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LEGAL SERVICES CORPORATION

MEETING OF THE BOARD OF DIRECTORS

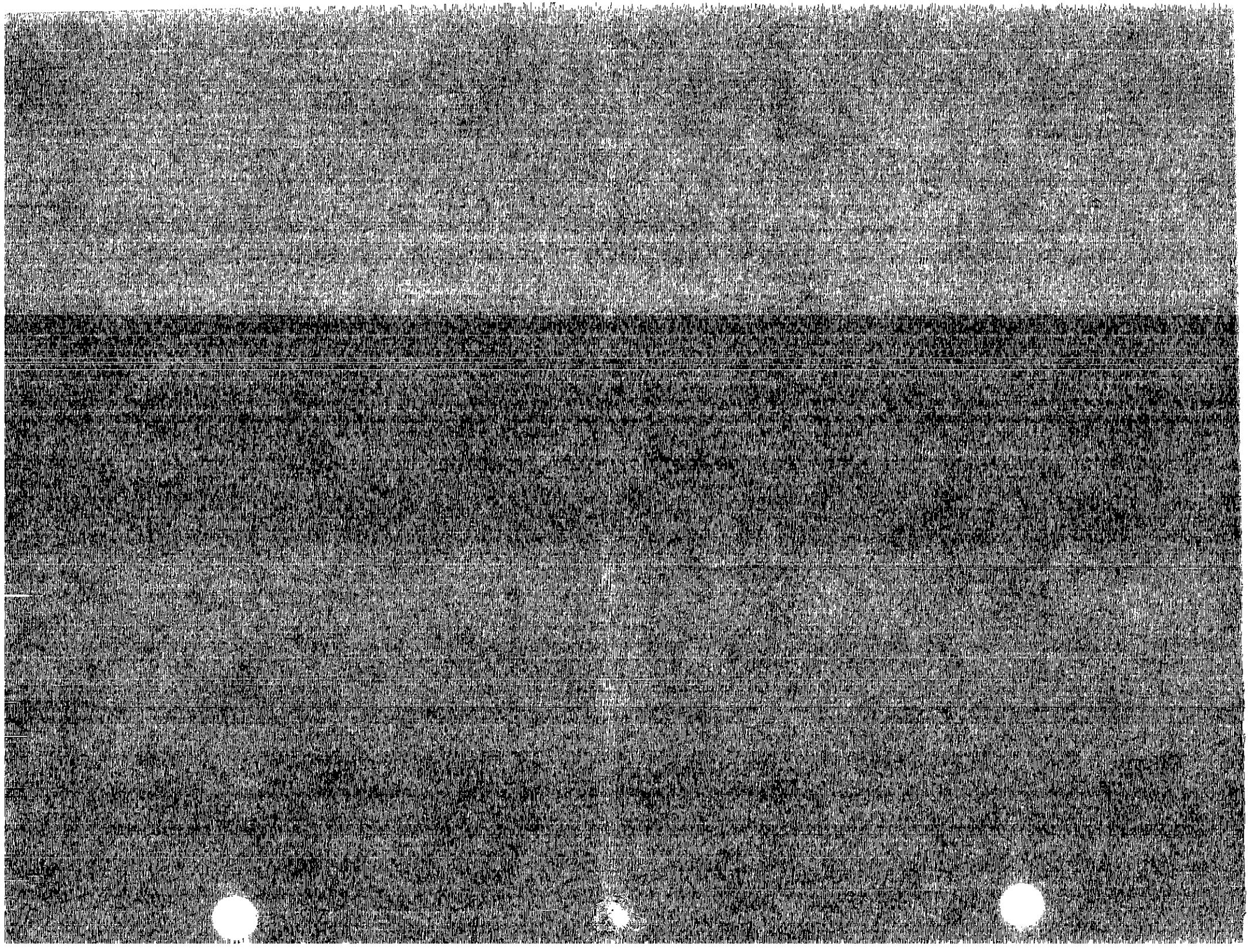
Thursday, July 6, 1978

Afternoon Session  
(Second portion)

The Board of Directors met, pursuant to Notice, in Ravensworth Hall, Arlington Hyatt House, 1325 Wilson Boulevard, Arlington, Virginia, at 9:30 a.m., the Honorable Roger C. Cramton, Chairman, presiding.

IN ATTENDANCE:

Roger C. Cramton, Chairman  
Thomas Ehrlich, President  
J. Melville Broughton, Jr., Member  
Steven L. Engelberg, Member  
Cecelia D. Esquer, Member  
Robert J. Kutak, Member  
Revius O. Ortique, Jr., Member  
Hillary Rodham, Member  
Glee S. Smith, Jr., Member  
Glenn C. Stophel, Member  
Richard Trudell, Member  
Josephine Worthy, Member



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P R O C E E D I N G S

2:11 p.m.

MR CRAMTON: Will members of the Board please take their seats. The meeting will come to order.

Mr Stophel, Mr Trudell, Ms Rodham.

We resume our meeting, only ten minutes late. Sorry for the delay. We now turn to the report of the Committee on Provisional Legal Services that was specially scheduled for 2:00 p.m. today in order to meet the convenience of Dean Branton, who's here from Howard University, our consultant James Robertson and his assistant.

Mr Ortique.

MR ORTIQUE: Yes. Mr Chairman and members of the Board, for some time the Board has been concerned about the operation of the Reginald Heber Smith program, and rightly so. This is an expensive program, it represents a large chunk of money.

And the Board has expressed its concerns on several occasions, and finally indicated to the staff that it wanted to have an evaluation done of that program.

The person selected to do the evaluation is Mr James Robertson, who is seated at the table there and who I'm sure you'll want to hear from, of the law firm of Wilmer, Cutler & Pickering.

And we were fortunate in having the report, to take a

1 look at it, at our June 13th meeting, the Committee meeting.

2 At our June 13th meeting the -- at least three mem-  
3 bers of the committee were present, together with the Chairman  
4 ex officio, and Dean Branton and Jim Robertson, and we received  
5 the report from Mr Robertson, together with the reaction or an  
6 evaluation of the report from our staff, and the reaction of  
7 the Dean.

8 I think that I ought to indicate for the members of  
9 the Board and the public that Dean Cramton -- Dean Branton be-  
10 came dean of Howard University only within the last few months,  
11 and I'm sure that all of you know that Howard University is a  
12 large university in Washington, D.C., but has some very strong  
13 ties with the type of activity that we're concerned with in  
14 the Reginald Heber Smith program.

15 It has operated this program for several years, and  
16 we have those recommendations. The Committee considered them,  
17 and the Committee instructed the staff to meet with Dean Bran-  
18 ton to discuss terms of the revised agreement.

19 And I don't know if you've had time to read the eval-  
20 uation report in detail, but -- it's a sort of thick one, but  
21 I'm sure that you've read both the summary statements from our  
22 staff, as well as comments from Dean Branton, and I'm sure that  
23 you recognize that there are areas where -- I don't want to say  
24 disagreement -- where agreement was not mutual, but that rea-  
25 sonable people can meet and discuss and negotiate, and before

1 I give you my recommendation, I think that what we ought to  
2 do is to allow Clint Bamberger to make some brief statements,  
3 and hear from Jim Robertson and Dean Branton, and then perhaps  
4 the Board will want to raise some questions after that.

5 So Clint, will you go ahead and proceed.

6 MR BAMBERGER: Well, the way you may want to proceed  
7 is to address some questions to Jim about the report, but let  
8 me -- Dean Branton and I can speak about what has happened  
9 since the meeting of the Committee just three weeks ago, when  
10 the Committee did authorize the staff to meet with the Dean and  
11 discuss the terms of the contract for the future.

12 The Dean and I have had two long and -- I think --  
13 very fruitful open discussions, and have reached agreement on  
14 a number of points.

15 There are at least two, and perhaps three, areas on  
16 which we have not yet reached agreement, and I repeat what Re-  
17 vius said, I don't think we reached disagreement on them either,  
18 but we haven't resolved them entirely.

19 I think that if we have an opportunity to continue  
20 those discussions for some limited period of time that we can  
21 come back with an agreement that accomplishes the purposes that  
22 both the Corporation and Howard share in making the Reginald  
23 Heber Smith program an effective program to recruit well-quali-  
24 fied and -- as well as -- I shouldn't say "as well as," but  
25 lawyers with particular emphasis on recruiting minority lawyers

1 into legal services, lawyers who will stay with the program and  
2 that the Reginald Heber Smith program will have a mark of com-  
3 mendation about it that one would be proud to say, as people  
4 are now, that they've been a Reginald Heber Smith fellow.

5 I think, as I say, the Dean and I have made consider-  
6 able progress, and perhaps he'd like to speak to that.

7 MR BRANTON: Mr Ortique, Mr Chairman, members of the  
8 Board, Mr Bamberger and I have had rather lengthy discussions.  
9 Let me say on behalf of the Howard University Law School and  
10 myself that we think a lot of the Reginald Heber Smith program.  
11 We want to continue to operate it.

12 I'd be the first to recognize the fact that there are  
13 some shortcomings in the program. It is my hope that in the  
14 months ahead that we can close the gap and make this a stronger  
15 and more vital program.

16 I did send to the Board last month some comments more  
17 or less in rebuttal to Mr Carter's comments on Mr Robertson's  
18 evaluation. Since that time I've had reason to even change my  
19 own views with reference to some statements in that document,  
20 a copy of which I believe you have attached in your portfolio.

21 Those changes have not occurred because of any re-  
22 treat, as such, in any position. I think it stems primarily  
23 from the fact that because I was new to the Law School, to the  
24 Reginald Heber Smith program as it operates from Howard, and  
25 because of the fact that the program was operating with an act-

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1 ing director who had not had the full experience of his pre-  
2 decessor, I had to pick up from various notes and documents and  
3 prepare something in a hurry to meet that Board deadline for  
4 your meeting.

5 Now the two areas in which I have had reason to change  
6 my own view -- and after discussion with the staff and other  
7 interested parties -- would be in the areas of pre-screening  
8 and also in the area of involving directors of local legal ser-  
9 vice programs in having an opportunity to interview those Reg-  
10 gies who are assigned to their respective programs.

11 In the report that we previously sent to you we took  
12 a position that we were just unalterably opposed to any pre-  
13 screening, and felt that everybody who applied for a fellowship  
14 should be interviewed.

15 We are satisfied that we can design the kind of an  
16 application that will enable us to perhaps weed out some people  
17 who in every respect probably should not take up our time in  
18 further interviews, and yet we are sensitive to the fact that  
19 there are some people who, from their resumes, or just the  
20 naked application, may possess qualities that this program has  
21 a serious need for, and they ought not be overlooked.

22 But we think we can close that gap and design an ap-  
23 plication that will give us what we really need so that we  
24 don't really overlook those people who ought to be interviewed.

25 In the case of the assignment of Reggies, while we

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1 feel that the Reggie program should make the final decision as  
 2 to the actual assignment of Reggies to particular projects, we  
 3 think that there ought to be some advance notice to the vari-  
 4 ous projects as to the name of those persons who are contem-  
 5 plated being assigned -- where we contemplate assigning them to  
 6 those projects, that we ought to make certain personnel infor-  
 7 mation available to them, if it is possible without too much  
 8 expense, for personal interviews, that ought to be allowed, or  
 9 if not, there at least could be interviews on a telephone. And  
 10 we might even furnish those directives with the names of some  
 11 of the references given by the applicant, so that the project  
 12 director could check with some of the reference sources direct  
 13 and make a decision before saying anything to us.

14 Now it may well be that in a given situation a direc-  
 15 tor may not want a particular Reggie, and if we have difficulty  
 16 assigning that Reggie someplace else, the final decision should  
 17 be left with the Reggie program, because everybody has to be  
 18 assigned. We can't have people floating around without a place  
 19 to send them.

