal matter and as a functional matter involve
4 considerations and actions very much like those taken by a
5 lawyer who is effecting a corporate merger.

6 And Al has particular discrete experience in that
7 area of the law and that area of business which would help us
8 do that in a salutary, efficient, sensible and lawful way.

9 Similarly, if there are other services which are
10 now rendered by one Corporation which need to be accomplished
11 by another corporate grantee, those kinds of changes as a
12 contract matter and as a corporate matter require very
13 sophisticated legal advice and action which Alex is peculiarly
14 equipped to provide.

15 MR. CRAMTON: This is an opportunity, gentlemen, for
16 you to address yourselves either to the policy questions or
17 what you think 10683 means and requires to provide some
18 advice and guidance to this study or comment on the nature and
19 form and direction of the study that is proposed.

20 MR. BROUGHTON: Has there ever been, Mr. Chairman,
21 an evaluation or has there been an evaluation in, say, recent
22 years of the Back-Up Centers, which as I understand it is
23 what we are talking about, at least most of which have been
24 in existence for some time.

25 MR. OBERDORFER: I understand there have been some

1 evaluations. One of the things that Alex is going to do is
2 go into those. And they may push him along much further
3 toward-- There haven't been any evaluations in the context
4 of this statute about what to do to carry out this statute.
5 But it may very well be that those existing evaluations will
6 help him to shorten his task and accelerate--

7 MR. BROUGHTON: You say there have been some. Were
8 these done by the OLS Office?

9 MR. OBERDORFER: I think they were more done by
10 Legal Services people. I know of one particular one that I
11 had in my hand this morning that was done by a lawyer I know
12 about from Boston, used to be in Boston, now at NYU. And I
13 haven't studied it, but I don't think it reads directly on the
14 kind of detail that we think is necessary to identify for the
15 purpose of corporate mergers and split-ups and spin-offs that
16 we are talking about here.

17 MR. CRAMTON: Perhaps Mr. Corbett could address
18 himself briefly to this question. To what extent have evalu-
19 ations been done of the support centers in recent years, and
20 are they presently available?

21 MR. CORBETT: I think they were done about three
22 years ago. And I think there is at least one copy, complete
23 copy, available. And I think they were done under a contract,
24 perhaps some of the Legal Service people going on to teams.

25 MR. CRAMTON: Does that answer your question, Mr.

1 Broughton?

2 MR. BROUGHTON: Yes.

3 MR. BOARMAN: Excuse me. These evaluations were
4 conducted during the summer of 1973 for all Back-Up Centers
5 by American Technical Assistance Corporation. At the time I
6 was Director of the Evaluation of Legal Services, we did make
7 the Office of Legal Services conduct an evaluation, I believe,
8 of all the National Back-Up Centers.

9 This was in the summer of 1973. That is the most
10 current evaluation of Back-Up Centers I know.

11 MR. BROUGHTON: Was that an old written report?

12 MR. BOARMAN: Old written reports. The evaluation
13 was performed by a team of an average of five people who spent
14 several days at each Back-Up Center. And each member filed
15 an individual report, and it was an overview, a summary, of
16 the joint opinion of the team.

17 These are available at the Office of Legal Services,
18 I believe.

19 MR. CRAMTON: That's what I understood Mr. Corbett
20 to say; at least one copy was available, which I assume can
21 be photocopied for the purposes of Mr. Polikoff's inquiry.

22 MR. POLIKOFF: I believe there have been some
23 additional evaluations of at least some of the Back-Up Centers
24 by some foundations.

25 MR. CRAMTON: Foundations and external groups. That

1 is my understanding, too. For different purposes, foundation-
2 funding purposes or some other purposes.

3 MR. BROUGHTON: Mr. Chairman, I appreciate the
4 remarks here. We were talking about consultants and guidelines.
5 Are we talking about people that the Corporation would employ
6 to do this work? How would that be handled?

7 MR. POLIKOFF: Development of the guidelines, I
8 want to talk to people who have some specialized experience in
9 evaluations. Frankly, I am not content to rely exclusively on
10 that. I think that when we are talking about the performance
11 of Legal Services, lawyers as well as technicians in the
12 evaluation field ought to have a lot of input. I think that
13 the guidelines that we ultimately develop for these evaluations
14 should be the work product of the Staff that is doing the
15 evaluation for the Corporation rather than something we take
16 from consultants.

17 But I think it would be unwise not to consult with
18 people who have background and expertise in that particular
19 area of work. I assume that those persons will be paid in an
20 appropriate manner by the Corporation on a consulting basis.
21 Some of these outside professionals, I will call them,
22 incidentally, I think, have been used in connection with other
23 evaluations we have referred to.

24 MR. OBERDORFER: Mr. Broughton, I haven't had a
25 chance to talk to you all about this aspect of our Staff plan.

1 And we do have some sort of internal matters to work out.
2 But Tony Mondello has indicated an interest in possible
3 continuing after the transition.

4 You remember in our Staff structure, we have got
5 an evaluation group. And I am frankly a little bit at sea
6 as to how one goes about evaluating programs generally. And
7 Tony has been talking to us informally -- and I think it can
8 be conformed if everything else works out -- about taking the
9 inhouse responsibility for directing from our end the Staff
10 support to Al Polikoff and at the same time using this as a
11 guinea pig, learning more than any of us now know about how
12 evaluations generally ought to be conducted, programs every-
13 where, and start growing that particular capability that I
14 don't think now exists.

15 MR. BROUGHTON: Mr. Chairman, I would just like to
16 suggest this: this is coming to me for the first time as
17 far as this approach is concerned. And I appreciate very much
18 your background and your being here today. And nothing in
19 this is any reflection on that. I am just concerned having
20 gotten into this as one Board member for the first time today.
21 It is before us, as I understand, for approval of this plan
22 as outlined.

23 I would simply like to suggest that we are going to
24 meet tomorrow. I would like to have a little more time to
25 reflect on this and perhaps other Board members, too. To

1 that extent, I just move we have had this report, and as far
2 as any decision is concerned or approval, if that is requested,
3 that we carry this over as an item of unfinished business
4 for some action tomorrow.

5 MR. CRAMTON: As I understand it, this is not an
6 item which is before us for any action today anyway, but
7 merely for discussion and information and for feedback from
8 the Board.

9 As I understand it, the prior resolutions of the
10 Board have required the Staff to undertake the evaluation
11 effort which now today is being outlined. If the Board wants
12 to direct or guide or shape that effort in a way other than
13 what has been suggested, today or tomorrow is the time to do
14 it. We can either discuss it now or if you would like to
15 think and reflect on it and come back to it if it seems
16 appropriate to do so tomorrow--

17 I also thought it might be appropriate to have a
18 few minutes if the Board members thought it would be useful
19 of discussion by members of the public who are here either
20 about this question that has been opened by Mr. Oberdorfer
21 -- that is, what is it that Congress intended -- and then
22 about the procedure that has been proposed or outlined by
23 which facts and evaluations would be obtained which would
24 then try to make this very complex intermeshing of law and
25 policy with the real word that is out there and what is being

1 done and what has to be done to meet the requirements of law.

2 Mr. Kutak.

3 MR. KUTAK: Gentlemen, I would hope that perhaps
4 part of the design plan might have in mind at least an
5 eventual necessity for some promulgation of a resolution.
6 and it might very well bear in mind the requirements that your
7 committee and this Board will eventually have to face in terms
8 of some appropriate implementing regulation.

9 And while I am not asking you to do our work or the
10 work of a team that would actually be doing the regulation
11 drafting, there might be some very valuable communication here
12 with respect to inputs from the study that would bear or could
13 bear directly on the considerations of counsel who will be
14 undertaking the eventual appropriate draft of such regulation.

15 MR. SMITH: The point I was going to make, I think
16 you covered, Mr. Chairman. Actually, there is nothing before
17 us for action today. It is just a status report on action we
18 took last meeting.

19 MR. CRAMTON: But it is open to the Board to give
20 further direction to the Staff on this subject.

21 MR. SMITH: I understand Mr. Broughton to suggest
22 maybe we were being asked to take action, and we are really
23 not.

24 MR. CRAMTON: He wants to reflect on this and maybe
25 give advice tomorrow.

1 MR. BROUGHTON: That's what I meant.

2 MR. CRAMTON: That's perfectly appropriate.

3 MR. BROUGHTON: As I see this, what I understood the
4 resolution to mean -- and I realize the timeframe is handi-
5 capping -- we are involved in other things and could be
6 involved in outlay of appropriated funds which I am not saying
7 at this point I oppose or not. But I would just like to reflect
8 further.

9 And perhaps our counsel would like further expres-
10 sion of attitude as far as this particular phase of the
11 matter is concerned from the Board. I just wanted additional
12 time to reflect on that and we come back tomorrow and discuss
13 this tomorrow.

14 MR. OBERDORFER: That's very good.

15 MR. CRAMTON: Would the Board like at this time
16 to reflect on it and to hear briefly from some members of
17 the public?

18 MR. BROUGHTON: I was getting ready to suggest
19 since some of the members of the public are here today and
20 may not be able to be here tomorrow, we want to hear
21 from them.

22 MR. CRAMTON: As I understand it, there is unanimous
23 consent to hear briefly from members of the public who are
24 here on the question of what the 10683 in the context of the
25 privileges of the act means or the procedures that have been

1 outlined that the Board or Staff intends to address.

2 MR. STOPHEL: May I ask one question first before
3 we go to the public? Has our counsel definitely construed we
4 have no difficulty with continuing the programs as they
5 presently exist beyond October 13 during this evaluation
6 study?

7 MR. OBERDORFER: On the basis which they have been
8 continued-- namely, by action of the Community Services
9 funding them through March 31. I have no difficulty with that.

10 MR. STOPHEL: But they would become subject to our
11 regulations relative to certain of the restrictions under the
12 act? Do we construe that the contracts making grants not
13 only to Back-Up Centers, but do our projects immediately
14 become subject to some of these restrictions regarding the
15 activities of Legal Services attorneys and others?

16 MR. OBERDORFER: I have a practical answer to that
17 question, Mr. Stophel. I don't know how a court would
18 decide with respect to our standing to proceed administratively
19 or in court against a grantee who acted between October 13
20 and March 31 in violation of the new statute. But I would
21 think that any grantee who was supposed to be engaged in the
22 practice of law would not have to be hit over the head with a
23 hammer in order to identify his liabilities and responsibilities
24 under the law and what Congress intended to be done and do it.

25 What the legal rights are, I don't know.

1 MR. CRAMTON: And indeed, they might vary depending
2 upon the provision of the statute and facts involved.

3 MR. OBERDORFER: We can test all that out. I think
4 that we have questions about, for example, the prohibitions
5 in the statute against desegregation cases and abortion cases
6 and things like that.

7 For what it is worth, and I am not saying how the
8 law will reach those who do things that the law says shouldn't
9 be done, but they ought to be able to read the law just like
10 somebody administering the law as a Government Officer ought
11 not to have to be sued in order to understand what his duties
12 are.

13 MR. STOPHEL: They can just assume that be said.
14 Because I feel the same way that a grantee who after October
15 14 commits as an action that is contrary to the statute under
16 which we are operating, when it comes grant-making time, I
17 think that is going to face him as far as I personally am
18 concerned.

