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96th Congress }  
2d Session } COMMITTEE PRINT

JUVENILE JUSTICE ACT CORNERSTONE:  
CONTINUATION FUNDING

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JUVENILE JUSTICE AND DELINQUENCY PREVEN-  
TION ACT MANDATE FOR CONTINUATION OF  
SATISFACTORY PROGRAMS FUNDED UNDER THE  
ACT OF 1974 AS AMENDED IN 1977 AND 1980:  
SECTION 228

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A REPORT  
OF THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-SIXTH CONGRESS  
SECOND SESSION



NOVEMBER 1980

Printed for the use of the Committee on the Judiciary

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[96th Congress]

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(II)

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FOREWORD

For a decade now we have worked to provide assistance to establish and *maintain* worthwhile private non-profit juvenile programs which, without the prospect of continued funding would face uncertain, if any, futures. Such a notion was integral to my Juvenile Justice and Delinquency Prevention Act which became law in 1974. We were especially concerned about the prospects of those who planned to eliminate costly, insensitive or antiquated features of the way many handle children in trouble and their families. We wanted to provide incentives for these endeavors and a sense of security for those who were successful.

Over the years we have struggled to help assure that the Juvenile Justice Act with its several mandates, including section 228(a), continuation funding, were implemented in a manner consistent with our intent. This report reveals such an effort. It provides the taxpayer with a rare tour of the Alice-in-Wonderland-like Cosmos in which not so civil servants convert congressionally mandated "shalls" into convenient self-serving "mays". It is a record of bureaucratic arrogance without rival.

It is particularly disheartening that litigation was required to properly expose the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) subversion of this vital provision of the Act. It is equally disconcerting that even judicial intervention has not curbed OJJDP abuses. It is especially ironic that inappropriate policies persist even though the Law Enforcement Assistance Administration (LEAA) and its Crime Control Act have for all practical purposes been abolished. It had been our hope that organizational independence within the Department of Justice would liberate OJJDP from past policies that stifled or undermined the Act's Congressional mandates. Regrettably the ghost of the Crime Control Act and its policies, such as the assumption-of-cost and limitations on the length of funding, that were specifically rejected by our act, have recently been resurrected and revitalized with paramount influence. Over the years while we tried to insure that juvenile justice was not just one of the competing priorities within LEAA but *the* National priority, few would have speculated that with the demise of LEAA the OJJDP would continue the competition with its own Congressional mandates.

Although the road which *Project Read* had to pursue in order to right the capricious way in which they were treated by OJJDP was a difficult one, they were lucky. Other victims of the recent wholesale termination of worthwhile programs were less fortunate. Without the litigation remedy they have had to close their doors.

While the entire record of the *Read* case is worthy of detailed review the following discussion of the legislative history of Section 228

(III)

of the Act in Judge Morton Needleman's opinion on the matter is especially noteworthy:

Juvenile justice programs traditionally faced a continuity problem. While other crime projects usually had come under the wing of State and local governments, juvenile justice reform programs had been forced to scratch for scarce private and voluntary support. This historic difference between the administration of juvenile and other crime programs is reflected in the different approaches taken by Congress in the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice Act of 1974. Under the Safe Streets Act costs are assumed by State and local governments in 3 to 4 years. The "assumption of cost" concept was specifically rejected in the Juvenile Justice Act in favor of 228(a) which directs continued indefinite federal funding. That 228(a) reflects a congressional purpose to institutionalize carefully chosen and successful private, non-profit juvenile programs which prior to the enactment of the statute had faced an uncertain future, is also shown by the results of a meeting which took place soon after the passage of the Juvenile Justice Act of 1974. Present were Mr. Rector (then Staff Director and Counsel to the Juvenile Delinquency Senate Subcommittee which had drafted the legislation and later to become director of OJJDP), Fred Nader (Acting Assistant Administrator of OJJDP) and representatives of the National League of Cities and the United States Conference of Mayors, organizations which had sponsored the 1974 Act. From this meeting emerged an understanding of the purpose of Section 228(a) which Mr. Rector adopted as OJJDP director, and which he identified during the hearings as consistent with his own understanding of the act:

"Unlike the Safe Streets Act, once a project is funded under the Juvenile Justice Act, it will be continued, unless it receives a bad evaluation, through the life of the legislation. There is no prescribed cut-off date requiring local institutionalization. This could have future implications for local evaluation capability and may allow for the development of more innovative projects which might not be initiated if there was fear it could not be institutionalized."

The emphasis on continued funding in the Juvenile Justice Act came in response to the plea made during the congressional hearings that the lack of continuity in juvenile justice programs had devastating effects not only on the youngsters participating in these programs but also on the project organizers as well. Just as a program was making some progress it was a disheartening blow to the youngsters to see the support precipitously removed. Moreover, the private agency providing the program was faced with the prospect of years of wasted effort and a threat to its credibility.

Another theme heard during the hearings prior to enactment of the 1974 Act was that Federal government's involvement in juvenile delinquency (especially on the part of the Department of Health, Education, and Welfare in administering the Juvenile Delinquency Prevention and Control Act of 1968) consisted largely of endless agonizing over the causes of juvenile delinquency with the result that practically all effort was expended on "stop-and-start" pilot or demonstration projects. While the congressional drafters thought that there would still be room for some research, the sponsors essentially wanted LEAA

to put in place, and keep in place, long-term action programs that delivered services.

The legislative history emphatically does *not* support the argument of LEAA officials that 228(a) should be interpreted merely as allowing funding for more than one year, but does not mandate anything more. As introduced in the 93d Congress on February 3, 1973, S. 821 originally contained the following language in Section 407(b):

"In accordance with criteria set forth by the Director, grants or contracts *may* provide for long-term funding, provided that such grants or contracts provide for yearly evaluation to ascertain if the goals of such grants or contracts are being achieved."

Following the introduction of the bill, there was additional testimony about the need for stability, continuing support, and the havoc wrought when effective juvenile delinquency programs are not re-funded. In response to this testimony the discretionary language of 407(b) was replaced with the final stronger version of 228(a).

As originally conceived Section 228 of the Act was the cornerstone of the Act: not only a building block for expansion of activities, but also a solid foundation for funded projects. OJJDP has perverted this rationale. It cites scarce resources as an obstacle to proper implementation, but it has sought no additional funding for expansion. It dilutes existing action funds rather than seek additional funds to implement the unique, yet dormant, interagency provisions that we provided in the statute. As if suffering from a fetish for "stop-and-start" pilot or demonstration projects, OJJDP has diverted millions of its discretionary action (special emphasis) funds through awards for research and development projects and by transfer of funds to other federal agencies for so-called "innovative purposes." Thus, rather than carry out their commitment to existing projects with satisfactory evaluations, those eligible for continuation under Section 228 of the Act were terminated by OJJDP. By dislodging this cornerstone OJJDP has undermined its foundation. Its current short-term wrecking crew mentality seems designed to assure limited future growth.

As the lone witness for *Read* in proving its case against OJJDP testified: "... the Section didn't need changing. The practices of the agency needed changing." In that Judge Needleman concurred. In that we in Congress concur. It is hoped that the publication of "Juvenile Justice Act Cornerstone: Continuation Funding" will help persuade the Department of Justice to assist us and others in restoring the Office of Juvenile Justice and Delinquency Prevention and providing an expanded agenda that respects the sound original design of the Juvenile Justice and Delinquency Prevention Act of 1974.

BIRCH BAYH, *Chairman,*  
*Subcommittee on the Constitution.*

October 2, 1980.

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PART I: PROCEEDINGS

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
WASHINGTON, D. C. 20531

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: IN THE MATTER OF:  
: Read, Inc., Issue of Denial of a :  
: Continuation Grant Application :  
: for National Institute of :  
: Juvenile Justice and Delinquency :  
: Prevention Training Funds :  
----- -x

The above-entitled cause came on for hearing before the Honorable Morton Needleman, Administrative Law Judge, at Conference Room I, Federal Trade Commission, 2120 L Street, N. W., Washington, D. C., commencing at 10:00 o'clock a.m., on the 30th day of January 1980, when were present on behalf of the respective parties:

For LEAA:

JOHN J. WILSON, ESQ.  
Attorney Advisor  
Office of Justice Assistance and Statistics  
Room 1268  
633 Indiana Avenue, N. W.  
Washington, D. C. 20531

For Read, Inc.:

KARR & LYONS  
By MONA A. LYONS, ESQ.  
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Washington, D. C. 20005

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919 18TH STREET, N.W.  
WASHINGTON, D. C. 20006

PHONES: 331-1981  
331-1982

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P R O C E E D I N G S

JUDGE NEEDLEMAN: On the record, please.

This is a hearing held under the authority of Section 803(b) of the Justice System Improvement Act of 1979, 42 USC, Section 3071, et seq., from the LEAA administrator review procedure regulations C.F.C., Part 18, the Justice System Improvement Act Appeal Procedure as applicable to agency actions taken under the Juvenile Justice and Delinquency Prevention Act of 1974 by reason of Section 262 of such Act.

Prior to the beginning of the hearing this morning, the parties have entered into a factual stipulation, which I have accepted and have so initialed. This factual stipulation will be made part of the official record in this proceeding.

Also prior to the hearing this morning, the parties have marked as joint exhibits some fifteen exhibits with subparts, which will be identified on the record as LEAA and Read Exhibits 1 through 15G with subparts. These exhibits are identified as follows:

1 - Catalog of Federal Domestic Assistance - Program 16.518 -- National Institute for Juvenile Justice and Delinquency Prevention.

2 - Memorandum dated September 19, 1979 from James C.

Howell to Emily Martin, Subject: Project READ review.

3A-3J - Fiscal Year 1980 Subprogram Plan -- National Institute for Juvenile Justice and Delinquency Prevention.

4 - Memorandum dated November 20, 1979 from Vermont McKinney to James Howell, Subject: Project READ Continuation.

5 - Letter dated November 28, 1979 from James Howell to Janet Carsetti rejecting Project READ grant application.

6A-6B - Catalog of Federal Domestic Assistance - Program 16.517 -- Special Emphasis Prevention and Treatment Programs.

7 - LEAA Financial Guideline M 7100.1A CHG 3, Chap. 7, Par. 12, October 29, 1975 -- Continuation Support Policy Under the Special Emphasis Program.

8 - Memorandum dated October 5, 1979 from Marjie Miller to David West through Emily Martin, Subject: Continuation of Program - Project HEAD.

9A-9B - Memorandum dated October 17, 1979 from David West to Emily Martin, Subject: Continuation of Unsolicited Grants.

10A-10C - Letter dated February 24, 1976 from Thomas J. Madden to John Rector regarding LEAA implementation of Section 228(a) of Juvenile Justice Act.

1 11A-11B - LEAA State Planning Agency Grants Guideline  
2 M 4100.1F CHG 1, Chap. 3, Par. 52 o, May 20, 1977 -- Continuation  
3 Support Policy under the Formula Grant Program.

4 12 - LEAA State Planning Agency Grants Guideline  
5 M 4100.1F CHG 3, Chap. 3, Par. 52 s, July 25, 1978 -- Revised  
6 Continuation Support Policy Under the Formula Grant Program.

7 13A-13C - LEAA Instruction I 4510.2, September 14,  
8 1979 - "Program Announcement Standards for Categorical Grants."

9 14A-14B - LEAA Instruction I 4560.4, September 14,  
10 1979 - "Competitive Categorical Grant Application Review Policy."

11 15A-15G - LEAA Instruction I 4040.2, September 14,  
12 1979 - "The Project Period System of Obligating Funds for  
13 Categorical Grants and Cooperative Agreements."

14 The exhibits being joint exhibits are received without  
15 objection and the record will so reflect. I understand that  
16 counsel for Read, Ms. Lyons, has an opening statement.

17 MS. LYONS: Just a brief one, Your Honor.

18 Our first and only statutory claim here is a very  
19 straightforward one. It is quite simply that the Juvenile  
20 Justice Act of 1974 under which Project Read has been funded  
21 for four years provides for and mandates continuation funding  
22 of that program if it satisfies the quid pro quo of that

1 provision of the statute, which is that its annual yearly  
2 evaluation is satisfactory. In our stipulations, the parties  
3 have agreed and I'm quoting from page 2 of the stipulation,  
4 stipulation 4. "Project Read's performance of its obligations  
5 under each of those three grants having covered a period of  
6 four years, has been fully satisfactory." In short, there  
7 is no issue with respect to whether or not the triggering  
8 mechanism of the statute has been satisfied, the triggering  
9 mechanism being a satisfactory evaluation. The only other  
10 phrase in Section 228(a) of the Act, which envisions any  
11 discretionary authority in our judgment in the administrator  
12 of LEAA with respect to the continuation of the funding,  
13 is the first phrase. It says, "In accordance with criteria  
14 established by the administrator," and then goes on to say,  
15 "It is the policy of Congress and the programs funded under the  
16 Title shall continue to receive financial assistance providing  
17 their yearly evaluation of such programs are satisfactory."  
18 With respect to that first phrase "In accordance with criteria  
19 established by the administrator," which stipulation the  
20 parties have agreed, and I'm referring to page 4 of the stipula-  
21 tions, stipulation number 1, under the heading, "Lack of  
22 Continuation of Funding criteria," "The parties have agreed

1 that there are no LEAA regulations or guidelines which establish  
2 criteria for continuation funding of Project Read."

3 Our position, therefore, is that what discretionary  
4 authority that first phrase vests in the administrator is not  
5 at issue in this case.

6 JUDGE NEEDLEMAN: Doesn't the administrator have general  
7 discretion under this statute since the statute speaks only  
8 in terms of the administrator being authorized to make grants?  
9 The statute doesn't say that the administrator must make any  
10 grants.

11 MS. LYONS: We would have no quarrel with the notion  
12 that there is absolute discretion vested in the administrator  
13 to make an initial grant. Our view is once that discretionary  
14 decision has been made that Congress has stated as a matter of  
15 policy that some other factors are going to come into play.  
16 Our reading of the legislative history is that we don't want  
17 to put money into something and just yank it out if they have  
18 shown us they can do what we said we want you to go ahead and  
19 do. There is certainly nothing in our judgment from the  
20 statute that would require with respect to this type of grant,  
21 discretionary grants under Title II, the initial award of a  
22 grant to Project Read.

1 Our point would be once that award was made that  
2 certain other provisions of the statute come into play.

3 JUDGE NEEDLEMAN: Suppose the appropriation of LEAA is cut  
4 in half by Congress and LEAA must choose between several  
5 worthwhile projects. How does it do that and yet comply with  
6 Section 228?

7 MS. LYONS: An excellent question. One, we intend to  
8 address to the extent that we will demonstrate to you that  
9 financial concerns were not at issue in this particular instance,  
10 and, two, to suggest that historically that situation has not  
11 a risk even with respect to decisions to terminate funding and  
12 that if it did, that I'm sure intense agency debate would  
13 develop over whether that meant you had to share, you had to  
14 cut everybody's budget down or whether you had to choose  
15 separate programs. I don't know the answer to that. Again,  
16 only to demonstrate that we don't think that is the question  
17 here, and that it is a difficult question when and if it should  
18 arise within the agency. We intend to address it through some  
19 testimony today.

20 JUDGE NEEDLEMAN: Are you saying, Ms. Lyons, that the  
21 Justice Department has, in effect, discontinued funding to  
22 Project Read in violation of Section 228(a), because it has not

1 established criteria?

2 MS. LYONS: No. I'm saying that we don't even have to get  
3 to the question of criteria because they have admitted they  
4 don't have any. It might be more difficult if they had, indeed,  
5 established criteria and then it seems to me you might be put  
6 to the question of evaluating whether or not that was the type  
7 of criteria that Congress meant. For example, is Congress  
8 referring here to evaluative criteria, criteria such as did you  
9 meet your objectives? Are they referring to the nature of  
10 evaluation, systematic evaluations, evaluations pertaining to  
11 accounting procedures? My only point with respect to that is  
12 that since we have stipulated that there are no such criteria,  
13 that we don't have to get into a debate about whether or not  
14 the ones that might be -- would be permissible under the  
15 statute or what Congress had in mind.

16 JUDGE NEEDLEMAN: Well, I am a little bit troubled by  
17 that. I can understand it could have come before me, pre-  
18 sumably, by the other reviewing authorities, and say that once  
19 a grant has been made under this statute, the grant may not  
20 be terminated unless we fail to meet the criteria contemplated  
21 by Section 228, and since there are no criteria we are  
22 entitled to have the grant continued if the performance is

1 satisfactory.

2 Now, if you had made that argument, which you're not  
3 making, I would then have put to you a different question;  
4 namely, you were willing to accept the grant without existence  
5 of criteria contemplated by Section 228; why does the absence  
6 of that criteria in any way establish rights within Project  
7 Read? I can understand why the public might be interested in  
8 these criteria. I just don't understand that part of the  
9 statute as creating any rights with Read since Read --

10 MS. LYONS: I couldn't agree with you more.

11 JUDGE NEEDLEMAN: -- accepted several grants without  
12 existence of those criteria.

13 MS. LYONS: I could not agree with you more, that that  
14 initial phrase of this section of the statute establishes no  
15 rights in Project Read. My only point is that it seems to me  
16 that if there were criteria, that the administrator could argue  
17 that those criteria limit what appears to be a relatively  
18 absolute right provided by the rest of the sentence of the  
19 statute, and since we don't have what I would assume to be  
20 limitations as articulated by the administrator, it seems to  
21 me we just have the rest of the sentence to deal with here today.

22 JUDGE NEEDLEMAN: In other words, you're saying to me

1 that the Justice Department has had five years in which to draw  
 2 up criteria for discontinuance of programs, the Justice  
 3 Department has not complied with the statutory obligation to draw  
 4 up criteria; that being the case, somehow the language of  
 5 Section 228 must be read literally as meaning every program  
 6 once funded must continue to be funded if the performance is  
 7 satisfactory, is that what you're saying?

8 MS. LYONS: I think that's right.

9 JUDGE NEEDLEMAN: But, again, that gets me back to my  
 10 other point. As a matter of administration, what is the Justice  
 11 Department going to do if it has limited funds?

12 MS. LYONS: There are two things that I need to say in  
 13 response to that. The first is the stipulation with respect  
 14 to the absence of criteria is very deliberately addressed to  
 15 the absence of criteria with respect to continuation of funding  
 16 with respect to Project Read. You will hear from the agency,  
 17 I am sure, that they have criteria that they believe are  
 18 satisfactory with respect to funding of state planning agencies  
 19 under the Act. Funding Special Emphasis Projects, that is a  
 20 separate division of the National Institute of Juvenile  
 21 Justice and Delinquency Prevention division of LEAA that has  
 22 funded Project Read for four years, with respect to that

1 institute and programs such as Project Read funded under the  
 2 institute, there are no such criteria for continuation funding.

3 That as a whole is created by the agency, and to  
 4 answer your question, I think they have a problem there. I  
 5 mean our argument will be, our claim under the statute will  
 6 be that if they have any program similarly affected, it seems  
 7 to me would have a very good claim at that moment in time  
 8 if continuation funding is denied. Again, if and when the  
 9 financial crisis arises, the appropriation stages, I don't  
 10 think is -- I think it is an interesting concern, but I  
 11 don't think it is one that we have to resolve here.

12 JUDGE NEEDLEMAN: Are you going to argue before me that  
 13 the so-called budgetary crisis is merely a bureaucratic  
 14 shuffling here? In other words, the way I understand LEAA's  
 15 argument, the money for Project Read came out of, let's say,  
 16 a certain box --

17 MS. LYONS: The Institute.

18 JUDGE NEEDLEMAN: The Institute. Those funds now have to  
 19 be used to set up the Institute. Approximately one million  
 20 dollars is available and of the one million, \$800,000 has to  
 21 go to set up the Institute. Now, are you going to argue before  
 22 me that that is precisely what Congress did not want the Justice

1 Department to do, Congress did not want the Justice Department  
2 to justify the cessation of worthwhile programs by bureaucratic  
3 shuffling of the budget? And the Justice Department has  
4 complied with the Congressional will here. The Justice Depart-  
5 ment must find funds within the total LEAA appropriation to  
6 support worthwhile projects which have accomplished the  
7 satisfactory level of performance. Is that what you're saying?

8 MS. LYONS: Yes.

9 JUDGE NEEDLEMAN: All right.

10 MS. LYONS: I just have another minute or so to discuss  
11 a couple of other claims that are in the case. Our first  
12 position is that the meaning of the statute is plain. We move  
13 a step farther with respect to the evidence we propose to  
14 offer to assume that some interpretation of the statute by an  
15 administrator occurs, and we intend to ask particular  
16 administrators about that, their interpretation and implementa-  
17 tion of this provision of the statute since 1974. With respect  
18 to the two claims concerning the manner in which this  
19 particular funding application was denied, we do not propose  
20 to offer directly any evidence. We think that they are  
21 covered satisfactorily in the stipulations. Those are the  
22 claims that a September 14th, 1979 instruction, which articulated

1 a major change in LEAA policy was applied retroactively to a  
2 grant application pending since August.

3 The second is that --

4 JUDGE NEEDLEMAN: You take the position that the LEAA  
5 September 14th policy statement, which I understand relates to  
6 policy encouraging or requiring competitive bids, grants --

7 MS. LYONS: Exactly.

8 JUDGE NEEDLEMAN: -- is in itself perhaps violative of  
9 Section 228 in the sense that LEAA has no business promulgating  
10 internal rules which would frustrate the Congressional purpose  
11 of continuing worthwhile projects?

12 MS. LYONS: Your Honor, I disagree with you. I think it  
13 is possible --

14 JUDGE NEEDLEMAN: I'm just asking a question, a hypothetical.

15 MS. LYONS: What I would like to do is address it at  
16 the end of the day, if I may.

17 JUDGE NEEDLEMAN: All right.

18 MS. LYONS: Because I hope to cover it in the examination  
19 of three witnesses, and I think it will flush itself out  
20 nicely that way.

21 JUDGE NEEDLEMAN: Before you sit down, Ms. Lyons, let me  
22 ask you one question. Why didn't you try to settle this entire

1 shooting match by applying to this other division within LEAA  
 2 one of the subdivisions of OJJDP; namely, Special Emphasis  
 3 Division for an exception? I understood from your papers that  
 4 you didn't know about the exception procedure, or something  
 5 like that, but at one point you certainly were apprised that  
 6 there was an exception procedure. Why didn't you go to the  
 7 Special Emphasis Division and make a formal application for  
 8 exception?

9 MS. LYONS: We were told -- I don't know whether you  
 10 know the background of this meeting. Mr. Wilson at the first  
 11 expression of concern about the denial of funds arranged a  
 12 meeting at LEAA for the parties and for the personnel of  
 13 the agency who were involved in the decision-making process.  
 14 There were ten people or so there. At that meeting, when it  
 15 became clear that reconsideration of the denial was not going  
 16 to be forthcoming, we asked if there was an exception policy.  
 17 We asked how to perfect a request for an exception, and  
 18 essentially we were told by the acting administrator of OJJDP  
 19 that he saw no basis whatsoever for reconsidering the case,  
 20 no basis for considering an exception.

21 At that point, we moved directly to a formal request  
 22 for a hearing on the grounds that if you -- he would have been

1 the official to whom ultimately an exception request would  
 2 have been directed and -- it was an informal request to be  
 3 considered as an exception and an informal denial, which I think  
 4 all the parties agreed was well understood to be exactly what  
 5 it was.

6 JUDGE NEEDLEMAN: That would include an exception from the  
 7 policy to --

8 MS. LYONS: The September 14th competitive --

9 JUDGE NEEDLEMAN: -- the September 14 policy as well as  
 10 some kind of special grant from the Emphasis Division. You  
 11 thought there was no other avenue?

12 MS. LYONS: Exactly. That's all I think we have to say  
 13 as introductory remarks.

14 JUDGE NEEDLEMAN: Mr. Wilson.

15 MR. WILSON: Your Honor, the agency will reserve its  
 16 opening statement at the time it presents its case.

17 JUDGE NEEDLEMAN: Mr. Dogin. Mr. Dogin is the first  
 18 witness for you?

19 MS. LYONS: Yes, he is.

20 JUDGE NEEDLEMAN: Mr. Dogin, do you swear the testimony  
 21 you're about to give will be the whole truth and nothing but  
 22 the truth?

1 MR. DOGIN: I do.

2 JUDGE NEEDLEMAN: Ms. Lyons, you may examine.

3 MR. HENRY S. DOGIN, a witness called to testify on  
4 behalf of Read, Inc., being first duly sworn, testified as  
5 follows:

6 DIRECT EXAMINATION

7 QUESTIONS BY MS. LYONS:

8 Q Mr. Dogin, state your full name for us.

9 A Henry S. Dogin.

10 Q Your present position?

11 A Acting director of the Office of Justice Research  
12 and Statistics, LEAA reorganized.

13 Q How long have you been occupying that position?

14 A This position, the President signed a new Justice  
15 Assistance Program on December 27th, so I would imagine since  
16 December 27th. I was previously administrator of LEAA in mid-  
17 March to December 27, 1979.

18 JUDGE NEEDLEMAN: Before you go on, just clarify one point  
19 in my mind. Why am I still sending the documents in this  
20 proceeding to Mr. Broom?

21 THE WITNESS: Because he has oversight and general direction  
22 of the Office of Juvenile Justice and Delinquency Prevention,

1 and he would be making -- he would be reviewing the final  
2 decision here.

3 JUDGE NEEDLEMAN: I am just talking about a very technical  
4 matter. Who is the custodian of the documents here?

5 THE WITNESS: LEAA.

6 JUDGE NEEDLEMAN: But the Office of Management of the Civil  
7 Service Commission has directed all of its official papers  
8 to Mr. Broom --

9 THE WITNESS: That's correct.

10 JUDGE NEEDLEMAN: -- as acting administrator of LEAA.

11 THE WITNESS: That's correct.

12 JUDGE NEEDLEMAN: He is acting administrator --

13 THE WITNESS: That's correct.

14 JUDGE NEEDLEMAN: -- but you're the administrator?

15 THE WITNESS: No. This is a very interesting question.

16 LEAA at one time was a monolithic organization that contained  
17 within it -- the administrator had line of authority over the  
18 National Institute of Justice, a number of program offices,  
19 one of which was the Office of Juvenile Justice and Delinquency  
20 Prevention. Congress changed the statute which was signed, as  
21 I said, last December. It now creates -- where there was one  
22 LEAA with a line of authority over everything, it creates, in

1 effect, four agencies; LEAA, which is a smaller organization  
 2 without research and without statistics but still with Juvenile  
 3 Justice, it creates an independent National Institute of  
 4 Justice headed by a Presidential appointee and creates a new  
 5 Bureau of Justice Statistics, and it creates for the first time  
 6 a smaller organization with responsibility to coordinate all  
 7 of these independent agencies called the Office of Justice  
 8 Assistance Research and Statistics. I was named by the  
 9 Attorney General as acting director of OJARS, and Mr. Broom,  
 10 who was my deputy in LEAA, is the acting administrator of the new  
 11 LEAA.

12 JUDGE NEEDLEMAN: Thank you very much.

13 BY MS. LYONS:

14 Q In terms of line of authority, is Mr. Broom answerable  
 15 to you?

16 A No, not at all.

17 Q An independent agent?

18 A I am responsible for the coordination of his work with  
 19 the National Institute of Justice. I do not have line  
 20 authority over him and I do not have any authority over grants,  
 21 other than to develop some initial policy over priority programs.

22 Q Are you familiar, sir, with the subject matter of

1 this hearing, the denial of tuition funding?

2 A Generally, yes, I am aware there was a denial by the  
 3 Office of Juvenile Prevention public project, Project Read.

4 I only became aware of that very recently. I still don't know  
 5 what Read is. I do know it was denied at some point last year.

6 Q With respect to that denial, under what circumstances  
 7 as of last December, would either a denial of or approval of  
 8 a grant application come across your desk, if it was an OJJDP  
 9 matter?

10 A I would say in almost all cases the denials of grants,  
 11 not just in OJJDP, but all grants within LEAA, the old LEAA,  
 12 are within the province and delegated to the program head. I  
 13 would in most cases not know whether or not a grant was denied  
 14 unless there was some Congressional interest or something.  
 15 But usually I don't know that. That is delegated to the  
 16 program office and that was a policy that I accepted and carried  
 17 forward before I got here.

18 Q I gather the same is not true with respect to  
 19 approval?

20 A On an approval, the old Crime Control Act made it  
 21 mandatory that the sign-off of authority would rest with the  
 22 administrator of LEAA, and that includes juvenile justice grants

1 as well as Institute grants.

2 Q So I gather at the time a decision was made to  
3 deny Project Read's proposal for continuance of funds, Mr.  
4 David West, as the administrator of the Office of Juvenile  
5 Justice, would have been the deciding official?

6 A That would be his call, solely his call.

7 Q Sir, are you familiar with Section 228(a) of the  
8 Juvenile Justice Act of 1974?

9 A Yes. I have read it. I remember having some  
10 discussions with the general counsel of the agency, Tom Madden,  
11 oh, I think in December or January of '78. Am I familiar  
12 intimately with the legislative history? Not really, no; but  
13 I have some general knowledge.

14 Q Do you have a view as the administrator of OJARS now  
15 and did you have a view as the LEAA administrator as to the  
16 meaning of and the reach of that provision of the statute?

17 A I have some thoughts about it. I had reviewed the  
18 agency policy which I think -- the only time I think it was  
19 ever articulated was some point in 1976, and I think my view  
20 is probably consistent with what the agency policy was under,  
21 I guess, Velde in '76, and continued under Mr. Gregg until  
22 I got there.

1 Q What did you understand that policy to be and when  
2 you made --

3 A I think generally it is a statute that permits  
4 broader and probably lengthier funding than anything under Part  
5 C, LEAA statute, because, you know, in Part C there is  
6 discussion about assumption of costs.

7 Q You're talking about the Crime Control Act now?

8 A Yes. That is not the case with 228(a). I think  
9 228(a) -- let me just look at the statute --

10 Q Would you --

11 A Yes, 228(a) talks about the programs, "Juvenile  
12 justice programs funded under the Title shall continue  
13 to receive financial assistance providing that the yearly  
14 evaluation of the program is satisfactory." I grant you that is  
15 different than Part C, but, does that, at least in my opinion,  
16 does that mean that an agency such as OJJDP or LEAA must  
17 continue funding ad infinitum a program. I would think not.  
18 And I would apply, I guess, what I would call a test of  
19 reasonableness. There isn't a great deal of legislative history.  
20 There are no cases, certainly no case law at any level of the  
21 courts interpreting it, but I would apply a test of reasonable-  
22 ness. Can an agency continue funding programs forever, and . .

1 should it? Is that what Congress meant?

2 My, I guess, curbstone lawyer's opinion, administrator  
3 lawyer's opinion, would be probably not. I don't think Congress  
4 envisioned funding forever. I think in applying a test of  
5 reasonableness, you have to look at budgetary considerations.  
6 There is just so much money that Congress will allocate to  
7 a program. There are many competing programs and priorities for  
8 monies, limited dollars. There are issues that may arise  
9 every year in criminal justice, whether it be violent juveniles,  
10 or whatever, that new issues, new problems that develop in  
11 juvenile crime around the country that needs to be addressed,  
12 and if you would consider that every program, the program  
13 that has merit be funded and over and over again, what you  
14 would have developed would be funding for just a certain number  
15 of programs, and you would never be able to meet any of these  
16 new problems that may arise. You would never be able to attack  
17 or meet the mandate of the statute, which talks to demonstration  
18 and innovative programs, because you would be funding just  
19 a certain number of programs and there would be no money for  
20 anything else. It is a balancing act.

21 My opinion is I don't think Congress said you should  
22 fund programs forever. Or else they might have used the word

1 "must," and I don't see that in the statute.

2 Q They did, of course, use the word "shall."

3 A Yes, I know, I read the Webster's dictionary, you  
4 can read into that.

5 Q With respect to the three categories of considerations  
6 that you just made reference to, budgetary constraints,  
7 competing priorities, let us say, and new problems that might  
8 arise, referring back, if you would like, to the provision of  
9 the statute we're talking about, would you read an obligation  
10 to -- in the administration of LEAA to formalize those  
11 considerations into some kind of written balancing test by  
12 which previously funded programs might be able to anticipate that  
13 what Congress seemed to tell them they were entitled to?

14 A If I understand your question, Ms. Lyons, you're  
15 suggesting that the agency should have some formal policy  
16 interpreting 228.

17 Q It is your view --

18 A I think we do. I think there is a letter of general  
19 counsel back in '76, which in some way interprets. I don't  
20 know if you've seen that.

21 Q Yes. Are you referring to a letter from Mr. Madden  
22 who was then general counsel of the agency to Mr. Rector?

1 A Yes. It was on the Hill.

2 Q Let me show you that letter.

3 A I have a copy. I think that talks to some sort of  
4 balancing act. Here, February 26th, 1977.

5 Q You can hold onto that copy and I'll get mine.  
6 It is Exhibit No. 10, Judge Needleman.

7 A The language on page 2, do you want to have it marked?

8 MS. LYONS: It has been marked. It is Exhibit 10A.

9 THE WITNESS: We feel -- I'm reading from the second para-  
10 graph. "In formulating the guidelines to implement Formula  
11 Grants and Special Emphasis funds, LEAA sought to establish  
12 an orderly method of development of implementation and length  
13 of funding."

14 BY MS. LYONS:

15 Q Right. Sir, if you just stop there for a second. . .  
16 Are you aware that Project Read is funded by NIJJDP?

17 A I know absolutely nothing about Project Read.

18 Q All right. Would you --

19 A Excuse me. I knew it was funded by the OJJDP at some  
20 point in time. I learned that from the papers.

21 Q Just on the language that you read here, would you  
22 assume that whatever guidelines this letter refers to would

1 apply to a program funded under the Institute or by the  
2 Institute? This first sentence here, this provision --

3 A I would imagine that would apply to any fund within  
4 the rubric of LEAA.

5 Q Does it not say in the formulating, the guidelines for  
6 Formula Grants and Special Emphasis grant funds?

7 A Special Emphasis grant funds. I see. You can argue  
8 that the Institute grants are not covered by this.

9 Q Under this letter are you aware --

10 A I think they should be and I think as a matter of  
11 policy and practice, I would probably in my discussions with  
12 the administrator think they should be covered. It is the  
13 same argument, are you going to fund a grant forever? You have  
14 to bite the bullet at some point. Whether it is an Institute  
15 grant or an action grant.

16 Q Other than this particular letter, sir, are you aware  
17 of any other statements of LEAA policy in writing with respect  
18 to continuation of funding?

19 A Yes. Continuation funding or funding generally of  
20 LEAA?

21 Q Continuation funding within the meaning of Section  
22 228(a) of the Act?

1 A I don't know of any other -- I know I issued a  
2 memorandum of September 14th, '79, which talked about open  
3 competition and which did mention continuation funding, but it  
4 didn't directly relate to 228(a), if that is what your question  
5 is.

6 Q Is it fair to say the following to you, and I'm not  
7 sure we'll have to go any further if I can get a direct answer  
8 to that, but for this letter to this director written by Mr.  
9 Madden, you were aware of no other written guidance to you  
10 from either prior administrators of LEAA or within the  
11 regulation of the agency itself, with respect to agency policy  
12 concerning continuation funding under Section 228(a) of the Act?

13 A I don't know of any other written policy dealing with  
14 228(a) in the agency. I don't think there is.

15 Q With respect -- you made reference --

16 A There is practice, there is practice and the way  
17 things were done, but I don't know of any other written policy  
18 under 228(a).

19 Q That's fine. With respect to the September 14th,  
20 1979 instruction that you issued that concerned competition --

21 A Yes.

22 Q -- programs?

1 MS. LYONS: By the way, Judge Needleman, we discovered  
2 yesterday -- we were informed by the agency that on that same  
3 date Mr. Dogin issued two other instructions, which have been  
4 included in your exhibit file and have been admitted. I don't  
5 think either party takes the position that they were at issue  
6 in this particular denial of funding. But since they were  
7 issued as a package, we thought it would be better to include  
8 them. My questioning will be directed only to the one that  
9 seems to have been at the heart of the issue.

10 BY MS. LYONS:

11 Q Am I correct in saying that the effect of this  
12 instruction, which is entitled "Program Announcement Standards  
13 for Categorical Grants," the traditional method of funding  
14 by LEAA changed dramatically?

15 A No, I think not.

16 Q Would you describe for me then --

17 A No, I think not. LEAA had always had a mix of  
18 competitive programs and unsolicited programs, and I know I  
19 could point to programs like the family violence program within  
20 the Office of Criminal Justice. It was a competitive  
21 nationally announced program. I believe some of the JJ programs  
22 were nationally announced programs even before I got there. I

1 was aware of the Federal Grant and Cooperative Agreement Act  
 2 of 1977, which talks to maximizing competition in grants and  
 3 contracts. That is very important. Obviously, Congress felt  
 4 it was very important there should be competition. I personally  
 5 felt for the fairness to grantees an open -- an openness on  
 6 the part of the agency and the perception of fairness and openness  
 7 on the part of the agency that we should as much as possible have  
 8 competitive grants. I am not a fool. I recognize there are  
 9 many grants that are worthy, that are brilliant in design,  
 10 that don't fit within a particular niche or program area that  
 11 we should accept as unsolicited.

12 All I was doing, in effect, was articulating a federal  
 13 standard and something which the agency had done somewhat trying  
 14 to make it more of a practice of open competition. However,  
 15 it did not in any way prohibit any unsolicited programs from  
 16 being funded and they were in certain areas of the agency, in  
 17 the discretion -- recommendation and in the discretion of the  
 18 program head. It did not in any way prohibit continuation  
 19 funding of worthy and worthwhile programs. I think if you'll  
 20 look at the instruction, I think it says the instruction does  
 21 not apply to noncompeting continuation applications. So it  
 22 doesn't stop the funding of unsolicited continuations, but it

1 just articulates a general policy which maximizes competition.  
 2 Again, it is a balancing act.

3 Q Let me pose the following question: Did you intend  
 4 for this instruction --

5 JUDGE NEEDLEMAN: Let the record show that Ms. Lyons is  
 6 referring throughout this examination to Joint Exhibit 15,  
 7 and so forth.

8 THE WITNESS: You're referring to I 4560 of September 14.

9 BY MS. LYONS:

10 Q 4510.2, Program Announcement Standards.

11 A Oh, the standards. Yes. That sets out -- that is  
 12 a further articulation of the general philosophy of competition.  
 13 It sets out standards of what that competition means.  
 14 Advertising in the "Federal Register," peer panel reviews.  
 15 That's merely articulation of the general policy.

16 JUDGE NEEDLEMAN: Did you want 13, 14, 15, or what?

17 MS. LYONS: I would like him now to have 13 and 14.

18 JUDGE NEEDLEMAN: All right. Here is 14.

19 BY MS. LYONS:

20 Q I gather that some of your earlier testimony was  
 21 directed towards what is marked as Joint Exhibit 14(a)?

22 A Yes. I was talking about competitive categorical

1 grants, the policy, the general articulation that there should  
2 be more competition. And the other is the implementation of  
3 announcement standards for categorical grants.

4 Q This, I gather, is the umbrella instruction, this  
5 4560.4 the "Competitive Categorical" --

6 A Which one is it?

7 Q Exhibit 14A.

8 A Yes, that is the general instruction. The program  
9 announcement articulating the policy, and 13A is the establishing  
10 of the procedures, the personnel panels to conduct competitive  
11 objective reviews, et cetera.

12 Q With respect to Exhibit 14A, I'm looking at item number  
13 2 where it says, "Scope." It says, "This instruction does not  
14 apply to noncompeting continuation/<sup>and</sup>administrative supplemental  
15 applications submitted under categorical grant programs."  
16 Does it apply to Project Read?

17 A If I understand your question, this instruction talks  
18 to competition, correct? I think the answer to your question  
19 really is in the discretion of the program office. If the  
20 program office felt that this program had merit, it could  
21 have funded it under an exception. It could have said we will  
22 continue it. Let me finish my answer.

1 Q Okay.

2 A It doesn't have to compete. It is a continuation  
3 application and it has merit and we can fund it. They don't  
4 have to go into open competition. I think essentially that  
5 is the call of the program office. It could apply and it could  
6 not apply depending upon the discretion of the program office.

7 Q Let me ask you this: Is Project Read a noncompeting  
8 continuation grant application submitted under a categorial  
9 grant application?

10 A I don't know anything about Project Read.

11 Q Let's assume that is what it is.

12 A I don't mean to be evasive. I just don't know that  
13 much about Project Read.

14 Q Let's assume it is a noncompeting continuation  
15 grant application to which we are referring submitted under a  
16 categorical grant program. Under the language of "Scope" here,  
17 isn't it expressly precluded --

18 A If the program office had designated -- it is their  
19 call as to how they want to call it. They could say, well,  
20 Project Read is in an overall category and this overall category  
21 has to be a part of competition. They could call it that way,  
22 but assuming what you say, assuming that you -- that the

1 program office has decided that it is a project that should  
 2 not be competition, it is a project of merit, then it does not  
 3 apply. It does not apply but it could be funded. It could be  
 4 funded if the program office wanted to fund it. I guess what  
 5 I'm saying is this does not prohibit funding by the program  
 6 office in open competition. It essentially tells the program  
 7 office if you feel that this is a continuation and should not  
 8 be competitive and it has merit, then follow certain procedures  
 9 and recommend immediate funding, and I'll fund it; but they  
 10 decided not to do that.

11 Q I'm hopelessly confused. This topic here addresses  
 12 "Scope," in Exhibit 14A. It doesn't say anything about  
 13 discretion. It says this instruction does not apply to certain  
 14 things, and the certain things that --

15 A But the person that puts the label on whether it is  
 16 competing or noncompeting is the program office.

17 Q Is something created by --

18 JUDGE NEEDLEMAN: Just one at a time. You'll have a  
 19 hopelessly confused record with these interruptions of both  
 20 questions and answer. Let the witness finish his answer, let  
 21 counsel finish her question.

22 THE WITNESS: The word --

1 JUDGE NEEDLEMAN: Read back the pending question.

2 (The reporter read from the record as requested.)

3 JUDGE NEEDLEMAN: Back on the record, Ms. Reporter.

4 Finish the question.

5 BY MS. LYONS:

6 Q Doesn't the "Scope" provision of this instruction,  
 7 provision number 2 --

8 JUDGE NEEDLEMAN: Of Exhibit 14?

9 BY MS. LYONS:

10 Q Of Exhibit 14A expressly exclude a noncompeting  
 11 continuation categorial grant program application from the  
 12 coverage of this instruction?

13 A I would answer that this way: If the program  
 14 office decided that a particular application was a noncompeting  
 15 continuation, yes, it would be excluded. Yes, it would be. And  
 16 let me just elucidate this a little bit more. I'll try to be  
 17 of assistance to the court.

18 For example, I mentioned the family violence program,  
 19 that is the Program Office and the Office of Criminal Justice  
 20 Programs has decided that is a national competition and all  
 21 applications would be subject to this instruction 14A, 13A  
 22 and 14A if the program office decided, let's say, for example,

1 the funding in 1976 for Republican and Democratic Conventions  
2 that was a national competition. It was necessary to meet a  
3 national need or had merit. That would be called noncompeting  
4 continuation, but that is essentially a call by the program  
5 office.

6 JUDGE NEEDLEMAN: May I see the exhibit, please.

7 THE WITNESS: So just really to sum up, if the program  
8 office had a competition and decided that this program was a  
9 part of competition, it would be included. If it was non-  
10 competition, it would not be covered by this instruction. Is  
11 that clear?

12 BY MS. LYONS:

13 Q That's fine.

14 JUDGE NEEDLEMAN: Let me just clarify one point here.

15 THE WITNESS: Sure.

16 JUDGE NEEDLEMAN: On September 14th, 1979, when Exhibit  
17 14A was written, were there in existence both competing and  
18 noncompeting programs?

19 THE WITNESS: Yes, throughout the agency.

20 JUDGE NEEDLEMAN: If Project Read is designated as non-  
21 competitng continuation application as of September 14th,  
22 1979, how can you then say that one of these offices has

1 discretion as to whether the instruction is going to apply?

2 THE WITNESS: Somebody at some point in time makes a  
3 determination whether it is competing or noncompeting. I  
4 assume that Project Read, a determination had been made at  
5 some point in time whether it was competing or noncompeting.

6 JUDGE NEEDLEMAN: I'm asking you to make that assumption.  
7 I'm asking you to make these assumptions as of September 14th,  
8 it is noncompeting.

9 THE WITNESS: Then that is it. It is not covered. That's  
10 what I said.

11 JUDGE NEEDLEMAN: What you're saying, I understand that  
12 somewhere along the time that designation can be changed?

13 THE WITNESS: I would suggest to you, yes, I think so if  
14 the program office felt for any number of reasons either that  
15 they had evaluated the total program area and it had not worked,  
16 or the budget constraints were so severe they decided to go  
17 competition with less dollars; sure, there are lots of reasons  
18 for changing from unsolicited to competition, and essentially  
19 that's a program office call.

20 BY MS. LYONS:

21 Q One final thing, sir. You told us that Exhibit 13A  
22 was really the implementation instruction of the policy

1 articulated in Exhibit 14, is that correct?

2 A Yes. Let me just make sure that I take a look at  
3 the right document. Yes. Again, 14A talks about a general  
4 philosophy and policy about competition, and 13A talks to the  
5 implementation, a statement regarding availability of funds  
6 of the peer panels, et cetera.

7 Q So the "Scope" provision would reach both, is that  
8 correct? We would never even have to consider 13 if we  
9 discovered under "Scope" that it didn't apply?

10 A Let me see if I understand. The "Scope" provision --  
11 yes. I think that's true. Yes.

12 MS. LYONS: May I have one moment here.

13 JUDGE NEEDLEMAN: Off the record.

14 (Discussion off the record.)

15 JUDGE NEEDLEMAN: Back on the record.

16 MS. LYONS: We have nothing further.

17 CROSS EXAMINATION

18 QUESTIONS BY MR. WILSON:

19 Q Mr. Dogin, I would like to clarify a little further  
20 the matter of these instructions. LEAA Exhibit 15A through so  
21 and so, the instruction that establishes the project period  
22 system for obligating funds, the instruction that we have talked

1 about, 13 and 14, 14 establishes as a policy that competition  
2 for a grant should be through the establishment of review panels  
3 where possible. Fourteen states under the "Scope" that, "This  
4 instruction does not apply to noncompeting continuation and  
5 administrative supplemental applications submitted under the  
6 categorical grant programs," correct?

7 A Yes.

8 Q And the definition of Section 4(b) defines noncompeting  
9 continuation applications as those requesting funds for  
10 subsequent budget periods within an approved project period.  
11 Is it not the case that under the project period system an  
12 application is approved for a project period which may cover  
13 up to three years, and then it is then funded in annual budget  
14 increments of one year or --

15 A Yes.

16 Q Or in some cases eighteen months, so that in this  
17 case unless Project Read were a project that had been approved  
18 for a project period beyond its existing expiration date of  
19 the grant, that just is expiring now, it would not be a non-  
20 competing continuation application because its project period  
21 has expired?

22 A Yes, I think that's correct.

1 Q I think it is important that we clarify that for the  
2 record. The project period system is not in effect with  
3 regard to Project Read --

4 MS. LYONS: This is a question?

5 JUDGE NEEDLEMAN: I think you might confine your own com-  
6 ments to your summation, particularly in light of the relation-  
7 ship between you and this witness. Objection sustained.

8 BY MR. WILSON:

9 Q Then, Mr. Dogin, you would say that Project Read  
10 if its project period had recently expired would be categorized  
11 as a noncompeting continuation application?

12 A Yes.

13 JUDGE NEEDLEMAN: Is your answer yes?

14 THE WITNESS: Yes.

15 JUDGE NEEDLEMAN: Does that require a determination by  
16 someone or is it automatic? I'm not sure I understand  
17 this exchange between you and Mr. Dogin, Mr. Wilson. Will  
18 you question the witness directly. You were asked by Ms. Lyons  
19 whether as of the date of the announcement the program was  
20 a competing program or not, and you said you did not know.  
21 Ms. Lyons said assume with me that it was not. All right.  
22 The program goes into effect as of September 14th. Now, I'm

1 a little bit troubled by this last exchange you had with Mr.  
2 Wilson. Are you saying this Project Read automatically became  
3 a competing program once its term ended, or what? Does someone  
4 have to take some action?

5 THE WITNESS: I would say it automatically became non-  
6 competing. That could change if the program office decided,  
7 well, it is going to be competition and that's a program office  
8 call.

9 JUDGE NEEDLEMAN: All right.

10 MR. WILSON: Okay.

11 BY MR. WILSON:

12 Q Mr. Dogin, with regard to LEAA Exhibit 13, paragraph  
13 4(e), does paragraph 4(e) provide exceptions to the policy for  
14 competition where certain procedures are followed?

15 A Yes.

16 Q Could you tell us what that exception policy is?

17 A Well, it does speak for itself. It is the exhibit,  
18 but essentially -- really, if the program office felt that  
19 a particular project or a particular continuation of a project  
20 is a meritorious one, it is outstanding, and they decided to  
21 recommend continuation funding without competition, I certainly  
22 -- I want to recognize that and I don't want to preclude this,

1 and this is why this announcement deals with that.

2 Q Does the instruction require that the program office  
3 head make a certification in writing?

4 A It would certainly require something affirmative be  
5 done by the program office.

6 Q Would you consider a determination of whether to  
7 request an exception to the administrator is an authority that  
8 is vested in the program office head?

9 A Yes. Yes. And generally with very, very few  
10 exceptions in my tenure at LEAA, I usually have accepted the  
11 recommendations of the program heads in terms of funding.

12 Q Was there a recommendation made to you to make an  
13 exception for Project Read?

14 A I did not receive any, no.

15 Q You referred earlier to the opinion letter from LEAA  
16 general counsel, Thomas Madden, to John Rector, which set forth  
17 the basis for the policy that LEAA had adopted with regard to  
18 the continuation of funding of formula grants and special  
19 emphasis programs. Are you familiar with the guidelines that  
20 implement that program?

21 MS. LYONS: Objection.

22 JUDGE NEEDLEMAN: What is the objection?

1 MS. LYONS: The objection is that the witness testified  
2 quite categorically that other than that letter he was familiar  
3 with no other written statements of policy concerning 228(a)  
4 of the Act and continuation policy under that provision. Now,  
5 these are going to come in and be discussed. But I have trouble  
6 with them being relied on by this witness at this point in terms  
7 of the testimony he has already given about the meaning of that  
8 statutory provision and the policy, excuse me, of the agency  
9 with respect to it.

10 MR. WILSON: Your Honor, counsel made reference to these  
11 policy statements that were in existence before for the formula  
12 grants and special emphasis programs. I think I should have the  
13 opportunity to get Mr. Dogin's input on these policies of  
14 the agencies which were duly promulgated in guidelines published  
15 in the "Federal Register" and formally adopted by the  
16 administration of LEAA.

17 JUDGE NEEDLEMAN: I thought your question went to any  
18 interpretations of Section 228 beyond the letter sent by Mr.  
19 Madden.

20 MS. LYONS: That is what these are.

21 MR. WILSON: These are not interpretations.

22 JUDGE NEEDLEMAN: I'm not sure that is what he is referring t

1 MS. LYONS: He's asking about statutory interpretation now.

2 JUDGE NEEDLEMAN: Why don't you put the question again.

3 BY MR. WILSON:

4 Q I'm asking Mr. Dogin whether he's familiar with  
5 the LEAA guideline provisions, their Exhibits 7 and 12, that  
6 implements the continuation of funding policy for Formula  
7 Grant programs and Special Emphasis programs under the Juvenile  
8 Justice Act?

9 A Could I take a look at them.

10 JUDGE NEEDLEMAN: Exhibits what?

11 MR. WILSON: Seven and 12.

12 THE WITNESS: Yes, I've seen these. I've read these. Yes.

13 BY MR. WILSON:

14 Q Mr. Dogin, Exhibit 7 is the LEAA financial guideline  
15 for continuation of support policy under the Special Emphasis  
16 program. Would you review that guideline and in your judgment  
17 does it cover all Special Emphasis programs or only those  
18 pursuant to announced programs?

19 A Which one are you talking about, Mr. Wilson? 7A?

20 Q 7A, yes.

21 A It seems to me this would cover everything under the  
22 Juvenile Justice Act. Special Emphasis and I would imagine --

1 Q Let me --

2 JUDGE NEEDLEMAN: Let the witness finish his answer.

3 MR. WILSON: All right.

4 THE WITNESS: No, it would apply to Special Emphasis  
5 prevention and treatment, Formula Grants and to Special  
6 Emphasis. There doesn't seem to be any articulation of the  
7 Institute at all.

8 BY MR. WILSON:

9 Q Now, does that policy, Mr. Dogin, require in your  
10 judgment a review of any Special Emphasis treatment program grant  
11 that is funded to receive funding for an indefinite period of  
12 time? I refer you specifically --

13 A It doesn't say it.

14 Q I refer you to paragraph 12(c) sub (b) in parens.

15 A No, it doesn't talk to indefinite periods of time.

16 Q Does it not, in fact, state in preparation of  
17 applications applicant shall not request the support for a  
18 project beyond the time period stated in the program announcement?

19 A It seems to attempt to limit the project period  
20 and not articulate any sort of indefinite period.

21 Q I refer you now to Exhibit 12, "LEAA State Planning  
22 Agency Grant Guideline" promulgated July 25, 1978. That is a

1 continuation support policy under the Formula Grant program.  
 2 Does that policy statement establish in your judgment that  
 3 funding would continue forever for any program funded by a  
 4 state under the Formula Grant program?

5 A No, it does not. Incidentally, I did see this. I  
 6 indicated to Ms. Lyons that I was not familiar with any other  
 7 documents. I saw this recently and I was --

8 MS. LYONS: Exhibit 12?  
 9 THE WITNESS: Twelve, yes. So I was incorrect when I said  
 10 I saw nothing else. I did see this at some point in time  
 11 recently, yes.

12 BY MR. WILSON:

13 Q Does that guideline --

14 A No, it doesn't talk in any way to indefinite periods  
 15 of time.

16 Q Does it, in fact, establish that the states must  
 17 provide for a minimum length of funding?

18 A Yes, it does.

19 Q Does it require the states to provide any funding  
 20 beyond the minimum period established in their programs?

21 A Repeat that, Mr. --

22 Q I say, does it establish or require that the states

1 provide funding for individual projects beyond the minimum  
 2 period established in the state's program?

3 A I don't see it. It establishes a minimum number of  
 4 years, but it doesn't talk to anything after that.

5 Q Would you say that LEAA is not requiring states to  
 6 continue support forever for any form --

7 A It is not making it mandatory, that's correct.

8 MR. WILSON: Thank you, that is all.

9 JUDGE NEEDLEMAN: Ms. Lyons.

10 MS. LYONS: Thank you.

11 REDIRECT EXAMINATION

12 QUESTIONS BY MS. LYONS:

13 Q Can you just answer yes or no to this question, sir.

14 A It is hard for a lawyer to do that. I'll try.

15 JUDGE NEEDLEMAN: Off the record.

16 (Discussion off the record.)

17 JUDGE NEEDLEMAN: Back on the record. Put your question.

18 BY MS. LYONS:

19 Q Again, I would like just a yes or no answer if you

20 can. Did you give any thought to Section 228(a) of the Juvenile

21 Justice Act when you were writing these instructions?

22 A Some; but it was not the compelling -- one of the

1 compelling issues that went into my determination on the  
2 promulgation of these instructions. I was aware of it, but it  
3 was not the main reason for my determination.

4 Q Do you believe that there is no conflict between these  
5 instructions and Section 228(a) with respect to programs that  
6 had funding from OJJD before September 14th, 1979?

7 A No, I really don't think there is a conflict because  
8 I think that this permits continuation funding. If the  
9 program office once feels it is meritorious and if it were at  
10 one time in competition, it permits it to take it out of  
11 competition with certain written reasons. No, I don't think  
12 it is in conflict. I think it is not inconsistent.

13 Q Your interpretation of Section 228(a) is that  
14 Congress was just permitting you to provide continuation funding?

15 A I would say that's correct. I would say it was  
16 recognizing that these grants probably need more support,  
17 these Juvenile Justice grants probably need more support than  
18 the Part C or Part E grants, which like a prosecutor's grant  
19 or a police grant which might receive institutionalization  
20 each year from a traditional unit of government. And it was  
21 recognizing that many Juvenile Justice grants are outside  
22 traditional government; social service agencies. They deal

1 with private foundations and they realize it is more difficult  
2 to institutionalize a Juvenile Justice program. I think that's  
3 the rationale for it. I don't think they were going as far  
4 as saying that these programs, Juvenile Justice programs should  
5 be picked up year after year after year, and that is, again,  
6 my concept of reasonableness.

7 MS. LYONS: I have nothing further of this witness.

8 JUDGE NEEDLEMAN: Mr. Wilson.

9 MR. WILSON: Nothing further, Your Honor.

10 JUDGE NEEDLEMAN: What is the program which --

11 THE WITNESS: Well, I think it is the Juvenile Justice  
12 Institute. I don't know anything more about it. I think I  
13 probably would not be the appropriate person to answer that.  
14 I just don't know.

15 JUDGE NEEDLEMAN: In other words, in terms of its proper  
16 slot it is a program under the National Institute of Juvenile  
17 Justice?

18 THE WITNESS: Yes, sir.

19 JUDGE NEEDLEMAN: What is an Institute grant?

20 THE WITNESS: An Institute grant is a grant -- Juvenile  
21 Institute grant is a grant made by a unit within the Office of  
22 Juvenile Justice and Delinquency Prevention for, I would imagine,

1 research and development programs.

2 JUDGE NEEDLEMAN: What is an action grant?

3 THE WITNESS: An action grant is -- it goes beyond research.  
4 It is the actual implementation of a program. It is to attack  
5 a particular problem and to put the resources out there to  
6 attack the problem. One specific example is, let's say, a  
7 rackets bureau in a prosecutor's office, and the difference  
8 between that and a research grant would be to study the  
9 effects of unorganized crime of the prosecutor's office that have  
10 a rackets bureau. That would be the difference between a  
11 research grant and action grant. The action grant would fund  
12 a prosecutor's fund for possibly equipment, fund investigators  
13 and fund accountants.

14 JUDGE NEEDLEMAN: Let me see if I can cut through some of  
15 this bureaucratic gobbledygook and see where Project Read  
16 belongs.