20 So in those two respects we have departed from the  
 21 statements -- from the statement, rather, that we sent to the  
 22 Committee prior to its meeting.

23 We have worked out a number of agreements. I would  
 24 say that we are more in agreement in terms of the total number  
 25 of points, although there are two or three points that we deem

1 to be rather basic that we're still working with Mr Bamberger  
2 on, and I'm optimistic that we can resolve those areas of con-  
3 flict and keep the program going.

4 One thing that I've been concerned about is the fact  
5 that all of this comes not only at a time when I barely get on  
6 board, when we've been without a director, and also when we are  
7 at the end of a fiscal year, and we're talking about substan-  
8 tive changes -- it does put a little bit of a rush on us to try  
9 and come to decisions on some of these points.

10 I would hope that something could be worked out to  
11 keep the program going during the interim while we continue to  
12 work out these areas of disagreement, so that in the not too  
13 distant future we'll have it all finalized and we'll have a pro-  
14 gram that you and we will be proud of.

15 MR ORTIQUE: Wiley, I kind of apologize to you. I've  
16 known you over the years, and so I didn't say anything about  
17 your background.

18 Wiley Branton -- I knew him when he was in the south.  
19 He's from Pine Bluff, Arkansas and worked in the civil rights  
20 movement in Arkansas, and is one of the attorneys who is res-  
21 ponsible for several of the landmark civil rights decisions of  
22 the fifties and sixties, has worked in a legal services program  
23 here in Washington, was the director, and then went to a pri-  
24 vate firm and was called from that private firm to become one  
25 of the -- become the dean of the Howard University Law School.

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1 I'll make mention that -- something that I mentioned  
2 at our Committee meeting to some of the people who had not  
3 known that Howard University has a long tradition of being that  
4 institution -- Howard University Law School -- that institution  
5 that has produced some of the outstanding legal minds in the  
6 country.

7 I recall quite clearly certain men like Charles Hous-  
8 ton, Thurgood Marshall, Spottswood Robinson -- these are all  
9 past -- Patricia Harris -- past deans of the Law School of  
10 Howard University, and of course Wiley Branton joins that elite  
11 group of legal scholars that I think many in the country are  
12 proud of.

13 Dean, I think you ought to touch upon a matter of  
14 great concern to members of this Board, and that is, one, the  
15 general involvement of Howard University Law School in the acti-  
16 vities of the Reginald Heber Smith program, and more specifically,  
17 the potential for involvement of a faculty person or a number of  
18 faculty people in this effort.

19 MR BRANTON: Well, as a new dean, I am not proud of  
20 the past involvement of the law school faculty in the operation  
21 of the program. I think at one time the director did teach  
22 some classes and somewhere along the road that was abandoned  
23 and it was operated as a separate project, which was more ad-  
24 ministrative, with very little involvement, if any, from the  
25 Law School.

1           After coming on board and reading the report and  
2 talking with others, it is our intention to involve a full-time  
3 faculty member in the actual operation of the program to the  
4 greatest extent possible, to bring the Reginald Heber Smith  
5 program under the general supervision of our committee on cli-  
6 nical programs so that we get the supervision of a faculty  
7 committee that's involved in our other clinical programs.

8           We contemplate having members of that committee make  
9 inputs in the actual operation, in making suggestions for the  
10 strengthening of the program, in using them perhaps in serving  
11 in some consulting role with the Reggies in the field, as well  
12 as with the staff.

13           Mr Robertson has made a number of interesting sug-  
14 gestions regarding some future possibilities, one of which we  
15 have found attractive, and that is consideration of the possi-  
16 bility of granting some kind of a master's degree in community  
17 law or some related subject area to Reggies who complete, say,  
18 a two-year assignment in the Reggie program, but this would  
19 have to be augmented by some academic component and ways would  
20 have to be worked out then to get that academic credit.

21           It is possible that we may not have to do that, nec-  
22 essarily, at Howard. That might very well be a cooperative  
23 venture with other law schools in other parts of the country in  
24 those areas in proximity to where the Reggies are assigned.

25           These types of proposals, of course, take time: re-

1 call for faculty review, approval by our Board, perhaps the  
2 American Association of Law Schools, and others. But they  
3 are interesting possibilities that we want to look into. I  
4 don't think that these things have been done in the past, and  
5 I hope that we get started on that right away.

6 MR ORTIQUE: Thank you.

7 Jim, did you want to make some comments before we  
8 take specific questions from the audience? This is the person  
9 who prepared the evaluation.

10 MR ROBERTSON: Mr Ortique, and Mr Chairman, and mem-  
11 bers of the Board, perhaps some very brief comments, but I  
12 must say that listening to Clint Bamberger and Dean Branton  
13 talk about the discussions they've been having and about the  
14 forward-looking constructive way they're approaching the future  
15 of the Reggie program, it seems to me frankly that the discus-  
16 sion may have already gone past the evaluation that I did, which  
17 was done several months ago when Dean Branton had just come on  
18 board and knew nothing of the Reggie program, and I think listen-  
19 ing to him talk about it is pretty graphic evidence of a new  
20 kind of dynamic interest that can be expected from Howard Law  
21 School, and from my point of view that is one of the most im-  
22 portant attributes for the Reggie program in the future.

23 I was asked to look at the Reggie program in general  
24 and look at it all the way from the ultimate question of should  
25 the program continue, through the second ultimate question of

1 should it be conducted in-house, or independent of the Corpor-  
2 ation, to a lot of nuts and bolts questions about how the re-  
3 cruiting should be done, when it should be done, precisely  
4 what the involvement of the faculty should be, and so on.

5 I came, I think, rather unequivocally to the conclu-  
6 sion that the Reggie program has been and can continue to be  
7 a very substantially important program for the Legal Services  
8 Corporation. It may evolve in the future into something else  
9 from what it is now. Right now the location and the operation  
10 and the purposes of the program seem to be pretty well laid  
11 out, especially with Dean Branton's new input.

12 I also came rather unequivocally to the conclusion  
13 that the Reggie program, at least in its present -- with its  
14 present goals and missions, ought to be conducted largely in-  
15 dependently of the Corporation, and I don't mean by that cut  
16 completely loose, but I think the location of the program,  
17 especially the selection, the Reggie selection process, out of  
18 the Corporation, is important to that goal, and I think Howard  
19 is a natural place for the Corporation to be.

20 But once you answer those ultimate questions and get  
21 to the sorts of nuts and bolts that are now being discussed,  
22 I think perhaps my report is -- has done its work, because  
23 there's lots of room for reasonable people to differ about how  
24 the nuts and bolts work, and I don't think any of them -- I  
25 don't think any of the operational details of the program will

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1 make the ultimate difference of whether the program succeeds  
2 or fails, or not.

3 Those can be worked out between Howard and between  
4 the Corporation, then I think my work is finished. But if mem-  
5 bers of the Board have questions about the report or about my  
6 approach, I'll be happy to try to answer.

7 MR BAMBERGER: May I just add one more thing before  
8 we go further.

9 Shortly after the Committee met, I reviewed the re-  
10 port and I wrote a letter to the -- I called Dean Branton, set  
11 a time to meet, and I wrote him a letter, and in that letter I  
12 listed the points that I thought he ought to talk about, and  
13 those have formed the basis, the outline for our discussion.

14 Perhaps it would be useful if I gave that to members  
15 of the Board that you would have a notion of the kinds of  
16 things that we have been talking about.

17 These were -- actually were the subject of our first  
18 discussion, and then became the basis for the second and more  
19 extended discussion.

20 MR CRAMTON: Mr Robertson, one area in which I would  
21 be interested in your view, is it clear, from your standpoint,  
22 that Howard University can conduct an employment program for  
23 the Corporation in which race is stated as a -- not only rele-  
24 vant, but a very important aspect of the selection process?

25 I say that because the Federal government tells Cor-

1 nell University that it can't, that it cannot advertise in  
2 newspapers or in letters or make any statement that women or  
3 blacks are preferred in terms of employment. All it can say  
4 is, "We're an affirmative action employer, and we do not dis-  
5 criminate in terms of employment."

6 Now this is an employment program, right? These  
7 people are employees of Howard University. This is involving  
8 Federal grant money, and my understanding is -- my question  
9 really is, why is -- does the Federal government give Cornell  
10 University signals that it apparently doesn't give Howard  
11 University?

12 MR ROBERTSON: Well, I think there's a kind of a  
13 threshold question, Dean Cramton, about whether the Reggie pro-  
14 gram is an employment program, and if it's an employment pro-  
15 gram, is it one program like the CETA program or a Jobs for  
16 Youth program? I think not.

17 I consider the Reggie program -- although I must say  
18 this is, to my knowledge, has never been clearly articulated  
19 as such by this Board and maybe should be -- but I consider  
20 the Reggie program as part -- an organic part, if you will --  
21 of the entire Legal Services Corporation's efforts to find and  
22 place attorneys in legal services programs all over the coun-  
23 try.

24 Now, in that respect of course the Corporation doesn't  
25 hire the lawyers that work in local programs, but --

1 MR CRAMTON: But it is fairly clearly an employment  
2 program. Howard University employs them, and they're employees  
3 for a year, two years, whatever --

4 MR BRANTON: May I interrupt to ask if you are assum-  
5 ing that Howard advertises for preference by race or by sex?  
6 Because we don't.

7 MR CRAMTON: Well, the program is stated as a program  
8 for minority recruitment, and the -- if the criteria -- if the  
9 program was advertised as one of seeking the attorneys who are  
10 most qualified for local legal services activities, which takes  
11 into account all of these questions of sensitivity, ability to  
12 communicate, and the like, is one thing, but if it's advertised  
13 -- and we state it -- as a, quote, "minority" recruitment pro-  
14 gram, as Clint Bamberger did in his statement, as the documents  
15 do, as your report does, then it seems to me the program has to  
16 be viewed as a program in which a very substantial preference  
17 is given on grounds of race.

18 MR BRANTON: We don't say it that way. We say that --

19 MR CRAMTON: And my question is -- well, is that so --

20 MR BRANTON: No.

21 MR CRAMTON: -- and if it is, is that legal? It's  
22 just the --

23 MR BRANTON: It says here, the purpose is to continue  
24 the Reginald Heber Smith program to recruit highly qualified  
25 lawyers, including a significant number of minority lawyers.

1 That's all it says about that.

2 MR CRAMTON: What, the application form?

3 MR BAMBERGER: No, this is -- these are the words --

4 MR CRAMTON: Those are the words that I drafted in  
5 case of the -- in terms of the evaluation that we asked Mr  
6 Robertson to do.

7 MR ROBERTSON: And they are words that the Dean and  
8 I agreed as an acceptable statement of the purpose of the Regi-  
9 nald Heber Smith program.

10 MR CRAMTON: Well I guess my point is I would like  
11 the Board to at least have some kind of understanding of what  
12 the purpose or objective of the program is, and have the Cor-  
13 poration agree on what that objective or purpose is, and also  
14 have it clear that the purpose or objective clearly is legal,  
15 both under statute and Constitutionally.

16 MR ROBERTSON: Well, in the first place, Dean Bran-  
17 ton, a lot of this -- Dean Cramton, excuse me.

18 MR CRAMTON: It's confusing.

19 MR ROBERTSON: What the program advertises -- and I'm  
20 referring to Task B of the evaluation report, which is the  
21 flier that is sent out to law schools.

22 MR CRAMTON: The emphasis over the past eight years  
23 has been on --

24 MR ROBERTSON: That's what I'm reading.

25 MR CRAMTON: -- recruitment of attorneys from ethnic

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1 and racial minorities.

2 MR ROBERTSON: That's the advertisement.

3 MR CRAMTON: But go on.

4 MR ROBERTSON: It should be noted, however, that the  
5 Reggie program provides equal employment opportunity without  
6 regard to race, creed, national origin, or sex.

