

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

PROVISION FOR THE DELIVERY OF LEGAL SERVICES
COMMITTEE MEETING

March 8, 1992

12:05 p.m.

The Washington Marriott Hotel
1221 22nd Street, N.W.
The Dupont Room
Washington, D.C. 20037

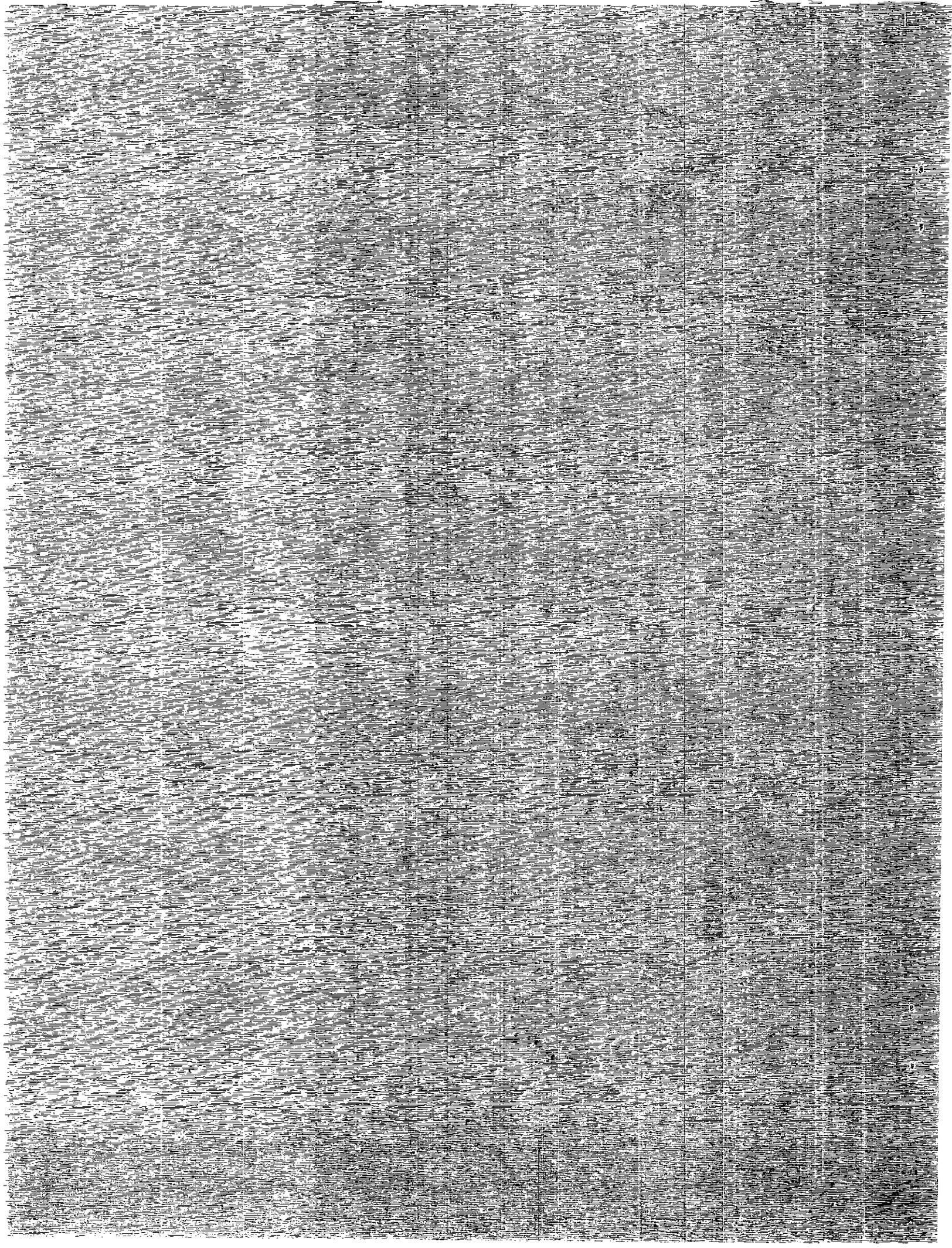
Board Members Present:

J. Blakeley Hall, Chairman
Howard H. Dana
Jo Betts Love
Jeanine E. Wolbeck

Staff Present:

John P. O'Hara, President
Emelia DiSanto, Vice President
Patricia Batie, Secretary
Victor Fortuno, General Counsel
David Richardson, Treasurer and Comptroller
Leslie Russell
Ellen Smead, Director, Office of Field Services

Diversified Reporting Services, Inc.
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WASHINGTON, D.C. 20006
(202) 296-2929



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P R O C E E D I N G S

1
2 CHAIRMAN HALL: We're going to call to order this
3 meeting of the Provisions for the Delivery of Legal Services
4 held today in the Washington Marriott, March 8, 1992.
5 Attending is Jo Betts Love, Jeanine Wolbeck, and myself, as
6 committee members; Howard Dana joining us to my right; and
7 our president is here with us; and other members of the staff
8 and the audience.

A P P R O V A L O F A G E N D A

9
10 CHAIRMAN HALL: Since we have a fairly lengthy
11 agenda, and I know all the other committees have meetings
12 after us today, and they have more things to do, we're going
13 to move right on. I'll ask if one of the members will give
14 me a motion to approve the agenda as it's printed in the
15 Board book.

M O T I O N

16
17 MS. WOLBECK: So moved.

18 CHAIRMAN HALL: Do I have a second?

19 MS. LOVE: Second.

20 CHAIRMAN HALL: All those in favor say aye.

21 (A chorus of ayes.)

22 CHAIRMAN HALL: Opposed nay.

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1 (No response.)

2 CHAIRMAN HALL: It's approved.

3 APPROVAL OF 1/12/92 MEETING MINUTES

4 CHAIRMAN HALL: Next we'll move to the approval of
5 the January 12, 1992, minutes, which is the last time this
6 committee met. Have both of you all had an opportunity to
7 read those? Could I have a motion to approve those, then?

8 M O T I O N

9 CHAIRMAN HALL: Jo moves?

10 MS. LOVE: Yes.

11 CHAIRMAN HALL: Jeanine seconds?

12 MS. WOLBECK: Yes.

13 CHAIRMAN HALL: All in favor say aye.

14 (A chorus of ayes.)

15 CHAIRMAN HALL: Opposed nay.

16 (No response.)

17 CHAIRMAN HALL: It's passed.

18 We'll move now to the consideration of procedures
19 for proposals for Corporation grants. I understand we have a
20 report by Ellen Smead. If you'll come forward, Ellen, and
21 give us your presentation, please.
22

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CONSIDERATION OF PROCEDURES FOR
PROPOSALS FOR CORPORATION GRANTS

MS. SMEAD: Thank you, Mr. Chairman, good afternoon. For the record, my name is Ellen Smead, and I am the director of the Office of Field Services. As you know, my office has primary responsibility for administering the Corporation's grants.

I've been asked to speak to you today about the types of one-time grants that we awarded during 1987 through 1991. The procedures used in awarding such grants and the procedures we proposed to use were to award meritorious and innovative grants.

First, I'd like to refer to some handouts that were sent to you last week. We put together a profile of our one-time grants year by year. The profile includes the grantee's name, the grant period, the grant amount, the type of grant, the purpose of the grant, and the rationale for each grant.

We've broken these down to six different grant types or subject matters, those being: pro bono, materials development, training, emergency, self-help, and student internship. The information on these has been consolidated

1 into some tables and to some charts, too.