17 Project Read is a program which comes under NIJJD, P,  
18 correct?

19 THE WITNESS: The research arm of the Juvenile Justice  
20 office, yes.

21 JUDGE NEEDLEMAN: Now, if NIJJD indicates that Project  
22 Read is a worthwhile project, isn't that enough for your purposes

1 as the head of this organization to get it an exception or  
2 to cut through --

3 THE WITNESS: They have got to do two things. They can  
4 say it is a worthy project but they have to come first to the  
5 administrator of the Juvenile Justice Office and explain to him  
6 the worthiness. We have enough money. We believe it  
7 should be funded. And then they prepare a grant package. The  
8 administrator of the office of Juvenile Justice then recommends  
9 to the head of LEAA for funding. It still could be meritorious  
10 and it still could be worthy, but if other considerations,  
11 other competing priorities and lack of dollars prohibit the  
12 Juvenile Justice office from going to the Institute head, going  
13 to his boss, it could never get to me for funding. So, worthi-  
14 ness may be a wonderful thing, but there just may not be enough  
15 dollars. But, essentially, that's the call of the program  
16 officer. But if they did come to me with a grant package and  
17 say, number one, it is worthy; number two, we have enough money  
18 and we recommend it for funding, you know, in all likelihood  
19 I would have funded it.

20 JUDGE NEEDLEMAN: All right, the NIJJD has to report to  
21 the office of Juvenile Justice, is that correct?  
22

1 THE WITNESS: Yes.

2 JUDGE NEEDLEMAN: Are you saying that projects funded by  
3 the NIJJDP must compete against each other in a review  
4 by OJJDP?

5 THE WITNESS: I wouldn't say that because there is a  
6 pot,  
7 separate / I believe, and you would have to get more detail  
8 from the Juvenile Justice people, I believe there is a pot of  
9 money for every research which is within the province of the --  
10 head of the reserach office, and it may be competing against  
11 other research programs.

12 JUDGE NEEDLEMAN: This isn't a research program, is it?

13 THE WITNESS: It is research in that it is within the  
14 province of the research arm. Somebody designated it as research  
15 and the call was made by the head of the research arm of OJJDP.

16 JUDGE NEEDLEMAN: Research arm of OJJDP is NIJJ --

17 THE WITNESS: Yes. I know it sounds like the New Deal.

18 JUDGE NEEDLEMAN: -- and then there's another arm of OJJDP --

19 THE WITNESS: There is a Special Emphasis Division, yes.

20 JUDGE NEEDLEMAN: Project Read, I'm trying to find its  
21 particular cubbyhole, apparently as of the time it was  
22 discontinued was in NIJJDP?

THE WITNESS: I assume that is correct. Everybody has

1 been saying that.

2 JUDGE NEEDLEMAN: Is it the view of you as an overall  
3 head of this unless it can find money for its NIJJDP and unless  
4 NIJJDP has funds to cover the project, then Project Read is just  
5 out there in the cold?

6 THE WITNESS: Not necessarily.

7 JUDGE NEEDLEMAN: Where can it go?

8 THE WITNESS: It depends on the program and I don't know  
9 the program. If the program will be labeled legally as an  
10 action type of program as well as research and mixed somewhere  
11 in the Juvenile office, I think legally it is permissible to  
12 fund it, but that is a call that has to be worked out between  
13 the head of JJO and the Institute head. I don't know what kind  
14 of program it is. I don't know if it is a mix. If it is pure  
15 research, I think it would have a difficult time in being able  
16 to convince the head of the Juvenile office it should be funded  
17 out of some other pot of money. I just don't know because I  
18 don't know the kind of program. I frankly -- I would really defer  
19 to the experts in Juvenile, Mr. West and Mr. Howell, or anyone  
20 else.

21 JUDGE NEEDLEMAN: I'm troubled by this bureaucratic maze  
22 because the way I read the papers here, this project is told

1 by the Justice Department that you can't have any additional  
2 funds because the funds which you would have had is going to  
3 the establishment of this Institute?

4 THE WITNESS: Establishment of what institute?

5 JUDGE NEEDLEMAN: Some institute within NIJJD.

6 THE WITNESS: All right. They are saying that there is  
7 another project that they want to fund and not fund Read  
8 because of this other program.

9 JUDGE NEEDLEMAN: Right. The way I understand what  
10 happened here, Read was told there was only one million dollars  
11 for all of this and approximately \$300,000 must go to this  
12 Institute. Now, doesn't that process make an annullity of  
13 Section 228 when you say to an organization that irrespective  
14 of your worth there is only one million dollars for you to  
15 compete for and almost inevitably these projects would not be  
16 continued? In other words --

17 THE WITNESS: If you read 228 as saying you must fund  
18 them, yes, it does make an annullity. But if there is any  
19 sort of discretion or any sort of reasonableness, I use the  
20 word "reasonableness," I don't think it makes it an annullity.  
21 I think it is how you interpret the section. I think the  
22 section says it is a recognition that these programs are harder

1 to get funds and we want to continue funding.

2 JUDGE NEEDLEMAN: But Section 228 is not confined to the  
3 one million dollars which Project Read was told to scurry  
4 about and try to get. Section 228 refers to all of Title II.  
5 It says, "In accordance with criteria established by the  
6 Administrator, it is the policy of Congress that programs funded  
7 under this title shall continue to receive financial assistance  
8 providing that the yearly evaluation of such programs is satis-  
9 factory." So haven't your internal procedures really put these  
10 people in a terrible bind? You are telling them that their  
11 existence is dependent on their ability to compete for --  
12 THE WITNESS: Dollars.

13 JUDGE NEEDLEMAN: One million dollars. Not the total  
14 dollars of LEAA but one million dollars.

15 THE WITNESS: I'm not sure they were competing for just  
16 one million dollars. I think you asked me earlier could they  
17 have gotten the money from another pot and my answer is it  
18 depends upon what Project Read was. I don't know. Project  
19 Read may be a mix of research, training or action. If that is  
20 the case, then it is not limited to one million dollars. It  
21 may be limited to the total Juvenile Justice pot.

22 JUDGE NEEDLEMAN: That is exactly my point, Mr. Dogin.  
Doesn't 228 minimally require you as the administrator to

1 evaluate the program in terms of its worthiness as compared to  
2 all other programs which are entitled to --

3 THE WITNESS: Yes, and I think that is delegated to and  
4 done routinely by the head of the Juvenile Justice office.

5 JUDGE NEEDLEMAN: Do you know whether it was done in this  
6 case?

7 THE WITNESS: Do I know what was done in this case? Only  
8 by hearsay, not firsthand.

9 JUDGE NEEDLEMAN: Don't the documents in this case indicate  
10 that it was not done? What they did here was say there was only  
11 one million dollars available here and Project Read and some  
12 other institute are going to compete for that one million  
13 dollars and Project Read is out?

14 THE WITNESS: I don't know if that is the case. I do not  
15 know if there was a dialogue between Mr. Howell and Mr. West  
16 as to the availability of other funds. I don't know. It may  
17 very well have been and it may not have been.

18 JUDGE NEEDLEMAN: Let me ask you about one other matter of  
19 statutory interpretation here --

20 THE WITNESS: I think I was asked --

21 JUDGE NEEDLEMAN: You volunteered your views of the  
22 statute here. You indicated that the statute was intended to

1 permit long-term funding.

2 THE WITNESS: Yes.

3 JUDGE NEEDLEMAN: And did not establish any criteria right  
4 of any organization to obtain funds forever.

5 THE WITNESS: That is my test of reasonableness, yes.

6 JUDGE NEEDLEMAN: Isn't there one other element in this  
7 equation, and I wonder whether you find this in the legislative  
8 history, and I put this to you as a hypothetical just to get  
9 your opinion as an expert.

10 Did not Congress also intend that organizations which  
11 had expended effort in the Juvenile Justice area over a period  
12 of time, say, two or three years, would not suddenly find that  
13 their effort comes to nothing because of a bureaucratic decision  
14 to cut off their funds? In other words, didn't Congress have  
15 in mind both the right, if you will, the Justice Department  
16 to help these projects, but also weren't they attempting to  
17 encourage these organizations to expend the effort on the  
18 assurance at least that if they did expend the effort and the  
19 effort was satisfactory, then the Justice Department would  
20 bend every effort to continue the program?

21 THE WITNESS: Yes, I think that's correct. I think that's  
22 correct. But I don't think that I could logically reach the

1 conclusion that the Justice Department has an obligation to  
 2 subsidize, subsidize a given program or series of programs,  
 3 albeit successfully evaluated, ad infinitum. There is a  
 4 gray area. All right.

5 JUDGE NEEDLEMAN: Isn't the purpose of Section 228 really  
 6 to resolve that gray area and the Justice Department coming up  
 7 with criteria for discontinuing these programs which is something  
 8 that apparently you haven't done?

9 THE WITNESS: Well, I respectfully refer you to the  
 10 February 24th memo of 1976, which I think deals with the  
 11 balancing. I think there are some -- these are the guidelines.  
 12 They may not nail it down as to a mathematical certainty, but  
 13 I think they do a pretty good job.

14 JUDGE NEEDLEMAN: I'm not sure of that. I'm certainly  
 15 going to review that, but my real trouble here is if you don't  
 16 have these guidelines, aren't you left with a rather arbitrary  
 17 decision which ignores Congressional purpose, which may have  
 18 happened here? If you don't have guidelines, then you're left  
 19 with some bureaucrat saying I only have one million dollars to  
 20 share between you and another project and I'm going to make  
 21 that decision?

22 THE WITNESS: No, I understand what you're saying. It is

1 valid, but I respectfully submit that if you lay down guidelines  
 2 which are really quite narrow, if you say, let's say five  
 3 years or six years, four years in a Juvenile Justice project;  
 4 one, they might not have established that which they set out  
 5 to do; two, they might not have been able to find private  
 6 funding. I think it has to be somewhat fluid. I don't think  
 7 it can be arbitrary. I agree with you, Judge, but I don't think  
 8 you want to nail it down to the year, the exact year, four  
 9 years or five years, or else they would have assumption of  
 10 costs and if they want it ad infinitum, I think that it --

11 JUDGE NEEDLEMAN: What does that mean, "assumption of  
 12 costs"?

13 THE WITNESS: At some point in time a unit of government  
 14 or private organization is to pick it up. That's in the LEAA  
 15 legislation and all states, at least New York State, we had an  
 16 assumption of costs under Part C granted there could be no  
 17 continuation funding after four years with LEAA dollars, and  
 18 during the second and third year we wanted the unit of  
 19 government or private sources to show some sort of plan for  
 20 institutionalization.

21 JUDGE NEEDLEMAN: Let me ask you just one final question  
 22 to clarify this in my mind. What are the exhibits which you

1 believe do establish the criteria under Section 228?

2 THE WITNESS: I would say the most significant is the  
3 letter from Mr. Madden to Mr. Rector of February 24th, '76.

4 MR. WILSON: That is Exhibit 10A to 10C.

5 THE WITNESS: And another one that Mr. Wilson showed me,  
6 I think deals with it also, which is 7 --

7 JUDGE NEEDLEMAN: 10A through 10C and Exhibit 7?

8 THE WITNESS: I would have to take a look at it. The one  
9 that deals specifically with 228(a).

10 MR. WILSON: Exhibits 12 and 7 are the guidelines.

11 JUDGE NEEDLEMAN: Exhibits 12 and 7. Does counsel have  
12 any additional questions on the basis of my questions?

13 MS. LYONS: I would like just a clarification here, sir.

14 FURTHER REDIRECT EXAMINATION

15 QUESTIONS BY MS. LYONS:

16 Q In our stipulations we have agreed that this project,  
17 Project Read has been funded under Part C of Title II. Would  
18 you just clarify once again. This, the Part C to which you're  
19 referring, is under a completely different statute.

20 A I don't want to confuse the record and I don't want  
21 to prejudice your confused record. I'll clarify that. Part C  
22 is that section first under the Omnibus Control and Safe Streets

1 which created LEAA, continued in '76 under the Crime Control  
2 Act, which dealt with criminal justice programs other than  
3 juvenile justice and corrections. The prosecution programs,  
4 police programs, public defender program types would all fall  
5 within Part C.

6 Q Project Read would not?

7 A Well, whatever Project Read is, if that is the case,  
8 yes.

9 MS. LYONS: I have nothing further.

10 MR. WILSON: Nothing further.

11 JUDGE NEEDLEMAN: Thank you very much.

12 THE WITNESS: Let me add one thing just on that one point.  
13 Juvenile Justice projects can be funded under Part C. In fact,  
14 there is a requirement of a maintenance of effort --

15 MS. LYONS: Shall we apply there?

16 THE WITNESS: But there is an assumption of costs policy  
17 there. Is that clear?

18 MS. LYONS: Yes.

19 THE WITNESS: Unfunded Juvenile Justice, but from what  
20 you said I don't think Read is under there, right?

21 MS. LYONS: Thank you.

22 THE WITNESS: Thank you, Judge.

JUDGE NEEDLEMAN: You may be excused.

(The witness was excused.)

JUDGE NEEDLEMAN: Back on the record.

Mr. West, do you swear the testimony you're about to give will be the truth and nothing but the truth?

MR. WEST: I do.

MS. LYONS: Might I just say one preliminary thing. I gather Mr. Wilson intends to call Mr. West to testify as to the chronology and the events pertaining to this denial. I had originally intended to call Mr. West for just the same type of examination that we did with Mr. Dogin. Would it be preferable just to go ahead with the narrative at this point, or are we going to call him back this afternoon? How would you recommend we proceed?

JUDGE NEEDLEMAN: What do you want to do, Mr. Wilson?

MR. WILSON: Well, I prefer to present my three witnesses in order because of the chronology involved and this application worked its way through the process.

MR. DAVID D. WEST, a witness called to testify on behalf of Read, Inc., being first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. LYONS:

Q. Would you state your name, sir?

A. My name is David D. West.

Q. And the position you currently occupy?

A. I'm the director of technical assistance in the Formula Grant programs.

Q. For how long have you occupied that position?

A. With about a nine months' interruption, for about five years.

Q. When did the nine-month interruption occur?

A. In April, I believe about April 30th, I was designated as the acting deputy associate administrator for the Office of Juvenile Justice, and as the administrator was absent during that period of time I served as the acting administrator up until the recent new administrator has been appointed.

Q. Do you know when he was confirmed, appointed, sworn in, or whatever the operative -- when did you lose your authority as the top official in the Office of Juvenile Justice and Delinquency?

A. Sometime around after Christmastime.

Q. For the period of time that is the subject matter of this hearing, that period being from the time of Project Read's

1 grant application was submitted until the time, let us say,  
2 of the request for a hearing, were you the top official in  
3 the Office of Juvenile Justice and Delinquency Prevention?

4 A Yes, I was.

5 Q You heard Mr. Dogin's description of your authority  
6 with respect to denial and approval of grants, is that correct,  
7 that you have authority to deny but you would have to recommend  
8 to him for approval?

9 A That's correct.

10 Q And you agree with that description of the powers that  
11 you had during this period of time?

12 A Yes.

13 Q Are you familiar with Section 228(a) of the Juvenile  
14 Justice Act?

15 A Yes.

16 Q Can you tell us what you think it means?

17 A We not only have the communication that was referred  
18 to earlier between the Office of General Counsel and Congres-  
19 sional staff, but we also have discretionary guidelines as well  
20 as formula guidelines that are a part of the attachments that  
21 interpret the continuation policy as it relates to legislation.  
22 There was a continuing concern --

1 MR. WILSON: Could I just interrupt?

2 JUDGE NEEDLEMAN: No, don't interrupt.

3 MR. WILSON: I'm sorry.

4 JUDGE NEEDLEMAN: Read back the witness's testimony.

5 (The reporter read from the record as requested.)

6 THE WITNESS: There was a concern that we address as an  
7 office that is also reflected in Congress as it relates to  
8 grants, that we do a better interpretation of the grant periods  
9 as it relates to the guidelines and that's laid out in the  
10 fact that as a part of the guideline requirement, we notify  
11 through our program announcements and through our formula grant  
12 procedures the projected project period of a grant.

13 BY MS. LYONS:

14 Q By project period do you mean a particular period for  
15 which it is right now funded, like here you go, here is your  
16 grant for one year?

17 A In our program announcement we make a statement  
18 as to how this grant will be -- that it can anticipate funding  
19 from our office, and we fund it by a project period of time.

20 Q Let me see if I understand you with respect to what  
21 a project period is. You might say in a program announcement  
22 we're going to run reading programs for five years; however,

1 your grant right here now that I'm going to give you for reading  
2 projects is for one year. The five years is the project  
3 period and the one year would be the grant period? Or are they  
4 different, is what I'm trying to establish?

5 A We define the -- we will define the length of a  
6 program eligible under that announcement for saying that a program  
7 is funded for a set period of time, and they are eligible for  
8 renewal of funds based on a set of criteria. We announce the  
9 program. We set that length of time, overall length of time,  
10 and then we make a decision based upon the actual funded period  
11 of time as to whether they will continue to receive funds or not.  
12 So, you have two items that we're dealing with there.

13 Q Are the kinds of program announcements that you're  
14 describing ones that are issued pursuant to these September  
15 1979 instructions?

16 A Well, we have our own. They could be a part of that.  
17 We announce our own program announcements as an office.

18 Q When you talk about program announcements, are  
19 you referring to announcements that trigger competitive bidding?

20 A Yes.

21 Q By grant applicants?

22 A Yes.

1 Q So we're only talking about the competitive grant  
2 arena when we talk about program announcements?

3 A Well, there may be different program announcements  
4 that are done, for example, within the research part of  
5 the Institute. They may be different than what I'm talking about  
6 and they may follow a different process, and you would have to  
7 ask Doctor Howell that procedure, not me, if there is a  
8 difference.

9 Q When I asked you what you thought Section 228(a)  
10 meant, you referred to --

11 A I referred to an interpretation -- I'm sorry.

12 Q The letter to Mr. Rector and the formula grant  
13 guidelines and the special emphasis discretionary guidelines?

14 A Yes.

15 Q Exhibits 10, 12, and 7, excuse me for them not being  
16 in the right order, is that correct?

17 A Is that the same thing that I've got copies of here?  
18 I don't have them numbered like you have, or anything.

19 Q You have Exhibit 7. You have Exhibit 12, that looks  
20 like Exhibit 7 to me. Let me just hand you these Exhibits 7,  
21 10 and 12, and ask you if they embody as far as you know the only  
22 written statements of agency policy with respect to continuation

1 funding under Section 228(a)?

2 A. There may be some financial guidelines that also would  
3 make refernce to it. No, we have a series of guidelines that  
4 deal with continuation. They result in both financial guidelines  
5 as well as the discretionary guidelines as well as the formula  
6 grant guidelines. So this appears to be the main items that  
7 would deal with continuation, anyway within the office.

8 Q. Is your view of the meaning of Section 228(a)  
9 consistent with the policy that is articulated within these  
10 documents?

11 A. Yes.

12 Q. I'm going to hand you now Exhibit 12. Would you tell  
13 me if I'm characterizing it right. Is this the formula grant  
14 guideline which refers to continuations afforded under the Act,  
15 Section 228(a)?

16 A. That's one set of that. July 25th, 1978.

17 Q. Is there another set of that?

18 A. There could be a -- that's July '78. I think this  
19 is probably the most recent. I would have to check. I think  
20 this is the most recent we have.

21 Q. When was the first time during the summer or fall of  
22 1979 that you became aware that Project Read had submitted an

1 application for re-funding to the Office of Juvenile Justice?  
2 I'm not asking for an exact date. I'm trying to get a context.

3 A. There was some correspondence back and forth. I  
4 guess it would have to go back to some of that communication.

5 Q. I'm handing you now Joint Exhibit No. 2, a letter  
6 from James Howell to Emily Martin, a copy to you. Did you  
7 receive that letter?

8 A. I think I did see this.

9 Q. Can you paraphrase and tell us what is happening with  
10 this letter? What is James Howell doing?

11 A. In this letter it would appear that Doctor Howell  
12 has gone an additional mile in an effort to try and be of  
13 assistance to Project Read in possibly locating other financial  
14 resources within the Office of Juvenile Justice.

15 Q. He had found that he did not have resources?

16 A. Well, he indicates in here that we have supported the  
17 activity for the past four years and that the program was  
18 refocused, and that you're now asking for two additional years,  
19 and he's referring to the application for consideration to the  
20 Special Emphasis Division.

21 Q. The Special Emphasis Division being separate from the  
22 Institute, both of them being divisions under your domain?

1 A That's correct.

2 Q Do you know what determination the Office of Special  
3 Emphasis made with respect to the referral that Doctor Howell  
4 had made?

5 A Do I know now or did I know at another time? Right  
6 now, do you mean?

7 Q Do you know right now? I'm sorry.

8 A Yes.

9 Q Do you know?

10 A I'm sorry. I answered yes.

11 Q I'm very sorry. What was it that Special Emphasis  
12 did with that referral?

13 A Well, if I'm not mistaken, I would guess that they  
14 returned the -- they would notify Doctor Howell there was not  
15 a possibility for a consideration in the Special Emphasis  
16 program because of some inability to address those kinds of grant  
17 applications as a part of the continuation policy and planning  
18 that we were doing at that time for Special Emphasis programming.  
19 There would be no program announcement or way for the Special  
20 Emphasis program to address that as a continuation or an  
21 application under that kind of mechanism.

22 Q Since the program had initially -- let me see if I

1 understand -- the program was initially funded but the  
2 Institute <sup>was</sup> once it got referred to Special Emphasis it became a  
3 new program, is that what you're saying?

4 A Well, I'm saying that the Institute has its own  
5 limit, percentage of money as a part of the legislation. It  
6 has other programs, its own priorities and its own categories  
7 that it funds under, and that once it is referred out if it had  
8 been referred to the office, it would have had to have been  
9 either introduced as a new program application, for any kind  
10 of possible program initiative that we had at that time, and it  
11 would have been -- if possible, it would have been notified  
12 there were programs coming up that they could compete for for  
13 an additional funding.

14 Q Exhibit 2, which is the referral from Doctor Howell  
15 to Special Emphasis through you.

16 A Yes.

17 Q In terms of what you're saying was the kiss of  
18 death for this project, wasn't it?

19 A No.

20 Q If it was going to be treated as a new program for  
21 which there was no program announcements, and program announce-  
22 ments were required and no new unsolicited programs were going

1 to be funded, are you calling this going an extra mile?

2 A Yes. And I can tell you why.

3 Q Okay.

4 A There were a number of unsolicited grant applications  
5 funded under the action discretionary grants program by our  
6 offices, a significant number of those who were all eligible  
7 for a continuation consideration. We were looking at all of  
8 the action programs from the discretionary grants at that time  
9 for continuation consideration. It is possible that it would  
10 have been referred at a time that was close to our policy  
11 statement regarding continuations covering discretionary grants  
12 within the other part of the office. I would assume that Doctor  
13 Howell is referring it up to see if there was some possibility  
14 for it to receive some kind of consideration in another part  
15 of the office, to see that it served a thorough review by all  
16 parts of the office as far as funding possibility. That is all.

17 Q I didn't mean to suggest from my question that Doctor  
18 Howell thought this was the kiss of death. I'm talking about  
19 the policies that were being formulated in headquarters, if I  
20 might, about what we were going to continue funding.

21 A My policy in relationship to continuation of funding  
22 of action programs would not have allowed Project Read to be

1 eligible, that's correct.

2 Q Is that policy, the policy articulated in Exhibit 9A,  
3 the memo to Emily Martin from you a month later?

4 A Yes, this is a reclarification of that policy.

5 Q Is it fair to say that the reason that Project Read  
6 didn't get funded by the Institute was because the Institute's  
7 priorities had changed? As the head administrator, your  
8 understanding of the facts here, the Institute wanted to  
9 fund different programs than this one you had been funding  
10 for four years.

11 A I would say that is the main reason. There would also  
12 be a consideration given to any grant that had received the amount  
13 of funds and had been funded by our office for that period of  
14 time to give them consideration. Each time there is a grant such  
15 as you're talking about, it is funded for a specific period of  
16 time and there's no guarantee that there is additional funds  
17 available after that funding period. So their decision in the  
18 event there had not been any change in a priority, it would  
19 still have had to be under consideration. My understanding  
20 is that the decision we're talking about, however, was done  
21 based on the legislative mandate to create a training  
22 institute and that prior pushing on the Institute resulted in

1 that decision, or at least a significant portion of that  
2 decision.

3 Q Can you tell me what the total Institute budget was  
4 for fiscal 1970?

5 JUDGE NEEDLEMAN: When you say "institute" here, we  
6 have now confused two points. There is a national institute  
7 and a training institute. I assume Ms. Lyons' point goes to --

8 MS. LYONS: Agency institute.

9 THE WITNESS: Can I clarify that. When we talk about an  
10 institute, I'm talking about a Juvenile Justice Institute as  
11 a part of the office. When I talk about training, I'll drop  
12 the word institute if it causes confusion, because what we're  
13 talking about is an action item under the Institute's authority;  
14 the Institute as having authority for research -- to clarify an  
15 earlier comment -- has not only the responsibility for  
16 research but it also has the responsibility within that authority  
17 for training, and hence we have Project Read.

18 JUDGE NEEDLEMAN: The question Ms. Lyons put to you was  
19 what was the total budget of the Institute at this time.

20 THE WITNESS: I would probably have to go back and check it.  
21 It is set up to, I believe eleven percent of the budget. So  
22 we might be talking in the neighborhood of eight to ten million

1 dollars, something like that.

2 BY MS. LYONS:

3 Q What was the total budget for Special Emphasis  
4 Division for FY'80?

5 JUDGE NEEDLEMAN: That's a different budget than the  
6 Institute budget?

7 MS. LYONS: It is the other division to which the applica-  
8 tion was referred.

9 THE WITNESS: That is also set by legislation that says  
10 a minimum of twenty-five percent, I believe, is the wording of  
11 the total appropriation.

12 BY MS. LYONS:

13 Q What was set aside for FY'80?

14 A I could probably ask people in the room and get the  
15 very specific information.

16 Q Just put me in the ballpark then.

17 A We would be talking of fiscal year '80, funds of  
18 fifteen million dollars.

19 Q For Special Emphasis?

20 A It is possible.

21 Q Did you carry over funds from Special Emphasis from  
22 FY'79?

1 A We carried over some funds in fiscal year '79. We  
 2 do not have year money in terms of carryover like that.  
 3 We deal with carryover only on the basis of budget categories.  
 4 We have what they call no line money. The money that we carried  
 5 over was programmatically identified as belonging to programs  
 6 that were planned for the office and were being implemented  
 7 but were not going to be funded at the end of that fiscal year.  
 8 We did not at any time in the Office of Juvenile Justice have  
 9 unidentified finances, unissued portions or untargeted money  
 10 available within our Office of Juvenile Justice.

11 Q Your fiscal year ends September 29, 1979, correct?

12 A That's correct.

13 Q At that time can you tell me whether there was  
 14 something in the neighborhood of twenty million dollars of  
 15 Special Emphasis funds unexpended in fiscal year '79?

16 A There may very well have been a portion of  
 17 unexpended discretionary funds, but there was not any untargeted  
 18 funds. There is a very significant difference.

19 Q All right. Can you tell me whether my amount is in the  
 20 ballpark, twenty million?

21 A I think your twenty million is not in the ballpark  
 22 as it relates to the different kinds of money we have in the

1 office. That would be a total combination of monies within  
 2 the office. That would include other parts of the Crime  
 3 Control budget also.

4 Q That are administered by Special Emphasis?

5 A They are administered by our office and a portion,  
 6 at least, by Special Emphasis, yes.

7 Q Did the Institute have any carryover money as of  
 8 September 29th?

9 A I don't know that. I don't remember. They may have  
 10 had a small portion of carryover money.

11 Q Did you have the authority to authorize expenditure of  
 12 those carryover monies prior to September 29th for Institute  
 13 funding or Special Emphasis funding of a particular project?

14 A It is hard to answer --

15 JUDGE NEEDLEMAN: Let him answer the question, Ms. Lyons.

16 THE WITNESS: I had the authority to make the recommendations  
 17 regarding funding, but we fund by a total program category and  
 18 there has to be approval for a program category before I have  
 19 the authority to fund an initiative program. So it has to  
 20 fall within that. So there are limitations as to the  
 21 question you're asking. Restate your question and I can answer  
 22 it better.

BY MS. LYONS:

Q I'll withdraw it.

I'm going to hand you Joint Exhibit No. 4, which is a memo from the Special Emphasis Division written by Vermont McKinney through Emily Martin to Doctor Howell, director of the Institute. Could you tell me the reason that is articulated there for denial of funding by the Special Emphasis Division?

A We have three ways of -- three avenues of funding a discretionary grant. The first way would be through an unsolicited grant application process, which we as an office were not accepting any unsolicited grant applications to the office. We were going competitive grant applications for all our initiatives. The second part was that any continuation of unsolicited noncompetitive grant application programs were being reviewed and systematically notified that they were not going to be eligible for continued funding after a period of time so that they would be notified in a timely fashion and able to compete for other initiatives that the office was going to go through the "Federal Register" on for a competitive process. The only other way to fund programs is also through a competitive program that makes a program announcement. This would have indicated that there is not a program initiative

1 right now going on, that this could have been entered into  
2 for competition, although there may be one coming up, and it  
3 would also indicate that our continuation policy that had been  
4 previously stated would not consider Project Read as a continua-  
5 tion application for those unsolicited grants.

6 Q I think your answer is longer than your memo.

7 A That's why we go to memos, I guess.

8 Q Does unsolicited mean noncompetitive, is that all  
9 it means?

10 A It means that there has not been a public program  
11 announcement. It is not a competitive grant, and it is sort  
12 of self-initiated on the part of the applicant to the office.  
13 Send anything in. We receive all kinds of applications.

14 Q So if Doctor Howell says to Doctor Carsetti, "Get me  
15 your application tomorrow," he hasn't solicited her application  
16 and he calls her up and says, "Come in to my office. I need  
17 you to fill out a grant application quickly," that is not a  
18 solicitation the way you use the word within the agency?

19 A That is not through a public announced system. If  
20 someone called and said we want to submit the application to  
21 your office, we have no right to refuse an application. We  
22 try to be of help to it. If someone wants to submit anything,

1 we would give them the necessary papers and try to give them  
2 the necessary instructions to submit it, even though we might not  
3 be able to do anything with it other than accept it, you see,  
4 under our policies.

5 Q Let's assume you don't have a program announcement.  
6 Let's assume it is August of 1979 and that the instructions  
7 haven't come out yet, the September 14th instructions that  
8 say everything has to be by program announcements; an official  
9 of your office picks up the telephone and calls somebody up  
10 because they like what that person is doing and say, "Would  
11 you please submit a grant application that would propose doing  
12 A, B, and C," in terms of how the word is used in all of  
13 these documents, is that a solicited proposal?

14 A Let me restate it so I understand. Are you saying  
15 if someone from our office called up a party and said we would  
16 like to receive an application from you?

17 Q Yes.

18 A I don't know where that would fall. I never heard  
19 of something like that happening with the office's activities.  
20 Now, you know, if it did occur, I would not see it happening  
21 under those circumstances.

22 Q In Exhibit 4, Special Emphasis Division tells the

1 Institute that they can't fund Project Read, is that correct?

2 A Yes, that's correct. Now, let me just say this,  
3 because you're talking about application to me. This is a  
4 continuation application. It is very possible that someone  
5 would call up and say if you're going to be in a position of  
6 asking additional funds from this office, you had better get  
7 your continuation application in. That's different than asking  
8 for a new application in a sense you see on a project.

9 Q If it is a continuation project and someone calls up,  
10 is that solicited?

11 A That is merely a notification. It is a notification  
12 on the fact that something is due in a sense, or that you  
13 ought to be considering. It is not a solicitation. It does  
14 not tell them they ought to do something that we're not going  
15 to think of doing before. If they weren't planning on submitting  
16 one, that notice to them, doesn't mean they should submit one.  
17 It really tells them of a clock that is going on.

18 Q Let's assume that in 1975 --

19 A Wow --

20 Q -- OJJD called up someone named Doctor Janet  
21 Carsetti and said, "Would you consider designing a reading  
22 program for us to assist the kids in trouble with basic literacy

1 problems?" She says, "That sounds like a grand idea," and she  
 2 submits a grant application and for four years thereafter,  
 3 after the initial award of a grant, she receives continuation  
 4 funding. Let's assume further that in 1975 her grant application  
 5 was solicited. Did it cease being solicited the next year or  
 6 at the end of the first grant period when she submitted an  
 7 unsolicited proposal for continuation funding?

8 A The scenario you describe, I would describe as an  
 9 unsolicited grant application. I think what you should do  
 10 is ask Doctor Howell directly as it relates to the Institute  
 11 process. He's much more knowledgeable on that procedure than  
 12 I am.

13 Q I'm really talking about a definition of the problem,  
 14 what the words "solicited" means. It crops up in all of this  
 15 and I haven't sorted it out yet. I hand you Exhibit 8.

16 A I haven't read it all, but I have a feeling for the  
 17 contents.

18 Q All right. Do you recall when you first saw that  
 19 document?

20 A No, I don't.

21 Q Can you tell me, and it might be unclear, the date  
 22 of that document?

1 A I cannot tell you that from this --

2 Q I can just refer to a stipulation we have here. It  
 3 is stipulation number 4, Judge Needleman. It says that  
 4 document was authorized on October 5th, 1979. Can you tell  
 5 us basically what this document is so that we have a context  
 6 for this examination?

7 A I don't recall this document, but what it appears  
 8 to be, it appears to be an effort on the part of program staff  
 9 to see if there are some options available that would be of  
 10 assistance to giving consideration to Doctor Howell's request  
 11 that the grant application be looked at to see if there was  
 12 something that could be done with it.

13 Q When you say you don't recall that document, do you  
 14 mean you don't recall having seen it before I just handed it  
 15 to you?

16 A I don't remember the document.

17 Q Do you recall our discussing it on December 20th,  
 18 1979 in your office?

19 A No, I don't.

20 Q Do you recall having told us you had never seen it  
 21 before December 20th?

22 A No, I don't recall that. I'm sorry.

1 Q Do you recall whether or not you told us that you  
2 found the document to be unimportant because you weren't  
3 concerned with the programmatic aspect of this project,  
4 and you didn't really care what this program officer was  
5 going to tell but the substance?

6 A What I said is that we have a policy statement relating  
7 to continuations that would not have allowed this application  
8 to be given consideration under our continuation policy for  
9 action programs at another part of the office; that we had not  
10 given and would not be giving any continuation consideration to  
11 the Institute's programs that were going on there as they  
12 related to the action programs in another part of the office,  
13 that's correct.

14 Q Is it fair to say that the decision you made on  
15 December 20th, 1979 was one in which it made it immaterial  
16 whether or not this program worked, didn't work, had met its  
17 goals, not met its goals, had efficiently spent government  
18 monies; none of those questions were important to the decision  
19 you made on December 20th, 1979?

20 A I have fifty or more in a projection of grant  
21 applications that were in a very similar or could be in a very  
22 similar position making the same statements of being beneficial

1 to the community and effective, that were covered under the  
2 continuation policy consideration, having the same statement.  
3 The only statement that I made was that the policy statement  
4 covering continuations was for discretionary action programs  
5 within the Special Emphasis Division part of our office of  
6 discretionary grants, and did not cover the Institute's  
7 program activities. The Institute has its own budget and its  
8 own responsibility as a part of our office and has its own  
9 responsibilities for the kinds of grant and the kinds of  
10 research things that they fund, and I made that very clear.

11 Q Could you try and answer the question I asked you,  
12 which is, is it fair to characterize the decision you made on  
13 December 20th as being unaffected by questions such as whether  
14 or not the program worked or did not, whether it had merit  
15 or did not, whether it efficiently spent government money or not?

16 A That's correct.

17 Q Do you recall whether or not you told us on December  
18 20th that you were, and I'm going to try to use one word and  
19 quote you exactly, "shocked" to have discovered that Project  
20 Read had been funded by the Institute for four years?

21 A I think I made a statement that said I was shocked  
22 to find unsolicited noncompetitive grant applications in our

**CONTINUED**

**1 OF 7**

1 office that had been funded for that length of time, something  
2 in that vein.

3 Q Isn't it true that the first time a required  
4 competitive system of grant applications was put into effect  
5 at OJJDP was on September 14th, 1979?

6 A Oh, absolutely not. We have always had a significant  
7 portion of our research being done in a competitive process  
8 within the office.

9 Q There was no requirement that you do so, however,  
10 was there?

11 A I think if you look at -- and I probably could be  
12 more specific, there is a general procedure and guidelines in  
13 relationship to discretionary grants within LEAA that affects  
14 the Office of Juvenile Justice that continually speaks to a  
15 competitive process for grant applications.

16 Q I gather your concern or your shock that this  
17 unsolicited program had been funded for four years must arise  
18 out of the feeling that maybe there are other people who could  
19 do this better, and that we ought to have them compete for it.  
20 Is it the need for competition that concerns you about that?

21 A My response was to the effect that there are hundreds  
22 of thousands of applications that come to the Office of Juvenile

1 Justice and one of the concerns, a continuing concern of the  
2 Office of Juvenile Justice is that it be fair and that  
3 announcements be publicly made to everyone of the activities  
4 the office is going to involve itself in, and we put out  
5 public notice and follow a procedure of grant application and  
6 grant review. I was merely expressing that a program of that  
7 nature without having to compete for almost over a million  
8 dollars for that period of time, I would consider it to be unusual  
9 it had no basis for the decision as it related to the policy  
10 covering continuation for Project Read because the policy in and  
11 of itself excluded that consideration.

12 Q Sir, do you recall at the December 20th meeting to  
13 which we have been referring a discussion about whether or not  
14 there was any waiver or exception policy with respect to the  
15 continuation and competition policies that were the reasons  
16 this grant application ultimately was denied?

17 A Yes.

18 Q Do you recall what you said with respect to the  
19 granting of such exception or waiver?

20 A I indicated that we were not giving consideration to  
21 granting any exceptions to that policy.

22 Q To anybody including Project Read?

1 A That wasn't the question, I don't think, that I had  
2 from you at that time.. You asked, if I remember, if we would  
3 consider granting an exception to Project Read, and I indicated  
4 that we would not.

5 Q Do you recall whether or not you told us that you  
6 couldn't do that because then you would have to do it for  
7 everybody?

8 A I don't think I said it in those kinds of words.

9 Q Was that your concern?

10 A No. If you can grant an exception by -- or if you  
11 can make it by exception, you would not have to make an  
12 exception to everyone that was interested in receiving an  
13 exception. The statement that I made was in relationship to  
14 being consistent as a policy of the office and being fair to all.

15 Q In other words, you had no exception policy with  
16 respect to the continuation policy of the Special Emphasis  
17 Division?

18 A We were making no exceptions to that continuation  
19 policy.

20 Q And, therefore, you must have had no policy if you  
21 were making no exceptions?

22 A I don't understand. If you look at the reference

1 in the document that you referred to earlier, the September 17th  
2 document, it says that exceptions can be made. Now, if I  
3 indicate --

4 Q Right.

5 A If I indicate that we are not making any exceptions,  
6 I don't see where that takes you.

7 Q Forgive me. I was talking about your memo in which  
8 you articulate to Ms. Martin as the director of Special ----  
9 Emphasis the particular continuation funding policy that  
10 would be effective in Special Emphasis for the remainder of  
11 this year.

12 A That's a different issue covering other grants.  
13 Are you talking about the September 17th -- when you asked me  
14 the question, were you referring to the September 17th memo?

15 Q The September 14th instruction, no.

16 A Which one are you referring to?

17 Q I had shown you and talked to you about two exhibits,  
18 Exhibit 4 and Exhibit 9. Exhibit 4 is a memo from Special  
19 Emphasis to Doctor Howell saying they can't fund Project  
20 Read because it is now LEAA-OJJD policy to award action grants  
21 through the issuance of public guidelines and a competitive  
22 application review process. The only unsolicited projects that

1 are to be considered for continued support in FY '80 until  
 2 they're able to compete are action grants funded in fiscal  
 3 1978 and 1979 with Special Emphasis discretionary funds. The  
 4 policy to which I was referring in my question to you about  
 5 exceptions was the latter policy, the policy which sets up  
 6 a way to provide continued support for some programs during  
 7 this transition period between the issuance of the instruction  
 8 and the time we got around to public program announcements and  
 9 inviting programs to compete, and that kind of thing. As I  
 10 understand that policy, you could only be entitled to continued  
 11 support if you had already been funded by Special Emphasis?

12 A That's correct.

13 Q To Special Emphasis. Now, Project Read's problem  
 14 was that it had been funded by the Institute, is that right?

15 A That's correct.

16 Q So it wasn't entitled to continuation funding from  
 17 Special Emphasis?

18 A That's correct.

19 Q So were you telling me that you did not have any  
 20 exception policy with respect to making an exception to this  
 21 continuation policy now?

22 JUDGE NEEDLEMAN: By that you mean the policy stated in --

1 MS. LYONS: The last sentence of paragraph 2 of Exhibit 4.

2 THE WITNESS: There were no exceptions made to this policy  
 3 other than a consideration given for discretionary funds. So  
 4 there was no exceptions. This says discretionary funds. There  
 5 were no exceptions to <sup>the</sup> discretionary fund part of it.

6 BY MS. LYONS:

7 Q Is it fair to say that but for the September 14th,  
 8 1979 instructions and policies that were developed in reaction  
 9 to that, that but for that, there would have been no obstacle  
 10 to Special Emphasis funding Project Read?

11 A No, that wouldn't be fair to say.

12 Q What would have been the obstacle to Project Read  
 13 funding if we can assume that none of these --

14 A Well --

15 JUDGE NEEDLEMAN: Let Ms. Lyons finish her question.

16 BY MS. LYONS:

17 Q All the exhibits that we have been referring to, the  
 18 instructions, the memo interpreting the instructions, the memos  
 19 setting up policy about implementation of the instructions,  
 20 if none of that had happened, if Mr. Dogin had never issued  
 21 his instructions on September 14th, what obstacles would have  
 22 been in the way of Special Emphasis funding Project Read?

1 A One of the immediate obstacles, and there might be  
 2 more than one, would be that the discretionary grants program  
 3 has also its own grant applications for consideration, and  
 4 that there is no history, particularly within the office, where  
 5 the Institute programs have been made a part of the responsi-  
 6 bility for continuation consideration within our action dis-  
 7 cretionary grants program. So what I'm saying is that we have  
 8 a number of applications that are eligible for consideration  
 9 under our limited discretionary grant program to begin with.  
 10 The entire question as to Project Read being given consideration  
 11 to other parts of the office, and a request like that for  
 12 consideration, was unusual to begin with. And I thought  
 13 at the time it was probably done possibly for two reasons.  
 14 One is that it is not the type of research activity that is  
 15 focused primarily within the Institute. It does have the  
 16 training responsibility that the Institute has. And I thought  
 17 that it was also a possibility of Doctor Howell trying to be  
 18 of assistance to Project Read.

19 Q Let me see if I can get a yes or no answer on  
 20 the one question here. Is it true that the lack of money  
 21 appropriated by Congress, overall dollars, was not a factor  
 22 in the denial of the continuation of funding of the grant

1 application submitted by Project Read?

2 A Lack of resources and program priorities within  
 3 the Institute is a factor for decision.

4 Q Can you answer me yes or no, whether lack of Office  
 5 of Juvenile Justice Delinquency Prevention money, whichever  
 6 division it is in, your central office, Special Emphasis or  
 7 Institute, where the absence of financial resources or  
 8 limited appropriation from Congress having to split the baby  
 9 problem was not a factor in the denial of this grant application?

10 A I can't answer that by a yes or no answer like that.  
 11 I think the budgetary limitations upon the office are always  
 12 a consideration and will continue to be a consideration across  
 13 the board for all parts of the office.

14 Q Let me put it this way. If you had wanted, for  
 15 whatever reason, to fund Project Read, you as acting administra-  
 16 tor of the Office of Juvenile Justice, can you tell us whether  
 17 or not you could have found some money to do it, whether  
 18 you had to make an exception to a policy to get the money  
 19 from Special Emphasis, whether you had to tinker with the  
 20 budget of the Institute; is it fair to say that there was money  
 21 to do it?

22 A Could I have found money?

1 Q Yes.

2 A That's the question?

3 Q Yes.

4 A I think I could have.

5 MS. LYONS: We don't have anything further.

6 JUDGE NEEDLEMAN: Mr. Wilson.

7 CROSS EXAMINATION

8 BY MR. WILSON:

9 Q Mr. West, I want to ask you whether Doctor Howell ever  
10 requested of you that additional funds be made available to the  
11 Institute to continue Project Read; in other words, that there  
12 be an exception made for Project Read from the existing program  
13 funds?

14 A No, he did not.

15 Q So then you would not have considered making funds  
16 available for the funding of Project Read in the absence of a  
17 request from Doctor Howell?

18 A That is correct.

19 Q To make an exception or to make funds available in  
20 some fashion?

21 A That is correct.

22 Q You mentioned that it is unusual to fund a project for

1 four years. How unusual would it be for OJJDP to fund a  
2 project for six years which would have been the case if Read  
3 had been funded for a two year project as they requested?

4 A That would be quite exceptional.

5 Q How is the budget within OJJDP, once you get an  
6 appropriation from Congress of a certain amount of dollars,  
7 how is the appropriation made once you get past the statutorial  
8 allocation, how are the appropriations made within the offices?

9 A We break down the budget into the available funds  
10 for the states and that is set aside. We break down a  
11 portion of the money that is required for the Institute and  
12 we break down a portion of money that will be for action  
13 money and we have a small technical assistance portion and  
14 we take another portion out of the Special Emphasis discretion-  
15 ary fund to identify some interagency program funding.

16 Q Once funds are allocated, for example, to the  
17 Institute for program funding, how does the Institute then  
18 allocate those funds amongst the various statutory areas of  
19 responsibility? What mechanism is used to do that?

20 A It develops a program plan of action and lays out  
21 what the anticipations are or expectations for the use of  
22 the funds and submits that plan of action for orderly process.

1 for the use of those funds.

2 Q To whom is that plan submitted?

3 A That plan is submitted to the administrator of the  
4 Office of Juvenile Justice and then it is sent forward after  
5 approval for consideration within the Department.

6 Q Within that document, are funding priorities estab-  
7 lished for the Institute?

8 A Yes.

9 Q Are those funding priorities then reviewed and ap-  
10 proved by the administrator of OJJDP and then by the admini-  
11 strator of LEAA?

12 A Yes.

13 MR. WILSON: I have no further questions.

14 JUDGE NEEDLEMAN: Let me ask you a few points here.

15 Mr. West, as of December 20, 1979 when you were the  
16 acting director of OJJDP, what was the approximate budget of  
17 OJJDP?

18 A The budget for the year was one hundred million dol-  
19 lars.

20 JUDGE NEEDLEMAN: That was fiscal 1980?

21 THE WITNESS: Yes, sir. Out of that budget, for example,  
22 we immediately, as a part of a legislative requirement,

1 award sixty-three some million dollars to the states as a  
2 part of our Formula Grants program.

3 JUDGE NEEDLEMAN: That is required in Title II of the  
4 Act?

5 THE WITNESS: It is required as a part of the legisla-  
6 tion as to the state planning agencies.

7 JUDGE NEEDLEMAN: That would leave approximately twenty-  
8 seven million dollars for the other functions of OJJDP?

9 THE WITNESS: That is roughly correct, yes, sir.

10 JUDGE NEEDLEMAN: And is that money evenly divided be-  
11 tween the Institute and the Special Emphasis Division and the  
12 experts who work within the OJJDP office itself?

13 THE WITNESS: It is divided but not evenly. There are  
14 legislative requirements covering the Institute's amount of  
15 funds they will receive and a legislative requirement cover-  
16 ing Special Emphasis monies that they will receive.

17 JUDGE NEEDLEMAN: As a matter of organizational arrange-  
18 ments why is it that Project Read gets its funding from the  
19 Institute?

20 THE WITNESS: The legislation places a responsibility for  
21 all training activity within the Institute's authority of the  
22 Act, and so they are actually responsible for training; like

1 in another part of the office we have technical assistance but  
2 it is legislatively placed as an Institute responsibility and,  
3 hence, has a budget and, hence, has training responsibility  
4 and sets up training priorities and funding of Project Read.

5 JUDGE NEEDLEMAN: Is it inconceivable that Project Read  
6 could obtain funding from the Special Emphasis Division?

7 THE WITNESS: They could very well be eligible for a num-  
8 ber of our other program initiatives that we are doing on a  
9 competitive basis, and they would submit applications and com-  
10 pete like the rest of the country does for specific things,  
11 yes.

12 JUDGE NEEDLEMAN: But there is nothing in the mandate  
13 of the Special Emphasis Division which would preclude Project  
14 Read getting its funding from Special Emphasis Division?

15 THE WITNESS: No. I am not first hand knowledgeable of  
16 Project Read either, but I would say if the question was is  
17 it possible to fund such a program under the discretionary grant  
18 program the possibility does exist, yes, sir.

19 JUDGE NEEDLEMAN: What else is there in the Special  
20 Emphasis Division besides discretionary funds?

21 THE WITNESS: There isn't anything else within Special  
22 Emphasis other than discretionary funds; although discretionary

1 funds may be larger than what Special Emphasis has. The  
2 remaining amount of money we are talking about, however,  
3 discretionary funds are handled primarily through Special  
4 Emphasis and they lay out a program plan, for example, where  
5 we are funding five or six competitive initiatives this year.  
6 And we set up the announcement for the amount of money avail-  
7 able and how long the grant will last and set up a competitive  
8 process. So there are a number of things that are being funded.  
9 We funded restitution and a prevention and adequacy program  
10 and we are in the process of looking at programs to support the  
11 serious offender and other initiatives like that.

12 JUDGE NEEDLEMAN: All the funds controlled by  
13 Special Emphasis are, in effect, discretionary funds?

14 THE WITNESS: That is correct. I am sorry to add a little  
15 bit of confusion. We do have a sum of money that is trans-  
16 ferred -- that adds to that budget that is called Crime Control  
17 funds that Mr. Dogin referred to earlier that we can also use  
18 within that available monies. But with that exception, the  
19 answer is yes.

20 JUDGE NEEDLEMAN: As of December 20, 1979, what was the  
21 policy of OJJDP to continue satisfactory programs?

22 THE WITNESS: We had a policy that said that we were moving

1 from unsolicited grant applications to a program that was go-  
 2 ing to try and go national competition for all of our initia-  
 3 tives and during that time we had a continuation policy that  
 4 stated that we would give those discretionary grant programs  
 5 an opportunity for limited continuation, notifying them that  
 6 they would be eligible until September 30th and at that time  
 7 they all would have the opportunity to compete for any of  
 8 the other kinds of programs that we had developed. Our reason  
 9 for doing that was to see that they were notified in a timely  
 10 fashion and also were able to compete for these other kinds of  
 11 program initiatives.

12 JUDGE NEEDLEMAN: This policy of OJJDP applied to both the  
 13 Institute and to Special Emphasis Division?

14 THE WITNESS: The policy that I just mentioned to you  
 15 applied to the discretionary programs for the Special Emphasis  
 16 part of the office.

17 JUDGE NEEDLEMAN: What was the policy of the Institute  
 18 with respect to continuation of satisfactory programs as of  
 19 December 20, 1979?

20 THE WITNESS: I think Doctor Howell would probably be  
 21 able to give you a much clearer understanding as to their  
 22 continuation policy. I am assuming from some of the documentation

1 and things that it was based upon not only the performance of  
 2 applications but also based upon priorities that had been  
 3 established by the Institute as to what they were going to do  
 4 with their limited resources.

5 JUDGE NEEDLEMAN: Can you tell me why the policy with re-  
 6 spect to the continuation of Special Emphasis funds until the  
 7 competitive process began did not apply to the Institute?

8 THE WITNESS: We are really dealing with the same office  
 9 but really distinct separate parts of it. We have a signifi-  
 10 cant number of grantees within our discretionary program that  
 11 are competing for continuation consideration for a very small  
 12 sum of money. The issue that we are dealing with has not  
 13 come up to my knowledg before in relationship to the Institute's  
 14 programs. They sort of are a self-contained unit of the of-  
 15 fice dealing with their own types of program activities that  
 16 fit within the overall structure of the office.

17 JUDGE NEEDLEMAN: Did you, in fact, continue certain pro-  
 18 grams under the discretionary funds aspect of OJJDP until  
 19 the competitive process began?

20 THE WITNESS: We are doing that for the discretionary  
 21 grants part of the office. That is what the announcement  
 22 covered. It made a policy statement regarding the continua-  
 tion consideration for those grantees most of whom had been

1 either funded for one year or two years, that they had limited  
2 consideration. They are in a position of having to compete in  
3 a sense for those funds. They have to compete by their own per-  
4 formance and review of their applications and so on. That was  
5 done for the discretionary grants program.

6 JUDGE NEEDLEMAN: Not all programs were continued until  
7 the competitive process begins, is that right?

8 THE WITNESS: Well, not all programs require continuation.  
9 There are different numbers there.

10 JUDGE NEEDLEMAN: When does the competitive process begin?

11 THE WITNESS: As I mentioned earlier, we have always had  
12 a competitive process for many of our announced initiatives.  
13 We have also had a policy that unsolicited grant applications  
14 could be accepted by the office and those programs are funded  
15 under an unsolicited grant application process. Otherwise,  
16 they submit a application to the office and ask if we will  
17 give them consideration. Their funding period is based upon  
18 the award that we make to them, so they are on a year by year  
19 basis as it relates to the funding of those projects. They do  
20 not receive, for example, a three year or four year or five  
21 year commitment or anything like that.

22 JUDGE NEEDLEMAN: I am confused by the sequence of events

~~THE WITNESS: Well, not all programs require continuation. There are different numbers there.~~  
~~JUDGE NEEDLEMAN: When does the competitive process begin?~~  
~~THE WITNESS: As I mentioned earlier, we have always had a competitive process for many of our announced initiatives. We have also had a policy that unsolicited grant applications could be accepted by the office and those programs are funded under an unsolicited grant application process. Otherwise, they submit a application to the office and ask if we will give them consideration. Their funding period is based upon the award that we make to them, so they are on a year by year basis as it relates to the funding of those projects. They do not receive, for example, a three year or four year or five year commitment or anything like that.~~

21 JUDGE NEEDLEMAN: In other words, the new initiatives  
22 had not been drawn up?

1 THE WITNESS: Some of them are still in the process of  
2 being drawn up. They will not be completed --

3 JUDGE NEEDLEMAN: As to the new initiatives that were  
4 drawn up you decided to keep some programs going?

5 THE WITNESS: That is correct.

6 JUDGE NEEDLEMAN: How were those decisions made?

7 THE WITNESS: We notified all the discretionary grant  
8 applicants of the eligibility continuation consideration. We  
9 notified them of the steps that they would have to follow if  
10 they wished to be considered for continuation until September  
11 30th.

12 JUDGE NEEDLEMAN: How did you make a choice? Obviously,  
13 there was a certain number which applied for continuation  
14 until the competitive initiatives were drawn up, correct?

15 THE WITNESS: That is correct.

16 JUDGE NEEDLEMAN: You made a choice. On what basis did  
17 you make that choice?

18 THE WITNESS: I am not sure I understand what choice  
19 you are referring to.

20 JUDGE NEEDLEMAN: To continue the funding until a com-  
21 petitive announcement covering that program was drawn up.

22 THE WITNESS: Let me try and describe the situation and

1 maybe that will answer because I am not sure I am understand-  
2 ing your question. We had a number of applications, say 20  
3 or 25 applications. First I ask the question of the office,  
4 I say, "How many grants do we have in this category of  
5 unsolicited noncompetitive that are going to come to our office  
6 and possibly ask for more money?" And I get a list of those  
7 grantees whose grants expired for that year.

8 JUDGE NEEDLEMAN: As of when?

9 THE WITNESS: Well, during the entire time period of, say,  
10 this year. So I went from right up to the end of the fiscal  
11 year because the grant periods are all different because they  
12 were funded at different times and you couldn't put them to-  
13 gether. So I got this list that said this grant is going to  
14 expire in two months and this grant is going to expire in  
15 eight months. I had a list of them and I had limited resources  
16 and what we said is notify all of those grantees of consider-  
17 ation for continuation; limited consideration only up to  
18 September 30th. And we gave them all limited consideration,  
19 like some wanted, maybe, two years and they could only get.  
20 possibly, five months. We tried to be fair across the board  
21 with all of those discretionary programs.

22 JUDGE NEEDLEMAN: You lose me again. Let's assume there

1 is a discretionary grant program which ends on January 1,  
2 1980.

3 THE WITNESS: Just a grant?

4 JUDGE NEEDLEMAN: Yes. And yet there is no competitive  
5 announcement that covers that program in existence yet. Did  
6 you continue such a program?

7 THE WITNESS: Yes.

8 JUDGE NEEDLEMAN: On what basis did you continue it? You  
9 must have made a decision to continue it. What were the  
10 criteria that you used to continue that program?

11 THE WITNESS: The criteria we used was that we -- Are  
12 you asking for the selection criteria or are you asking --

13 JUDGE NEEDLEMAN: I am trying to figure out why a pro-  
14 gram within the Special Emphasis Division would have been  
15 continued and the Project Read is not continued. Obviously,  
16 where you have direct control, namely, in the Special Emphasis  
17 Division, you have the same policy announcement, namely that  
18 we are going to do this on a competitive basis, and you have  
19 the exact same facts and the project ends as of a certain date  
20 and yet you continue it even though there is not a competitive  
21 announcement. On what basis did you continue those projects?

22 THE WITNESS: We continued the project on the basis that

1 they had successful performance and that they were eligible  
2 for continuation under other criteria and that they were fund-  
3 ed by discretionary grant programs.

4 JUDGE NEEDLEMAN: Did you know that, in fact, at some  
5 future point in 1980 there will be an announcement that covers  
6 that program? Do you know that now?

7 THE WITNESS: There will be an announcement that will  
8 allow any of those programs to compete, yes, sir.

9 JUDGE NEEDLEMAN: So it had to be a performance criteria  
10 to continue?

11 THE WITNESS: Yes, sir.

12 JUDGE NEEDLEMAN: When you apply that performance cri-  
13 teria for continuing that discretionary grant, are you mind-  
14 ful of the requirement of Section 228 of the statute?

15 THE WITNESS: Yes.

16 JUDGE NEEDLEMAN: Let's go back to those criteria. Are  
17 there written criteria? Does everyone know these criteria?  
18 Are they published or what?

19 THE WITNESS: In the communication that we provided as  
20 a part of the continuation consideration we notified the ap-  
21 plicant as to what kind of things they had to meet in order to  
22 be given continuation consideration.

1 JUDGE NEEDLEMAN: What were those?

2 THE WITNESS: We laid out four or five points about the  
3 performance of the grantee and meeting the goals and the ob-  
4 jectives of the grant and a number of things, fiscal respon-  
5 sibility and things like that.

6 JUDGE NEEDLEMAN: Now let's just look at the Institute.  
7 The Institute had the exact same policy statement, namely, --  
8 the September 14th announcement about competitive bids, right?