7 Now I believe --

8 MR CRAMTON: That's not the reputation of the program,  
9 I think.

10 MR ROBERTSON: Well, Dean Cramton, the reputation of  
11 the program is something that I'm certainly not an expert on,  
12 the reputation of it, but I think I have learned, as well as  
13 can be learned, what the actual criteria -- selection criteria  
14 of the Reggie program -- are and I think if I may jump into  
15 unfamiliar territory, maybe uncharted for us all, if you want  
16 to discuss this in terms of what the Supreme Court said, I  
17 think, in the Bakke case, I think you would find the actual  
18 Reggie selection criteria somewhere better than -- if I -- I'll  
19 try to explain what I mean by that -- but better than the Har-  
20 vard test that the Supreme Court explicitly sanctioned in the  
21 Bakke test, in the Bakke case.

22 If you look at selection criteria on a continuum  
23 between the absolutely racial quota criteria of the University  
24 of California at Davis, running through the Harvard plan, which  
25 grants a granted preference in the sense of one plus on the

1 basis of race, through this continuum running through to some-  
2 thing that is truly racially neutral, I think you will find  
3 that the selection criteria of the Reggie program lie on that  
4 continuum somewhere between the Harvard plan and purely racial-  
5 ly neutral selection criteria.

6 So if anybody understands what the Bakke decision  
7 means, and if that continuum idea makes any sense, then I think  
8 the selection criteria of the Reggie program are quite legal,  
9 and that's when you consider them, by the way, all by themselves,  
10 just consider the 255 -- the 155 Reggies as one body of employ-  
11 ees, if you want to call them that.

12 If you look at Reggies as I prefer to look at them,  
13 as part of the entire manpower and womanpower of the Legal Ser-  
14 vices Corporation attorneys, then I think what the Reggie pro-  
15 gram is doing is something that needs to be done for the Legal  
16 Services program as a whole, and as part of that organic whole.  
17 I don't think there's any question that it's legal.

18 MR BROUGHTON: Mr Robertson, you state on page ten  
19 of your report that -- you refer to the stated goal which was  
20 just quoted by the Dean, but you go on to say that that is no-  
21 where a matter of official writ, and the Reggie program is what  
22 it is today largely because of custom and usage.

23 MR ROBERTSON: Yes sir. I think that's an implied  
24 hint to the Board of the Legal Services Corporation that it  
25 might be useful to state these purposes of the Reggie program

1 as part of a resolution of the Board, although I don't think  
2 that's necessary. The Reggie program has been going on for  
3 eight years now, nine years, under various predecessor agencies,  
4 and there's never been much doubt about what the goal is. It's  
5 just never been clearly written down.

6 MR CRAMTON: Do you think that the Bakke decision  
7 dealing with admissions clearly carries over to the employment  
8 situation and supersedes a lot of the existing law relating,  
9 based to some extent on the standard deviations from the em-  
10 ployment pools and the like and shifting the burden of proof  
11 and compelling state interest, and the like -- I gathered from  
12 some comments that you made to me in connection with the Com-  
13 mittee meeting that you were of the opinion that there was a  
14 very substantial legal question about the validity of the past  
15 conduct of the program under prior Equal opportunity law.

16 MR ORTIQUE: I didn't get that. Are you talking  
17 about the comment that he made at the open meeting, the June  
18 13th meeting? I thought --

19 MR CRAMTON: Some of them made at the public session,  
20 some of them afterward. Your question --

21 MR ROBERTSON: Oh, Dean Cramton, at the meeting was  
22 whether I thought in the event of Title VII litigation, that  
23 there was a concern about the prima facie case of discrimina-  
24 tion being made out based on the past performance of the Reggie  
25 program.

1 Now Bakke, as you well know, was not a Title VII  
2 case and had nothing to do with Title VII, and my discussion  
3 of Bakke and Title VI and the equal protection --

4 MR CRAMTON: That's what I wanted, the legal ques-  
5 tion --

6 MR ROBERTSON: -- clause, and so on, was not related  
7 to the Title VII question.

8 Now, I said at that meeting, if I recall correctly,  
9 that if you take the statistics alone of the past performance  
10 of the Reggie program, you would find, I suppose, an apparent  
11 striking disproportionate result in the numbers of minorities  
12 hired by -- hired as a result of Reggie selection, and that  
13 yes, under Title VII law, as I understand it, that would be  
14 sufficient all by itself to raise a prima facie case or to  
15 establish a prima facie case of reverse discrimination.

16 Now, that answer was very incomplete. In the first  
17 place, I'm not sure who a Title VII case gets brought against.  
18 In the second place, it's not altogether clear to me -- although  
19 I think I know what the answer is -- that a Reggie fellowship  
20 is employment within the meaning of Title VII. I think it pro-  
21 bably is, but there's a question.

22 And even if a prima facie case is established, under  
23 Title VII, as you well know, there is lots of room for rebuttal  
24 and it is the rebuttal part of the case that makes me think  
25 that at least the criteria the Reggie program uses can be stated

1 in a way that will show triable issues of fact.

2 Now you and I know that there is some concern about  
3 how good the records are and whether you could -- whether you  
4 could successfully work up a rebuttal case. I can't make a  
5 call on that. If I were defending it, I would sure find a re-  
6 buttal case.

7 MR CRAMTON: Well, Tab F, as the contract between  
8 Howard Universities and the Reggies, says -- "This letter ex-  
9 presses our agreement regarding your employment as a Reginald  
10 Heber Smith fellow." I think there's no question but these  
11 are employment arrangements.

12 MR ROBERTSON: Well, I think I can see that --

13 MR CRAMTON: People paid full time on an employment  
14 basis, I would think that Howard University is subject to Title  
15 VII, and the Corporation's involved in the arrangement, and the  
16 question is, is it legal?

17 You know, you also, I think, stated to me that the  
18 existing data that Howard University did not have, the lack of  
19 data, made it extremely doubtful whether defenses could be  
20 proffered that would satisfy a court, that -- in other words --  
21 the prima facie case would prevail and that there was a very  
22 strong likelihood, in your view, that based on the past conduct  
23 of the program that it would be held in violation of Title VII.

24 MR ROBERTSON: Well, Dean Cramton, I think you're  
25 overstating my position. I will say that based on what I know



1 about the data that have been collected over the years by the  
2 Reggie program, that in the -- I think -- unlikely event the  
3 suit were filed about the past practices of the program -- and  
4 by the way, I'm -- we're talking about -- we're talking here  
5 I suppose about legal matters as to which the Corporation and  
6 its directors and its officers are privileged, and we're talk-  
7 ing here in I suppose a public forum about all of this.

8 MR CRAMTON: We're abjured all the time to avoid  
9 executive sessions --

10 MR ROBERTSON: All right.

11 MR CRAMTON: -- and conduct matters in open meetings.

12 MR ROBERTSON: With due regard for that, I think that  
13 in the unlikely event that anything like that happened, and a  
14 prima facie case were established and all legal and procedural  
15 obstacles were to be overcome by a plaintiff -- by the way,  
16 who does he sue? Does he sue the Legal Services Corporation?  
17 He or she? I don't know. Is the Legal Services Corporation --

18 MR CRAMTON: Ask a good Title VII lawyer, I guess.

19 MR ROBERTSON: Well, that's a good -- I think that's  
20 a real problem about who the defendant might be in a suit like  
21 that.

22 MR CRAMTON: Well certainly Howard University --

23 MR ROBERTSON: Overcoming all of those problems, it  
24 seems to me that there might be some problems in establishing  
25 a rebuttal case.

1 MR CRAMTON: Mr President?

2 MR EHRLICH: It seems to me the important thing is,  
3 in terms of the future --

4 MR CRAMTON: That's what I was going to turn to next.

5 MR EHRLICH: -- and I think that Dean Branton, as I  
6 understand it, in his discussions with Clint Bamberger, made  
7 it very clear that they both think and that I think that we do  
8 need criteria for choosing, we do need data, the school needs  
9 it, and that whatever else happens in terms of the future,  
10 there will be recordkeeping and there will be the kind of cri-  
11 teria worked out that can assure the program can, consistent  
12 with that goal, well-qualified lawyers with a consistent number  
13 of minority lawyers to meet the needs of legal service for  
14 those who will come in and stay in, as in the past.

15 I hope we'd look to the future for those kinds of  
16 things, as opposed to saying too much about what has been the  
17 problem in the past, except to assure we avoid them in the fut-  
18 ure.

19 MR CRAMTON: What I'm searching for, Tom, is some  
20 indication that the criteria to be applied in the future will  
21 be stated in terms of job-related criteria, and that they will  
22 in fact meet the requirements of Title VII and they will in  
23 fact meet the requirements of the Federal Constitution.

24 And that's the assurance that seems to me to be ab-  
25 solutely essential if the Corporation is going to proceed.

1 MR BRANTON: Well, Mr Chairman, you make that state-  
2 ment sort of assuming that that has not been the case.

3 MR CRAMTON: I don't know. I mean I --

4 MR BRANTON: I would disagree with it. I don't know  
5 that we're doing anything any differently in Howard from what  
6 you're doing at Cornell, other than perhaps we do offer a more  
7 meaningful opportunity for minority participation at Howard  
8 than you do at Cornell.

9 The applications say nothing about race. We do not  
10 advertise that we're seeking only minority lawyers. Assuming  
11 for the sake of argument that a prima facie case could be made  
12 that the statistics would purport to show some discrimination  
13 in employment, I think it's one that's rebuttable from the  
14 facts.

15 And in terms of the final selection, we are concerned  
16 with selection of people who can serve the poverty areas of our  
17 country.

18 Our applications say nothing about race. We might  
19 have some difficulty looking back, trying to be -- to determine  
20 exactly how many were white, how many were of any particular  
21 racial persuasion.

22 The statement was made about not having proper re-  
23 cords. We submit that we have had proper records consistent  
24 with the contract and the kind of program that we have operated.

25 Now it may be that, for example, Mr Robertson and

1 others in their evaluation wanted to find certain statistics in  
2 support of whatever it was they were searching for, and they  
3 did not find exactly what they were looking for, but it was not  
4 a record that was necessary, at least in the opinion of the  
5 people running it for them in the past, for that kind of opera-  
6 tion.

7 I just happen to think that we need to have more data,  
8 because I think we need to take a look at what's been happening  
9 to our Reggies, what's been happening to people who've gone  
10 through the program, where they are now, how long they stayed  
11 with poverty kinds of programs after they left the Reggie pro-  
12 gram, things like that.

13 I think we ought to gather that kind of data. We  
14 apparently have not gathered it in the past, but I would not  
15 want the questions that have been put to cause anybody to think  
16 that Howard had been operating a program that was not consis-  
17 tent, either with Title VII, or with the Constitution of the  
18 United States.

19 MR BAMBERGER: I think the Dean and I would both be  
20 helped if the members of the Board had any comments about these  
21 points that we've been discussing, and give us some guidance in  
22 our future discussions.

23 MR TRUDELL: I think it would be helpful if you would  
24 discuss the points that you disagree on, so we've got that as a  
25 background, you know, assuming that maybe some of these differ-

1 ences are major differences that, you know, are going to re-  
2 quire some discussion before they can be resolved.

3 MR STOPHEL: Before we move to that, could I just ask  
4 a question of Mr Robertson about one of his conclusions, that's  
5 really a preamble to getting into a discussion of a future  
6 contract with Howard, and that is your conclusion -- two-fold.  
7 In reading the report I began to wonder, because of the state-  
8 ments about what Howard is doing, what it is offering to the  
9 program for the \$102,000, what your conclusion was going to be,  
10 and then you conclude that yes, we should stay with Howard and,  
11 two, the program should be independent.