2 The table shows the number of grants and the amount
3 of grants that were awarded by grant type. This information
4 has also been incorporated into two pie charts that are
5 attached. As you can see from the handouts, approximately
6 two-thirds of the grants were awarded to our regular grantees
7 for emergencies and material development. Training is also a
8 significant category. Most of that money went to Drake
9 University or the Indian Law Support Center.

10 For a minute, I'd like to move on to meritorious
11 and one-time grants at this point. A lot of the requests
12 that we've received are what is now being called meritorious
13 and innovative grants. Prior to about November, we just
14 lumped them together and called them unsolicited grants.

15 Meritorious grants are grants that are awarded for
16 special projects or activities that aid or support legal
17 services delivery. Examples of this would be sponsoring a
18 special training event, updating a legal manual, or expanding
19 an existing pro bono project.

20 The innovative component encourages new and
21 experimental approaches to enhance legal services delivery.
22 The use of new technology or alternative dispute resolution

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1 projects would be examples of innovative grant types. We
2 have been asked in the past to speak to you about the
3 procedures that we would use to award meritorious and
4 innovative grants in light of the fact that the budget
5 includes a request for money to award such grants.

6 This morning there was distributed a flow chart
7 that looks like this (indicating). These are our draft
8 procedures, the ones that we've been talking about. These
9 are very similar to the procedures that are already in use,
10 but I'll explain the differences as we go along.

11 First of all, we would propose to put a
12 solicitation notice in the Federal Register within 60
13 calendar days of the beginning of the LSC fiscal year. This
14 is different than what we do now. We do not do a
15 solicitation at this time.

16 The notice would specify the appropriate deadlines,
17 up to two per year, the contact person, LSC, and the amount
18 of funds available if we know it at that time. The
19 prospective grantee would then complete the application and
20 send it to my office in the grants and budget division. We
21 are thinking that each prospective grantee can submit one
22 application per category per year.

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1 The grants and budget division would then review
2 the application for technical compliance with the
3 solicitation requirements. For example, they would make sure
4 that the right number of copies have been submitted and that
5 the appropriate forms are signed.

6 A letter would then be sent to the applicant
7 acknowledging receipt if the application is complete.
8 Incomplete applications would be rejected by letter, but an
9 applicant may be given, say, five to seven days, business
10 days, to correct a minor problem. This would be, for
11 example, if they forgot to sign a form or there was a page
12 missing, but basically it was complete. We just want to put
13 some minor touches on it.

14 Next, the Office of Field Services' deputy director
15 would conduct a preliminary review of proposals for
16 consistency with applicable Board policy in the LSC Act and
17 regulations. What we're looking for here is if the
18 application clearly does not fall within LSC guidelines. For
19 example, if an application came in for litigation pool or for
20 criminal work, it would be thrown out at this point.

21 If necessary, we would obtain a legal opinion from
22 the Office of General Counsel. If the application is

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1 rejected, the applicant would be advised in writing of the
2 rejection, the reason for the objection, and the right to
3 appeal directly to me as director of the Office of Field
4 Services.

5 Next would come the merit review of applications by
6 a Grant Advisory Committee chaired by the OFS deputy
7 director. Members of the committee would be selected, with
8 the president's approval, from LSC's staff and other
9 interested parties, including program representatives as
10 necessary.

11 This differs a little bit from our current practice
12 in that we presently do not have members of the public
13 involved. We only have staff involved presently on the merit
14 review system. The composition of the task force will vary
15 depending on the volume of proposals received and the
16 purposes or scopes of the proposals.

17 I should back up one second. When I said it is
18 different, this procedure is similar to what we do right now
19 for law school solicitations, in that we have staff, law
20 school clinicians and program representatives on our merit
21 review for law school applications.

22 The review under the innovative and meritorious

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1 grants will be conducted pursuant to the criteria set forth
2 in the solicitation and a Federal Register notice, if
3 applicable. The committee would then make non-binding
4 recommendations of the grant awards.

5 Next, the OFS deputy director would submit a
6 memorandum on behalf of the Grant Advisory Committee setting
7 forth their recommendations. This memorandum would go to the
8 director of Office of Field Services, and it would include a
9 summary of the reviewer's comments and the committee's
10 recommendations and other relevant information.

11 The OFS director would review this memorandum and
12 prepare a memorandum to the president concurring with,
13 dissenting from, or recommending modifications to the
14 committee's recommendations. The OFS director's
15 recommendations can take into account issues not within the
16 committee's purview, such as the proposed grantee's success
17 and compliance under existing or prior grants.

18 The OFS director will solicit input from the Office
19 of Monitoring Audit and Compliance, and may solicit input
20 from the Office of General Counsel and other offices within
21 LSC. The OFS director would then transmit this memorandum
22 with the initial memorandum about the advisory group's

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1 recommendations to the president.

2 The president then makes a decision to award the
3 grant or deny the grant. If a grant is awarded, the
4 president has discretion to award an amount or term different
5 than requested by the grantee or recommended by the Grant
6 Advisory Committee. The president also has discretion as to
7 the requirements of the grant.

8 Next, the proposed grantee would be notified in
9 writing of the intent to award the grant. He would also
10 issue a public notice with a 30-day comment period. This
11 would be also a time when we advise Capitol Hill and follow
12 our usual procedures for notifying the award of grants.

13 The grants and budget division would then negotiate
14 with the proposed grantee on any special requirements during
15 this 30-day comment period. After the 30-day comment period,
16 assuming there's no problem, we would then issue the grant.
17 Award documents would then be issued.

18 After which we would begin disbursing grant funds
19 after we have received the original countersigned grant
20 documents and all preconditions have been satisfied. An
21 example of a precondition would be that a grantee might be
22 required to submit a most recent audit report or a CPA

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1 evaluation of an accounting system in internal controls.

2 The grantee would then submit periodic reports as
3 specified, and LSC would monitor it during the term of the
4 grant. The grantee would submit a final report and refund
5 any remaining funds, including any derivative income, at the
6 end of the grant period.

7 We would then, at the end of the grant period, also
8 complete an evaluation of project and do any follow up, if
9 necessary. For example, if the intent was to expand legal
10 services, we might follow up and see, if in a year, that
11 project is still in existence and if it's still providing the
12 services.

13 Finally, the president would make an annual report
14 to the Committee on Provisions of the Delivery of Legal
15 Services within 90 days of the close of LSC's fiscal year.
16 Such report would include the following information for each
17 grant: name of the grantee, the amount, the purpose, and the
18 results, if any, if it was completed. You would also make
19 any appropriate recommendations regarding such grants.

20 For emergency grants, we currently use and would
21 intend to use a somewhat more streamlined process. By their
22 nature, we try and turn around requests for emergency funding

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1 very quickly. Those requests are reviewed by a staff person
2 in the grants and budget division as soon as they are
3 received.

4 Those requests can come in writing or they can be
5 verbal. For example, if the office is torn apart and they
6 cannot send us a written request, we will accept something
7 verbally, and we have done that in the past. A person in the
8 grants and budget division will then turn over her or his
9 analysis to the division manager who would then make a
10 recommendation to me.

11 I would review that recommendation and make a
12 recommendation to the president. Those procedures are very
13 quick, as I said, because we want to get the money out as
14 quickly as possible.

15 One handout I referred to but I did not talk to
16 specifically was, we did send you two copies of proposed
17 Federal Register notices. One of them includes a funding
18 amount and the other one does not include a funding amount.
19 That's the only difference between those two.

20 That concludes my comments on the grant procedures.

21 CHAIRMAN HALL: Thank you, Ellen. Do any of the
22 committee members have a question?

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1 (No response.)

2 CHAIRMAN HALL: Ellen, at our last meeting, there
3 was some question -- I think Howard posed it -- on whether
4 these guidelines should be in the form of a regulation versus
5 a guideline. I don't know if you were in the room at that
6 time. Do you recall?