9 THE WITNESS: The Institute is not in that position of  
10 having those kinds of activities that I was dealing with in  
11 the discretionary grants program. I am dealing with a separate  
12 part of the office and the policy statement that I was dealing  
13 with was a significant number of continuation applications in  
14 a different part of the office.

15 JUDGE NEEDLEMAN: Are you saying that the September 14th  
16 instruction from Mr. Dogin did not apply to the Institute?

17 THE WITNESS: Well, the September 14th -- I was dealing  
18 with my own policy statement. The September 14th memo from  
19 Mr. Dogin, I am not sure whether it did or not. I was dealing  
20 with my own policy statement. I think it was October 17th  
21 where I talked in terms of continuation consideration within  
22 my office.

1 JUDGE NEEDLEMAN: Reading from the instruction that appears  
2 in both the Joint Exhibits 13 and 14, it says, "The policy  
3 contained in this instruction is applicable to all categorical  
4 grant programs." Does that include the Institute's grants?

5 THE WITNESS: A categorical grant, to my knowledge, is  
6 a discretionary grant.

7 JUDGE NEEDLEMAN: So it doesn't include it?

8 THE WITNESS: I wouldn't think it did. The Institute  
9 is viewed as a research and evaluation type of activity for  
10 the most part and they have their own criteria and things that  
11 they have to establish in relationship to that activity.

12 JUDGE NEEDLEMAN: Is it your testimony that the September  
13 14th announcement from Mr. Dogin was not an adequate basis for  
14 refusing to refund Institute programs?

15 THE WITNESS: Could I see the memo?

16 JUDGE NEEDLEMAN: Surely.

17 THE WITNESS: Because I was not dealing with that as a --

18 JUDGE NEEDLEMAN: I will show the witness all three  
19 exhibits, 13, 14, and 15.

20 THE WITNESS: The one that you are referring to is 14A?  
21 Is that it?

22 JUDGE NEEDLEMAN: Yes. All three refer to essentially the  
same subject.

1 THE WITNESS: I am sorry. Would you restate the question  
2 that you were asking me.

3 JUDGE NEEDLEMAN: Let's have the reporter read back the  
4 question.

5 (The record was read as requested.)

6 THE WITNESS: I wasn't using this announcement as a  
7 basis for that kind of a decision. I guess that is why I am  
8 having difficulty with it. This announcement did not affect  
9 my decision as it related to Project Read.

10 JUDGE NEEDLEMAN: I understand your earlier testimony  
11 that the Project Read was not refinanced or refunded on the  
12 basis of the Institute's priorities and the performance of  
13 the project, is that correct or was the performance not a  
14 factor?

15 THE WITNESS: The performance was not a factor to my  
16 knowledge.

17 JUDGE NEEDLEMAN: So it came down solely to the fact  
18 that Project Read was not refunded because of a different set  
19 of priorities within the Institute?

20 THE WITNESS: That is correct.

21 JUDGE NEEDLEMAN: Do you have any additional questions,  
22 Ms. Lyons?

1 MS. LYONS: Just one.

2 REDIRECT EXAMINATION

3 BY MS. LYONS:

4 Q Mr. West, you testified that it would be very excep-  
5 tional to have a program funded for six years, did you not;  
6 that it was very exceptional?

7 A It would be exceptional to have a program funded  
8 under unsolicited noncompetitive procedures within the office.

9 Q Can you tell me how long the Juvenile Justice Act  
10 has been in effect?

11 A Since 1975; passed in '74 and in office in '75.

12 Q Is it going into its seventh year?

13 A Yes.

14 MS. LYONS: I don't have anything else.

15 JUDGE NEEDLEMAN: Mr. Wilson.

16 MR. WILSON: Nothing further.

17 JUDGE NEEDLEMAN: Thank you very much. You are excused,  
18 sir.

19 (Witness Excused.)

20 JUDGE NEEDLEMAN: Off the record, please.

21 (Discussion off the record.)

22 JUDGE NEEDLEMAN: Back on the record. We will recess

1 until 2:00 o'clock p.m..

2 (Whereupon, at 1:05 o'clock p.m. the parties adjourned  
3 for the noon recess.)

4 -----  
5 AFTERNOON SESSION

6 JUDGE NEEDLEMAN: Ms. Lyons.

7 MS. LYONS: We will call Mr. John Rector.

8 JUDGE NEEDLEMAN: Do you swear the testimony you are  
9 about to give will be the truth, the whole truth and nothing  
10 but the truth?

11 THE WITNESS: Yes, I do.

12 JUDGE NEEDLEMAN: Ms. Lyons.

13 MR. JOHN M. RECTOR, a witness called to testify on be-  
14 half of Read, Inc., being first duly sworn, testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. LYONS:

18 Q Will you state your name, sir, please.

19 A John Michael Rector.

20 Q And your occupation.

21 A I am a lawyer. I am currently employed at the  
22 Justice Department as a senior attorney advisor in the office

1 of Improvement of Administration of Justice.

2 Q How long have you been in that position?

3 A Since last spring, May.

4 Q Prior to accepting that position, what was your  
5 next previous job?

6 A I was the administrator of the Office of Juvenile  
7 Justice; nominated by Carter in the spring of '77 and confirmed  
8 in June of '77.

9 Q Did you serve in that position until the spring of  
10 '79?

11 A Yes, I did.

12 Q For a two year period?

13 A Just short of two years.

14 Q Prior to the time that you were nominated to the posi-  
15 tion as Administrator of OJUDP, what was your next previous  
16 position?

17 A I was employed by Senator Birch Bayh of Indiana as  
18 the the staff director and chief counsel of the Senate Judiciary  
19 Subcommittee on Juvenile Delinquency.

20 Q Mr. Rector, are you familiar with the provision  
21 contained in Section 228(a) of the Juvenile Justice Act?

22 A Yes, I had familiarity with that section.

1 Q Mr. Henry Dogin, the administrator of OJARS, testi-  
2 fied here earlier and stated that he viewed that provision  
3 as providing permission for the administrator of LEAA to  
4 provide continued funding to projects that had been performed  
5 satisfactorily. Do you agree with that interpretation of that  
6 provision of the statute?

7 A No, I do not agree that the statute is a permissive  
8 statute once a project is funded; however, I am familiar with  
9 Mr. Dogin's views on this particular matter. Serving as  
10 associate administrator of LEAA as well as administrator of  
11 LEAA, Dogin was for a short period of time my immediate super-  
12 visor and this subject was discussed and it was clear we had  
13 a difference of opinion.

14 Q Would you tell us just the preliminaries at this  
15 point what your view was during the time you were administrator  
16 of OJJDP and if it has changed in any respect today what  
17 your view of the provision of the statute is?

18 A My view is a thumbnail view. A thumbnail sketch of  
19 the view is that what Congress intended was that once pro-  
20 jects were funded they were funded for an indefinite period  
21 subject to the receipt of unsatisfactory evaluation barring  
22 caveat such as repeal of the statute by the Congress, barring

1 untoward fiscal reports or such as that with regard to the per-  
2 formance of a particular project. It is based, I think, on a  
3 view of it not only as being a staff person who directed and  
4 participated in the drafting of the statute but based on the  
5 whole philosophy of the Juvenile Justice Act. A decided and  
6 distinct philosophy of the Act is in contrast, a specific  
7 contrast, to the Crime Control Act. The Act was passed as a  
8 complement to the Crime Control Act. There are a dozen areas  
9 in which the continuation issue was one which was set out to  
10 clearly distinguish it from the Crime Control and Safe Streets  
11 Act program. Continuation was a major issue in the deliber-  
12 ations at the staff level and elsewhere. However, it was never  
13 controversial. The measure passed the Senate 88 to 1 and in  
14 the House 329 to 20. There were several issues of controversy,  
15 however, this issue of continuation was not one of those con-  
16 troversies. It was clearly articulated. It was based in three  
17 years of hearings which focused in large part on the vicious  
18 circle that youth programs were experiencing under the HEW Act,  
19 in part under the LEAA Act and under local funding, particularly  
20 in change oriented youth programs. Of course the Juvenile  
21 Justice statute is a reform change oriented statute. Youth  
22 programs in general were basically last in and first out when it

1 came to budget priorities locally and federally. In addition,  
 2 the federal statute of HEW which had been a predecessor of this  
 3 particular statute had incorporated the assumption of costs  
 4 notion that has been mentioned earlier here today, and also  
 5 incorporated notions of match on an ever increasing basis so  
 6 that each year of your grant experience the grantee would  
 7 have to provide a greater share, a greater non-federal share  
 8 of the relationship. Those kinds of policies and practices  
 9 and behaviors were specifically cited throughout the discussion  
 10 in the development of the Juvenile Justice Act was in part  
 11 predication for the continuation section.

12 There were basic philosophical differences in the period  
 13 of time. The HEW, for example, which housed the Juvenile  
 14 Justice program at the time attempted to convert most programs  
 15 into a pilot or demonstration mode rather than a service delivery  
 16 action project. If it was successful there would be no reason  
 17 to curb or terminate funding. This dichotomy of discussion per-  
 18 meated the entire history of the JJDP Act right down to the recom-  
 19 mendation by the Justice Department and HEW and by OMB to veto  
 20 the Act. When it was submitted to President Ford in the summer  
 21 of '74 this was one of the definitions that was joined.

22 Environmentally, at least in regard to this whole context,  
 is an issue about which there is substantial disagreement.

1 It is an issue that subsequent to the passage of the '74  
 2 Act there has been substantial disagreement. For example,  
 3 in 1976 I noted the letter that was sent to me that was men-  
 4 tioned earlier today from Mr. Madden to myself as staff director  
 5 regarding the agency's interpretation. Of course, that wasn't  
 6 necessarily the interpretation of the Congressional staff or  
 7 the members involved. But contemporaneous with the submission  
 8 of that particular letter the agency under Attorney General  
 9 Levi had prepared a bill to the Congress that repealed  
 10 section 228(a); so the environment was one of decided dif-  
 11 ference of opinion about the efficacy of 228(a). It continued  
 12 in my view, and it does continue to date.

13 Q I take it you are not in agreement with the policy  
 14 articulated in this letter to you by Mr. Madden who was then  
 15 general counsel of LEAA concerning the agency's interpretation  
 16 of the statute that we are talking about?

17 JUDGE NEEDLEMAN: Let the record show that the witness  
 18 is examining Joint Exhibit 10A, B and C.

19 THE WITNESS: If this is interpreted to put a cap on the  
 20 life expectancy of a particular relationship, I disagree with  
 21 it. I think this could be read entirely different than it  
 22 has been implemented through financial guidelines and what-have-

1 you. I think the crucial distinction is whether or not the  
 2 particular grantee has met his goals and been satisfactorily  
 3 evaluated. My recollection is that evaluation in no way means  
 4 the classic formal kind of evaluation that you might associate  
 5 with a research endeavor. My recollection is that evaluation  
 6 in the guidelines refer to monitoring of the type that would  
 7 be conducted at the staff level by a particular individual  
 8 responsible and most knowledgeable about the particular grantees.  
 9 The OJJDP office in my experience here and my knowledge of  
 10 it prior to my experience at the office really didn't ever  
 11 have to confront this issue of the continuation. There is a  
 12 number of explanations for it, but I think in large part it is  
 13 important to understand that in the first several years of the  
 14 OJJDP office's history most of the projects that were funded  
 15 by the Juvenile Justice office were funded with Crime Control  
 16 Act money and not Juvenile Justice Act money. That has been  
 17 an area of dispute separate and distinct from this whole issue  
 18 of continuation.

19 So issues of continuation would not have arisen. There  
 20 would have been very little debate about continuation within  
 21 the office since they were dealing primarily at the outset  
 22 in Crime Control Act monies. For example, the two major

1 projects that were announced by the office publicly were in the  
 2 area of diversion and in the area of institutionalization of  
 3 non offenders. In both of those project areas the lion's  
 4 share of the overwhelming majority of the money in the projects  
 5 was Crime Control Act money to the extent that Crime Control  
 6 Act money would be commingled with Juvenile Justice Act monies,  
 7 so that even when there was a commingling the policy of Crime  
 8 Control, namely, non-continuation, namely, assumption of costs,  
 9 was applied to the projects that were jointly funded.

10 I can remember my former employer being very unhappy when  
 11 I was on the Hill, not just in this continuation area but in  
 12 many other areas of policy; for example, the preference to  
 13 funding private nonprofits and what-have-you. That was all  
 14 undermined by commingling the JJDP money with the Crime Control  
 15 Act money. This is just one area in our view and in my view  
 16 as administrator for a couple of years of a pattern of prac-  
 17 tice which expressed the disagreement with the basic statute.

18 MS. LYONS: Just a procedural housekeeping matter. I am  
 19 about to number a Reed exhibit. Would you prefer that I  
 20 start with number one now using the other side as Joint Exhibits,  
 21 or would you prefer that I pick up with Exhibit No. 16?

22 JUDGE NEEDLEMAN: Off the record.

1 (Discussion off the record.)

2 (The document referred to was marked  
3 Read Physical Exhibit A for identification.)

4 JUDGE NEEDLEMAN: Back on the record, please.

5 MS. LYONS: I regret that I have only one copy of this  
6 exhibit. This witness handed it to me after the lunch recess.

7 BY MS. LYONS:

8 Q Mr. Rector, while Mr. Wilson is examining the exhibit,  
9 can you tell me the date on the letter that you received from  
10 Mr. Madden setting forth something purporting to be an agency  
11 interpretation of Section 228(a) of the Act?

12 A If you are referring to Exhibit 10A, the date is  
13 February 24, 1976.

14 MS. LYONS: I will be happy to go ahead with something  
15 else. He is looking at the four pages of the exhibit.

16 JUDGE NEEDLEMAN: Off the record.

17 (Discussion off the record.)

18 JUDGE NEEDLEMAN: On the record, please.

19 BY MS. LYONS:

20 Q Mr. Rector, you made reference to an effort by  
21 LEAA to have Section 228(a) repealed as reflected in a bill  
22 they submitted. Let me hand you what is Read Exhibit No. 1

1 and ask you what that exhibit is and if that bill is contained  
2 therein?

3 JUDGE NEEDLEMAN: Well, Ms. Lyons, you are offering an  
4 exhibit which has not been received.

5 MS. LYON: All right.

6 JUDGE NEEDLEMAN: I don't want to have the witness testify  
7 about documents which are not going to be in evidence. If  
8 you can have the witness identify the document first and  
9 then make an offer and --

10 BY MS. LYONS:

11 Q Can you identify this document, sir?

12 A It is a letter submitted by the then Attorney General  
13 Levi to the Vice President transmitting the LEAA bill extend-  
14 ing the Juvenile Justice Act to 1976.

15 Q Where did that submission appear?

16 A It appeared in the Judiciary Committee Oversight  
17 Hearings in May of 1976 entitled "Ford Administration Stifles  
18 Juvenile Justice."

19 JUDGE NEEDLEMAN: The document which the witness has  
20 identified in the record will be marked for identification  
21 as Read Exhibits 1(a) through 1(e).

22 (The document referred to was marked  
Read Exhibits 1(a) through 1(e) for  
identification.)

1 MS. LYONS: I move this document into evidence at  
2 this time, Judge, before proceeding with further examination  
3 about it.

4 MR. WILSON: Your Honor, I would object. I fail to see  
5 any relevancy of the proposed amendment to the statutes,  
6 the impact upon interpretation of the section that currently  
7 exists in the statutes. It is merely a proposal with nothing  
8 more to it substantively.

9 JUDGE NEEDLEMAN: Well, I assume that the witness may  
10 have something to say about why the proposal was made.

11 MR. WILSON: Your Honor, I don't believe that the witness  
12 would have anything to do with that proposal.

13 JUDGE NEEDLEMAN: I believe the witness has already  
14 testified that the Attorney General Levi proposed an amendment  
15 to the Juvenile Act because of this very problem, in that the  
16 Act could be interpreted as precluding or limiting the discre-  
17 tion of the Justice Department in cutting off funds for programs  
18 which were already funded. It seems to me that this is  
19 evidence of the Justice Department's own view of the statute.  
20 You may question this witness on cross on the basis of his  
21 understanding or limitations of his understanding, but it  
22 seems to me it is relevant. Your objection will be overruled.

1 The document will be received in evidence as Read Exhibits 1(a)  
2 et seq.

3 BY MS. LYONS:

4 Q Mr. Rector, do you have my Exhibit 10 there? Here,  
5 that is it. You told us the date on Exhibit 10 was February  
6 24, 1976.

7 A Correct.

8 Q Again, that is the document upon which Mr. Dogin -  
9 says he relies for his implementation and interpretation of  
10 Section 228(a). First, would you just tell us the date of  
11 the letter contained in Read Exhibit No. 1?

12 A The letter is dated May 14, 1976.

13 Q So/within a couple of months after the letter to  
14 you was written by Mr. Madden, General Counsel, explaining  
15 how the agency viewed the Act?

16 A For those understanding bureaucracy, certainly this  
17 would have been in the process contemporaneously with the  
18 February letter. I don't know precisely down to the week, but  
19 I would imagine the bill would have been in process December,  
20 '75 or January, '76.

21 Q Would you refer us by mention of the page of the  
22 exhibit to whatever references in that exhibit are made to

1 Section 228(a) of the Act?

2 A At page 1(c) under Subsection 23 it says there that  
3 "Section 228(a) is amended by deleting all of subsection (a)," which is the pertinent section. Then again in the section  
4 which is the pertinent section. Then again in the section  
5 "Analysis" of the bill on page 1(e), subsection 23, it is  
6 explained by indicating that "Section 228 is amended to de-  
7 lete the subsection (a) provision for continuation funding..."

8 Q Now I am going to hand you what are Joint Exhibits  
9 Nos. 7, 11, and 12 which are all guidelines of LEAA. I am  
10 going to hand you what is called "Financial Guideline M7100 LA  
11 secondly I am going to hand you "State Planning Agency Grants  
12 Guideline," series 4100. Mr. West, your acting successor,  
13 testified that the expressions of policy contained in those  
14 documents are the same as his views concerning the interpre-  
15 tation of Section 228(a). Do you agree with that?

16 A Well, I am not absolutely certain what his views are.

17 Q He said they are expressed in those documents as to  
18 the meaning of Section 228(a).

19 MR. LYONS: Excuse me. Could you clarify which document  
20 he is examining at this point?

21 THE WITNESS: I am looking at Exhibits 7(a) and 11(a)  
22 and 12. The question?

1 MS. LYONS: Let me withdraw that first question.

2 BY MS. LYONS:

3 Q Is it your belief that those documents which are  
4 guidelines of LEAA are the most recent statement of LEAA  
5 guidelines concerning continuation funding under Section 228(a)?

6 A Well, regarding the Institute funding, I am not aware  
7 that there are any even ostensible guidelines relative to the  
8 228(a). The guidelines indicated, fiscal guideline October 29,  
9 '75, are to my knowledge the most current fiscal guidelines.  
10 I think they allow a variety of interpretations. The Exhibit  
11 11(a), if I am not mistaken, either 11(a) or 12, were amended  
12 subsequent to July 25, and what I am thinking about is, as I  
13 mentioned, the continuation issue arose very seldom in my  
14 tenure at the office. I can't remember but a couple of times  
15 that it did arise. It arose in discussions with Mr. Dogin  
16 in late '78, early '79. It arose regarding programs that had  
17 been funded under the Crime Control Act. Otherwise, it wasn't  
18 likely to arise because very few grants had received Juvenile  
19 Justice money for longer than a year or two. I think the  
20 Read Project is exceptional. I think if you went back and  
21 examined the grants that were being funded at the time it  
22 was funded you would see (1) very few were funded and (2) of

1 those that were funded many were funded with Crime Control  
 2 Act money. In fiscal '78 a substantial number of grants were  
 3 funded. I can't remember the total number. I know it was  
 4 somewhere around 110. That contrasted to something less than  
 5 40 that had been funded in the preceding several years.  
 6 So you had a tremendous amount of activity in '78 where we  
 7 allocated fiscal funds from '75-76 and 77-78. But because  
 8 of that circumstance no one was getting between the rock and  
 9 the hard place on the ultimate definition of 228(a). But it  
 10 was implicit in my view in the funding that once funded it was  
 11 subject to continuation, subject to the caveat I already  
 12 mentioned.

13 JUDGE NEEDLEMAN: Subject to what?

14 THE WITNESS: Subject to the caveat I mentioned with  
 15 regard to evaluation, with regard to inappropriate fiscal  
 16 behavior, like theft and what-have-you, and subject to the  
 17 elimination of the program by a Congressional act or something  
 18 such as that. But the other specific time that continuation  
 19 arose was late in the spring of 1978. I have forgotten what  
 20 the numbers are, but a substantial number of grantees, many of  
 21 them youth service bureaus, had received money from LEAA  
 22 through the state programs; received Crime Control Act money,

1 Part C money and Part E money; C money to be distinguished  
 2 from Institute money, JJDPACT money or the Crime Control Act.  
 3 They were funded under this assumption of costs notion of the  
 4 Crime Control Act and they were reaching their third year; in  
 5 other words, the grim reaper. They were getting excited about  
 6 that as grantees whether they would be cut off, and a tremen-  
 7 dous amount of discussion, let's say, occurred through the  
 8 vehicle of the Governors' Conference and other normal vehicles  
 9 that led to substantial discussion. An outgrowth of that,  
 10 to make a long story short, was that in the fall of '78 the  
 11 guidelines with regard to continuation funding were substan-  
 12 tially altered. They were altered in my recollection as fol-  
 13 lows:

14 Here you had grantees throughout the states that received  
 15 Crime Control Act funds. Eyes open. Assumption of cost  
 16 policy; not the continuation notion. But even given that, I  
 17 was able to persuade the acting administrator of LEAA, Mr.  
 18 James Gregg, that we could at least draw on the spirit of the  
 19 policy of continuation of the DJ Act and attempt to provide  
 20 additional funding even to grantees that had been funded  
 21 exclusively with Crime Control Act monies. I don't really  
 22 remember all the specifics, but I know we did provide an

1 opportunity for additional several years of funding even  
 2 to those grantees. The text of the "Federal Register"  
 3 statement on it signed by Mr. Gregg laid out a rationale  
 4 with regard to continuation and what interested me about it,  
 5 it was a blending of the Juvenile Justice Act rationale on the  
 6 one hand and the Crime Control Act rationale on the other  
 7 hand. That is to be distinguished from the kind of case we  
 8 are talking about here where you have exclusive Juvenile  
 9 Justice Act money.

10 BY MS. LYONS:

11 Q I am going to hand you what has been marked for  
 12 identification purposes Read Exhibit No. 2 and I will ask you  
 13 if you can identify that document and if it is the document  
 14 to which you have just referred? He has a copy.

15 A This is the October 17, 1978 document to which I  
 16 was referring.

17 MS. LYONS: I move this document into evidence at  
 18 this time, Your Honor.

19 JUDGE NEEDLEMAN: Mr. Wilson.

20 MR. WILSON: No objection.

21 JUDGE NEEDLEMAN. No objection. It is received as  
 22 Read Exhibit No. 2. I don't know if it has been adequately

1 marked in the record, but it will be identified as page 47794  
 2 from the "Federal Register, Vol. 43, No. 201, Tuesday, October  
 3 17, 1978.

4 (The document referred to was  
 5 marked Read Exhibit No. 2 for  
 6 identification and received in evidence.)

7 BY MS. LYONS:

8 Q Other than this "Federal Register" document, Mr.  
 9 Rector, are you aware of any other publications of LEAA or  
 10 guidelines or regulations which provide support for your in-  
 11 terpretation of Section 228(a) rather than the interpreta-  
 12 tions that we have heard from Mr. Dogin and Mr. West?

13 A I think there are a number of publications that shore  
 14 up the view that 228(a) is the one that I articulated as  
 15 contrasted with a permissive view, a permissive view that would  
 16 read as if the statute said "authorized to" rather than say-  
 17 ing "shall." I know that during the fall of '78 one of our  
 18 tasks was to reassess the Juvenile Justice Act. The budget  
 19 Act requires that a year prior to expiration of a grant pro-  
 20 gram, or any program for that matter, that the administrator  
 21 send it to the appropriate oversight committee a year in ad-  
 22 vance to give them a chance to assess the situation. In the  
 past the practice of the executive agencies was to submit a

1 measure the day before it was about to expire. This was a  
 2 way to get a more orderly discussion about important issues.  
 3 There was a task force appointed by the Attorney General, the  
 4 then Attorney General Griffin Bell. He appointed several of  
 5 us to the Juvenile Justice Task Force to actively consider  
 6 all relevant issues regarding the Juvenile Justice authori-  
 7 zation. Patricia Wald, then the Assistant Attorney General  
 8 for Legislative Affairs (she is now on the Circuit Court  
 9 for the District of Columbia) chaired the group and we ac-  
 10 tively considered numerous issues regarding the Juvenile  
 11 Justice Act. The continuation issue was one of the issues  
 12 that was discussed in the course of our deliberations. I  
 13 have to indicate that it was not one of the major issues.  
 14 It was not considered a major issue. There were a dozen  
 15 other issues considered far more current and pertinent and  
 16 important.

17 But the various issues and the options on those issues  
 18 with recommendations were laid out in a task force report  
 19 that she authored, reflecting the various consensus of the  
 20 group. That report was submitted in early February of '79  
 21 to the then Deputy, now Attorney General Benjamin Civiletti,  
 22 which became the basis and in part the basis for the bill that

1 was submitted to the Congress last spring.

2 MS. LYONS: I apologize for this, Your Honor. These are  
 3 exhibits that just arrived. Maybe Mr. Wilson can give us  
 4 a statement on that.

5 JUDGE NEEDLEMAN: The bill which was submitted to Con-  
 6 gress last spring became the Justice Improvement Act?

7 THE WITNESS: This is a separate bill. The year we are  
 8 currently in the Congress is just beginning to undertake the  
 9 reauthorization of the Human Justice Act. The bill that was  
 10 submitted last year was separate and distinct from the  
 11 Justice Improvement Act and probably had a title something  
 12 like Juvenile Justice Amendment of 1979. It was not intro-  
 13 duced by any member of the House or Senate. It was submitted  
 14 to the committees but not introduced.

15 JUDGE NEEDLEMAN: Was the Wald report directed to the  
 16 Justice Improvement Act?

17 THE WITNESS: The Wald report was directed to the Juven-  
 18 ile Justice reauthorization. In fact, she chaired the Juven-  
 19 ile Justice Task Force. The exclusive job was to assess the  
 20 '74 statute, the '77 amendments, the problems and policy,  
 21 operation and otherwise, and to make recommendations.

22 JUDGE NEEDLEMAN: All right.

1 BY MS. LYONS:

2 Q I am going to get back to the Wald report,  
3 Mr. Rector, but I had previously numbered Read Exhibit No.  
4 3(a), and I will ask you if you can identify this? It is  
5 the only copy I have. Mr. Wilson has read it.

6 A This is a memorandum of August 23, 1978 from my-  
7 self as administrator of the Office of Juvenile Justice to  
8 Mr. James Gregg who was then the acting administrator of LEAA.  
9 It is one of a series of memoranda that led to the change  
10 in the October 17th "Federal Register" regarding continuation  
11 policy under the Crime Control Act.

12 MS. LYONS: I move that document into evidence at this  
13 time, Your Honor.

14 JUDGE NEEDLEMAN: Mr. Wilson.

15 MR. WILSON: No objection.

16 JUDGE NEEDLEMAN: Without objection Read Exhibits 3(a),  
17 3(b) and 3(c) previously identified as a memorandum dated  
18 August 23, 1978 from Mr. Rector to Mr. Gregg will be received.

19 (The document referred to was  
20 marked Read Exhibit 3(a), (b)  
21 and (c) for identification  
22 and received in evidence.)

JUDGE NEEDLEMAN: Off the record, please.

1 (Discussion off the record.)

2 JUDGE NEEDLEMAN: Back on the record, please.

3 MS. LYONS: May I go ahead and examine before he does  
4 the pagniation?

5 JUDGE NEEDLEMAN: Surely. Ms. Lyons is showing the wit-  
6 ness a document identified as Read Physical Exhibit A.

7 BY MS. LYONS:

8 Q Can you identify this exhibit, sir?

9 A This exhibit is entitled "Option Paper on Juvenile  
10 Justice and Delinquency Prevention Act Reauthorization."

11 Q Is that the Wald report that you referred to  
12 earlier?

13 A Yes, it is. This is the "option Paper" that was  
14 submitted to the then Deputy, now Attorney General Benjamin  
15 Cifiletti..

16 MS. LYONS: I introduce this document into evidence at  
17 this time.

18 JUDGE NEEDLEMAN: Off the record, please.

19 (Discussion off the record.)

20 JUDGE NEEDLEMAN: Back on the record, please.

21 Read Exhibit A previously identified on the record as  
22 the Wald Report has been offered as a physical exhibit which

1 consists of 63 paginated pages and may be cited in briefs  
2 or other materials as Read Physical Exhibit A by page number.  
3 The document has been offered, Mr. Wilson.

4 MR. WILSON: I have not read the whole thing in detail,  
5 Your Honor, but I believe it is an authentic document.

6 JUDGE NEEDLEMAN: Do you object to it?

7 MR. WILSON: I object in not having the opportunity to  
8 see it. I don't have copies of the document. I have never  
9 had these documents brought to my attention before today.  
10 We had made all our documents available well in advance of  
11 the hearing to counsel so that they could be considered. It  
12 will make it very difficult for me to cross examine Mr. Rector  
13 about these documents given the fact that they are all being  
14 heaped upon us at one time like this.

15 JUDGE NEEDLEMAN: Well, that objection will be overruled.  
16 I certainly have no intention of imposing on the Justice  
17 Department the same rules that I wouldn't impose on a corpor-  
18 ation or corporate officer, but it seems to me, given the  
19 fact that Mr. Rector is an employee of the Department of  
20 Justice and the fact that you had been notified well in ad-  
21 vance that Mr. Rector was going to appear you certainly had  
22 available to you adequate discovery means to determine what

1 Mr. Rector had in his possession and what Mr. Rector was  
2 going to rely upon today. I regret if you are not completely  
3 prepared but it seems to me in the absence of a relevancy  
4 objection I am going to admit it. The objection will be  
5 overruled as to notice and the document will be received  
6 as Read Physical Exhibit A.

7 BY MS. LYONS:

8 Q Referring to page 28 of the Read Physical Exhibit A,  
9 "Issue" as identified by Roman numeral XIII, is that where the  
10 Section 228(a) is addressed in this "Option Paper"?

11 A Yes. This is "Issue XIII," entitled "Miscellaneous  
12 Issues Raised in Discussions about the Juvenile Justice and  
13 Delinquency Prevention Act." As I indicated, there has been  
14 12 major areas of some significant debate and this is the  
15 miscellaneous category. In the first miscellaneous issue  
16 is the following: "Should there be a 5 year limit on funding  
17 instead of the 'forever funding' guarantee in the Act, especi-  
18 ally as budgets decrease. (This continues over on page 29.)  
19 The 5 year limit might also require at the end of 3 years  
20 that the recipient begin to phase in other funding. The  
21 task force thinks this is a good idea but it is sure to  
22 bring on some political opposition from the public and private

1 recipients." That is the full text on the report of the  
2 discussion of the continuation section as discussed by the  
3 Wald report.

4 Q Do you know what happened to that particular issue  
5 as it got reflected in the Department of Justice --

6 A I was not a party to Mr. Civilletti's reaction to  
7 our discussion of this particular text; however, I am aware  
8 that in the bill that he submitted to the Congress 228(a) --  
9 was left intact.

10 Q And that bill was submitted subsequent to the time  
11 he received the Wald report?

12 A This report was the major predication for his  
13 decisions as to what form the bill would take.

14 JUDGE NEEDLEMAN: That bill has not been acted upon  
15 yet by Congress?

16 THE WITNESS: That bill was not even introduced by any  
17 member of Congress last spring. That bill and other bills  
18 would probably be introduced in the next month or so.

19 BY MS. LYONS:

20 Q Do you recall whether or not there is anywhere  
21 else in this document any other reference to the provision of  
22 the Act or to the continuation of the policy of LEAA of pro-

1 grams funded under the Act?

2 A My recollection is that the only other reference  
3 to the continuation policy appears in a summary document  
4 that our office and the General Counsel's office prepared  
5 after the passage of the '77 amendment. I believe it is  
6 one of the exhibits attached to the record.

7 Q By your office, do you mean OJJDP?

8 A Yes, pardon me.

9 Q Could you locate that document in there and tell  
10 us what it says with respect to what we are discussing?

11 A This particular document starts on page 39, and  
12 it is entitled "Juvenile Justice and Delinquency Prevention  
13 Act Amendments of 1977, Prepared by Office of General Counsel  
14 and LEAA." At page 41 of that document it reads at about  
15 the fifth paragraph, "Section 228 of the 1974 Act, stating  
16 that it was the policy of Congress that programs funded  
17 shall continue to receive financial assistance providing that  
18 the yearly evaluation of such programs was satisfactory, is  
19 left intact."

20 Q What page was that? 41?

21 A 41 of the document that started at 39.

22 Q Will you show me physically where you were reading

1 from since we only have one copy of this?

2 MS. LYONS: Your Honor, I am going to put two paper  
3 clips on the two sections that are referred to in case  
4 Mr. Wilson would like to cross examine on them.

5 THE WITNESS: This document is not a secret document  
6 or something. There are many, many copies of it available  
7 throughout the agencies involved. It was widely debated  
8 in the General Counsel's office, the Juvenile Justice office  
9 and elsewhere. It was a subject of some substantial dis-  
10 cussions. It was not like, at least in my view, a surprise.

11 BY MS. LYONS:

12 Q Mr. Rector, I am going to hand you what has been  
13 marked for identification as Read Exhibit No. 5 entitled  
14 "Law Enforcement Assistance Administration, Juvenile Justice  
15 and Delinquency Prevention Act, Fact Sheet," and ask if you  
16 can identify that document?

17 A This is a two-page document that is distributed by  
18 the Office of Congressional Liaison at the LEAA. It is a  
19 sort of thumbnail sketch explaining significant provisions in  
20 the Juvenile Justice Act.

21 MS. LYONS: I would move this document into evidence at  
22 this time.

1 JUDGE NEEDLEMAN: Mr. Wilson.

2 MR. WILSON: No objection.

3 JUDGE NEEDLEMAN: Without objection the document previous  
4 ly identified as Read Exhibit 5(a) and (b) are received.

5 (The document referred to was  
6 marked Read Exhibit 5(a) and (b)  
7 for identification and received  
8 in evidence.)

9 BY MS. LYONS:

10 Q Let me ask you, Mr. Rector, if this document,  
11 this LEAA document, makes any reference to Section 228 (a)  
12 that would support your interpretation of that provision of  
13 the statute?

14 A Under the "Discretionary Grants" paragraph on page  
15 5(b) it says the following in concluding the paragraph:  
16 "Successful programs are to receive continued funding."

17 Q Is that the whole text of the comment?

18 A That is the entire text in my view that would  
19 relate to 228(a). It does not specifically refer to the sec-  
20 tion.

21 Q I gather that your testimony earlier was during  
22 your tenure as administrator of OJJDP there was never  
really a headon collision with this statute?

1 A Well, I would characterize the six months discussion  
 2 that resulted in the "Federal Register" item that we dis-  
 3 cussed a headon collision. Basically, just to give you my  
 4 perspective on the environment at the time, it was clear to  
 5 me that there were deep differences within the agency  
 6 among the policymakers about sections such as 228(a) and  
 7 others. We were raising issues about not just continuation  
 8 but a multitude of issues that we felt and the Congress had  
 9 fairly well documented that had been misinterpreted. So  
 10 the context was not just focused on one particular issue  
 11 such as continuation. But we did, indeed, have a so-called  
 12 headon as you phrased over the issue of continuation. That  
 13 culminated in the "Federal Register" piece. I have forgotten  
 14 how many months and how many pieces of paper and how much,  
 15 frankly, outside pressure of persons who agreed with us that it  
 16 took before persons of recent paid attention to the issues  
 17 that we were raising that led to the change that was made  
 18 with reference to it. It was basically a ripe issue. There  
 19 were grantees throughout the country ringing the bells of  
 20 the governors and what-have-you and it made an issue that  
 21 couldn't like some other issues be avoided. I think the  
 22 continuation issue itself, there were very few grantees that

1 were in a position where they would complain about continu-  
 2 ation policy within the discretionary program, thus the  
 3 issue was not raised.

4 Q Was it the practice of the office to continue  
 5 funding programs? You were talking about very few having  
 6 been funded more than one or two years for funds actually  
 7 authorized by the Juvenile Justice Act. During your tenure  
 8 were programs terminated for any reason other than --

9 A I am not absolutely certain --

10 JUDGE NEEDLEMAN: Let the witness answer.

11 MS. LYONS: -- for any reason other than unsatisfac-  
 12 tory performance, failure to comply with the terms of the  
 13 grant, misappropriation of funds?

14 THE WITNESS: To the best of my recollection the answer  
 15 is no. I was here earlier and I had an opportunity to  
 16 hear some of the other perspectives on policies and pro-  
 17 cedures, and I have a different view of much of that. It  
 18 was quite common to fund so-called unsolicited applications.  
 19 It is really a misnomer. They are solicited. Throughout the  
 20 history of the office prior to my arrival and subsequent (I  
 21 can't speak to what happened during the course of the summer  
 22 and in the fall) it was quite common and, in fact, we

1 encouraged the submission of so-called unsolicited.

2 I can recall in my testimony to the House Education  
3 Labor Committee in June of '78 we set out our rationale for  
4 encouraging the receipt of so-called unsolicited. Of course  
5 that testimony had to be approved by the Department of  
6 Justice, by OMB and the White House prior to my delivery of  
7 it. So, as contrasted with some of what has been said,  
8 there is no doubt that it was clear policy of the office  
9 for affirmative action reasons, for far outreach reasons, for  
10 a whole host of reasons to encourage the receipt of so-  
11 called unsolicited. Obviously, there has been a radical  
12 departure from that and reasonable people can differ about  
13 that. But I think there is no doubt but in terms of size  
14 of grants, we funded, for example, I can think of a particu-  
15 lar grant that Dave West urged me to fund, that was well in  
16 excess of one million dollars that received a grant.  
17 Normally, it would have gone a contract route; but it went  
18 a grant. It used to be the architecturally clearing house  
19 of the grantee project director -- his name is Brown but I  
20 can't remember the name of the project -- we funded in  
21 December of '78 a grant in excess of two million dollars to  
22 the National Council of Negro Women for the Sisters United

1 Projects for eight or ten projects around the country;  
2 totally unsolicited approach. We funded two million to the  
3 WYCA focused primarily on minority young women who were in  
4 trouble and needed some assistance other than being  
5 incarcerated. If you look through the full catalogue of  
6 items that have been funded by the office you will see a  
7 list replete with examples of substantial size of unsolicited  
8 projects. I think if you look carefully at the office  
9 you will find it all over the ballpark. You will find some  
10 four and five years funded, which basically would be the  
11 maximum possible at this juncture in the history of the Act.  
12 I don't know if anything has changed radically since I  
13 left but my experience was people were all over the ball-  
14 park in terms of who got funded and who didn't get funded  
15 and the duration of it and the rest of it, but we never to  
16 my recollection had to deal with continuation because of the  
17 unique circumstance that I described.

18 But apparently (I haven't studied the instructions) it  
19 has been the subject of your discourse, but that appears to  
20 me to be a radical departure from past policy and it appears  
21 it is wholly out of focus in the crunch.

22 BY MS. LYONS:

1 Q Is it fair to say that assuming the project  
2 monitor supplied you as the approval official for grant  
3 a satisfactory evaluation of the Project Read this summer  
4 or fall, that you would have felt obligated under Section  
5 228(a) of the statute to provide it with continuation of  
6 funding?

7 A The answer is yes. And I think the continuation,  
8 if anything, is earlier implicit in the original award un-  
9 less a negative evaluation was forthcoming or unless the  
10 project program was eliminated or some of the other caveats  
11 were present. One clarification. I would not have been the  
12 final approval or bottom line official. I would have been  
13 the person who could have declined to fund it; but I would  
14 have had to submit it to the grant contract action board and  
15 then to Mr. Dogin.

16 JUDGE NEEDLEMAN: You just said something which caught  
17 my mind. I hate to do this before both counsel have a chance  
18 to examine you, but I know I will forget this point. You  
19 said it would have been continued unless the project had  
20 been eliminated.

21 THE WITNESS: Clarification. I mentioned several caveats  
22 earlier; that the Juvenile Justice and Delinquency Prevention

1 Act program had been eliminated by Congress. That was  
2 one of the caveats; statutorially if the project had been  
3 repealed, which, obviously is not necessarily needed to be  
4 a stated caveat; but it is on the list of the three caveats  
5 we had. Another one being fiscal impropriety and the  
6 third being failure to meet satisfactory evaluation.

7 JUDGE NEEDLEMAN: You are saying under this statute  
8 228(a) that the Justice Department cannot say that we have  
9 had enough of literacy training and we are going to go on  
10 to something else?

11 THE WITNESS: Yes. The primary decision of that  
12 variety is made at the outset as to whether or not to fund  
13 a particular programmatic area. Subsequently, barring  
14 the p-or performance record and negative evaluation or what-  
15 have-you, there is an entitlement to the receipt of appro-  
16 priate dollars.

17 JUDGE NEEDLEMAN: Suppose the Justice Department  
18 program under one of these Juvenile statutes provided  
19 basketball hoops in juvenile detention centers; does  
20 every juvenile detention center have to keep manufacturing  
21 basketball hoops and buying them and putting them up under  
22 this statute? Do they have to put up these basketball hoops

1 in every detention center?

2 THE WITNESS: I would think that under an extreme  
3 circumstance such as that that the project would be refunded  
4 for a comparable but different activity. The reality is  
5 that almost all of these areas that are funded are nowhere  
6 near as discreet and well defined as you are indicating.  
7 It is quite the contrary that they are meeting the needs.  
8 They are like drops in a bucket and a basic policy decision  
9 was made to sustain and basically subsidize a series of  
10 projects rather than to put a dozen of projects around the  
11 country through this continual vicious cycle of a couple of  
12 years and one year refunding and disruptiveness and all that.

13 JUDGE NEEDLEMAN: Are you saying, Mr. Rector, that  
14 when one examines the Juvenile Justice system and the history  
15 of that system and the history of the legislation one would  
16 find certain problem areas, for example, the literacy, or  
17 the lack of literacy of young men and women who get caught  
18 under the Juvenile Justice system, and the statute antici-  
19 pates that once a funding choice was made which was consistent  
20 with the basic statutory purpose and the entire history of  
21 the juvenile delinquency problem, then the concept of  
22 continuation comes into focus?

1 THE WITNESS: Yes.

2 JUDGE NEEDLEMAN: Is that what your understanding is?

3 THE WITNESS: Yes.

4 JUDGE NEEDLEMAN: I am sorry.

5 MS. LYONS: I have nothing further of this witness.

6 All my documents are into evidence, are they not?

7 JUDGE NEEDLEMAN: Off the record.

8 (Discussion off the record.)

9 JUDGE NEEDLEMAN: Back on the record.

10 Exhibits 1, 2, 3, and 5, that is Read Exhibits 1, 2,  
11 3 and 5 and Physical Exhibit A have all been marked and  
12 received. Ms. Lyons has one more exhibit.

13 BY MS. LYONS:

14 Q Mr. Rector, I am handing you (Mr. Wilson has al-  
15 ready seen it) what has been marked for identification as  
16 Read Exhibit 4(a) through 4(1), a letter entitled "National  
17 League of Cities, United States Conference of Mayors,"  
18 dated December 6, 1974 and addressed to you from Mr. Gordon  
19 Raley with enclosures or attachments. Can you identify  
20 that document?

21 A Mr. Gordon Raley was the Juvenile Justice Specialist  
22 at this point in time for the National League of Cities,

1 J. S. Conference of Mayors.

2 Q Can you just tell us whether you can identify  
3 that document and if you can identify that document I will  
4 move it into evidence. It is Read Exhibit 4(a) through  
5 (1).

6 JUDGE NEEDLEMAN: Have you seen this, Mr. Wilson?

7 MR. WILSON: Yes. I have no objection as to its  
8 authenticity.

9 JUDGE NEEDLEMAN: Do you have any objection?

10 MR. WILSON: I may have objection as to its relevancy.

11 JUDGE NEEDLEMAN: What is the relevancy of this docu-  
12 ment?

13 MS. LYONS: There is a document attached to this let-  
14 ter which was sent by the League of Cities, Conference of  
15 Mayors, to, I gather, all the state planning agencies, I  
16 am not certain (again Mr. Rector just gave me this document),  
17 in which it describes the continuation of funding policy of  
18 the Juvenile Justice Act in comparison to the continuation  
19 funding policy of the Safe Streets Act.

20 JUDGE NEEDLEMAN: Well, this is a review of the National  
21 League of Cities. How does the review of the National  
22 League of Cities become relevant to the Congressional purpose

1 and intent bind the Section 228(a)?

2 MS. LYONS: I withdraw it if you prefer. I think it  
3 is probative of when the Act came out of what people who  
4 were charged with communicating to the grantee population,  
5 for example, at large or criminal justice planning agencies  
6 across the country, how they read that provision of the  
7 Act. It has taken us several years to meet up with this  
8 Act and say, okay, Mr. Rector has a sharply different view  
9 of this statute than persons currently in power at LEAA  
10 and anything that I can do to suggest that he doesn't stand  
11 alone in his views --

12 JUDGE NEEDLEMAN: What is the National League of  
13 Cities, Mr. Rector, the United States Conference of Mayors?

14 THE WITNESS: I think at that point they were a joint  
15 organization. They are the organization that represents the  
16 interests of all the mayors in the United States. The Con-  
17 ference represents the large mayors. The League of Cities  
18 represents the mayors of small cities. It is the infor-  
19 mation dissemination and lobbying arm, what-have-you, of  
20 the mayors of the United States who have primary interest  
21 in programs such as LEAA, Juvenile Justice, Crime Control  
22 Act and what-have-you.

1 JUDGE NEEDLEMAN: What is the connection between the  
2 National League of Cities and the United States Conference  
3 of Mayors and the passage of the original Juvenile Justice  
4 Act in 1975?

5 THE WITNESS: I don't think of it as a connection to  
6 the passage. I thought of the relevance to the basis of  
7 my perspectives and my policies in terms of administering  
8 the statute; that there were expectations throughout the  
9 country in various circles that are consistent with the  
10 perspectives that I have and implemented at the Office of  
11 Juvenile Justice and something such as that points to  
12 support that perspective.

13 JUDGE NEEDLEMAN: Does the letter of December 6, 1974  
14 represent such a perspective that you took into account  
15 when you were administrator?

16 THE WITNESS: I think the letter such as that and other  
17 -ed  
18 letters certainly help me formulate my bottom line opinion  
19 in terms of policy when I was in the office. There are  
20 letters such as that and then there are letters that helped to  
21 refine it even more specifically from the groups who were  
22 trying to repeal the 228(a). They would be articulated;  
they would be damned if they were going to fund projects

1 indefinitely and such as that in their effort to repeal that  
2 section. So certainly there were others who had the same view  
3 of it but it was precisely for the same view that they  
4 recommended that it be repealed. So, up until recent times  
5 I don't know of any substantial differences of opinion about  
6 the statute other than the internal differences that have  
7 developed.

8 JUDGE NEEDLEMAN: It is a recent opinion by the Circuit  
9 Court of Appeals of the District of Columbia in, I believe,  
10 in the National Association of Advertisers versus Pertchak,  
11 an FTC case. In that case on questions of legislative  
12 history it was the view that the Circuit Court of Appeals,  
13 at least, and some other authorities may look to sources  
14 outside of the actual Congressional debates and conference  
15 reports, which is the history in that case. The Court of  
16 Appeals relied rather heavily on a letter sent by the  
17 Administrative Conference to Senate sponsors of the FTC  
18 Approval Act. On the basis that legislative history is an  
19 extremely lucid concept anyway, and the reviewing  
20 authorities may want whatever help they can get, I am going  
21 to allow this in, Mr. Wilson.

22 MR. WILSON: Your Honor, may I ask what the date of

1 that correspondence is?

2 JUDGE NEEDLEMAN: The cover letter is dated December 6,  
3 1974. It refers to a meeting dated November 11, 1974.

4 MR. WILSON: I just note that the Act was passed  
5 September 7, 1974, so that as legislative history is sub-  
6 sequent to the passage of enactment of the Juvenile Justice  
7 Act.

8 JUDGE NEEDLEMAN: Again, I am not prepared to say that  
9 these scraps are unimportant legislative history given the  
10 recent opinion by the D. C. Circuit which indicates that on  
11 difficult questions the D. C. Circuit is quite prepared to  
12 go outside of the conference report and the Congressional  
13 Record, so I am going to allow it in, particularly since  
14 this witness was the administrator of the program and he  
15 has already testified that it was this sort of expectation  
16 which led him to his views. It is relevant on the issue of  
17 legislative history which seems to be an important issue in  
18 this proceeding.

19 (The document referred to was  
20 marked Read Exhibit 4(a) through  
21 4(1) for identification and was  
22 received in evidence.)

MS. LYONS: Could I just have that document back, sir?

1 BY MS. LYONS:

2 Q Could you tell us what the document is that is  
3 attached to the letter that you received from Mr. Raley?

4 A The document at 4(b) is a memorandum submitted by  
5 Mr. Gordon Raley and Sandra Kelly to each of the -- probably  
6 criminal justice staff of every mayor in the United States  
7 explaining a meeting in preparation for implementing the  
8 Juvenile Justice Act.

9 Q Would you turn then to page 4(e) and tell us what  
10 that memo says about Section 228(a) of the Act?

11 A At page 4(e), about the fifth paragraph, entitled  
12 "Continuous Funding" it reads: "Unlike the Safe Streets Act,  
13 once a project is funded under the Juvenile Justice Act,  
14 it will be continued, unless it receives a bad evaluation,  
15 through the life of the legislation. There is no prescribed  
16 cut-off date requiring local institutionalization." That  
17 would be what would normally be called assumption of costs;  
18 local institutionalization. It continues: "This could have  
19 future implications for local evaluation capability and may  
20 allow for the development of more innovative projects which  
21 might not be initiated if there was fear it could not be  
22 institutionalized." That is the full paragraph.

1 That was one of the common notions behind the con-  
2 tinuity of the funding section to provide an incentive and  
3 to provide the security in the project.

4 Q I gather these institutionalization things are  
5 for the Justice planners who might really like a diversion  
6 project, for example, but it would be wonderful under as-  
7 sumption of costs that they would have to write into the  
8 whole budget which would meet local resistance?

9 A That is part of it, but primary emphasis of the  
10 Juvenile Justice Act was to fund private non-profit projects  
11 such as Project Read, as distinguished from the public  
12 entities. It was in that area where there was particular  
13 resistance to initial funding and, of course, to continua-  
14 tion funding; not solely because many of these projects were  
15 new and changes were warranted but solely because there are  
16 limited dollars and the public communities seem to have a  
17 corner of the market and over the years the privates didn't  
18 win out. The public seemed to always be able to reshuffle  
19 the budget somewhere and come up with a match. They were  
20 increasing match. Privates were normally strapped to an  
21 extent that that wasn't possible and that is where the  
22 Juvenile Justice Act that Congress provided one hundred

1 percent match and one hundred percent funding so there  
2 wouldn't have to be a match which is, again, another notion  
3 consistent to and opposed to the assumption of cost approach.

4 Could I add something on the juggling of budgets as  
5 it bears on 228(a)? I find it rather novel that any project  
6 will find itself out in the cold, so to speak, just because of  
7 the way the monies are pocketed or shelved within a particular  
8 entity within the Juvenile Justice office. As we read the  
9 228(a) it applies to the entire title. It doesn't apply just  
10 to one part as opposed to the other. The obligation as I  
11 interpreted it and certainly a number of others around the  
12 office, the office is responsible for the implementation of the  
13 title and it seems a ruse, to say the least, that by shrinking  
14 one category of funding where a particular project or projects  
15 happen to have been formally funded and making unavailable other  
16 dollars by some bureaucratic guise that they can thereby elim-  
17 inate the efficacy of 228(a). That is rather artful but certain-  
18 ly I can't see the reasoning of people who support that.

19 MS. LYONS: I have nothing further.

20 JUDGE NEEDLEMAN: Let's have a brief recess.

21 (A recess was taken at 3:20 p.m.)

22 JUDGE NEEDLEMAN: On the record, please. Mr. Wilson, you

1 may cross examine.

2 CROSS EXAMINATION

3 BY MR. WILSON

4 Q Mr. Rector, the letter, Exhibit 10(a), to you from  
5 LEAA General Counsel, Tom Madden (and he is still the General  
6 Counsel), purports to be in response to your request for an  
7 explanation of the LEAA guidelines for implementation of  
8 Section 228(a), is that correct?

9 A That is correct, yes.

10 Q So this was an explanation of an in-place agency  
11 policy to implement the Section 228(a) provision, would you  
12 agree with that?

13 A Repeat that.

14 MR. WILSON: Repeat the question back to him.

15 (The record was read as requested.)

16 THE WITNESS: I would say it appeared to be the current  
17 policy of LEAA at that juncture with regard to the interpre-  
18 tation of 228(a).

19 BY MR. WILSON:

20 Q Does this opinion letter from the General Counsel  
21 indicate to you that that policy is in the General Counsel's  
22 opinion consistent with the Section 228(a) provision?

1 A Yes.

2 Q Let me ask you this, you are experienced as a staff  
3 counsel for the Congress: Could you tell me who is responsible  
4 for the interpretation and implementation of statutes passed  
5 by Congress?

6 A At the Justice Department?

7 Q Any agency that is charged with implementing a  
8 statute passed by Congress. Who interprets the statutes?

9 A Well, I think there are a variety of intents. I am  
10 not familiar with each and everyone of them. But oftentimes  
11 it is the general counsel's office and in the instance of the  
12 Justice Department the bottom line rests with the Office of  
13 Legal Counsel, Mr. John Harmon. Assistant Attorney General  
14 John Harmon is the bottom line in the Justice Department for  
15 all statutory interpretations.

16 Q You are saying that in your knowledge the Office of  
17 General Counsel at LEAA does not have the authority to inter-  
18 pret the LEAA legislation?

19 A I am not saying that. I thought you indicated the  
20 question about final authority. My recollection is that when-  
21 ever there is a difference of opinion between counsel and the  
22 administrative officers and other assistant attorneys general

1 and other policy makers in the hierarchy at Justice, the bottom  
2 line is the General Counsel.

3 Q You received personally a letter dated February 24,  
4 1976 from Madden, did you not?

5 A Yes.

6 Q Did you follow up that letter with an additional re-  
7 sponse of the agency protesting that this interpretation was  
8 erroneous?

9 A I don't recall any particular followup.

10 Q Did you write out any correspondence or contact the  
11 legal counsel at the Department of Justice?

12 A I can't speak to contact. I think I was constantly  
13 in contact and probably not many hours went by prior that I  
14 talked to Tom Madden about this matter, but I can't speak  
15 specifically with regard to conversations. I am certain that  
16 general counsel and staff of general counsel who were prosely-  
17 tizing an amendment to repeal the very section now that that  
18 activity was more in our mind than some current interpretation.  
19 We spent the spring of that particular year trying to assure  
20 that the various initiatives including the one that repealed  
21 this were not successful. That is my best recollection. I  
22 don't remember and I didn't have access, direct access in the

1 last couple of days to the Committee files. I was trying to  
2 find some memorandum of my staff discussion of this particular  
3 piece and in the time I had to do a search I wasn't able to  
4 find anything. It was somewhat consistent, I think, in the  
5 view of myself and other staff people with the disagreements  
6 that we had with the agency. It wasn't novel for us to dis-  
7 agree on the statutory interpretation of this section or others.

8 Q But you do agree that the Office of General Counsel  
9 does have responsibility and authority for interpreting the  
10 statute?

11 A With the caveat that within the Department, the bot-  
12 tom line is the Office of Legal Counsel.

13 Q Do you also agree that the agency has the authority  
14 and responsibility to establish policies to implement the  
15 statutory requirements of the Juvenile Justice Act?

16 A I think that, yes, but. The but is that with regard  
17 to policy that relates to Juvenile Justice, the policy author-  
18 ity resides in the Office of Juvenile Justice as administrator  
19 under Section 527 of the statute. The policy direction rests  
20 with that particular individual and in this instance currently  
21 Ira Schwartz.

22 Q Will you confine yourself to the questions that I

1 ask you.

2 A Let me try to be more succinct. The policy does not  
3 reside generally with LEAA. The policy direction with regard  
4 to all Juvenile Justice and Delinquency Prevention matters  
5 whether under Crime Control or under Juvenile Justice Act  
6 reside with the associate administrator of LEAA, namely the  
7 administrator of the Office of Juvenile Justice.

8 JUDGE NEEDLEMAN: Who is that currently?

9 THE WITNESS: A fellow by the name of Ira Schwartz who  
10 was confirmed and sworn in just several weeks ago.

11 JUDGE NEEDLEMAN: What is his title?

12 THE WITNESS: He replaced myself.

13 JUDGE NEEDLEMAN: He is the administrator of what?

14 THE WITNESS: Of the Office of Juvenile Justice. He also  
15 acts under the statute as the associate administrator of LEAA,  
16 and in that regard has policy direction of the juvenile area  
17 over the entire agency.

18 JUDGE NEEDLEMAN: You say associate director of LEAA.  
19 Aren't you also overlooking this other organization which  
20 oversees LEAA?

21 THE WITNESS: The new organization OJARS. To my under-  
22 standing guidelines and what-have-you regarding OJARS statutes

1 have not been implemented. So that policy direction in the area  
2 of Juvenile Justice, in fact under the old statute as well, is  
3 now under the new statute Justice Improvement Act, I have for-  
4 gotten which section it is, retains policy direction for juvenile  
5 matters in the office head of the Office of Juvenile Justice  
6 even under the OJARS statute.

7 JUDGE NEEDLEMAN: All right, proceed.

8 BY MR. WILSON:

9 Q Let me ask the question one more time so that I can  
10 get a yes or no answer. The question I am asking is whether  
11 LEAA has the authority and responsibility to implement and  
12 formulate policies to implement Section 228(a)? Now before  
13 you answer, LEAA includes OJJD.

14 A Well, with that clarification I would say yes.

15 Q The exhibit which was submitted, Read Exhibit 1, is  
16 the proposal from Attorney General Levi for reauthorization  
17 of the Juvenile Justice Act. Are you aware that that reauthor-  
18 ization proposal also in addition to deleting Section 228(a)  
19 inserts an assumption of costs provisions similar to the pro-  
20 vision in the Crime Control Act?