12 Let's go to the independence question first. Accept-  
13 ing whatever goals you think there are in the program, as it  
14 has existed, why the independence issue? Why not in-house, if  
15 it is just going to be a recruitment program where we do it on  
16 a nondiscriminatory basis, or whatever, looking for sensitive  
17 people to go into our programs?

18 Why did you conclude so strongly that it should be  
19 independent of the Corporation?

20 MR ROBERTSON: Because, Mr Stophel, the criteria that  
21 are employed now for the selection of Reggies are criteria  
22 which I consider to be unusual for the selection of lawyers,  
23 and also, very important for Legal Services.

24 The Reggie selection criteria are not the standard  
25 kind of criteria where you fill out a form and take a test and

1 the guy that's got the best score on the test wins or the guy  
2 that stood highest in his class wins, and that, Mr Stophel, is  
3 the way the government hires people.

4 The selection of Reggies is done on a much more --  
5 I'd like to use the word sophisticated basis, because I think  
6 it's the correct word to use. On the basis of evaluating Reg-  
7 gies, these are very subjective things: sensitivity, commit-  
8 ment, experience, likelihood that these are people who really  
9 want to be Reggies and not just people out for a job.

10 These selection criteria are criteria that I don't  
11 think can or should be applied in the rather mechanical way  
12 that any government or quasi-governmental agency would, and  
13 even given the obvious sensitivity and care of the current  
14 management of the Legal Services Corporation, I don't think  
15 it's something that ought to be done inside the Corporation by  
16 that kind of a board. It has to be done, in my view, by the  
17 exercise of some more independent judgment.

18 And that's why I came to the conclusion that the  
19 selection function, at least, should be done independent of  
20 the Corporation.

21 Does that satisfy you?

22 MR STOPHEL: Well, no, it doesn't satisfy me, but it  
23 gives your answer.

24 I've been on the end of receiving a Reggie and hav-  
25 ing interviewed him as a chairman of the local board, having

1 dealt with the executive director of the Reggie program in  
2 suggesting a man who wasn't licensed to practice at that time.  
3 I think that problem has been cleared up. We couldn't have  
4 used him if they would have sent him, and I'm -- I see a thir-  
5 teen-member staff, and I just really don't understand the dif-  
6 ference in that thirteen-member staff being at a location  
7 separated from the law school and not having really a real re-  
8 lationship with them, as contrasted with the thirteen-member  
9 staff over here in another office run by our Corporation.

10 I'm having difficulty seeing what you express as a  
11 judgmental factor that can be given to the applications by that  
12 group over there, as contrasted with perhaps the same group  
13 over here, without the cost of the indirect expenses going  
14 through.

15 MR ROBERTSON: I don't think there's much disagree-  
16 ment between us about that, Mr Stophel, and I think my report  
17 makes it pretty clear that I do not fully understand how the  
18 program got to be operating not only independently from the  
19 Corporation, but independently from Howard.

20 I think it ought to be relocated at Howard, and put  
21 under the academic -- real academic oversight of Howard, be-  
22 cause that's what, in my mind, gave the Reggie Fellowship its  
23 currency in the past years, and I think can again.

24 MR STOPHEL: But if academics is not one of the  
25 strong criteria being used, why use the academic? You just

1 said that academics is what, typically, a law firm looks at:  
2 that is, how did the guy do in his class standing or grade  
3 point average, or something, and that this program does not  
4 emphasize that.

5 Rather, it emphasizes sensitivity, past experience,  
6 in legal services, and that sort of thing, and yet you're tell-  
7 ing me let's move it over under the academic arm of the law  
8 school, which seems to me to be a little bit incongruous.

9 MR ROBERTSON: Well, I -- it --

10 MR ORTIQUE: May I make one comment, because I've  
11 heard that before, and it bothers me -- I've not only heard  
12 it from you, I've heard it from another member of the Board.

13 It bothers me that we can pass out a statement saying  
14 that academics are not emphasized in the program, and put a  
15 period behind that.

16 MR STOPHEL: I was repeating what Mr Robertson said,  
17 and I agree that the criteria -- and I didn't mean to state  
18 that it was ignored, Revis, but I think it is agreed that that  
19 is not a primary criteria in the present selection process,  
20 but --

21 MR ORTIQUE: Primary is -- you know, it's a relative  
22 term. No, it's not at the very top, because we're seeking  
23 somebody who's different from what I would call a pinhead or  
24 egghead, from one of the -- you know, the schools that place  
25 its greatest emphasis on how the person scores, but I'm sure

1 that in Chattanooga you recognize that those persons who fin-  
2 ished at the very top of their class would not necessarily do  
3 the best job of lawyering, of representing the interests of  
4 their client, of even preparing the best brief or the best  
5 case before the courts.

6 So that emphasis on academics is a relative thing,  
7 particularly in terms of this special program, and the point  
8 that I want to make is that we make those bald statements as if  
9 this program goes out and gets people who have not been able to  
10 get into a law school. And that takes some little achievement,  
11 I'm sure. At least it did when I went to law school.

12 MR BAMBERGER: The academic involvement that we're  
13 talking about with the Reggie program that the Dean and I have  
14 discussed is an academic involvement in the fellowship itself.  
15 That is a notion that was implicit and explicit in the original  
16 Reginald Heber Smith Fellowship.

17 One of the things the Dean and I discussed, as he  
18 said, is the possibility that this could be a program that af-  
19 ter two years led to a degree, an LLM degree, but at least  
20 what the law school would bring to it is that possibility of  
21 some learning content, to the Reginald Heber Smith Fellowship  
22 itself.

23 If I can address your other point, Glenn, about why  
24 an independent group, I think that when we're talking about  
25 selecting a special group of people to be Legal Services law-

1 yers, I don't think that the Corporation that funds the program  
2 ought to select the staff for the program or place them in the  
3 program.

4 I think if we are going to have a program that is  
5 selecting special people, people who wear this badge of honor  
6 as a Reginald Heber Smith Fellow, they ought to be selected by  
7 that entity, and that entity ought to assign them to the parti-  
8 cular legal services program, as the Dean has said, in consul-  
9 tation with the program, and only the absolutely unanticipated  
10 cases, ever make that assignment without agreement by the direc-  
11 tor of the program.

12 I don't think that the Corporation ought to be in the  
13 business of selecting and assigning staff to its grantees. I  
14 would rather see that done by an independent group.

15 MR TRUDELL: I think if you could recognize the fact  
16 that the grantee should have the independence, then there are  
17 other responsibilities that go along with that, because in read-  
18 ing the list here, I mean there are things that, you know, that  
19 you say you can do on one hand, but then you need the LSC  
20 staff's concurrence.

21 You know, it just jumps back and forth.

22 In terms of the selection process, you know, I think  
23 that maybe something that everybody wants to say is that maybe  
24 we all have problems having a law school, in terms of the Reg-  
25 gie program being housed there, selecting and place people all

1 over the country. You know, I have problems with that, you  
2 know, and I think it's alluded to in this checklist that there  
3 will be an advisory committee established, and I would be con-  
4 cerned about what kind of status and input that advisory com-  
5 mittee has.

6 If it's just primarily windowdressing, then I could  
7 not go along with it.

8 I think the feeling is, you know, the consensus is  
9 that, you know, the program is needed and, as Tom pointed out  
10 earlier, in terms of looking toward the future, how do you,  
11 you know, put the track record that everybody's talking about  
12 behind us, you know, and restructure the program, or whatever,  
13 so that it is an attractive program.

14 And so far we haven't gotten to that, and I think  
15 maybe this is the time.

16 But you know, it's -- there are a lot of inconsistent  
17 things on this sheet, and as I mentioned before, in terms of  
18 the points that you have not been able to reach an agreement  
19 on, I think that we should have the benefit of hearing that  
20 aired by everybody here, because I think this Board, the way  
21 it's presently composed, and with new Board members coming on  
22 sometime between now and the end of the year, we're going to  
23 have to live with the direction the program takes.

24 And in the past, maybe the Board either wasn't will-  
25 ing or didn't have the interest or didn't have the time to get

1 more involved in a program of this nature, but I think that the  
2 feeling is now that at least the new Board members want to get  
3 more involved in it.

4 MR BAMBERGER: Well may I address your point first  
5 about the advisory committee. And I think -- I know Dean Bran-  
6 ton shares my idea. It would not be windowdressing. It would  
7 be an effective advisory committee.

8 We talked about some of their duties specifically,  
9 and they were: review the criteria for the selection of the  
10 Fellows; review the criteria for the selection of the Legal  
11 Services Programs to which the Fellows would be assigned; re-  
12 view the actual -- the criteria for the assignment of Fellows  
13 to programs; and the experiences that the Fellows have at the  
14 program during that year.

15 And it would be a broadly based committee, including  
16 the director -- the faculty member who is the director of it  
17 would be a member of that committee, as well as present and  
18 former Reginald Heber Smith Fellows, Legal Services Lawyers,  
19 paralegals, clients, and other persons. In our conversations  
20 we thought of law faculty people, lawyers in private practice,  
21 and others who would be on it.

22 I think we can agree on the points about which we  
23 have not yet reached agreement without any difficulty, the  
24 things that we haven't discussed through entirely. Do you want  
25 to say what they are?

1           The Dean has checked them off on his list, and they're  
2 the same ones that I would check off, so I know that we're in  
3 agreement on that.

4           MR CRAMTON: Why don't you summarize the points that  
5 are still outstanding.

6           MR BRANTON: Well, the areas where we still have some  
7 disagreement, if you have that little check list, on the first  
8 one, the second sentence says, "The Corporation will have the  
9 right to cancel the contract if its appropriation is reduced  
10 substantially."

11           There's a difference of opinion on the legal question  
12 as to whether or not we would have a right to a hearing if  
13 there was a cancellation of the contract without any hearing.  
14 We are asking that either that -- just remain silent about  
15 that, or that we say the Corporation has the right to cancel  
16 contracts pursuant to any hearing rights as provided in the  
17 statute.

18           If it turns out that the facts of the case are such  
19 that we have no right, then we simply wouldn't have it. But  
20 I think it's a little bit much to ask us to contract away our  
21 right to a hearing if in fact we do have a right to a hearing.

22           But that's a difference of opinion on that one.

23           MR CRAMTON: And it only applies to a situation in  
24 which the Corporation would be substantially reduced in --  
25 the Corporation is not asking you to waive hearing rights in

1 any other situations.

2 MR BRANTON: No, except that if they feel that their  
3 budget is too low to support their essential programs, at  
4 their sole discretion, without any hearing, they could simply  
5 cancel.

6 MR STOPHEL: Could I ask why this is a three-year  
7 contract, as contrasted with our one-year grants to recipients.

8 MR BAMBERGER: I'll respond. My notion about that  
9 was that if we were going to ask Howard to involve its faculty  
10 heavily in the program and really make a commitment to streng-  
11 then and improve the Reginald Heber Smith program, that they  
12 needed to have some security that the contract would continue  
13 beyond just a year.

14 MR STOPHEL: Well, but you've had a faculty member as  
15 the head, haven't you? He's had faculty status, hasn't he?

16 MR BRANTON: No.

17 MR BAMBERGER: No.

18 MR STOPHEL: I understood from the report that he had.

19 MR BRANTON: Only in the technical sense, he was  
20 considered as being a member of the faculty.

21 MR CRAMTON: And the other areas?

22 MR BRANTON: Moving down to the seventh item on the  
23 list, "The Corporation will make the recruitment visits to the  
24 campuses."

25 We think that the Reggie program ought to do basically

1 its own recruiting, or most of it, in any event. We think  
2 there's a special need to try and get people for the Reggie  
3 program. I would point out, for example, the Department of  
4 Defense does a lot of recruiting, but they have separate re-  
5 cruiters for the Air Force, the Marines, Navy, et cetera.