19 MR. OBERDORFER: You sound like you are on the Senate
20 floor.

21 MR. STOPHEL: I happen to be right here.

22 MR. CRAMTON: Are there more comments from members
23 of the Board?

24 (No response.)

25 Are you prepared to hear briefly from the public?

1 Are there public comments?

2 MR. RAY: Denison Ray of Durham, North Carolina.

3 We in the field, of course, have been working with
4 Back-Up Centers for many years and have built up tremendous
5 residue of, I think, insights and opinions of our own with
6 respect to the various Centers, the mechanisms and the like.

7 I hear Mr. Polikoff allude to the inclusion of a
8 Legal Services attorney on each evaluation team. At least
9 that's how I understood it. But I did not hear any identification
10 of an effort to obtain any broader reflection of the experi-
11 ence and opinions that the field possesses.

12 And I wondered whether it was your intention to
13 undertake such effort and if not why not.

14 MR. OBERDORFER: I haven't had an opportunity to
15 warn him yet, Denison.

16 MR. RAY: That is probably as good an answer as
17 any.

18 MR. OBERDORFER: The intention is to act like a
19 sponge and absorb whatever information is available in the
20 time frame and certainly not limit the input insofar as Legal
21 Services are concerned to one selected attorney to serve on an
22 evaluation team of one particular Center.

23 I haven't in all candor explored in any depth the
24 mechanics by which that broad statement ought to be made.

25 And it ought to include, incidentally, the client community

1 as well as Legal Services lawyers.

2 And what essentially has to be figured out is how
3 the evaluation team can get the most information in the short-
4 est time in the most usable way.

5 MR. CRAMTON: I might add the Board has already had
6 the advantage of three very helpful documents on the subject
7 and will undoubtedly receive more. It has received a very
8 large packet of materials. I am not quite sure from either
9 PAG or Olds Bugg or NLADA or all together or through Allen
10 Houseman, all of which have been extremely valuable.

11 It received a lengthy memorandum and other attach-
12 ments from a lawyer in Eugene, Oregon, by the name of John
13 Jakeler, and it has received a very extensive legal opinion
14 which up to now and still remains confidential which has gone
15 to members of the Board. And we hope that there will continue
16 to be other materials available from interested people.
17 And we are taking them all into consideration.

18 Mr. Boarman.

19 MR. BOARMAN: Marshall Boarman of the Community
20 Services Administration.

21 You have not yet received an official communication
22 from CSA with respect to your resolutions, have you?

23 MR. CRAMTON: I have not received a response from
24 my letter to Mr. Diegos of September 11.

25 MR. BOARMAN: I am on the Staff of the CSA, and I

1 can't speak officially as to what their position is going to
2 be, but I have reason to believe it is going to be a favorable
3 response.

4 MR. CRAMTON: The Board would be gratified by that
5 because it thinks this problem is a very difficult one in
6 which time is extremely important.

7 MR. BOARMAN: As I say, I can't speak for CSA, and
8 if it turns out not to be favorable, don't blame me. But
9 I do apologize for the agency in terms of not having the
10 answer at this meeting. Possibly we will be able to get a
11 response before you break up tomorrow.

12 It seems to me that there are these papers on the
13 table that you mention; that the critical question is what
14 does the Green Amendment mean; and that simultaneously with the
15 look at the factual side and what the Back-Up Centers are doing,
16 there should be a strong effort for the Board to resolve
17 this question as to what the Green Amendment means and what
18 activities it applies to.

19 There is the possibility it applies to only some of
20 the functions and activities of Back-Up Centers. It is also
21 possible it applies to all of them. And I think that this should
22 be an open discussion.

23 Is there any timetable for inviting witnesses?
24 Are there going to be public hearings for people to make formal
25 presentation or comment?

1 MR. CRAMTON: The subject was open today within the
2 very short time limits that are available. And I assume they
3 will be revisited from time to time at every Board meeting as
4 the Staff reports, as it must in my understanding, at each
5 Board meeting on the status of this study.

6 And what we envision is a kind of back and forth
7 process by which the Board gradually gets a deeper under-
8 standing of policy. At the same time, it gets deeper under-
9 standing of what Back-Up Centers are doing and what functions
10 are involved until finally we are able to put it together.

11 But you are welcome to speak to the question of
12 policy now.

13 MR. BOARMAN: I was just interested in the time frame.
14 If the Back-Up Centers are extended through the 30th of June
15 and if there is difficulty then in further forward funding
16 them because after October 13 the CSA is no longer involved --

17 MR. CRAMTON: We will be having at least three
18 Board meetings, I expect, within the five-month period that Mr.
19 Polikoff is talking about. And assuming they are able to
20 meet that schedule, I think his report is going to be available
21 for consideration by the Board in February.

22 And sometime at least three months prior to when the
23 grants would expire, the Board would have to be moving very
24 quickly to terminate activities which needed to be terminated,
25 relocate other activities, reshuffle, undertake activities

1 itself that needed to be carried on, and the like.

2 MR. OBERDORFER: I certainly assume with the full
3 opportunity for public discussion of the law and the facts.
4 Because that is what this report will be. It will be a legal
5 and factual opinion really about what the Corporation should
6 do and how it should do it to comply, carry out, the Green
7 Amendment. And that is a debatable subject.

8 And the report certainly ought to be made public
9 and allowed the fullest opportunity for debate of it. That
10 should be provided.

11 MR. CRAMTON: We have had conflicting views on some
12 of these questions already -- that is, the meaning of training
13 and technical assistance in the Green Amendment and what
14 that encompasses and the meaning of research.

15 MR. BOARMAN: Will the Staff react to what it has now
16 and come out with its own recommendations or position, the
17 Transitional Staff, by some date and make it available to the
18 public?

19 MR. OBERDORFER: Mr. Boarman, we reacted on the record
20 at the last Board meeting with a paper and an oral presentation
21 by myself and by Mr. Eardley. At that Board meeting, we
22 received -- we didn't have the benefit of it beforehand --
23 the material that you all gave to the Board members. And we
24 haven't had a chance to react to that, publicly, that is.

25 It is answered, sort of anticipated in a way, in

1 the paper already written and available. That document and
2 any other point of view should be made available to Mr. Poli-
3 koff in connection with his study. And I invite you to make
4 friends with him and be as persuasive as you can and infor-
5 mative as you can with him.

6 MR. BOARMAN: Thank you.

7 MR. CRAMTON: Well, if there is no further discussion
8 on this topic, we will leave it for now subject to the
9 possibility that Mr. Broughton may want to raise the matter
10 again tomorrow.

11 MR. BROUGHTON: Or other members of the Board.

12 MR. CRAMTON: Or other members of the Board for
13 further discussion by the Board which would result in more
14 explicit directions to the Staff in what you do next.

15 Thank you very much, Mr. Polikoff for joining us.

16 MR. POLIKOFF: Thank you.

17 MR. THURMAN: Mr. Chairman, could I just raise one
18 matter? I suspect insofar as the last half of this hall is
19 concerned sometimes it seems like we are in perpetual Executive
20 Session. I think there is a great deal of difficulty in
21 hearing what is going on here. And maybe we ought to keep that
22 in mind occasionally. There are people here who are very
23 interested in what the Board is doing.

24 MR. CRAMTON: The next item on the agenda, No. 4,
25 is labeled Report by the Chairman on Alternative Delivery

1 Systems. Actually, what we have in mind is there is going
2 to be a presentation by more than the Chairman. But let me
3 fill you in on a meeting that was held on September 18, 1975,
4 in which a group of interested individuals gathered here in
5 Washington to discuss in a preliminary way several questions.
6 And the questions that were discussed were, first, what is
7 the mandate that was laid on the Corporation by the section
8 of the Statute, 1007G which requires the Corporation to make
9 a "comprehensive independent study of the existing staff
10 attorney program and through the use of appropriate demonstration
11 projects of alternative and supplemental methods of delivery
12 of legal services to eligible clients, including judicature,
13 vouchered, pre-paid legal insurance, and contracts with law
14 firms."

15 There are several questions about what was intended
16 the Corporation do which were discussed.

17 A second question on the agenda for that meeting was
18 what information about existing and alternative delivery systems
19 is readily available? What form is that information in?
20 And how reliable is it?

21 A third question that was discussed was what new
22 information does the Corporation need to develop within the
23 two-year period of the study in order to make recommendations
24 to Congress? And there was detailed discussion of whether or
25 not the two-year period was a realistic period in which

1 demonstration projects could be mounted, research designs
2 carried out, and information produced.

3 And then finally, there was discussion of the more
4 practical level all directed toward the question that if the
5 Corporation was to go to Congress for a supplemental appropri-
6 ation request for fiscal '76 or to include alternatively a
7 request for funding in fiscal year '77 submissions to Congress,
8 it would have to have a fairly clear idea of what it wanted
9 to do, how it was going to staff it and carry it on, and how
10 much it was going to cost.

11 We had a very interesting and useful discussion.
12 I must say it was inconclusive on most of these questions,
13 although there was a consensus in general that the experiments
14 that had been carried on thus far had not been scientifically
15 designed and did not provide sufficient information as a basis
16 for reliable conclusions to compare, say, the staff attorney
17 system with various variance of staff attorney systems and
18 open market systems, to say nothing about the almost total
19 absence of information or experimentation with the poverty
20 group of pre-paid insurance vouchers and similar plans.

21 So there was a general conclusion that although a
22 lot of work could be done with existing data, existing studies,
23 to try to find insights there that perhaps would be useful
24 and suggestive, past studies have not produced conclusive
25 quantitative results on the relative cost or effectiveness of

1 staff attorney approaches, Judi-care approaches or certain of
2 these other alternatives that are mentioned in the statute.

3 There was a great deal of discussion for the need
4 of the Corporation to identify criteria to have a notion of
5 what its vision of legal services was and what was important
6 see that you had criteria which could be tested and examined
7 in experiments and demonstration projects that were set up.

8 It was emphasized again and again that unless you
9 know what you are looking for, you can't really test anything.
10 So some hard thinking by the Corporation and Board and its
11 Staff was necessary even to mount designs that would produce
12 useful information.

13 And there seemed to be, I think, a general conclusion
14 that although some existing data could be re-examined and
15 evaluated, although a start could be made in the production
16 of new information by mounting demonstration projects and the
17 like, it was unrealistic to think that conclusive results would
18 be produced in a two-year period three months of which is
19 already gone and which it would take at least three or four or
20 maybe six months to mount demonstration projects, obtain the
21 funding for them and mount them, then six months subtracted
22 from the other end to analyze results, all of which leaves
23 less than a year for the conduct of a demonstration project
24 itself; and that the Board would probably be in a situation
25 inevitably of getting started on something and making an

1 interim report on the basis of after two years with more
2 conclusive and final recommendations following along at a
3 later stage.

4 The Office of Legal Services of Community Services
5 Administration has entered into contracts with the Urban
6 Institute, and the Urban Institute has done a substantial
7 amount of prior thinking. And there are some representatives
8 of the Urban Institute here who want to make a brief presen-
9 tation of the thinking and work that they have done.

10 Is Miss Vogt here?

11 Why don't you come up here at some convenient
12 place where you can be seen and heard by members of this
13 group?

14 Miss Leona Vogt and Mr. Richard Schmidt, both, have
15 been engaged in this effort to determine what it has to do
16 in the study to carry out this mandate of 1007G.