7 MS. SMEAD: I was still on maternity leave.

8 CHAIRMAN HALL: I think Vic was going to possibly
9 be asked for an opinion on that or just that it died at that
10 point. I don't recall. Apparently, you don't know a thing
11 about it.

12 MS. SMEAD: No, sir, I don't.

13 CHAIRMAN HALL: Howard, do you recall that? Was
14 there ever any further discussion on that?

15 MR. DANA: I don't recall any further discussion.
16 I'm not sure, given the real -- if the guidelines that are
17 being proposed are really the flow chart and the announcement
18 of funding. Is that what is being proposed?

19 MS. SMEAD: Yes, sir.

20 MR. DANA: I'm not sure that you would need a
21 regulation. I think of this as a good procedure, but I don't
22 see anything in here that is really in the nature of a

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1 guideline requiring regulatory authority. It's basically --

2 CHAIRMAN HALL: I thought that you had had a
3 concern with that last time of some degree, Howard.

4 MR. DANA: Well, I did. But I think that there is
5 very little direction in here as to how the Corporation would
6 exercise its judgment, except there would be a Merit Review
7 Committee. I'm not sure that the -- I don't know, but I
8 think it's worth asking the OGC as to whether or not this is
9 consistent with our existing regulations. I assume it is.

10 CHAIRMAN HALL: It seems also there was some --
11 Vic, did you want to comment on that?

12 MR. FORTUNO: Yes, sir. I'm here and available to
13 comment if there are any questions. It seems from what I
14 heard it's principally internal operating procedures that
15 we're talking about. It does not appear that, at least
16 preliminarily, that a regulation would be needed to set this
17 out.

18 In any event, a regulation that were promulgated
19 now certainly couldn't have an effective date any earlier
20 than October 2nd, although the rule-making process could
21 commence. I don't know the regulation is needed for this,
22 however. It is simply governing the internal operating

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1 procedures of the Corporation.

2 CHAIRMAN HALL: It was just a question that was
3 brought up and probably should be set aside at this point.
4 We should proceed without that.

5 Another question I had was, there was some mention,
6 then again by Howard, of whether or not there should be two
7 sets of guidelines, one for field programs and the other for
8 all others, perhaps on the rationale that field programs
9 understand the grant-making process somewhat better than
10 others.

11 So, therefore, if I could call upon Howard again to
12 flesh that out for me, I don't know if that went anywhere or
13 not.

14 MR. DANA: I guess this process really solves my
15 principal concern, which was we have been passing
16 out -- making grants. There was really no public
17 notification of the field that this was a possibility. So,
18 people who were aware of it made applications, and it just
19 didn't seem to be a fair way of dispensing the public funds.

20 I also felt that if there were going to be rules as
21 to who got what and why, those ought to be set forth too.
22 Essentially, what is proposed here is there are no rules in

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1 terms of who gets it. It's really the judgment of a Merit
2 Review Committee and management, and that's --

3 CHAIRMAN HALL: Their job.

4 MR. DANA: That's their job. So, I think that the
5 fact that there are going to be people on that committee from
6 outside the Corporation, we'll give it greater credibility.
7 I think that's healthy. My principal concern has been
8 satisfied by the notion of a public notice to the world.

9 The fact that there are no particular guidelines as
10 to who gets what and why, except that it's meritorious and
11 innovative, is fine. I don't think it's probably necessary
12 to amplify those words. It may be that over time, as we get
13 into this, the committee and the Corporation will sort of
14 develop rules.

15 When they do, like, for instance, the rule that I
16 heard alluded to, that each program can only apply for one
17 grant in one of the ultimate areas, I don't know whether that
18 means they can apply for a meritorious grant and an
19 innovative grant or not.

20 But the one-per-year rule, that kind of rule ought
21 to be somehow memorialized and available to everybody. But I
22 had some specific questions about it, but I think this is a

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1 very excellent first step.

2 MS. SMEAD: Mr. Chairman?

3 CHAIRMAN HALL: Yes.

4 MS. SMEAD: I think the solicitation would answer
5 some of Mr. Dana's concerns. The solicitation would set
6 forth the criteria that would be looked at. It would also
7 indicate the percentage weight that would be given to each of
8 those criteria.

9 CHAIRMAN HALL: Mr. Dana?

10 MR. DANA: Thank you, Mr. Chairman. Would the
11 criteria -- maybe it is the criteria that I was looking for.
12 Have those been developed on an interim basis?

13 MS. SMEAD: We've got a preliminary draft of a
14 solicitation that I thought I had with me here today, but
15 apparently I do not. We finished up a preliminary draft on
16 Friday.

17 MR. DANA: Well, it may be that the criteria as to
18 who gets the grant is what I was thinking of in terms of
19 guidelines. Again, without seeing them and without getting
20 an opinion of counsel, I wouldn't know if those guidelines or
21 criteria needed to be a matter of record or whether they -- a
22 matter of regulation or not.

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1 But I think that the fact that we have them and are
2 developing them, and that they will be made available to
3 people who are interested, and presumably published in
4 appropriate places, has really satisfied my concern.

5 CHAIRMAN HALL: Ellen, one other question that I
6 had. I know that this committee member doesn't intend to
7 offer any motions on this today until I've had a chance to
8 study the transcript and your explanation of it. So we will
9 meet again.

10 When we do, some questions that were on my mind,
11 did these work? I know the emergency relief grants worked,
12 but were they successful programs? Do we have the product of
13 their grant? Do we have copies of the tapes that they were
14 going to produce and the materials?

15 MS. SMEAD: Yes. On these we do have. I've seen
16 the tape on some of these. For example, the Volunteers of
17 the Indigent on the second page, indigent persons, I've seen
18 that tape. These have been successful, or they are being
19 successful. For example, one of them is a grant to the
20 Consumer Law Center which is still making its materials.

21 CHAIRMAN HALL: I guess that's a given then that
22 the grants that have been made in the past, there's no

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1 problem there. That doesn't need to be looked at.

2 Apparently whoever is or you all who are making these awards
3 are apparently doing a good job, at least on the ones that
4 you do.

5 Mr. Dana?

6 MR. DANA: Mr. Chairman, you mentioned something I
7 thought was a litigation pool. It was a no-no.

8 MS. SMEAD: Yes, sir. Under our regulation not
9 have a revolving litigation pool.

10 MR. DANA: What is a revolving litigation pool?

11 MS. SMEAD: I turn to general counsel.

12 MR. FORTUNO: I think what she's talking about is
13 where you use certain funds to litigate, recover attorney's
14 fees, and then take the fees that you recover and put those
15 back in the funds to use to continue that perpetual fund.

16 MR. DANA: How do you deal with the problem of an
17 outsider or a member of your merit -- would you have rules
18 that would indicate that if a person was from a program and
19 his program had an application for funds in that year, would
20 that person be excused entirely?

21 MS. SMEAD: We haven't formulated that yet, but our
22 practice has been in the law schools -- law schools are

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1 divided up into regions, seven regions. If a member of the
2 review committee has an application pending before the
3 committee, he or she does not review any of the applications
4 for that region only. So they can review for the other six
5 regions but not for whatever region they are in.

6 MR. DANA: A couple of just nitpicks. Is it
7 contemplated that this solicitation or this announcement of
8 funding would be used this year?

9 MS. SMEAD: The one included herein would be.
10 That's why it's only got -- it says for 1992. It only has
11 one deadline because we're well into the fiscal year now. My
12 understanding is there hasn't been any money specifically
13 designated for meritorious and innovative grant proposals.
14 That's why one of these does not have a funding amount given.