6 And we think we can do a better job in recruiting for  
7 the Reggie program than the Legal Services Corporation can.

8 MR BROUGHTON: Well, wasn't that one of the areas of  
9 criticism in the Robertson Report?

10 MR BRANTON: That it was a duplication of effort,  
11 it's something that the Reggie program -- I mean legal services  
12 program is starting to do for other services. It's felt that  
13 while those people are there recruiting for legal services,  
14 generally they could also recruit for the Reggie program.

15 MR BROUGHTON: Well is the answer yes? I mean was  
16 that not a criticism in the Robertson Report?

17 MR BRANTON: The criticism was that it --

18 MR BROUGHTON: As it has been going on during these  
19 nine years or so.

20 MR BRANTON: -- becomes a -- that if they're doing  
21 it, becomes a duplication, but I think we're going to have to  
22 admit that to some extent it would be a duplication, but I  
23 think it's the results that we're looking at, and we just  
24 think we can do a better job of recruiting for the Reggie pro-  
25 gram than could somebody who's recruiting for a lot of other

1 purposes. We would have a very clear, well-defined purpose,  
2 recruiting just for the Reggie program.

3 We think we can do a better selling job of trying to  
4 sell the Reggie program.

5 MR BAMBERGER: Can I just say a word here?

6 MR STOPHEL: And what's the third area?

7 MR BAMBERGER: Can I say a word about that, please?

8 I think the word "recruitment" may be somewhat misleading.  
9 There are in fact three steps in the enlistment, if I may say,  
10 of a Fellow -- to carry out the military analogy.

11 The recruitment that we speak of here is a visit by  
12 a person to a law school to talk about a career in legal ser-  
13 vices and a career as a Reginald Heber Smith Fellow.

14 The next step is the review of the application forms  
15 submitted by any persons who become interested as a result of  
16 that explanatory visit.

17 The interview would then be conducted by the Regi-  
18 nald Heber Smith program, and the selection would be made by  
19 the Reginald Heber Smith program. And because the Corporation  
20 itself will begin next year the visits to law schools to ex-  
21 plain to law students the attractiveness of careers in legal  
22 services, we thought that we should avoid that duplication.

23 Those persons would also explain the Reginald Heber  
24 Smith program.

25 The program would be involved in the presentations

1 made by those people. The Dean would suggest to us people to  
2 be engaged as recruiters. Before we made the appointment of  
3 recruiters, the Dean would review that list and the materials  
4 given to the recruiters to explain the Reginald Heber Smith  
5 program would be reviewed by the program.

6 I'm sorry, the next point.

7 MR BRANTON: The other points, the third one from  
8 the bottom, "After the Fellows have had a few months of experi-  
9 ence in legal services programs, the Corporation will conduct  
10 a training session for them in lawyer skills and poverty law."

11 We think that the Reggie program should play a major  
12 role in that kind of training, particularly if we're going to  
13 try and aim in the direction of perhaps adding to some academic  
14 component leading toward some kind of a degree. That training  
15 might very well become a part of the academic component.

16 Until we get to that stage, in any event, the Reggie  
17 program should be involved in that training. I don't think  
18 that that training ought to be handled strictly by the Legal  
19 Services Corporation.

20 MR BAMBERGER: May I say on that one, our lack of  
21 agreement is quite narrow. The Dean acknowledges that certain-  
22 ly for the class of Reggies that begin on August 1, the law  
23 school could not put together that kind of program, and so what  
24 we would propose is that for the next year the Legal Services  
25 Corporation do the program, but then we would look, over the

1 next seven or eight months, at the possibility of Howard doing  
2 the training program for the Reginald Heber Smith Fellows,  
3 and we would perhaps change that arrangement in the second or  
4 third year of the contract.

5 MR BRANTON: And of course the last item on the list  
6 is one that we feel very strongly about, "The Corporation will  
7 disburse the compensation to Fellows." We've been doing that.  
8 There's no reason why we should not continue to do that. If  
9 we're going to run the program, frankly, we ought to run it.

10 We can demand greater accountability from the people  
11 out in the field if we're the ones sending the compensation to  
12 them. Right now, after Reggie has been on board for a year,  
13 if that Reggie wants to change to another project, or if the  
14 project wants to get rid of somebody, we have to reassign them,  
15 we can make those assignment, we can make that assignment right  
16 now without having to come back and bother the Legal Services  
17 Corporation about that.

18 We can transfer the Reggie. We can transfer the mon-  
19 ey for the Reggies.

20 I don't believe that there are any allegations any-  
21 where that the money is not being properly handled. There  
22 might have been some delays in accounting, because of the size  
23 of the overall Howard University operation, but I think that --  
24 Mr Robertson found that that had been cleared up a great deal,  
25 and that reports were coming in faster now. I know they have

1 changed their entire system over there.

2 MR STOPHEL: Does the program now make the check  
3 payable to the Fellow, or does it make it to the grantee?

4 MR BRANTON: We make it to the grantees.

5 MR STOPHEL: Well we're sending them a check once a  
6 month anyway. Wouldn't it be simpler to simply send them a  
7 second with ours, so that --

8 MR BRANTON: We don't think so, because we keep -- we  
9 maintain the record as to where the Reggies are, who's there,  
10 things like that.

11 MR STOPHEL: But how does -- I didn't understand your  
12 statement that this would help your accountability with the  
13 Fellows. You really don't send anything to the fellows --

14 MR BRANTON: Not --

15 MR STOPHEL: -- in the way of compensation. I didn't  
16 understand that.

17 MR BRANTON: I'm talking about to the projects, to  
18 the individual program.

19 What it all boils down to is, you know, do you trust  
20 us to run the program? That's really what it boils down to.

21 MR STOPHEL: We're really talking about saving money,  
22 aren't we?

23 MR ORTIQUE: That is a point I think needs to be  
24 underlined.

25 MR STOPHEL: That was a money item.

1 MR BRANTON: The only way we -- there's Mr Robertson's  
2 bare statement that the Corporation can do it cheaper, and I  
3 don't think there's anything in there to support that statement.

4 I don't know how many people would be required to  
5 handle the accounting function. I don't know, you may or may  
6 not do it more cheaply. That I don't know. There's no documen-  
7 tation of that, one way or the other.

8 But if you run this one, as I understand it, it would  
9 be the only program where you do that, so why treat this pro-  
10 ject any differently from the other projects that you're in  
11 now?

12 MR BROUGHTON: Well Dean, I think this Board is faced  
13 with a decision and that it is our responsibility as to how  
14 this program can best be run, which includes -- I don't think  
15 I'd say don't we trust you. It's not that. It's our determin-  
16 ation as to how the best way is that this program can be run,  
17 and that takes into account our responsibility to the taxpayers.

18 MR CRAMTON: Well it does seem to me on that we ought  
19 to address ourselves to the larger issues, and not to the de-  
20 tails of contract or grant arrangements.

21 MR STOPHEL: We're just about to pass by some of  
22 those things, that if we don't have some input here, Roger,  
23 it's going to go on just as it has, for years, just a few lit-  
24 tle window dressings.

25 MR CRAMTON: At the pleasure of the Board, and I was

1 just hoping --

2 MR BROUGHTON: Well I had this question to ask Mr  
3 Bamberger, if I could, referring to the check list, if I may.  
4 The items that the Dean set forth as being areas of disagree-  
5 ment, as I understand it, the last item is one in which you  
6 stated that the issue between you has been narrowed.

7 MR BAMBERGER: Not -- the third.

8 MR BROUGHTON: The third from the bottom.

9 MR BAMBERGER: Yes, the training.

10 MR BROUGHTON: Yes. Now is your position fairly  
11 rigid with respect to the other items?

12 MR BAMBERGER: Well I -- they're -- I -- no. I'm  
13 willing to continue to discuss all of these points listed. I  
14 don't know what "fairly rigid" means.

15 MR BROUGHTON: Well, this goes to my next question.  
16 In going over your list, and trying to reflect on the Robert-  
17 son Report, aren't you suggesting, at least, or setting forth  
18 some concerns and items that you feel should be done in a so-  
19 called revised program that cover areas that have not hereto-  
20 fore been done by this Corporation or its predecessor, and  
21 going further, aren't the things you suggest in large part  
22 bringing the program more and more under so-called House con-  
23 trol of the Legal Services Corporation?

24 MR BAMBERGER: Well --

25 MR BROUGHTON: Aren't you suggesting some things here

1 that have not been heretofore done?

2 MR BAMBERGER: No sir, I don't think so. I may be  
3 suggesting some things that are being done, but I don't think  
4 it brings it any more under House control.

5 MR BROUGHTON: Well aren't you at least suggesting  
6 that up till now there's not been a very good job of monitor-  
7 ing the program, so far as Legal Services Corporation is con-  
8 cerned, and its predecessor?

9 MR BAMBERGER: Well I can't speak to its predecessor.  
10 I think the Legal Services Corporation has effectively monitored  
11 the program since this Corporation came into being.

12 MR CRAMTON: Mr Robertson, do you think that the --  
13 this arrangement satisfactorily safeguards the independence  
14 that you value and spoke for?

15 MR ROBERTSON: Which one are you --

16 MR CRAMTON: This kind of checklist of key provisions.  
17 I mean is it really critical that Howard interview and select  
18 the Fellows, which I gather is maintained on here.

19 MR ROBERTSON: Well, if your question is, do I think  
20 that it's critical to the independence of the program that  
21 Howard continue to interview and select the Reggies, yes, I  
22 do think that's critical, and I gather that that -- I gather  
23 that nothing in the discussions so far between Mr Bamberger  
24 and Dean Branton would arrive at a different result.

25 Yes, I think that will maintain the kind of indepen-

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1 dence that I was talking about, at least, when I wrote this  
2 report.

3 MR CRAMTON: Mr Engelberg?

4 MR ENGELBERG: Yes. I was concerned about the part  
5 of Mr Robertson's report dealing with overhead, and the ques-  
6 tion -- I think the implication in the report was that the  
7 \$100,000 may be too much to pay for the services from Howard.  
8 I think that was the conclusion you reached, which has to do  
9 with this last issue.

10 The other thing -- and my guess is, and I just know  
11 nothing about it, that probably this pattern, as Dean Branton  
12 indicated, is true of a lot of similar contracts. That is --  
13 I mean I take it it's kind of a normal part of the grant world,  
14 where there is this overhead paid, and I -- my concern is I  
15 think that it really is larger than the Reggie program. I  
16 think that at some later time the Board, unless there is no  
17 problem -- I would like to see some way of getting at this  
18 question of whether the Corporation is paying out too much in  
19 overhead for these kinds of contracts.

20 By the same token, I guess I do agree with Dean Bran-  
21 ton, and I am concerned with singling out one contractor and  
22 treating them differently -- if in fact that's being done. I  
23 don't know, and I really guess I'm asking that question to  
24 Clint.

25 I mean, in other words, is it true that this over-

1 head pattern -- that other contractors are paid a fair amount  
2 of overhead for, you know, dispensing money, or whatever it is?  
3 I mean -- the problems that seem to exist with the Reggie pro-  
4 gram --

5 MR BAMBERGER: Well, as far as overhead goes with  
6 the universities, we have over the past few years made an ef-  
7 fort and have eliminated that in all of the contracts that we  
8 had. That is, we have disengaged those support centers that  
9 were affiliated with the universities in order to avoid the pay-  
10 ment of overhead.

11 MR ENGELBERG: You mean sort of for the use of the  
12 university's name?

13 MR BAMBERGER: Yes.

14 Now with respect to Howard, the Dean and I discussed  
15 overhead the first time we met, and my letter to him said that  
16 I thought that the suggestion by Jim Robertson that the over-  
17 head should be limited to 25 percent instead of 40 percent,  
18 was a reasonable figure to think about, but that we ought to  
19 first decide the work plan.