17 Miss Vogt, just go ahead, please.

18 MISS VOGT: This is preliminary for the purpose of
19 limiting the presentation.

20 MR. CRAMTON: You are going to have to speak up.

21 MISS VOGT: We were asked to make a brief presentation
22 on the alternative Legal Service delivery study which we
23 have been involved in for over a year. There are three things
24 I just want to address briefly.

25 (Miss Vogt used a chartboard throughout.)

1 One is the legislation. And Dean Hardy addressed
2 some of the issues which were significant in relation to the
3 study.

4 Second, the Urban Institute work which we have done
5 to date on the evaluation design.

6 And third, the decisions that are left and that are
7 needed to finalize the design and implement the study.

8 First of all, there are three important aspects of
9 the legislation which we have been looking at and struggling
10 with which affect the study design. First of all, the
11 delivery systems identified. There are five again that were
12 mentioned in the legislation only two in which there are
13 operational programs in existence. There are none in the pre-
14 paid voucher and contracts to law firms areas which are
15 addressed primarily to the floor.

16 Secondly, the 107G does not identify any measures
17 to be used in the study. And there are no program goals
18 identified in the legislation which obviously has to be
19 addressed in order to determine what evidence would be used
20 in a study in which these comparisons would be made.

21 And the third one again was mentioned by the Chair-
22 man, the two-year reporting requirement to Congress. This will
23 affect the design considerably.

24 The preliminary results of the Urban Institute work
25 are in the brown-covered document which the Directors

1 received. Some of the major ones which we presented in that
2 document are, first of all, that only two models exist; that
3 the data are presently insufficient to produce conclusive
4 results and valid comparisons of these strategies.

5 We interviewed over 90 members of the Legal Services
6 community to find out what evidence they would accept in a
7 study like this, and we did come up with a consensus on the
8 types of measures to be employed, but not on the specific
9 measures to be used in the study.

10 We concluded that new projects were needed in order
11 to make these comparisons in particular additional judicature
12 projects and the contracts' vouchers and the pre-paid. If
13 those comparisons are going to be made, we felt that three
14 years would be necessary to come up with definitive results.
15 However, some information would be useful in two years at
16 the reporting time.

17 We laid out in that report various design operations
18 for the Corporation. And based on those options, we came up
19 with just sketchy ideas of what could be tested based on the
20 models selected and the measures to be used. And those are
21 presented in a way for the Corporation to carry forward.

22 We also concluded that because of the methodological
23 problems in previous studies, because of the controversy that
24 had gone on in relation to those studies, the measures should
25 be tested to find out if the data could be collected or can

1 be collected, and if collected properly interpreted or at
2 least to the satisfaction of the Corporation.

3 So we were asked by the Office of Legal Services to
4 carry forward the evaluation without preempting the decisions
5 of the Corporation to test the measures we identified in the
6 design book. So far, we are in this study right now. We will
7 finish December 31 of this year. So we are finishing some
8 data collection and working in the analysis of it.

9 What we have done is select field-test projects
10 which would collect the data. We did this with the Office of
11 Legal Services. We did not try to create a statistically
12 valid sample. We merely tried to get a mix of projects in
13 order to test the procedures in large Staff projects, both
14 Staff and judicature projects and projects that are in urban
15 and rural areas.

16 We created an external advisory panel. And the
17 purpose of that was to involve members of the Legal Services
18 community in the design and get Federal backing without the
19 Corporation Board. We wanted to make sure we at least had
20 some larger input outside of the Institute and the Office of
21 Legal Services.

22 This group has met and reviewed our initial analysis
23 plans. They are also participating in the test of our peer-
24 review assessment. We are almost completed with the client-
25 satisfaction survey to test the client-satisfaction measure

1 which is simply were you satisfied with the services you
2 received in the program?

3 The hypotheses we are testing in the field test are,
4 first, will the projects cooperate in getting consent from the
5 clients and signatures from the clients in order to conduct
6 the interviews? Will the clients be willing to be interviewed?
7 If yes, is it possible to find them after a given period of
8 time? And if you find them, will they answer the series of
9 questions?

10 We are now testing the results of the survey. We are
11 also testing two methodological approaches, one a face-to-
12 face interview, and secondly an in-person interview to deter-
13 mine if telephone interviews produce the same quality of data
14 at a lower cost. We are using Urban Institute Staff trained
15 in survey research and also students we have trained in the
16 project communities and of course universities in those areas
17 to conduct surveys.

18 This part is almost completed. We are beginning the
19 analysis on the survey results. Peer-review assessment is the
20 approach that we are using to measure quality of services
21 provided in the program. It is a slight misnomer in that we
22 are using attorneys to assess Legal Services attorneys, but
23 they are actually assessing the services provided.

24 So we have developed structured interview instruments
25 in which the team of two attorneys interviews and discusses

1 the work of the attorney around cases he has handled, around
2 closed cases, open cases, advice-only cases, without, of course
3 access to those cases. They are using a rating system. And
4 what we are trying to test in this peer-review in the field
5 test is, first of all, will attorneys or projects be willing
6 to be interviewed?

7 Second, can different attorneys rate in a similar
8 way or would they assess them the same way?

9 And third, after the field work is over, will the
10 members of this panel find that this is a valid test of
11 quality of service?

12 And based on their conclusions and the work that we
13 do, we will make recommendations to the Corporation on this
14 strategy as a test of quality. We are testing data collection
15 forms in the Legal Services projects.

16 By the way, I am sorry, I should have mentioned we
17 are doing all these in both Staff and judicature projects. We
18 are testing data collection forms to get at cost and access.
19 And these forms try to, or we are trying to, document several
20 things.

21 One, the range of services provided and the range of
22 problems identified, meaning the nature of the case. Because
23 those two factors will affect cost considerably. So it would
24 be very important to know what goes into the cost either total
25 cost, cost per case, or cost per client.

1 Those are the three major cost measures we are test-
2 ing.

3 Access was a topic -- I don't want to call it a
4 measure -- which caused a great deal of controversy in our
5 early interviews. Because there are so many definitions you
6 can use. One is obviously geographic access. Are clients
7 from a broad area being served equally well in two or three
8 different strategies?

9 Another is psychological access. Are there any
10 reasons why clients feel they either do not have the ability
11 to use the system or they do not use the system? Or are there
12 services that clients are denied, meaning they are denied
13 access to service because of either the type of problem or
14 client or some other unknown thing?

15 We are looking at the distribution by case type
16 which we will get through our reporting system. We are also
17 looking at the services that are denied clients where clients
18 are rejected either because of program guideline or because of
19 other reasons. And we are also looking in an exploratory way
20 -- we can't do any analysis obviously with a small sample size,
21 but the client satisfaction survey to see whether they feel
22 either they will not use the service again or they feel they
23 were denied service if that happened to be the case.

24 There were three additional measures that we identified
25 in the design paper which we were not testing. And we were

1 not testing them actually because the Office of Legal Services
2 requested we not test them. One was the access measure that
3 stems out of awareness of legal needs, translating that into
4 use of service.

5 The reason why we are not doing that is because the
6 American Bar Foundation is in the middle of study on legal
7 needs, and they are actually sampling some of the citizens in
8 that poverty community or that poverty level. So there was no
9 need actually to test that procedure since all we are doing
10 is conducting a test.

11 Another one was called impact on the poverty commun-
12 ity. And we are not testing that because of the possible
13 changing nature of the program. And we are getting infor-
14 mation in the peer-review on impact work or what the
15 attorneys consider to be major pieces of work they have done.
16 But we are not using it to get at impact on the poverty com-
17 munity. We are trying to use it as a measure of quality of
18 service.

19 And the third one that we are not testing is client
20 preference. The reason why we are not doing that is because
21 there was no existing operational setting in which we could
22 go in and actually ask clients about a choice of service
23 because there is no place where-- well, there are now in
24 West Virginia places, but they were just beginning when we
25 started -- but where you could actually ask a question

1 about knowledge of two services and which one the client
2 would prefer.

3 As I said, our report will be finished December
4 31. The Chairman has identified, I think, all the decisions,
5 maybe not organized in this fashion, but decisions that are
6 left before the study can be implemented, before the final
7 decision can be set.

8 One is clarifying the legislative intent. And in
9 particular, the thing that we seem to consider a very
10 important issue is the two-year reporting requirement. How
11 is that to be viewed? Is it the final report and so forth?
12 That will affect how much money obviously the Corporation
13 would even want to request and how they introduce the
14 Act.

15 Second, selection of research design. In that, the
16 study objectives would have to be set. And the reason why we
17 list this separately, one objective obviously is response to
18 Congress.

19 There is another possible use of the study results.
20 And that is to manage the Legal Services program. And so
21 there would have to be some very specific decisions made about
22 what information is wanted in regard to the program operations
23 before the design is finalized. The specific strategies would
24 have to be identified.

25 The number of those strategies, the number of

1 replication of those strategies -- in other words, the quality
2 of results -- would be a factor. All those things have to be
3 determined, and plus the operational models would have to be
4 developed before the program was put out in place or before
5 this study actually begins.

6 The Corporation would have to select the measures
7 to be used, any set of measures, all of which have costs
8 related to them.

9 And then finally, determination would have to be made
10 about funding levels and the staffings and so forth to support
11 the study. And this could happen in an incremental way,
12 either deciding what to do here and how much it will cost,
13 or going to Congress and deciding how much one is going to get
14 and what you can buy for that.

15 MR. CRAMTON: That is a very useful presentation.

16 Do members of the Board have questions of Miss Vogt?

17 Mr. Kutak.

18 MR. KUTAK: Mr. Chairman, I can't think of a bigger
19 challenge that the Board has. And perhaps a bigger service
20 that this Board is going to render, not only to the community
21 that it traditionally serves and will, I hope, continue to
22 serve, but to the legal profession at large.

23 Not only do I think will this study help us perhaps
24 more intelligently understand how to manage the Legal Services
25 program, but really how to interface with the entire legal

1 system and profession.

2 I, for one, was heartsick that I was away the day
3 that interim conference was held because I feel that it is a
4 mission that I would have liked to have had some better aware-
5 ness of by that experience.

6 I first wanted to report to the Board that a week
7 ago, the President of the American Bar had his annual what he
8 calls leadership conference. He calls together the chairmen
9 of all of the committees of his association to converse about
10 where the Bar is going and what it is doing. And in that
11 regard, I had the opportunity at his invitation to report on
12 this undertaking which many in that group were aware of, but
13 many were not.

14 And I can tell you that the ABA was extremely inter-
15 ested in this work. And I believe I can speak with some
16 confidence that to whatever degree and whatever extent that that
17 one association among many associations of our profession
18 can contribute, can have, will be available for us to have.

19 And in that regard, I found to my surprise not only
20 for the traditional committees working such as the Consortium
21 Committee and Standing Committee on Legal Aid and Committee on
22 Specialization and Committee on Pre-paid Legal Services, but
23 I for the first time discovered there was a Committee on
24 Delivery of Legal Services. And that in itself had a committee
25 constituted to undertake some serious effort in this regard.

1 And the chairman is a very conscientious man and is,
2 I am sure, going to be a very effective leader.

3 So I bring, first of all, to the Board the report
4 that one association -- and I am sure it was only reflective
5 of many Bar Associations and legal groups -- is going to be
6 extremely interested because I think they not only feel this
7 contribution they can make, but I think they realize the
8 consequence that this study will have on one large sector of
9 the public whom we serve.