21 A Yes.

22 Q Is it not logical to conclude that assumption of

1 costs as a concept is inconsistent with a continuation policy  
2 that sets no limits?

3 A Yes.

4 Q Therefore, is it not also fair to conclude that the  
5 reason that Section 228(a) was proposed to be deleted was not  
6 because it provided continuation funding forever but rather  
7 because it was felt there was a need to have an assumption of  
8 costs policy so that projects would be picked up at the local  
9 level after a reasonable period of federal assistance?

10 A I wouldn't agree with that. I would say that the  
11 assumption of costs is the logical alternative to continuation  
12 policy and those who opposed the continuation policy would  
13 have substituted in lieu thereof the assumption of costs notion.  
14 I think that is precisely what happened in the bill that was  
15 submitted and rejected.

16 Q Would you agree that the assumption of costs policy,  
17 were it in place, given that LEAA has interpreted 228(a) in  
18 a manner that restricts funding to discrete project periods  
19 would offer some protection to and assistance to private, non-  
20 profit and other grantees so that when their period of assist-  
21 ance was terminated they would not be left with no sources be-  
22 cause with the assumption of costs policy the local governments

1 are making a commitment to picking up funding? Isn't a pro-  
2 tection to those grantees?

3 A In that context I am not fully certain what you are  
4 referring to by assumption of costs. I was referring to the  
5 declining match over the several years period of the grant.

6 Q For clarification then, assumption of costs policies  
7 state that the grantees in the case of the Formula Grant Program  
8 would be that the state would agree to pick up the cost of  
9 funded projects after a reasonable period of federal assistance  
10 so that if a private grantee had a grant there would be some  
11 local commitment to picking up the funding. Do you see?

12 A All right.

13 Q So doesn't it offer a project to those grantees when  
14 their federal funding terminates if there is a local commit-  
15 ment to pick up the costs?

16 A It is not my recollection of the Levi-Velde --

17 Q Excuse me, Mr. Rector. Is this identified as the  
18 Velde-Levi bill?

19 A I said Velde because he happened to be the administra-  
20 tor of the pertinent agency at the time. Levi or the Ford  
21 administration bill, I think, is the common way to refer to it.  
22 It was the Levi-Velde bill.

1 Q To your knowledge, Mr. Rector, you were still a mem-  
2 ber of Senator Bayh's staff at the time that the Senator's  
3 authorization proposal was submitted to the Congress in 1976,  
4 is that correct?

5 A At which proposal?

6 Q Senator Bayh's proposal to reauthorize the JJDP Act  
7 which I believe was proposed in early '77?

8 A '77, yes.. Right. That is the Senate Bill 2021.

9 Q Did that bill change the Section 228(a) requirement?

10 A To the best of my recollection it did not.

11 Q Well, were you, and wasn't Senator Bayh aware of  
12 LEAA's interpretation and implementation of the Section 228  
13 provision?

14 A The section didn't need changing. The practices of  
15 the agency needed changing.

16 Q I don't believe that was the question. It was not  
17 responsive to my question, Mr. Rector.

18 JUDGE NEEDLEMAN: I believe it was responsive to your  
19 question, Counsel. Ask another question. You weren't pleased  
20 with the answer.

21 BY MR. WILSON:

22 Q Mr. Rector, when you became the administrator of OJJDP

1 were the M 4100 state planning agency grant guidelines in  
2 effect for Formula Grants as well as the M 7100.1A financial  
3 guideline policies, both of which have been admitted into  
4 evidence, in place?

5 A I believe that, yes; and I think the fiscal had been  
6 in place since '75 and the other ones had been initiated in  
7 early '77 prior to my arrival and then were rewritten twice in  
8 the summer of '78 and then subsequently in the fall of '78.  
9 And as you are well aware this continuation issue was seldom  
10 discussed. There were a multitude of other issues. I think  
11 of a dozen issues in the financial guidelines that were the  
12 subject of discussions of myself and the head of LEAA from the  
13 outset that were in my view and in the view of many consistent  
14 with the statute.

15 Q Did you change those guidelines of the state planning  
16 agencies?

17 A I think the only change we made as I indicated  
18 earlier was the change culminating in the fall of '78.

19 Q Which was change 3 to M 4100.1F that is exhibit --

20 A I wouldn't necessarily recollect all the numbers, but  
21 it was the one in the fall on October 17th.

22 Q That is Exhibit 12. Would you review that document,

1 please.

2 A No, no. This is July 25, '78. I was making refer-  
3 ence to the change that we made in the fall of '78 that allow-  
4 ed the originally funded Crime Control Act grantees to receive  
5 continuation funding in spite of the fact they were funded  
6 under the Crime Control Act.

7 Q We will get to that. This is different. This is  
8 the policy for continuing the Formula Grant funding under the  
9 Juvenile Justice and Delinquency Prevention Act. The other  
10 policy did not amend or change this policy, did it?

11 A I am not aware that this represents a change. In  
12 other words, I am not aware that Exhibit 12 dated July 25,  
13 '78 represented a change.

14 Q Let me show you Exhibit 11 which was the prior policy  
15 from May of 1977.

16 A It shows there was a change.

17 Q Well, the latter policy became agency policy during  
18 your tenure as administrator of OJJD, did it not?

19 A What I am trying to say is that I don't recall there  
20 is a difference between these two items. I have not studied  
21 these to recollect whether they are different. One is shorter  
22 than the other, but I don't recall policywise there was a

1 change. If in fact there was a change, I was, in fact, the  
2 administrator of the office at the time that these particular  
3 guidelines were promulgated by the Juvenile Justice office and  
4 approved by the head of LEAA.

5 Q Were you the administrator of OJJD on July 25, 1978?

6 A That is what I just said. I was, in fact, the ad-  
7 ministrator then. If there was a change between these two the  
8 change was recommended by our office. I signed the recommenda-  
9 tion for a change if there was a change, and then it was approv-  
10 ed by the head of LEAA.

11 Q The July 25, 1978 policy for implementation of  
12 Section 228(a) for Formula Grants, is that change consistent  
13 with your contention that Section 228(a) requires continuation  
14 funding in perpetuity?

15 A I don't see on the face of it any inconsistency.

16 Q Well, doesn't the July 25, 1978 policy require states  
17 to establish minimum periods of funding for Formula Grant  
18 funding projects?

19 A It is the maximum period that is in contention and I  
20 don't see anything inconsistent with the philosophy intended  
21 under 228(a).

22 Q You interpret the establishment of a minimum period  
for funding that says a project then must be funded in perpetuity

1 because of the requirement it must be --

2 A All I am saying is that I don't see anything here  
3 inconsistent with a view indicated in the Wald report and  
4 elsewhere.

5 Q Does that guideline then permit a state to establish  
6 a three year funding period for a particular program and no  
7 more?

8 A I would say no. That is not to say that the states  
9 are not doing that. I don't mean to imply that.

10 Q Let me ask another question to fill out your inter-  
11 pretation of Section 228(a). The section does not speak to  
12 a level of funding. Would your interpretation be that a project  
13 once funded is entitled to funding at the same level that it  
14 was originally funded for?

15 A No. I indicated earlier it would have to be some-  
16 what comparable. Any adjustment couldn't be so devastating  
17 that it substantially changed the nature and quality of the  
18 undertaking that had been funded earlier but in the instance  
19 the Judge gave of the example of the basketball hoops, that  
20 would be an extreme example where we would be up against the  
21 rock and the hard place and even in that instance I indicated  
22 that a comparable task and funding would be appropriate.

1 Q Did you say that Section 228(a) applies to all funds  
2 under Title II of the Juvenile Justice Act?

3 A Yes. The statute says that. I know there is a lot  
4 of confusion about that. In fact, there is a lot of confusion  
5 in the Juvenile Justice office about the entire statute, so I  
6 don't want to put this particular aspect in some rare or  
7 different context. Most of the people in the office had grown  
8 up with the Crime Control Act as their guiding light and here  
9 came this entirely different approach and so we are constantly  
10 trying to remind people you are dealing with the Crime Control  
11 Act here and Juvenile Justice here, and you have to remember  
12 there are different rules that attach and should apply.

13 Q Would you say that then if OJJDP provided funding  
14 under a technical assistance contract to provide assistance in  
15 a particular area to individual organizations that that tech-  
16 nical assistance support would have to continue to be funded  
17 in perpetuity regardless of whether or not there was any  
18 need for that kind of assistance?

19 A As I indicated earlier, if you can eliminate the need,  
20 maybe that begins to draw a parameter on the duration intended  
21 by the Section. If you are talking about technical assist-  
22 ance, you are talking about a contract, you are talking about

1 contract procedures, you are talking about something quite dif-  
 2 ferent than the grants that we have been discussing to date.  
 3 Now, it is entirely possible that one of the rougher spots in  
 4 this whole discussion might be how 228(a) jives or meshes with  
 5 the contractual situation as distinguished from grants be-  
 6 cause of the lack of control that the office has in the con-  
 7 tract situation. I had not really thought of that before,  
 8 frankly.

9 Q So you are saying this Section 228(a) maybe doesn't  
 10 apply to contracts?

11 A I am not saying that it doesn't apply. But its ap-  
 12 plication might create unique circumstances.

13 Q If OJJDP transfers funds which it has authority to  
 14 to do/another federal agency to carry out a program, is OJJDP  
 15 then required to continue to transfer those funds to another  
 16 agency year after year?

17 A That is difficult to answer. Let me try. The trans-  
 18 fer of funds to other offices is intimately related to the  
 19 priority setting within the office. I think my view on  
 20 transfer, not exclusively because of 228(a) reasons, but be-  
 21 cause the Appropriations Committee tells me not to transfer  
 22 monies to the agencies. Let me shortcut this. If the office

1 in setting priorities like, say, budget '81 at this juncture  
 2 and budget '82, as you develop '82, if the first application  
 3 relative to the priority was an application and concerned  
 4 about 228(a) and continuation, a lot of other questions wouldn't  
 5 arise. You probably wouldn't be transferring any dollars to  
 6 any other agencies if you were meeting your full responsibility  
 7 of continuation under the statute. There is just not that  
 8 much money. So that is a corollary to what you are asking,  
 9 but I think the answer is there would be very little being  
 10 transferred if, in fact, at least in my view, the agency is  
 11 meeting its obligations. Like in this instance and in others,  
 12 you are cutting out projects while at the same time you are  
 13 transferring four million dollars to Labor and HEW and other  
 14 federal agencies. In my view that violates the spirit of  
 15 228(a) and it violates probably more than the spirit in that  
 16 had you not done that you would have more than adequate re-  
 17 sources available to fund Project Read and other projects.  
 18 The problem is that 228(a) was not a priority. It was not im-  
 19 portant, apparently, in the establishing of the priorities  
 20 in the Institute or in Special Emphasis or elsewhere.

21 Q You are talking about four million dollars transfer.  
 22 Are you saying that four million dollars was transferred out

1 of the Institute budget?

2 A No. I don't believe whether it is in the Institute  
3 or Special Emphasis or some other cubbyhole it is relevant.  
4 It was transferred out of the discretionary monies that were  
5 provided to the office to implement Title II. 228(a) attaches  
6 to Title II.

7 Q Is it not a fact that there is legislative history  
8 that indicates that the Institute is to receive no more than  
9 11 percent of the overall OJDP appropriation?

10 A I know that came up earlier. It is not in the  
11 statute. I think it was mentioned earlier that it was in  
12 the statute. It is not in the statute but in the conference  
13 report in '74, the House-Senate Conference Report, there is a  
14 dispute. The Senate wanted a five percent of the Institute.  
15 The House wanted ten and they said no more than 10. In 1977  
16 in the Conference Report they indicated 11 for the Institute  
17 with the very specific purpose in mind, namely, grants desig-  
18 nated to state advisory groups in the participating states.  
19 So it is in the legislative history in that a preference was  
20 stated in the two Conference Reports in '74 and '77. It is  
21 unlike the statutory provisions that require that a certain  
22 amount of money go into Special Emphasis and a certain amount

1 going into Formula Grants. On that point it was stated earlier  
2 today that 25 percent of the appropriation has to go into  
3 discretionary grants and Special Emphasis. That is not actually  
4 correct. The first decision is made on the statutory decisions  
5 as to what goes into an area called concentration of federal  
6 effort. Then an allocation should be made to the Institute  
7 with its guidance of no more than 11 percent. Then the re-  
8 maining money is split between the Formula Grant programs that  
9 go out to the states and the discretionary monies that are  
10 available in the office through the Special Emphasis Division.  
11 The split is that 25 percent of those monies go to the Division  
12 or Special Emphasis. So on one hand you are required by law  
13 to do something and on the other hand there is a very strong  
14 urging by the Congress not to fund the Institute with more  
15 than 11 percent. Also a corollary to that is a strong emphasis  
16 on not focusing on research and focusing more on action  
17 projects. As mentioned earlier today, it is not a research  
18 organization. If I had, you know, to bet the family farm I  
19 would bet you more than half the money in the Institute is  
20 what you call action grant category and it is a mislabeling to  
21 indicate that this little Institute within the office is re-  
22 search. I think a tiny portion of the budget is research.

1 Q Assuming that OJJDP took the Congressional direction  
2 of 11 percent seriously, and I think you might give us that one,  
3 and actually allocated 11 million out of the total one hundred  
4 million dollars for OJJDP to implement the Act by the Institute  
5 would say that the Section 228(a) leaves any room whatsoever  
6 for the establishment of new priorities and funding in pro-  
7 gram areas that have been identified by the Congress as pri-  
8 orities but which have not because of lack of resources and  
9 so forth as yet been implemented?

10 A Not to the derogation of projects, existing projects  
11 who have received satisfactory evaluations. I think that is  
12 the problem. I heard a discussion earlier today that you talk-  
13 ing about a million dollars and somehow within that million  
14 dollars \$800,000 of it is to be allocated to some new center,  
15 a center that was required in the legislation, was required as  
16 regarding programmatic aspects and not a lot of money. But  
17 that begs the question. The application of 228(a) should come  
18 along before you get to a category that has a million in it.  
19 The application should come certainly prior to looking at the  
20 eleven million. It should come at a point when the office bear  
21 looks over all of the offices as to how many continuations are  
22 required in the office. That comes first. Then issues of

1 model programs and -- not a model program -- some new effort.  
2 I know I had specific instruction from the Committees not to  
3 be everything to everybody and not to fund a dozen programs;  
4 to get succinct and targeted and focused. So, you have to do  
5 that when you have a limited amount of money although it has  
6 been increasing. You have to do that when you have a limited  
7 amount of money and when you have a provision such as 228(a).  
8 I think any other approach that I have seen to date is just  
9 not consistent with it.

10 Q There were exhibits submitted with regard to the  
11 Youth Service Bureau situation that originally arose in Ohio  
12 where those projects had exhausted their eligibility for Crime  
13 Control funding, given the restraint of assumption of costs  
14 policy. LEMA modified through the publication in the "Federal  
15 Register," which was also submitted as Exhibit 2, the assumption  
16 of cost policy to permit Juvenile Justice grants funded by the  
17 Crime Control Act to be funded for an additional period of  
18 time under the Crime Control Act. I would just like a little  
19 clarification of in what way that particular situation that  
20 developed impacts on the Section 228(a) provision?

21 A Well, 228(a) was cited as the predication for the  
22 change in the agency policy. So it was an aspect of the

1 agency's implementation of 228(a) and what I think is inter-  
 2 esting and relevant here is that even when projects were funded  
 3 exclusively with Crime Control Act funds we persuaded Mr.  
 4 Gregg to agree to continuation funding.

5 Q The rationale given in the "Federal Register" publi-  
 6 cation was that Juvenile Justice projects traditionally had a  
 7 more difficult time obtaining local support, is that not the  
 8 case?

9 A It makes reference to the historic difficulty of  
 10 institutionalizing successful juvenile programs which is a  
 11 shorthand way of referring to precisely what the basis was  
 12 for it in the first place.

13 Q Didn't the "Federal Register" also cite the contin-  
 14 uation policy for a basis of flexibility with regard to the  
 15 length of funding? Is that not the case?

16 A Even in a hard and fast Crime Control Act context  
 17 we were able to draw or extrapolate from 228, which did not  
 18 apply to Crime Control and provide some relief consistent  
 19 with that policy to Crime Control Act funded grantees as  
 20 distinguished from a case like Project Read that was funded with  
 21 Juvenile Justice Act funds.

22 Q But that publication in the "Federal Register" did

1 not change, did it, the agency's interpretation of Section  
 2 228(a)?

3 A I think it changed it significantly. If you read  
 4 Mr. Gregg's policy clarification here and lay it down next  
 5 to the letter of February, 1976 and the interpretation that  
 6 some give that letter you are certainly coming out with  
 7 different results.

8 Q The Pat Wald report, the "Option Paper," was en-  
 9 tered into evidence as Physical Exhibit A. Are you aware  
 10 as to which member of the task force raised an issue as to  
 11 228(a) or whether it was done by the staff who originally  
 12 wrote up this "Option Paper"?

13 A I think my best recollection is that several per-  
 14 sons over a series of weeks that we met occasionally would  
 15 say things such as "What are we going to do about the goddamn  
 16 continuation section?" And most of the people who were say-  
 17 ing that were office heads from the LEAA who were on the task  
 18 force. This was not debated extensively as were sections  
 19 like maintenance of effort and others. I know that Mr. Dogin  
 20 and I had a public and private discussion at one of the  
 21 meetings. He was unhappy that at one meeting I was pushing  
 22 for continuity of policy with regard to 228(a). My recollection

1 is that he said to me, "Your view is going to get us into  
 2 a lot of trouble on this." I said, "It is not my view;  
 3 it is the Congress' view." That would have been in late  
 4 December or early January. I remember Pat Wald and Blair  
 5 Ewing -- then Blair Ewing had the large research institute  
 6 at LEAA. He has since gone over to the new OMM. He had con-  
 7 cerns about continuation policy. I think he was afraid it  
 8 was going to be extrapolated to apply to his projects in the  
 9 research area, and he just couldn't live with that. His  
 10 whole perspective was to find something for a year and have  
 11 a conference on it and go to the next project. We had a  
 12 lot of discussion on research on the one hand and substantive  
 13 programs on the other hand. I think it was important that  
 14 it was not considered a major issue. It was considered a  
 15 miscellaneous issue and it was considered in the context of  
 16 being forever funding and that proposal was made. It certain-  
 17 ly wasn't made by myself. I have forgotten who made it to  
 18 put a five year cap on funding. I certainly didn't support  
 19 that. I am sure Pat Wald didn't support that and it obviously  
 20 was not incorporated in Ben Civiletti's submission to  
 21 Congress. So I gathered from that he didn't agree with it.  
 22 Had he agreed with it he would have put limitation on the

1 section.

2 Q Can you state categorically that this "Option  
 3 Paper" was the final report of the task force?

4 A It was the final "Option Paper" of the task force  
 5 that was submitted to Ben Civiletti. Subsequent to Ben  
 6 Civiletti's decision-making about various aspects of the  
 7 Juvenile Justice Act a shorter publication was transmitted to  
 8 the Criminal Justice, the Juvenile Justice community around  
 9 the country and Congress. That became the exact predication  
 10 for the bill that was submitted.

11 Q There were two other documents submitted that I would  
 12 like to ask you about; the summary of the Juvenile Justice  
 13 Act published jointly by CJJDP and the Office of General  
 14 Counsel, which I wrote, and the Office of Congressional  
 15 Liaison document entitled "Fact Sheet" on the '74 Act. Would  
 16 you consider either one of those documents to be legislative  
 17 history; yes or no, please?

18 A As the lawyer said earlier in the day, I will try  
 19 to say yes or no. History relative to appropriate adminis-  
 20 trative policy, not necessarily legislative history per se.  
 21 That is paper track record of the LEAA articulation of its  
 22 policy in the area statement by the General Counsel's office.

1 Statements by the Congressional Liaison Office, statements by  
2 the General Counsel in conjunction with our office with regard  
3 to authorship in such issues, I find it of interest that the  
4 '74 summary made absolutely no reference to the continuation  
5 section of the statute, however, it did discuss every other  
6 aspect of 228.

7 Q Is that the document then in evidence?

8 A That is also in the Wald report. It precedes the  
9 item to which you are referring.

10 Q The joint memo states that programs funded "shall  
11 continue to receive financial assistance providing the yearly  
12 evaluation of such programs is satisfactorily left intact."  
13 Does that do anything more than reiterate the language of the  
14 statute?

15 A No, I don't think -- I think that is precisely  
16 what it does. It puts the community of interest on notice  
17 that 228(a) is still intact. The reason for that, I think,  
18 was that there was a substantial effort to repeal it. And  
19 it was important to persons, potential applicants and what-  
20 have-you that they were informed that the efforts to repeal  
21 it were not successful.

22 Q Well, didn't the administration submit a bill sub-

1 sequent to the Levi bill when President Carter came into office  
2 that did not, in fact, lead to continuation of the funding  
3 of the --

4 A As a Carter appointee, that is one of the reasons  
5 he wanted it published.

6 Q Would you agree that the same thing is true about  
7 the Office of Congressional Liaison "Fact Sheet" which  
8 states "Successful programs are to receive continued funding"?  
9 Is that not also a reiteration of the words of the statute?

10 A It is an articulation of the agency policy from  
11 the Congressional Liaison's office to its Hill offices and  
12 other entities.

13 Q Would you say your interpretation of 228(a) pre-  
14 cludes the use of a project period system of funding pro-  
15 grams and projects funded under the JJDP Act, under the Juvenile  
16 Justice Act?

17 A The September 14th business of '78?

18 Q That is an agency policy and it is also the exist-  
19 ing policy under the Special Emphasis program in the financial  
20 guidelines. Would you say that is inconsistent with the  
21 statute?

22 A It is not inconsistent. It was somewhat confusing

**CONTINUED**

**2 OF 7**

1 this morning as to exactly what the intentions are relative  
2 to the September 14th instruction and it appears on one hand  
3 that matters such as this were not within the scope and  
4 then people seem to be saying that they were. I was not a  
5 party to developing any of that. I am not really familiar  
6 with it. But I would say that anything that puts a limita-  
7 tion on the funding is inconsistent with the salient criteria,  
8 mainly satisfactory evaluation, is inconsistent and certainly  
9 a wholesale phasing out such as is apparently happening in  
10 the office of projects is totally inconsistent.

11 Q Did you ever approve guidelines for Special Emphasis  
12 programs while you were administrator of OJJDP that had  
13 project periods built into them? In other words, funding  
14 under this, for example, funding under this program shall be  
15 three years; funded with two year funding and then a third  
16 year if the first project period was successfully completed?  
17 Did you ever approve any kind of guideline for Special  
18 Emphasis programs that had that kind of provision in it?

19 A I don't think we ever funded anything that would  
20 not have allowed for multiple year funding, subsequent year  
21 funding.

22 Q So your answer is no?

1 A To the best of my recollection the answer is no. I  
2 would say with the exception of some projects that Mr. Dogin  
3 handled personally that I had referred to him late in '78.  
4 I am not certain as to what my understanding is. Perhaps  
5 some of those that had restrictions like 18 months re-  
6 strictions, I certainly wouldn't have agreed to that.

7 Q Did the Special Emphasis Division of OJJDP institute  
8 a restitutional program while you were administrator of  
9 OJJDP?

10 A We did, and that was funded by Crime Control Act  
11 money.

12 Q Entirely?

13 A Almost exclusively. I am not certain on the  
14 figures but the overwhelming majority of the money was Crime  
15 Control. My recollection is that we got into a circumstance  
16 where there were some grantees that had misunderstood the match,  
17 the need for match and that we assisted them by making Juven-  
18 ile Justice moneys available. There were some inequities  
19 involved. I have forgotten what it was. And Juvenile Justice  
20 money was made available to those grantees who had some  
21 substantial, genuine misunderstanding about match.

22 Q Was there any reason why you feel the projects

1 funded under the restitution program were required to receive  
2 funding in perpetuity that you couldn't have provided  
3 in the guidelines that continuation of funding would be  
4 provided out of JJ funds after the funds were exhausted?

5 A I think earlier it was implicit in our Juvenile  
6 Justice funding. The burden rests with us to the extent that  
7 we wanted to demonstrate that the project had not performed  
8 successfully to let them know and that would put them on  
9 notice that they had a 228(a) type problem.

10 Q Well, did the Special Emphasis Division in its  
11 fiscal year 1979 program plan request to continue its  
12 Prevention grantees for a third year even though the project  
13 period was defined as two years? Do you recall that?

14 A That would be totally consistent. I don't recall  
15 whether it did, but it should have.

16 Q Do you recall that you only agreed to fund one-half  
17 of the requested amount, three million dollars, to keep those  
18 projects going? Do you recall that?

19 A I don't specifically recall it. My recollection  
20 is that I funded what was requested by the office involved  
21 and that, however, at the outset the estimation had been  
22 higher than three. It was decided that three was enough to

1 extend the Prevention projects because of the concern such as  
2 carry-over money. There had been slow expenditures. I would  
3 have to look it up. I don't have a specific recollection  
4 of it, but I remember having discussions with Dogin about  
5 the program plan in December and January, '79 as to whether  
6 the three million plus was adequate continuation for the Pre-  
7 vention projects which, incidentally, that was the first set  
8 funded with Juvenile Justice money. I don't recall any  
9 problem about that.

10 Q Would you agree that if there were six million  
11 dollars worth of continuation Prevention grants and the  
12 office only allocated three million dollars and could not  
13 fund all of those grantees in total or would only fund all of  
14 them partially that would be inconsistent with Section 228(a)?

15 A I would agree that barring performance evaluation  
16 problems that if the various Prevention projects were not  
17 funded in fiscal '79 that that violated 228(a). As you  
18 know, I was not there throughout the funding cycle and I am  
19 not certain whether they were or not.

20 MR. WILSON: Your Honor, I would like to propose the  
21 admission of LEAA Exhibit 1 which is a memorandum to  
22 Henry S. Dogin, then Deputy Administrator for Policy

1 Development of LEAA from John Rector, Administrator of  
2 OJJDP, dated January 5, 1979, with regard to a request for  
3 reprogramming the funds submitted by the Office of Juvenile  
4 Justice.

5 BY MR. WILSON:

6 Q Mr. Rector, did you from time to time write memo-  
7 randums to Mr. Dogin with regard to program expenditures and  
8 planning for funds?

9 A Well, certainly I approved initially memoranda  
10 to Mr. Dogin that was prepared by the staff and this is  
11 obviously one of them.

12 MR. WILSON: Your Honor, I propose to submit this docu-  
13 ment. I think it is relevant to Mr. Rector's posture on these  
14 Prevention grantees and what their rights were with regard  
15 to funding. I would ask that Mr. Rector review particularly  
16 the material on page 1(a) under "Answer" at the bottom  
17 and continuing over on exhibit 1(b) at the top.

18 JUDGE NEEDLEMAN: Are you going to offer this in evi-  
19 dence?

20 MR. WILSON: Yes.

21 JUDGE NEEDLEMAN: He offered the document LEAA Exhibit  
22 1(a) through 1(f).

1 MS. LYONS: I am on page 1(c). I don't see any objec-  
2 tion at this time. If you want to go ahead and admit it,  
3 and if I come across something terrible, can I report it  
4 later?

5 JUDGE NEEDLEMAN: Take your time. It seems to me that  
6 for the purposes of cross examination it is going to take a  
7 rather brilliant objection on your part to keep it out anyway.

8 MS. LYONS: I don't have any objection.

9 JUDGE NEEDLEMAN: The scope of the direct examination  
10 is going to allow quite a large degree of latitude on cross  
11 and I suggest that you just state your objection. Let the  
12 record reflect the fact that the document from Mr. Rector to  
13 Mr. Dogin dated 5 January 1979 previously identified as  
14 LEAA Exhibit 1(a) through 1(f) are received without objection.

15 (The document referred to was  
16 marked LEAA Exhibits 1(a) through  
17 1(l) for identification and was  
18 received in evidence.)

19 BY MR. WILSON:

20 Q Let me point out to you, Mr. Rector, that the  
21 memorandum states and I quote, "As you are probably aware,  
22 the program guideline for prevention as announced in November,  
1976, indicated that project funding would be available

1 for a two year period." And then skipping down to the  
2 seventh line, "This office has since determined that the pre-  
3 vention effort should be reduced in scope, and since there  
4 was no formal commitment of third year funding by OJJDP to  
5 grantees; third and final year funding could be made avail-  
6 able to prevention grantees on a competitive basis." Is  
7 that your statement, Mr. Rector?

8 A That certainly has my initials on it.

9 Q Can you explain how that statement squares with  
10 the views which you have given us as to the proper inter-  
11 pretation of Section 228(a)?

12 A It doesn't appear to square with it. My recollec-  
13 tion is that -- What, in fact did we do? I couldn't remem-  
14 ber it. Continuations were funded; prevention continuations  
15 were, in fact funded, is that correct?

16 Q I don't know.

17 A I don't know either. So my recollection is that  
18 it says if we have the money to continue for the third year  
19 in fiscal '78, and in fact it was not made on a competitive  
20 basis.

21 Q So you were recommending an action to Mr. Dogin  
22 that was inconsistent with your interpretation of Section

1 228(a), is that correct?

2 A It certainly appears that way. I should add in the  
3 context of this particular timeframe there were several  
4 things that we did that in daylight would not be on all  
5 fours consistent with 228(a). For example, I was given the  
6 prospect -- I had very narrow choices. We had 18 or 20 un-  
7 solicited grant applications that had been submitted to the  
8 office. I was given the choice by Dogin to have them funded  
9 for one year and see what happens later or not fund at all.  
10 I opted for the one year. There is probably a piece of paper  
11 somewhere in the agency that we opted for one year. The  
12 alternative is that they would have been cut off entirely.  
13 Now some of that sprung from the basic differences that we  
14 were having about policy including continuation.

15 Q So that you are saying what you did was to put  
16 conditions on grantees specified funding would be for a one  
17 year period?

18 A I don't recall if that happened. I am saying on a  
19 policy level he and I met.

20 Q Did that happen?

21 A I don't recall. He and I had met. We had an on-  
22 going program of unsolicited projects. He obviously disagreed

1 with unsolicited projects. He basically said to me I will  
 2 cancel every one of them if you push it for more than a cer-  
 3 tain period of time. I don't think it was ever finalized  
 4 on paper, but they were funded. Now, with regard to each  
 5 of the grants, I am sure -- I don't know what they said.  
 6 Most of them were signed before I left and referred to him and  
 7 funded after I left. But from reading newsletters and what-  
 8 have-you, my understanding is that they are all funded.

9 Q Weren't the deinstitutionalization of status  
 10 offenders grants closed out during your tenure as admini-  
 11 strator of OJJDP?

12 A As Crime Control funded projects, yes.

13 Q They were all Crime Control Act funded projects?

14 A Most of them had a portion of Juvenile Justice  
 15 Act funds, but they were Crime Control Act policywise. They  
 16 were Crime Control Act projects. First -- Wait a minute.  
 17 That is all.

18 Q There were some, I believe --

19 JUDGE NEEDLEMAN: Did you finish your answer?

20 THE WITNESS: I did finish my answer. I misspoke. They  
 21 were Crime Control Act projects; not Juvenile Justice Act  
 22 projects. They were funded in the fall of '76 long before

1 I got there and the monies had been commingled and Crime  
 2 Control Act guidelines applied.

3 BY MR. WILSON:

4 Q Did the Office of Juvenile Justice while you were the  
 5 administrator fund 60 track II grants with reverted money  
 6 that were Special Emphasis monies as one time only one year  
 7 grants?

8 A The track II grants were funded and were selected  
 9 prior to my arrival at the office. There were selected under  
 10 a guideline published four or five months before my arrival  
 11 by the regions and, in fact, were funded as the terms indi-  
 12 cated.

13 Q They were funded for one year periods while you were  
 14 administrator of OJJDP?

15 A The guidelines were developed and the projects  
 16 selected prior to my arrival.

17 Q Did you take any action or any steps to change the  
 18 guidelines or to change the one year for these track II --

19 A No one could change the guidelines. The projects  
 20 had already been selected consistent with the guidelines. In  
 21 other words, it was well beyond. It was not at a point where  
 22 we could change the guidelines. The guidelines had been

1 distributed to the state planning agencies and the regional  
2 offices. They had solicited an untold number of applications.  
3 Each had selected one or two for funding and sent them into  
4 the office and when I arrived there was a stack of applica-  
5 tions.

6 Q Did you continue to fund those projects after their  
7 one year funding?

8 A I attempted to fund the projects and Mr. Dogin  
9 vetoed in the spring of '79 my attempt.

10 Q You attempted to fund them all?

11 A All the ones that had received satisfactory eval-  
12 uations. As a matter of fact, the basis for his rejection  
13 was that he wanted to put the money set aside for them in  
14 the area of alternative education and he felt it was more  
15 important for our office to fund alternative education than it  
16 was to continue track II's and he was the boss.

17 JUDGE NEEDLEMAN: That is track II?

18 THE WITNESS: Track II refers to projects that were  
19 funded by LEAA at the regional level. Track I was Washington  
20 based; track II the regions. Another factor in the midst  
21 of all this, right as I arrived the Attorney General abolished  
22 the regional offices. So all his applications were already

1 selected and were coming in. I can't remember whether  
2 Mr. West agreed with our effort to refund those projects or  
3 not, but I know I could certainly supply memoranda document-  
4 ing my effort with Mr. Dogin and his very clear response.

5 BY MR. WILSON:

6 Q Read Exhibit 4 is material from Gordon Raley  
7 from the League of Cities addressed to you. Wasn't Mr. Raley  
8 a member of Congress or a Congressional staff member at that  
9 time?

10 A Mr. Raley, as I indicated earlier, was a Juvenile  
11 Justice specialist for the League of Cities and the Conference  
12 of Mayors and obviously was not a member of Congress although  
13 he is now staff director of the Oversight Committee in the  
14 House. But he was not then.

15 Q Was he an LEAA policymaker or legal advisor?

16 A No, he wasn't.

17 Q His letter to you thanks you for your input and  
18 help. Is it a possibility that you gave him the information  
19 that once a project is funded it will continue to be funded  
20 through the life of the legislation?

21 A My recollection is that Mr. Nader was at that meet-  
22 ing and was the acting administrator at that time of the

1 Juvenile Justice Office. He and I and perhaps others  
 2 made a presentation to key leaders from the mayors' offices  
 3 around the country. Whatever Mr. Raley and his staff sur-  
 4 mised from that is reflected in the memorandum that he sent  
 5 out to the mayors around the country. It could in part  
 6 mean the senior staff person and the person in charge of the  
 7 Senate Conference. It wouldn't have been unlikely that he  
 8 wouldn't have listened somewhat as to what I had to say about  
 9 it; and he would have listened to Mr. Nader and others. I  
 10 imagine that had there been substantial disagreement between  
 11 the LEAA representative and myself it would have been re-  
 12 flected. He is a very conscientious person.

13 Q You said Section 228(a) applies to all funds and that  
 14 this business of allocating funds from one source and setting  
 15 priorities and putting funds in one slot or box is a bureau-  
 16 cratic game, I believe your phrase was. Are you aware that  
 17 the statute provides specific lawful purposes for the use of  
 18 funds under the Special Emphasis programs under the concen-  
 19 tration of federal efforts programs, under the Institute  
 20 programs? Are you aware that the funds cannot be used for  
 21 any purpose under the Act?

22 A The Special Emphasis language is general enough

1 to fund any project conceivable other than something  
 2 in the research area. The language under the Institute/certain<sup>is</sup>  
 3 ly compatible with the research training and action projects  
 4 that it has funded. The concentration of federal efforts  
 5 section is as broad, if not broader, than the Special  
 6 Emphasis section.

7 Q Do you think given the limitation, the 11 percent  
 8 limitation that Congress has put on Institute funding,  
 9 it would be consistent with that intent for the Institute  
 10 to shift programs that it doesn't have sufficient money to  
 11 continue over to another part of the office for continuation  
 12 of funding? Isn't that, in effect, doing indirectly what  
 13 Congress said you can't do directly?

14 A My judgment is that making decisions about 228(a)  
 15 policy subsequent to setting out your priorities is incon-  
 16 sistent. The issue is whether you are going to look at con-  
 17 tinuation policy as you are formulating your budget or your  
 18 priorities or whether you are going to establish new priorities,  
 19 allocate the funds to new priorities and then tell the folks  
 20 there is no money for continuation, which makes somewhat of a  
 21 mockery. The entire notion of continuation to tell people  
 22 that the money is not available begs the question. At one

1 juncture in the planning process in the establishment  
2 of priorities money was available. Decisions were made that  
3 made it unavailable. Those are the decisions that seem to be  
4 inconsistent with 228(a).

5 Q So you are saying you think it would be okay to  
6 shift Institute funded projects over to other parts of the  
7 office for funding out of those fund allocations?

8 A I don't know of anything legally that would prohibit  
9 that. My view would be that those projects that are entitled  
10 to continuation should be funded out of the Institute.  
11 There is nothing, however, that would have prohibited the con-  
12 tinuation funding like a Project Read or others out of  
13 Special Emphasis monies. The main issue is their receipt of  
14 continuation funding.

15 MR. WILSON: I have no further questions.

16 JUDGE NEEDLEMAN: Ms. Lyons.

17 MS. LYONS: I have nothing further.

18 JUDGE NEEDLEMAN: Off the record.

19 (Discussion off the record.)

20 JUDGE NEEDLEMAN: Back on the record, please.

21 Let me ask you very briefly about your own personal  
22 background, Mr. Rector. When did you work for Senator Bayh?

1 THE WITNESS: I worked for Senator Bayh from April of '71  
2 until June of '77. In the first instance as the deputy chief  
3 counsel for his committee and in the second instance as his  
4 staff director and chief counsel. I became staff director  
5 and chief counsel in, I think, the summer of '73.

6 JUDGE NEEDLEMAN: What is the committee to which you  
7 refer?

8 THE WITNESS: It is the Senate Judiciary Subcommittee  
9 to Investigate Juvenile Delinquency. We handled gun control,  
10 drug control and Juvenile Justice.

11 JUDGE NEEDLEMAN: Was the Senate Judiciary Subcommittee  
12 responsible for the legislation which became Public Law  
13 93-415?

14 THE WITNESS: I would say it certainly is, in fact,  
15 known as the Bayh act.

16 JUDGE NEEDLEMAN: I am going to renege on my commitment  
17 not to go into this, but I won't have Mr. Rector after today.  
18 When did you first come up with the concept in this Committee  
19 of 228(a)?

20 THE WITNESS: I have been scratching around for some  
21 reminders on that. I went through most of the memoranda that  
22 I have. It was in a bill, S. 3148, that Senator Bayh

1 introduced in February of 1972. To the best of my recollection  
 2 the specific language was based on the Economic Opportunity  
 3 Act, the '64 Act. There was either identical or parallel  
 4 language and the motivated need for such language was some-  
 5 what comparable to some of the needs that were cited in  
 6 what later became known as poverty programs but were com-  
 7 parably unable to obtain initial funding, more or less con-  
 8 tinuation funding. I have not been able to find the specific  
 9 piece of paper on it but I can remember discussions with  
 10 my own staff and the staff of which was a part. The chief  
 11 counsel of the committee at that time was an attorney in  
 12 town now, Larry Speiser. I can remember staff meetings but  
 13 I haven't been able to find a specific piece of paper on it.  
 14 But the Economic Opportunity Act was in part a model for the  
 15 language. It was integral part of the hearings. It was  
 16 oftentimes stated as absolutely essential (the provision, that  
 17 is) in the course of the hearings. There had been particular  
 18 graphic examples of juvenile programs having their funds cut  
 19 off in Senator Bayh's home State of Indiana and in others  
 20 as well. But he spoke fairly frequently to programs that  
 21 were in his view -- paraphrase it -- got the shaft from the  
 22 ~~change warranty programs or formula warranty programs; well~~

1 intended programs that were doing good jobs that started to  
 2 get a little bit effective and then they lost their funding,  
 3 and it was a focal point of discussion throughout the  
 4 developmental period. Basically the House bill, Congressman  
 5 Perkins in the House introduced our bill, so most of the  
 6 developmental period took place in the Senate Committee be-  
 7 tween '71 and its passage in '74. We had hearings in '71  
 8 but our first bill was introduced in '72 and hearings again  
 9 in '73 and then a new bill reported in '74, and a final bill  
 10 signed by the President late in early fall of '74.

11 JUDGE NEEDLEMAN: When did you have hearings on the con-  
 12 cept of 228(a)?

13 THE WITNESS: We never had a hearing that was specific-  
 14 ally on that concept. It is sort of laced throughout the  
 15 various hearings; statements by Senator Bayh, statements by  
 16 Marlow Cook who was the ranking Republican at the time and  
 17 very enthusiastic about the Act, the bill, and very unenthusi-  
 18 astic about the HEW program that had the authority at the  
 19 time. And Senator Mathias of Maryland was another person of  
 20 significance in the process. It was a boilerplate aspect of  
 21 what Birch Bayh wanted as was the emphasis on private non  
 22 profits. The salient aspect of the legislation as you go

1 back and review it really didn't get as much comment as some  
2 of the other things did. You were either going to go with them  
3 or not go at all is the way it came down to.

4 JUDGE NEEDLEMAN: Are you an attorney?

5 THE WITNESS: I am an attorney; a graduate of Hastings  
6 Law School

7 JUDGE NEEDLEMAN: What is the precedent under EPOA  
8 or similar language?

9 THE WITNESS: I am not personally familiar as to  
10 whether it is presently comparable in its subsequent  
11 agency or what, but I do know that -- in fact we had dis-  
12 cussions with Sargent Shriver's people and others that were  
13 involved in that effort, not exclusively on this, because the  
14 kind of program we were envisioning was somewhat similar to  
15 what had been done through their activities. We talked to  
16 them about a number of things in the continuation aspect.  
17 It was viewed by most of us as absolutely essential to change  
18 warranty kinds of things.

19 JUDGE NEEDLEMAN: What does OJDP do now with the  
20 kinds of situations which I believe you discussed during  
21 your cross examination, namely, here is a project we are  
22 not quite sure about and rather than kill it entirely I would

1 like to try it for a year or two? It would seem that in  
2 your interpretation of 228(a) these pilot, experimental pro-  
3 jects now will have no chance at all of even getting a trial  
4 because if your version of the statute was adopted the  
5 Department of Justice would be permanently wedded to that  
6 project with no chance of divorce.

7 THE WITNESS: Well, the chance for divorce would come  
8 with the unsuccessful performance of the project. However,  
9 there is no question in my mind and that of many others  
10 that in the debates on it -- I can't count the hundreds of  
11 times Birch Bayh and others talked about the time for pilot  
12 projects and demonstrations is over. We have had a gut full  
13 of that. We had six years of it under the particular  
14 administration we were arguing with and it was a basic  
15 philosophical difference. There is no doubt that a lot of  
16 people supported federal revenue sharing. A lot of people  
17 like Doctor Weinberger supported pilot projects. The Depart-  
18 ment of Justice and HEW and OMB all recommended a veto. The  
19 testimony of HEW officials specifically cited the need for  
20 only pilot kind of funding as one of their objections. So  
21 there is no doubt there is a basic difference of opinion  
22 philosophically about a provision like this as contrasted

1 with an experimental think-tank kind of environment and  
2 that was precisely what was intended to be avoided.

3 JUDGE NEEDLEMAN: Senator Bayh was sponsoring the --

4 THE WITNESS: He was sponsor of the original bill going  
5 back to '72 and every subsequent measure since then.

6 JUDGE NEEDLEMAN: The 1974 statute.

7 THE WITNESS: And as Mr. Wilson alluded, he was also  
8 the the author of the '77 amendment that extended it, and I  
9 am certain in the current session he is still again re-  
10 sponsible for it and will introduce current legislation to  
11 be authorizing it.

12 JUDGE NEEDLEMAN: Is there any doubt in your mind at all  
13 that Senator Bayh as the sponsor of 228(a) meant what it  
14 says, namely, that the programs must be funded --

15 THE WITNESS: No, if I had any doubt about it --

16 JUDGE NEEDLEMAN: -- until --

17 THE WITNESS: -- I would certainly articulate it.

18 JUDGE NEEDLEMAN: Did he say that on the floor of the  
19 Senate, do you know?

20 THE WITNESS: I think in many places it is articulated  
21 as continuation funding. What is interesting it is indicated  
22 in hindsight. It was an issue we argued about. There were

1 a lot of issues we argued about. That was not a subject of  
2 argument. It was a boilerplate aspect of the statute.  
3 The same as set aside for private entities. As LEAA and  
4 other organizations had to have it excluding private nonprofits  
5 from funding. So that was boilerplate. Continuation was  
6 boiler plate. I can remember when we had the bill in the  
7 Senate Judiciary Committee in June or July of '74 and we  
8 were into tremendous arguments with former Senator Roman  
9 Hruska and former Senator John McClellan and others who were  
10 carrying the ball for the Justice Department who opposed the  
11 bill when it came to shove on certain aspects of continuation.  
12 <sup>were</sup> And there were others that/in there; we are either going to  
13 get those or we are not going to get the bill at all.

14 JUDGE NEEDLEMAN: If you look at the first clause in 228(a)  
15 it says, "In accordance with criteria established by the  
16 Administrator..."

17 THE WITNESS: So that people would know the nature  
18 of the evaluation, you know, so that they would know what  
19 the standards were. As I indicated earlier, I think the  
20 agency took the position that evaluation didn't have to be  
21 sophisticated, very expensive, meticulous Ph.D kind of  
22 thing. It was adequate that the kind of evaluation that the

1 grant monitors and superiors gives to the programs it would  
 2 be sufficient. It would be that kind of thing that was  
 3 anticipated that the criteria would set out. So it would  
 4 eliminate the doubt as to the kind of evaluation so you  
 5 wouldn't get sandbagged because you didn't provide for an  
 6 extraordinarily expensive evaluation at the outset and get  
 7 told after being funded for two years there is no evaluation.  
 8 At the time we were working on this statute, my staff and  
 9 myself and various members who assisted, we were in an en-  
 10 vironment where we were expecting the worst. We had three  
 11 or four years of no support whatsoever from the executive  
 12 agencies. So it wasn't like we were going down this road  
 13 hand-in-hand. It was like we were going down the road look-  
 14 ing to be tripped and the rest of it. So we were trying to  
 15 think of everything we could. That is why we said "shall"  
 16 instead of "may." There are a lot of aspects to it. The  
 17 continuation, I know, was in the '73 version and it was in  
 18 the '74 version.

19 JUDGE NEEDLEMAN: Isn't there a set of criteria which  
 20 was used for making evaluations?

21 THE WITNESS: On evaluation, the agency did not publish  
 22 criteria in my view to implement -- implementation criteria  
 with regard to the evaluation. The guidelines that they are

1 referring to, both in the financial guidelines and the  
 2 discretionary program guidelines, reiterate satisfactory  
 3 evaluation. My recollection is that they don't promulgate  
 4 criteria elaborating on the nature of satisfactory evalu-  
 5 ation.

6 JUDGE NEEDLEMAN: So it is your testimony that the  
 7 only evaluation which is presently relevant is the evaluation  
 8 by the so-called program monitor?

9 THE WITNESS: I do believe that is correct. I do be-  
 10 lieve that in the Formula Grant guidelines there is some  
 11 reference to the fact that evaluation for purposes of 228(a)  
 12 means monitoring under the appropriate section of those guide-  
 13 lines and I have forgotten precisely what it says where  
 14 monitoring is indicated, but that would be in contrast to  
 15 your sophisticated evaluation.

16 JUDGE NEEDLEMAN: Let me ask one final question.  
 17 Actually, this record is quite barren about what Project  
 18 Read does do and does not do. I understand it has something  
 19 to do with teaching literacy through the arts. Let's assume  
 20 that the program monitor who was the evaluator says that,  
 21 yes, Project Read did, indeed, do a good job for four  
 22 years, but with all the research currently reported in

1 educational journals and elsewhere it is indicated that  
2 the way to teach literacy is through intensive electronic  
3 training rather than through art projects. So the In-  
4 stitute on the basis of the best advice they can get with  
5 a very hard look at these two alternative ways of teaching  
6 literacy opts for the electronic technique instead of what-  
7 ever Project Read does. How does the agency reconcile  
8 making that choice with 228(a)?

9 THE WITNESS: Taking your example, Project Read is in  
10 small part an art component, too, but it is primarily an  
11 intensive effort to improving reading ability of incarcer-  
12 ated children and children who are in the community based  
13 programs. If in some absolutely overwhelmingly persuasive  
14 way it became apparent that they were not being successful  
15 then that would be a basis for --

16 JUDGE NEEDLEMAN: No, I am posing a different --

17 THE WITNESS: If you are talking about relativity,  
18 and one is 60 percent successful and one is 40 --

19 JUDGE NEEDLEMAN: Right. Let's assume that they have  
20 every reason to suspect that an intensive electronic train-  
21 ing -- they stick a kid into a room and put earphones on  
22 him for eight hours a day like they used to teach foreign

1 language -- is a better way to teach literacy than anything  
2 Project Read has done up to now notwithstanding the fact  
3 that Read has shown excellent results; but on the basis of a  
4 hard look at the entire area LEAA or one of its associated  
5 organizations decides that with the same money they can do  
6 better.

7 THE WITNESS: Well, if things could be clearly drawn  
8 like that in a field such as the one we are talking as con-  
9 trasted with items coming off the production line, if I  
10 were the person I would encourage projects like Project  
11 Read to include the mechanistic component in their array of  
12 activities. I think if I were faced with that practical  
13 decision, that is what I would do.

14 JUDGE NEEDLEMAN: Is that contemplated in the directives  
15 that the grantees which demonstrated success would be con-  
16 tinued even if it meant changing programs somewhat?

17 THE WITNESS: I think it is true of most programs that  
18 they are fine tuned as they go along. Not everything is a  
19 hundred percent on all fours and perfect when they start,  
20 if you are talking about basically something like a techno-  
21 logical discovery, something radical and new and different  
22 and well-documented and the rest of it. Those things don't

1 happen in the field of criminal justice; but assuming it did,  
 2 if the flip side of that was that what they had been doing  
 3 was totally unsuccessful that would be a basis to cut them  
 4 out. But just in the competitive arena, I would still  
 5 say that would be a very close call that wouldn't be an  
 6 adequate basis for terminating their funding.

7 JUDGE NEEDLEMAN: Is it your testimony that the call  
 8 by LEAA Administrator Dogin for competitive procedures  
 9 may be inconsistent with 228(a) or is incompatible?

10 THE WITNESS: I would say in a perspective sense it  
 11 certainly could be compatible if they are allowed to be  
 12 funded subject to satisfactory evaluation. However, I  
 13 think it would be problematic with regard to projects that  
 14 had been funded by the office who had received satisfactory  
 15 evaluation; and a nonperspective application of a competitive  
 16 policy effectively eliminates the funding. I think that is  
 17 totally inconsistent. I think some wholesale phasing out of  
 18 projects without even looking at the merits of the project  
 19 is totally inconsistent with the statute, even for those who  
 20 disagree as to precisely what evaluation criteria should be  
 21 applied. To just take 30 or so projects that have received  
 22 funding under a title that the section attaches to and to

1 wholesale cut them off without any reference to the statute  
 2 seems to be a baldface contradiction of the statute.

3 JUDGE NEEDLEMAN: All right, Ms. Lyons, do you have  
 4 anything?

5 MS. LYONS: Nothing further.

6 JUDGE NEEDLEMAN: Mr. Wilson.

7 MR. WILSON: Nothing further.

8 JUDGE NEEDLEMAN: Thank you very much.

9 (Witness Excused)

10 MS. LYONS: We have one final item before we rest  
 11 our side of the case. Since we have agreed by stipulation  
 12 as to what we think is relevant to the project, the  
 13 quality of performance and what they did, and all that sort  
 14 of thing, if you would like we would like to move three  
 15 annual reports and publications prior to this year and  
 16 if you have any questions I think you can find the answers  
 17 here. Mr. Wilson has represented that he has no objections.  
 18 There are three annual reports and three other publications.  
 19 These are the annual reports and these are the publications.  
 20 JUDGE NEEDLEMAN: Why don't you or one of your colleagues  
 21 mark these as Read Physical Exhibits and give a description  
 22 on the record and make the offer.

1 Let me go over again something that we discussed off  
 2 the record. I am very much interested in legislative  
 3 history of 228(a). It seems to me that this proceeding  
 4 may very well turn on questions of law and legislative  
 5 history rather than the facts which are largely undisputed.  
 6 I would appreciate it very much if both sides did spend some  
 7 time researching legislative history and I will do the same  
 8 and submit within a schedule which I will set an  
 9 account, if possible, of the legislative history. I have  
 10 already indicated off the record I would expect to see  
 11 references of the floor debates and perhaps the hearings  
 12 and various committee reports, as well as any other material  
 13 which you might consider relevant legislative history.

14 It seems to me that to the extent that the material is public  
 15 you don't have to worry about it. You can cite it to me or  
 16 write it to me. I will find it. I would not rely on non  
 17 public letters anymore. I mean you have a chance to in-  
 18 troduce one, but it seems to me that in this sort of  
 19 proceeding counsel should not be sneaking non public  
 20 material which other counsel cannot object to.

21 So from this point on I would ask that you rely ex-  
 22 clusively on public documents rather than memos hidden in

1 the Justice Department files or memoes hidden in the files of  
 2 these organizations.

3 That brings me to another subject, namely, I don't  
 4 know how much of Mr. Rector's testimony you anticipated,  
 5 Mr. Wilson; but I would be quite amenable to recessing this  
 6 thing right now and resuming tomorrow morning because it  
 7 did go far beyond what I thought would be our time and this  
 8 would perhaps give you some time to organize your thoughts  
 9 and perhaps try and find some documentation which further  
 10 contradicts Mr. Rector's position or perhaps even go over  
 11 his position with your own witnesses. Again, I don't know  
 12 how much of his testimony is a real surprise to you, but I  
 13 would be quite amenable to recessing until tomorrow morning.

14 MR. WILSON: I would appreciate that, Your Honor.

15 JUDGE NEEDLEMAN: I think I am going to do that be-  
 16 cause of the lateness of the hour. I think we are all fair-  
 17 ly exhausted. It has been a very long day, much longer than  
 18 I anticipated, and we will resume tomorrow morning with the  
 19 witnesses for LEAA. You have three witnesses, is that  
 20 correct?

21 MR. WILSON: Yes, sir.

22 JUDGE NEEDLEMAN: Again, I apologize to any witnesses

1 who have been here today who were not called in that we  
2 did go far beyond what I expected.

3 Have you marked these?

4 MS. LYONS: Yes. We had to mark them on the inside  
5 first page because they were slick.

6 JUDGE NEEDLEMAN: Why don't you tell the reporter  
7 what you marked.

8 MS. LYONS: What has been marked for identification as  
9 Read Physical Exhibit B is the Read Annual Reports, 1976-  
10 1977. What has been marked as Read Physical Exhibit C is  
11 a report of the motivational reading program by Project  
12 Read entitled "To Make a Difference." Read Physical Exhibit  
13 D is a report of the activities of Project Read, 1978 to  
14 1979 entitled "Continuing to Make a Difference." Read  
15 Physical Exhibit E is entitled "Motivational Activities  
16 for Reluctant Readers." Read Physical Exhibit F is entitled  
17 "Designing a Paperback Book Program," again by Project Read.  
18 Finally, Read Physical Exhibit G is called "Troubled Youth  
19 and the Arts, A Source Guide." Physical Exhibits E, F,  
20 and G are publications completed during the last grant year.  
21 The other three physical exhibits are annual reports pertain-  
22 ing to the other project periods.

1 JUDGE NEEDLEMAN: Ms. Lyons has moved for receipt into  
2 evidence of Read Physical Exhibits B through G. Mr. Wilson.

3 MR. WILSON: No objection.

4 JUDGE NEEDLEMAN: Without objection Read Physical  
5 Exhibits B through G will be received.

6 (The documents referred to were  
7 marked Read Physical Exhibits  
8 B through G for identification  
9 and received in evidence.)

10 MR. WILSON: Your Honor, two of my witnesses have other  
11 engagements tomorrow. One has a court appointment at 10:30  
12 and another has an appointment at the White House in the  
13 morning. Would it be possible for us to reconvene right  
14 after lunch tomorrow? I don't anticipate that the presen-  
15 tation of my case will take any more than three hours.

16 JUDGE NEEDLEMAN: Off the record, please.

17 (Discussion off the record.)

18 JUDGE NEEDLEMAN: Back on the record. At the request  
19 of counsel for LEAA we will adjourn until 1:00 o'clock p.m.  
20 tomorrow afternoon and we will hear the witnesses to be  
21 presented by LEAA.

22 Thank you very much.

(Whereupon, the parties adjourned at 5:00 o'clock p.m.  
to reconvene tomorrow, January 31, 1980, at 1:00 o'clock p.m.)

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
WASHINGTON, D. C. 20531

-----x  
IN THE MATTER OF:  
Read, Inc., Issue of Denial of :  
a Continuation Grant Application :  
for National Institute of Juvenile :  
Justice and Delinquency :  
Prevention Training Funds :  
-----x

The above-entitled cause came on for further hearing from adjournment from January 30, 1980, before the Honorable Morton Needleman, Administrative Law Judge, at Conference Room I, Federal Trade Commission, 2120 L Street, N. W., Washington, D. C., commencing at 1:00 o'clock p.m., on the 31st day of January 1980, when were present on behalf of the respective parties:

For LEAA:

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Office of General Counsel  
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For Read, Inc.:

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PHONES: 331-1881  
331-1982

1 LEAA'S WITNESSES:

2 James Howell  
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5 Emily C. Martin  
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8 David West  
9 Direct Examination by Mr. Wilson 358

10 Read Exhibit No. 6

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22

1 JUDGE NEEDLEMAN: On the record, please. This is a  
 2 continuation of the proceeding involving Read and the discon-  
 3 tinuance of funding by LEAA. I just have one preliminary  
 4 matter I want to mention on the record. When citing to  
 5 exhibits or presenting exhibits to witnesses, I think for  
 6 purposes of record clarity it would be best to refer to the so-  
 7 called LEAA and Read exhibits as Joint Exhibits. They are  
 8 marked Read-LEAA Exhibits 1 through 15, and I put a notation  
 9 on the first page of each exhibit it is a Joint Exhibit. In  
 10 effect, we have three sets of exhibits; Joint Exhibits and LEAA  
 11 exhibits and Read exhibits. If you're going to show the witness  
 12 an exhibit, be sure to show that the Joint Exhibits are  
 13 referred to as Joint Exhibits. I have so marked them as Joint  
 14 Exhibits notwithstanding the fact as they went into the record  
 15 on January 30th as the LEAA and Read exhibits. So let the  
 16 record reflect that the exhibits that went in yesterday are  
 17 going to be referred to henceforth as Joint Exhibits.