20 What is the work that's going to have to be done by  
21 Howard. What's the staffing? And to the extent possible, I  
22 would put more costs in the direct costs -- that is not car-  
23 ried -- carry as few things as possible as undefined overhead,  
24 but to the extent that Howard can identify costs directly re-  
25 lated to the legal services program, we would pay those and

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1 leave that amorphous area of overhead at a bare minimum.

2 And we deferred our discussion of the overhead until  
3 we could agree on a work plan. The Dean could then sit down  
4 and say well here's the kind of staff I need.

5 MR ENGELBERG: Well is it fair to say -- and this is  
6 past issue, that I'm not familiar with -- that the Corporation's  
7 policy now is basically not to pay overhead, really, for the  
8 use of the university or any other outside institution's name  
9 or affiliation. Is that official policy of the Corporation?  
10 Isn't that the --

11 MR CRAMTON: You don't have to pay overhead for the  
12 use of the name. You pay overhead for -- to recompense an in-  
13 stitution for the cost of providing space, for the drain on  
14 library facilities, for utility costs, and other things. I mean  
15 those are overhead.

16 MR ENGELBERG: I understand that, but I mean my un-  
17 derstanding is -- and it's certainly not just true of the Reg-  
18 gie program -- that with a lot of grant programs there's a  
19 built-in factor which was alluded to in Mr Robertson's report.

20 Clint seemed to indicate that that has been a problem  
21 with other universities in the past, and which the Corporation  
22 has tried to disengage from. I'm just trying to establish if  
23 that is a consistent Corporation policy.

24 MR BAMBERGER: There are other contracts that the  
25 Corporation has where there are indirect expenses and the Cor-

1 poration pays some percentage of the contract amount to cover  
2 those indirect expenses.

3 MR STOPHEL: But I think Steve is correct that in  
4 general, when we found early on so many contracts with univer-  
5 sities, as Mr Bamberger has said, there was an attempt to  
6 either negotiate that figure downward, or out of the contract,  
7 or disengage, and in fact, we disengaged from a number of uni-  
8 versities because they would not negotiate a lower figure.

9 MR ENGELBERG: Okay.

10 MR BAMBERGER: Because there -- here we have a dif-  
11 ferent situation, that we see an involvement of the university  
12 an asset of being involved with the university.

13 MR CRAMTON: Well we shouldn't pay for the name and  
14 the involvement. We ought to pay on indirect costs, only, for  
15 services rendered, not just for Howard's name.

16 MR BAMBERGER: We want the involvement, and we will  
17 pay for the indirect costs.

18 MR ENGELBERG: Could I ask just one final question  
19 of Dean Branton.

20 If in fact -- and maybe it can't be done -- but if  
21 during these negotiations the Corporation could reasonably  
22 demonstrate that they could do the disbursement function cheap-  
23 er than Howard, and -- would that -- you know, would that satis-  
24 fy you that the Corporation -- maybe it can't be demonstrated.  
25 I don't know.

1 MR BRANTON: No it would not. I think it's more  
2 basic than that.

3 MR ORTIQUE: Yes, and Steve, it's --

4 MR BRANTON: It goes back to the control of the pro-  
5 gram, as to whether we're running the program, or not.

6 MR ORTIQUE: -- whether you're allowing them to run  
7 the program. This is no different from what we do with CALS  
8 in New York, for example, or what we do with the statewide  
9 programs. We give them the money and we say, "You go ahead  
10 and you do thus-and-so," and we have never questioned whether  
11 they ought to do it or whether we could dispense some checks  
12 on our computer cheaper than they could dispense the checks.

13 MR CRAMTON: Ms Esquer?

14 MS ESQUER: I think that the four areas that Dean  
15 Branton outlined, in my opinion, do point to a lack of allow-  
16 ing Howard the independence necessary to run the Reggie program.  
17 I'm particularly concerned with the first and the last items.

18 I think that maybe the first item could be divided  
19 into two areas, as a result of the report. I'm not satisfied,  
20 and I would join Mr Stophel in again asking, you know, why a  
21 term of three years, and I'm not sure, you know, just -- you  
22 know, the reply that security -- you know, that you need that  
23 type of security.

24 I might be more comfortable as a Board member, in  
25 light of this report, to allow just the renewal of the current

1 contract with Howard University, and give them, you know, a  
2 year's time to submit a new contract, to negotiate out a new  
3 contract.

4 As far as the second part, on the right to cancel the  
5 contract, I just don't see how this can be done without some  
6 type of a hearing. I think that that would just be crucial.

7 The last part of it, the disbursement part, I think  
8 that that is necessary, if you're going to have control of a  
9 program, that you also hold the pocketstrings, and I just do see  
10 this kind of as infringement on the independence of a program.

11 And I do see a distinct treatment, you know, of this  
12 program, as to other grantees.

13 MR STOPHEL: Well Ms Esquer, as I see it, what we  
14 have here, though, is a national program, and the only one of  
15 its type, and the term compensation here is not really a valid  
16 point, because what is sent out there is a lump sum per month  
17 to a program, to a recipient, and it is compensation plus  
18 fringe benefits, gauged at the level of that contracting par-  
19 ty. It is not compensation as the term is used here.

20 MS ESQUER: I understand that, but this disbursement  
21 of funds, if you want to do it, you know, to a local project,  
22 is done as a result of some negotiation as to what the duties  
23 of a Reggie will be in the local program, and I think that one  
24 of the complaints that I've heard directly from Reggies in the  
25 programs is that a local program will tend to swallow up the

1 Reggies, or, you know, they go into this, into the contract as  
2 a Reggie, with the understanding that they will be allowed to  
3 specialize in a certain area or to participate in certain types  
4 of lawsuits, and then the local program, for whatever reasons,  
5 does not comply with that part of its agreement with a program,  
6 and I think that in that event Howard University might want to  
7 stop the flow of funds until problems like that are worked out.

8 MR STOPHEL: But that's done with a telephone call,  
9 and your point is one that I wanted to get to on concept, be-  
10 cause I think this gets to what is the goal of the Reggie pro-  
11 gram.

12 Is it to tell a program, a recipient, "You shall use  
13 this person, you shall use him in this way"? And I think this  
14 gets to our goals, what is the purpose of the Reggie program,  
15 and we can beat around it and we've had several expressions of  
16 what it is, and perhaps this Board is going to have to define  
17 that and put it in writing somewhere.

18 But is it our goal to have Howard, or someone else,  
19 assign a person to a program and say to that program, "You shall  
20 use this person in this way"?

21 Having worked --I think that this can create sub-  
22 stantial problems for a director of a program who has the morale  
23 of his entire program to worry about, and here he's got one fel-  
24 low who's a licensed practitioner who comes in at perhaps the  
25 same salary scale, and yet he has specific guidelines from

1 above as to what he's to do in the program.

2 Now I think this is something we really have to work  
3 out, and I'm not sure whether it's been addressed and whether  
4 Clint or the Dean or Jim would like to discuss that aspect.

5 From your discussions with project directors, did  
6 you find this a potential problem, of assigning specific things  
7 from the contracting party?

8 MR ROBERTSON: I don't think it's a problem any more,  
9 Mr Stophel. I think --

10 MR STOPHEL: But it really hasn't been done in re-  
11 cent years very much, either.

12 MR ROBERTSON: I don't think that it has been done  
13 in recent years. I think what has happened is there's been  
14 kind of a narrowing of the gap of expectations on both sides  
15 so that both people -- both parties, if you will, both the Reg-  
16 gie and the project director, have come to understand that a  
17 Reggie is assigned to a project, and when he gets there he is  
18 some -- he or she -- is some combination of a Fellow with an  
19 agenda of his or her own, and a soldier working for the project  
20 director, and my contacts with project directors and with Reg-  
21 gies all over the country indicates that in almost every case  
22 that's not a problem today.

23 So I think it's -- it is, if I may say so, kind of a  
24 non-issue.

25 MR CRAMTON: Mr Robertson, there have been several

1 suggestions that the Board ought to postpone, essentially, ul-  
2 timate decisions here once again by perhaps some kind of one-  
3 year arrangement in which something would be worked out.

4 I guess my feeling is that now is the time to make  
5 some decisions and get some stability in this area, and allow  
6 people to do some longer term planning -- whoever is going to  
7 do it or whoever is going to run it -- and put some thought in  
8 it, hire some good people, and so on.

9 What's your reaction to that question?

10 MR ROBERTSON: Well, I think I'm going to fall back  
11 on the reaction of my very earliest comments about this, Dean  
12 Cramton. I think that as long as the continued viability of  
13 the program and its general direction is established, the rest  
14 of it becomes a detail -- at least from my point of view.

15 If Howard and the Corporation still has some negotiat-  
16 ing to do about details, there's no reason -- in my thinking --  
17 why that can't be done over a period of time.

18 I would like to see a three-year deal worked out,  
19 just because it seems logical to me that Howard needs some run-  
20 ning room to get some new ideas started. But I don't think  
21 that's critical.

22 MR CRAMTON: Mr Bamberger?

23 MR BAMBERGER: May I take up sort of a positive ap-  
24 proach to what you said, Ms Esquer. I suggest to you that here  
25 are the Dean and I, two persons come together, have two meet-

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1 ings to discuss a program about which there is neither any lack  
2 of thought or feeling or ideology, and have reached agreement  
3 on ten of fourteen essential points, and are not very far away  
4 on two of the others that we haven't reached agreement on.

5 Now what I would hope that the Board would do would  
6 be to say to us, "Go back to the table, that we'll continue  
7 the Reggie contract as it exists now, let's say until the end  
8 of September," and by that time I'm confident that the Dean and  
9 I can reach an agreement, and to continue this program and re-  
10 port back to this Board. ~~this program~~

11 I think a delay of a year destroys a momentum that is  
12 going now, a momentum that grows out of this thorough and ex-  
13 cellent report by Jim Robertson, the discussions that we had,  
14 in the Provision of Legal Services Committee, and the two meet-  
15 ings that the Dean and I have had.

16 And I think if we'd had more time we might have come  
17 -- if the Dean had been in office for a year, and wasn't at the  
18 same time trying to take hold of the law school as I'm pester-  
19 ing him to talk to me about the Reginald Heber Smith program,  
20 I think we'd be here telling you that we've reached an agree-  
21 ment that was satisfactory.

22 MR TRUDELL: I think the idea of going back to the  
23 table is fine, but not alone. I think that there are other  
24 elements that, you know, should be a part of that discussion,  
25 and I would feel very comfortable if there were a Board member,

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1 you know, that could explain to me that certain points had been  
2 addressed, and that the consensus was more than just two people  
3 -- or the staff and Howard, you know, because I think we're put  
4 in a position in terms of the Board members where we have to  
5 react, and I don't think that any of us came here today with  
6 the intention of voting up or down, because it's a very large  
7 program and I for one wouldn't be satisfied with saying, "It's  
8 three years, you've got the grant," and even though we've talked  
9 about an advisory committee, and these kinds of things, there's  
10 no assurance that those things are going to fall in place quick  
11 enough.

12 Because, you know, I think the -- you know, how you  
13 intertwine the, you know, the training of the support services  
14 office with the Reggie program and the recruitment and every-  
15 thing else, there are a lot of, you know, questions that I  
16 would like to see discussed by more than just two people.

17 MR EHRLICH: Well, I don't think anyone would doubt  
18 that there will be wide discussion, and if you do what was just  
19 proposed, a wide discussion of a range of issues.

20 I hope you'll continue the discussion here at the  
21 Board level, and would not be limited to -- shall not be limited  
22 to two people. Of course not.

23 Ultimately somebody has to put down some proposals  
24 against policy adopted by the Board, and I hope you won't do  
25 other than articulate what you think ought to be those policies

1 so we can go ahead and have that agreement.

2 That's the job of the staff, to carry out the poli-  
3 cies as established by the Board, and that's what we want to  
4 do.