10 And I really hope, Mr. Chairman, that as this thing
11 progresses, you in your leisure can find the ways and the means
12 of structuring perhaps another committee that will be given
13 equal status with the other committees that are working to
14 seize advantage of the opportunity we have.

15 I for one am not concerned about the two-year
16 deadline. I think if we even have an interim report for the
17 Congress, if we have a transitional report, if you will,
18 providing to them the work product that has been developed and
19 indicating the directions of our thinking, this will be
20 helpful.

21 I think it would, indeed, be presumptuous that we
22 could come to any ultimate conclusions as to any really con-
23 sequential decisions like this committee, this task force,
24 is going to face and resolve. So I am not really worried, I
25 think, about the shortness of the time. It is enough that I

1 hope will be a spur, and I hope it is enough so it will be
2 treated seriously enough that we will have ready some report
3 for the Congress by that two-year period which will touch the
4 various bases that you have alluded to -- evaluation, certainly
5 some tentative indication and some long-range planning.

6 But I think that to the degree that I was aware of
7 their reasons for putting this provision in the law, it will
8 be all the more reason for us to proceed with all deliberate
9 speed, but to be very deliberative in our thinking processes
10 and that we should take as long as we need, as long as we can
11 justify that we are using the time well, and, of course, the
12 money wisely.

13 But I for one, Mr. Chairman, would like to reflect
14 that I don't think there is any one single undertaking that
15 we could have to make a contribution to the community of the
16 poor whom we represent, but the profession at large, that
17 will affect that than this study. And I hope that we can in
18 the next two or three months as the Urban Institute begins
19 to bring its recommendations to a close be ready to interface
20 and have a well thought-out design plan that will maybe be
21 in the long run the gratest contribution we can make.

22 MR. ORTIQUE: I would just like to comment that I
23 agree with you fully, Bob. This is a tremendous responsibility
24 on the part of this Board. I know that there are groups such
25 as the Legal Aid and Defender Committee that had a violent

1 reaction some years ago to any thought of any other delivery
2 system, other than the one that had been initiated by Legal
3 Services. But I am certain that those attitudes have changed
4 to the extent that they understand that there must be a proper
5 evaluation of all of the possible delivery systems.

6 And certainly the one that everybody reacted to,
7 judicature, is not the only other system to compare the law-
8 office type delivery system to. And I think that an even
9 greater responsibility that this Board must face up to is that
10 there is a large segment of the population that is concerned
11 about delivery to them that is outside of the jurisdiction of
12 our particular responsibility. And there will be some emphasis,
13 I am sure, in the Halls of Congress to do something about that.
14 Because they probably represent a group almost as large as
15 the group that we are responsible for.

16 That being true, it seems to me that we have the
17 additional responsibility to make sure that our objectives
18 are not diluted by an effort on the part of legislators to
19 represent what they view as their constituency, for example.

20 I am particularly concerned that those areas that are
21 presently under-represented, talking about the southeast and
22 south, where there are large enclaves of poor people that are
23 not represented at all, do not find that their Congressmen
24 because of the hue and cry on behalf of middle income or lower
25 middle income people feel, "Well, we have got to equate what

1 we are doing under this act with what we propose to do under
2 another act."

3 So that we do have that tremendous responsibility,
4 and I would suggest in addition to the obvious responsibilities
5 that we be ever alert to any diminution of our objectives or
6 our interest on behalf of the people that we serve.

7 MR. KUTAK: If I could take just one more minute,
8 Mr. Chairman.

9 MR. CRAMTON: Please.

10 MR. KUTAK: The one disappointment I left at the
11 American Assembly that was in Palo Alto in June is that I
12 thought we were just echoing what was heard in '64 and '65
13 and '66 with alternative methods of delivering legal services.
14 No new ideas came out. No new additional dimensions were
15 explored. We were sort of that Assembly was just kind of
16 rethinking the authorities of the McAlpin Committee on the
17 availability of legal services and other groups ten years
18 before.

19 I thought to myself, "Here is a challenge to really
20 make no little plan as Mr. Burnham once said and really be sure
21 we are not just simply retracing some innovative thoughts
22 and testing them, but to see whether we can find other vehicles
23 that surely haven't yet been tried."

24 And I am very eager whether it is the illegal clinic
25 or variations of that because I don't think we can classify

1 categorically our constituency. I think it is a shifting
2 constituency and a moving constituency. And I dare say if
3 the needs are identified, it is going to be a very enlarging
4 constituency. And we have to be very, very sensitive to
5 combinations and variations of these themes.

6 I hope, in other words, when we design this program
7 and as we develop this program, we don't approach this program
8 with any fixed, formally and set methodology; that we really
9 do some very daring thinking and experimentation. Because I
10 think we are going to need it in order to serve ultimately
11 the constituency we are charged with serving.

12 MR. CRAMTON: These aren't what I would call questions,
13 but you have some comments.

14 MR. KUTAK: Do we have a copy of this report?

15 MR. CRAMTON: It has been sent to you. You should
16 receive the brown document and also a subsequent memorandum
17 that is a summary of the subsequent field test.

18 MR. KUTAK: I am very interested to see it.

19 MR. CRAMTON: There also is in your folder a sub-
20 stantial Staff memorandum that purports to provide some
21 background on various prior studies of the same questions as
22 a way of informing members of the Board about some prior
23 studies that have been made and what they either do or don't,
24 mostly don't, show.

1 MR. BREGER: I want to agree with both the comments
2 of Revius and Bob and say I think this is clearly one of the
3 most important tasks we have at hand and that our brief should
4 not be limited to the two-year mandate by Congress to con-
5 sider within that time some alternative delivery mechanisms,
6 but rather to take the opportunity and the possibility provided
7 to us by the creation of the new Corporation to rethink and
8 take a creative approach towards the future of Legal Services
9 generally and possibly to move beyond the work that was done
10 in the sixties in this area.

11 In that regard, I think it is very important that all
12 of the Board members begin to consider and be thinking about
13 these issues continually. At some juncture, we are going to
14 have to make a report to Congress. At a later juncture, we
15 are going to have to hopefully implement some of the new ideas
16 and innovations that we may have developed.

17 And I think we ought to consider having almost the
18 same sort of continual report to the Board on this matter that
19 we have set up on a temporary basis in regard to the Back-Up
20 Center matter.

21 I think it is also important as Bob suggested that
22 we begin to develop a mechanism for committee consideration of
23 these matters so that all views and concerns can be ventilated
24 for this report to the Board.

25 So I would suggest that we strongly consider asking

1 that the Board or strongly consider ourselves setting up a
2 committee on this subject and asking the Chairman to do so at
3 the appropriate time that he feels that enough work has been
4 done so that we can begin to recurrently raise this theme and
5 have us engage in bold thinking on the subject.

6 My concern is that we begin the interface between
7 Board thinking and Urban Institute thinking as soon as possible
8 rather than wait far along into the period where we have to
9 begin to develop our report to Congress.

10 MR. CRAMTON: I hope we can begin it today. I am
11 all in favor of bold thoughts and creative thoughts and
12 innovative thoughts and imaginative thoughts.

13 MR. KUTAK: Would you like some specific thoughts?

14 MR. CRAMTON: It is kind of lofty, and I keep asking
15 the questions which thus far I haven't gotten much help from
16 anyone, either the Legal Services community or the Board,
17 although the Board, I will admit, hasn't been directly asked
18 the question of what it is the Board intends to ask from the
19 Congress in terms of a supplemental appropriation request.
20 That is at least a specific question.

21 We have told the Congress we were going back with a
22 supplemental appropriation request for fiscal 1976 which would
23 contain a request for what we thought was needed in this
24 current fiscal year for alternative delivery systems study.

25 That is a very specific question in which you have to come up

1 with a dollar figure and then for hard-headed Congressmen who
2 don't necessarily believe in research with great enthusiasm
3 justify how you are going to spend that money and in what way
4 and what will it produce.

5 And that is a specific question that may not be very
6 imaginative or creative, but it is specific.

7 MR. BREGER: Mr. Chairman, I would like to move, then,
8 possibly this Board create a committee on the future of Legal
9 Services with the mandate of reporting recurrently to the
10 full Board on issues relating to new approaches toward Legal
11 Services and the alternative delivery systems generally at
12 each Board meeting until instructed otherwise.

13 MR. BROUGHTON: I will second that.

14 MR. STOPHEL: Who is going to serve on such a
15 committee?

16 MR. SMITH: Isn't the Committee on the Future of
17 Legal Services almost too general?

18 MR. BREGER: My only concern was that such a com-
19 mittee would not limit itself solely to what can be done within
20 the confines of the two-year mandated study.

21 MR. SMITH: I was just thinking the committee might
22 more appropriately be limited to more alternative delivery
23 because the future takes in the whole realm of responsibility
24 of the Board as a whole. I think a Committee of the Whole
25 on the Future of Legal Services--

1 MR. BREGER: I would take that amendment, then.

2 MR. KUTAK: A Committee of the Whole really doesn't
3 advance us very far.

4 MR. BROUGHTON: I seconded the motion. While he
5 said he would accept that, I was not planning to. I would
6 agree with Bob, you still have the whole Board.

7 I was impressed with the letter of the 22nd. Bob
8 was maybe the only one who didn't receive it in which he
9 outlined his thoughts with respect to this separate committee
10 of the Board.

11 MR. SMITH: My point was we tend to get general, and
12 we don't accomplish. If we talk about the whole general future
13 of Legal Services, I don't know if we pinpoint it to get
14 reaction as if we pinpoint it in one area.

15 MR. BROUGHTON: My assumption was if such a committee
16 were to be created by the Board, it would first focus in on
17 the requirements, Congressional requirements, of the alter-
18 native delivery study. My concern was that it would not limit
19 itself to that; that it would think boldly and freely and begin
20 to sensitize the Board to more long-range possibilities if
21 they should exist.

22 So it was not the intention that such a committee
23 would simply return with general statements of the order of
24 American Assembly statements, but that it would first focus
25 in and deal with the Congressional mandate, but it would go

1 beyond that and in cases where things could not be accomplished
2 in two years, think about those things as well.

3 MR. KUTAK: Mr. Chairman, in that regard, is the
4 Urban Institute's ultimate study directed to this end? Is it?
5 Is the idea for it in its December 31 report to in effect
6 have a design for what ought to be the kind of study that
7 is mandated here?

8 MR. CRAMTON: They have prepared one proposal which
9 is dependent as Miss Vogt has said -- and she can correct me
10 if I am wrong -- on first, it tests only two models. It
11 compares staff attorney systems with certain variants of
12 judicature or combinations of judicature with staff attorney
13 systems.

14 Second, it is dependent upon judgments and criteria
15 that the Board would have to make about what are the
16 outcome measures of the criteria by which the results are
17 to be judged. And they are field testing some to determine
18 whether or not they can be tested. And there may be others
19 that need to be added.

20 And three, it is a very ambitious proposal which
21 though it could be carried out at various forms, if it is
22 going to be scientifically valid carries some very large
23 dollar figures.

24 MR. BREGER: My concern would be we would not want
25 to limit a Board committee just to consider the immediate

1 problem or one proposal, but to report back to the Board on
2 varieties of proposals and varieties of new thinking on the
3 subject.

4 MR. SMITH: Well, my concern was that the charge
5 would be so general they wouldn't focus on the immediate needs
6 and specifics.