15 MR. DANA: I cannot find any difference between the
16 two that are in front of me, so when you find it, maybe you
17 could -- but there's a typo early on concerning the period of
18 time. I think one of those is out of sync.

19 MS. SMEAD: Oh, yes, I see.

20 MR. DANA: It occurs to me that \$75,000 per grant
21 may convey the impression to applicants that there's more
22 money in that pool than there really is. So I think that it

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1 would be helpful to indicate that the Corporation has
2 approximately whatever it has, the implication that you can
3 get -- so you have a fighting chance to get a \$75,000 grant
4 when there's only a couple hundred thousand dollars in the
5 pool.

6 I think it may set the field -- I mean, their
7 proposals might be too expansive for what you're able to
8 fund. It's just a thought.

9 CHAIRMAN HALL: I take it you'd leave that blank as
10 to amount.

11 MR. DANA: Well, either that or I would indicate
12 what the Corporation approximately feels that it intends to
13 award during that period. Oh, I see, that is the difference.
14 I found the difference. I got you. That would help. With
15 that number filled in, I think the \$75,000 is fine. Without
16 it, I think the \$75,000 is misleading.

17 I commend the staff for these improvements. I
18 think the field will welcome them.

19 MS. SMEAD: Thank you.

20 CHAIRMAN HALL: Jack, do you have any comments?

21 MR. O'HARA: No, sir.

22 CHAIRMAN HALL: Any others?

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1 (No response.)

2 CHAIRMAN HALL: Thank you, Ellen.

3 The fourth item on our agenda, consideration of the
4 current Corporation policy governing interstate subgrants,
5 Ellen, I see you're back up again. Thank you.

6 CONSIDERATION OF THE CORPORATION POLICY

7 GOVERNING INTERSTATE SUBGRANTS

8 MS. SMEAD: Mr. Chairman, as I said, this is
9 another item that came up at the last meeting when I wasn't
10 here. This is the issue of LCS's practice on interstate
11 subgrants. There are two components to this issue: What has
12 LSC's practice been regarding interstate subgrants; and two,
13 what are the reasons for allowing or buying such subgrants?

14 I believe that Charlie talked before about the
15 history. There's never been a formal Board policy on this
16 issue, but LSC has opposed subgrants and grantees operating
17 in more than one state in several instances over a long
18 period of time from 1985 through present.

19 There is presently one interstate subgrant in
20 existence between Neighborhood Legal Services in Connecticut
21 and Western Massachusetts Legal Services. This is a
22 long-time arrangement stemming from a proposal to defund

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1 Neighborhoods Migrant Program in 1978, because there were not
2 enough migrants in Connecticut to justify the migrant grant
3 in the opinion of LSC at that time. The defunding procedure
4 resulted in a settlement in 1980. One of the terms was to
5 allow this interstate subgrant.

6 Another interstate subgrant recently was the one
7 involving the Legal Aid Bureau of Maryland, commonly known as
8 LAB, which received the subgrant from Peninsula Legal Aid
9 Center in Virginia, in which LAB provided the migrant staff
10 and did the migrant work on behalf of the Virginia program.

11 Beginning in 1986, the then-assistant director of
12 OFS told the Virginia program that LSC objected to the
13 continuance of the subgrant, stating that as a matter of
14 general policy, LSC has opposed the delivery of services to
15 clients of one state by an LSC recipient or subrecipient of
16 another.

17 The subgrant was authorized for 1986, but in 1987
18 it was approved on condition it would not be renewed for
19 1988. Eventually the Virginia program was able to put in its
20 own program.

21 In another instance, an interstate grant proposal
22 was submitted by Texas Rural Legal Assistance for the

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1 Arkansas migrant grant back in 1985. That request was denied
2 by a letter of July 31, 1985, from the then-director of the
3 Office of Field Services. The letter stated that, however,
4 Section 1607 of the Legal Services Corporation regulations
5 requires the governing body of a recipient possess a nexus to
6 the state in which the clients are to be served.

7 Most recently, and I assume the reason this is
8 before you at this time is, LSC was reluctant to approve
9 Alabama and Mississippi migrant proposals which involve
10 subgranting proposed funding out of state to Florida Rural
11 Legal Services. This was consistent with past practices.

12 As Deputy Director Charlie Moses told you on
13 November 17th, these applications were not turned down but
14 were discussed with the applicants and approved with
15 modifications, leaving the conduct and control of the
16 activities with the applicants which are recipients in their
17 respective states.

18 These recipients are using personnel and resources
19 from outside their states but are not delegated performance
20 of the grant to an organization outside their states.

21 I'd like to move now to the reason for disfavoring
22 interstate subgrants. The Board has raised the question

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1 whether this administrative practice is justified. We at LSC
2 think we are authorized to continue such a practice. LSC has
3 discretionary authority to approve or disapprove subgrants
4 under the subgrant regulation.

5 This authority has been exercised for various
6 reasons in the past and has not been successfully challenged.
7 As desirability of this practice, the case rests primarily on
8 the strong presumption of the structure of the LSC Act in
9 favor of local control of all aspects of the delivery of
10 legal services.

11 For example, 1007(c) of the LSC Act requires that
12 the recipients be governed by a body at least 60 percent of
13 which consists of attorneys who are members of the bar of a
14 state in which the legal assistance is provided. The
15 so-called McCollum Amendment further requires a majority of
16 each recipient board be apprised of attorneys who are
17 admitted to practice in one of the states and who are
18 appointed by the governing body to the state, county,
19 municipal bar associations, the membership of which presents
20 a majority of attorneys practicing law in the locality in
21 which the organization is to provide legal assistance.

22 One-third of the recipients board is also supposed

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1 to be eligible clients. While there is no requirement that
2 specifically says they must come from the area that's being
3 served, there is a strong indication that they should be from
4 that area. For example, in our regulations, we suggest that
5 they should come from client and neighborhood associations.

6 Furthermore, LSC has some latitude in determining
7 what are appropriate groups for purposes of client-Board
8 composition. The regulations give us authority to approve
9 that selection process. It's likely that if we had a group
10 that was from out of state that was proposed as a appointing
11 organization, we would not likely approve it.

12 On another matter, there is a strong preference in
13 the Act for attorneys delivering services to be local to the
14 service area. 1007(8a) of the Act specifies the Corporation
15 shall ensure that recipients solicit the recommendations of
16 the organized bar of the community being served before
17 filling staff attorney positions in any project funded
18 pursuant to this title, and give preference in filling such
19 positions to qualified persons who reside in the community
20 being served. These provisions manifest an intent to both
21 the governments of the recipient programs and the personnel
22 delivering them to be local.

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1 Basically, we feel that the interstate subgrants
2 are not desirable and are somewhat contrary to the broad
3 intent of the LSC Act. We think there are strong reasons for
4 pressing for local control and delivery of services. Greater
5 knowledge under more frequent contact with the eligible
6 client community can usually be expected. Furthermore, such
7 local focus tends to enhance the commitment and expertise
8 that may be lacking in local communities.

9 Since this has been brought to question about the
10 migrant grants, I'll address that issue too. Migrant grants
11 have special characteristics which affect the considerations
12 that I just discussed. The same analysis of the LSC Act and
13 the same programmatic argument for local control remain
14 valid.

15 While it is true that migrant clients are often not
16 in a particular state much of the year, the problems they
17 face are local, as their employers are local, most frequently
18 the farmers. The environment grant is subgranted to an
19 out-of-state entity. The local recipient will never be
20 forced to develop the involvement and expertise needed to
21 operate a migrant program.