5 And I would resist our establishing those broad basic  
6 policies, as opposed to the Board. I resist, on the other hand,  
7 negotiation of a contract, because I don't think you can do it  
8 that way, by other than somebody from the University and from  
9 the Corporation staff, but in an open process so that people  
10 know what's happened. We're not playing games and we're not  
11 being secretive.

12 MR STOPHEL: This is the kind of contract that I  
13 think should be treated as was the new form worked out for the  
14 support centers, because it was of such essential and sensitive  
15 nature to the Board itself, and although I won't be a part of  
16 the Board voting on that contract, I think that it should come  
17 back to this Board for approval -- perhaps not as this is the  
18 contract we're going to sign, but these are the terms it's go-  
19 ing to contain -- in the same manner as we did with those con-  
20 tracts with the support centers after we had made that hard  
21 decision of what was going to be included, what could the sup-  
22 port centers do.

23 And we wanted to make sure that the contract provided  
24 for those things.

25 MR TRUDELL: Well, you know, I for one would be more

1 than happy to get involved in that discussion process, because  
2 I think there are some Board members here -- maybe all of us --  
3 not saying everything we want to say about the program, and  
4 I think here's an opportunity to really, you know, get it out  
5 on the table and keep it out there, because it cuts across the  
6 whole country, and not just one particular area.

7 And I think there's room for involvement of more than  
8 just Legal Services people, in terms of making suggestions, not  
9 saying they're going to be accepted or rejected, and I realize  
10 that, you know, time is against us in terms of, you know, the  
11 fall semester is not that far away, and Jim's report was very  
12 good in terms of making suggestions about the recruitment,  
13 selection and placement process.

14 And to get all those things under way I guess you've  
15 got to start now, and in terms of Cecilia -- Cecilia mentioned  
16 the fact that, you know, maybe a one-year contract is adequate,  
17 the fact that Howard is the grantee, they've got the upper  
18 hand in terms of if everything is done, it's going to stay  
19 there, probably for an indefinite period of time.

20 MR BAMBERGER: Well I don't want to lose the momen-  
21 tum that I think is now going on, and what have been very  
22 fruitful and -- discussions. I hope the Board would require  
23 us to come back quicker than that.

24 MR CRAMTON: It seems to me that the President  
25 stated a position that we really ought to adhere to, and re-

1 inforce. It not only states the kind of statutory division of  
2 responsibility between the President and the staff and the  
3 Board, but really the sensible path that we ought to follow.

4 The Board should define what the policy and purpose  
5 of this program is, whether we're satisfied with Howard's per-  
6 formance in the past, whether we think the promise of future  
7 performance at Howard is sufficient to go ahead, and in general  
8 the kind of parameters of any future arrangement, and then  
9 leave it to the staff to negotiate, consistent with the policy  
10 laid down by the Board.

11 I don't think the Board ought to get into the ques-  
12 tion of participating in negotiations or ultimately deciding  
13 the question of -- in my own view, because it isn't sufficient-  
14 ly important -- of who ought to send the checks out. I mean  
15 that's -- these are details that really aren't that -- in my  
16 view -- sufficiently important as related to the policy issues  
17 that the Board ought to be concerned about, as what is the pur-  
18 pose of the program? What objectives ought it to accomplish?  
19 How should it go about, in general, accomplishing those objec-  
20 tives? Is Howard the right recipient or grantee to carry out  
21 those objectives?

22 And then authorize the staff to negotiate.

23 And we've been talking about the program for three  
24 years. Let's decide something about it, not just defer.

25 MR ORTIQUE: There is a concern that -- and I should

1 have mentioned that Dick Trudell was at our committee meeting.  
2 I mentioned that you were there, Mr Chairman, but I didn't men-  
3 tion that Dick was there. There certainly is at least one  
4 area that Dick initiated and that a couple of us expressed some  
5 interest in, and that is the matter of an advisory committee,  
6 and I think that that is an area that this Board could direct  
7 that an effective advisory committee will be established.

8 And that the Board as its policy would be looking to  
9 that advisory committee to indicate to us as to whether the  
10 Reginald Heber Smith program was carrying out its mission. They  
11 would be monitoring it, so that there are some things that I  
12 think can be decided.

13 I am concerned that we ought not get into -- as you  
14 are -- that we ought not get into great detail, but I do believe  
15 that there is room for Board policy development, and those  
16 areas ought not take us a year to decide on that. And I don't  
17 see any reason why we should wait for a year to do something  
18 about this, particularly when the grantee or the prospective  
19 grantee is saying, "There are areas that we're ready to move  
20 in on now."

21 For example, his faculty involvement, the hiring of  
22 an executive director, the placing of this program under his  
23 clinical committee. Those are things that I think can be ac-  
24 complished, that he will accomplish at, you know, the next  
25 meeting or two meetings of his faculty people.

1           And I think that would be substantially along the  
2 road that Jim Robertson has suggested in his evaluation, and  
3 that a number of the Board people have urged ought to be the  
4 direction for this program.

5           So that it would appear to me that we certainly --  
6 the committee will be involved, the Delivery Committee. Other  
7 Board members will be involved, but I would think that we ought  
8 to move in the direction of getting something going immediate-  
9 ly.

10           MR BROUGHTON: Well why can't we decide at this meet-  
11 ing. The question was raised, I think very appropriately, by  
12 the Chairman just a moment ago. That is this Board.

13           MR ORTIQUE: I have no problem with that. I think  
14 we can --

15           MR BROUGHTON: Well I mean I didn't understand that  
16 you were disagreeing with that, but I mean he raised, I think,  
17 some very valid points, and the indecision by the Board, first  
18 of all, and why couldn't they -- an attempt be made to resolve  
19 those at this meeting?

20           MS ESQUER: I have a problem in that I haven't been  
21 on this Board for three years. I haven't been sitting here,  
22 and am not aware of the three-year history, except as exhibited  
23 by this report.

24           I'm not maybe, perhaps, not knowledgeable enough  
25 about, you know, exactly what can be done in the future, and I

1 really don't feel comfortable with just saying okay, if every-  
2 body is this close on these particular things -- I think that  
3 the advisory committee that was mentioned, was mentioned pro-  
4 bably in a larger scope, as I remember, not just in overseeing  
5 whatever contract is drafted, but in maybe discussing this re-  
6 port a little bit further, and people say well what are the  
7 goals of Reggie?

8           Maybe we need that type of further discussion, and  
9 for that reason I don't see, Clint, why renewing the current  
10 contract that we have, and asking that a new proposal be sub-  
11 mitted, you know, for the next contracting period, would stifle  
12 any momentum that has been started.

13           I think that it, in fact, could be expanded upon by  
14 a further discussion of what Reggies should be doing.

15           You know, we had another area where there were I  
16 guess \$4.5 million that were going to be spent, and that was  
17 in a quality improvement project, and I didn't see that there  
18 was any movement to rush the Board into making a decision in  
19 a one-month period, and I do see that, and I feel that I am  
20 being overly pressed to make a decision that I am not prepared  
21 to make at this particular meeting, and maybe not even at the  
22 October meeting.

23           I would favor some further discussion on what the  
24 goals of Reggie should be, and not just among the Board, and  
25 not just from staff, but with other people -- maybe some of the

1 field people.

2 I was interested to see that PAG has submitted no  
3 comments on this program, and to me that's kind of interesting,  
4 because that particular organization is integrally involved in  
5 dealing with Reggies, and I would have appreciated hearing some  
6 comments from them.

7 So I'm just telling you that as a Board member I feel  
8 that I am being pressed into making a decision.

9 MR TRUDELL: I think, you know, Roger's comment about,  
10 you know, in a sense what are the responsibilities of Board  
11 members, and how far do we go -- I'm of the thinking that until  
12 you have an adequate background, in terms of sensitivity and  
13 having been there and back, it's hard to make the decision in  
14 the abstract.

15 And I think that you have to get next to the people  
16 that this program is all about, and if you don't -- because I  
17 think the ultimate goal of the program is that the clients get  
18 better services, you know, and if it's mandated that it's  
19 strictly a program to enhance the development of lawyers, then  
20 I think we're misleading a lot of people.

21 MR EHRLICH: Why can't we --

22 MR CRAMTON: Mr Ehrlich, please.

23 MR ORTIQUE: I wanted to suggest a compromise that  
24 we would renew the contract and -- for a year, but that if the  
25 advisory committee, the law school, the staff, all indicating

1 to us in six months that we now have a package that we think  
2 says what we ought to be saying, that we would take another  
3 look at that time.

4 That to me would give the Dean the opportunity to  
5 say look, I've got a contract for a year, but it would also  
6 give him the opportunity to say I think we're putting a package  
7 together rapidly enough that we can move to a three-year agree-  
8 ment, if that's what's indicated, without waiting a full year  
9 before you do that, since we are talking about momentum, and  
10 so forth.

11 All I'm saying is that we go with the one-year con-  
12 tract with the notion that we would want to take a good look  
13 in six months to see if we are ready to negotiate a longer con-  
14 tracting period.

15 MR CRAMTON: And go with the program as it's been run  
16 in the past, abandon all the agreements that have been made and  
17 the possibilities --

18 MR ORTIQUE: No, no. We're going to make all the  
19 agreements that we can.

20 MR BRANTON: Mr Chairman, I can assure you that if  
21 this contract is renewed for another year, that most of these  
22 things that we've worked out, it would be my intention to try  
23 and implement as many as we agreed upon, even on the continua-  
24 tion of the contract.

25 MR CRAMTON: Do you think a one-year renewal would

1 give you adequate opportunity to hire the kind of people that  
2 you really ought to get to run this program?

3 MR BRANTON: It may not, but it's a lot better than  
4 this -- you know, putting off till September or something, you  
5 know, because right now everybody's acting. Everybody's in an  
6 acting capacity right now, and I need to put somebody in charge  
7 of that program that I can say well at least you're going to  
8 run this program for a year.

9 MR CRAMTON: So you'd prefer that to what Mr Bamber-  
10 ger proposed?

11 MR BRANTON: Unless Mr Bamberger and I can iron out  
12 the other problems just as quickly.

13 I don't intend to abandon the efforts of trying to  
14 resolve this matter with him. It might very well be that we  
15 can resolve it, but --

16 MR CRAMTON: The range of disagreement does seem to  
17 me to be quite small. Maybe it's --

18 MR BRANTON: But also very basic. Yes, it's small,  
19 but it's also very basic.

20 MR CRAMTON: Well, I don't see what's basic about  
21 who signs the checks, but -- they go to the local programs.

22 MR BROUGHTON: Well doesn't that relate to the com-  
23 pensation --

24 MR BRANTON: No, we don't take any overhead off of  
25 that.

1 MR BROUGHTON: You don't?

2 MR BRANTON: No, no. No.

3 MR BROUGHTON: Mr Chairman, could we agree on a five-  
4 minute recess at this point? We've been at it almost two  
5 hours, an hour and fifty minutes.

6 MR STOPHEL: I think that as a matter of policy this  
7 Board ought to shy away from longer than one-year contracts.  
8 The only one that I'm aware of that we've acted on is our lease,  
9 which did come to the Board in the form of a contract to be  
10 approved.

11 I just really think that as a broad policy matter we  
12 ought to go with one-year contracts, which gives you ultimate  
13 flexibility.

14 I realizing that planning, but -- planning for this  
15 program is no more difficult than planning for Denny Ray's  
16 two and a half million dollar program --

17 MR CRAMTON: Or permanent contracts, for all the other  
18 programs.

19 MR STOPHEL: Well that's true, given what we have  
20 in the way of hearings, but they're entitled to the same hear-  
21 ings, as a recipient, I assume.