7 MR. BREGER: I hope we can rely on the Chairman to
8 do that.

9 MR. THURMAN: Section 1007G is pretty broad when you
10 read that. It seems to me if we had a committee to study the
11 mandate under 1007G, we would accomplish everything that
12 Marshall is talking about.

13 MR. ORTIQUE: Why don't we postpone giving the
14 charge to the committee? The sense of this Board is that
15 we need a committee of this Board to focus on the objectives
16 or the mandate given to us by the Congress. And we don't
17 want to wait too long until we get that moving.

18 MR. CRAMTON: Is there a consensus on that? Because
19 there is a view that, one, we have quite a few committees
20 now. And the members of the Board are pretty busily engaged.

21 MR. ORTIQUE: One less committee shortly.

22 MR. CRAMTON: Two, the issue like the Back-Up Center
23 issue is an extremely important one. And all members of the
24 Board, not just members of the committee, may want to have a
25 substantial impact.

1 And third, because of the transition and the
2 necessity that our small Staff has had to concentrate on things
3 of very, very immediate time priority, they have not been
4 able to address themselves to the question of what the
5 Corporation ought to do in this area.

6 But if we do select a president in the relatively
7 near future and if, as I think, the president we do select
8 is likely to have a very strong interest in this area and
9 to have some views as to how it should be done, it may be
10 that this is an area in which the Staff can be relied on to
11 carry the ball to formulate proposals and options, to bring
12 them at each meeting of the Board for discussion by the full
13 Board, and consideration by the Board and for the views of
14 the Board.

15 The question is should we really create a committee
16 on this issue or should we leave this issue to the develop-
17 ment of recommendations and formulations and proposals by
18 Staff?

19 MR. STOPHEL: I think ultimately, we may need a
20 committee, but I think it is premature at this point--

21 MR. THURMAN: I make a motion to table.

22 MR. STOPHEL: -- with everything else we are working
23 on to set aside a committee for this purpose right now.

24 MR. THURMAN: I move to table the present motion.

25 MR. STOPHEL: I will second it if it is necessary.

1 MR. CRAMTON: As I understand it, we are not
2 terribly bound by parliamentary procedure, but this is a non-
3 debatable motion. All those in favor of the motion to table
4 please say, "Aye."

5 (Chorus of "Ayes.")

6 All those opposed say, "No."

7 (Chorus of "Noes.")

8 I think that the "Ayes" had it, but I am in doubt.
9 Can I have a show of hands? All those in favor please raise
10 your hand.

11 Four.

12 All those opposed?

13 Four.

14 It looks as though we have a tie. And I will break
15 the tie by voting to table, and we will consider this question
16 at a subsequent point.

17 MR. BREGER: May we suggest a time certain or do
18 you want to just leave it open?

19 MR. CRAMTON: I think the point that this issue is
20 going to be discussed at each meeting of the Board is a sound
21 one, and we are going to have some kind of status report of
22 what we are doing in terms of-- by early January, we are going
23 to have to tell the Congress what we are going to do. And
24 that means we are going to have to give very extensive con-
25 sideration, and the Staff is going to have to push this issue

1 forward.

2 I think it would be helpful if we perhaps heard
3 from some--

4 MR. BROUGHTON: My feeling is I am not suggesting by
5 my second of Mr. Breger's motion that we are committed, but
6 nevertheless it seems to be a recognition of the great signi-
7 ficance of this just as there has been a recognition heretofore
8 in our organization of the Presidential Search Committee,
9 Committee on By-Laws and Regulations, Administration.

10 And if we view this area here in the same light or
11 at that same level, my feeling was it is justified to have a
12 separate committee that could focus attention and could direct
13 an effort with the Staff and the party who may be selected
14 president.

15 MR. CRAMTON: I think that may be an appropriate
16 avenue. I just thought if there is a possibility that we
17 will appoint a president in the next month or six weeks or
18 some time period, we might be advised by the temporary executive
19 officer as to whether or not the committee was desirable.

20 Would it be helpful to hear from members of the
21 public on this issue or should we push on?

22 MR. STOPHEL: If they know what we are talking about,
23 it would be good.

24 MR. BROUGHTON: Mr. Chairman, could we take a seventh-
25 inning stretch?

1 MR. CRAMTON: We have some coffee here. Let's take
2 a ten-minute break.

3 (Whereupon, a recess was taken.)

4 MR. CRAMTON: Gentlemen, the meeting will come to
5 order.

6 The almost unbearable heat here, I think is taking
7 its toll on all of us, and we regret it. Apparently the air-
8 conditioning facilities are just not in operation. We have been
9 trying to do something about it, but thus far, it has been
10 without avail. I hope tomorrow, the problem is corrected.

11 I would like to move on to the next item on the
12 agenda, but before doing so, on behalf of the Board, I would
13 like to invite any members of the public or any interested
14 groups or organizations to give us advice and help about how
15 to go about approaching this question of the alternative
16 delivery system study which many of us recognize, and I agree,
17 is one of the most important, if not the most important, activities
18 that this Board is going to be involved in. And we need
19 the assistance of informed people.

20 I hope that some of the groups here will take an
21 attitude and an attitude that will not be one that is framed
22 in terms of what is wrong with other people's ideas, but of
23 the more constructive nature of what is it that would be a
24 constructive and useful approach.

25 Do I have somebody?

1 Mr. Flug wants to be recognized. Does he have
2 unanimous consent for a brief remark?

3 MR. FLUG: Mr. Chairman, most of what I would have
4 said was said by the members of the Board because, of course,
5 the NLADA Staff shares the feelings of the Chairman of the
6 ABA Committee on Coordination of Judicial Improvements
7 and also the ranking member of the ABA Standing Committee
8 on Legal Aid to Indigent Defendants, which was the hat I think
9 he was wearing when he made his last statement and the others
10 that this is probably the most important thing this Corpor-
11 ation will do other than run a National Legal Services program
12 for the next several years.

13 And we do want to make clear that for those of you
14 who may have the feeling, feelings developed out of the old
15 kind of knee-jerk polarized discussions, debates, that used to
16 take place, certainly our attitude is that all we care about
17 is the most effective, efficient, delivery of legal assistance
18 to the poor, and we have no proprietary interest in any
19 specific form of delivery.

20 We want to know as much as anybody else what the
21 best forms of delivery are, and we think that this study is
22 important to test that out. We want it to be done well, be
23 done quickly.

24 The person among our members and in the field who
25 has been designated by the Project Advisory Group, Mr. John

1 Dooley of Vermont, is not here today. Mr. Bob Sable of the
2 Consumer Law Center in Boston on temporary leave to be a
3 member of the NLADA Staff has been in touch with Mr. Dooley
4 and has a few comments based on his conversation with him.

5 It was Mr. Dooley's expectation, I think either
6 today or very shortly, to make some affirmative and constructive
7 suggestions for getting things started. And he will be
8 doing that.

9 MR. CRAMTON: Would it be possible because of the
10 pressure of time to get these and other comments from
11 individuals in writing? Your recommendations as to how we
12 should go about attacking this area and what needs to be done
13 and how it should be done and what questions the Board needs
14 to address in the future.

15 MR. SABLE: Mr. Chairman, we will prepare that, and
16 we will submit it to the Board and to the Staff within a
17 week. I just say that we are anxious for the study to go
18 ahead, not only because of the Congressional mandate, but
19 because we hope that the study will be arranged in such a way
20 that it will give us continuing advice on how to improve the
21 quality of services. And we will address those issues in
22 our written remarks.

23 MR. CRAMTON: I think that is everyone's hope.
24 And we certainly want to achieve both of those between objectives
25 both of improving the existing system and alternatives to

1 make the job better.

2 That brings us to item 5 on the agenda, Report by the
3 Chairman of the Committee on By-Laws and Regulations.

4 Mr. Kutak.

5 MR. KUTAK: Mr. Chairman, your Committee on By-
6 Laws and Regulations met this morning pursuant to the agenda
7 and the order of business that we had. We wanted you to know
8 that in pounding out what we believe will be the last
9 emendations of the By-Laws that we had one real big conceptual
10 problem. And I said in resolution of it that I was reminded
11 of an observation of Mr. Justice Frankfurter who, I believe,
12 was quoted as saying that the legislative history is so unclear
13 that we had to resort to the statutory language.

14 And I think in this situation, you see our problems
15 instantly when we get to it. I believe every member of
16 the Board has before him the draft, Tab 5, of the Legal
17 Services Corporation By-Laws.

18 The changes are basically in, but one instance, of
19 a technical nature. And I will see to it that not only the
20 Corporation, but the Board members have a clean and final
21 version after we arrive. But I did want you to know that on
22 page 7, Section 3.05(a) that we added a further sentence at
23 the bottom of that page, this to help clarify the intent with
24 respect to conflict of interest.

25 The sentence added reads--

1 MR. CRAMTON: At what point?

2 MR. KUTAK: The very bottom of the page after the
3 period. It would be a new sentence after the word "Board."

4 If a Director violates this subsection in connection
5 with any transaction, the validity of the transaction unless
6 void by law, avoidable by the Corporation, shall not be affected
7 by the violation, but the Director by law may be liable to
8 the Corporation for damages.

9 I believe that was the first change that was adopted.

10 The next one appears on page 14. It is the first
11 line of Section 4.05. We struck the words "Promptly upon,"
12 and inserted the words "Concurrently with."

13 And then four lines up from the bottom of Section
14 4.05, we put a period after the word "recipient." As I called
15 to your attention earlier, the term "recipient" is already
16 defined and, therefore, we did not have to. This way, it is
17 defined differently and inconsistently. And that is now
18 consistent.

19 Then on page 16, we have a new Section 4.08 which I
20 will yield to my colleague, Mr. Breger, to present.

21 MR. CRAMTON: Do we have it in mimeographed form or
22 something like that?

23 MR. BREGER: I am not sure. It may be simpler to
24 read it aloud.

25 MR. STOPHEL: You mean we can't even follow along

1 here?

2 MR. BERGER: If you have a suggested alternative
3 section--

4 MR. CRAMTON: I see it is in here.

5 MR. BREGER: -- which we have accepted with one minor
6 emendation.

7 MR. STOPHEL: Is that the memorandum of September 11?

8 MR. BREGER: No, that is not the memorandum of
9 September 11.

10 MR. CRAMTON: Why don't we go on to some other items
11 and have them get some copies of it made so we have it in
12 front of us? And we will come back to it once we have gone
13 through the others so we just have it in front of us.

14 MR. KUTAK: Okay. Then, passing 4.08, the next
15 comment is on page 19, in Section 5.01, six lines up from the
16 bottom, the sentence reading, "Persons who are not Directors
17 may be appointed to serve as nonvoting members of a committee
18 if the Board so authorizes or directs." Your committee
19 recommends deleting that.

20 The thrust there is that each committee can when
21 constituted by the Board have that authorization. The impli-
22 cation here is that it is perhaps assumed that more than
23 necessary, the emphasis is placed on the presence of non-
24 voting members. And since they are nonvoting anyway, they would
25 at the most be ex officio.

1 It seemed clearer and simpler not to build in a
2 specification and authority for nonvoting persons, persons
3 not members of the Board who are not voting to be named.
4 So we just deleted the sentence.

5 MR. STOPHEL: Any committee can ask anyone to sit
6 with it if it wants.

7 MR. KUTAK: Well, the question is as an auditor.

8 MR. OBERDORFER: Precisely, yes.

9 MR. BERGER: Or advisor.

10 MR. KUTAK: But as to be a member, an ex officio
11 member, that authority would only be given if when the Board
12 is constituted, it is given authority to so provide.