22 This process of development of needed expertise

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1 locally has occurred in many, if not most, new LSC grantees.
2 It's a vital part of the process of establishing a new
3 program in the area. This observation applies equally to the
4 establishment of a new recipient and to establish a new
5 component such as a migrant native American or existing
6 recipient.

7 If the administrative practice of disapproving
8 interstate subgrants is discontinued -- we expect to have
9 approximately three, in fact. First, new migrant grantees
10 will be far less likely to develop an active full service
11 presence for the target population in these states. There's
12 a good chance that we will never really have a migrant
13 program in these states but merely a migrant program for
14 these states run by and from another state.

15 Subgranting one states migrant funds to another
16 states migrant recipient may also be undesirable for the
17 clients in the subrecipient state. The subgrant may divert
18 personnel and management resources from provision of adequate
19 services in the subrecipient state to provide services to the
20 subgrantor state.

21 While a subgrant makes additional funds available
22 to the subrecipient, these funds are not guaranteed long

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1 term. So the subrecipient may not hire additional personnel
2 to the extent needed to absorb all the extra work. It is
3 unlikely that the subrecipient will hire additional
4 management.

5 Finally, any such subgrant is likely to entail
6 travel costs in excess of what would be required for an
7 in-state recipients. Thank you.

8 CHAIRMAN HALL: Thank you, Ellen. Do any of the
9 committee members have question of this witness?

10 (No response.)

11 CHAIRMAN HALL: Howard, do you? Ellen, do you need
12 to take a break?

13 MR. DANA: It seems to me that the Corporation is
14 asking too much of this witness.

15 CHAIRMAN HALL: I agree.

16 MR. DANA: If the witness can carry on.

17 MS. SMEAD: Yes, sir.

18 MR. DANA: I would first like to -- I was able to
19 read this on my way down, and I was impressed with the
20 caliber of this analysis and of the advocacy and rationale
21 that the Corporation has marshalled for its fourth policy.
22 As I think perhaps the director that raised the concern

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1 initially with the policy, I'm happy to tell you that this
2 has all but flipped me into coming in line with the policy of
3 the Corporation to discourage, wherever possible, interstate
4 subgrants.

5 I reserve the right to change my mind again. I
6 think in part my concern, at least initially, had to do with
7 the notion of a subgrant as opposed to a contract. What you
8 are talking about, I think, when you talk about subgrants,
9 you mean that is a delegation of the direct provision of
10 legal services to eligible clients within the grantees
11 territory to someone else.

12 MS. SMEAD: Yes, sir.

13 MR. DANA: As opposed to a contract with another
14 entity to provide training, support, guidance, or some other
15 support function.

16 MS. SMEAD: Yes, sir.

17 MR. DANA: Which in the context of going into a new
18 area of the law not previously practiced in an area, I
19 thought it was very reasonable; in other words, especially in
20 these three states, four states, where there was no migrant
21 program. I think the idea of importing expertise from away
22 was healthy, wise, and efficient. I take it that this policy

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1 would not prevent that?

2 MS. SMEAD: Correct. It would not.

3 MR. DANA: Mr. Chairman, I think that if I were
4 voting as we speak, I would be voting in favor of the policy
5 that the Corporation has articulated here. I think it makes
6 sense, which I did not previously appreciate. I appreciate
7 the staff for making it clear to me.

8 MS. SMEAD: Thank you, sir.

9 CHAIRMAN HALL: Harrison, would you come forward
10 and give us a response to that, please?

11 MR. McIVER: Harrison McIver of the Project
12 Advisory Group.

13 I would hope that there would be a delay in taking
14 action on this because I think that the programs could
15 present a case to the contrary. I got a copy of this on
16 Friday, and I didn't have an opportunity to really confer
17 with programs and to develop a response. I will attempt to
18 address some of the points raised.

19 First, there is no statutory prohibition against a
20 subgrant relationship, subgrant if found within the LSC Act
21 or statutory provisions. There are other examples of not
22 necessarily subgrant arrangements, but where LSC directs

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1 recipients to provide services to clients across state lines.

2 One example is the Legal Aid Bureau is currently
3 providing migrant representation to Delaware. East Texas
4 Legal Services provides services in four counties in
5 Arkansas. DNA Legal Services in Arizona currently provides
6 services to native Americans in New Mexico and Utah.
7 Obviously, the national support centers definitely have
8 provided support services to legal services programs
9 nationwide.

10 CHAIRMAN HALL: Harrison, can I ask you, of course
11 this policy wouldn't prohibit the support centers from what
12 they're doing.

13 MR. McIVER: That's right.

14 CHAIRMAN HALL: The examples of the out-of-state
15 help that you've just detailed, I know East Texas is close to
16 parts of Arkansas. I mean, are those examples where they are
17 very far apart, or are they still in the same locality?

18 MR. McIVER: Well, they're not far apart, but in
19 migrant programs, for instance, Texas Rural has
20 responsibility for the entire State of Texas. When you deal
21 with the migrant streams, you're following migrants where you
22 find them. They may end up in different parts of the state.

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1 CHAIRMAN HALL: Mr. Dana?

2 MR. DANA: Thank you. Harrison, are those
3 instances that you described where services are being
4 provided by program across state lines, aren't those programs
5 directly funded by the Corporation to do that?

6 MR. McIVER: They are currently directly funded,
7 but in this day and time, to have a strict prohibition rather
8 than look at a situation on a case-by-case basis -- for
9 instance, in Mississippi, the expertise, as you mentioned,
10 Mr. Dana, was lacking.

11 The whole goal was to create the expertise, import
12 the expertise in order to give the program time enough to
13 develop and to be able to assume full responsibility for
14 services within Mississippi. The whole point in goal was
15 never to create a subgrant situation that would be
16 totally -- I mean, in time forever, if you will. It was just
17 designed for a short-term situation.

18 If you even look at the situation in Connecticut
19 and in Massachusetts, nothing has been said about that, about
20 the quality of services being delivered. Nothing has been
21 said in this document about what is being provided in an
22 economic and efficient manner.

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1 Just talk about that was the aberration. I think
2 you need to look at -- I would submit that the situation
3 needs to be looked at on a case-by-case basis rather than
4 have a blanket prohibition.

5 MR. DANA: How do you deal with the argument that I
6 think was made quite persuasively that the Act really talks
7 about local control? It's quite insistent that clients and
8 bar associations create the board that governs a program. If
9 a program that is from State A has a board made up of clients
10 and lawyers from State A, why aren't we violating the spirit
11 of the Act to have that entity provide legal services in
12 State B?

13 MR. McIVER: Are you saying spirited? Statutorily,
14 those provision only apply to the recipients as opposed to
15 subrecipients because we know in pro bono situations we have
16 that. In state support situations, those boards are not
17 required to conform to 1607.

18 I think the situation could be made flexible, such
19 that programs could be encouraged as a condition to a
20 subgrant approval to create boards that will allow numbers to
21 cross state lines and that kind of situation so that you can
22 have that local presence.

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1 But to have a strict across-the-board prohibition,
2 I think, and fortunately in the 21st century, I think this
3 policy might have been more relevant 10 years ago or 20 years
4 ago. We're talking about moving to the future and we don't
5 know what situations we'll have at hand.

6 I think we need to continue to look at things in an
7 innovative and creative way, such that we can fashion a
8 system that will provide high quality legal services to the
9 programs in an economically efficient way.

10 I think the travel issue perhaps, if you're talking
11 about Florida rule, and in terms of Mississippi, it might be
12 something you will look closely at. But when you have
13 contiguous situations, the travel issue just falls. That
14 would be my response.

15 CHAIRMAN HALL: I'm not sure what the policy says
16 in whole, but it seems to me it says we don't look upon
17 interstate subgrants favorably. But it doesn't seem to
18 exclude the possibility, especially in a short-term
19 situation, that one might be made. Maybe I just missed
20 something in here.