18 All right, Mr. Wilson.

19 MR. WILSON: Thank you, Your Honor. I would like at this  
 20 time to make my opening statement.

21 Your Honor, the agency intends to bring forth evidence  
 22 and testimony to establish and support the facts and arguments

1 detailed in the agency's prehearing brief. These facts will  
 2 demonstrate that: Project Read received generous funding  
 3 for their training program receiving a full opportunity to  
 4 demonstrate the viability of the Read program concept. Project  
 5 Read was funded under three separate and distinct grant awards.  
 6 Each award was for a project period established by the terms  
 7 of the grant award. None of these grant awards made any  
 8 commitment to funding beyond the period of the grant. No verbal  
 9 assurances of continuation funding were made. No indication  
 10 appears that Read relied on Section 228(a) of the Juvenile  
 11 Justice Act as a guarantee of a continuation of funding.  
 12 In applying for a continuation grant, Read, Inc., stood in no  
 13 different position than any other applicant for new NIJJDP  
 14 funding. After four years and \$869,695 in grant funds to  
 15 support the project, Project Read applied for another continua-  
 16 tion grant for \$601,535.

17 However, the Institute in establishing funding  
 18 priorities for fiscal year 1980 made a policy determination that  
 19 higher priority funding areas required the use of available  
 20 training funds. Eight hundred and twenty-five thousand dollars  
 21 of one million dollars set aside for training purposes was  
 22 allocated to establish a NIJJDP training center as mandated

1 by Section 248(a) of the Juvenile Justice Act. The balance  
 2 was allocated to continue the training of juvenile court  
 3 judges and other court-related personnel under Section 244(2),  
 4 again a higher Institute priority. When it appeared that Read  
 5 would not be an Institute priority, Doctor Howell, director  
 6 of the Institute, as a courtesy to Project Read requested that  
 7 Special Emphasis Division of OJJDP review the application.  
 8 Had the Special Emphasis Division indicated they were in a  
 9 position to fund the project, Doctor Howell would have  
 10 transferred the application to the Special Emphasis Division for  
 11 process. When the Special Emphasis Division notified Doctor  
 12 Howell that they could not consider funding of Project Read  
 13 consistent with established priorities of OJJDP and the Special  
 14 Emphasis Division, NIJJDP formally rejected the application.

15 Your Honor, Project Read contends that Section  
 16 228(a) of the Juvenile Justice Act should be construed to require  
 17 that Read be funded in perpetuity that once any OJJDP program or  
 18 project is funded it must receive funding as long as the Act  
 19 continues to exist. In fact, Your Honor, Congress has  
 20 vested in the LEAA administrator the authority to establish  
 21 criteria for continuation funding of programs to carry out the  
 22 Congressional policy. On July 25th, 1974, in explaining the

1 rationale for the Section 228(a) continuation policy, Senator  
 2 Birch Bayh, a co-sponsor of the Senate bill, stated and I  
 3 quote: "Most of the Indiana Youth Service Bureaus are local,  
 4 nonprofit agencies that have proven that private agencies can  
 5 present an effective way to deal with youth in trouble. Such  
 6 programs may be funded by the state in the new Part F. These  
 7 Youth Service Bureaus have had problems in the past in obtaining  
 8 information concerning the length of funding contemplated by  
 9 LEAA. Under the new Part F, the policy of Congress is clearly  
 10 stated that projects which are successfully evaluated shall  
 11 receive funding. With the passage of new Part F, this policy  
 12 should be implemented so that programs such as Youth Service  
 13 Bureaus will be able to work out with LEAA an orderly method of  
 14 development, implementation and length of funding."  
 15 LEAA has established, through the exercise of its  
 16 statutory authority to implement Section 228(a), policies  
 17 that meet the need cited by Senator Bayh by providing funding  
 18 through the establishment of project period. For Formula  
 19 Grants and Special Emphasis programs, the policies provide for  
 20 the establishment of a project period in the program description.  
 21 This meets the Congressional concern that applicants for  
 22 programs know in advance the length of funding they will receive.

1 For other programs and projects that are unsolicited or non-  
2 competitive, a consistent agency practice has evolved that  
3 establishes discrete project periods in accordance with the  
4 terms and conditions of the individual grant awards.

5 In the case of Project Read, three separate  
6 projects were funded, each for a specific period of time.  
7 Continuations for subsequent project periods are then evaluated  
8 in accordance with criteria established by the program office.  
9 This practice is consistent with the Congressional intent  
10 behind Section 228(a) and permits the flexibility needed to  
11 administer a federal assistance program.

12 These policies and practices have been consistently  
13 carried out since the passage of the Act in 1974. They have  
14 not been the subject of Congressional debate or criticism.  
15 LEAA's explanation of and rationale for the policy were  
16 articulated in February of 1976 in response to Congressional  
17 staff inquiry which is on the record. No negative Congressional  
18 response was received by LEAA. No criticism was leveled. When  
19 the JJ Act was reauthorized in 1977, the Congress did not see  
20 fit to modify Section 228(a) or to comment on LEAA's implementa-  
21 tion of the policy. LEAA contends that, as a legal matter,  
22 interpretation of Section 228(a) was a matter of agency

1 discretion, that this discretion has been exercised in a manner  
2 consistent with the Congressional intent, and that the agency  
3 policy is entitled to great weight and deference. It should not,  
4 under established legal principles, be disturbed unless it is  
5 clearly erroneous and inconsistent with the law.

6 We look forward to submitting a legal brief following  
7 the hearing detailing the legislative history of the Section  
8 228(a) provision and the agency's authority to implement that  
9 section in accordance with the statutory purpose.

10 JUDGE NEEDLEMAN: I just have a few questions I want to  
11 ask you at this stage.

12 Are you saying that as a matter of law Section 228(a)  
13 comes within the rubric of 5 USC 701(a)(2); namely, left to the  
14 discretion of the agency beyond the scope of a court of reviews?

15 MR. WILSON: It is not beyond the scope of the judicial  
16 review, Your Honor, but we feel judicial review is limited  
17 to the determination of whether the agency acted in a manner  
18 consistent with the statute. In other words, where there are  
19 different interpretations possible of a statutory provision,  
20 the court will not determine whether an agency's interpretation  
21 is what the court would have interpreted it, but whether it is  
22 reasonable and consistent with all statutory purposes and the.

1 provisions of the statute.

2 JUDGE NEEDLEMAN: Can you cite any authority for the  
3 proposition that a statute such as 228(a) has the language  
4 "shall" and it creates a matter beyond court review as  
5 complied by 701(a)(2)?

6 MR. WILSON: We feel that Section 228(a) is  
7 directory in a sense that the agency is required to establish  
8 policy to implement the section.

9 JUDGE NEEDLEMAN: Now, I understand here besides that,  
10 the issue of agency review by a court is not really the point  
11 of this proceeding at all. Obviously, I am not the reviewing  
12 court. The charge that is being made here is that you have  
13 violated the statute. The charges are being made here that  
14 you, the government, have violated Section 228(a). It has  
15 nothing to do really with what a reviewing court would do in  
16 terms of exercising discretion if you had that discretion.  
17 The specific charge is being made by Read that you violated  
18 228(a), and as far as my job is concerned, it is to determine  
19 whether, in fact, Section 228(a) has been violated; not whether  
20 there is a reviewable issue here.

21 MR. WILSON: I'm not saying that, Your Honor. What I'm  
22 saying is that the agency's implementation of the policy

1 established in Section 228(a) is entitled to some deference  
2 if the agency's interpretation is consistent with the  
3 statutory provision.

4 JUDGE NEEDLEMAN: Are you saying that I should not only  
5 be guided by the case law which now exists for Section 701, but  
6 also 706 of the APA; namely, under what circumstances will  
7 an agency exercise judgment. Are you saying that is the  
8 applicable case law here?

9 MR. WILSON: We will address that issue in our brief.

10 JUDGE NEEDLEMAN: I don't really see it that way, but,  
11 of course, it seems to me that the agency review by the Circuit  
12 Court of Appeals is quite different from a charge that you have  
13 not adhered to your own statute. Now, I could be wrong about  
14 that. I welcome any briefing on that question. It seems to me  
15 that body of law is not really apposite. But, again, I welcome  
16 your brief to show that.

17 I would note, by the way, there are recent cases,  
18 particularly in the D. C. Circuit, which indicate that even  
19 cases, rare cases that come under 701(a)(2) the matter is left  
20 to the discretion of the agency, but that means the absolute  
21 discretion. And the bridge between 706 review and 701(a)(2)  
22 review is narrow. But that is only due to the question of the

1 powers of a Circuit Court of Appeals and the policy of the  
2 Circuit Court of Appeals to defer to the best judgment of the  
3 agency. Here the charge is being made that, in fact, the agency  
4 does not have any judgment because the statute says that you  
5 shall do certain things and you didn't do it.

6 But, again, I just raise that point because I notice  
7 that in your prehearing brief there, too, you seem to want to  
8 measure discretion with the power of the Court of Appeals  
9 review of discretion. I do not understand that to be the  
10 principle that we should be following.

11 Let me get to one more matter. You have already  
12 stipulated with counsel for Read that there are no LEAA  
13 regulations or guidelines which establish criteria for the  
14 continuation of funding?

15 MR. WILSON: Yes.

16 JUDGE NEEDLEMAN: That being the case, haven't you already  
17 on the face of the matter violated Section 228(a)?

18 MR. WILSON: No. What we're saying, Your Honor, is  
19 that the practices that have evolved within the agency for  
20 reviewing unsolicited noncompetitive grants for continuation  
21 is consistent with Section 228(a). We have specific policies  
22 that are applicable to the Formula Grants program and to

1 announced Special Emphasis initiatives and that the program office  
2 acted in a manner consistent with those policies.

3 JUDGE NEEDLEMAN: What are the criteria for evaluating  
4 Project Read?

5 MR. WILSON: Well, those will be articulated by the  
6 personnel from the office --

7 JUDGE NEEDLEMAN: You have stipulated there are no LEAA  
8 regulations or guidelines to establish criteria. How can anyone  
9 testify to something that you've already stipulated away?

10 MR. WILSON: I'm not saying that the criteria that are  
11 used to evaluate continuation applications are pursuant to  
12 guidelines or regulations. I'm saying that as a matter of  
13 practice.

14 JUDGE NEEDLEMAN: Even going beyond that paragraph of the  
15 stipulation you've also stipulated that performance of Project  
16 Read was satisfactory and, in fact, you have stipulated that  
17 if called to testify, presumably, people who are familiar with  
18 the program, Read ought to have exemplary status. So what  
19 criteria are you referring to beyond the fact that it is a  
20 yearly funding situation and you establish priorities? Are  
21 those the criteria you're referring to?

22 MR. WILSON: Those are among the criteria that are used.

1 yes, sir.

2 JUDGE NEEDLEMAN: Well, this afternoon you emphasized the  
3 fact that Project Read was funded for a specific period, and  
4 you attach great weight to that. Isn't every LEAA project, no  
5 matter in which cubbyhole it fits, funded for a specific period?

6 MR. WILSON: Yes, they are, Your Honor, but, for example,  
7 in the Special Emphasis program in competition for programs  
8 we establish project periods. We announce programs under which  
9 funding will be viable beyond the initial period of funding  
10 so that those projects have an entitlement to receive  
11 continuation funding if project performance is satisfactory.  
12 At the end of this established project period, the program is  
13 completed.

14 JUDGE NEEDLEMAN: Well, as a matter of government disburse-  
15 ment, does LEAA like every other agency's type of budget, aren't  
16 there budgetary reasons why each of your grants do, in fact,  
17 have some reference to a beginning period and ending period?

18 MR. WILSON: Grant continuations are always subject to  
19 availability of funds. No agency has the authority to obligate  
20 funds in advance of the appropriations made by the Congress.

21 JUDGE NEEDLEMAN: But Congress knew all about that.  
22 Congress knew all about how funds are appropriated and how

1 grants are issued. Yet knowing that, Congress told you to  
2 continue satisfactory programs.

3 MR. WILSON: Our guidelines and our practice with regard  
4 to these unsolicited proposals makes that one of the criteria  
5 in determining whether to continue the funds. The availability  
6 of funds is always a condition precedent to a determination to  
7 continue funds, the availability of appropriations. So that if  
8 the agency had a radical decrease in the amount of funds  
9 available and were not in a position to be able to meet commit-  
10 ments that had actually been made, we would not be legally able  
11 to make those, and we're obligated to make those in the absence  
12 of appropriations.

13 JUDGE NEEDLEMAN: Are we going to hear anything substan-  
14 tively today about the performance of Project Read and why  
15 a decision was made to discontinue?

16 MR. WILSON: We're going to hear testimony as to the  
17 procedures that were followed in the office and the basis for  
18 the determination not to continue funding Project Read.

19 JUDGE NEEDLEMAN: I just have a few more points about the  
20 stipulation. In the stipulation, paragraph 2, there is a  
21 reference to the first grant being given to the American  
22 Correctional Association.

1 MR. WILSON: Yes.

2 JUDGE NEEDLEMAN: What is the connection between the  
3 American Correctional Association and Project Read?

4 MR. WILSON: As I understand it, the American Correctional  
5 Association received the grant. Doctor Carsetti at that point  
6 in time administered the grant as the project director for  
7 Project Read as an employee of the American Correctional  
8 Association.

9 JUDGE NEEDLEMAN: And then Project Read was a separate  
10 entity?

11 MR. WILSON: That's correct.

12 JUDGE NEEDLEMAN: Do you accept that, Ms. Lyons?

13 MS. LYONS: Absolutely. At the end of that first grant  
14 period it incorporated and split off. It is now a corporate  
15 entity.

16 JUDGE NEEDLEMAN: All right.

17 Paragraph 5 of the stipulation refers to the fact  
18 that on January 9, 1980 Project Read received a no cost extension  
19 of its current grant to June 30th, 1980. What is a no cost  
20 extension?

21 MR. WILSON: A no cost extension is an extension of the  
22 budget periods specified in the grant award during which the

1 grantee is entitled to obligation funds. In other words,  
2 we extended the ending date of the grant. No new funds were  
3 provided. It just extends the authority to obligate the funds  
4 that have already been awarded to the project.

5 JUDGE NEEDLEMAN: If such funds had not already been  
6 expended?

7 MR. WILSON: That's correct.

8 JUDGE NEEDLEMAN: Project Read's fiscal 1979 funds ran out  
9 September 30th, 1979.

10 MR. WILSON: That was the ending date of the grant, yes.

11 MS. LYONS: No. No.

12 JUDGE NEEDLEMAN: Just one minute. Are you saying that  
13 if there are any funds left over from the previous grant,  
14 Project Read may expend those funds until June of 1980?

15 MR. WILSON: Yes.

16 JUDGE NEEDLEMAN: Is that your understanding?

17 MS. LYONS: That is my understanding of a no cost extension,  
18 yes.

19 JUDGE NEEDLEMAN: Am I right or wrong?

20 MS. LYONS: No cost extension, you're right. There is  
21 only one factual area here which is the grant period of the  
22 last grant was December 14th, 1977 to December 15th, 1979.

1 It wasn't at the end of the fiscal year. It was never on a  
2 fiscal year basis. There were some funds as of December 15th.  
3 All those funds were expended as of today.

4 JUDGE NEEDLEMAN: But you accept counsel's clarification  
5 of the stipulation?

6 MS. LYONS: Yes.

7 JUDGE NEEDLEMAN: All right. This has nothing to do with  
8 the stipulation, but I would like this one point clarified;  
9 namely, why do we have this shooting match at all? If I under-  
10 stand, Mr. Dogin's policy announcement and even the testimony  
11 yesterday of Mr. West, both of those organizations within LEAA  
12 could conceivably announce a competitive program for which  
13 Project Read could compete.

14 MR. WILSON: That's correct.

15 JUDGE NEEDLEMAN: First of all, is there such an announce-  
16 ment planned, do you know?

17 MR. WILSON: There will be announced during this fiscal  
18 year a Special Emphasis Division program which is titled  
19 "Capacity Building" which is a broad program, which would  
20 probably encompass the type of project that Project Read is  
21 currently administering. But that program won't be funded until  
22 the very beginning of fiscal year 1981. Probably right at the

1 beginning, early October.

2 JUDGE NEEDLEMAN: Which office is going --

3 MR. WILSON: Excuse me, early October of 1980, which is  
4 fiscal year 1981.

5 JUDGE NEEDLEMAN: Which office is going to announce that  
6 program?

7 MR. WILSON: Special Emphasis.

8 JUDGE NEEDLEMAN: Is your client informed of the  
9 prospect of such a competitive announcement?

10 MS. LYONS: Not that I'm aware.

11 JUDGE NEEDLEMAN: Well, obviously, it has not been done  
12 yet.

13 MS. LYONS: I can ask if there has been a notice of  
14 "Capacity Building" program to Project Read.

15 JUDGE NEEDLEMAN: Yes. Off the record.

16 (Discussion off the record.)

17 JUDGE NEEDLEMAN: Back on the record.

18 Ms. Lyons.

19 MS. LYONS: Doctor Carsetti informs me that Project  
20 Read has received no notification from LEAA about a competitive  
21 program that they might compete for called "Capacity Building"  
22 in the Special Emphasis Division.

1 JUDGE NEEDLEMAN: So, in effect, what you're saying  
2 to me is that your client is out of business right now?

3 MS. LYONS: My client is out of business today.

4 JUDGE NEEDLEMAN: And minimally will be out of business  
5 until October of this year which, assuming that competitive  
6 announcement is going to be made and that Project Read in  
7 competition with everyone else in the world is able to get  
8 that project?

9 MS. LYONS: That's right.

10 JUDGE NEEDLEMAN: Let me ask you one more question, Ms.  
11 Lyons. Is your client totally dependent upon LEAA funds for  
12 its operation?

13 MS. LYONS: Yes. In the past month, and let me see if I  
14 can express this accurately if you would like it clarified for  
15 the record, some time within the past two months the arts  
16 component of Project Read, which uses drama as a literacy  
17 vehicle for kids, got a six thousand dollar grant from the D. C.  
18 Commission on the Arts and Humanities. One of the purposes  
19 of the no cost extension from LEAA was to have the umbrella  
20 organization survive while that six thousand dollars was spent.  
21 That as well is finished as of this point. I should note with  
22 respect to the no cost extension that it did require, even to go

1 into this month, that Doctor Carsetti not receive only fifty  
2 percent of her salary. And she received nothing as of today,  
3 which was the last pay period for any staff. There are to  
4 my knowledge (just nod if I'm wrong) no other money service  
5 existent at this time. One of the real problems of what we  
6 call the fundamental unfairness problem here is the grant  
7 period as you may recall ended on December 15, 1979. There  
8 was no notice from LEAA that continuation funding wouldn't  
9 be supplied until late November. So we are talking about a  
10 matter of weeks in which this project had the opportunity  
11 to go out and hussle other monies.

12 JUDGE NEEDLEMAN: Let me ask both counsel one further  
13 question. Do you recall yesterday that Mr. Rector testified  
14 that Section 228(a) was drawn, at least part of the idea  
15 came from, I believe he said it was the Economic Opportunity  
16 Act, is that correct?

17 MS. LYONS: I think that is what he said as well.

18 JUDGE NEEDLEMAN: Does its counsel know of any precedent  
19 under the Economic Opportunity Act which relates to this? I  
20 know that you cited the Hawaiian Kona case in your prehearing  
21 brief. In reading that case, I don't see any reference to a  
22 section which resembled Section 228(a). In fact, the issue

1 there, I believe, was again the question of court review  
2 authority of agency discretion. I didn't see any reference  
3 in that opinion (I read it rather quickly this afternoon)  
4 about the agency operating under the kinds of constraints  
5 which appear in Section 228(a).

6 MR. WILSON: I'm not aware, Your Honor, of any existing  
7 statutory provisions that track Section 228(a). Those cases  
8 did not bring up any similar funding provision.

9 JUDGE NEEDLEMAN: Do you know of any?

10 MS. LYONS: Interestingly enough, Judge, one of the cases  
11 cited by LEAA in their prehearing brief, National Consumer  
12 Information Center versus Alagos to the director of CSA, the  
13 predecessor of OEO, created under the Economic Opportunity Act,  
14 the court is dealing with -- well, I would ask you to read it  
15 but it appears to be an amendment to what was a mandatory funding  
16 provision to make it a discretionary funding position and the  
17 court appears to hold that for the duration of time that it  
18 was mandatory they had to be funded, but once it became a  
19 discretionary -- I read this very quickly last night -- until  
20 Mr. Rector had raised that it had never come up in our research  
21 that, indeed, the language of 228(a) might have been borrowed  
22 from another statute.

1 JUDGE NEEDLEMAN: That raises an interesting question in  
2 my mind because you may have conflicting signals in the juvenile  
3 delinquency statutes. Because here in 228(a) it tells the  
4 administrator what he shall do and yet the funding sections  
5 of the statute read like the funding sections in the NSCS  
6 case; namely, that the administrator is authorized to spend.  
7 I don't know how far you get with that, but, anyway, I was  
8 searching for some process where you do have this kind of  
9 continuation policy. That's what I am interested in and I was  
10 wondering whether counsel has found any.

11 MR. WILSON: I haven't.

12 MS. LYONS: No, I have not.

13 JUDGE NEEDLEMAN: During the briefing period maybe you'll  
14 research that question.

15 MS. LYONS: Yes.

16 JUDGE NEEDLEMAN: All right, Mr. Wilson.

17 MR. WILSON: I would like to call as the first agency witness  
18 Doctor James C. Howell.

19 LEAA to maintain the issues on his behalf, offered  
20 and introduced the following evidence, to wit:

21 JUDGE NEEDLEMAN: Doctor Howell, do you swear the testimony  
22 you're about to give will be the truth, the whole truth and

1 nothing but the truth?

2 DR. HOWELL: Yes, sir.

3 JUDGE NEEDLEMAN: Keep all the exhibits in front of you  
4 in case you need to refer to them.

5 DR. HOWELL: Thank you.

6 DR. JAMES C. HOWELL, a witness called to testify on  
7 behalf of LEAA, being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. WILSON:

10 Q State your full name for the record.

11 A James Carlton Howell, H-o-w-e-l-l.

12 Q What is your current position within OJJDP?

13 A Well, I have two titles, director of the National  
14 Institute for Juvenile Justice and Delinquency Prevention, and  
15 deputy associate administrator of OJJDP and LEAA.

16 Q Doctor Howell, how long have you been an employee  
17 of LEAA?

18 A Just over five years.

19 Q How long have you been with the National Institute of  
20 Juvenile Justice and Delinquency Prevention?

21 A Since its establishment.

22 Q How long have you been the director of the Institute?

1 A About three years.

2 Q As director of the Institute, do you administer  
3 the National Institute for Juvenile Justice programs authorized  
4 under Part C of the Juvenile Justice and Delinquency Prevention  
5 Act?

6 A Yes, sir, that's correct.

7 Q Is your budget for the operations of the Institute  
8 separate from that of other divisions or entities within OJJDP?

9 A Yes, that is correct. Each fiscal year we have to  
10 submit a program plan to the head of the office of the  
11 Institute portion of the program. We are allocated in the  
12 budget of the office a separate budget amount each fiscal year  
13 as well.

14 Q Would you tell us what the amount of your budget was  
15 for fiscal years '78, '79 and '80?

16 A Well, not exactly. But in '78 we had a budget  
17 allocation of eleven million and we had five million carryover  
18 funds from fiscal year 1977, which brought our total budget  
19 for fiscal year '78 up to \$16 million. In fiscal year  
20 '79 our budget was about eleven million. As I recall, there  
21 was a carryover from '78, '79 of about \$170,000, something  
22 like that. So it is just over eleven million. Then in fiscal

1 year '80, eleven million plus carryover, I think from '79 to  
2 '80, of about either thirteen or seventeen thousand, somewhere  
3 in that neighborhood.

4 Q Are there limitations on the amount of money that  
5 OJJDP has budgeted that are established by the Congress?

6 A On the amount OJJDP --

7 Q Excuse me. On the amount that the Institute receives  
8 out of the overall OJJDP appropriation?

9 A Yes. As was indicated yesterday in the legislative  
10 history a ceiling is placed of not more than eleven percent  
11 of the total OJJDP appropriation for each fiscal year.

12 Q I draw your attention to Joint Exhibit 1, which is  
13 a catalog of federal proposals. Would you read the section of  
14 that document entitled "Objectives"?

15 A Yes, sir. "To encourage, coordinate and conduct  
16 research and evaluation of juvenile justice and delinquency  
17 prevention activities; to provide a clearinghouse and  
18 information center for collecting, publishing, and distributing  
19 information on juvenile delinquency; to conduct a national  
20 training program; and to establish standards for the  
21 administration of juvenile justice."

22 Q Does that statement accurately reflect the major

1 objective of NIJJDP?

2 A Yes, it does. It does more than that, though, in that  
3 it outlines main functions of NIJJDP. We have four statutory  
4 mandated functions, which are covered in this general statement  
5 of objectives. Those four functions are research and  
6 evaluation as the first function, and, secondly, training;  
7 thirdly, clearinghouse; and, fourthly, development of standards  
8 for administration of juvenile justice.

9 Q Mr. Howell, would you read the section of that document  
10 entitled "Criteria for Selecting Proposals"?

11 A "Applications are judged according to their consistency  
12 with the policies and program priorities established by the  
13 Juvenile Justice and Delinquency Prevention Act. Specific  
14 criteria are applied that are related to the particular program  
15 areas under which projects are funded. The criteria are  
16 incorporated in the individual program announcements."

17 Q Do you then in establishing your annual program plan  
18 take into account priorities that have been formally established  
19 for your office?

20 A Certainly. We do that each year in the course of  
21 developing our program plan for the upcoming fiscal year.

22 Q We will come back to that. You're familiar with the

1 funding history of Project Read?

2 A Yes, sir.

3 Q Read was initially funded in '76, was it not?

4 A That's correct.

5 Q Can you tell us how, to your knowledge, that  
6 project came to the attention of NIJJDP and how it came to be  
7 funded?

8 A I'm not sure about how it came to the attention of  
9 NIJJDP. I wasn't director of the Institute at that time,  
10 as I recall. I believe Mr. John Greeson was acting director  
11 of NIJJDP at the time. However, the point at which I do  
12 recall dealing with it was at the point where staff were  
13 discussing the funding of it. Our attitude toward it was that  
14 we couldn't and for other reasons didn't want to get our  
15 training program off the ground at that time as mandated in the  
16 legislation, that is the training center, and I'll refer to it  
17 as training center rather than training institute to reduce the  
18 confusion here, but we were aware at that time that we would  
19 be establishing that training center at a later point in time  
20 so we had an interest in getting our training program off the  
21 ground, getting something underway, so as to show some activity  
22 in the area, get some training activities going until such time

1 as we wanted to and were able to establish the training center  
2 as mandated. So, our thinking on it was that the Read  
3 activity was something that was peripheral to our legislative  
4 mandates. There is no specific mandate certainly in that area.  
5 We viewed it as being permissible under our legislative  
6 authority, but that it was something that we wouldn't be  
7 criticized for. Who could criticize providing literacy training  
8 and education for kids? That was our thing. So we decided  
9 to support it on that basis back in '76.

10 Q Do you recall what authority under the JJDP Act that  
11 this particular training program was funded?

12 A Section 244, subsection 1, I believe.

13 Q Could you read that, please?

14 A Yes, Section 244, subsection 1, states: "Develop,  
15 conduct and provide for training programs for the training  
16 of professional, paraprofessional, and volunteer personnel and  
17 other persons who are or who are preparing to work with juveniles  
18 and juvenile offenders."

19 Q Would you read the antecedent part of that section?

20 A Yes, sir, the beginning of Section 244 under the  
21 heading "Training Functions," it states that "The National  
22 Institute for Juvenile Justice and Delinquency Prevention is

1 authorized to . . ." and then it goes on.

2 Q Would you say that authority is permissive in nature,  
3 that it permits the Institute to fund those types of training  
4 programs?

5 A Yes, certainly. Very broad range of activities.

6 Q Did the focus of the Read grant change over a period  
7 of time from the time it was initially funded until the third  
8 grant was awarded?

9 A Yes, it did. There was a major change prior to  
10 funding it in fiscal year 1978. I think that is the most  
11 significant change in programmatic emphasis that has been made.  
12 What happened was that up until that time Read had primarily  
13 focused its activities on training educators within correctional  
14 institutions and in the course of our reviewing the application  
15 for the two-year award that began in FY'78, we did ask Read to  
16 refocus their efforts primarily on community-based alternatives  
17 to institutions, that is, to move the program from within  
18 institutions to outside of institutions to the community-based  
19 alternatives area.

20 Q Why was that focus of the grant changed?

21 A Well, it was mainly because of our philosophy with  
22 respect to training, philosophy that I shared with the then

1 administrator of OJJDP, Mr. Rector; namely, that to the  
2 extent that you strengthen programming within correctional  
3 institutions, you may well increase the likelihood of youth  
4 being placed there in order to provide for them access to those  
5 training programs. So, given the philosophy of our legislature,  
6 the intent of Congress to decrease reliance on correctional  
7 institutions, particularly large training schools, we felt it  
8 important to refocus the program on the community-based area.

9 Q In addition to your other responsibilities, do you  
10 serve as the project monitor for the Read grant?

11 A Yes, that is one of the hats that I wear.

12 Q When did you begin that monitoring responsibility?

13 A I believe it was in the fall of '78. It may have  
14 been '77, though. I would have to check this to be sure. It  
15 was when we lost the last of the program training staff we had  
16 there. I had no choice but to assume monitorship.

17 Q Were you involved with review of the Read application  
18 for continuation of funding for the last two-year grant that  
19 was awarded?

20 A That's correct. That is helpful. It would have  
21 been the fall of '78 that I became officially the project  
22 monitor.

1 Q Had you had any discussions with Doctor Carsetti  
2 with regard to continuation prospects for the Read project  
3 prior to the award of the two-year grant, the last two-year  
4 grant?

5 A Yes. I do recall talking with her about it at that  
6 time, about the prospect for funding. We did that again with  
7 respect to the current continuation application. We had a  
8 number of conversations in which we talked about future  
9 prospects for funding. As has already been brought out, we were  
10 dealing with the project on a grant period by grant period  
11 basis. So, on those two instances we discussed the prospects  
12 for funding at some point in the course of submission of the  
13 application. We also discussed each time and on other occasions,  
14 I believe, our view of the project and how it was related to our  
15 priorities and legislative mandates. I was on those occasions  
16 informing Doctor Carsetti with which she seemed to agree that  
17 really HEW should be funding the project. It is an educational  
18 project and some unit of HEW, specifically the Office of  
19 Education, should more appropriately be funding the project.  
20 There was a problem then from the standpoint of its relationship  
21 to our legislative mandates in a priorities sense.

22 Q Then you had suggested to Doctor Carsetti as early

1 as 1978 there were more appropriate sources for funding  
2 Project Read?

3 A That's correct.

4 Q Was there any commitment in 1978 through your prior  
5 grant award for continuation funding to Project Read?

6 A No, not that I am aware of.

7 Q At what point in time do you recall discussing with  
8 Doctor Carsetti the prospect for continuation of Project Read  
9 in the current grant?

10 A Well, I'm not sure about the first time that we  
11 talked about it. But the most significant discussion that we  
12 had about it clearly was on August 3rd of 1979.

13 Q What was the nature of that discussion?

14 A Well, Doctor Carsetti came to my office and we talked  
15 about continuation prospects. Again, I raised the point of the  
16 priorities, the priorities issue and HEW, and so on, from the  
17 standpoint that at that time I told her that in my judgment  
18 it was extremely unlikely that we would provide continuation  
19 funding for the period that she was interested in because of  
20 several reasons; mainly the change in our priorities I indicated  
21 to her that we must establish the training center and that  
22 we had to give priority to those specific legislative mandates

1 with respect to the training center and that this activity  
2 in light of that, Read's activity, had low priority for us.

3 Q Why didn't you tell Doctor Carsetti there would be  
4 no continuation funding for Project Read from the Institute  
5 on August 3rd?

6 A Well, first of all, I don't make final decisions.  
7 on those matters. But, secondly, at that time we had prepared  
8 our draft program plan and were preparing to establish the  
9 training center as mandated by Sections 248 through 250 of  
10 legislation, subject to the approval of the head of the office.  
11 Then I anticipated at the time that I met with her on August  
12 3rd that we would be doing that in fiscal 1980, that is,  
13 establishing the training center. Those are the two main  
14 reasons I didn't tell her flat no at that point.

15 Q Did you offer at that time to assist Doctor Carsetti  
16 in finding alternative sources of funding?

17 A Yes, I did. I offered to help her, I believe, with  
18 respect -- well, we discussed several possibilities; the  
19 National Institute of Corrections, the HEW, the Office of  
20 Education specifically within HEW, and Special Emphasis funding  
21 there within the office. As I recall, those were the three  
22 possible sources that I offered to help her seek funding from.

1 Q What, if anything, did you tell Doctor Carsetti  
2 at that time with regard to the submission of an application  
3 for continuation funding?

4 A Well, she indicated to me that a staffer within  
5 the Special Emphasis Division had a special interest in the  
6 project, Marjorie Miller, and so because of that and in the  
7 course of discussing alternative sources of funding we did talk  
8 about Special Emphasis as a possibility. I suggested that she  
9 submit the application to NIJJD and in the course of reviewing  
10 the application given the time line on submission of approval  
11 of program planning, and so on, we would determine whether or  
12 not it was eligible for NIJJD funding, and at the same time I  
13 would refer it to other sources such as those we discussed for  
14 review and help her in any way I could to obtain funding  
15 elsewhere at the same time.

16 Q Did you give Doctor Carsetti any assurance that the  
17 project would continue to be funded either through NIJJD or  
18 the Special Emphasis Division?

19 A Absolutely not. I indicated to her it was extremely  
20 unlikely within NIJJD and that I couldn't speak directly to  
21 the prospects within Special Emphasis Division.

22 Q Did you at that time anticipate that the Special

1 Emphasis Division would consider funding the entire training  
2 project as currently constituted?

3 A Well, no, I didn't. My thinking was that there  
4 were components of the Read project that might qualify for  
5 Special Emphasis programming. Later Marjorie Miller and I  
6 discussed that in more detail as to what prospects were there and  
7 what her interest was in having it reviewed by the Special  
8 Emphasis Division.

9 Q The parties have stipulated that the application for  
10 continuation funding was submitted on August 22, 1979. What  
11 did you do when you received the application?

12 A Well, the next day, on August 23rd, Marjorie Miller  
13 came to me and asked me to refer the projects to the Special  
14 Emphasis Division. She indicated an interest in getting it  
15 funded, perhaps, under the -- well, at that time there was a  
16 youth arts initiative that was on the drawing boards for  
17 consideration in the context of the FY'80 program plan, and the  
18 other possibility that she and I discussed was adding it as a  
19 program component to the Project New Pride Initiative.

20 Q Doctor Howell, let me draw your attention to Joint  
21 Exhibit 2. Is this the memorandum by which you requested that  
22 the Special Emphasis Division review the application submitted

1 by Doctor Carsetti?

2 A Yes, that is correct.

3 Q Did you formally transfer this application to the  
4 Special Emphasis Division?

5 A No, I did not. This memorandum refers it to the  
6 Special Emphasis Division for their review, which is so stated  
7 in paragraph number 3, the second sentence. Its status was  
8 as a submission to NIJJD.

9 Q Is it standard operating procedure when one part  
10 of OJJDP receives an application to circulate it within all  
11 of the component parts of the office for consideration for  
12 funding?

13 A No, no. In fact, that is very rarely done.

14 Q Why was it done in this case?

15 A Well, two reasons: one, I was trying to help them  
16 find funding elsewhere, and, secondly, because Marjorie Miller  
17 had specifically asked me on the next day after the application  
18 came in to refer it to Special Emphasis for their review.

19 Q What would you have done with the application had you  
20 received a positive response from the Special Emphasis Division  
21 following its review?

22 A Well, then it would have been transferred to them had

1 that occurred.

2 Q You have already testified that the Institute is a  
3 separate program division from Special Emphasis. In what ways  
4 does your office work with Special Emphasis? How are your  
5 activities tied together?

6 A Well, mainly from the standpoint of development and  
7 evaluation of the major action programs that are funded through  
8 the Special Emphasis Discretionary grant program. We work  
9 with them in doing the background work prior to the development  
10 of the design of those initiatives, and then the evaluation of  
11 those initiatives is funded by the Institute, and then we work  
12 with them throughout the life of that program.

13 Q Are the authorities of your respective offices and  
14 division overlapping in the sense that anything that NIJDP  
15 could fund by the Special Emphasis Division?

16 A No, no, absolutely not. We have very specific  
17 legislative mandates broken down into the four areas as I  
18 indicated earlier, one of those being training. That is  
19 the legislative responsibility of the Institute. That is why  
20 I said a while ago that I wouldn't have expected the project  
21 to be funded in toto out of the Special Emphasis Division; that  
22 there might have been components of it that would qualify

1 because it was a training program primarily up to that point.

2 Q You said that you had not told Doctor Carsetti  
3 that the project would not be funded by the Institute absolutely,  
4 because your program plan was in process of review. When was  
5 that program plan for fiscal year 1980 approved?

6 A I believe it was on September 11th of '79.

7 Q Do you go through a process in the development of  
8 program plans?

9 A Oh, yes, very much so. It is a fairly elaborate  
10 process that basically involves reviewing the legislation to  
11 determine priorities and to review our activities from the  
12 standpoint of priorities that are set forth in the legislation,  
13 review of the possible continuation projects. It is at that  
14 time, that's the development of the program plan, that Section  
15 228(a) comes into place for us.

16 In the course of considering continuation projects  
17 as to whether we wish to recommend them for continuation. Then  
18 we consider other factors such as activities on the part of the  
19 rest of the office, what they have planned, how our work might  
20 tie in with those, availability of funds, availability of  
21 staff, factors such as that. I could go into more detail if  
22 you would like, but that's the gist of the process.

1 Q That's fine. I refer you to Joint Exhibit 3A, the  
2 fiscal year 1980 subprogram plan. Is that exhibit the final plan  
3 as approved for the Institute for fiscal year 1980 program  
4 planning?

5 A Yes, it is.

6 Q Would you tell us what that subprogram plan provides  
7 as to the principal activities of the Institute for fiscal year  
8 1980?

9 A Well, it covers the major area about which we were  
10 talking a while ago, the major functions of the Institute.  
11 Number one, information development and dissemination; number  
12 two, research evaluation and program development; training  
13 development; and, four, standards development for juvenile  
14 justice.

15 Q How do you determine the priorities as between the  
16 various activities in the program plan?

17 A Well, that is one of the early steps in developing  
18 the program plan, of course. We are faced with that situation  
19 here in that we were ready to establish the training center  
20 concept as set forth in Sections 248 and 50 of the legislation.  
21 So, we had to make a decision about how much money would be  
22 required to get that training center off the ground in fiscal

1 year 1980. That helped us then to determine how much money  
2 might be available for the other functional areas. But it is  
3 not quite that cleancut or that easy. You have to work back  
4 and forth. You look at continuations and then research and  
5 evaluation areas; for example, we had a large number of  
6 continuations there of projects funded in prior years. So,  
7 it is a matter of working back and forth as to the priorities  
8 and resources, staffing and so on, and our ability to respond  
9 to those legislative mandates.

10 Q I refer you to Joint Exhibit 3I of the fiscal year  
11 1980 subprogram plan. Could you tell us what was established  
12 there for the training activity for fiscal year 1980 under  
13 that plan?

14 A Well, there are only two activities indicated. One  
15 project, the first project, is the National Council of  
16 Juvenile and Family Court Judges Training. And then the second  
17 project is the training center itself. Eight hundred and  
18 twenty-five thousand for a total of one million funding for  
19 training.

20 JUDGE NEEDLEMAN: The training center, the way I understand  
21 it from Joint Exhibit 3I, has nothing to do with literacy training  
22 at all?

1 THE WITNESS: That's correct. At least it is highly  
2 unlikely that it would until we get further down the road with  
3 it. That's a possibility in the future.

4 JUDGE NEEDLEMAN: Is "Capability to train juvenile  
5 justice and alternative system practitioners and volunteers  
6 capability of training materials development," does that  
7 contemplate literacy training?

8 THE WITNESS: No, sir, it didn't. What we had in mind there  
9 was focusing the training center, whether it is the center  
10 as such or consortium of projects or what. We didn't know for  
11 sure at that time. We still haven't completed all the details  
12 of it. In any event, what we understood the Congress to  
13 intend there was a training effort that focused on the major  
14 priorities in the legislation, such as prevention, alternatives  
15 to incarceration, those types of activities; and then other  
16 foci go to other needs within the field. We are in the process  
17 of identifying those needs, whether management or what. But  
18 in any event, activities conducted by Project Read would  
19 certainly be peripheral to that legislative mandate.

20 BY MR. WILSON:

21 Q Doctor Howell, could you tell us under what statutory  
22 provision the training center would be funded?

1 A Yes, I believe that would be Section 244(3). Yes,  
2 that is correct. Section 244 authorizing the Institute to  
3 devise and conduct a training program in accordance with the  
4 provisions of -- actually it is stated in Section 249, 50 and  
5 51. And there is a footnote which apparently should read  
6 Sections 248, 249 and 250.

7 Q Would you read Section 248(a)?

8 A Yes, sir. This is under the heading of "Establishing  
9 of Training Program: 248(a). The associate administrator  
10 shall establish within the Institute a training program  
11 designed to train enrollees with respect to methods and  
12 techniques for the prevention and treatment of juvenile delin-  
13 quency. In carrying out this project the associate administrator  
14 is authorized to make use of available state and local services,  
15 equipment, personnel, facilities and the like."

16 Q Would the training center carry out this provision of  
17 the Act?

18 A Yes, it certainly will.

19 Q Do you consider that provision, Section 248, to be  
20 mandatory as opposed to discretionary authority of the  
21 Institute?

22 A I consider it to be mandatory from the standpoint of

1 the nature of the activities. For example, there are certain  
 2 aspects I think we might have some leeway on, like, for  
 3 example, establishing within the Institute a training program.  
 4 That is impractical given the fact that we only have two staff  
 5 persons, two program staff persons in our training division.  
 6 As a matter of fact, it is not a division to itself. It  
 7 is combined with standards and information dissemination as a  
 8 single division, but we do have one juvenile training specialist.

9 Q Do you have authority under Section 241(3)(4) of the  
 10 Act to enter into grants and contracts for the partial  
 11 performance of any functions of the Institute?

12 A Yes, that's correct.

13 Q Would you be doing this through the establishment of  
 14 the training center?

15 A Yes, in all likelihood a contract.

16 Q Why would the National Council of Juvenile and  
 17 Family Court Judges budget for \$175,000 in the program plan  
 18 be a priority over Project Read?

19 A Well, there are two main reasons, I think. The first  
 20 is that the legislation, the JJDP Act places considerable  
 21 emphasis on the objective of improving the juvenile justice  
 22 system and more specifically Section 244, subsection 2 under

1 "Training Functions" states as follows: "Develop, conduct and  
 2 provide for seminars, work shops and training programs in  
 3 the latest proven effective techniques and methods of  
 4 preventing and treating juvenile delinquency for law enforcement  
 5 officers, juvenile judges and other court personnel, probation  
 6 officers and correctional personnel and other federal, state  
 7 and local government personnel who are engaged in work relating  
 8 to juvenile delinquency."

9 Q So you would consider the training of judges to be  
 10 a higher priority in the Congress's eyes for funding over  
 11 a reading program?

12 A Yes, that is my interpretation of the legislation.

13 Q I draw your attention to Joint Exhibit 4. Is this  
 14 the response you received from the Special Emphasis Division  
 15 giving the results of its review of the project for funding?

16 A Yes, that's correct. It is dated November 20th, 1979.

17 Q What action did you take in response to this November  
 18 20th, 1979 memo?

19 A Well, I then proceeded to prepare a rejection letter.

20 Q I refer you to Joint Exhibit 5. Is this the  
 21 rejection letter to which you transmitted?

22 A Yes, it is. It is dated November 28, '79.

1 Q Is the basis for your denial established in paragraph  
2 3 of that letter?

3 A Yes. That is the main reason.

4 Q Would you read that, please?

5 A Yes. "Our fiscal year 1978 training priorities  
6 within the NIJJDP have been established and do not include  
7 the type of training activity under Project Read."

8 Q And in the fourth paragraph did you again suggest to  
9 Project Read there may be other alternatives to funding?

10 A Yes. In that fourth paragraph I referred to  
11 possibilities within the Special Emphasis Division. I stated  
12 that "As we have discussed, there may be competitive Special  
13 Emphasis programs under which your project might qualify  
14 which are to be announced during FY'80. I suggest that you  
15 contact Miss Marjorie Miller, Special Emphasis Division, to  
16 determine the most appropriate action guidelines under which  
17 you might apply."

18 Q Doctor Howell, would you characterize the funding  
19 of Project Read as a noncompetitive project for each of its  
20 three funding periods?

21 A Yes, I would, yes. As I indicated earlier, we were  
22 dealing with it on a grant by grant basis.

1 Q Is this the usual way that Institute grants are  
2 funded?

3 A No, it is quite the opposite. It is unusual. Most  
4 of our projects are funded through formal competitive procedures  
5 in response to formal announcements or formal solicitations.

6 Q Approximately what percentage of your grants are  
7 funded in a noncompetitive manner?

8 A Well, for FY 1980, it would be about ten percent of  
9 the total number of projects that we expect to fund this  
10 fiscal year.

11 Q Is Project Read the first grant that was ever  
12 terminated at the end of a funding period due to changed  
13 priorities?

14 A No, no. As a matter of fact, in the training area  
15 itself in FY'79, we declined to provide continuation funding  
16 for four prevention training projects that we had funded in  
17 fiscal year 1978. We initially funded them for one year. The  
18 grantees inquired as to the prospects for continuation funding  
19 and we indicated to them that we would not be able to provide  
20 continuation funding because we wanted to move on to establish  
21 the training center. That was one of the major reasons that  
22 I gave them. There were other projects as well. In the

1 training area, for example, the training project up at  
 2 Harvard called the Harvard -- well, called the Deinstitutionali-  
 3 zation Training Project," I just recently went up there on a  
 4 site visit and informed them that we would not be able to pro-  
 5 vide continuation funding again, primarily because of our need  
 6 to establish the training center. There have been other  
 7 projects outside the training area research evaluation  
 8 projects. I could list a number of them if given time, if  
 9 you would like.

10 Q Other than to change priorities of the Institute,  
 11 what other factors do you consider in determining whether or  
 12 not to continue grants to Institute grantees beyond the  
 13 established project period?

14 A Well, there are several factors such as availability  
 15 of funds, whether or not the project successfully completed or  
 16 successfully met its objectives as established in the grant.  
 17 Thirdly, whether the activity was completed or not, that was  
 18 initially funded. Then our relationship of the activities to  
 19 our priorities. I believe that may not cover all the factors  
 20 but those are certainly the main ones.

21 Q Did John Rector when he was administrator of OJJDP  
 22 ever instruct you to continue funding of all NIJJDP funded

1 grants, contracts, perpetually, ever instruct you to continue to  
 2 fund them without regard to those kinds of criteria?

3 A No.

4 Q Were projects terminated by the Institute during  
 5 his tenure as administrator?

6 A Well, I would think so. I'm trying to think of  
 7 when the projects I was just mentioning were terminated. I'm  
 8 sure there were but I can't recall offhand whether there were  
 9 any in that particular period that might appear to be eligible  
 10 for continuation. Most of our projects, you see, are for a  
 11 discrete period of time and research and evaluation projects,  
 12 they have a life of their own, a discrete life within which you  
 13 accomplish the project and that is the end of it. There is  
 14 no need to continue them.

15 Q Doctor Howell, what would be the impact on the  
 16 Institute carrying out its statutory mandate being unable  
 17 to discontinue funding to recipients of NIJJDP grant funds,  
 18 whether by grant or contract of cooperative agreements for any  
 19 reason other than the recipient received a satisfactory annual  
 20 evaluation?

21 A I think that would be unworkable unless we had a  
 22 dramatic increase each year in our budget and our level of

1 staffing. What you would be doing, you would be continuing  
 2 the projects that exist. We have a very comprehensive set  
 3 of legislative mandates. We have to go on to other things.  
 4 There is no way with our limited budget that we can meet all  
 5 of our legislative mandates so we have to address some of  
 6 them in a sequential fashion. So unless you had something  
 7 like a geometric increase in funds and staff, we wouldn't be  
 8 able to meet our mandated responsibilities. It would just  
 9 seem to me to be unworkable for training projects, for research,  
 10 evaluation projects. Those are typically completed; certainly  
 11 in the case of those kinds of projects. We could fund indefini-  
 12 tely a clearinghouse activity. That wouldn't present -- or  
 13 might not present a problem. I don't know, but in most  
 14 instances it would seem to me it would be unworkable.

15 MR. WILSON: That's all I have. Thank you.

16 JUDGE NEEDLEMAN: Ms. Lyons.

17 CROSS EXAMINATION

18 QUESTIONS BY MS. LYONS:

19 Q Just on that last point, Mr. Howell, are you going  
 20 to fund the training center next year?

21 A We expect to be able to get it funded this fiscal  
 22 year, in fiscal year 1980.

1 Q Are you going to fund it the year after that?

2 A Well, I'm not sure. It depends on whether or not,  
 3 first of all, we fund it for a one-year period or two-year  
 4 period. We don't have all that worked out yet. It is in  
 5 draft form at this point, but that decision would probably  
 6 rest on performance and the other factors I just mentioned  
 7 a while ago in making those decisions.

8 Q Didn't you just tell us that the statute says that  
 9 you have to have a training center?

10 A Right.

11 Q But you're not sure you're going to have one next  
 12 year?

13 A Well, these are all factors that might preclude us.  
 14 I can't say absolutely they will. First of all, the  
 15 administrator of the office has to approve our design for the  
 16 training center and then we will have to get approvals up the  
 17 line for whatever funding mechanism that we use. I don't have  
 18 final say on those matters. I merely make recommendations  
 19 on those.

20 Q Let me put it to you this way: You have stated that  
 21 because of a statutory mandate your training priority in  
 22 fiscal 1980 become the establishment of a training center,

1 clearly something Congress said you had to do. You then go  
2 and spend 850,000 of a million available dollars for training  
3 to design, I gather, a training center?

4 A No, no, that's not correct. First of all, it is  
5 825,000, not eight hundred and fifty. Secondly, as I indicated  
6 earlier, I don't have the final design of it worked out yet.  
7 We anticipate there will be a training resource center and  
8 that in conjunction with it there will be curriculum development.  
9 We may have some special training for top-level juvenile  
10 policymakers, decisionmakers, Juvenile Justice program  
11 administrators training for state advisory groups, and then  
12 there is the section on technical training teams for the state.  
13 So this is the type of activities I anticipate I'll cover.

14 Q Whatever, didn't you tell us the reason that you put  
15 825,000 to that activity was because Congress said you had to?  
16 Whatever the activity involves, isn't that the reason that  
17 you gave us for electing to put \$825,000 in that particular slot?

18 A Well, no, there's more to it than that. The office,  
19 you know, of course, needs training activities in support of  
20 its programs. The field needs training. We are now prepared  
21 to move into training in a major way whereas we spent the  
22 past several years since our establishment developing information

1 through research, evaluation and so on. We are now ready  
2 to make the transition in fiscal year 1980 to putting that  
3 information to use through establishing a clearinghouse,  
4 spending it, and we established in FY'78 the clearinghouse,  
5 and through establishing this training center and through,  
6 hopefully, moving into standards implementation, so it is a  
7 general transition that we are making in our Institute program  
8 in FY'79 and '80.

9 Q Is one of the reasons, sir, you elected to spend  
10 \$825,000 in your 1980 budget that Congress told you you had to?

11 A That's correct.

12 Q But you still believe that next year you could  
13 change your mind about that?

14 A Well, no.

15 Q Then --

16 JUDGE NEEDLEMAN: Let him finish his answer. Finish your  
17 answer.

18 THE WITNESS: No, I don't see how we could change our  
19 mind about it because I think that's a very specific legislative  
20 mandate. There is a lot of legislative history pertaining to  
21 the establishment of that training center. At one point of  
22 the legislative history reference is made to our establishment

1 of a training academy like the FBI Training Academy at  
2 Quantico. Now, I don't think it is the consensus that  
3 there would be that kind of activity. I honestly assure you  
4 that it won't be. But, in any event, it is a very important  
5 legislative mandate that I feel very strongly about as far as  
6 our implementing it.

7 BY MS. LYONS:

8 Q Let me ask you again, sir, do you expect to have  
9 a training center next year?

10 A I expect to establish it in fiscal year 1980, this  
11 current year.

12 Q Do you expect to have a training center in fiscal  
13 year 1981?

14 A Yes.

15 Q If the legislation is still in effect, do you expect  
16 to have one in fiscal year 1985?

17 A I don't know about a training center. We might then  
18 be able to move to this training institute within the  
19 Institute. You need to understand, I think, with respect  
20 to that that we are starting out with a resource center. We  
21 are trying to connect others with available training opportuni-  
22 ties, provide curriculum material to them, and so on. So what

1 we are establishing this fiscal year isn't fully responsive  
2 to these legislative mandates in Sections 246 through 250. So  
3 we will have to make a shift so we may no longer have a training  
4 center. We may have a training institute within the Institute.

5 Q Do you expect whatever you have to satisfy Sections  
6 248, 250, 251 of the Act, whatever the sections are to tell you  
7 to create a training center, that you'll be spending \$825,000  
8 or more per annum on that activity?

9 A No. Not necessarily. As I was indicating a while ago,  
10 one part of the revised training program plan that we are  
11 preparing at the moment is for a training resource center.  
12 Now, as to whether the other activities that I indicated like  
13 the technical training teams, training of state advisory  
14 groups, and so on, whether that would be a part of the training  
15 center and, therefore, a part of whether you could then say  
16 \$25,000 is for the training center, is something I don't know  
17 yet.

18 Q Is this particular priority going to get more  
19 expensive, less expensive or stay the same in years to come?

20 A More, I would think. It is a very comprehensive  
21 mandate.

22 Q So if your training budget stays at a million dollars

1 you are going to need more budget and more money and more staff  
2 because you're not going to be able to do anything new, are you?

3 A. I don't think it would stay at a million. I think  
4 we would have to -- well, each fiscal year, I expect, that is  
5 as long as I remain director of the Institute and so on, be  
6 shifting more of our resources into the training dissemination  
7 and the standards areas, I would think.

8 Q. My point is, Doctor Howell, that you told us you  
9 couldn't live with a continuation funding policy because it would  
10 be unmanageable.. You would have to keep supporting all these  
11 things that you were funding and you would never get to do  
12 anything new without new staff, a lot more money. You're  
13 telling us now about the creation of something that is going  
14 to take more and more and more of what you have said is a limited  
15 budget that Congress told us in legislative history was limited  
16 to eleven percent of what was ever appropriated. Isn't this  
17 going to cut into more and more of your ability to fund new  
18 creative training or any other Institute projects in the future?

19 A. First of all, I need to make a correction with respect  
20 to what you said. You attributed me as having said that I  
21 couldn't live with a continuation grant policy. That is not  
22 what I said. I said that the funding in perpetuity interpretation

1 of Section 228(a) would be unworkable, and I said we do have  
2 a continuation grant policy and I indicated the factors; but to  
3 get back to the point you're making, yes, certainly, if your  
4 budget remains fixed, we would be either making fewer starts  
5 in other areas or funding fewer continuation projects, or a  
6 combination of both. Probably both in order to expand our  
7 training activities to fully meet this legislative mandate,  
8 that's correct.

9 Q. Are you going to go back and ask Congress to repeal  
10 Sections 248, 49 and 50?

11 A. No, I would rather try and get more money and more  
12 staff. That would be my preference.

13 Q. Can you tell me where this \$825,000 is today?

14 A. It is in the Institute's budget and earmarked for  
15 training and more specifically for the training center concepts.

16 Q. Do you have a date certain at which allocations to  
17 the Institute will be spent on any activity pertaining to this  
18 training center?

19 A. Yes, we have an estimated date in our work plan. I  
20 don't recall exactly what that date is. It would be toward  
21 the end of this fiscal year.

22 Q. Towards September?

1 A Yes, before it is allocated. That's right. Before  
2 September of 1980, which is the end of FY 1980.

3 Q Maybe I'm confused. These are not monies that ought  
4 to be spent in fiscal year 1980 between September 30th, '79  
5 and September 30th, '80?

6 A That's correct, that's correct. That's what I'm  
7 saying, by September of this year, by the end of September  
8 this year, which is the end of FY 1980.

9 Q Shouldn't these monies be spent now, is what I'm asking  
10 you, and finished being spent by September 30th, 1980?

11 A In our work plan that we developed in conjunction with  
12 the program plan, we lay out a timetable for when we anticipate  
13 making those awards. So, the important thing is that it be  
14 done within fiscal year 1980. That is, the awards be made  
15 prior to September 30th. I believe it is the last day of  
16 September, whatever it is of 1980.

17 Q What happens to that money if you don't spend it by  
18 September 30th, 1980?

19 A Well, I would anticipate that we would carry it over  
20 into fiscal year 1981.

21 Q I gather, sir, that you don't read Section 228(a)  
22 of the Act to say you have to continue funding Project Read,

1 is that correct?

2 A That's correct.

3 Q But you do read Section 248 of the Act to say you  
4 have got to establish a training center?

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q If I hand you the statute, could you maybe explain  
9 to me why you find one to be mandatory and one to be  
10 discretionary?

11 A Well, I don't need an Act for that.

12 Q All right.

13 A I indicated a while ago that there is a great deal of  
14 legislative history with respect to the training center. I  
15 have a different interpretation of the legislative history with  
16 respect to Section 228(a) than has been offered here yesterday  
17 and today. First of all, although I must say I don't know that  
18 legislative history as well as others might, my understanding  
19 of it, though, in 228(a) is that it was primarily intended to  
20 apply to private, nonprofit organizations that were operating  
21 new service bureaus. I have never been of the opinion that  
22 the Congress intended that it be applied specifically to research

1 and evaluation projects, you know, in particular.

2 Q In your testimony, I believe you told us, and  
3 please correct me if I'm wrong, you referred to Section 244 of  
4 the Act which says the National Institute for Juvenile Justice  
5 and Delinquency Prevention is authorized (permission language)  
6 "to develop, conduct, provide for training programs," et  
7 cetera, et cetera, "develop and provide for seminars." You  
8 then relied on language there, it seems to me, that says  
9 basically to provide training to law enforcement officers,  
10 juvenile judges and other court personnel, probation officers,  
11 correctional personnel and other federal, state and local  
12 government personnel who are engaged in work relating to  
13 juvenile delinquency. You referred to that language,  
14 I believe, when you told us how you planned your training  
15 priorities for 1980, didn't you?