13 MR. STOPHEL: Would the committee be authorized to
14 expend funds to bring such a person to a committee meeting if
15 he is not a member?

16 MR. KUTAK: I would answer that maybe we should
17 defer to counsel on that, but only if the committee was given
18 that authorization.

19 MR. CRAMTON: What is there that permits in the
20 By-Laws generally non-members to be appointed absent this?

21 MR. KUTAK: Nothing.

22 MR. CRAMTON: Doesn't it prohibit it? Because it
23 is "may appoint Directors to serve on such committees."

24 Isn't the implication of that that no one who is not a
25 Director may ever be appointed?

1 MR. KUTAK: No.

2 MR. CRAMTON: Then why? It is not clear to me that
3 that isn't the necessary implication of the existing language.

4 MR. SMITH: I attended this committee at your
5 suggestion last night, and I think our discussion was along
6 the lines that this sentence invites the creation of such
7 nonvoting committee members perhaps more than might be desir-
8 able, but it was discussed.

9 And Mr. Hornblower as counsel to the committee
10 suggested that without that, if in the resolution creating
11 the committee certain people were included, that that could be
12 done if the Board did it.

13 Now, personally, I would never be in favor of that
14 because I think making advisory members or consultants members
15 of the committee creates first-and second-class consultants.
16 Certainly, there would be very few instances where you would
17 want non-members of the Board to be members of a committee.
18 But once you have used that and did it, then there would be,
19 I think, a feeling when you used advisors or called upon
20 other groups for advice in the future that if they didn't
21 receive that status, they were sort of second-class advisors
22 compared with someone who had previously served as a member of
23 the committee while in an advisory capacity.

24 I think the precedent in legislative committees
25 both at the State legislative level and Congressional level

1 is that committees call in lots of people for testimony
2 and sometimes for advisory groups, but never in any instance
3 do they make them members of the committee.

4 I think in private corporate matters, the committees
5 of private corporations seek advice, they get consultation,
6 they have advisory groups, but they don't make them and
7 can't make them members of the committee.

8 One of the practical problems that would arise as an
9 example was in connection, for instance, with the Presidential
10 Search Committee when certain groups were called upon for
11 input and advice. During the course of the Presidential
12 Search Committee's meetings, it was determined that at least
13 two other groups should probably also be called upon for
14 advice.

15 If those first three or four groups that were being
16 used for advice, if their representative had been made a
17 nonvoting member of the committee by action of this Board
18 which would have been the only way they could have done it,
19 then the committee proceeding along found that at least a couple
20 of other groups should be included, there wouldn't be any
21 way without waiting until the next meeting of the Board for
22 those additional groups to be given the same status.

23 And yet, when they are just being called upon as
24 advisors to give advice and meet with the committee, but not
25 made members of the committee, if the committee sees the

1 need to add a couple more as they did in this instance, the
2 ones they add have the same status as the ones they previously
3 had.

4 And so the objective as I see it in deleting the
5 sentence is to encourage a greater use of advisors and greater
6 use of input from organizations that have something to offer
7 whereas I think this might be restrictive.

8 MR. BERGER: And there is a further consideration
9 we had which was in the event that we should wish to go into,
10 it would be a rare case, an executive session, we would have
11 as a committee a complicated problem of what the status of
12 nonvoting members would be in that case.

13 We felt to some extent all of the contributions
14 which advisory groups could provide could be maintained by
15 having them sit as permanent advisors without developing any
16 potential problems by adding them as official members.

17 I might add, Glenn, that we assumed throughout this
18 discussion it would be possible for committee chairmen to
19 request and secure funds in order to reimburse such advisors
20 for their work with the committees.

21 MR. STOPHEL: Mr. Smith has convinced me this
22 emendation is proper.

23 MR. CRAMTON: Mr. Kutak, how do you want to handle
24 these? Do you want to approve as we go along?

25 MR. KUTAK: Without objection, I should assume so.

1 I have a motion to adopt.

2 MR. CRAMTON: Has there been any objection to the
3 prior changes?

4 (No response.)

5 They have been approved. Move on.

6 MR. KUTAK: Next is 5.02(c). There is a slight
7 change on the first line. The first part, just simply for the
8 sake of conformity with 4.08, strike the word "committee."
9 It would be "All meetings of a committee" instead of "All
10 committee meetings."

11 Otherwise, it is the same until the very end of
12 Section 5.02(c) when we have added a new sentence which reads:
13 "No recommendation for presentation to the Board shall be
14 adopted in an Executive Session."

15 MR. BROUGHTON: Where is that going?

16 MR. KUTAK: The end of the Section 5.02(c) New
17 sentence.

18 MR. CRAMTON: Read it again, please, Mr. Kutak.

19 MR. KUTAK: No recommendation for presentation to the
20 Board shall be adopted in an Executive Session.

21 MR. THURMAN: What is your reasoning on that one?

22 MR. KUTAK: The reasoning is that the "committee" is
23 a term which under the government in the sunshine centers
24 seemed to be continually broadened and developed so that in
25 view if it were a committee of two that got on the telephone

1 together, one may, and indeed there are case laws, constitute
2 it a committee meeting. And what we want to be sure about is,
3 first of all, that if that interpretation of committee meeting
4 would occur, we were awfully certain that recommendations of
5 any kind that would be for this Board's consideration emerging
6 from the committee ought to have gone through the process of
7 open meetings with the availability of public input.

8 MR. CRAMTON: What about a personnel recommendation?
9 They would have to be publicly announced that, for example,
10 the Presidential Search Committee is recommending a particular
11 candidate before that was publicly considered at a Board
12 meeting.

13 MR. MONTEJANO: Or dismissal.

14 MR. BROUGHTON: Any committee recommendation, pre-
15 sentation, has to come to the Board.

16 MR. CRAMTON: But it could come to Executive Session
17 or it could come in a public meeting at the Board without the
18 action being taken in public by the committee.

19 MR. STOPHEL: The committee might want to come to
20 an Executive Session of the Board before it made a public
21 recommendation.

22 MR. KUTAK: The rationale of it is that most heavy
23 work is done in your committees and that the substantive input
24 from the public is important in that process; and that if we
25 are saying that all committees shall be open to the public, it

1 would seem to be except, of course, where they vote together
2 in a private session that any actions which that committee
3 would thereupon want to take ought to have the benefit of
4 that public input; and that, therefore, it is advisable to
5 make certain that we provide that while they can deliberate
6 in Executive Session when the circumstances are required,
7 the actions of the committee if they are committee actions
8 should be available for public view and public comment prior
9 to Board action.

10 MR. THURMAN: I think there are too many concerns
11 about personnel matters here. I make a motion not to add that.

12 MR. STOPHEL: I second it.

13 MR. CRAMTON: You have heard the motion and second.
14 Is there further discussion?

15 MR. ORTIQUE: It would seem to me, Bob, your stated
16 objective is a worthy one, and I have no quarrel with it. My
17 problem is, though, that as a practical matter, you are
18 indicating we will go into Executive Session knowing full
19 well that whatever we talk about is not going to be productive
20 of anything significant enough to present to the Board.

21 And in that context, it seems to me that you have got
22 to determine in front whether you are going to go into
23 Executive Session or not. And once you make that determination,
24 you are telling me that nothing that we do is worthy of coming
25 before the Board. We can't make a decision, therefore.

1 MR. KUTAK: That is a very important point, Revius.
2 And maybe we ought to have Lou here.

3 MR. CRAMTON: First, Lou had to leave.

4 MR. KUTAK: I think we have been very influenced by
5 one assumption. And maybe this assumption is incorrect. And
6 that is no decisions can be made by this Board in Executive
7 Session. Is that our counsel's interpretation of Section
8 1003?

9 MR. BREGER: We have assumed that to be the case.

10 MR. CRAMTON: Mr. Tatel and Mr. Hornblower, would
11 you advise us in Mr. Oberdorfer's absence?

12 MR. HORNBLOWER: It is not my opinion, Mr. Chairman,
13 and I asked Lou briefly this afternoon if he had ever taken
14 that position, and he said no.

15 MR. CRAMTON: What is the basis of that opinion?

16 MR. KUTAK: I have no idea. I think that has been
17 the opinion--

18 MR. SMITH: I think that has been our practice. We
19 have not taken any action; we haven't kept any record. We
20 have just conducted discussions as the basis for action, but
21 the action has always been in open meeting.

22 I think the states that have sunshine laws, that
23 is exactly what is required. And we are going to be dealing
24 with a lot of those. I think it is necessary that the actions
25 be in open session. It doesn't mean the Executive Session

1 isn't productive as Revius said because there can be a lot of
2 discussion that can lead to simplifying the action in the
3 open session, but the action isn't taken in the open session.

4 MR. ORTIQUE: He says no recommendation. That is
5 the thing that bothers me. I am not talking about the ulti-
6 mate conclusion. We will take the ultimate conclusion here in
7 the open meeting.

8 But when you say no recommendation can be made, it
9 just seems to me that you defeat your purpose for holding
10 any session at all.

11 MR. KUTAK: I see now you are reading "recommendation"
12 in a sense which frankly I did not read it in. I interpreted
13 "recommendation" a Board, a committee, can't take any action
14 on behalf of the Board unless it is an Executive Committee
15 that has been given that power by the Board. All a committee
16 can do is make recommendations to the Board.

17 And so there are positions adopted by your committee
18 to our committees as recommended actions report.

19 MR. CRAMTON: Does this sentence mean something
20 other than the Board action on recommendations of committees
21 shall be taken in public?

22 MR. BREGER: Yes, it does.

23 MR. CRAMTON: Revius is not quarreling with
24 that, but the notion that the committee recommendation,
25 he thinks, ought to be able to be taken in Executive Session.

1 The Board action on it would be in public session.

2 MR. ORTIQUE: The committee comes to us with a
3 recommendation, and it seems to me you can evolve your recom-
4 mendation in Executive Session, but certainly, you are not
5 going to take action on behalf of this Board in any Executive
6 Session. We are going to take the action right here out
7 front.

8 MR. SMITH: But the committee recommendation is
9 committee action.

10 MR. ORTIQUE: But it says no recommendation for
11 presentation to the Executive Board. There is no point in
12 meeting.

13 MR. BROUGHTON: What Bob said is unless this
14 Executive Committee has specific authority to bind the
15 Corporation in between meetings.

16 MR. BREGER: We may have been influenced by our
17 experience in our Regulations Committee in which we have
18 had a number of meetings in which we have not reached bottom-
19 line votes, but which have been very productive in clearing
20 the air and having Bob and I as well as other participants
21 understand better the options that are open to us.

22 MR. ORTIQUE: A recommendation could be an option,
23 couldn't it?

24 MR. CRAMTON: Counsel in Mr. Oberdorfer's absence,
25 Mr. Hornblower, would like to give us some legal advice which

1 I think ought to be put on the record, whether or not we
2 accept it.

3 MR. HORNBLOWER: It may be true this Board has not
4 taken any action in Executive Session, but I don't believe that
5 it is prohibited from doing so nor do I believe it is advisable
6 for it to prohibit itself from doing so. Whenever possible,
7 it should do and does its business before the public. But
8 it ought to be able to take action of certain kinds in
9 Executive Session and then come out later and report those
10 actions as having been taken.