21 MR. McIVER: Well, straight prohibition, that's
22 what we were concerned about. We agree that the Corporation

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1 has the authority. We're not addressing that point, but
2 we're just trying to encourage that no policy be developed
3 such that it would be a straight across-the-board
4 prohibition.

5 When you get something in the Corporation you just
6 automatically say no, it doesn't conform to policy and a
7 strict constructionist view in that regard.

8 CHAIRMAN HALL: Ellen, is that your interpretation
9 that it's a strict prohibition?

10 MS. SMEAD: No. It's not a strict prohibition.
11 It's a discouragement. We try to work around it too, just
12 like we've done in Mississippi and Alabama where we've
13 approved contracts for people to come in, provide assistance
14 both from Florida -- and we're working on one with MLAP,
15 Migrant Legal Action Program.

16 We would expect that the people would share
17 information, that they would want to get some assistance from
18 the people that have the expertise in the area.

19 CHAIRMAN HALL: Harrison, does that satisfy your
20 concern?

21 MR. McIVER: Well, for example, I've been advised
22 that there was some talk and maybe it was presented to the

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1 Corporation -- I know there was some talk among our circles.
2 Perhaps in Mississippi a regional concept might -- in terms
3 of four states, a regional concept might be the most
4 appropriate way to address it.

5 Obviously, 1607 would have to be dealt with because
6 you could likely have representation from all four states on
7 a governing body. I would say that rather than disfavoring
8 it, it should be looked at on a case-by-case basis. Disfavor
9 would discourage and would create a mindset against.

10 I think what we're talking about allowing creative
11 energies to flow and not be discouraged and to allow -- if
12 someone has a proposal, to feel that it would be seriously
13 considered and not be discouraged from submitting such a
14 proposal.

15 CHAIRMAN HALL: Mr. Dana?

16 MR. DANA: Mr. Chairman, I understood that it was
17 not your intention to take action on this. I'm persuaded
18 that there may in fact be some merit to the side that I used
19 to be on. Maybe what we should do is ask to have a brief
20 from Harrison presented that our staff could react to.

21 CHAIRMAN HALL: I understood you were preparing
22 that; were you not, Harrison?

1 MR. McIVER: Well, I will --

2 CHAIRMAN HALL: Or want to. We would love to have
3 it, then.

4 MR. McIVER: Thank you.

5 CHAIRMAN HALL: Thank you, Harrison. Thank you,
6 Ellen.

7 Is there anything else from any of the other
8 committee members, or from any of the other staff, or
9 president, or anybody else from the seating area?

10 (No response.)

11 CHAIRMAN HALL: If not, we're going to move on to,
12 I guess, our last item, consideration of vehicles through
13 which the Corporation could assist LSC-funded grantees to
14 recruit and retain staff attorneys. I think loan repayment
15 and loan assistance is going to be our focus.

16 CONSIDERATION OF VEHICLES THROUGH WHICH THE
17 CORPORATION COULD ASSIST LSC-FUNDED GRANTEEES

18 TO RECRUIT AND RETAIN STAFF ATTORNEYS

19 MR. RUSSELL: Good morning. I'm Leslie Russell,
20 for the record.

21 I last addressed this Board of this issue in
22 December, wherein I gave a brief overview of the varying

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1 mechanisms for attorney recruitment and retention. Today, I
2 hope to follow up on that in two general areas: one being
3 the principal activities of staff since the last Board
4 meeting; and secondly, a brief discussion of other activities
5 and considerations.

6 Since the last Board meeting, there are two things
7 that have generally occurred and been conducted by staff.
8 One was a meeting with the National Association for Public
9 Interest Law and the other one was, in consideration of those
10 discussions and other information available to staff, the
11 preparation of a draft survey.

12 First, with respect to the National Association for
13 Public Interest Law, coined NAPIL as its acronym, we
14 generally discussed three mechanisms for recruitment and
15 retention. NAPIL is a major player in the loan repayment
16 assistance area as well as other areas of promoting public
17 interest law.

18 They serve principally as an information
19 clearinghouse on loan repayment assistance programs. They
20 are recently, through a Ford Foundation grant, they are
21 initiating a fellowship program in 1993. They also support
22 some internship program for approximately 750 summer interns,

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1 law students, at an approximate cost of \$1.5 million.

2 NAPIL is a law student-created and law
3 student-activated organization. Their national headquarters
4 is located in Washington, D.C., approximately two blocks from
5 here, as a matter of fact. They raise funds. Their member
6 organizations contribute funds for the summer internships.
7 Their member school law student organizations pledge part of
8 their summer income to support the internships.

9 Generally, they do and are the lead player, I
10 guess, with respect to loan repayment assistance. They also
11 provide training and help law schools develop loan repayment
12 assistance programs. In my discussion with NAPIL, it was
13 again confirmed that loan repayment assistance programs are
14 good as a retention mechanism and have value as a recruitment
15 mechanism.

16 We also discussed the need on a national level for
17 LRAPs to support and stimulate law student interest in public
18 interest law. One drawback to the current loan repayment
19 assistance programs is the fact that the portion of the loan
20 forgiven is currently subject to income tax. There is a bill
21 pending in Congress that might change this. Prospects look
22 good. However, in terms of a timetable, there's no definite

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1 timetable as to when that change may take place.

2 With respect to fellowship programs, we discussed
3 two types of fellowships. One would be a full-time
4 fellowship which, in itself, is obviously a good recruitment
5 to, I think, the Reggie Program. It showed that fellowships
6 are good recruitment tools. Theoretically, they should also
7 have some retention value.

8 In our discussion, it was clear that prestige is a
9 main or a major drawing point to a fellowship program.
10 Prestige may be unhatched by the longevity of the program or
11 a commitment to a fellowship program for more than, say, one
12 year.

13 Additionally, if perhaps a fellowship program was
14 provided in conjunction with an LRAP, that may, in itself,
15 help enhance the prestige of the fellowship program. The
16 major fellowship program in existence currently is operated
17 by the law firm Scanton Arps. They have committed \$10
18 million to their own fellowship program. They receive
19 approximately 250 applications for 25 slots annually.

20 The second fellowship-type program we spoke about
21 was a summer internship fellowship. As I indicated, NAPIL
22 conducts its own summer internship program for approximately

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1 750 programs. It's a cost effective mechanism to bring law
2 students into the legal services realm. It also, from the
3 Corporation's perspective, would give us an opportunity to
4 potentially tap into existing law school civil clinical
5 projects.

6 From the field perspective, it has the potential to
7 develop a pool of young attorneys from which they can draw
8 from in the future. At the same time, it will sensitize law
9 students to the needs of low income individuals for legal
10 services while, at the same time, the programs would have the
11 benefit of another individual to provide direct services and
12 assistance. That's generally an overview of my discussions
13 with the National Association of Public Interest Law.

14 The second activity, major activity, since the last
15 Board meeting has been the drafting of a survey to LSC field
16 programs to try to obtain more information on the level of
17 need for recruitment and retention programs. The theory of
18 the survey came up principally because of the remarks of
19 Steve Gotlieb at the last Board meeting concerning
20 differences of program opinion regarding the need for
21 attorney recruitment and retention.

22 I think that Mr. Gotlieb, in mentioning the survey

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1 that had been conducted jointly by NLADA and NAPIL, was able
2 to provide for some information by percentages on public
3 interest programs own assessment of the need for those type
4 of surveys, for those type of programs.