16 A Yes.

17 Q And you said that it seemed to you that Congress was  
18 concerned about judges and other law enforcement personnel  
19 because its emphasis, one of the emphasis of the Act was to  
20 improve the juvenile justice system. Is that a fair characteri-  
21 zation of your testimony?

22 A Generally. I think you may have overstated it just

1 a little bit. I don't think Congress was concerned about  
2 judges and other law enforcement personnel. It depends on  
3 what you mean by "concern." I know that Congress didn't intend  
4 that highest priority would, say, be placed there.

5 Q Let me ask you this, do you read the statute as Congress  
6 having told you that it is more important to train judges,  
7 and I'm seriously asking you about your training priorities,  
8 than it is to teach kids to read or to train teachers how to  
9 teach kids to read?

10 A Yes, I do. The reason for that is that one thing you  
11 have to take into account in looking at a legislative mandates  
12 other federal agencies have in that area. I'm not aware of  
13 any specific legislative mandate that we have in that area  
14 other than in the more general area of community-based  
15 alternatives. But, otherwise, my judgment of it is that  
16 providing for educational programs should primarily be the  
17 responsibility of the now Department of Education. Now, I  
18 don't claim to be an expert in this area, but I'm just telling  
19 you what my judgment is on it.

20 Q Let me try and get this a little clearer because I'm  
21 going to get back to you or your references to HEW. Are you  
22 saying Congress was not concerned with the funding of education

1 projects that either directly would assist kids in trouble or  
2 indirectly by training the people working with those kids,  
3 educationally?

4 A No, no, I'm not saying that; for one point that I  
5 would make is that in '77 our legislation was amended  
6 to add law-related education, so we have a very specific mandate  
7 there. And, of course, in other areas of the legislation there  
8 are references I made to the education area, like, for example,  
9 many education programs and so on. It is a matter of relative  
10 emphasis, relative priorities that I'm speaking to.

11 Q You don't read what Congress intended is to tell  
12 you that one of your purposes, one of the Institute's purposes  
13 was to train teachers who would work with the kids?

14 A Yes, I do. If I understand your question correctly,  
15 you're asking me if I believed that Congress intended us to do  
16 that.

17 Q Do you think Congress told you to do that in the  
18 statute? What do you think now as director of the Institute  
19 in terms of how you organize your priorities? Do you right now  
20 think that Congress told you to do that?

21 A I don't know about the use of the term "told."  
22 Authorized, certainly. My response would be that it is a

1 question of priorities. You have to look at it in terms of  
2 the priorities that Congress gave us and that means looking  
3 at the entire set of legislation. So, I wouldn't state it  
4 unequivocally as you have.

5 Q I refer you, sir, to the Part C of the Juvenile Jus-  
6 tice Act entitled "National Institute for Juvenile Justice  
7 and Delinquency Prevention." I'm referring to Section 241,  
8 originally what was, I gather, Section D, what has become  
9 Section F.

10 A Yes.

11 Q I ask you to read that to us.

12 A 241F?

13 Q And I'm particularly interested in the second clause  
14 that is marked in the margin "training."

15 A I don't think it is 241F that you want, is it?

16 Q I'm looking at amendments of 1977. You may be looking  
17 at the '74 Act. No. Here's the one. Would you like my copy?

18 A No, I would rather read the current legislation if  
19 you could point out to me --

20 Q Either F or D. I have the marked amendments in here.

21 A 241D. This is Section 241D. "It shall be the purpose  
22 of the Institute to provide a coordinating center for the

1 collection and preparation and dissemination of useful data  
 2 regarding the treatment and control of juvenile offenders and it  
 3 shall also be the purpose of the Institute to provide training  
 4 for representatives of federal, state, local law enforcement  
 5 officers, teachers and other educational personnel, juvenile  
 6 welfare workers, juvenile judges and judicial personnel, pro-  
 7 bation personnel and correctional personnel and other persons,  
 8 including lay personnel, including persons associated with law-  
 9 related education programs, youth workers and representatives  
 10 of private youth agencies and organizations connection with  
 11 the treatment and control of juvenile offenders."

12 Q And the verb in that sentence says -- the verb  
 13 when we talk about that difference is between mandatory and  
 14 permissive?

15 A Yes.

16 Q Does it tell that you are authorized to have this  
 17 as a purpose or that you have got to have this as a purpose?

18 A Well, it says "shall" be the purpose.

19 Q And one of your purposes shall be to provide  
 20 training to teachers and other educational personnel?

21 A Right.

22 Q Can you tell me in fiscal year 1980 what, if any,

1 training you're providing to teachers or other educational  
 2 personnel?

3 A In fiscal year 1980?

4 Q Yes.

5 A Mainly in the law-related education area. This was  
 6 a new amendment to the Act in 1977. For the most part, that  
 7 is the type of training we are doing in that area.

8 Q What does that mean?

9 A Law-related education is a fairly new concept which  
 10 refers to various approaches for teaching youth and adults  
 11 about their respective rights and responsibilities under the  
 12 law.

13 Q And you're training teachers how to do that?

14 A In part, yes. The training does include that, that's  
 15 right.

16 Q Anything else that you're doing with the training of  
 17 teachers or educational personnel?

18 A On, let me think. Well, in a minimal sort of way  
 19 in other programs there might be educators included, but that  
 20 certainly is the main activity. We haven't developed a separate  
 21 training component for teachers yet per se, particularly in that  
 22 context. One of the things we have to do is figure out what

**CONTINUED**

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1 the relationship is between delinquency and the educational  
2 system. Now, the school has been established as a major  
3 factor in relation to delinquency whereas literacy per se  
4 has not. So, this is something we have to sort out before  
5 we develop a more comprehensive training component focused  
6 on educators.

7 Q I gather what you're saying is you don't really know  
8 whether Project Read does any good?

9 A No, I didn't say that. I didn't say that at all.

10 Q You haven't done the research that would demonstrate  
11 whether it does any good?

12 A I didn't say that either. What I said was that the  
13 relationship between illiteracy per se and delinquency is  
14 unknown to my knowledge; whereas, the general relationship  
15 between school failure and delinquency is well known. So an  
16 important question is the extent to which illiteracy per  
17 se contributes to that general school set of factors in relation  
18 to delinquency.

19 Q Just so I won't pursue this if it is unnecessary,  
20 is there a hint in your testimony that because you didn't  
21 know as a matter of empirical fact that there might be a  
22 connection between illiteracy and delinquency, you decided, at

1 least in part, not to continue Project Read?

2 A Absolutely not. No, I'm not saying that at all.

3 Q Do you know how many teachers Read trained during  
4 the period of time you funded it?

5 A I think I lost track. I could make a guess. I know  
6 it was on -- are you talking about the entire four years now?

7 Q Give me any figure.

8 A Well, thousand.

9 Q All right. Did you have a figure in mind when you  
10 set your priorities for Institute training programs this year?

11 A Did I have that figure in mind?

12 Q A figure. A more exact figure? Were you thinking  
13 about the numbers of people that you had reached out there  
14 working with kids in trouble?

15 A Oh, sure, we were aware of that. It is a training area.  
16 The training priority issue here, not the specific project.

17 Q Do you have any reason to believe that the Department  
18 of HEW has any authority under which to fund an educational  
19 program for kids who are not in public school?

20 A Yes, I do. I can't reference the specific legislation  
21 and I haven't examined it in a long time, so I don't know  
22 exactly what the legislation provides right now, but I was

1 thinking of the Elementary and Secondary Education Act.

2 Q Title I?

3 A I believe that would be Title I, yes.

4 Q Funds for kids outside of public school?

5 A I'm not sure about that.

6 Q Were you ever told by anyone associated with Project  
7 Read that HEW could not support a program like this because  
8 it worked with kids in correctional institutions and community-  
9 based projects --

10 A As a matter of fact, Doctor Carsetti told me that  
11 and others have told me the same thing from time to time,  
12 including folks from HEW, but I'm unwilling to accept the notion  
13 that their statutory mandate is that narrow.

14 Q But you rely on the Elementary and Secondary Education  
15 Act in support of what you just said?

16 A No. No. I didn't say that at all.

17 Q I want to ask you some questions about what you told  
18 us about the conversations you have had with Doctor Carsetti  
19 concerning funding special projects through the years. Is  
20 it safe to say that what you hoped to communicate on August  
21 3rd, 1979 to Doctor Carsetti was not a hopeful picture?

22 A With respect to funding by NIJJDP, that's correct.

1 Q Do you think she went out of that room thinking that  
2 she wasn't going to be in business today?

3 A Well, she did make, as I recall, I'm not absolutely  
4 positive about this, but I believe she did make an allusion  
5 in the course of the conversation as to what would happen to  
6 the program if they weren't re-funded.

7 Q I'm trying to get a general tone of it. Were the  
8 two of you depressed because this project you had been working on  
9 together so long was now at the end of its line and was just --

10 A Well, I didn't feel that way and I don't have any  
11 reason to believe that she felt depressed about it, certainly,  
12 but because I was optimistic about the possibilities of finding  
13 funding for the project elsewhere and that's why I offered to  
14 assist; I otherwise wouldn't have offered.

15 Q How enthusiastic were you about finding funding in  
16 the Special Emphasis Division?

17 A Well, I didn't know for sure about that. I was some-  
18 what optimistic, but that was based on what Doctor Carsetti  
19 had told me that Marjorie Miller indicated to her. I learned  
20 about Marjorie Miller's interest in the project from Doctor  
21 Carsetti in that August 3 meeting.

22 Q Are you telling us right here and now that you didn't

1 suggest to Doctor Carsetti that she go to Special Emphasis;  
2 that she suggested to you that may create a possibility?

3 A I'm not telling you that. We had discussed it and  
4 later in the conversation, as I recall, she told me what Marjorie  
5 had said, and I said, okay, let's go pursue that.

6 Q So I have it perfectly straight, you suggested  
7 that maybe Special Emphasis would consider the project and she  
8 thereupon informed you or shortly thereafter that Marjorie  
9 Miller of that division was interested in the project?

10 A I knew earlier that Marjorie had some interest in it.  
11 I believe that's correct, that it was in the course of that  
12 conversation that she indicated to me that the prospects  
13 according to Marjorie sounded, I don't know exactly how to  
14 characterize them or how she characterized them, but let me  
15 just say promising.

16 Q Did you tell her that one of the reasons that  
17 Special Emphasis would be a better place for it to be funded  
18 from because she would expand in different areas and fit herself  
19 in different projects funded by the division, and you really  
20 had nothing to support her anymore in the Institute, nothing  
21 to look into like that?

22 A I don't recall exactly what I said to her about how

1 that might work if, indeed, I said anything. My thinking about  
2 it is reflected in the memorandum in which I transferred it.

3 Q Let me refer you to paragraph 4 here and ask you to  
4 read that to us.

5 JUDGE NEEDLEMAN: Referring to what?

6 MS. LYONS: I'm sorry. This is Joint Exhibit 2.

7 THE WITNESS: This is my memorandum to Ms. Emily  
8 Martin dated September 19, 1979. I'm sorry. Which paragraph?

9 BY MS. LYONS:

10 Q Paragraph 4.

11 A "My primary reason for the referral is that, given  
12 the success of the project, I believe its impact can be even  
13 greater if it were integrated with one or more of the above  
14 programs as a specific component. A natural expansion would  
15 be to earmark 10 of Project Read's sites and place them with the  
16 New Pride Application sites. I also believe the result would be  
17 to strengthen the parent program and result in a greater impact."

18 So that is the second paragraph. The reference  
19 there is to two program areas, Youth Arts Initiative and  
20 New Pride.

21 Q Now, my only reason for questioning you about this is  
22 I got the sense in direct examination that you told her it was

1 extremely unlikely she was going to get funding from the  
2 Institute. It sounded like a very depressing meeting.

3 MR. WILSON: Your Honor --

4 JUDGE NEEDLEMAN: Let her finish the question.

5 BY MS. LYONS:

6 Q If you were looking for money from one division of  
7 the federal agency and that one division told you what you say  
8 here in paragraph 4, would you leave the room feeling like  
9 your days were numbered?

10 JUDGE NEEDLEMAN: Hold on a second. Mr. Wilson.

11 MR. WILSON: Yes. Your Honor, I object to the form of  
12 the questions. It is not proper. The counsel is making  
13 statements and then following it up with questions.

14 JUDGE NEEDLEMAN: I'll state it on a different ground. I  
15 fail to see what the state of the depression of Doctor Carsetti  
16 has to do with the Section 228(a) of the Juvenile Justice and  
17 Delinquency Prevention Act.

18 MS. LYONS: I'll answer it and just tell you there has  
19 been a lot of suggestions by the agency that there was never  
20 any expectation of continued funding, that --

21 JUDGE NEEDLEMAN: If you want to go to questions as to  
22 the expectations of Doctor Carsetti and the basis for those

1 expectations, again; but let's not go off into her --

2 MS. LYONS: Mental state.

3 JUDGE NEEDLEMAN: State of mind and whether she was  
4 depressed or not. Let's proceed.

5 BY MS. LYONS:

6 Q Do you recall, Doctor Howell, sometime in early Novem-  
7 ber 1979 encountering within the agency building the assistant  
8 director of Project Read, Catherine Pierce?

9 A I ran into her, yes.

10 Q Do you recall if she told you that she had just run  
11 into Vermont McKinney from the Special Emphasis Division and  
12 he told her on that date that there wasn't going to be any  
13 funding?

14 A The first part is correct. I think we need to be more  
15 specific with respect to the latter part of your statement and  
16 that is that it was being rejected by the Special Emphasis  
17 Division, right?

18 Q That is what I meant. Thank you for the clarification.  
19 Do you recall whether you expressed surprise upon hearing that?

20 A Yes, I did.

21 Q If you expressed surprise, did you before that  
22 encounter, November 9th, somewhere around that time expect

1 Special Emphasis to provide funding?

2 A No. It wasn't that. I was surprised to learn it  
3 from her. That's the main reason I was surprised at that  
4 moment. It was a combination of that and the fact that it had  
5 been rejected, so it was both; but right at that very moment,  
6 I was surprised that she knew it and I didn't.

7 Q Why were you surprised that it had been rejected?

8 A Well, I guess the main point was that Marjorie Miller  
9 seemed rather optimistic about it and that is the last report  
10 I had heard. As I recall, she had been on travel for an extended  
11 period of time and I had not had any conversations with her  
12 recently and I didn't really know what its status was, what  
13 happened to it in that period.

14 Q Did you have reason to believe before this encounter  
15 with Ms. Pierce that the project was going to be funded?

16 A No.

17 Q So why were you surprised it was rejected? That's not  
18 clear to me.

19 A Well, as I say, I was surprised mainly that she knew  
20 about it and I didn't. But, I had not really thought about it  
21 too much at that time. There were a lot of other things going  
22 on and I just had not really focused on it lately. That was

1 the only reason.

2 Q Did it matter to you if Project Read was out of  
3 business on January 31?

4 MR. WILSON: I object, Your Honor. It is an irrelevant  
5 question.

6 MS. LYONS: I'll withdraw it.

7 BY MS. LYONS:

8 Q How long have you been funding the Juvenile Justice  
9 project?

10 A Well, since the beginning when the Institute was  
11 established. About the same period for which we have been  
12 funding Read. We might have started a little earlier the  
13 Justice project.

14 Q Six years?

15 A No, I don't think so. Maybe five. I'm not sure  
16 exactly.

17 Q I may be reading this document which is Joint Exhibit  
18 3 incorrectly. But is it true that there are only two training  
19 projects for this year in here, one is for the training center  
20 and the other is for the Juvenile Justice?

21 A Yes, that's correct.

22 Q And you haven't spent any of the money for the

1 training center?

2 A. That's correct.

3 Q. So the only training projects you have is a  
4 continuation of a project that has been funded since the  
5 Institute was created?

6 A. I'm sorry. Would you repeat that.

7 Q. The only active training program that you have right  
8 now is a continuation project that has been funded since day  
9 one of the Institute?

10 A. No, no, we have six law-related education training  
11 projects that are underway at the moment. They just didn't  
12 require funding in fiscal year 1980.

13 Q. All right. With respect to the training budget, we  
14 are talking about roughly a million dollars, we have two  
15 training programs, right?

16 A. Well, you have one training program and one training  
17 project. The training center, more so represents a program  
18 than a project, thinking of a program as consisting of a cluster  
19 of projects. So there is an unknown number of projects  
20 represented. Probably if they go the consortium route,  
21 there might be four or five training projects under the training  
22 center, just with that clarification.

1 Q. Did you give any thought when you discovered that  
2 you couldn't get the training center off the ground until  
3 September 1980 to use some of that money to fund Project Read?

4 A. Well, yes, we did in the course of developing our  
5 training program plan. We were trying to estimate how much  
6 money would be required to get the training center off the  
7 ground and how we might do that, whether as a pilot effort or  
8 what. But, yes, we did.

9 Q. Why did you reject that idea?

10 A. Well, because of the comprehensiveness of the  
11 training mandate where we were at this point in time, in terms  
12 of implementing our training program in relation to the other  
13 activities of the office. Generally, the priorities related  
14 to the whole training area.

15 Q. But what very well may happen is \$825,000, more than  
16 seventy-five percent of your training budget for this year, is  
17 going to be unexpended as of fiscal year 1981?

18 A. No, absolutely not. If things go as planned and I  
19 feel rather confident that they will, because I probably have  
20 on my desk today our revised training program plan, if that  
21 is the case and if the work is moving along as I believe it is  
22 with respect to developing the RFP for the training center

1 (request for proposals), then I think the chances are extremely  
2 good that we would have that training center funded prior to  
3 September, at least the end of September this fiscal year.

4 Q Do you have any anticipation that you might get  
5 it funded by August?

6 A It is a possibility but that would really be pushing  
7 it. But I have no real concern about getting it funded this  
8 fiscal year.

9 Q It would be pushing it to get it into the second to  
10 the last month of the fiscal year, but you're confident,  
11 get it --

12 JUDGE NEEDLEMAN: Just one moment. Is there an objection?

13 MR. WILSON: I object. What the possibilities of what  
14 could happen under the program plan in the future are not the  
15 issue here. It is irrelevant to the nature of the direct  
16 examination of Doctor Howell.

17 JUDGE NEEDLEMAN: I think it is getting a little opinious  
18 here, Ms. Lyons. I believe you're trying to demonstrate there  
19 may be funds available.

20 MS. LYONS: All right.

21 JUDGE NEEDLEMAN: But it is your interpretation of Section  
22 228(a) that where within LEAA they must find funds to continue

1 worthwhile programs, and I don't know how fruitful it is for  
2 you to try to pinpoint an exact part of the budget which you  
3 think belongs to Project Read if that is what you're trying to  
4 do.

5 MS. LYONS: No, I am not.

6 JUDGE NEEDLEMAN: I don't understand your argument at all.

7 MS. LYONS: I don't know what the extent of your concern is  
8 with financial constraints. You raised them in my opening  
9 statement yesterday and maybe I'm overdemonstrating, but I  
10 want to make clear it is our position that financial considera-  
11 tions are not a real factor in a decision to deny this  
12 particular application to continuation of funding. I'll move  
13 onto something else right away.

14 JUDGE NEEDLEMAN: All right. All I'm saying, I may very  
15 well be concerned with the conflict between budget and 228(a).  
16 I don't see how my concern is resolved by your attempt to trace  
17 a specific amount of money and have me in the first instance  
18 make a determination that that money has been well spent,  
19 has not been well spent or will be well spent. I'm not  
20 prepared to make that kind of determination.

21 MS. LYONS: We are being told, though, Judge, that the  
22 criteria that Congress may have been referring to in Section 228

1 and the priorities in that kind of thing that you sit and take  
 2 a hard look at the budget, in this instance a million dollars,  
 3 that you take a hard look and think about what you think  
 4 Congress told you to do, and then you reallocate your resources  
 5 and it is too bad if somebody gets bumped in the process; but  
 6 that is a difficult process. If there is discretion in that  
 7 section of the Act -- our position is there's not -- but if there  
 8 is, I think what I'm trying to get to and I don't know whether I  
 9 am successful, is that maybe the exercise of the discretion  
 10 in this particular instance was not very sound. I will go on  
 11 to something else right away.

12 JUDGE NEEDLEMAN: No, I don't see why you should go on.  
 13 Why don't you stop right here. It seems to be a very crucial  
 14 point. I'm very deeply troubled by the two conflicting views  
 15 of the meaning of 228(a) and how to resolve this very issue.  
 16 Here is the administrator telling us that not only does he have  
 17 discretion, even more importantly, he has a legislative  
 18 direction. The legislative direction is that he is supposed to  
 19 set up this training institute.

20 MS. LYONS: Yes.

21 JUDGE NEEDLEMAN: So he appropriates a certain amount  
 22 underneath of that to the training institute. Am I going to be  
 the one to second-guess the administrator whether the \$800,000

1 was extravagant, when the \$800,000 should be spent? Is that  
 2 the function of appeal under 228(a)?

3 MS. LYONS: I think if the claim is shortage of funds  
 4 made it impossible to provide continuation of Project Read,  
 5 then you have to get into that inquiry.

6 JUDGE NEEDLEMAN: Do you mean to tell me that I have to  
 7 sit here and decide whether they appropriated too much money  
 8 for this training center or not and whether they have been  
 9 diligent enough in spending it? How would I know that? How  
 10 would a reviewing authority know that? It means they would  
 11 have to go into all of the details of the planning process of  
 12 what they expect to get out of this training center, how  
 13 quickly they spend their money. Is that contemplated by the  
 14 statute?

15 MS. LYONS: I don't think so at all.

16 JUDGE NEEDLEMAN: Well, all right, again, if that is not  
 17 complied by the statute, then, what you're saying, I assume,  
 18 is that all other projects which are not mandated specifically  
 19 by the statute must all compete for the rest of LEAA's  
 20 budget and then continuing projects have this preference,  
 21 if they have a formula. That raises another point in my mind.  
 22 Apart from the training center, how will I ever know or any

1 other reviewing authority ever know what part of the entire  
2 LEAA budget is mandated by statutory provisions?

3 MS. LYONS: Just the Juvenile Justice Act appropriations  
4 would be my position. Oh, I see what your question is. The  
5 testimony I heard yesterday was that the entire office budget  
6 of discretionary monies would be Title II, was a hundred  
7 million dollars, in that vicinity. If my representations about  
8 that amount is correct, it is to those funds which come under  
9 Title II of the Act which we are talking about. I beg for  
10 correction if I'm not right.

11 JUDGE NEEDLEMAN: That is why I don't understand why you're  
12 going through this excruciating detail. It seems to me on this  
13 one you're going to lose. I mean they have the right to follow  
14 the dictates of the statute which tells them to set up a  
15 training program. Now, you're arguing with them about whether  
16 they should set up the training program or not.

17 MS. LYONS: No.

18 JUDGE NEEDLEMAN: You don't think too highly of the  
19 training program?

20 MS. LYONS: I wish they would go ahead and do it.

21 JUDGE NEEDLEMAN: It is none of your business and the  
22 speed with which they set it up is none of your business. If

1 they want to take their time and not rush into this thing and  
2 not spend all the money in fiscal '80, I don't see where you  
3 have any right to stand here and say, "Look, you're not  
4 spending that money quickly enough; give it to Project Read."

5 MS. LYONS: Only if they're saying to Project Read we have  
6 exhausted all the money we possibly had to provide continuing  
7 funding.

8 JUDGE NEEDLEMAN: But the money that is allocated to  
9 that project is not your concern. I would think that you  
10 would have to make your case on the basis of funds which are  
11 not specifically allocated to projects which are mandated by  
12 the statute. You make an extremely weak case if you're saying  
13 that we are entitled to funds which are earmarked for a required  
14 mandate. You get a hopeless case. Why don't you just proceed  
15 any way you want to.

16 MS. LYONS: Okay.

17 JUDGE NEEDLEMAN: I think the particular avenue you're  
18 pursuing is a blind alley and one which I prefer not to get  
19 into.

20 (Discussion off the record.)

21 JUDGE NEEDLEMAN: Back on the record.

22 Just one point about this. When this training center

1 or training institute within your Institute is finally  
2 established, is there going to be some form of in-house  
3 operation or what?

4 THE WITNESS: Well, I don't think so in the short run.  
5 Certainly not the way our tentative design would structure it.  
6 We may not provide any direct training at the center this fiscal  
7 year. We have startup time and so on. And I would think that  
8 at most we might have a small pilot training program, training  
9 thirty or fifty people there within the center; but we certainly  
10 don't have the wherewithal to put that training institute  
11 within our Institute. We don't have the space and staffing,  
12 and so on. Our hope is it does become an in-house effort with  
13 a staff that consists of Institute staff, but, now, given our  
14 size of staffing, we have to grant or contract it out. It  
15 has to be done externally because we don't have the wherewithal  
16 at the outset.

17 JUDGE NEEDLEMAN: Again, I'm interested in how the mind of  
18 bureaucracy works. You're setting up a training center  
19 which is supposed to meet the Congressional direction of  
20 Section 248(a). Why couldn't you invite Project Read to form  
21 the delinquency literacy training function within that training  
22 center, given the fact that on September 19th, 1979, you said

1 the project, that is Project Read, has been extremely  
2 successful. I'm quoting from Joint Exhibit 2. Basically,  
3 my question is given a project which the bureaucracy  
4 acknowledges is successful, why don't you find a place for it  
5 somewhere?

6 THE WITNESS: It is quite possible that we would want to  
7 add Project Read as a training component on down the road  
8 once we have addressed the more pressing programmatic areas  
9 or feel we have those under control. Those are such areas  
10 as how do you establish a community-based alternative to  
11 incarceration? Our legislation requires that status offenders  
12 be removed from correctional institutions and detention facili-  
13 ties placed in community-based programs. But training is  
14 badly needed for persons who are involved in the establishment  
15 and operation of such community-based alternatives. That is  
16 one of the areas we intend to address in our training center.  
17 So later on then once we have done training in that area and  
18 other priority areas, then we would be able to touch on the more  
19 peripheral areas such as learning disabilities, illiteracy.  
20 We might even, although I hope it is quite a while, get into  
21 nutrition, training, you know, in nutrition. It is just an  
22 example of another factor --

1 JUDGE NEEDLEMAN: Isn't that exactly what Congress did not  
 2 want to do? Isn't that really what Congress did not want you  
 3 to do? Based upon Mr. Rector's testimony yesterday (he had  
 4 drafted this legislation), he doesn't want you to go around  
 5 looking for new horizons once you found something that worked.  
 6 Now, look what you're doing here. You find something that  
 7 worked. You monitored this program for five years almost.  
 8 All reports come back saying the project works and apparently  
 9 the drafters were worried about this very process, the bureau-  
 10 cracy to find a project that works; since the bureaucracy  
 11 always prefers new things rather than old things, they would let  
 12 this thing wither on the vine by cutting off its appropriations.  
 13 In fact, Doctor Carsetti might not be here in eight or ten  
 14 months when you're ready to resume. She might go on to some other  
 15 field and the juvenile justice system has lost the work.  
 16 Doesn't 288(a) tell you not to do that?

17 THE WITNESS: Well, not in this sense, though, first of  
 18 all, I don't know and I don't think anyone else knows what  
 19 contribution Project Read makes toward either reduction or  
 20 prevention of delinquency, okay? The evidence that I am aware  
 21 of on Project Read is with respect to changes in reading  
 22 ability. I don't think the relationship of that change to

1 delinquency has been measured.

2 JUDGE NEEDLEMAN: Do you have the final word on the  
 3 contribution to delinquency of anything?

4 THE WITNESS: No. We are gradually refining it more and  
 5 more. We have got a real good handle on the major factors  
 6 related to it; school, family, peer group, and community,  
 7 and we can further specify to some degree, a fairly encouraging  
 8 degree, the contribution of those sets of factors to different  
 9 types of delinquency. So we are working at a pretty general  
 10 level yet, and my point, though, is that, yes, while the project  
 11 appears to be successful in terms of meeting its objective,  
 12 anyway we don't know about its contribution to delinquency  
 13 prevention or reduction, and that there are other programmatic  
 14 approaches that do appear to work in addressing more  
 15 comprehensively the delinquency problem per se.

16 JUDGE NEEDLEMAN: That seems to be a rarity. You fund  
 17 the project for five years and not being sure what it  
 18 contributes to delinquency?

19 THE WITNESS: Well, as I indicated at the outset, the  
 20 project was originally funded from the viewpoint that it is a  
 21 good thing to do. We never knew that the project would be  
 22 as successful as it has been, I think. That is really

1 encouraging that kids can be taught to -- their reading  
2 ability can be improved in a short period of time. As to  
3 whether those effects are longlasting, of course, is unknown.  
4 But, our thinking at the outset was that this is a useful  
5 thing to do whether or not it has a delinquency prevention  
6 or reduction potential.

7 JUDGE NEEDLEMAN: Is Project Read considered a research  
8 project?

9 THE WITNESS: Training. As currently designed they  
10 train educators who do literacy education work.

11 JUDGE NEEDLEMAN: Give me an example of other ongoing  
12 training projects you have?

13 THE WITNESS: We have mentioned the training with  
14 National Council of Juvenile and Family Court Judges. We had a  
15 training project up in Massachusetts.

16 JUDGE NEEDLEMAN: Family court judges?

17 THE WITNESS: Yes, sir. We also have a Deinstitutionali-  
18 zation Training project through the villages in Topeka,  
19 Kansas. I neglected to mention that one a while ago as an  
20 FY'80 activity, not for funding, but the project is still  
21 operating on FY'79, I believe. Then the law-related education  
22 training projects, the cluster of prevention training projects

1 that we founded earlier and one other project which the -- I  
2 believe it is Boy Scouts of American -- this was carried in  
3 law enforcement type training. We funded that in the  
4 amount of 30,000 once. I believe that is all the training  
5 projects that we have funded. I'm not positive, but I think so.

6 JUDGE NEEDLEMAN: Do you have any proof, I don't know how  
7 one gets proof in the social sciences anyway, do you have any  
8 proof that training of boy scouts, or for that matter family  
9 court judges, reduces the juvenile delinquency?

10 THE WITNESS: No, sir, I would be very reluctant to  
11 make that claim?

12 JUDGE NEEDLEMAN: But yet you wanted Project Read to make  
13 that claim?

14 THE WITNESS: I believe that that judges training project  
15 should be viewed not from the standpoint of delinquency  
16 prevention or reduction, but rather improving the administration  
17 of juvenile justice, which is a major objective of the  
18 legislation.

19 JUDGE NEEDLEMAN: Do you really have to be that much  
20 concerned about proof as to the connection between literacy  
21 and delinquency given the emphasis and the status itself in  
22 training of teachers?

1 THE WITNESS: Yes. Where we were headed a while ago with  
 2 the testimony that I was giving in respect to teachers, is that  
 3 yes, I do, of course, acknowledge that legislative mandate,  
 4 however I am inclined to believe that the intent of the  
 5 Congress was that training focus on the teachers would be more  
 6 so related to arbitrary codes of conduct in the schools, the  
 7 method by which they teach, the methods about which they  
 8 discriminate against kids, a lot of legislative history on  
 9 dropout, pushout, suspension and expulsion; those kinds of  
 10 factors, rather than literacy per se.

11 JUDGE NEEDLEMAN: Is Project Read, by the way, directed to  
 12 children already caught up within the juvenile justice system?

13 THE WITNESS: Yes, sir, for the most part.

14 JUDGE NEEDLEMAN: If that is true, doesn't the legislative  
 15 history clearly indicate that funding from HEW would have been  
 16 an impossibility even the bitter, let's say, fight over who  
 17 was going to get this program, and clearly HEW was taken out  
 18 of the program?

19 THE WITNESS: Yes. I concede that would add to the  
 20 difficulties. However, I'm not inclined to state that that is  
 21 not a possibility.

22 JUDGE NEEDLEMAN: Just one more question. What is the

1 National Institute of Correction?

2 THE WITNESS: That is a companion institute that is  
 3 focused primarily in the adult area that was established by  
 4 our 1974 Act. I don't believe it is in the '77 Act.

5 JUDGE NEEDLEMAN: It is a part of Juvenile Justice and  
 6 Delinquency Prevent Act?

7 THE WITNESS: Yes, it was. It was in existence earlier  
 8 and I don't recall the statutory basis for its existence, but it  
 9 was officially created by the 1974 JJDP Act.

10 JUDGE NEEDLEMAN: All right, fine.

11 BY MS. LYONS:

12 Q Doctor Howell, were there any other programs whose  
 13 performance was satisfactory that had been funded by the  
 14 Institute and whose grants had expired sometime recently that  
 15 did not receive continuation funding?

16 A Yes. There were several. There were several training  
 17 projects earlier. I named about four, five, five, I believe,  
 18 training projects that in the past -- I'm not sure exactly as  
 19 to the dates, but within the last two years. The Harvard  
 20 Deinstitutionalization Training project, I indicated to them  
 21 that we would not be interested in receiving a continuation  
 22 application because of the training center mandate, and so on.

1 There have been a number. There are a number in the research  
2 area. We just recently notified the National Center for State  
3 Courts, a project we funded for them will not be provided  
4 with continuation funding at this time.

5 Q How many of these projects that didn't get continuation  
6 funding submitted applications?

7 A Oh, I don't know offhand. What we try and do is  
8 notify folk before they submit the application as we did here  
9 with Doctor Carsetti. So, I would think that the majority of them  
10 were notified prior to their development of application.

11 MS. LYONS: We have nothing further.

12 JUDGE NEEDLEMAN: Mr. Wilson.

13 MR. WILSON: No further questions.

14 JUDGE NEEDLEMAN: Thank you very much, Doctor Howell.

15 THE WITNESS: Thank you.

16 (The witness was excused.)

17 JUDGE NEEDLEMAN: Will counsel tell me whether this is a  
18 case of first impression? Has there been any other case brought  
19 under Section 228(a)?

20 MR. WILSON: No, Your Honor, other than the materials that  
21 have been provided to you, their specific policy of implementa-  
22 tion and the memorandum from General Counsel, there are no other

1 materials that I am aware of that relate to 228(a). We never  
2 had any appeals or questions with regard to 228(a) circumstances.

3 JUDGE NEEDLEMAN: Let's just take a brief recess.

4 (Recess at 3:15 o'clock p.m.)

5 JUDGE NEEDLEMAN: On the record, please. Mr. Wilson.

6 MR. WILSON: I would like to call Emily Martin to the  
7 stand.

8 JUDGE NEEDLEMAN: Ms. Martin, will you swear the testimony  
9 you're about to give is the truth, the whole truth, and nothing  
10 but the truth?

11 MS. MARTIN: I do.

12 MS. EMILY MARTIN, a witness called to testify on  
13 behalf of LEAA, being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. WILSON:

16 Q Will you state your name, please.

17 A Emily C. Martin.

18 Q What is your current position within the Office of  
19 Juvenile Justice?

20 A I am director of the Special Emphasis Division.

21 Q How long have you been an employee of OJJDP?

22 A A little over five years.

1 Q How long have you been the director of the Special  
2 Emphasis Division?

3 A For that whole period of time.

4 Q As director of the Special Emphasis Division, do you  
5 administer the Special Emphasis program authorized by Part B,  
6 subpart 2 of the Juvenile Justice Act?

7 A Yes.

8 Q I refer you to Joint Exhibit 6, which is the "Catalog  
9 of Federal Domestic Assistance."

10 A Yes.

11 Q It is a description of the Special Emphasis Preven-  
12 tion and Treatment Program. Ms. Martin, would you review the  
13 section entitled "Objective and Special Emphasis" on 6A.

14 A Do you want me to read it?

15 Q Yes, would you review it and tell us whether it  
16 accurately describes the objectives of the Special Emphasis  
17 program?

18 A It does accurately reflect the objectives of the  
19 division and the program.

20 Q Will you tell us how Special Emphasis grants are  
21 funded, what the normal procedures are for funding Special  
22 Emphasis programs?

1 A Yes, we issue in the "Federal Register" after having  
2 solicited public comment a program guideline, and that program  
3 guideline solicits applications under competitive process. We  
4 also mail out the same guideline in the form of a program  
5 announcement to a mailing list which is six or seven thousand  
6 names in length. And the applications come in on a specific  
7 date as specified in the guideline. We then review those  
8 competitively and come up with the best applications submitted,  
9 and then recommend that those applications be awarded.

10 Q Has the division ever funded unsolicited -- which  
11 we will define broadly for the purposes of this question -- as  
12 noncompetitive projects?

13 A Yes, we have.

14 Q How do concept papers or applications for unsolicited  
15 proposals come to the attention of the Special Emphasis Division?

16 A Applicants submit applications to our office and, of  
17 course, anyone is free to submit an application to a federal  
18 agency. Once we receive that application we have a responsi-  
19 bility to review it and to make a recommendation with respect  
20 to its merits for funding. If we have monies allocated for  
21 unsolicited proposals in the past, we would make a recommendation  
22 to the administrator of the office with respect to funding or

1 not funding. This is a category of programs that we have  
2 eliminated, however, and will be issuing a guideline which will  
3 solicit general type programs through a competitive process.  
4 That guideline will be going into the "Federal Register" in  
5 April for the solicitation of applications in June, as a matter  
6 of fact June 30th.

7 Q Have you ever funded unsolicited proposals that have  
8 been directed to your attention by the administrator of the  
9 office?

10 A Yes. I have done that.

11 Q Are those proposals rigorously evaluated to determine  
12 their merit?

13 A Not normally. Not normally.

14 Q Would you say that this has been a frequent fact --

15 A There was a period of time when we were directed to  
16 award specific projects that had been identified by the  
17 administrator of the agency.

18 Q By the administrator --

19 A I'm sorry, by the administrator of the office.

20 Q Which administrator of the office did this practice  
21 occur under?

22 A Under the administration of Mr. Rector.

1 Q For announced Special Emphasis programs, do you follow  
2 the continuation support policy that is set forth in Joint  
3 Exhibit 7, which is the financial guideline provision for  
4 the continuation --

5 A Is that 7A?

6 Q 7A, yes. 7A and B.

7 A Yes, we do.

8 Q Could you explain how the financial guideline  
9 provision is implemented with regard to continuation or length  
10 of project period for projects funded under announced programs?

11 A Yes. In the program guideline we define a project  
12 period and that project period has for the most part been two  
13 or three years, and we indicate in the guideline that we will  
14 make awards either for one year, eighteen months or two  
15 years with a continuation application anticipated, and the  
16 recommendations for continuation will be based on performance.  
17 That is the extent to which they have met the stated goals and  
18 objectives.

19 Q Do you ever extend projects beyond the project period  
20 specified in the program announcement?

21 A We have done that. We do that on a case by case basis  
22 in relation as to the extent to which the applicant has or has

1 not achieved objectives, the likelihood of their being able  
2 to achieve the objectives as outlined in the program if given  
3 a specified additional amount of time.

4 Q Coming back to Project Read, Doctor Howell testified  
5 that he referred the Read application on September 19th, 1979  
6 for a Special Emphasis Division review. What did you do with  
7 that application when you received it?

8 A I referred it to Marjorie Miller, who was the program  
9 manager for the Replication of Project New Pride, and I referred  
10 it to Marjorie because it had been identified by Doctor Howell  
11 as having elements in it which might be suitable for utilization  
12 in the Replication of New Pride, which has a learning  
13 disabilities component, and I asked her to review it in that  
14 context.

15 Q I refer you to Joint Exhibit 8, which is a memorandum  
16 to yourself from Marjorie Miller.

17 A Yes.

18 Q Was that the response that you received from Miss Miller  
19 following her review?

20 A Yes.

21 Q Would you refer to 8(f) of the exhibit and tell us  
22 what Miss Miller's request was?

1 A She requested --

2 Q Bottom of the page.

3 A Yes. She ended up requesting that it be funded. "It  
4 is highly recommended that the applicant be contacted for the  
5 purposes of refining the proposal, budgeting requirements  
6 and additional material. . . I feel this program is strong  
7 enough in its concept that we may request Mr. Dogin to make an  
8 exception of this program and allow OJJDP to fund it under our  
9 authorization."

10 Q Did you forward this memorandum to David West and the  
11 acting associate administrator of OJJDP?

12 A No, I did not.

13 Q Would you tell us why you did not do so?

14 A We were finalizing at that point a policy on  
15 continuations of unsolicited applications, and I did not forward  
16 it because in the process of the review of this application the  
17 decision was made that the only applications that would be  
18 considered for the continuation were those which had been  
19 identified as unsolicited proposals, funded by the Special  
20 Emphasis Division with Special Emphasis action monies.

21 Q Did you participate in the development of this policy  
22 that you referenced for the continuation of unsolicited grants

1 funded by your division in fiscal year '78, '79?

2 A Yes, I did.

3 Q Were the results of that policy development the policy  
4 statement issued by Mr. West? That would be Exhibit 9A and B.

5 A Yes.

6 Q What did you do with reference to the Project Read  
7 proposal after you received this policy statement?

8 A I referred it to Vermont McKinney, who was the deputy  
9 director of Special Emphasis, and indicated that he should  
10 communicate with Doctor Howell about our position.

11 Q Did you then approve the memorandum drafted by Mr.  
12 McKinney, which is Joint Exhibit 4, to James Howell, dated  
13 November 20th, 1979?

14 A Yes.

15 Q Did you at the time that you signed this memorandum  
16 consider the Read application to be a pending application in  
17 the Special Emphasis Division?

18 A No, I did not.

19 Q Would you concur with the statement of Mr. McKinney  
20 in paragraph 2 of the memorandum with regard to the reasons  
21 that Special Emphasis Division was unable to consider the Project  
22 Read application for funding?

1 A Yes.

2 Q Competitive funding of program applications is  
3 covered as established by the financial grant guideline. What  
4 policy for continuations is applied to grants that are not  
5 funded under announced programs?

6 A The projects which were funded in -- not under an  
7 announced program had a project period set in their grant award  
8 in other words, the project period was normally set for a year.

9 Q In other words, the length finally determined the  
10 project period?

11 A Yes, there were a few exceptions to that. When an  
12 applicant came in and outlined a scope of work and objectives,  
13 which required that they go beyond a year, in several instances  
14 we accepted what they identified as the needed time frame  
15 and the project period that was then determined based on the  
16 scope of their objectives. I think we must have had about  
17 three of those.

18 Q Are you saying then that the normal way that you would  
19 view the funding of an unsolicited proposal was that when its  
20 project period had expired the project would be completed?

21 A Yes.

22 Q So that would you say then that funding beyond the

1 end date would be generally for a continuation of the same  
2 project or expansion of the activities, from a normal viewpoint  
3 with regard to continuations of those proposals?

4 A Well, we operate under the normal assumption that  
5 it takes from two to three years to successfully implement  
6 most of the action programs. Even though the project period in  
7 the grant award may have specified a year, it was our practice  
8 to look at them for a longer period of time in terms of the  
9 objectives that had been spelled out. If funds were available,  
10 if the policy permitted, we would recommend if performance had  
11 been satisfactory that they continue for a second year or for  
12 a third year.

13 Q Do you consider these grantees under these unsolicited  
14 proposals to have a right to continuation of funding?

15 A In no way.

16 Q To your knowledge, did any of these grantees ever  
17 have the understanding that they would be continued or had  
18 a right to be continued beyond the established project period?

19 A Only those where it was specifically spelled out in the  
20 application and specifically then spelled out in the grant  
21 management memorandum, which conveys the application along with  
22 the recommendation to the administrator of OJJDP.

1 Q John Rector testified yesterday that he was the  
2 administrator of the office from the period June 1977 to May  
3 of 1979. When was the deinstitutionalization of status  
4 offenders program originally funded?

5 A In 1975.

6 Q For how long of a project period were those grants  
7 funded?

8 A Two years.

9 Q Were Special Emphasis funds used to fund those grant  
10 awards?

11 A Yes.

12 Q How much of a total amount of funds were used?

13 A Well, the total amount of funds were, I think,  
14 something like \$11.9 million and of that amount almost 9  
15 million, I think, was Juvenile Justice monies.

16 Q How many projects were funded altogether?

17 A There were eleven.

18 Q How many of those had Juvenile Justice Special  
19 Emphasis money as part or all of their funding?

20 A I would think -- let's see. I think about seven of  
21 them had totally Juvenile Justice money.

22 Q Did these Special Emphasis, the institutionalization

1 grants terminate two years after they were funded?

2 A No, most of them did not. As a matter of fact, they  
3 had startup problems in most instances and were continued for  
4 a third year with no cost extensions. This is an extension  
5 which permits them to go on because they have funds to continue.  
6 All but five of them terminated at the end of their no cost  
7 extensions as a result of having achieved their objectives. We  
8 requested and got permission to continue five of them because  
9 their objectives had not been met, and they needed an additional  
10 period of time to do that.

11 Q Were all seven of the DSO grants that were funded  
12 with JJDP Act monies continued?

13 A All of them were not continued.

14 Q How many of them were not continued?

15 A Well, of those which were continued, only three of  
16 them had Juvenile Justice money. Two of them had Crime  
17 Control money and three had Juvenile Justice money. So if there  
18 were seven that had been funded with Juvenile Justice money,  
19 it is the difference; three from seven is what? Five. Five  
20 would have been terminated.

21 Q Were these grantees notified that they had a right to  
22 receive continuation funding?

1 A No.

2 Q Was Mr. Rector the administrator at the time that  
3 these grants were terminated?

4 A They would have been terminated in 1977 and '78. Yes.

5 Q Did the Special Emphasis Division fund a restitution  
6 initiative?

7 A Yes.

8 Q Was that in response to a program announcement?

9 A Yes, it was.

10 Q When was that program announced?

11 A That was announced in, let's see, 1977.

12 Q How much money was set aside for the funding of  
13 these programs?

14 A Thirty million dollars was set aside for the funding  
15 of them, but we only actually awarded a little over \$19 million.

16 Q How many projects were funded under the restitution  
17 initiative?

18 A Forty-one.

19 Q How much of the nineteen-some million dollars for  
20 this program, how much of the monies were Juvenile Justice  
21 Special Emphasis monies?

22 A Let's see, we funded them in two batches. One was

1 funded in September and the other group was funded like in  
2 January. I think of the \$19 million, almost \$6 million was  
3 Juvenile Justice money.

4 Q Were some of those projects funded entirely  
5 with Special Emphasis money?

6 A Yes.

7 Q And some were a mix of Special Emphasis and Crime  
8 Control money?

9 A No, we did not mix. In other words, if a grant was  
10 funded with Juvenile Justice money, it was funded entirely  
11 with Juvenile Justice money. If it was funded with Crime Control,  
12 it was entirely Crime Control.

13 Q When were the awards made under the restitution  
14 initiative?

15 A They were made in September of 1977 and like January  
16 1978. And some were awarded between that period of time, but  
17 the period of funding was like September 30th through January.

18 Q Was John Rector the administrator of OJJDP at the  
19 time those grants were awarded?

20 A Yes.

21 Q Were those grants awarded for a special time period?

22 A Yes, the project period for those projects was three

1 years, and we awarded a two-year grant initially and they  
2 will be coming in at the end of this fiscal year for the third  
3 year.

4 Q So this policy for a three-year project period was  
5 in accordance with the program announcement and in accordance  
6 with the financial guideline that we have had referenced that  
7 established the policy for funding the Special Emphasis  
8 programs?

9 A Right.

10 Q Did the Special Emphasis Division also fund the  
11 prevention program?

12 A Yes, we did.

13 Q When was this program funded?

14 A Let's see, November. The announcement went out in  
15 November 1977. We funded the projects like in October of 1977.

16 Q You said the announcements went out in November 1977,  
17 and you funded them in October 1977?

18 A No, it went out in November 1976, and we would have  
19 funded them in 1977, okay, 1977.

20 Q How many grants were awarded under the prevention  
21 initiative?

22 A Sixteen.

1 Q How much Juvenile Justice money was this?

2 A The original awards were like \$6.1 million for one  
3 year.

4 Q This was all Special Emphasis discretionary grant  
5 money?

6 A Yes.

7 Q Was Mr. Rector the administrator at the time you  
8 made these awards?

9 A Yes, he was.

10 Q What was the project period established, if any,  
11 by the program announcement for the prevention program?

12 A The project period established was two years.

13 Q Were they funded for one two-year grant?

14 A No. They were funded for one year with the  
15 provision that they would come in for a continuation funding  
16 at the end of the first year.

17 Q Did the program announcement provide that no con-  
18 tinuations were expected beyond this two-year time period?

19 A I don't know if the program announcement did, but the  
20 grant awards did. In other words, the grant manager's memorandum  
21 indicated that we did not expect to continue funding beyond two  
22 years. I don't know if that was in the program announcement.

1 or not, but it is a provision that we very frequently put in  
2 grants.

3 Q What is a grant manager's memorandum?

4 A A grant manager's memorandum is a memorandum which  
5 conveys to the administrator the salient facts about the merits  
6 of a particular grant or program. It outlines the specific  
7 elements that are to be included in its implementation as well  
8 as the funding level and the period of time and any special  
9 considerations that pertain to the grant.

10 Q Did this particular grant manager's memorandum for  
11 the prevention program provide there was no continuation funding  
12 commitment for these projects?

13 A Yes.

14 Q Who signs the grant manager's memorandum?

15 A It is signed by the grant manager, the division head  
16 which was me, and the administrator of OJJDP.

17 Q Was this particular grant manager's memorandum signed  
18 by the administrator of OJJDP?

19 A Yes.

20 Q Who was the administrator of OJJDP at that time?

21 A John Rector.

22 Q When these grants neared termination, did Mr. Rector

1 direct you to fund all of them beyond the two-year period?

2 A No.

3 Q What was the policy then that was established for  
4 continuation funding of these grants?

5 A The policy permitted them to terminate and I requested  
6 that they be continued for a third year. They were all  
7 performing very well. Unlike many of the projects that we  
8 had funded, they got off the ground very well, and had a very  
9 good record both of -- a very good record of expenditure of  
10 funds as well as services to youngsters, and they were providing  
11 qualitative services, and I recommended that they be continued  
12 for a third year to give them additional time to institutionalize  
13 their efforts; and I got approval for funding them at half the  
14 level at which they had been funded the previous year.

15 Q Who established that policy for continuation of  
16 funding?

17 A What, for half a year?

18 Q Yes.

19 A Mr. Rector signed off only on half a year. I mean,  
20 in other words, half the level of funding and in some instances  
21 the projects only -- they cut back their services. In some  
22 instances, some only went for ten months.

1 Q You funded each of these projects at half the level  
2 they had received for an annual period under their second year  
3 award?

4 A Right, right. Now, one of the projects was rejected  
5 because it had not performed satisfactorily in its previous  
6 year.

7 Q Did any of these grantees when they were informed that --  
8 they would be permitted one half of the -- funded at one half  
9 the level -- protest that they were entitled to continuation  
10 funding?

11 A No, none of them protested that they were entitled to  
12 continuation. They were sorry they weren't getting a full year  
13 of funding.

14 Q Ms. Martin, may I ask you what would be the impact  
15 on the Special Emphasis program of being unable to discontinue  
16 funding to any recipient of a grant or contract for any reason  
17 other than a failure to receive a satisfactory yearly  
18 evaluation?

19 A It would make my life much easier in the sense that  
20 we could simply continue to fund the same projects and all the  
21 work. The staff time that goes into the development of new  
22 program announcements would be eliminated, so that we would

1 concentrate on giving support to those who had been originally  
2 funded. We would not be able to meet the mandate of Section  
3 224, which outlines the series of areas in which Special  
4 Emphasis programs should address their attention to.

5 Q Do you believe that overall that such a policy would  
6 have a detrimental effect on the objectives that Congress  
7 established for the Special Emphasis program?

8 A I think it would give them a lot more dollars.

9 MR. WILSON: Nothing further.

10 JUDGE NEEDLEMAN: Ms. Lyons.

11 CROSS EXAMINATION

12 QUESTIONS BY MS. LYONS:

13 Q Ms. Martin, you were making reference earlier to what  
14 is Joint Exhibit 8, the last page, and the recommendation of  
15 your staff person, Marjorie Miller, about what to do with the  
16 grant application from Project Read that had wandered into  
17 your office. You then told us that you didn't send it to  
18 Mr. West because you had a policy that would not allow for  
19 continuation funding for this project. Given what Ms. Miller  
20 was asking for was an exception here, did you feel that you  
21 should send it -- why didn't you send it to Mr. West for  
22 purposes of asking for an exception to the policy to which

1 you referred?

2 A Because I didn't feel that there was a case for  
3 making an exception.

4 Q What were the deficiencies?

5 A Under the policy under which we were operating?

6 Q What were the deficiencies in the report that she  
7 made to you?

8 A There weren't any deficiencies in her report. The  
9 basis for my not forwarding it had to do with, number one,  
10 we had allocated a limited amount of money to deal with  
11 continuation of grants which had been identified as unsolicited  
12 proposals. And in considering the range of who might be  
13 considered in that category of grants, there were grants in other  
14 parts of the agency which had been funded as unsolicited  
15 proposals. So the issue became one of how much money is  
16 available and where is our initial responsibility in relation to  
17 continuations? We determined that our initial responsibility  
18 was to those which had been funded with Special Emphasis monies.

19 Q Did you tell Buddy Howell that?

20 JUDGE NEEDLEMAN: The witness has not finished her  
21 answer. You keep cutting off the witness, Ms. Lyons. Are  
22 you finished?

1 THE WITNESS: Yes, I'm finished.

2 BY MS. LYONS:

3 Q Did you tell Doctor Howell that?

4 A We indicated that we were operating under a policy  
5 in the McKinney memo to him, which precluded the consideration  
6 of Project Read and that policy as indicated was circumscribed  
7 by where our major responsibility was.

8 Q Do you recall when you first learned that Project  
9 Read was going to get denied funding from all sources? I mean,  
10 that whatever you made your decision for Special Emphasis, when  
11 did you become aware, indeed, there was no money within  
12 the agency for Project Read from other divisions?

13 A The first that I became aware of Project Read was  
14 when Doctor Howell sent to me his memorandum requesting that  
15 we review it and at the point at which it was sent back to him  
16 I had no further discussions with him or anybody else about it,  
17 and had had none previous to that.

18 Q Do you recall that you attended a meeting on December  
19 20th concerning the denial of Read funding?

20 A When you came?

21 Q Yes.

22 A Yes.

1 Q Had you had any discussion before that meeting between  
2 the time you got the Miller memo, which is Joint Exhibit 8,  
3 and that meeting? Did you become aware that, indeed, finally  
4 Read had been denied continuation funding through the entire  
5 office of OJJDP?

6 A Frankly, no. I came to the meeting cold, really.  
7 In other words, we had dealt with our responsibility by  
8 getting it back to the Institute. And beyond that we had no  
9 further responsibility.

10 Q Either before or after that meeting, did you have a  
11 discussion with either David West, Buddy Howell or any other  
12 persons concerning whether or not under Section 228(a)  
13 somebody had better find some money for Project Read?

14 A No, I had no discussions in that vein. There were  
15 only two areas in which I could have <sup>funded</sup> Project Read. One had  
16 to do with the potential utilization of Replication of New  
17 Pride and that would not have been a situation where we would  
18 have funded Project Read per se. We would have looked at  
19 whether or not we could use elements of it to fit into New Pride.  
20 The second dimension had to do with whether or not it fitted  
21 potentially under the continuation policy that we were  
22 exploring and once those questions were answered, then I had no

1 further basis for considering it or discussing it with anyone.

2 Q Are you saying that neither before or after the  
3 meeting with respect to the Project Read application no one of  
4 the persons involved in this grant application discussed  
5 Section 228(a) with you or in your presence?

6 A Not with me, no.

7 MS. LYONS: I have nothing further. Excuse me, may I have  
8 moment.

9 BY MS. LYONS:

10 Q Ms. Martin, do you recall anyone ever suggesting to  
11 you that Section 228(a) required continuation funding of  
12 programs as long as they got a satisfactory yearly evaluation?

13 A I remember the discussion went back to the first  
14 initiative that we developed in the office. It was  
15 deinstitutionalization of status offenders in 1975, and we had  
16 discussions at that time with respect to what the implications  
17 of that were and what it actually meant, and we determined at  
18 that time that there was nothing incompatible -- that project  
19 periods were not incompatible with that provision in the  
20 statutes, and, you know, we institutionalized Project Read in  
21 our announced initiatives from that time on and we never had  
22 appeal on that issue before, and, to my knowledge, it has not

1 been an issue with Congress, as we have gone up on a number  
2 of occasions for hearings and we have written to Congressmen  
3 in response to a range of issues, and it just simply has not  
4 come up.

5 Q Were there persons within the agency that disagreed  
6 during that preliminary effort with the notion that project  
7 periods were all that was necessary to satisfy Section 228(a)  
8 of the Act?

9 A The discussion of project periods and the  
10 determination that settled on project periods did not eliminate  
11 our authority to fund projects as long as they were successful.  
12 So we didn't really look at it as either/or. It had to do  
13 with what becomes an effective way to deal with projects and  
14 one of the elements in our consideration was we ought to  
15 really deal with specific objectives, which, in turn, can be  
16 evaluated in terms of whether or not they have achieved the  
17 impact that they were designed to achieve. Now, we recognize  
18 obviously that there are some projects that will take much  
19 longer than others to achieve their objectives and should be  
20 continued. So it is not an either/or matter from our under-  
21 standing of the policy that we are working with.

22 Q During this debate, or whatever it was, the formulation

1 of the project period policy and all that you suggested it  
 2 implies, do you recall getting a letter from general counsel  
 3 to the National Conference of State Criminal Justice Planning  
 4 Administrators with attachments, a part of which address Section  
 5 228(a) of the Act?

6 A. I don't remember that offhand.

7 Q. Do you recall whether Richard Geltman, who was general  
 8 counsel to the National Conference of State Criminal Justice  
 9 Planning Administrators, had a position with respect to the  
 10 meaning of Section 228(a) of the Act, which he ever articulated  
 11 to you or otherwise?

12 A. Frankly, I don't remember. They comment on all of  
 13 our guidelines and they may have commented on some of the  
 14 guidelines. And, frankly, I just don't remember.

15 MS. LYONS: As soon as Mr. Wilson is finished, I'm going  
 16 to show you this document to see if it refreshes your  
 17 recollection.

18 MR. WILSON: If proposed Exhibit 6E is the only matter  
 19 that is relevant to the issues under consideration, I don't  
 20 have to read the whole thing.

21 MS. LYONS: That is the only one that I would question  
 22 about. I wouldn't like to disassemble the document because it

1 won't represent what it is. That is the only one that I'm  
 2 going to question the witness about.