11 MR. CRAMTON: Give an example. I thought your
12 example was a good one.

13 MR. HORNBLOWER: One example would be let's say a
14 confidential recommendation coming from the committee on a
15 personnel matter or otherwise, and the action taken is to
16 reject the recommendation. Shouldn't it be able to do that
17 in Executive Session, and then report later that that has been
18 done?

19 MR. CRAMTON: Or not report it at all.

20 MR. HORNBLOWER: Or not report it at all if it is
21 confidential. I don't think the record should stand that this
22 Board is disavowing its authority to take action whatever that
23 may mean in Executive Session.

24 MR. THURMAN: I think we have a good counsel here.

25 MR. BROUGHTON: Your statute gives us that right.

1 MR. HORNBLOWER: The statute in referring to
2 Executive Session does not foreclose taking action. If the
3 sunshine law is passed and it is made applicable to this
4 Corporation, there may be some other problem. But I don't think
5 you ought to anticipate.

6 MR. CRAMTON: And we would obviously amend By-Laws
7 that were inconsistent with it and not act inconsistent with
8 the statutory requirement.

9 We have before us this additional language. It
10 has been moved and seconded the additional language not be
11 added. Is there further discussion on the addition of this
12 language?

13 MR. BREGER: Maybe we should allow public comment
14 on this.

15 MR. STOPHEL: They have commented substantially.

16 MR. THURMAN: I move the question.

17 MR. BREGER: I was speaking about changes in 5.02.

18 MR. STOPHEL: Was there comment at your committee
19 meeting?

20 MR. CRAMTON: Was this question fully discussed at
21 your committee meeting?

22 MR. KUTAK: Let me put the thing for the Board in the
23 constructive light that it was at least intended in the offer.
24 The opinion of Whistle which, by the way, I had the benefit
25 of at the committee meeting and parenthetically shared, however,

1 does not necessarily need to be determinative of this question.

2 MR. CRAMTON: It is a policy issue.

3 MR. KUTAK: Because it really cuts across 4.08 as
4 well as 5.02. I think the Board has got to ask itself down
5 the line where the real work of this Board is going to occur.
6 I would assume that this Board, for example, is simply not
7 going to be able to sit as an appropriations committee. If
8 we have budgets of \$100 million, \$150 million, \$250 million --
9 Rudy is far more experienced in this -- you handle them out
10 in committee.

11 You do go over them in gross and in concept, but the
12 real work isn't done in this Board at least as we get down the
13 line. The real work is going to be done in committee.

14 The same thing, I submit to you, I hope at least
15 would be the case with regulations. You are going to, of course,
16 want to have the bottom line as the substance of it, but the
17 Board isn't going to draft regulations; it is going to get
18 the sense of it. The real work is going to be done in
19 committee.

20 I think as we progress, we are going to see, and
21 as we get familiar with our own rhythms and directions and
22 responsibilities, the work of this committee, the work of this
23 Corporation, by this Board, is going to be done by our
24 committees, not by this Board except on a kind of an oversight
25 basis. We are going to be depending on our committees to

1 function.

2 My point to all of this is it is going to be
3 terribly important for the integrity of the process that the
4 real public input will occur as the committee has got their
5 sleeves rolled up and are pounding out the concepts and
6 handing out the issues. It is really in a group like that under
7 pressures like this for them to really have a meaningful
8 public input.

9 The public input is going to occur at the committee
10 level. What kind of signals do we want to sent out? What
11 kind of indeed signals do we want to pick up? That is, I
12 would think to the maximum degree possible public participation.

13 MR. ORTIQUE: I agree with everything you are saying,
14 Bob. But I think this statement opens up--

15 MR. KUTAK: Even things I haven't yet finished.

16 MR. ORTIQUE: -- to the possibility that any time
17 some committee wants to go into Executive Session, they can
18 go into Executive Session and tell themselves, "We don't
19 intend to make any recommendation to the Board, but we are
20 going to discuss this thing thoroughly; we are going to dis-
21 cuss among ourselves." And those committee members come back
22 with fixed points that have not had the input of other
23 people.

24 And they say, "Our skirts are clean because we have
25 not decided to make any recommendation."

1 I would much prefer the public knowing that committee
2 has been in Executive Session, they are coming back with the
3 recommendation, and we are going to raise some questions
4 about what they discussed at that time. Or else the very
5 thing that you say you fear will happen. People will talk
6 about these things on the telephone. People will reach all
7 kinds of decisions without the public ever knowing that they
8 have been in Executive Session. And the reason that they
9 don't have to report anything is because they are not going to
10 make any recommendation.

11 I think the other side of that coin is a bad one,
12 and I would much prefer that every time we go into Executive
13 Session, the public knows we have been in Executive Session.
14 And if we are going to say something we better say it out
15 here on the table.

16 MR. KUTAK: That is the thrust at least of the
17 sentence. The deletion of the sentence would be just the
18 contrary, Revius. It would mean a decision could be made in
19 Executive Session and reported directly to the Board.

20 MR. ORTIQUE: In public?

21 MR. KUTAK: Oh, no. Oh, no. If a decision is
22 made in Executive Session, they are never reported out. It
23 goes from Executive Session to indeed perhaps Executive
24 Session in the--

25 MR. CRAMTON: Except we haven't done that yet. The

1 power exists.

2 MR. BROUGHTON: Mr. Chairman, we have been over this
3 ground so many times. We just heard the report from the Urban
4 Institute. We talk about two years from now we report to
5 Congress. I don't believe we will ever be in a position to
6 report to Congress or anything else because of this one thing.

7 It seems to me with due respect to the Chairman,
8 we are coming back to the other side of the track which I
9 thought was settled in some way two or three meetings ago.

10 MR. CRAMTON: Could I try some language on you, Mr.
11 Kutak, and see if you accept it? It is a substitute which
12 would read as follows:

13 "To the extent feasible, Board action on committee
14 recommendations taken in an Executive Session shall be taken
15 in public or shall be made in public session."

16 Which merely expresses the posture that the Cor-
17 poration has taken thus far that we are going to take important
18 actions in public session. And when we discuss things in
19 Executive Session, whether in committee or what about Staff
20 recommendations, I don't follow your assumptions that committees
21 are going to be-- all of the committees we have are transition
22 committees. They were set up for a transition period because
23 we did not have a permanent Staff.

24 My assumption is just the contrary, that most
25 important policy questions will come directly to this Board

1 from a very strong, well-organized Staff that will prepare
2 papers with options and reports and draft regulations. And
3 they won't necessarily be screened through committees; they
4 will come directly.

5 I don't think a Staff recommendation has to be made
6 in a public session. I hope they will consult with knowledge-
7 able people before they come in. But obviously, everything
8 that the Staff does, I think, has got to have a certain degree
9 of confidentiality to it. When it gets out in the public is
10 when they come in before the Board with them.

11 I think the committee has to have the same feeling.

12 MR. THURMAN: I would like to try my motion before
13 we start amending. My motion is not to add this sentence.

14 MR. CRAMTON: All right. That preceded my effort
15 to compromise. Is there further discussion on Mr. Thurman's
16 motion?

17 MR. ORTIQUE: I would like to ask one question, and
18 that is with reference to Section 4.08 which is the standard
19 as I appreciated for the Executive Session. Why does it say
20 that all committee meetings will meet that test, make it
21 explicit in the language of these regulations?

22 MR. KUTAK: Revisus, because I was hoping to even
23 have a broader rule for committees than for the Board with
24 respect to what could be done in Executive Session than the
25 narrow, I hope the narrow, tests of 4.08. I was trying to

1 get broader discretion for committees than for the Board, what
2 you could do in Executive Session.

3 However, I don't belabor the point. I know this
4 Board understands the spirit of this act. And I know it is
5 going to work together in good faith. And if I--

6 MR. ORTIQUE: If we believe that, I would certainly
7 want to make sure we put the 4.08 in it.

8 MR. KUTAK: Before we complicate ourselves in that
9 one, I would submit I would find the Chairman's suggestion which
10 captures the spirit of it perhaps better than what we have done
11 with our efforts here with the new sentence. And if the Board
12 rejects our sentence, I would perhaps if it would give me 30
13 seconds, I would urge the adoption of that because it does
14 perpetrate the notion or advocate, I would say, the notion
15 of what I was hoping we would catch. That is, most of our
16 committee work be done in the open.

17 MR. SMITH: I think Revius' suggestion was discussed
18 for more than an hour this morning, and there are lots of
19 reasons it wouldn't work.

20 MR. ORTIQUE: What?

21 MR. SMITH: We could get into a lot of them. There
22 are two members of the committee, Marshall and Bob, if you
23 made it, they couldn't meet without following the provisions
24 of 4.08. They couldn't have lunch together without having a
25 public meeting and getting a 2/3rds vote to go to lunch.

1 Because the two of them are always meeting, and if it would
2 constitute an Executive Session, they couldn't call each
3 other on the telephone.

4 MR. BREGER: That's about all we talk about.

5 MR. KUTAK: In fact, to facilitate it, if my col-
6 league will permit, I will accept the motion so we don't have
7 to even vote on it. I will withdraw this and offer as a
8 substitute the Chairman's language which I think captures the
9 spirit of the gentlemen. And that is what we really need, the
10 spirit.

11 MR. ORTIQUE: I want the spirit captured, but I also
12 want to make sure we spell out some guidelines for Executive
13 Sessions. And what you say makes me all the more determined we
14 need to make sure 4.08 states it. I don't want folks making
15 decisions at lunch and on airplane rides and over the
16 telephone. I want to make sure that the public knows that
17 these things are not being done.

18 MR. KUTAK: With the permission of my colleague,
19 I would like to accept your motion, Sam, and withdraw this
20 language and offer in substitute the language of the Chairman.

21 MR. CRAMTON: Let me read it again and see whether
22 it is acceptable.

23 To the extent feasible, Board action on recommendations
24 adopted in an Executive Session of a committee shall be taken
25 in public session.

1 MR. STOPHEL: I won't accept it.

2 MR. CRAMTON: You will not?

3 MR. STOPHEL: No, not without a vote.

4 MR. KUTAK: I would move its consideration.

5 MR. BREGER: I will second it.

6 MR. CRAMTON: It is before us. Is there discussion?

7 MR. STOPHEL: I just think to the extent feasible,
8 what does that mean other than what we decide? And I think
9 that's exactly what we are doing now. We are deciding what
10 will be decided in Executive Session every time we take a
11 vote. And we have to have 2/3rds for it. I don't see any
12 reason to add another sentence to this.

13 MR. THURMAN: I agree with Glenn.

14 MR. BROUGHTON: We have had the advice of able
15 counsel so far as we stand as far as the statute is concerned.

16 MR. THURMAN: Why don't we vote on that?

17 MR. CRAMTON: The question before you is the
18 adoption of the language proposed by Mr. Kutak and formulated
19 by the Chair. All those in favor please say, "Aye."

20 MR. BREGER: Excuse me. Do we want to allow for
21 public comment?

22 MR. CRAMTON: I don't see any hands seeking attention.

23 MR. BREGER: Okay, let's move it.

24 MR. CRAMTON: All those in favor say, "Aye."

25 MR. STOPHEL: Are we moving to include it?

1 MR. CRAMTON: The vote is for inclusion of the
2 sense. If you are opposed, vote against it.

3 All those in favor say, "Aye."

4 (A few "Ayes.")