5 In reviewing that survey, I did notice that the
6 joint NLADA and NAPIL survey was conducted through about 1450
7 public interest-type organizations, which I assume included
8 legal services programs. Three hundred and twenty-six
9 organizations responded. However, there was no indication as
10 to how many of those organizations were LSC-funded
11 organizations.

12 So, it's difficult to extrapolate those results to
13 our programs. If we extrapolate the total mailings to the
14 total returns, the survey had about 20 percent response rate.
15 Extrapolating to LSC programs, then we could say that
16 approximately 20 percent of LSC programs responded.

17 I would hope in conducting an in-house survey that
18 we can get a much higher response rate and a much better
19 feeling in terms of local programs thoughts on the needs for
20 attorney recruitment and retention programs. Additionally, a
21 survey would have the benefit of allowing us to better
22 determine projected costs, better determine special needs of

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1 specialized programs, i.e., native American and migrant
2 programs.

3 It would allow us to determine the number of vacant
4 entry-level positions in our programs, determine the level of
5 outstanding student loans, and determine whether or not there
6 is an affect of geographical and funding differences. Again,
7 the survey is in draft form and has not received final
8 approval.

9 I don't think Mr. O'Hara has had the opportunity to
10 review it, but I do believe it's in a position where if
11 approved we can get going fairly soon on it.

12 CHAIRMAN HALL: Leslie, that's an in-house survey?

13 MR. RUSSELL: Yes. It's a survey prepared in house
14 to be disseminated to the field.

15 CHAIRMAN HALL: I'm just a little bit confused.
16 The things that you've talked about on this survey, is there
17 another survey that has been done in the past by someone
18 else?

19 MR. RUSSELL: As I mentioned, the NLADA and NAPIL
20 jointly surveyed 1450 organizations regarding the need for
21 recruitment retention tools.

22 CHAIRMAN HALL: We have a copy of that?

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1 MR. RUSSELL: I have a copy of the results of that
2 survey. Those results were specifically discussed by Steve
3 Gotlieb during his most recent presentation to the Board.
4 His percentages in terms of need and minority recruitment, et
5 cetera, were derived from that survey. That survey, however,
6 from my assessment, did not tell us a lot in terms of our
7 programs needs, unless we extrapolate from the whole spectrum
8 to our programs.

9 I was hoping that an in-house conducted survey
10 would achieve a much higher response rate. Then we can get a
11 better fix on our programs thoughts of the need for attorney
12 recruitment retention programs.

13 If I can proceed, there are some other activities
14 and considerations to be taken into account. For instance,
15 other possible activities are maybe in-house or jointly
16 through in house and the field, attempting to increase the
17 visibility of the Legal Services Corporation and LSC programs
18 on law school campuses.

19 In my discussion with NAPIL, it was clear that
20 through their workings with law schools, that the visibility
21 of LSC programs on law school campuses is small. Generally,
22 neither LSC nor a majority of our programs actively attend or

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1 support job fairs or career days conducted in law schools.

2 There is potential for the LSC either independently
3 or jointly with local programs or through an LRAP or
4 fellowship program to enhance the visibility of the
5 corporation and its programs on law school campuses. Part of
6 that could be the attending of career days and job fairs or
7 providing materials and handouts and having a Legal Services
8 Corporation desk and information available for law students
9 that attend those type activities.

10 Another thing that can be done might be a planning
11 conference with participants from the Corporation, law
12 schools, local programs, bar associations, a working-type
13 conference to try to develop mechanisms or the best
14 mechanisms for the Corporation to pursue in terms of
15 implementing attorney recruitment or retention programs.

16 Another possible activity might be the conduct of a
17 pilot project. That will be beneficial if the Board decides
18 it desires more empirical evidence on the need and
19 effectiveness of various recruitment retention mechanisms.
20 That could also be done in conjunction with the planning
21 conference.

22 It could benefit the Corporation in terms of how to

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1 effectively implement such programs, and it would also
2 provide a mechanism to work out any problems or difficulties
3 that might be encountered in implementing such a program.

4 Finally, I guess there are two other important
5 considerations with respect to retention or recruitment
6 mechanisms. One is the administration of any such project.
7 I guess the two alternatives are in-house administration,
8 which, in itself, will require additional staff. I don't
9 believe it's feasible, with the current budget mark, to
10 operate those programs in house.

11 The other consideration would be utilization of
12 outside organizations to administer the programs. There may
13 be outside organizations willing to undertake that task. It
14 would probably require more than a one-year commitment from
15 the Corporation to support those programs.

16 Should funding for such programs be limited?
17 Another consideration might be the provision of recruitment
18 retention benefits based on program needs. Staff could
19 develop criteria, possibly based upon two attorneys per
20 10,000, poverty population, the number of attorney vacancies,
21 program size, specialized service population, rural/urban
22 considerations, to determine which programs are more in need

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1 of recruitment retention benefits.

2 We could possibly develop some type of program
3 which would try to first reach those programs that exhibit
4 the most need.

5 CHAIRMAN HALL: Leslie, a third way to do it would
6 be to earmark the money and send it on to the programs.

7 MR. RUSSELL: That's one consideration in terms of
8 how particular programs might operate. That's a very
9 feasible mechanism of operation for loan repayment assistance
10 programs and for summer internship fellowship programs. From
11 an administration standpoint, those may be the preferred
12 mechanisms of operation.

13 For a full-time fellowship program, something along
14 the lines of a Reggie program, for instance, a grant to
15 programs may not enhance the effectiveness of that program if
16 it is agreed that prestige is an important factor.
17 Centralization of full-time fellowship programs generally
18 enhances the prestige of the program.

19 The application process, the competition for
20 limited funds, the elitism associated with full-time
21 fellowship programs is generally enhanced by a centralized
22 national scope. So, for two of the mechanisms, I think I

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1 would agree that grants to programs may be a feasible
2 mechanism of implementation.

3 CHAIRMAN HALL: Even meritorious award grants.

4 MR. RUSSELL: If that's something that the Board
5 was interested in, those recruitment and retention benefits
6 could be granted on a meritorious basis. I think that's
7 feasible also. I think that with the budget mark, the
8 potential does exist to operate some form of all three of the
9 various mechanisms.

10 CHAIRMAN HALL: I was just going to comment that it
11 seems like during these past years when one of the issues was
12 earmarking child support money, it was never done. It was
13 never earmarked. But I noted that a significant number of
14 the meritorious awards seem to be related to child support
15 type of issues. Comment for what it's worth, perhaps.

16 MR. RUSSELL: Well, you're speaking, I guess, of
17 the unsolicited grant proposal process?

18 CHAIRMAN HALL: Yes, sir.

19 MR. RUSSELL: Well, I was on the task force for a
20 period of time. I think that how many of those got funded
21 was based principally on what proposals were submitted. As a
22 member of the task force, and I think I can speak for the

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1 entire task force, we viewed each proposal with an open mind
2 and tried to come to a fair and nonpartial judgment in terms
3 of the merit of each proposal.

4 CHAIRMAN HALL: I'm not criticizing that at all.
5 In fact, I probably would have supported each one of those
6 decisions you made. I just thought it was perhaps a fourth
7 method, and you'll probably have some requests when we set
8 that process into being, if we ever do, for funds to do some
9 type of recruitment or payment of loans and so forth. I'm
10 sure you'll get some of those.

11 MR. RUSSELL: I guess that would depend on how the
12 Board decides it wants to or if it decides it wants to
13 conduct or become involved in attorney recruitment and
14 retention programs.

15 CHAIRMAN HALL: Well, since earmarking gets into
16 the issue of local control, and I know that Harrison is going
17 to tell me that he doesn't favor that because of that
18 particular fact --

19 MR. RUSSELL: Well, local control can be built into
20 loan repayment assistance and summer internship programs.
21 Local control or the lack of local control may be a
22 detraction from a full-time fellowship program.