3 (The document referred to was marked  
 4 Read Deposition Exhibit No. 6,  
 for identification.)\*

5 BY MS. LYONS:

6 Q. Ms. Martin, I'm handing you what has been marked for  
 7 identification as Read Exhibit No. 6, and I'll ask you if this  
 8 refreshes your recollection about receipt of a communication  
 9 from Mr. Geltman?

10 A. Is there a specific part of this I should look at?

11 Q. Well, if you do remember the letter, maybe if you  
 12 would refer to page 6E of the exhibit as marked.

13 A. I'm trying to see which guidelines this is that they're  
 14 commenting on.

15 Q. Do you recollect the document, Ms. Martin?

16 A. Yes, I'm vaguely familiar with it now, yes.

17 MS. LYONS: I'll just move it into evidence, Your Honor.

18 MR. WILSON: I object to the admission of the document,  
 19 Your Honor. I don't see how it is relevant. We stated  
 20 yesterday that you did not want further evidence post-passage  
 21 of the Act as to other people's understanding of that statutory  
 22 provision, and as far as I can tell that is all this document

\*This exhibit was not admitted into evidence.

1 purports to be.

2 JUDGE NEEDLEMAN: What is the purpose of moving this par-  
3 ticular piece of hearsay into the record? In the case of the  
4 document which was introduced yesterday, which Mr. Rector  
5 testified about, it seems to me that you could have overcome the  
6 timely hearsay objection that has been made on the basis  
7 that even if the sender of the document is not being cross  
8 examined, the document is being introduced for the purpose of  
9 showing what was in Mr. Rector's mind when he made certain  
10 decisions. He was aware of Mr. Raley's point of view as  
11 expressed in Read Exhibit 4. So even if the document is not  
12 admitted for the truth of the statements contained in the  
13 document, it goes to the fact that it was said and Mr. Rector  
14 was aware of what was said. Here the witness hasn't indicated  
15 that she was aware of what was said or that she took into  
16 account what was said, so what is the relevance for this purpose,  
17 except to show the truth of the statements contained in there,  
18 namely, Mr. Geltman's statement? If you want Mr. Geltman's  
19 statement, get him here so he can be cross examined.

20 MS. LYONS: The purpose of that exhibit is only as  
21 followup to the examination of Ms. Martin with respect to  
22 disputes about whether or not a simple declaration of a project

1 period would satisfy Section 228(a) of the Act. As I under-  
2 stand what she testified, is that is how it was understood,  
3 that you could implement Section 228(a) of the Act. If that --

4 JUDGE NEEDLEMAN: She testified to that. If you want to  
5 cross examine her, you may cross examine her as vigorously  
6 as you want to and you may try to impeach that testimony. How  
7 does this in any way impeach that testimony?

8 MS. LYONS: May I ask you to hold the ruling off for one  
9 moment and let me ask her one more question?

10 JUDGE NEEDLEMAN: Surely.

11 BY MS. LYONS:

12 Q Ms. Martin, did you respond to that letter or those  
13 comments?

14 A Yes.

15 Q You did?

16 A Yes. My staff would have. I didn't, but my staff did.

17 MS. LYONS: Well, I assume you do not have that response  
18 available for us today?

19 JUDGE NEEDLEMAN: What is the point of the document? You  
20 want Mr. Geltman's opinion? It might be terrific. If you want  
21 Mr. Geltman's opinion, let him appear before me because I  
22 want him to be cross examined about his opinion and the rule

1 under 5 USC 554. He has to be cross examined. This is an  
2 adjudication.

3 MS. LYONS: What I would like to do is read Ms. Martin  
4 an interpretation of Section 228 and ask her if she agrees  
5 with it.

6 JUDGE NEEDLEMAN: You can try to impeach her testimony or  
7 do whatever you want, but you can't sneak into the record Mr.  
8 Geltman's opinion.

9 MS. LYONS: No further questions.

10 JUDGE NEEDLEMAN: If you want to cross examine further,  
11 you can cross examine the witness on any piece of paper you  
12 want and ask the witness whether she agrees or disagrees  
13 with it. Do anything you want, but you cannot get into the  
14 record someone's opinion unless that person is here to cross  
15 examine.

16 BY MS. LYONS:

17 Q Let me ask you this, Ms. Martin. Would you agree  
18 with the statement that under the provisions of the Juvenile  
19 Justice Act --

20 MR. WILSON: I object. I believe the counsel is reading  
21 Mr. Geltman's statement.

22 JUDGE NEEDLEMAN: It is perfectly proper for her to read  
Mr. Geltman's statement. It does not go into the record for

1 the truth of the statement. She's read the statement to find  
2 out if the witness agrees with it or not. I'm not accepting  
3 that statement as substantive evidence that is what the Act  
4 means.

5 MR. WILSON: All right.

6 JUDGE NEEDLEMAN: It is not going in for the truth of  
7 the statement contained there. It is going in simply for  
8 the purposes of challenging or expanding the testimony or  
9 impeaching the witness. She can read her anything. She can read  
10 the newspapers to impeach the witness.

11 BY MS. LYONS:

12 Q Ms. Martin, do you agree with the following  
13 statement: "Under the provisions of the Juvenile Justice Act  
14 a recipient of a Special Emphasis award provided for money  
15 available under that measure would be eligible subject to  
16 evaluation to an indeterminate number of years of funding  
17 pursuant to Section 228(a)"?

18 A And how would I respond to that? Is that your  
19 question, if I had to answer that today?

20 JUDGE NEEDLEMAN: Do you agree or disagree?

21 THE WITNESS: As eligible for indeterminate --

22 BY MS. LYONS:

1 Q Number of years of funding subject to evaluation?

2 A No, I don't think I would.

3 MS. LYONS: I have nothing further.

4 JUDGE NEEDLEMAN: Let me ask you a few points here, Ms.  
5 Martin. I want to clarify this part that is somewhat confused.  
6 If you look at the financial guidelines, which have been  
7 identified as Joint Exhibits 7A through 7B, there is an  
8 indication there that the policy of 228(a) is to apply. That is  
9 in the heading "Continuation Support." Do you have the exhibit  
10 in front of you?

11 THE WITNESS: Yes. I'm sorry.

12 JUDGE NEEDLEMAN: Look at 7A, paragraph 12.

13 THE WITNESS: Paragraph 12, did you say? Yes.

14 JUDGE NEEDLEMAN: So there is an indication that the policy,  
15 they don't identify the 228(a), but it is quite clear that is  
16 what they're talking about?

17 THE WITNESS: Yes.

18 JUDGE NEEDLEMAN: So there is a statement about that policy  
19 and then there is rearrangement of language so that it fits  
20 within an outline, and we have a statement that funding is  
21 usually going to be for twelve month segments.

22 THE WITNESS: Yes.

1 JUDGE NEEDLEMAN: Again, I want your explanation of how  
2 you reconcile, if you do reconcile, the overall policy and the  
3 funding policy?

4 THE WITNESS: Well, I have read "shall" as being dis-  
5 cretionary and in the context of the administrator of OJJDP  
6 and LEAA's authority to establish policy and procedures for award  
7 of application for determination of conditions under which  
8 projects will be implemented and continued. So, in my  
9 experience in the agency I have seen this as discretionary,  
10 which gives us the latitude to continue projects forever, if  
11 there is money, and if they are performing effectively. It  
12 also gives us the option to develop specific project periods  
13 which relate to specific objectives.

14 JUDGE NEEDLEMAN: All right, fine. Now, let's see how the  
15 policy is actually implemented. Do you have under your  
16 jurisdiction projects which are fairly comparable to the objec-  
17 tives of Read? By that I mean not an experimental project  
18 but a project which has a discrete objective within the  
19 entire problem of juvenile delinquency, and an attempt to  
20 get at that problem?

21 THE WITNESS: I can think of one project that we have.  
22 We fund a school resources center, a national school resource

1 center, which we expect to continue for a number of years.

2 It may not continue under the same auspices. In other words,  
3 the concept, if determined to be viable, would be one that the  
4 office would want to support. If the contractor, however,  
5 turns out not to be effective in implementing it, we would go  
6 out again to competitive bidding.

7 JUDGE NEEDLEMAN: What is he trying to do?

8 THE WITNESS: They are attempting to provide resources  
9 to schools in the areas of developing approaches to deal with  
10 school violence, vandalism and crime. It provides advocacy  
11 training, technical assistance to local public schools.

12 JUDGE NEEDLEMAN: All right, let's take that project, let's  
13 call it Project Violence. Each year you monitor Project Violence  
14 and you find that either you or one of your subordinates  
15 comes up with a laudatory report of the kind which apparently  
16 has pursued Project Read throughout its existence, including  
17 a laudatory report from your own staff, and the problem  
18 persists, in other words, the problem of school violence doesn't  
19 go away, that problem subsists, so you don't have that  
20 excuse for terminating the program; the project is successful,  
21 at least by whatever criteria you or your staff may apply,  
22 there's no malfeasance involved in the program, no one is

1 stealing any money from the government, there's no indication  
2 from Congress that Congress wants you not to support such a  
3 project, do you still nevertheless read Section 228(a) as giving  
4 you discretion with all those assumptions to abandon this  
5 violence program and go onto something else?

6 THE WITNESS: I would look at it this way, Your Honor,  
7 if the center is effective and does what it is supposed to do,  
8 the problem of violence and crime should be decreased; and if it  
9 is not decreasing but instead is increasing, one would have  
10 to question whether or not they are effectively doing what it  
11 is they are supposed to be doing. So that I think one has to  
12 look at need for a project in relation to what the government  
13 is supporting people to do. And if they are effective over a  
14 period of time, you should see a reduction in the problem that  
15 they are addressing. The other issue that I would also have  
16 to address is whether or not the implementing agency is, in  
17 fact, doing the project in the most effective way. I mean,  
18 they may get good reports, but the issue arises as to whether  
19 or not a different agency might bring some new insights and new  
20 dimensions or some better cost effective ways of dealing with it.  
21 So I think at a certain point in time we would want to look  
22 at the whole issue of competition in relation to whether or

1 not this has become a self-serving entity or is it, in fact,  
2 indeed, addressing the problems which exist.

3 JUDGE NEEDLEMAN: All right. Apart from the determination  
4 which you made, which I view as largely as a bureaucratic  
5 budgetary determination, you would only support for continuance  
6 those pending unsolicited Special Emphasis applications which  
7 you yourself had funded?

8 THE WITNESS: Yes.

9 JUDGE NEEDLEMAN: Did you make any evaluation of Project  
10 Read?

11 THE WITNESS: We did not in that context.

12 JUDGE NEEDLEMAN: Did you make it in any other context?

13 THE WITNESS: Marjorie Miller did the review and I was  
14 impressed with the review. That was why I raised the question  
15 whether or not Project Read would fit into the category of  
16 programs that we were talking about funding, and when the  
17 determination was made based upon the dollars available and  
18 the range of projects that might fit, if we fitted Project  
19 Read under that, it then became something that we couldn't  
20 deal with just from a fiscal standpoint. But to respond to  
21 your question, I was aware of what Project Read did and I was  
22 impressed with the effectiveness of the project, and if it had

1 been possible to fit it under this continuation policy that  
2 we were working under, we would have done it. But as we looked  
3 at the range of projects, totaled up the number of dollars that  
4 we would be talking about, if we gave this opportunity to  
5 everybody who had been funded under similar circumstances,  
6 there simply wasn't enough money to deal with it.

7 JUDGE NEEDLEMAN: When you continued certain programs in  
8 the unsolicited application category, did you continue those  
9 programs aware of the requirements of Section 228(a)?

10 THE WITNESS: We were aware of Section 228(a), but we also  
11 were dealing with the issue of fairness to the groups and  
12 organizations who feel they have a right to Juvenile Justice  
13 money. These were a group of people who came to us either  
14 because they knew somebody on staff or they had had a grant  
15 before for the most part. So that we were dealing with a very  
16 narrow universe, and the issue became one of continuing these  
17 projects, keeps us in a position of unfair advantage to other  
18 projects who may not have had the advantage of knowing staff,  
19 knowing people in the agency, or having had a grant before.  
20 JUDGE NEEDLEMAN: How did you make a determination as to  
21 which of these unsolicited projects you would continue and which  
22 you would not continue?

1 THE WITNESS: Well, there were twenty-eight projects  
2 funded between '78 and '79, who fell in the category of  
3 coming in, not in response to an announced program guideline  
4 and that was our universe because all the other projects that  
5 we were dealing with currently in the office are projects  
6 which have competed against a guideline.

7 JUDGE NEEDLEMAN: What did you do with the twenty-eight,  
8 continued some and discontinued others?

9 THE WITNESS: No, we sent all twenty-eight letters spelling  
10 out the policy and indicating that if they were interested  
11 in receiving interim funding through September 30th, they  
12 should indicate to the grant monitor that they wanted to do  
13 so, they should indicate how much money would be required to  
14 continue them from the point of termination through September 30th.

15 JUDGE NEEDLEMAN: Were all continued?

16 THE WITNESS: Some indicated they did not wish to be  
17 continued and others -- most of them said yes, they did want to  
18 continue so they would be in a position to compete under the  
19 Capacity Building Guideline, which will be issued around April  
20 30th.

21 JUDGE NEEDLEMAN: And all who wanted to be continued were  
22 continued?

1 THE WITNESS: If their performance has been satisfactory.  
2 In other words, if they have met the goals and objectives of  
3 their previous grant year at the point at which they come in  
4 requesting interim funding, we will continue them. We will  
5 not continue any who have not met their goals and objectives  
6 even for the interim period.

7 JUDGE NEEDLEMAN: So the way I read your policy, you will  
8 continue those projects which have indicated that they desire  
9 to be continued?

10 THE WITNESS: Yes, they were funded in that universe  
11 that I'm talking about.

12 JUDGE NEEDLEMAN: Then sometime in September 1980  
13 competitive bids of some form will go out?

14 THE WITNESS: Yes.

15 JUDGE NEEDLEMAN: And these programs may submit competitive  
16 bids?

17 THE WITNESS: Yes.

18 JUDGE NEEDLEMAN: So I assume then that you interpret Section  
19 228(a) as saying that even if a program has been successful  
20 that program must be put into the competitive mix if you  
21 decide that the competitive bids will be let for that particular  
22 program?

1 THE WITNESS: Yes, for the purposes of that policy they  
2 will be put in the mix and one of the dimensions which will  
3 be looked at in selecting projects will be the extent to which  
4 they have satisfactorily met their previous goals and  
5 objectives, and as to whether or not there is a continued need  
6 for the program.

7 JUDGE NEEDLEMAN: So you interpret 228(a) as at least  
8 allowing you to select a better program or at least one that  
9 you consider to be a better program, if in the competitive  
10 process the better program which happens to be superior to  
11 one which was already in existence and may have had the same  
12 goal?

13 THE WITNESS: I think I would say yes.

14 JUDGE NEEDLEMAN: But isn't it quite clear from at least  
15 everything before me here that this is not what happened to  
16 Project Read, that that particular choice, the one that you're  
17 talking about making sometime in September had not been made here?  
18 In other words, Project Read has not been rejected because  
19 someone in LEAA had decided that there is a better way to get  
20 at the literacy problem which exists in Juvenile Justice's  
21 view?

22 THE WITNESS: Well, I'm not that familiar with the way in

1 which the Institute's projects are recently solicited because  
2 they operate under a different mandate and have a good more  
3 latitude than the Special Emphasis does with respect to the  
4 condition under which they solicit applications. It comes out  
5 of their research mandate and evaluation mandate.

6 JUDGE NEEDLEMAN: But I understood that Mr. Dogin's  
7 September 14th initiative rejecting competitive bids will  
8 apply throughout the -- maybe I'm wrong about that -- it is  
9 not going to apply throughout LEAA?

10 THE WITNESS: I'm not sure about that. You would really  
11 have to ask Doctor Howell as to the extent to which it applies  
12 to the Institute and whether or not they have variations between  
13 the action programs and the Institute.

14 JUDGE NEEDLEMAN: Well, I'm not sure exactly what the  
15 record will show on this. It says here that "the policy  
16 contained in this instruction is applicable to all categorical  
17 grant programs. . ." What does that mean?

18 THE WITNESS: Well, the Institute is a categorical grant  
19 program, but I don't know in the body of it if it allows some  
20 latitude with respect to the Institute that does not allow for  
21 the action programs. I suggest that Doctor Howell is much more  
22 able to respond to that than I am.

1 JUDGE NEEDLEMAN: Did you have any other questions?

2 MR. WILSON: No.

3 MS. LYONS: No.

4 JUDGE NEEDLEMAN: All right, thank you very much.

5 (The witness was excused.)

6 MR. WILSON: I call David West to the stand.

7 JUDGE NEEDLEMAN: Mr. West, do you swear the testimony  
8 that you're about to give is the truth, the whole truth and  
9 nothing but the truth?

10 MR. WEST: I do.

11 JUDGE NEEDLEMAN: The record will reflect this is the  
12 same Mr. West that appeared on January 30th, and his background  
13 and present occupation are adequately described in the record  
14 at that point.

15 You may proceed.

16 MR. DAVID WEST, a witness called to testify on  
17 behalf of LEAA, being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. WILSON:

20 Q I believe we established yesterday that Mr. West had  
21 been an employee of OJJD since its inception as director of  
22 the Formula Grants Technical Assistance Division, and more

1 recently ended a nine-month period as the acting deputy  
2 associate administrator for the Office of Juvenile Justice.

3 Mr. West, I would like to ask you if you had prior  
4 governmental experience in administering Juvenile programs?

5 A I was with the agency when it was with HEW for five  
6 years as special assistant to the Commissioner for Training  
7 and Technical Assistance. So I am familiar with the legislation  
8 as we implemented it in HEW, as well as how it is being  
9 implemented in the Department of Justice.

10 Q Do you recall any particular criticism of HEW under  
11 the prior program for funding demonstration projects as  
12 opposed to continuing to fund the same project year after year?

13 A No. There were a number of criticisms of that program  
14 for a variety of reasons, but not particularly that can be  
15 identified.

16 Q Are you aware of Exhibit 10, the opinion letter that  
17 was sent by Mr. Madden, general counsel of LEAA, to John Rector?

18 A Yes, I am.

19 Q In your opinion based on your experience, do you  
20 feel that that opinion accurately reflects Congressional  
21 intent with regard to Section 228(a)?

22 A Yes. There seems to be a couple of issues that has

1 sort of been missed in some ways as it related to a continuation  
 2 policy as well as to the interpretation of eligibility. It is  
 3 possible to say that a grantee never loses its eligibility  
 4 for funds which puts it in a position of having to compete along  
 5 with a number of other people who have not lost eligibility.  
 6 There is another part of the legislation, not the Juvenile  
 7 Justice legislation; but, for example, the Crime Control  
 8 legislation sets a time period for how long you're eligible to  
 9 receive funding from the Department like, I think, the time  
 10 frame, if I'm not mistaken, is something like five years that  
 11 has been set. It is either in the Crime Control legislation or  
 12 it is a matter of the guideline regulations. One of the  
 13 concerns in the Juvenile Justice legislation is that Juvenile  
 14 Justice programs just/<sup>do</sup>not automatically lose their eligibility  
 15 for being able to receive funds. The continuation policy that  
 16 we had, that was one of the issues.

17 The other issue was that there was a continuing  
 18 concern over the fact that programs did not know how long  
 19 they could depend upon funding from the agency. And if you  
 20 look at the guidelines and the information contained in there,  
 21 we tried to resolve both of those issues by setting a minimum  
 22 period of funding as well as indicating that there was not

1 anything that would automatically find a grantee ineligible  
 2 for continuing to get more Juvenile Justice funds.

3 Q You're familiar with Joint Exhibits 11 and 12, which  
 4 are the two state planning agency grants guideline formulated  
 5 to implement the Section 228(a) provision for the Formula Grant  
 6 program to the states, are you not?

7 A Yes, I am.

8 Q The Exhibit 12 represents the change in the policy  
 9 from the May 20th, 1977 policy to the policy established on  
 10 July 25th, 1978. Would you explain your understanding that  
 11 change in the policy of the Formula Grant funding?

12 A We go through a guideline revision almost on a yearly  
 13 basis. This guideline revision was one of the revisions that  
 14 we actually accomplished under Mr. Rector as a part of  
 15 modifying the continuation policy for the office in the  
 16 updating of the regulations.

17 Q So change (3) is the current policy of OJJDP for  
 18 the Formula Grant program?

19 A Correct.

20 Q Who gets Formula Grants?

21 A The states all receive an allocation of funds from  
 22 the Office of Juvenile Justice; those states who have agreed to

1 participate in the Act.

2 Q And would you describe those as entitlement monies?

3 A Entitlements to the states in a sense.

4 Q That they are entitled to receive those funds provided  
5 that they met the criteria of the statute?

6 A Yes.

7 Q Approximately how much Formula Grant funds will be  
8 awarded to the states for the fiscal year 1980?

9 A Approximately \$64 million.

10 Q Would you say that the change (3) guideline, that  
11 is the Joint Exhibit 12, permits the states to establish a  
12 minimum and limited period of fund support for programs and  
13 projects identified in their state plan?

14 A Yes.

15 Q How was this established, this minimum?

16 A One of the concerns that we had as an office was  
17 that many times -- at least on some occasions -- the states  
18 would use the fact that they were not able to fund the program  
19 because of the Federal Government and the restrictions that  
20 we had in relationship to the money, and it was also indicated  
21 on occasions that there would be some difference regarding the  
22 funding period, so it was our effort in those guidelines to set

1 out to the states with an interpretation that they must make  
2 a commitment in writing to grantees, they must indicate the  
3 minimum amount of funds that they would provide and that the  
4 minimal funding level along with some other requirements, for  
5 example, not being allowed required matching for funds, and  
6 things like that, that were also a part of the legislation.

7 Q Would you say this policy does or does not provide  
8 continuation funding for each grantee ad infinitum?

9 A It does provide the eligibility of grantees to compete  
10 for limited funds for ad infinitum. It does not guarantee any  
11 grantee that they will receive funding forever once they have  
12 once received funding from the state planning agencies.

13 Q Who was the administrator of OJJDP at the time this  
14 particular guideline was promulgated?

15 A I indicated Mr. Rector was.

16 Q Are you familiar with Exhibit 13, instruction 4510.2,  
17 "Program Announcement Standards for Categorical Grants"?

18 A Yes.

19 Q Was this agency policy statement calling for maximum  
20 competition responsible, at least in part, for the decision or the  
21 policy that was formulated by or for the Special Emphasis  
22 Division with regard to continuation of the unsolicited

1 Special Emphasis grants?

2 A I'm not sure I understand the question.

3 Q You established policy --

4 A An unsolicited grant. The unsolicited grant  
5 application policy?

6 Q Exhibit 9, yes.

7 A You're saying was that policy at least partially  
8 responsive to the notice indicating a competitive stance?

9 Q Let me rephrase it. Was the formulation of that  
10 policy partially in response to the requirement for maximizing  
11 competition?

12 A It was partially in response. There was also a  
13 concern that had been expressed a number of times by organizations  
14 who had not been successful in receiving funds from the office  
15 that they had not received the same kind of consideration and  
16 a chance to compete for funds as others who seemed to be  
17 successfully getting money. There was a general concern that  
18 we open up the competition process or create a competition  
19 process and go with full notice to the public that would allow  
20 for the broadest possible competition involving any of our  
21 Special Emphasis discretionary grants programs, and that along  
22 with that we would also notify them of the expectations as to

1 how long they could receive funds, some kind of systematic  
2 orderly pattern setup that would also be responsive to the  
3 program priorities and directions that the office was  
4 establishing.

5 We have been concerned for sometime, especially in the  
6 field, and sort of follow the motto that if you don't know  
7 where you're going, any road will get you there, and that we will  
8 have to be in a position to set a direction process as to how  
9 we are going to accomplish the goals and objectives of the  
10 legislation and then be responsive to that under the bidding  
11 process that we go through.

12 Q What then was the rationale for continuing the  
13 current unsolicited grants up to September 30th, 1970 from  
14 whatever time they expired? What was the purpose of that policy  
15 decision?

16 A It was felt very clearly there was no responsibility  
17 on the part of the office to give additional consideration to  
18 those applicants. They knew at the time that they had entered  
19 into -- that's one of the problems with an unsolicited grant  
20 application process. It goes from that grant to grant period  
21 with no commitments made almost from either side with some  
22 exceptions, of course. Our intent under that was to try in

1 an orderly fashion to put all of those applicants on notice  
2 that we were moving further into a competitive process and  
3 that they would be eligible for limited continuation considera-  
4 tion as the other initiatives developed and they would be  
5 able to compete for those.

6 Q Would you say that Project Read was in the same  
7 position as those Special Emphasis grantees?

8 A No, I would not. Project Read for one thing, those  
9 other grantees that we're dealing with have been funded for a  
10 lesser period of time to begin with. They have not been funded  
11 for the length of time that we are even talking about. In  
12 addition to the fact that Project Read is from a distinct  
13 part of the -- other part of the office, and is not funded by  
14 the discretionary grant monies that we were dealing with  
15 in the policy issue and with all of those grantees. Our problem  
16 is not one of particularly even picking bad programs or picking  
17 good programs from a series of bad programs, or something like  
18 that. It is trying to select the number of excellent programs  
19 that dovetail into the office's priorities. And that is a very  
20 difficult continuing kind of a problem.

21 Q Were you aware the Special Emphasis Division was  
22 reviewing the Read application at the time the October 17th

1 policy was promulgated, continuation of unsolicited proposals?

2 A I just don't recall.

3 Q Did you subsequently make a determination that  
4 Project Read was outside the scope of the policy, the purpose  
5 for the policy and, therefore was ineligible for consideration?

6 A Yes, I did.

7 Q When did you make that determination?

8 A I don't have a date. I don't think I have a date on  
9 that.

10 Q Was it during the meeting of December 20th in your  
11 office when the parties met to discuss the Project Read situation?

12 A I definitely made that statement on December 20th,  
13 yes.

14 Q The record has established that Doctor Howell wrote  
15 a rejection letter to Project Read on November 28th, 1978 based  
16 on the change of priorities in the Institute training.

17 A I did review that letter because I have to have the  
18 authority for rejection, so I do remember seeing that letter.  
19 I don't know what the date of it was.

20 Q Do you recall what the reason was that was stated  
21 in the letter for not continuing Project Read?

22 A No. I guess it is in here. I know I have seen it

1 before. I would really surmise that it was probably an  
2 indication of the changing priorities within the Institute  
3 because that had been, you know, it has been indicated.

4 Q During the meeting of December 20th, 1979, did you  
5 state that you would not reconsider the Read application?

6 A Yes, I did.

7 Q Could you explain the reason why you --

8 A I saw no basis for making an exception under the  
9 notice that was referred to or the instruction that was referred  
10 to there. There had been no requests for an exception, and I  
11 saw no reason to make one.

12 Q Are you aware of your ability as an office head to  
13 request an exception to the policy for competitive funding of  
14 grant funds by making a request to the administrator of the  
15 agency for an exception?

16 A Yes.

17 Q And did you choose to make such a request?

18 A No, I did not.

19 Q As the acting associate administrator, did you consider  
20 the NIJJDP system for funding of grants to be consistent with  
21 principles of sound program management?

22 A Yes, I did.

1 Q Did you consider it to be consistent with Section  
2 228(a) in implementing guidelines?

3 A Yes.

4 Q What is the basis for that statement?

5 A The process of how to file and selection that they  
6 make to their program announcements and to the other mechanisms  
7 that they use within the Institute, follow the same pattern  
8 that we use and the same policies that we have established in  
9 the other parts of the office. There are some exceptions that  
10 relate back to the research and the uniqueness of the  
11 Institute's activities.

12 Q Would you consider the funding of noncompetitive  
13 applications outside of published programs to be for a  
14 project period commensurate with the term of individual grant  
15 award?

16 A Yes.

17 Q Could such awards provide within them for additional  
18 funding commitments as a part of terms of the grant award?

19 A If there was an agreement to do so, they could.

20 Q But absent such an agreement, would you consider the  
21 office in any way to have made a commitment to the grantee?

22 A None whatsoever. In the history there have been a

1 number of cases like that.

2 Q Would you say that it is possible for a grantee's  
3 performance under a grant to be satisfactory from a monitoring  
4 standpoint, but at the same time the project is not, in fact,  
5 having an impact or a major impact upon the Juvenile Justice  
6 system?

7 A Oh, I think that would be easily possible. We have,  
8 for example, some recent information that is indicating the fact  
9 that one to one counseling in changing behavior  
10 on the part of young people is ineffective and does not create  
11 the kind of change in behavior or reduction of delinquency,  
12 for example. The fact that we also have a number of programs  
13 that provide that type of counseling and are meeting the criteria  
14 and doing an excellent job, they could very well receive an  
15 adequate evaluation or good evaluation by the office, and yet  
16 what you might be talking about is the difference between  
17 efficiency and effectiveness as you're dealing with program  
18 conception and that kind of information changes as you move  
19 along in the field.

20 Q Mr. West, Mr. Rector testified yesterday that in  
21 his opinion Section 228(a) required continuation of funding  
22 projects once funded forever or at least for the life of

1 the legislation. Was there a Track II Special Emphasis funded  
2 program during your tenure as director of Technical Assistance  
3 and Formula Grants?

4 A Yes, we funded approximately sixty programs. The  
5 front end work or the preliminary work on the Track II's,  
6 I think they were mentioned yesterday, were done previous  
7 to Mr. Rector's administration, and then we ended up processing  
8 those sixty applications during the time that he was the  
9 administrator.

10 Q Was Mr. Rector the administrator when these project  
11 applications came up for termination after one year of funding?

12 A Yes.

13 Q Did he instruct you to notify these grantees that they  
14 were all eligible for continuation funding?

15 A No. As a matter of fact, I sent a memo indicating  
16 that we did not have available funds to fund all of the kinds  
17 of programs that we had and that unless otherwise instructed,  
18 I would notify all of these grantees that they were not going  
19 to receive any continuation consideration from our office,  
20 and I did so by letter a year ago last December now, I guess.

21 Q These sixty Track II grantees were not provided an  
22 opportunity to obtain second year funding?

1 A No. We notified them all it was a one-year, one-time  
2 only initiative that we were doing under discretionary grant  
3 programs, and that we were not entertaining continuations from  
4 them.

5 Q Do you feel that policy is consistent with Section  
6 228(a)?

7 A Yes.

8 Q Mr. West, what in your opinion would be the impact  
9 on the Formula Grants of the Technical Assistance Division's  
10 program if each state receiving Formula Grant funds were  
11 required to continue funding all projects regardless of the  
12 funding mechanism or the grant purpose for as long a period of  
13 time as the project received a satisfactory evaluation?

14 A There is one thing that would immediately -- those  
15 grantees who were successful of getting that first-time  
16 money would be very appreciative because they would certainly  
17 be assured of getting money based on monitoring performance for  
18 a good long time. Those who did not, of course, receive those  
19 kinds of funds would probably continue to be unhappy over the  
20 fact that they had been eliminated from that first go-around.  
21 The other consideration would be there are a number of stipulations  
22 within the legislation for the deinstitutionalization of

1 non-criminal children that has a time frame set to it like we  
2 are asking that the states reach a certain percentage of  
3 success in three years and complete success in five years.  
4 We are also in a position that we are giving directions to the  
5 states in relationship to the kind of programs that they fund  
6 around those grants. So we could be in the position of  
7 having to continue funding programs that were no longer addressing  
8 the kinds of issues that we would have in the legislation. We  
9 would be locked in with some kind of program descriptions almost  
10 like a forever basis as the priorities for the office change.

11 It would seem, as a side comment, it would be a very  
12 different kind of office in a program we would be operating as  
13 we would have locked in an administrator and an administration  
14 to a type of funding which would carry on almost forever with  
15 very little change unless it was a significant number of  
16 programs that failed or a significant amount of money that  
17 had been increased to the office.

18 Q What would be the impact of such a policy on your  
19 division's technical assistance activity?

20 A Well, I would be in a position right now where we do  
21 competitive technical assistance contracts and we do them on  
22 a national basis around the goals and priorities that have been

1 developed. That would mean that we not only would have the  
2 same technical assistant contractor, for example, for life,  
3 if they were successful in providing that kind of technical  
4 assistance, and it is also possible that some of the technical  
5 assistance that we contracted for could very well change as  
6 some of our program initiatives change, and we would be honor  
7 bound to perhaps hold the type of expertise that was no longer  
8 in demand as it relates to technical assistance.

9 Q In your perspective as a former acting associate  
10 administrator of the office, what would be the impact of  
11 such a policy on the Special Emphasis discretionary grant  
12 program?

13 A Well, it would seem like to me that one of the issues  
14 that we dealt with within the Juvenile Justice legislation  
15 which is very broad and comprehensive and requires all kinds of  
16 mandates with a very limited amount of resources; that we would  
17 be held to a set of the earlier initiatives, and that we would  
18 continue to be able to only fund certain kinds of initiatives  
19 and that would be as far as we had gone. For example, we are  
20 talking about some additional programs in the fields of  
21 alternative education and some additional programs to address  
22 a serious offender. It would be impossible, for example, even

1 though there has been a '77 amendment to the Juvenile Justice  
2 legislation where they have particularly focused upon us to do  
3 something with a serious offender. It would mean that we would  
4 possibly be in a position of not even having resources to  
5 start dealing with new initiatives as they come up.

6 Q OJJDP administers a fourth program which is  
7 called concentration of federal efforts and the office has,  
8 does it not, the authority to make funds available for the  
9 purpose of coordination of programs at the federal level? Is  
10 that correct?

11 A That's correct.

12 Q What would be the impact on the concentration of  
13 the federal efforts program of such a policy?

14 A Well, we would be locked in, it would almost seem  
15 like, to making those kinds of commitments with other federal  
16 agencies that would agree to provide at least our funding source  
17 ad infinitum, that we would not have the flexibility of bringing  
18 together the various federal agencies as it relates to the  
19 coordinating counsel and developing interagency agreements  
20 and funding programs because we would have a commitment to  
21 continue a portion of those funds forever. You don't have  
22 evidently that kind of understanding with other federal

1 agency programs that we would be cooperating with.

2 Q So you also have authority to transfer funds to other  
3 federal agencies to be used for the purpose of implementing  
4 the purposes of the Juvenile Justice Act. Under such an  
5 interpretation of Section 228(a) continuation of funding, would  
6 you think you would be bound to transfer the same amount of  
7 funds every year to the other federal gency?

8 A Under some of the interpretations that have been  
9 given here, it would seem like we made a lifetime commitment  
10 to make such a transfer.

11 Q Would it make sufficient sense to do that?

12 A No.

13 MR. WILSON: I have no further questions.

14 JUDGE NEEDLEMAN: Ms. Lyons.

15 MS. LYONS: No questions.

16 JUDGE NEEDLEMAN: Now referring to Joint Exhibits 11 and  
17 12, can we get a stipulation as to the application of Joint  
18 Exhibits 11 and 12? I'll simply ask the witness if he knows to  
19 what programs Joint Exhibits 11 and 12 were appended to. I'm  
20 not sure I understand how these guidelines actually apply.  
21 Shall I ask the witness that?

22 MR. WILSON: Do you know the answer to that?

1 THE WITNESS: I'll have to look at them.

2 JUDGE NEEDLEMAN: You have a set in front of you. Take  
3 a look at Exhibits 11 and 12.

4 MR. WILSON: Perhaps I can address that quite easily.

5 JUDGE NEEDLEMAN: Unless counsel can stipulate to it. It  
6 is so useless to get a statement from counsel unless it can  
7 be stipulated.

8 MS. LYONS: I'll be prepared to stipulate if what he's  
9 about to say is what I think he's about to say.

10 JUDGE NEEDLEMAN: What are you about to say?

11 MR. WILSON: These documents are excerpts from LEAA's  
12 state planning agency guidelines, and, therefore, these two  
13 policies are applicable only to the Formula Grant program  
14 authorized under Part B, subpart A.

15 JUDGE NEEDLEMAN: The part that confuses me, Mr. Wilson,  
16 is this a direction to the state and the state is supposed  
17 to give money, or is it a direction as to how the state is to  
18 apply for money?

19 MR. WILSON: It is a direction to the state as to what  
20 policy is binding on the state with their subaward Formula  
21 Grant plan.

22 JUDGE NEEDLEMAN: Will you accept that?

1 MS. LYONS: I don't know about the last statement, but  
2 with respect to the first statement I agree to. What I thought  
3 you were asking for, it doesn't apply to Project Read or  
4 Institute programs; 7 and 11, or 12.

5 JUDGE NEEDLEMAN: Do you accept counsel's statement?

6 MS. LYONS: Yes, I do accept it.

7 JUDGE NEEDLEMAN: Let me ask you one point or question  
8 about this, Mr. West. Looking at 11 and 12, first of all, are  
9 you in your current position assuming any responsibilities with  
10 respect to grants by states to subgrantees?

11 THE WITNESS: Yes, sir.

12 JUDGE NEEDLEMAN: So you have to be familiar with --

13 THE WITNESS: These guidelines.

14 JUDGE NEEDLEMAN: Of 11 and 12?

15 THE WITNESS: Yes, sir.

16 JUDGE NEEDLEMAN: Now, tell me briefly if you can the  
17 process here. First, Exhibit 11 is promulgated and that makes  
18 a specific reference to policy Section 228(a). Do you see that  
19 near the top of the page in the "Continuation Support"?

20 THE WITNESS: Yes.

21 JUDGE NEEDLEMAN: Then apparently someone comes along and  
22 institutes --

1 THE WITNESS: No.

2 JUDGE NEEDLEMAN: -- Exhibit 12. Well, if you look at  
3 the bottom of Exhibit 12 it says, "Page 6 (through 3)," and I  
4 read that based upon my knowledge of bureaucratic filing as  
5 meaning that you substitute page 60 in Chapter 3 of paragraph  
6 52 of some manual for the existing pages 62 and 63.

7 THE WITNESS: Well, what we have here, sir, is an update  
8 of the same guidelines with a different date on it as to when  
9 it was effective. What we have here is a bureaucratic effort  
10 on the part of the government to reduce some of our verbiage  
11 in relationship to state planning agencies, so we have a  
12 different date and updating of the same piece of information  
13 giving guidance to the states.

14 JUDGE NEEDLEMAN: I'm very well familiar with that  
15 procedure. It is in every damn office. But a secretary getting  
16 this new sheet of paper removes from her manual pages 62 and 63  
17 which begins with Exhibit 11 and Exhibit 11(b)?

18 THE WITNESS: Yes.

19 JUDGE NEEDLEMAN: And substitutes Exhibit 12, is that your  
20 understanding?

21 THE WITNESS: It can be done that way. We issue the entire  
22 thing over again and that is why I was confused. We don't

1 actually ask them to substitute. We actually issue the complete  
2 manual to them so they can do both.

3 JUDGE NEEDLEMAN: My point is not to test your knowledge  
4 of filing. My point is a much more pertinent one; namely,  
5 was an internal decision made in 1978 by the authorities at  
6 LEAA simply to abolish 228(a)?

7 THE WITNESS: That is why I was referring back again. When  
8 I talked in terms of -- what we did initially is we merely  
9 repeated the Act as stated and then interpreted it. The next  
10 one is not to do anything with 228(a). It merely means  
11 that we did not repeat it again verbatim. That's the only  
12 difference. There was no difference of interpretation going  
13 on in relation to the guidelines inasmuch as we were trying to  
14 be clear with understanding of continuation.

15 JUDGE NEEDLEMAN: Who made the decision to leave out the  
16 language that appears on Joint Exhibit 11A?

17 THE WITNESS: The decision for these guidelines to appear  
18 the way they do now goes through our office with my staff and  
19 myself working on them with a sign-off by me and a sign-off at  
20 the time by Mr. Rector that these are the way we want them to  
21 look.

22 JUDGE NEEDLEMAN: Was Mr. Rector responsible for Joint

1 Exhibit 12?

2 THE WITNESS: July 25th, 1978. Yes, sir.

3 JUDGE NEEDLEMAN: And you can't tell me today why you  
4 decided to eliminate the explicit reference to the language  
5 of 228(a) of Joint Exhibit 11A?

6 THE WITNESS: You're asking me on the difference between  
7 11A and 12. The only difference, the only reason we eliminated  
8 that explicitly is we did it through the entire guidelines  
9 because we had been told the guidelines were too lengthy and  
10 that would be one place and no use repeating all the legislation.  
11 All the states have a copy of the legislation themselves and they  
12 can read it. We also tried to clarify the continuation support  
13 directions to the states who were receiving our funds.

14 JUDGE NEEDLEMAN: Can I also get a stipulation from counsel  
15 about the meaning of the applicability of the instructions which  
16 appears on Joint Exhibits 13, 14, and 15? Can you make a  
17 statement on the record which Ms. Lyons will accept as to the  
18 applicability of these competitiveness programs?

19 MR. WILSON: Yes. Categorical funding would be any funding  
20 by LEAA other than to those grantees who are in an entitlement  
21 status and that would cover basically our Formula Grant program  
22 under both the Juvenile Justice Act and our -- well, it is now

1 also a Formula Grant program under the legislation.

2 JUDGE NEEDLEMAN: But there is no question or is there a  
3 question that Project Read would be classified as a  
4 categorical grant program?

5 MS. LYONS: It is a categorical grant program.

6 JUDGE NEEDLEMAN: Do you see Ms. Lyons' interpretation?

7 MR. WILSON: Yes.

8 JUDGE NEEDLEMAN: Do you want to ask Mr. West anything  
9 else?

10 MR. WILSON: No, sir.

11 JUDGE NEEDLEMAN: That's fine. Thank you very much.

12 (The witness was excused.)

13 JUDGE NEEDLEMAN: You have no other rebuttal witnesses?

14 MS. LYONS: No, sir.

15 JUDGE NEEDLEMAN: All right, that concludes the hearing  
16 and the matter of Project Read. The briefing schedule. I  
17 understand that the Justice Department will exert every effort  
18 to see that the transcripts are expedited and I expect to get  
19 the transcripts no later than next Friday. Is that your  
20 understanding, Mr. Wilson?

21 MR. WILSON: Yes, sir.

22 JUDGE NEEDLEMAN: I'm not sure you need the transcripts

1 all that much before you start writing. So I'm just working  
2 on that assumption. If you don't have the transcripts, we  
3 will worry about that some other time, but I'm not going to  
4 accept that as being much of an excuse anyway. I want whatever  
5 briefs you're going to file, whatever briefs you're going to  
6 file must be filed with me by February 14th. I'm not particularly  
7 interested in reply briefs, by the way. It is a waste of time  
8 anyway. So I would start writing whatever you want to write.  
9 I have told you what I'm interested in; namely, the legislative  
10 history of 228(a) and any supporting cases which you have that  
11 is interpreted by any similar language that exists. I think  
12 that is an adequate schedule. February 14th for whatever you  
13 want to submit. You can call it a posthearing brief. I'm not  
14 going to impose a format on you. I'll leave it up to the  
15 good discretion of very competent counsel to submit it in any  
16 form you want. I really don't think reply briefs are necessary  
17 and is a waste of time and will delay the matter even more.

18 Anything else?

19 MR. WILSON: No.

20 JUDGE NEEDLEMAN: I'll give both counsel plenty of  
21 opportunity to argue as early as practicable.

22 (The hearing was concluded at  
5:00 o'clock p.m.)

UNITED STATES OF AMERICA  
DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

In the Matter of: )  
READ, Inc. )

POST-HEARING ORDER NO. 1:  
CORRECTING THE RECORD

In the statements attributed to the Administrative Law Judge, it is ordered that the following corrections of the record be made:

Page	Line	Reads	Should Read
4	5	Section 3071, et seq., from the LEAA administrator review	Section 3071, et seq., and the LEAA administrative review
4	6	procedure regulations C.F.C., Part 18, the Justice System	procedure regulations C.F.R., Part 18. The Justice System
4	7	Improvement Act Appeal Procedure as applicable to agency actions	Improvement Act Appeal Procedure is applicable to agency actions
10	17	that. I can understand it could have come before me, pre-	that. I can understand you could have come before me, pre-
10	18	sumably, by the other reviewing authorities, and say that once	sumably, and the other reviewing authorities, and say that once
14	3	shuffling of the budget? And the Justice Department has	shuffling of the budget? And the Justice Department has not
37	11	JUDGE NEEDELMAN: What you're saying, I understand that	JUDGE NEEDELMAN: What you're saying, if I understand you, is that

53	2	JUDGE NEEDELMAN: Is it the view of you as an overall	JUDGE NEEDELMAN: Is it your view as overall
53	3	head of this unless it can find money for its NIJJDP and unless	head of this unless it can find money from NIJJDP and unless
54	11	for all of this and approximately \$300,000 must go to this	for all of this and approximately \$800,000 must go to this
54	12	Institute. Now, doesn't that process make an annulity of	Institute. Now, doesn't that process make an annulity of
54	15	compete for and almost inevitably these projects would not be	compete against. Almost inevitably these projects would not be
57	3	JUDGE NEEDELMAN: And did not establish any criteria right	JUDGE NEEDELMAN: And did not establish any perpetual right
57	15	in mind both the right, if you will, the Justice Department	in mind both the right, if you will, of the Justice Department
58	6	to resolve that gray area and the Justice Department coming up	to resolve that gray area by having the Justice Department coming up
106	16	where you have direct control, namely, in the Special Emphasis	you have a directive in the Special Emphasis
106	17	Division, you have the same policy announcement, namely that	Division that
106	18	we are going to do this on a competitive basis, and you have	we are going to do this on a competitive basis. You have
106	19	the exact same facts and the project ends as of a certain date	the directive and the project ends as of a certain date
134	17	Department the same rules that I wouldn't impose on a corpor-	Department the same rules that I would impose on a corpor-
145	20	every juvenile detention center have to keep manufacturing	every juvenile detention center have to keep ordering

**CONTINUED**

**4 OF 7**

145	22	this statute? Do they have to put up these basketball hoops	this statute even if they have already put up these basketball hoops
148	20	JUDGE NEEDELMAN: Well, this is a review of the National	JUDGE NEEDELMAN: Well, this is a view of the National
148	21	League of Cities. How does the review of the National	League of Cities. How does the view of the National
149	1	and intent bind the the Section 228(a)?	and intent behind Section 228(a)?
151	10	in the National Association of Advertisers versus Pertchek,	in the National Association of Advertisers versus Pertschuk,
151	12	history it was the view that the Circuit Court of Appeals,	history it was the view of the Circuit Court of Appeals,
151	13	at least, and some other authorities may look to sources	at least, that it may look to sources
151	18	Approval Act. On the basis that legislative history is an	Improvements Act. On the basis that legislative history is an
151	19	extremely lucid concept anyway, and the reviewing	extremely elusive concept anyway, and the reviewing
210	11	references of the floor debates and perhaps the hearings	references to the floor debates and perhaps the hearings
210	15	you don't have to worry about it. You can cite it to me or	you don't have to worry about it. You can cite it to me.
210	16	write it to me. I will find it. I would not rely on non	I will find it. I would not rely on non
233	3	proposition that a statute such as 228(a) has the language	proposition that a statute such as 228(a) which has the language
233	4	"shall" and it creates a matter beyond court review as	"shall" creates a matter beyond court review as

233	5	complied by 701(a)(2)?	contemplated by 701(a)(2)?
233	16	terms of exercising discretion if you had that discretion.	terms of reviewing discretion if you had that discretion.
234	7	an agency exercise judgment. Are you saying that is the	an agency exercise of discretion be reversed. Are you saying that is the
234	19	cases, rare cases that come under 701(a)(2) the matter is left	cases, rare cases that come under 701(a)(2) and the matter is left
234	20	to the discretion of the agency, but that means the absolute	to the discretion of the agency, that does not mean the absolute
234	22	review is narrow. But that is only due to the question of the	review is narrow. But that only goes to the question of the
235	9	review of discretion. I do not understand that to be the	to review discretion. I do not understand that to be the
236	8	regulations or guidelines to establish criteria. How can anyone	regulations or guidelines establishing criteria. How can anyone
236	18	the program, Read ought to have exemplary status. So what	the program would say Read ought to have exemplary status. So what
237	15	ment, does LEAA like every other agency's type of budget, aren't	ment, does LEAA like every other agency,
237	16	there budgetary reasons why each of your grants do, in fact,	have budgetary reasons why each of your grants do, in fact,
238	13	JUDGE NEEDELMAN: Are we going to hear anything substan-	JUDGE NEEDELMAN: Are we going to hear anything substantive
238	14	tively today about the performance of Project Read and why	today about the performance of Project Read and why
243	5	until October of this year which, assuming that competitive	until October of this year assuming that competitive

244	18	JUDGE NEEDELMAN: Does its counsel know of any precedent	JUDGE NEEDELMAN: Does either counsel know of any precedent
245	2	authority of agency discretion. I didn't see any reference	of agency discretion. I didn't see any reference
246	5	of the statute read like the funding sections in the NSCS	of the statute read like the funding sections in the NCIC
246	8	searching for some process where you do have this kind of	searching for some precedent where you do have this kind of
265	5	justice and alternative system practitioners and volunteers	justice and alternative system practitioners and volunteers.
265	6	capability of training materials development," does that	Capability of training materials development," does that
296	14	JUDGE NEEDELMAN: I'll state it on a different ground. I	JUDGE NEEDELMAN: I'll sustain it on a different ground. I
302	17	JUDGE NEEDELMAN: I think it is getting a little opinious	JUDGE NEEDELMAN: I think it is getting a little tenuous
302	22	228(a) that where within LEAA they must find funds to continue	228(a) that somewhere within LEAA they must find funds to continue
304	17	discretion, even more importantly, he has a legislation	discretion, even more importantly, he has a legislative
304	22	underneath of that to the training institute. Am I going to be	under that to the training institute. Am I going to be
305	11	have to go into all of the details of the planning process of	have to go into all of the details of the planning process.
305	12	what they expect to get out of this training center, how	What they expect to get out of this training center, how

305	17	complied by the statute, then, what you're saying, I assume,	contemplated by the statute, then, what you're saying, I assume,
305	20	budget and then continuing projects have this preference,	budget and then continuing projects have this preference.
305	21	if they have a formula. That raises another point in my mind.	That raises another point in my mind.
307	14	mandate. You get a hopeless case. Why don't you just proceed	mandate. You have a hopeless case. Why don't you just proceed
310	4	drafted this legislation), he doesn't want you to go around	drafted this legislation), it doesn't want you to go around
310	10	cracy to find a project that works; since the bureaucracy	cracy ending a project that works; since the bureaucracy
311	16	JUDGE NEEDELMAN: That seems to be a rarity. You fund	JUDGE NEEDELMAN: That seems to be peculiar. You fund
311	17	the project for five years and not being sure what it	the project for five years and are not sure what it
313	21	and delinquency given the emphasis and the status itself in	and delinquency given the emphasis in the statute itself on
314	16	an impossibility even the bitter, let's say, fight over who	an impossibility given the bitter, let's say, fight over who
344	6	timely hearsay objection that has been made on the basis	timely hearsay objection that had not been made on the basis
344	16	account what was said, so what is the relevance for this purpose,	account what was said, so what is the relevance
345	22	want him to be cross examined about his opinion and the rule	want him to be cross examined about his opinion. This proceeding is
346	12	want and ask the witness whether she agrees or disagrees	have and ask the witness whether she agrees or disagrees

346	13	with it. Do anything you want, but you cannot get into the	with it. Do anything you want to do, but you cannot get into the
346	14	record someone's opinion unless that person is here to cross	record someone's opinion unless that person is here to be cross-
346	15	examine.	examined.
347	3	that statement as substantive evidence that is what the Act	that statement as substantive evidence as to what the Act
348	15	they don't indentify the 228(a), but it is quite clear that is	they don't identify 228(a), but it is quite clear that is
352	5	budgetary determination, you would only support for continuance	budgetary determination, namely that you would only support for continuance
356	10	process the better program which happens to be superior to	process the better program happens to be superior to
356	20	at the literacy problem which exists in Juvenile Justice's	at the literacy problem which exists in the juvenile justice
356	21	view?	area?
379	15	procedure. It is in every damn office. But a secretary getting	procedure. It exists in every office. A secretary getting
379	17	which begins with Exhibit 11 and Exhibit 11(b)?	which coincides with Exhibit 11 and Exhibit 11(b)?
382	16	and the matter of Project Read. The briefing schedule. I	in the matter of Project Read. The briefing schedule. I
383	11	is interpreted by any similar language that exists. I think	have interpreted any similar language that exists. I think
383	20	JUDGE NEEDELMAN: I'll give both counsel plenty of	JUDGE NEEDELMAN: I have already given both counsel plenty of

383	21	opportunity to argue as early as practicable.	opportunity to argue so there will be no oral arguments.
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*Morton Needelman*  
Morton Needelman  
Administrative Law Judge

March 3, 1980

## PART II: EXHIBITS

(Joint Exhibit 1)

16.518 NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Federal Agency: Law Enforcement Assistance Administration, Department of Justice

Authorization: Public Law 93-415, Section 241-251, 42 U.S.C. 5610, as amended.  
 Objectives: To encourage, coordinate, and conduct research and evaluation of juvenile justice and delinquency prevention activities; to provide a clearinghouse and information center for collecting, publishing, and distributing information on juvenile delinquency; to conduct a national training program; and to establish standards for the administration of juvenile justice.

Types of Assistance: Project Grants (Contracts).

Uses and Use Restrictions: It is the purpose of the Institute to provide a coordinating center for the collection, preparation and dissemination of useful data regarding the preventing and treatment of juvenile delinquency, and to provide training for persons-professionals, paraprofessionals and volunteers, where activities relate to juvenile delinquency programs. The funds may be used to conduct research, development and evaluation into any aspect of juvenile delinquency, including the development of new or improved programs which show promise of preventing or treating juvenile delinquency, and to carry out programs of behavioral research on the causes of juvenile crime, means of prevention, and to evaluate juvenile programs and procedures.

Eligibility Requirements:

Applicant Eligibility: Public or private agencies, organizations, or individuals.  
 Beneficiary Eligibility: Same as Applicant Eligibility.  
 Credentials/Documentation: Costs will be determined in accordance with FMC 74-4 for State and local governments.

Application and Award Process:

Preapplication Coordination: Concept paper serves as a preliminary application. Standard application forms as required by OMB Circular No. A-102 must be used for this program.

Application Procedure: Applicant submits proposal on Standard Form 424. This program is subject to the provisions of OMB Circular No. A-110.

Award Procedure: Award package is sent to grantee. Notification of awards must be made to the designated State Central Information Reception Agency in accordance with Treasury Circular 1082.

Deadlines: Semi-annual unsolicited research cycles. Others as scheduled in annual program plan.

Range of Approval/Disapproval Time: From 1 to 3 months.

Appeals: Hearings held by LEAA.

Renewals: Continuation grant.

Assistance Considerations:

Formula and Matching Requirements: No match required.

Length and Time Phasing of Assistance Varies; generally 1 year. Drawdowns may be made.

Post Assistance Requirements:

Reports: Financial and subgrant data reported on a monthly, quarterly, and annual basis, as required by the LEAA Financial Guide (M7100.1A).

Audits: Full fiscal and program audit annually of at least 15 percent of projects; other site inspections as needed throughout the year. Also by special request.

Records: Grantee must keep complete records on disposition of funds.

Financial Information:

Account Identification: 15-0400-0-1-754.

Obligations: (Grants) Fiscal year 78 \$15,892,000, fiscal year 79 est \$11,175,000, and fiscal year 80 est Not available.

Range and Average of Financial Assistance: In amounts consistent with the Institute's plans, priorities, and levels of financing.

Program Accomplishments: In fiscal year 1978, the OJJDP Institute funded grants totaling approximately \$16,000,000; including \$6,385,000 for program

development, evaluation, information assessment, and systems programs; \$4,380,090 for research; \$3,000,000 for training and \$572,000 for juvenile justice standards. A total of 45 projects were funded.

Regulations, Guidelines, and Literature: Guidelines For Planning Grants (Guideline M4100.1F LEAA Financial Guide M7100.1D.)

Information Contacts:

Regional or Local Office: Not applicable.

Headquarters Office: Director, National Institute for Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, Washington, DC 20531. Telephone: (202) 376-3645.

Related Programs: 16,507, Law Enforcement Research and Development-Project Grants; 16,516, Law Enforcement Assistance-Juvenile and Delinquency Prevention-Allocation to States; 16,517, Juvenile Justice and Delinquency Prevention-Special Emphasis Prevention and Treatment Programs.

Examples of Funded Projects: Projects funded during fiscal year 1978 include Law-Related Education, Juvenile Justice Standards, Juvenile Justice Information and Management System, National Evaluation of Delinquency and Drug Use.

Criteria for Selecting Proposals: Applications are judged according to their consistency with the policies and program priorities established by the Juvenile Justice and Delinquency Prevention Act. Specific criteria are applied that are related to the particular program areas under which projects are funded. The criteria are incorporated in the individual program announcements.

(Joint Exhibit 2)

SEPTEMBER 19, 1979.

EMILY MARTIN,  
 Director, Special Emphasis Division

JAMES C. HOWELL,  
 Director, NIJJDP

PROJECT READ: Please find attached a continuation application from Dr. Janet Carsetti for the subject project.

The Institute has supported this activity for the past four years. It is a literacy program which initially was focused on providing teacher training for educators in institutional settings in methods and techniques for teaching reluctant readers. After the first two years of work we refocused the project on community-based programs which mainly served as alternatives to incarceration. Most recently, the project has developed an arts component which has consisted of encouraging participating teachers to initiate arts projects in conjunction with literacy training. Without a doubt, the project has been extremely successful.

The applicant is now requesting funding for two additional years. I am referring this application to you for consideration by the Special Emphasis Division, particularly in conjunction with the Youth Arts Initiative and for the New Pride Replication. There is presently a project READ component in Denver working with project New Pride clients.

My primary reason for the referral is that, given the success of the project, I believe its impact can be even greater if it were integrated with one or more of the above programs as a specific component. A natural expansion would be to earmark 10 of Project READ's sites and place them with the New Pride Application sites. I also believe the result would be to strengthen the parent program and result in a greater impact.

I appreciate your consideration of the application and am available to discuss its history and prospects with you should you so desire.

(Joint Exhibit 3)

FISCAL YEAR 1980 SUBPROGRAM PLAN

1. MBO Subprogram objective: 1.104—National Institute for Juvenile and Delinquency Prevention.
2. Subprogram Manager: James C. Howell, Director NIJJDP.
3. Office: OJJDP, Division: NIJJDP.
4. Status: Continuation.

5. *History of Program Activity:*

(a) *Principal Activities:* The major activities of NIJJDP coincide with the functions mandated to it by the JJDP Act of 1974 as amended. These are: 1) information development and dissemination; 2) research, evaluation and program development; 3) training development; and 4) standards development for juvenile justice.