5 Opposed "No."

6 (Chorus of "Noes.")

7 My language is defeated. We keep going, Mr. Kutak.

8 MR. KUTAK: The next change is on page 23.

9 MR. ORTIQUE: Before we go to that, I move that the
10 language in (c) be amended so that 4.08 be appropriately
11 inserted with reference to committee meetings and that we meet
12 those standards.

13 MR. CRAMTON: Is there a second for that motion?

14 MR. THURMAN: I don't think I understand that.

15 MR. ORTIQUE: I think we had some previous language
16 which stated that all committee meetings shall be open to
17 the public unless a majority of the voting members of the
18 committee or one-half of such members, of their number, is
19 even determined, and those determinations would be pursuant
20 to the provisions of Section 4.08.

21 MR. CRAMTON: Mr. Hornblower, would you summarize
22 the reasons why you think the inclusion of that language is
23 unwise?

24 MR. HORNBLLOWER: As the By-Law before you, the 4.08
25 procedures and criteria would apply only to an Executive

1 Committee when it would be taking action on behalf of the
2 Board pursuant to its executive authority. It was the thought
3 of counsel and I believe of the committee that, talking about
4 compelling interests of the Corporation and that standard,
5 meeting that standard was not necessary or inappropriate
6 for a committee which would be advisory only and did not have
7 authority to act for the Board.

8 It would debase the standard, in Mr. Breger's words,
9 for a committee without executive authority to make this
10 finding every time it needed to go into an Executive Session.

11 MR. CRAMTON: You have heard Mr. Ortique's motion.
12 Is there a second?

13 (No response.)

14 The motion fails for want of a second.

15 Mr. Kutak?

16 MR. KUTAK: Continue on page 23, gentlemen. A very
17 technical amendment.

18 Section 6.06(a), third line down, after the word
19 "Act," insert a comma. And we would add the words "rules and
20 regulations promulgated pursuant to the Act."

21 MR. CRAMTON: No objection. Continue on.

22 MR. KUTAK: Page 25 under Section 6.08, delete
23 (4) in whole, renumber (5) and (6) as (4) and (5).

24 And we would insert a new Section 6.09 providing
25 for the Office of Comptroller. And it is in the language of

1 the language we just deleted.

2 "The Comptroller shall keep or cause to be kept full
3 and correct records and accounts of the business transactions,
4 receipts and disbursements of the Corporation and at all
5 reasonable times shall exhibit such records and accounts to any
6 Director upon application at the Office of the Corporation
7 where such records shall be kept and shall perform such other
8 duties as from time to time may be assigned."

9 So it just creates the office and uses the appro-
10 priate language for spelling out the functions. Of course,
11 that would mean renumbering the sections following it to pick
12 up the new section number.

13 No objection, we go on to new Section 6.10 which is now
14 in your By-Laws Section 6.09, with a slight change that would
15 permit it. It is the first sentence; it is a slight change.
16 It would read: "The compensation of the officers shall be
17 fixed from time to time by the Board or in the case of an officer
18 other than a President or Vice President by a committee or
19 other officer to whom such authority is delegated at rates
20 not to exceed the amounts delegated by law."

21 That gives flexibility for accepting compensation
22 for other officers except President or Vice President by an
23 officer or by committee as this Board wishes.

24 And that endeth the reading except for 4.08 which I
25 turn to Mr. Breger for.

1 MR. BREGER: Well, I think the section may be our
2 committee's swan song.

3 Pursuant to discussions we had at the last Board
4 meeting and the further comments by the public, we have made
5 yet another stab, and I think in your committee view a very
6 satisfactory stab at taking into account the concerns that
7 we develop as standard for the compelling-interest test as it
8 were and at the same time recognizing the Board's need for
9 flexibility and clearer version to producing a laundry list
10 of exceptions by which we will allow Executive Sessions.

11 What we have done basically is provide a standard
12 in 4.08(b) which states:

13 "In determining whether an executive session is
14 required the Board shall be governed by the principle that the
15 public is entitled to the fullest information regarding the
16 decision-making process of the Corporation consistent with
17 the protection of personal privacy and with compelling
18 interests of the Corporation and the public."

19 The new 4.08(a) states:

20 "All meetings of the Board shall be open to the public
21 unless two-thirds of the Directors eligible to vote determine
22 that consideration of specific matter -- and here we had a
23 change -- on a specific occasion in which case the meeting
24 shall be closed to the public. That part of a meeting closed
25 to the public shall be known as an executive session. Agenda

1 and non-agenda items may be considered in an executive session.
2 An executive session shall consider only matter for which the
3 required determination has been made. The chairman of the
4 meeting shall announce the subject of the executive session
5 prior thereto."

6 Then we go into 4.08(b) which I read previously.

7 The intent of this new stab at 4.08 is to flesh
8 out to some extent what we mean by the determination that we
9 will enter into an Executive Session by making clear what I
10 think is clear in our actions until now or making clear in
11 words that we will accept the principle that we will give the
12 fullest information regarding the decision-making process that
13 we can consistent with other values which we are concerned
14 about.

15 MR. CRAMTON: Is there objection?

16 MR. STOPHEL: Concerning this?

17 MR. BROUGHTON: I am not sure I understand the dis-
18 tinction between this and the other. You said also since
19 this was adopted at our last meeting and, therefore, published,
20 there have been additional comments, public comments, that
21 have been filed as a result of the public.

22 MR. CRAMTON: That's right, to which the committee
23 has given consideration.

24 MR. BREGER: The main difference is we have added
25 the statement that in determining whether an Executive Session

1 is required, we shall be governed by the principle that the
2 public is entitled to the fullest information regarding the
3 decision-making process of the Corporation, and then taken
4 language from the old 4.08, consistent with the protection of
5 personal privacy and with compelling interests of the
6 Corporation and the public.

7 So the real difference is the addition of the fullest
8 information regarding the decision-making process language.

9 MR. SMITH: I don't really think it changes the
10 intent, Mr. Chairman, but it satisfies those members of the
11 public who commented upon it.

12 I was again present at that meeting this morning
13 that discussed this. I feel it satisfies the members of the
14 public at the meeting this morning. They expressed satis-
15 faction with this.

16 As far as I am concerned, the language in (b), that
17 part that is lifted out of the old 4.08, stated in a little
18 different way satisfies the public, still leaves the intent
19 and interpretation the same.

20 MR. CRAMTON: Is there discussion?

21 (No response.)

22 Do you want to vote on this question? We considered
23 this Executive Session provision at considerable length, and
24 there may be new arguments that can be made.

25 MR. MONTEJANO: Mr. Chairman, one very minor and

1 technical point. I go along with the modification. In your
2 last original 4.08, you add the Directors eligible to vote
3 determine. Compelling interests of the public, Corporation or
4 any person required that.

5 Now, you have gone to protection of personal privacy
6 and with compelling interests of the Corporation and the
7 public. For us as litigants, is there going to be a dif-
8 ference between "and" and "or"? I think it should be "or."

9 MR. STOPHEL: I don't think it is technical; I
10 think it is substantive. The conjunctive has to be different
11 from the disjunctive.

12 MR. KUTAK: I think the disjunctive would work,
13 wouldn't you, Marsh?

14 MR. BREGER: Yes. Make that amendment.

15 Thank you for bringing it to your attention. We
16 are somewhat shellshocked with this section, you see.

17 MR. KUTAK: Okay, Mr. Chairman, I would move that
18 the By-Laws as discussed and--

19 MR. CRAMTON: Well, is there further discussion on
20 Section 4.08, the amended 4.08?

21 MR. STOPHEL: Are we making the "and" "or" in both
22 cases in the last two lines, protection of personal privacy
23 or with compelling interests of the Corporation or the public?

24 MR. BREGER: Yes.

25 MR. KUTAK: Okay, Mr. Chairman, if there is no

1 further, I would move that the By-Laws as presented in their
2 amended form become effective 30 days after their publication
3 in the Federal Register.

4 MR. MONTEJANO: Second.

5 MR. CRAMTON: It has been moved and seconded that
6 the By-Laws in their amended form be adopted, published in
7 the Federal Register to be effective 30 days after the date
8 of publication.

9 Is there discussion?

10 MR. BREGER: I second it with great pleasure.

11 MR. CRAMTON: All those in favor please say, "Aye."

12 (Chorus of, "Ayes.")

13 Opposed say, "No."

14 (No response.)

15 The committee is to be congratulated for its virtue
16 and labors on these By-Laws. They have been the most care-
17 fully considered By-Laws in the history of any public or
18 private body in the United States.

19 MR. KUTAK: Mr. Chairman, in that regard, I think
20 the committee would want to thank a number of people who
21 have given a tremendous amount of input to us, not only the
22 Staff and its counsel, but I think this is a classic example
23 of how well a good draft can become better by the input from
24 the public as well.

25 MR. THURMAN: Can we just thank them as a group?

1 MR. KUTAK: Mr. Chairman, the next item on the
2 agenda is the discussion of Freedom of Information. I will
3 give a report on it.

4 MR. CRAMTON: I think after this item, we should
5 adjourn for the evening. It is 5:30 now.

6 Do you think that the Freedom of Information Act
7 Regulations will take long?

8 MR. KUTAK: If the committee pulls with me, we should
9 dispense with them in two minutes.

10 MR. THURMAN: Committee and the Board.

11 MR. KUTAK: The Board, rather.

12 MR. CRAMTON: Please proceed. If we can complete
13 the Freedom of Information Act Regulations in a reasonable
14 period of time, we will do so. If we can't, we will continue
15 on with them tomorrow morning.

16 MR. KUTAK: The reason I say that, sir, is that the
17 Freedom of Information Act Regulations, as you know, have been
18 out for public comment. We have received really two very
19 excellent comments with respect to them.

20 The first one addresses -- Dave, I alert you to
21 this because I think you will probably do the work -- the need
22 for the addresses of the offices, particularly, or regional
23 offices so that in effect people who need to obtain information
24 know where to get it.

25 And the other comment is there seems to be some

1 difficulty with respect to the availability of the indices
2 and some need to perhaps think through the process by which
3 whether the master index is in the national office and it is
4 coordinated with the regional offices and does the regional
5 office index coordinate with--

6 And these are two comments which we would like to
7 recognize and respond to. Other than that, Mr. Chairman, I
8 would say that the period of time for the running of receipt
9 of public notice for our comments does not expire until after
10 this meeting.

11 And it would be, therefore, my recommendation that we
12 of course, continue to reflect any further comments that come
13 in and if the Board wishes, make the appropriate changes
14 at least in the two instances that I have flagged. And there
15 could be others.

16 MR. CRAMTON: No action is necessary at this point?

17 MR. KUTAK: No action is necessary at this point.

18 MR. CRAMTON: The regulations perhaps in a some-
19 what slightly amended form will be before the Board presumably
20 at its next meeting for final action.

21 MR. KUTAK: And I assure the Board in the meantime,
22 it is the intention of the Corporation to act by them on an
23 interim basis.

24 MR. CRAMTON: That they are serving as a guideline in
25 the meantime.

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(No response.)

We reconvene tomorrow morning in this room at 9:00 o'clock. And we hope the air-conditioning is working.

(Whereupon, at 5:35 p.m., the meeting recessed, to reconvene at 9:00 a.m. on Sunday, October 5, 1975.)

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