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1 For instance, you're suggesting that a possible
2 mechanism of operating loan repayment assistance programs and
3 similarly a summer internship program would be a grant to the
4 local program, whereby the local program would be in control
5 of its recruitment, would make the selections, and would
6 pretty much control the process.

7 My personal view of a full-time fellowship program,
8 in terms of its achieving elitism, prestige, and thereby
9 attracting the most law students possible, local control in
10 that scenario may be somewhat diminished. But I think with
11 respect to the Corporation sponsoring some internship program
12 and the Corporation-sponsored loan repayment assistance
13 program, I think that local control is readily achievable.

14 CHAIRMAN HALL: Are you ready for some other
15 questions?

16 MR. RUSSELL: Absolutely.

17 CHAIRMAN HALL: Do either of the other committee
18 members, Jeanine or Jo, have any questions?

19 MS. LOVE: I'm still trying to understand.

20 CHAIRMAN HALL: I am too.

21 Howard?

22 MR. DANA: Thank you, Mr. Chairman. Leslie, the

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1 survey that you spoke of interests me, the one that was
2 sponsored by NLADA and NAPIL.

3 MR. RUSSELL: Yes.

4 MR. DANA: Have you inquired as to whether or not
5 those were blind surveys such that the responses were
6 unsigned or signed?

7 MR. RUSSELL: No. I haven't inquired as to whether
8 or not it was blind. I guess that would go to what
9 percentage of LSC programs responded or were involved in the
10 survey.

11 MR. DANA: My observation is that it might be if
12 the original responses are in existence, and they are -- if
13 you know or someone knows from whom they came, and the
14 information was in the computer, it might be very easy to
15 take a cut of just the legal services programs, see how they
16 responded.

17 I have seen that survey. You may want to,
18 notwithstanding that, have your own survey. As a thought, I
19 think it might be worth inquiring as to whether or not it
20 would be possible to get a pure legal services response to
21 that as a starting point.

22 MR. RUSSELL: Well, the survey, the NLADA survey,

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1 was conducted in 1989. I'm not certain whether or not the
2 results are -- whether or not a database exists from which
3 legal services programs -- specific results can be
4 determined. I can make that inquiry.

5 However, outside of the existence or nonexistence
6 of that information, since the survey is two-and-a-half to
7 three years old, and since I would guess through
8 extrapolation no more than 20 percent of LSC programs
9 probably responded, I would think that a current survey would
10 nonetheless prove useful.

11 It might even prove more useful if that information
12 was available from NLADA and NAPIL so that we can possibly
13 make a comparison, a time-line comparison, between that study
14 and a current study.

15 MR. DANA: I think that's true. I think that might
16 be helpful. I guess my suggestion is before we go into the
17 field with a survey, we ought to really determine or get some
18 reasonably broad spectrum of views as to whether or not we
19 are asking the right questions.

20 It might be that conferring with people in the
21 field as to whether or not the response to this survey, that
22 they would like some questions asked in this area. It might

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1 enhance our decision-making process.

2 MR. RUSSELL: I believe that that was the general
3 intent of the Corporation. My staff and I have developed a
4 fairly broad survey. As I said, it's still in draft form. I
5 have no objections with obtaining input from specifically, I
6 guess, our local programs that currently have mechanisms in
7 place.

8 I think NAPIL, as a forerunner in the loan
9 repayment assistance program area, could provide some
10 valuable information. I believe that NLADA has an arm which
11 has been exploring the use of recruitment and retention
12 mechanisms.

13 So, I think in order to solidify a survey and to
14 assure that it's the best that it can be, I don't have any
15 objection to that. I think that it's probably a good idea.
16 I think it's something that the Corporation had intended
17 anyway.

18 MR. DANA: That's great. If the list is open, I'd
19 like to get on it. Were you thinking perhaps of NAPIL as a
20 prospective grant recipient of the Corporation?

21 MR. RUSSELL: No. I hadn't developed anything that
22 far along. I'd spoken to NAPIL because they are in the

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1 forefront of the loan repayment assistance area. I haven't
2 discussed grants to any particular organization. I haven't
3 explored that yet. If that's something the Board is
4 interested in --

5 MR. DANA: No. I think the Board is in a
6 fact-finding mode right now. But it was interesting that
7 they seemed to be, at least in this area, seemed to be a
8 source of substantial knowledge.

9 MR. RUSSELL: Well, NAPIL is a national
10 organization. They have affiliate membership on 109 law
11 school campuses with law student representation ranging
12 probably from 20 to 30 to hundreds. So they are very active
13 in the public interest law area.

14 They not only promote and provide training in the
15 area of loan repayment assistance, they are about to conduct
16 their own fellowship program. They promote on law school
17 campuses the curriculum, required public interest law
18 curriculum, for all law students. They promote in other law
19 schools voluntary programs for law students to become
20 involved in the area of public interest law.

21 So they are not local. They are national. They
22 are well known. They conduct conferences, seminars, career

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1 days, and trainings across the country. They have
2 coordinated, I believe in the past, with NLADA in their
3 efforts to explore recruitment and retention.

4 So, in terms of a knowledgeable source that has
5 been more than willing to totally discuss recruitment and
6 retention mechanisms with me, they are an important source of
7 information. Their viability for actual coordination, again
8 I haven't explored that.

9 MR. DANA: One final question, Mr. Chairman.

10 Your comment that a loan repayment program is
11 taxable got me to thinking about that subject. I wondered if
12 the taxability of a loan repayment depends upon whether it is
13 the employer that is involved as opposed to a third party.
14 Intuitively, I wouldn't see the basis for the IRS grabbing a
15 piece of a gift from a law school or from a 501(c)(3)
16 corporation to promote a particular kind of activity.

17 MR. RUSSELL: Well, I think the general premise
18 behind the effort to remove that restriction is pretty much
19 what you stated, and I'm not a tax expert.

20 MR. DANA: Neither am I.

21 MR. RUSSELL: But from just thinking about it from
22 a tax standpoint, if the benefit is granted to a recipient,

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1 and as a condition of receiving the benefit the recipient is
2 required to maintain a certain type of employment, then I
3 think the IRS would probably see that as income because of
4 the nexus between the type of employment and the availability
5 of the benefit.

6 I think that the bill is pending in Congress now to
7 change the law, recognizing that this is a good thing. It's
8 somewhat analogous to what happens with the public health
9 benefits. Then there may be some similar benefits under the
10 GI bill. It's a mechanism to try to move in that direction
11 with respect to other student loans.

12 Generally, my understanding is that the bills are
13 not controversial. From a tax standpoint, the projected
14 impact is negligible. So, again, the thought is that the
15 chances are good that some bill will ultimately pass wherein
16 the benefits won't be taxable, and that would just make the
17 programs more attractive to law students.

18 CHAIRMAN HALL: Thank you, Howard.

19 Other questions?

20 (No response.)

21 CHAIRMAN HALL: Response from anyone in the
22 audience?

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1 (No response.)

2 CHAIRMAN HALL: Thank you, Leslie.

3 That concludes our work for today. I'll ask for a
4 motion to adjourn.

5 M O T I O N

6 MS. WOLBECK: So moved.

7 CHAIRMAN HALL: And a second?

8 MS. LOVE: Second.

9 CHAIRMAN HALL: All in favor say aye.

10 (A chorus of ayes.)

11 CHAIRMAN HALL: Opposed nay.

12 (No response.)

13 CHAIRMAN HALL: We're adjourned.

14 (Whereupon, at 1:33 p.m., the committee was
15 adjourned.)

16 * * * * *

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