22 MR CRAMTON: They wouldn't on a one-year contract.

23 MR STOPHEL: Everybody gets a one-year contract. It's  
24 a calendar year.

25 MR EHRLICH: If they provide legal assistance.

1 MR CRAMTON: If they provide legal assistance, but  
2 this is not a --

3 MR STOPHEL: But I think we perhaps ought to consider  
4 asking proposals from people to compare with this. We're work-  
5 ing perhaps in a vacuum. We have one program that we have se-  
6 vere criticisms of. We have a great number of solutions to  
7 solve those. But perhaps somebody else ought to say, "Here's  
8 what I can do for you," and run this program.

9 That seems to me a logical way to approach the ques-  
10 tion. Granted we can't do that before September, it seems to  
11 me we're going to have to go with this program with this ad-  
12 justments for this year.

13 I think we ought to invite proposals for running this  
14 program in the future.

15 MR ORTIQUE: I think that we ought to -- I can't help  
16 but respond to that, Glenn, on the basis of what this program  
17 is all about.

18 Now if you're talking about just running any recruit-  
19 ment program, then yes, I say that the University of Nebraska  
20 could probably do the same type of job.

21 When you're talking about running a recruitment pro-  
22 gram that has a special emphasis on minorities, I would respect-  
23 fully suggest that the University of Nebraska is not the ap-  
24 propriate university to do this program.

25 MR EHRLICH: Mr Chairman, could I make a --

1 MR ORTIQUE: South Dakota, I should have said South  
2 Dakota.

3 MR CRAMTON: And Mr Ehrlich, you've been very patient.

4 MR EHRLICH: I'm trying to make this point.

5 First, I don't want to lose the one that Dick made  
6 about general effort, and it's improving, because it's one I  
7 care a lot about. It turns then to the one that, Cecilia, you  
8 made about decisions.

9 One way or another, it seems to me, a decision is  
10 going to be made. The question is, "Which decision?" And  
11 there's no way to not make a decision about this program. Some  
12 three years -- the staff are going to press the Board as hard  
13 as we can to be sure we understand as fully as we can what it  
14 is you want to do and what it is you don't want to do in terms  
15 of the basic policy.

16 One way or another I hope with all my heart that we're  
17 going to have this program a long, long time. The first step  
18 is in terms of next year, and I personally hope -- still hope  
19 -- more than next year, but the truth is, if we say let's think  
20 about it for another year, I know what's going to happen over  
21 the next year, because I know what else you as a Board have to  
22 consider in terms of basic policies on where Legal Services are  
23 going.

24 You have enormous amounts of things on your agenda  
25 that are terrifically important to the future of Legal Services,

1 and inevitably, with the best of intentions in the world,  
2 we're not going to come right eye to eye on those issues of  
3 the Reggie program until the next cycle comes around.

4 And it isn't malevolence, it's just because there are  
5 so many other things.

6 You've got a chance to face these issues, and that's  
7 why we are pushing as hard as we can. You say, "That is so  
8 complex I don't want to do it for more than a year." Well do  
9 it for a year.

10 I think there's real advantage and stability for more  
11 than a year. I think a three-year is a very sensible arrange-  
12 ment in this particular case.

13 But, if you say let's hold it for a year, by all means  
14 let's do that. That's why we're pushing it for judgment, be-  
15 cause one way or another we're going to have to walk out of  
16 here and work out some kind of an arrangement.

17 I think, in terms of the basic kinds of approaches,  
18 they make sense. There have been other people who said there's  
19 disagreement. We want to get from you, the Board, your cur-  
20 rent judgment, at least for the next year, about this, because  
21 otherwise we're going to have to, quote, "do the best we can,"  
22 with them, and I happen to think the best we can isn't bad,  
23 but you're the Board and that's why we push as hard as we are  
24 for those judgments, as best we can.

25 MR CRAMTON: Mr Ortique, I think we would be helped

1 if we had a specific proposal that we could discuss, and maybe  
2 even vote on at some point, but if the discussion were focused  
3 on a specific proposal we might either decide we're not pre-  
4 pared to vote on it, or at least then discuss it and maybe we  
5 can vote.

6 MR ORTIQUE: I want to propose that we today tell the  
7 staff to proceed on the one-year contract; that we tell the  
8 staff -- number two -- that in all those areas that there is  
9 already basic agreement, that we incorporate those into the  
10 contract; three, that within six months that we would expect  
11 that they would tell us whether they are prepared to have us  
12 vote upon a longer term contract, which would take in the ques-  
13 tion of stability and all these other things; that the six  
14 months would give them the -- in my view -- the pressure --  
15 and hopefully in the Board's view -- the pressure to really  
16 get this job done, and at the same time would allow the Dean  
17 to proceed immediately to hire a permanent director, which I  
18 think that he needs to do like yesterday.

19 And that -- I don't want to even give them the out  
20 that they can -- that they have the full year. There's noth-  
21 ing wrong with giving a person a year's contract and renegotia-  
22 ting that contract before the year's up to something that gives  
23 them greater stability, which is what they're indicating they  
24 desire, which at the same time would give us the opportunity  
25 to look at what they have implemented.

1           That's why I make the recommendation of the six  
2 months. I don't want to wait a year to see whether we've got  
3 something.

4           I think that we can make a lot of corrective measures  
5 -- and Clint mentioned at least ten areas in which there is  
6 agreement -- if the Board deems it necessary, if we don't have  
7 the advisory committee in place, that perhaps we can have some-  
8 body else take a look at what the proposed long-term agreement  
9 is.

10           I think that the staff is capable of developing the  
11 long-term agreement within the six-month period, and we have  
12 the six months in which to look at all of these things, but  
13 I'm not suggesting -- and I'm sure I would hope that no one  
14 on the Board would want us to either go with a three-month or  
15 a six-month, when they need something to hang their hat on.

16           MR CRAMTON: Mr Bamberger?

17           MR BAMBERGER: The Dean and I are in negotiation.

18           MR CRAMTON: Could we take a five-minute recess?

19           MS ESQUER: I'd like to make one point.

20           MR CRAMTON: All right, Ms Esquer, and then let's  
21 take a five-minute recess.

22           MS ESQUER: The only thing I would add to what Revius  
23 was saying, I don't know whether I agree to the six months  
24 thing, which is that the only way that we'll be able to judge  
25 at the end of six months, or at the end of the year, how Howard

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1 University has performed is to insure that they are treated as  
2 a completely independent grantee, and that they do -- they car-  
3 ry out 100 percent of the functions concerning the Reggie pro-  
4 gram.

5 MR ORTIQUE: I accept that as part of the --

6 MR EHRLICH: Can I be sure that I understand what  
7 that means, because I honestly don't, now.

8 The truth is that the Reggie program is an integral  
9 part of the life and heart of Legal Services, and there are  
10 all sorts of ties and interactions, and if that means something  
11 other than what they've just been talking about, and if it  
12 does mean more or less, then I'd like to be sure we know it.

13 MR CRAMTON: Does everyone follow these items?

14 MS ESQUER: I will second --

15 MR CRAMTON: For example, the approval by the Corpor-  
16 ation of the recruitment posters and brochures.

17 MR ORTIQUE: No, no. She's talking about the --

18 MS ESQUER: I'm talking about the four areas.

19 MR ORTIQUE: -- four areas.

20 MR KUTAK: Mr Chairman?

21 MR CRAMTON: Mr Kutak?

22 MR STOPHEL: Well I disagree with your attempting to  
23 negotiate the contract on those items. I don't agree that  
24 those impinge on the independence of the program.

25 MR CRAMTON: Mr Kutak?

1 MR KUTAK: Mr Chairman, first of all, sorry I was  
2 not here for Mr Robertson's presentation, but I want to say  
3 that I am very impressed with his report.

4 I think this Board has about all the information it  
5 needs to have in order to make a decision.

6 I'm secondly impressed with Dick Carter's memorandum  
7 to Revius's committee, starting on page 73. I thought it was  
8 inciteful and terribly instructive in helping us come to what  
9 seems to me to be the one conclusion I needed to have as a  
10 Board member to make a judgment.

11 It's the first sentence of the second paragraph on  
12 the first page of Dick's memorandum. "The major conclusion of  
13 the evaluation report is that the program should be retained.  
14 It should be retained as a Corporation grantee under the ad-  
15 ministration of Howard University."

16 Now we have got an expert who's done an awful lot of  
17 work, corroborated by a staff that has done enormous amount of  
18 due diligence, to give us the one vital piece of information  
19 it seems to us as a Board we need to know.

20 Are we kidding ourselves, or have we been kidded by  
21 a lot of others, or do we have an outside expert corroborated  
22 by our staff telling us what I think in our guts we all did  
23 need to know and do know, and that is that the Reggie program  
24 is an exciting concept and that Howard University School of Law  
25 is the natural grantee for it.

1           Now, I think we're losing something, my colleagues,  
2 when we forget about the very proud history that this program  
3 has, as well as -- may I add -- the very bright future which  
4 this Corporation can give it.

5           I think that the Reggie program adds a further -- if  
6 not a new -- dimension to our Legal Services Corporation. How?

7           Certainly by insuring a cadre of lawyers which -- or  
8 who are particularly competent, particularly committed, and  
9 particularly compatible, for what we, as a Corporation, need  
10 to get done.

11           And I think we do need quality lawyers. I'm always  
12 very nervous when I hear about qualifications of lawyers. I'm  
13 convinced I couldn't get into my own law firm today. I sit  
14 around listening to my recruiting committee and I know the  
15 game would be up if I had to submit my application.

16           But I think we do need to have particularly qualified  
17 lawyers, and we know that we'll get them. We certainly know  
18 that we need to have dedicated lawyers. We know we will get  
19 them. And we certainly know that they're going to reinforce,  
20 if not establish, the goals and standards of our program.

21           Now, if we need the program -- and I think we all  
22 agree we do -- it follows in everything that we as a Board or  
23 we as a corporation have been doing, that it ought to be an  
24 independent program, and it ought to have stability if it's  
25 going to succeed, and certainly you know what I'm going to say

1 next. It's got to have pizzazz.

2 I think the Dean and -- I certainly know -- our staff  
3 and certainly the officers of our corporation, are convinced  
4 by, incidentally, the kinds of proposals or counterproposals or  
5 I guess if one of our former colleagues was here he'd say emen-  
6 dations, that would be made through the modifications sugges-  
7 ted, that it's going to get the kind of sparkle that Howard  
8 University is committed to give it, if we give it a chance to  
9 run.

10 I think we've got to have confidence in our officers,  
11 in Tom and Clint and in Dick, to negotiate with Howard Univer-  
12 sity within those broad parameters of a quality program, an in-  
13 dependent program, and a program with pizzazz, and leave it to  
14 them, within those parameters.

15 We've said before -- and we all know -- that the per-  
16 fect is the enemy of the good, and if we try to sit around  
17 here and create a perfect program, we're not going to have any  
18 program. We're going to have a -- and we need a program and  
19 we need it now.

20 I would urge -- whether it's one year or two years,  
21 I don't know what, I would leave that to the motion of our  
22 Chairman -- but I think he made a very helpful motion, and I  
23 hope it was in the form of one, and if so, I would second it,  
24 that we move forward with a program now -- one year, or I leave  
25 the year blank -- that if we need to come back after the -- in

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1 six months to consider how much further we go with the program,  
2 fine, but let's start, and let's get going.

3 MR CRAMTON: Do you want to take a five-minute break?

4 MR BROUGHTON: Well, I think everybody would.

5 (Laughter.)

6 (Whereupon, at 4:02 p.m. a shor recess was taken.)

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C E R T I F I C A T I O N

1  
2 This is to certify that the attached proceedings, in  
3 the matter of the first portion of the afternoon session of  
4 the Meeting of the Board of Directors of the Legal Services  
5 Corporation, held on Thursday, July 6, 1978 in Ravensworth Hall,  
6 Arlington Hyatt House, 1325 Wilson Boulevard, Arlington, Vir-  
7 ginia, were had as herein appears, and this is the original  
8 transcript thereof.

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