(b) *Program Changes Since January, 1978:* There have been no substantial changes in NIJJDP activities since January 1, 1978. There has been some refocusing of program emphases as required and warranted by program accomplishments to date. These are set forth under item No. 6 below.

(c) *Grants/Contracts Terminated,* because of performance (for other) problems. There have been no such terminations; none are expected for the remainder of fiscal year 1979.

6. *Accomplishments and Progress Toward Achieving Objectives.* The NIJJDP program is consistent with requirements of the JJDP Act as amended and with the goals and objectives suggested in the LEAA program pyramid. Specifically NIJJDP's goals are:

(a) To develop knowledge regarding juvenile delinquency and related deviant behavior among youth (including causes, contributing factors and the extent of delinquency and deviance) which can be effectively applied to prevent, treat and reduce delinquent and deviant youth behavior.

The objectives for achievement of the goal are:

(1) Development and support of research programs to acquire the necessary knowledge.

(2) Collection, synthesis and formulation of knowledge in applicable terms.

(b) Application of knowledge acquired through research in program development (prevention, deinstitutionalization, alternatives development, treatment).

The objectives for achievement of the goal are:

(1) Development and support of demonstration programs for testing and refinement of research knowledge for further application.

(2) Evaluation of programs to increase their effectiveness in delinquency/deviance, treatment, prevention, and reduction.

(c) Improvement of the operations of juvenile justice and alternative systems handling of delinquents and youths in danger of developing delinquent or deviant behavior patterns.

The objectives for the achievement of this goal are:

(1) Dissemination of knowledge developed through research, data collection and synthesis to potential users of such knowledge (a specific vehicle for this will be an NIJJDP Clearinghouse of Information).

(2) Development and support of training programs for juvenile justice and alternative system practitioners and citizens involved in volunteer efforts. (Specific vehicles for this will be an NIJJDP Training Center, and other mechanisms).

(3) Development of standards for the operations of juvenile justice and alternative systems consistent with the major emphases of the JJDP Act, including deinstitutionalization development of alternatives to conventional system handling of youth, protection of the rights of youths subject to the juvenile justice and alternative systems processing, and improvement of service delivery to youths within the sphere of responsibility of these systems.

The current accomplishments of the NIJJDP program are best indicated through a developmental perspective. While the years prior to fiscal year 1978 involved start-up of the research effort the current level of information development allows more structured movement toward operationalization of NIJJDP's goals and objectives, including secondary analyses of research findings (the assessment centers programs) establishment of the NIJJDP Clearinghouse and creation of the NIJJDP Training Center. While a substantial research effort and program evaluation (goals #1 and 2) will continue to be an ongoing process, the Clearinghouse and Training Center, to be established in fiscal year

1980, will substantially advance the achievement of goal #3 above. A considerable part of the fiscal year 1980 program set forth below represents a continuation of fiscal year 1979 effort in the areas of research, evaluation, standards development and training. The accomplishments (products) of this effort will become available (usable) in the next fiscal years.

7. *Program Plans:*

(a) *Fiscal year 1980 Plan:* See Plan attached.

(b) *Fiscal year 1981 Projections:*

*Program areas*

Research, evaluation and program development.....	\$6,000,000
Information development and dissemination.....	3,350,000
Training development and implementation.....	1,250,000
Standards development and implementation.....	1,500,000
<b>Total .....</b>	<b>12,100,000</b>

(c) *Resource estimate:*

	[Fiscal years]		
	1979 allocations <sup>1</sup>	1980 estimate <sup>2</sup>	1981 estimate <sup>2</sup>
	(1)	(2)	(3)
Budget.....	\$11,107,000	\$11,000,000	\$12,100,000
Staff.....	8 professionals, 4 clericals	14 professionals, 4 clericals	15 professionals, 5 clericals

<sup>1</sup> End of year.  
<sup>2</sup> Requested.

*Approvals:*

JAMES C. HOWELL,  
*Subprogram Manager and Division Director.*  
DAVID D. WEST,  
*Office Head.*

1 SUBPROGRAM PLAN FOR 1.104 NIJJDP FY 1980 SUBPROGRAM PLAN  
MBO Code & Subprogram Title

ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	(4) DOLLAR RANGE & NO. OF SITES	(5) PERFORMANCE ASSESSMENT PLAN	FY 1980 APDP (6) STAGE
Research Evaluation & Program Development					
Evaluation					
) *Restitution	Improve the use of restitution as an alternative to juvenile justice incarceration and processing	\$650,000	42	NIJJDP Monitor Advisory Committee Self Assessment	Testing
) Youth Advocacy (impact & process evaluation)	Will indicate the effectiveness of this type program & suggest improvements	300,000	Nationwide	" "	Demonstrat:
) *Family Violence	To develop information on effective strategies for preventing & treating family violence	450,000	25	NIJJDP monitor Advisory Committee Self Assessment	Demonstrat:
) New Pride	To determine the effects of the New Pride community based treatment model in a variety of jurisdictions.	300,000	10-12	" "	Demonstrat
) *School Crime	Provide knowledge regarding effective program interventions, to reduce crime & fear of crime in schools.	300,000	Nationwide	NIJJDP monitor Advisory Committee	Testing
Continuation from	previous years.				

FY 1980 SUBPROGRAM PLAN

SO SUBPROGRAM PLAN FOR 1.104 NIJJD  
MBO Code & Subprogram Title

ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	(4) DOLLAR RANGE & NO. OF SITES	(5) PERFORMANCE ASSESSMENT PLAN	FY 1980 APDP (6) STAGE
) Serious Offender	Provide knowledge regarding effective handling of serious youth crime through prevention, control or treatment strategies	\$400,000	Nationwide	" "	Demonstrati
) Separation of Juveniles from Adults	Determine most effective ways of separating juveniles from adult offenders in rural institutional settings.	150,000	10	" "	Demonstrati
) Alternative Education	Determine effectiveness of innovative educational programs. Improve educational curriculum	400,000	10-13	Project Monitoring Advisory Committee Self assessment	Demonstrati
) Prevention	Determine effectiveness of the process (and level of impact) of delinquency prevention services and approaches	200,000	2	" "	Demonstrati
Research					
) *Sexual abuse project (research & development)	Will indicate the nature of sexual abuse of children based on population studied. Will test the most effective program interventions.	400,000	1	NIJJD Monitoring Advisory Committee Self Assessment	Problem Definition Testing

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FY 1980 SUBPROGRAM PLAN  
 Y 80 SUBPROGRAM PLAN FOR 1.104 NIJJD  
 MBO Code & Subprogram Title

1) ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	DOLLAR RANGE & (4) NO. OF SITES	PERFORMANCE ASSESSMENT (5) PLAN	FY AP (6) ST
b) Unsolicited Research Program (Jan cycle)	Provide research findings not otherwise available to OJJDP.	\$ 400,000	Nationwide	NIJJD Monitoring Advisory Committee Self Assessment	Proble Defini Testin
c) Unsolicited Research Program (July cycle)	Indication of new promising areas of program development in prevention & treatment of delinquency.	400,000	Nationwide	NIJJD Monitoring Advisory Committee Self Assessment	Proble Defini Testin
d) Dynamics of Delinquency & Drug Use	Will provide new knowledge regarding variables in drug use over time.	200,000	Nationwide	Project Monitoring	Proble Defini
e) Unsolicited Research Program Continuations	Provide continuation support for promising research projects to reach optimum results.	1,000,000	N/A	Project Monitoring Advisory Committees	Proble Defini Testing
f) Minority Research Initiative	Obtain research findings regarding ramifications of juvenile justice system discrimination on the bases of race & sex & involve minority researchers in other areas of research.	400,000	Nationwide	Project Monitoring Advisory Committees	Proble Defini

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FY 1980 SUBPROGRAM PLAN  
 FY 80 SUBPROGRAM PLAN FOR 1.104 NIJJD  
 MBO Code & Subprogram Title

(1) ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	DOLLAR RANGE & (4) NO. OF SITES	PERFORMANCE ASSESSMENT (5) PLAN	F A S (6)
B. Standards in Juvenile Justice					
*1) Police Handling of Juveniles - Phase 2	Improve police practices consistent with deinstitutionalization & the use of alternatives in the handling of juveniles through the implementation and evaluation of police guidelines developed in two communities.	\$200,000	2	Project Monitoring Self Assessment	Testi
2) Standards Implementation	Development of model statutes based on national standards; provision of technical assistance and training to States in adoption and implementation of juvenile justice standards.	450,000	Nationwide	Project Monitoring Self Assessment	Demon
3) Supplement to Washington State Assessment	Assessment of two additional court jurisdictions vis-a-vis new legislation.	40,000	1	Project Monitoring Self Assessment	Testi
4) Maine Juvenile Justice Legislation	Determination of the effectiveness of new juvenile justice legislation.	250,000	1	Project Monitoring Self Assessment	"

FY 1980 SUBPROGRAM PLAN  
 SUBPROGRAM PLAN FOR 1.104 NIJJDP  
 MBO Code & Subprogram Title

ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	(4) DOLLAR RANGE & NO. OF SITES	(5) PERFORMANCE ASSESSMENT PLAN	(6) FY 1980 APDP STAGE
Court Watch	Citizen participation; improved court handling of juvenile offenders.	\$ 60,000		Project Monitoring Self Assessment User Assessment	Demonstration
Training	Trained judicial personnel; Competence in latest methods & techniques for handling youths under court & court related programs.	175,000	Nationwide	Project Monitoring User Assessment Self Assessment	Dissemination
Training Center	Capability to train juvenile justice & alternative system practitioners & volunteers. Capability of training materials development.	825,000	Nationwide	Project Monitoring Advisory Committee User Assessment Self Assessment	Implementation Testing
Information Dissemination	Information provided to enhance effective programs development	1,500,000	250-500,000	Project Monitoring Advisory Committee Peer review of products	Problem Definition
Assessment Centers	Effective dissemination of juvenile justice information to the field	150,000	4	Project Monitoring User Evaluation	11
Clearinghouse			1		

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FY 1980 SUBPROGRAM PLAN

SUBPROGRAM PLAN FOR 1.104 NIJJDP  
MBO Code & Subprogram Title

ACTIVITY	(2) RESULTS EXPECTED	(3) ESTIMATED COST	(4) DOLLAR RANGE & NO. OF SITES	(5) PERFORMANCE ASSESSMENT PLAN	FY 1980 APDP (6) STAGE
Exemplary Projects	Higher quality of juvenile justice programs (Incentive)	\$200,000	1	Project Monitor Advisory Committee Review Panel	Dissemination
Management Support Contract	Improved program development and implementation.	200,000	1	Project Monitoring User Evaluation	Implementation
Juvenile Court Statistics Reporting System	National data on court processing of juveniles.	200,000	Nationwide	Project Monitoring User Evaluation	Problem Definition
JJDP Administrative Consultation With Selected Groups	Improved decisionmaking & responsiveness to juvenile justice needs.	450,000	Nationwide	Project Monitoring Participant Evaluation	Problem Definition
Children in Custody Census	Updated information on the deinstitutionalization of juveniles.	350,000	Nationwide	Project Monitoring	Problem Definition

(Joint Exhibit 4)

U.S. GOVERNMENT MEMORANDUM FROM THE DEPARTMENT OF JUSTICE

NOVEMBER 20, 1979.

To: James Howell, Director, NIJJDP.  
 Through: Emily C. Martin, Director, SED, OJJDP.  
 From: Vermont McKinney, Deputy Director, Special Emphasis Division.  
 Subject: Project Read Continuation Application No. 9-1241-O-MD-JJ.

This is in response to your suggestion that Dr. Janet Carsetti, Director of Project Read submit their continuation application to the Special Emphasis Division for review and consideration under the Model Program unsolicited area.

The application has been reviewed and has been determined to have merit. Unfortunately, we cannot make a recommendation for funding because it is now LEAA/OJJDP policy to award action grants through the issuance of published guidelines and a competitive application review process. The only unsolicited projects that are to be considered for continued support in fiscal year 1980, until they are able to compete, are action grants funded in fiscal 1978 and 1979 with Special Emphasis Discretionary funds.

Therefore, we regret that at this time we are unable to provide assistance to Project Read.

(Joint Exhibit 5)

U.S. DEPARTMENT OF JUSTICE,  
 OFFICE OF JUVENILE AND DELINQUENCY PREVENTION,  
 Washington, D.C., November 28, 1979.

Dr. JANET CARSETTI,  
 Director, Project READ, Inc.,  
 8505 Cameron Street, Suite 216,  
 Silver Spring, Maryland.

DEAR DR. CARSETTI: This is in response to your grant application for continuation of "Project READ." I regret to inform you we are unable to offer continued LEAA support for your project at this time.

As we discussed by phone, your application was forwarded to the Special Emphasis Division of the Office of Juvenile Justice and Delinquency Prevention. While that Division had a strong interest in continuing the project, they have informed us that funds are not available to fund the project in fiscal year 1980.

Our fiscal year 1980 training priorities within NIJJDP have been established, and do not include the type of training activity under Project READ.

As we have discussed, there may be competitive Special Emphasis programs under which your project might qualify which are to be announced during fiscal year 1980. I suggest that you contact Ms. Marjorie Miller, Special Emphasis Division, to determine the most appropriate action guidelines under which you might apply.

Again, I regret we are unable to provide further assistance to Project READ at this time.

Sincerely,

JAMES C. HOWELL,  
 Director, National Institute for Juvenile Justice  
 and Delinquency Prevention.

(Joint Exhibit 6)

16.517 JUVENILE JUSTICE AND DELINQUENCY PREVENTION—SPECIAL EMPHASIS  
PREVENTION AND TREATMENT PROGRAMS

(Program Grants, Discretionary Grants and Technical Assistance)

Federal Agency: Law Enforcement Assistance Administration, Department of  
Justice

Authorization.—Public Law 93-415, Section 225-228, 42 U.S.C. 5601 (as amended); Public Law 93-83, 42 U.S.C. 3701, as amended; Section 204, Public Law 93-415, 42 U.S.C. 5601, as amended.

Objectives.—To develop and implement programs that support effective approaches, techniques and methods for preventing and controlling juvenile delinquency through development and utilization of community-based alternatives to traditional forms of official justice system processing; improvement of the capability of public and private agencies to provide delinquency prevention services to youth and their families; development of new approaches and techniques for reducing school drop-outs, unwarranted suspensions and expulsions; and through support of advocacy by groups and organizations committed to protection and improvement of the legal rights and welfare of youth. To provide technical assistance to Federal, State and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, operation or evaluation of juvenile delinquency programs; and to assist operating agencies having direct responsibilities for prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, and procedures established through the Office of Juvenile Justice and Delinquency Prevention and the priorities defined for formula grant programs.

Types of Assistance.—Project Grants (Contracts).

Uses and Restrictions.—To be eligible for a Special Emphasis grant, an applicant must: (1) respond to requirements of specific program guidelines issued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP); (2) be consistent with the objectives and priorities of OJJDP and the State's comprehensive juvenile justice and delinquency prevention plan; (3) provide for proper program administration, evaluation, and budget reporting; (4) demonstrate, in the overall quality of the proposal, that the program is technically sound and will achieve the required program objectives at the highest possible level; and, (5) respond to clear and documentable needs. Technical Assistance is provided public and private agencies, institutions and individuals in developing and implementing juvenile delinquency programs. In addition, support is provided for the major program thrusts of OJJDP: Special Emphasis Grants, Concentration of Federal Effort, National Institute for Juvenile Justice and Delinquency Prevention, and Formula Grants to states. Joint Funding: This program is considered suitable for joint funding with closely related Federal financial assistance programs in accordance with the provisions of OMB Circular No. A-111. For programs that are not identified as suitable for joint funding, applicants may consult the headquarters or field office of the appropriate funding agency for further information on statutory or other restrictions involved.

Eligibility Requirements.—Applicant Eligibility: Special Emphasis funds are available under the Juvenile Justice and Delinquency Prevention Act and Part C of the Omnibus Crime Control Act to public and private nonprofit agencies, organizations, individuals, State and local units of government; Part E funds under the Omnibus Crime Control Act are available to State and local units of government, combinations of State or local units. Technical assistance is available to States, units of general purpose local government, combinations of such states or units, or other private agencies, organizations, institutions or individuals.

Beneficiary Eligibility: Public and private youth serving agencies/organizations, State and local units of government, combinations of such units, or other private agencies, organizations, institutions or individuals.

Credentials/Documentation: Costs will be determined in accordance with FMC 74-4 for State and local governments. Governors (or their designated plan review agencies) must be given an opportunity to review the State Plan pursuant to Part III, Attachment A of OMB Circular No. A-95 (revised).

### Application and Award Process

**Preapplication Coordination: Special Emphasis:** In some program initiatives, applicants are invited to submit preliminary applications or concept papers in response to program announcements issued by OJJDP. The original and one copy are sent to the OJJDP in Washington, and one copy is sent to the State Planning Agency; or the original and two copies are sent to the OJJDP if the proposed program extends beyond State boundaries. One copy should be sent to the appropriate A-95 clearinghouse and one copy to the local A-95 clearinghouse in accordance with OMB Circular No. A-95 (revised). Applications are subject to State and areawide clearinghouse review pursuant to procedures in Part I, Attachment A of OMB Circular No. A-95 (revised). Preliminary applications are not to exceed 15 pages, but may have supporting information in appendices. Preliminary applications or concept papers are judged according to pre-defined selection criteria. Those applicants judged to meet selection criteria at the highest level are invited to develop full applications. Each program announcement provides the dates for preliminary application submission. The standard application forms as furnished by the Federal agency and required by OMB Circular No. A-102 must be used for this program.

**Application Procedure:** The applicant submits an original and 2 copies of proposals on Standard Form 424 in response to specific guidelines published by OJJDP. Applicants are expected to address each concern or requirement in the guidelines as clearly and specifically as possible, giving particular attention to goal and objective statements, methodology and data requirements. Applications are rated and ranked in relation to pre-defined selection criteria.

**Award Procedure: Special Emphasis:** grants may be awarded directly to applicants or may be awarded to State Planning Agencies (SPAs) with a subgrant or contract to the successful applicant for program administration and implementation. In either instance, OJJDP notifies both grantees and subgrantees of a pending award. Notification of awards must be made to the designated State Central Information Reception Agency in accordance with Treasury Circular 1082.

**Deadlines:** Published in program announcements.

**Range of Approval/Disapproval Time:** Special Emphasis: From 1 to 3 months.

**Technical Assistance:** From 1 to 4 weeks.

**Appeals:** Hearing held by LEAA.

**Renewals:** Continuation grant.

### Assistance Considerations

**Formula and Matching Requirements: Special Emphasis:** grants awarded under the Juvenile Justice and Delinquency Prevention Act may or may not require a 10 percent cash match; and, monies from Part C or E of the Omnibus Crime Control Act require a non-Federal cash match of 10 percent of the project cost, except for construction projects, where the match is 50 percent. No match is required for Technical Assistance.

**Length and Time Phasing of Assistance: Special Emphasis:** Awards usually are made for 2 or 3 years. Drawdowns are possible under Letter of Credit. Technical Assistance: Varies according to the type of request.

### Post Assistance Requirements

**Reports:** For Special Emphasis grants quarterly, and final financial and progress reports are required. For Technical Assistance: Evaluations of service are required.

**Audits:** Full fiscal and program audits will be done at close of grants, and on-site inspections will be made throughout the grant.

**Records:** Grantee must keep complete records on the disposition of funds.

### Financial Information

**Account Identification:** 15-0400-0-1-754.

**Obligations:** (Grants) Special emphasis: fiscal year 1978 \$35,192,000; fiscal year 1979 est \$27,603,000; and fiscal year 1980 est Not available. Technical Assistance: fiscal year 1978 \$3,000,000; fiscal year 1979 est \$3,000,000; and fiscal year 1980 est \$3,000,000.

**Range and Average of Financial Assistance:** Not available.

**Program Accomplishments.**—In fiscal year 1978, Special Emphasis grants were awarded under the program areas of restitution by adjudicated delinquents (over \$20,000,000), model programs, a national school resource network, prevention of delinquency (continuation grants), and diversion from the traditional juvenile justice system. Previously funded activities were continued in the areas of deinstitutionalization of status offenders, dependent and neglected children, and prevention of school crime and disruption. During fiscal year 1979, Special Emphasis grants will be awarded on a competitive basis in the program areas of advocacy, replication of the Denver, Colorado, Project New Pride, and alternative education. Technical assistance was provided in support of Special Emphasis programs as well as the OJJDP Formula Grant Program. During fiscal year 1979, these technical assistance efforts will continue and in addition a new contract focusing on integration of services will be awarded.

(Joint Exhibit 7)

### 12. Continued Support.

(a) **Authority.**—The Juvenile Justice Delinquency Prevention Act establishes the policy that programs funded under it shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

(b) **Applicability.**—This policy applies to formula grants and to Special Emphasis Prevention and Treatment grants.

(c) **Procedures.**—

#### (1) Special Emphasis and Treatment Programs.

(a) **Announcement.** Juvenile Justice and Delinquency Prevention Programs announced in the LEAA Guide for Discretionary Programs shall indicate the number of years (usually in 12 month segments) for which an applicant may request support for a project.

(b) **Preparation.** In preparing applications, applicants shall not request support for a project beyond the time period stated in the program announcement.

(c) **Receipt.** Upon receipt of an application the cognizant LEAA office shall negotiate with the applicant the total project period for which a project shall be approved. The length of the project shall be determined by LEAA on the basis of two primary considerations: the length of time required to complete the project, and the number of original and continuation applications desirable for the proper management of a particular Special Emphasis and Prevention and Treatment Program. The length of the project period, therefore, may be less than the period requested by the applicant or stated in the Discretionary Guideline program announcement. Project periods shall be divided into budget periods. These budget periods are the intervals of time into which the project period is divided for budgetary purposes. Budget periods are 12 months long except for the first and last budget period which may vary.

(d) **Notification.** If approved, a grant shall be awarded to the applicant in an amount and for a project period determined by LEAA to be necessary for the project. The award of the first budget period shall be considered a notification of LEAA's intention to support the grantee for the duration of the negotiated project period unless terminated prematurely:

(e) **Termination.** An award shall terminate automatically upon completion of the period set forth in the final application, unless extended. In addition, a project may be terminated prematurely, if: (1) The level of Federal funding under the JJDP Act is decreased materially, or (2) The applicant fails to comply with the terms and conditions of the award, or (3) The applicant fails to receive a satisfactory yearly evaluation.

(f) **Continuation Funding.** Grantees shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory. Withdrawal of Federal support would be indicated if the grantee failed in a material way to comply with the terms and conditions of the award; or, if for some reason not necessarily within the grantees control, it was established that continued funding was not in the best interest of the government.

(g) *Extensions.* Extensions of the project period shall be considered only when the original project period was approved for a period shorter than needed to complete the project or the results of the project seem so fruitful as to warrant support beyond that originally intended.

(2) *Formula Grant Funds.* For principles and procedures applicable to continuation support for subgrants awarded by the State from JJDP formula grants program refer to Guideline Manual for State Planning Agency Grants, M 4100.1E, Chapter 3, Paragraph 77.0.

(Joint Exhibit 8)

OCTOBER 5, 1979.

To: David West, Acting Associate Administrator, OJJDP.  
Through: Emily C. Martin, Director, SED, OJJDP.  
From: Marjorie L. Miller, Juvenile Justice Specialist, Special Emphasis Division, OJJDP.  
Subject: Continuation of Program—Project READ—Application Number 9-1241-O-MD-JJ.

*I. Issue*

Dr. Janet Carsetti, Director of Project READ has formally submitted a continuation application for her on going program, Project READ. NIJJDP has supported this program over the past few years. It is a literacy program focused on the following program elements:

- A. To provide teacher training in methods and techniques for teaching reluctant readers;
- B. To provide testing material for diagnosing students reading problems and provide teachers with resources for improving students' reading skills;
- C. To provide free paperback books to students in participating schools;
- D. To assist a number of schools of higher education with developing programs for teachers working in the juvenile justice system;
- E. To develop and disseminate nationally a series of publications to educators in the juvenile justice system; and
- F. To develop an arts component that will encourage participating teachers to initiate arts programs and to create a clearinghouse for related programs.

This application was favorably reviewed by both NIJJDP and the Special Emphasis Division. The purpose of this memorandum is to request authorization to begin processing the application for possible award and refer the application to FMGAB for fiscal review.

*II. Summary*

A. The philosophy of Project READ is that young people in the juvenile justice system need to be provided with the skills necessary for self-sufficient survival in a literate society.

They must, for example, be able to complete a job application, read a lease, read street and road signs, use a telephone book, read newspapers, read labels on prescription medicine, food packages, and more. But to be literate is more than knowing how to read and write. The concept of literacy should be expanded to include fundamental learning skills which train the senses and enrich our emotions.

Sensitivity, respect for other people, the confidence to express oneself, self-discipline, and self appreciation are qualities equally basic to becoming independent and leading productive life.

B. Most significant among the data collected by Project READ are the overwhelming deficiencies of young people in the juvenile justice system in the language arts and communications skills. Specifically, pre-test data from the 100 alternative schools participating in Project READ during 1978-1979 reveal:

1. The average reading level to be fifth grade.
2. Nineteen percent of the total population scored below the fourth grade level in reading.
3. The average mental age to be 13 years one month or equivalent to an eighth grade level.
4. The average self-concept score was well within the acceptable range, yet, 38 percent of the population reported themselves as "poor readers."
5. The average chronological age is 16 years.
6. Of 3,390 young people tested, 64 percent are male and 36 percent female.

These data conclude that while these young people possess the ability to read, they are not motivated to do so . . . at least until they are given highly motivating books; taught by new and different techniques; and allowed to practice reading during the school day.

C. Dramatic increases have been achieved by students participating in Project READ. Despite a low budget, (as compared to other federally funded literacy programs, and a limited staff), Project READ has worked with more than 40,000 young people in the juvenile justice system, and in 322 schools representing 49 States and the District of Columbia:

1. More than 155,000 paperback books have been given to these young people and more than 400 teachers have been trained in how to use the books and other motivational techniques to improve students' communication skills.
2. The average student gain more than twice as much in reading level than over the same period of time prior to working with Project READ.
3. The average child in mental age gained four months during a four month period. Verbal communication increased drastically. This is significant for these students as it passes the previous growth rate. Attitude toward reading and reading process increased by at least 13 percent. These students felt they were better readers after working with Project READ. Only 11 percent of all the children still felt they were not good readers.

4. When students are motivated to read what they select to read, improvement is almost inevitable. After four months, there were 15 percent fewer students reading below fourth grade level. More than half or 61 percent of all students tested are now able to read at or above fifth grade level and are able to function in a literate society.

D. Arts Component. In addition to the program elements above, Project READ has incorporated an arts component into its literacy efforts by working under the following premise: "the arts have the potential for turning around lives; for preventing young people from becoming insensitive and self-destructive; and, for that matter, preventing behavior deemed "delinquent" by the juvenile justice system." With two years of national experience investigating the "state of the arts" within the juvenile justice system, Project READ is now proposing the following:

Provide an Arts Program that would:

1. Serve as a nation-wide Clearinghouse for information on the Arts of Juvenile Justice Programs.
2. Form a National Resource Committee to assure that juvenile justice programs will not be overlooked in future legislation and planning which determines support for the arts and arts education.
3. Provide training in the arts to staff members of juvenile justice programs and schools so that they may develop successful arts programs.

E. Project New Pride: Replication. Project New Pride has been one of the 100 alternative schools and community based programs served by Project READ during the past two years. New Pride has found the educational training and efforts of Project READ to be extremely successful. They also have a "cultural education" component which can serve as a model. Therefore, I suggest, if funded, that we ask Project READ to hold 10 of their 50 proposed slots for the New Pride Replication sites. We at OJJDP can then be appraised of the efforts of Project READ's literacy and arts efforts in these 10 sites, and be able to make a more sophisticated decision concerning their future funding.

F. Alternative Education. For the same reasons described above this would also be a good initiative to link together the benefits of Project READ. Again, this program does serve alternative schools and could be a natural to plug this into the selected sites under this initiative when it gets underway.

*III. Benefits*

A. This undertaking of an arts initiative by Project READ would be helpful to OJJDP as the office determines the best means of supporting future arts efforts. Specifically, Project READ has identified existing efforts by juvenile justice programs and the arts community alike to develop "delinquency prevention" programs which are based on the arts. Additionally, they have identified and opened channels of communication with representative from other federal agencies (such as OE's Arts Coordination, the National Endowment for the Arts education programs, and the Department of Labor's Employment and Training Administration) who have been responsible for developing arts education programs for young people.

B. It makes sense to link this program with the New Pride Replication Initiative and possibly the Alternative Education initiative for reasons discussed above.

C. There is no other national effort in literacy and/or the arts for young people in the juvenile justice system. With the extremely successful results this Project has achieved, it would be advantageous to endorse continuation funding.

D. The Director of Project READ, Dr. Janet Carsetti and the proposed Assistant Director, Catherine Pierce, have worked directly with troubled youth at the national and local levels. Dr. Carsetti was the Director of the American Bar Association's Clearinghouse for Offender Literacy Programs and is a nationally recognized speaker and author for "correctional education programs." Ms. Pierce was the Assistant Director of the ABA's Female Offender Resource Center and co-authored *Little Sisters and the Law* a comprehensive look at the differential treatment received by young women in the juvenile justice system. Both these women have dedicated an extensive amount of time and effort to improved conditions for troubled youth.

E. This is one program that should be singled out by OJJDP as a Special Emphasis Program that works. This program should be nominated for exemplary status.

F. This has been a highly visible program which has attracted strong congressional support. Because of written material supplied by Dr. Carsetti regarding the need for improved literacy among the nation's youth, Senator Mathias agreed to cosponsor legislation leading toward a national youth literacy bill.

#### IV. Affected offices

The Special Emphasis Division for processing funding and monitoring. The Office of the Comptroller for fiscal review.

#### V. Financial consideration

The Budget which has been submitted with the proposal indicates that \$601,535 is required in program funds. This will cover a period of 24 months (which will coincide nicely with the initial New Pride Replication initiative) and possibly the Alternative Education Initiative.

#### VI. Recommendation

It is highly recommended that the applicant be contacted for the purposes of refining the proposal, budgeting requirements and additional material needed concerning specific program component tasks. I feel this program is strong enough in its concept that we may request to Mr. Dogin to make an exception for this program and allow OJJDP to fund it under our authorization.

Your approval to refer this application for fiscal review is requested.

Project READ presently runs out of funds December 15, 1979. Continuation of this grant will allow for a smooth transition (especially in the New Pride sites) without an interruption of program.

(Joint Exhibit 9)

U.S. GOVERNMENT MEMORANDUM FROM THE DEPARTMENT OF JUSTICE

OCTOBER 17, 1979.

To: Emily Martin, Director, SED.

From: David D. West, Acting Associate Administrator/OJJDP.

Subject: Continuation of Unsolicited Grants.

As you were present in the meeting with the Planning Team on Friday, October 12, you are aware that it has been proposed that we rethink the manner in which we will phase out unsolicited grants in the Office. The Planning Team proposed that we notify all Model Program Grantees eligible for continuation in fiscal year 1980 that we will give them continuation consideration for a period not to exceed September 30, 1980, and in an amount which is prorated by month and based upon their current budget.

I have considered this plan and I believe that it will adequately solve our problems in phasing out active unsolicited grants and will bring all of these grantees into a position of being able to compete for funds under a 1981 Capacity Building competitive initiative, which we will award on October 1, 1980. I want to

stress that these fiscal year 1980 continuations will be granted only on the basis of merit, meaning that the grantee has satisfactorily achieved all of its projected goals and objectives during the most recent grant period.

I will need the following information from the Special Emphasis Division to implement this continuation, I need:

1. An accurate identification of eligible grantees (Model Program grantees only) which terminate in fiscal year 1980, their termination dates, and the calculated cost of continuation through September 30, 1980, based upon proration of their present budget. Due Date: COB 10/17/79.

2. A draft letter for my signature which notifies all Model Program grantees due for continuation in FY 1980 of the opportunity and the conditions under which they can apply for continuation. This letter must contain a statement to the effect that this will be the final award made for their project under non-competitive, unsolicited procedure. Due Date: COB 10/19/79.

3. The proposed review procedures and criteria that the Special Emphasis Division will use to receive, rate and review these continuation applications. Due Date: COB 10/31/79.

This change in plans for funding Phase 1 of the Capacity Building initiative does not allow a delay in the development and publication of Phase 2 of the Capacity Building initiative. I want to have the Guideline published in final in the *Federal Register* no later than April 30, 1980, so that everything will be ready to make the awards as of October 1, 1980.

In addition to the fiscal year 1980 continuations, I want to have a complete list of all unsolicited (including Model Programs) grants which are due for continuation in fiscal year 1981. Please prepare this for me no later than November 30, 1979, and include the grant number, date of termination and nature of the commitment made. These grantees will all be notified during the month of December 1979, that they are not eligible to receive continuation funds for their unsolicited grants.

(Joint Exhibit 10)

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
Washington, D.C., February 24, 1976.

Mr. JOHN M. RECTOR,  
Staff Director and Chief Counsel,  
Senate Subcommittee to Investigate Juvenile Delinquency,  
Washington, D.C.

DEAR MR. RECTOR: This is in response to your request for an explanation of LEAA Guidelines which implement Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974. Section 228(a) states the following with regard to continuation funding of projects receiving financial assistance under the Act:

"Sec. 228. (a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

This Congressional continuation funding policy differs from the current provision of the Crime Control Act which requires that State and local governments demonstrate a willingness to assume the costs of improvements funded under Part C after a reasonable period of Federal assistance (Section 303(a)(9)). While LEAA's experience indicates the wisdom of the assumption of cost concept, the agency has implemented the continuation funding provision of the Juvenile Justice Act in a way that provides the flexibility for continuation funding desired by the Congress.

The most pertinent comment with regard to the intent of Section 228(a) was made by Senator Bayh in floor debate on S. 821. Senator Bayh, in discussing Indiana's Youth Service Bureaus, made the following comment on the continuation funding policy:

"These Youth Service Bureaus have had problems in the past in obtaining information concerning the length of funding contemplated by LEAA. Under the new Part F, the policy of Congress is clearly stated that projects which are successfully evaluated shall receive continued funding. With the passage of the new Part F, this policy should be implemented so that programs such as Youth Service Bureaus will be able to work out with LEAA an orderly method of development,

implementation and length of funding." (120 Congressional Record S. 13491, daily ed., July 25, 1974.)

In formulating the Guidelines to implement this provision for formula grant funds and special emphasis grant funds, LEAA sought to establish "an orderly method of development, implementation and length of funding." We felt that the statute would not permit establishment of a set period of funding for all programs since this would constitute an assumption of cost policy. However, we did not feel that the statute contemplated that the States and LEAA would be tied to funding every program and project, regardless of its nature, for an indefinite period of time. Therefore, we sought to formulate Guidelines which would accomplish the following objectives:

1. Require establishment of a projected length of project support based upon the nature of the activity, the nature of the applicants, and judgments regarding the appropriateness of long-term cost assumption.

2. Set forth the expected length of project funding in the program announcement or plan.

3. Provide for continuation funding throughout the established period for project funding unless stated grounds for premature termination, consistent with the statute, were found to exist.

4. Provide for extensions beyond the approved project period where necessary to complete the project or where the results of the project are so fruitful as to warrant continued support.

These objectives were formally established in State Planning Agency Grant Guidelines M 4100.1D, Chg. 1, July 10, 1975, Chap. 3, Par. 82(o) (formula grants) and in Financial Management Guideline M 7100.1A, Chg. 3, October 29, 1975, Chap. 7, Pa. 12 (special emphasis grants). These Guidelines do not establish a maximum funding period for any program or project, thus providing flexibility to tailor continuation funding to the nature of the individual program or project. At the same time, grantees are assured advance knowledge of the contemplated length of funding assistance and can plan accordingly. Provision for continuation funding beyond the established period for funding provides additional flexibility and an opportunity for outstanding projects to be continued where alternative sources of funding are unavailable.

I hope this explanation satisfactorily responds to your concerns. I would be pleased to answer any specific questions you might have with regard to the LEAA Guideline criteria for continuation funding.

Sincerely,

THOMAS J. MADDEN,  
Assistant Administrator  
General Counsel.

(Joint Exhibit 11)

M-4100.1F CHG 1 May 20, 1977

(2) *Plan Requirements.*—The SPA shall not less than on a yearly basis, review its plan and incorporate the results of evaluation and monitoring activities including the survey of State and local needs. The results of this analysis and evaluation should serve as an integral part of the planning process for the next year's comprehensive plan.

(o) *Continuation Support*

(1) *Act Requirement.*—Section 228(a) of the JJDP Act states: In accordance with criteria established by the administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

(2) *Plan Requirement.*—

(a) *Announcement of Programs.*—The description of every juvenile justice and delinquency prevention program prepared by the State shall indicate the number of years (12 month segments) for which an applicant may request support for a project. This determination shall be based on the nature of the activity to be supported, the nature of the agencies who will be applying for support, and judgments concerning appropriate assumptions of the long-term costs of conducting the project by non-Federal sources of funds. It may include a formula for declining Federal support over the life of the projects.

(b) *Preparation of Applications.*—Applicants shall request support for the full period of a project in responding to an announcement. The application shall not be for longer than the time period stated in the announcement.

(c) *Fixing the Duration of Support for a Particular Project.*—The State shall determine an appropriate length for a project prior to funding any portion of it. The period may be less than that set forth in the announcement if the State decides that a shorter period of time is sufficient for completion of the project, or that sound management of the program requires a mixture of funding periods. The final application shall set forth the period of support, and any additional terms related to the amount or proportion of Federal support contemplated.

(d) *Continuation Funding.* Award of funds for the first budget period in an approved application shall be considered notification of the State's intention to provide support throughout the period of the project, as specified in the final application, unless terminated prematurely.

(e) *Termination.* An award shall terminate automatically upon completion of the period set forth in the final application, unless extended. In addition, a project may be terminated prematurely, if: (1) The level of Federal funding to the State under the JJDP is decreased materially, or (2) The applicant fails to comply with the terms and conditions of the award, or (3) The applicant fails to receive a satisfactory yearly evaluation.

(f) *Satisfactory Yearly Evaluation.* For purposes of this section, the term "satisfactory yearly evaluation" shall refer to those activities defined as "monitoring" in accordance with paragraph 19 of this manual.

(g) *Extension of Project Period.* Extensions of the project period shall be considered only when the original project period was approved for a period shorter than needed to complete the project or the results of the project seem so fruitful as to warrant support beyond that originally intended.

(p) *Equitable Arrangements for Employees Affected by Assistance of this Act*

(1) *Act Requirement.*—Section 223(a) (17) of the JJDP Act requires that the State plan provide that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the JJDP Act. The Act further specifies the provisions which must be included in such protective arrangements.

(2) *Plan Requirement.*—Where applicable, the State plan must set forth a complete plan for meeting this requirement of the JJDP Act. See Appendix 3 of this guideline manual for further instructions on the scope of this requirement and the content of the required plan.

(Joint Exhibit 12)

(s) *Continuation Support*

Pursuant to Section 228(a) of the JJDP Act, the State Planning Agency shall:

(1) Indicate the minimum duration of each JJDP program described in its plan.

(2) Indicate the minimum number of years that funding may be requested and received for projects in each program.

(3) Assure that each funded project shall receive funding for the minimum number of years, unless prematurely ended due to: (a) a substantial decrease in Federal funding to a State under the JJDP Act; or (b) an applicant's failure to comply with the terms and conditions of the awards; or (c) an applicant's failure to receive a satisfactory yearly evaluation. Here "satisfactory yearly evaluation" refers to those activities defined as "Monitoring" in paragraph 19 of M 4100.1F.

(4) The State must assure that potential applicants know the information submitted under 52s (1) and (2) when programs are announced.

(t) *Other Terms and Conditions*

Pursuant to Section 223(a) (21) of the JJDP Act, States shall provide a list of all juvenile projects funded under the prior year's approved plan. This includes projects funded with JJDP funds as well as Crime Control maintenance of effort funds. This list shall include the project title, location, address, level and source of funding.

(Joint Exhibit 13)

I 4510.2

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
September 14, 1979.

Subject: Program Announcement Standards for Categorical Grants.

**1. Purpose**

The purpose of this instruction is to direct that grant applications should be considered for categorical funding primarily when in response to announced and published programs. The instruction also establishes standards for providing potential applicants and other interested persons with information sufficient to judge whether to apply for a grant, to understand how an application will be evaluated, and to understand the obligations imposed on a grantee.

**2. Applicability**

The policy contained in this instruction is applicable to all categorical grant programs and shall affect all programs having deadlines after October 1, 1979.

**3. Definitions**

a. Program announcement means a statement providing information on those program objectives for which grant applications are being solicited; the place where applications may be submitted; the deadlines, if any, for receipt of applications and the manner in which such deadlines may be met; the consequences of late submission; the place where application forms may be obtained; the form an application must take; and, where appropriate, other relevant information or references to such information.

b. Statement regarding the availability of funds means a statement by the program office of its best estimate, where relevant, of:

(1) The amount of funds which are expected to be available under a program for a specified fiscal period and the anticipated distribution of funds, if any, among subprograms and subactivities;

(2) The approximate number of awards expected to be made under the program from such funds;

(3) The expected average amount of an award or the expected approximate amount of the majority of awards;

(4) The anticipated number of, and the amount of funds available for, new and continuation awards;

(5) Any expectations or restrictions concerning the length of projects or the period of Federal support; and,

(6) Any other matter which will enable potential applicants to understand the probable availability of funds. (Any such statement should indicate that it does not bind the agency to any particular pattern of distribution except as may be required by law or regulation. In addition, any such statement should make clear, when appropriate, that the actual figures may vary widely from those given due to uncertainties in the appropriation process.)

**4. Policy**

Program objectives for which grants and other agreements may be made should be covered by program announcements. Competition for assistance shall be furthered to the maximum extent practicable by furnishing the public with sufficient and timely information, including publication of program information in the Federal Register.

a. All program objectives for which grants and other agreements may be made should be covered by program announcements. The award of grants outside the scope of a published program shall be exercised sparingly and only in exceptional circumstances. Exempted from this policy are those programs and projects where applications and concept papers are received through referral from other Federal agencies as a consequence of participation in inter-agency working groups established by directives issued by the Executive Office of the President.

b. Program offices should provide timely opportunities to participate in development of guidelines for programs in accord with policy and procedures set forth in Executive Order 12044 and LEAA Instruction I 1332.5A, Improving Law Enforcement Assistance Administration (LEAA) Regulations and Guidelines, which implements the Executive Order.

c. Competition for assistance should be furnished to the maximum extent practicable by furnishing the public with sufficient and timely information, including publication of program information in the Federal Register.

d. No selections or panel reviews should occur before final notice of the grant program is published in the Federal Register.

e. Exceptions to the policy set forth in paragraphs 4a and 4d will be made according to the following procedures.

(1) Upon receipt of an application not within the scope of any program announcement, the office head must determine in writing that:

(a) The proposed project is in fact not within the scope of any program announcement or any announcement expected to be issued, but can lawfully be supported by a grant or other agreement; and,

(b) The proposed project is of such outstanding merit that the award of a grant without competition is justified.

(2) The determination to be made in paragraph 4e(1) shall be endorsed by the cognizant awarding authority prior to receipt of the application.

(3) When such an application is recommended for approval, documentation of the determinations made subject to paragraphs 4e(1) and 4e(2) shall be included in the grant award package and made a part of the official grant file.

**5. Availability of Information**

a. Each program office should make available the following information and materials with respect to each program:

(1) A copy of, or reference to, the applicable statute or statutes under which the program is carried out;

(2) Rules which have been adopted for the administration of the program;

(3) Guidelines of general applicability which have been adopted for the administration of the program;

(4) If not otherwise made available in the program rules, a statement of the priorities and criteria which will be applied in the evaluation of applications;

(5) A statement regarding the availability of funds;

(6) One or more program announcements;

(7) A description of the procedures by which applications will be received and reviewed; and,

(8) Such other information as the program office deems appropriate to fully inform applicants of the nature of the program and the consequences of participation.

b. The various items of information listed in paragraph 5a may be stated in separate documents or collected in a single document. Where information is made available in separate documents, each document should, to the extent feasible, cross-reference each of the other documents. Where appropriate, a single document may be used to summarize information which pertains to several programs.

c. Program offices should assure that the items specified in paragraph 5a are made available sufficiently in advance of the anticipated receipt of applications to furnish interested persons with adequate time to make an informed judgment as to whether to apply and to prepare a complete application. To the maximum degree practicable, items of information relating to a fiscal year should be made available prior to the beginning of the fiscal year.

**6. Dissemination of Information**

a. At a minimum, the following information should be published in the Federal Register.

(1) Notice of intent to develop a guideline to allow timely participation in guideline development.

(2) Draft guideline for public comment, normally with a 60 day period for public comment.

(3) Program rules.

(4) Program priorities for funding and criteria for awarding grants if not otherwise contained in published rules.

(5) A statement regarding the availability of funds.

(6) The program announcements or pertinent parts thereof, sufficient to describe the program objectives, along with information on how the complete announcements may be obtained.

(7) Program offices should encourage persons interested in information regarding its programs to follow the Federal Register as a repository of information concerning the program.

b. Program offices are encouraged to promote the widest possible dissemination of information regarding the opportunity for public participation, development, and announcement of a program through publication of items in activities such as:

- (1) Trade and professional journals;
- (2) Agency or program handbooks, brochures, and other publications;
- (3) Distribution under agency or program mailing lists;
- (4) News releases; and,
- (5) Updating of the Catalog of Federal Domestic Assistance and related publications.

c. If program office staff offers consultation to applicants or potential applicants, the following principles should apply:

- (1) The program office should not provide advance information regarding priorities, criteria or other pertinent matters to a particular applicant or other interested person unless such information will be made available to all requestors.
- (2) The program office should include in published information as much detail as is practicable in order to reduce the need for consultations by applicants and potential applicants.
- (3) The program office should provide for coordination among staff members who are furnishing information to the public in order to maintain consistency of interpretation.
- (4) The program office should endeavor to make technical assistance resources available to all requestors on an equitable basis.

HENRY S. DOGIN,  
Administrator.

(Joint Exhibit 14)

I 4560.4

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
September 14, 1979.

Subject: *Competitive Categorical Grant Application Review Policy.*

#### 1. Purpose

This instruction prescribes policies to be followed for the competitive review of new, competing extension (renewal), and competing supplemental applications submitted under "Categorical Grant" programs.

#### 2. Scope

This instruction does not apply to noncompeting continuation and administrative supplemental application submitted under categorical grant programs.

#### 3. Applicability

The policy contained in this instruction shall affect all grant programs having application submission deadlines falling after October 1, 1979.

#### 4. Definitions

- a. New applications are those submitted for a project not currently receiving agency support.
- b. Noncompeting continuation applications are those requesting funds for subsequent budget periods within an approved project period.
- c. Competing extension (renewal) applications are those requesting funding to continue a project beyond the approved project period because either (1) the project period was approved for a period shorter than originally needed to complete the project, or (2) the results of the original project warrant support beyond that originally intended.
- d. Supplemental applications are those requesting funds over those budgeted and approved for one or more budget periods of the approved project period.
  - (1) Competing supplementals are those requesting funds for expansion of the objectives or scope of the approved project.
  - (2) Administrative supplementals are those requesting funds to meet increased administrative costs that take effect during a budget period, such as fringe benefits or salary increases.

#### 5. Policy

a. For each categorical grant program, there should be established a mechanism which will provide for the convening of a panel of personnel for the purpose of conducting a competitive and objective review of grant applications submitted under respective grant program.

b. The purpose of this review should be to supplement and assist the consideration and review of the applications by the program office, and should be in addition to any other review or clearance procedures adopted or required for the grant program.

#### 6. Designation of Responsible Official

Office heads shall be responsible for the competitive review of grant applications; and, may designate to others the exercise of this function. However, the office head shall retain the responsibility for assuring that these functions are properly executed.

#### 7. Implementation

a. Each office head must establish a formal system of Competitive Grant Application Review (Panels) and shall issue internal rules and procedures for carrying out the policy contained in this instruction.

(1) Procedures established by each office shall provide for the following types of notifications to applicants concerning outcomes of competitive reviews:

(a) Applications falling below minimum criteria shall be disapproved. Procedures should provide that applicants receive notice that the application is "rejected". Rejection letters should provide the specific reasons for the application's denial as is current practice.

(b) Procedures should provide that applicants whose applications meet or exceed minimum criteria should receive one of the following types of notification:

1. "Approved with funding": Award document and transmittal letter should be forwarded as is current practice.

2. "Acceptable—funding not available": All applicants whose submissions have met minimum criteria should be notified that they have met those criteria, and that the application proposed a well-developed, workable concept. The notification should explain that the application scored lower than others in certain defined areas and that the amount of funds in the competition was used up on applications scoring higher.

b. To obtain consistency in grant application review systems among program offices, the office head, prior to formal implementation of the review system, shall forward the implementing procedures to the Administrator for review and comment.

c. In any instance where a program office's application review system is not to be used to review an application or group of applications prior approval for utilization of a different procedure must be obtained from the Administrator.

d. Rules and procedures for carrying out this policy will be formalized by the program office in written directives within 60 days from the date of this instruction.

HENRY S. DOGIN,  
Administrator.

(Joint Exhibit 15)

I 4040.2

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
September 14, 1979.

Subject: *The Project Period System of Obligating Funds for Categorical Grants and Cooperative Agreements.*

#### 1. Purpose and Scope

This instruction describes the Project Period System for funding categorical grants and cooperative agreements. References and requirements made in this instruction concerning grants will also apply to cooperative agreements.

## 2. Background

In accordance with the Federal budgetary and appropriation process and Congressional intent, most projects funded by grants which will require more than one year to complete must be funded on an annual basis. It is important, however, that both the grantor agency and the grantee officials reach a mutual understanding as to the probable length of the project and the duration and approximate amount of financial support that LEAA will provide.

Under the Project Period System of funding grants, projects which will continue for more than one year, may be programmatically approved for support in their entirety, or a portion thereof, but funded in annual increments called budget periods. This system preserves the principle of funding grants on an annual basis, while at the same time providing the grantee with a statement of intent on the part of LEAA to continue funding the project for the remainder of the approved project period subject to conditions including the availability of future Congressional appropriations, compliance with the terms and conditions of the grant award, and the continued best interests of the government. This approach (1) permits both the grantee and LEAA to make long range budgetary projections and thereby provides security and stability to each in planning and program execution, and (2) reduces administrative procedures for both the grantee and LEAA by obviating the need for annual, in-depth, formal, competitive review.

## 3. Definitions

- a. *Project*.—The identified activity approved by the grantor agency for support.
- b. *Budget*.—The financial expenditure plan approved by the grantor agency to carry out the purposes of the grant-supported project. The budget is comprised of both the Federal share and any non-Federal share (matching contribution) identified on the grant award document.
- c. *Project Period*.—The total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions thereof.
- d. *Budget Period*.—The interval of time (usually 12 to 18 months) into which the project period is divided for funding and reporting purposes.
- e. *New Grant*.—The initial grant made in support of a project or program.
- f. *Noncompeting Continuation Grant*.—A grant made in support of any budget period after the first budget period within an approved project period.
- g. *Project Period Extension*.—
  - (1) *Competing Extension*.—The extension of a project period, which would otherwise terminate, in order to provide support for one or more additional budget periods.
  - (2) *Noncompeting Extension*.—The extension of a project period necessitated by an extension of a budget period.
- h. *Supplemental Awards*.—
  - (1) *Competing Supplement*.—An additional award of funds for an existing grant for the expansion of the project scope.
  - (2) *Noncompeting Supplement*.—An award of funds for an existing grant to meet increased administrative costs that take effect during a current budget period, such as fringe benefits or organizational or other salary increases not included in the grant.

## 4. Applicability

This policy is applicable to all categorical grant applications and cooperative agreements.

## 5. Policy

All applicable categorical grants shall be funded in accordance with the Project Period System as described in this issuance except to the extent restricted by legislation or regulations.

a. *Requirement*.—Applications for new grants, competing project period extension grants, and supplemental awards for program expansion are subject to the policy on Program Announcement Standards for Categorical Grants, as outlined in the effective edition of I 4510.2. All such applications which are approved must compete with each other for available funds in accordance with funding priorities. Applications for noncompeting continuation grants, noncompeting project period extension grants and noncompeting supplemental awards for ad-

ministrative increases may be approved administratively, and, if approved, may be funded, if funds are available.

b. *Documentation*.—Documentation on the Grant/Cooperative Agreement Award form (Appendix 1) of the approval of a project period expresses the grantor agency intention to provide continued financial support to the project for the full length of such project period subject to the following:

(1) The recommended levels of future support within a project period are not guarantees by the grantor agency that the project will be funded at those levels. Instead, the amounts represent estimates of future funding levels based on a projection of the information available at the time of award. The actual amount of the future awards will be determined or negotiated based on the proposed budgets, reports of progress, and other information submitted in the continuation application for the budget period involved and the availability of the grantor agency funds. The recommended levels of future support are provided to aid the grantee and the grantor agency in planning and budgeting for future activities.

(2) Funding of a noncompeting continuation grant within a previously approved project period may be withheld for justifiable reasons, which include:

- (a) A grantee is delinquent in submitting required reports;
- (b) Adequate grantor agency funds are not available to support the project;
- (c) A grantee fails to show satisfactory progress in achieving the objectives of the project or otherwise fails to meet the terms and conditions of the award;
- (d) A grantee's management practices fail to provide adequate stewardship of the grantor agency funds;
- (e) Outstanding audit exceptions have not been cleared; or,
- (f) Any reason which would indicate that continued funding would not be in the best interests of the Government.

c. *No Continuation Support*.—If the program office does not intend to provide continued support, the approved project period should not exceed the length of the budget period.

d. *Length of Project Period*.—The length of a new project period, or any competing extension thereof, should be determined on the basis of the following considerations:

- (1) The length of time requested by the applicant to complete the project;
- (2) The frequency of an in-depth review desirable for proper management of the project;
- (3) Limitations on the length of the project period placed by an appropriate program review group; and
- (4) Statutory and regulatory requirements.

NOTE.—Notwithstanding the provisions of Paragraph 5d above, a project shall not be approved—either initially or through extension—for a total of more than three years, except where specifically permitted by regulation or program announcement.

e. *Length of Budget Period*.—Budget periods within a project period usually shall be for 12 months, except that shorter or longer budget periods may be established because of compelling administrative or programmatic reasons, such as:

- (1) More advantageous anniversary dates;
- (2) Project periods not evenly divisible into 12-month increments;
- (3) Projects clearly short term in nature which generally means 18 months or less in duration;
- (4) An unavoidable extended absence of the project manager due to illness;
- (5) A merger of two or more grants into a consolidated grant;
- (6) A change of grantee business cycles;
- (7) The orderly termination of the project; or
- (8) Start-up time of three to six months.

f. *Fund Lapse*.—To utilize available funds before they lapse is not a compelling administrative or programmatic reason to alter the length of a budget period.

g. *Funding of Budget Period*.—Budget periods within a project period must be funded from successive annual appropriations, beginning with the initial award and continuing through all noncompeting and competing extension grants awarded for the project.

h. *Multi-Year Approval*.—Notwithstanding the provisions of paragraph 5e above, no grant may be multi-year funded unless the action is recommended by the Office Head and approved by the Administrator, (unless this authority is specifically redelegated).

#### 6. Award procedures

a. *Application and Initial Grant Award*.—An applicant requesting financial support for a new project shall submit an application which includes a detailed budget and narrative for the first proposed budget period and a summary budget for each additional budget period within the requested project period. The applicant shall use Federal Assistance Form (SFF-424, LEAA Form 4000/3, Section E) to forecast the budget estimates of Federal funds needed for the balance of the project period. If, after review in accordance with established review procedures, the application is approved for support and funds are available, the grantor agency may award a grant in an amount representing the Federal share of the approved budget for the first budget period. The Grant Award documents (the letter of transmittal and the Grant Award form) shall show the approved project period and the recommended level of Federal funding for each subsequent budget period within that project period. The letter of transmittal shall indicate that the award of future funds may be withheld or the grant may be terminated for the reasons identified in paragraph 5b(2)(a)-(f).

b. *Noncompeting Continuation*.—Prior to the completion of any budget period, except the final budget period of an approved project period, the grantee, in order to receive continuation funding, must submit a noncompeting application requesting funds for the next succeeding budget period. This application must be submitted to the grantor agency no later than 90 days prior to the end date of the previous (current) grant and must be submitted in accordance with the application submission requirements contained in the program announcement. If the application is approved for support and funds are available, a grant award will be made for the next budget period. The amount of the award will be the grantor agency share of the approved budget. The Grant Award documents will show the recommended level of Federal funding for any subsequent budget period(s) or any changes in the recommended level of future funding. The letter of transmittal shall indicate that award of future funds may be withheld or the grant terminated for the reasons identified in paragraph 5b(2)(a)-(f).

NOTE.—For continuation of a grant awarded prior to fiscal year 1980, the grantee shall submit a noncompeting continuation application (formerly entitled "continuation grant") which shall be subject to the requirements of the following subparagraphs.

(1) If the program office does not intend to provide continued support, the project period shall not exceed the length of the budget period.

(2) If the program office intends to provide continued support beyond fiscal year 1980, this information must be documented on the Grant Award documents. These award documents (the letter of transmittal and the Grant Award form) shall identify the approved project period and the recommended level of Federal funding for each subsequent budget period within the project period.

c. *Competing Project Period Extension*.—A grantee may apply for an extension of one or more budget periods beyond the scheduled expiration date by submitting a competing project period extension application in accordance with the application submission requirements of the program announcement. Such an application is appropriate when:

(1) The original project period was approved for a period of time shorter than grant support was needed; or,

(2) The results of the original project warrant support beyond the period originally recommended.

Such competitive extensions shall be reviewed, evaluated, and approved on the same basis as an application for a new grant. If approved for funding, the project period will be extended and grant awards will be made in support of the project during the extended period.

d. *Noncompeting Project Period Extension*.—A noncompeting extension of a project period may be granted when an extension of a budget period causes the final budget period to extend past the ending date of the previously approved project period if a grantee requests, in writing, additional time for reasons such as:

(1) Continuity of support during the review of a competing project period extension application; or,

(2) An orderly phase-out of the Federal support for projects not requiring additional support or whose competing project period extension applications have been disapproved or if approved, will not be funded. Such an extension should be made without additional funds. A request for a noncompeting project period extension may be approved administratively by the Office Head based on adequate progress of the project and compliance with the grant's terms and conditions.

#### 7. Reports of expenditure and award adjustments

a. The grantee shall submit the required Final Financial Status Report within 90 days after the end of a budget period.

b. Any unobligated balance of funds remaining at the end of a budget period within an approved project period shall not be available for use by the grantee and shall be withdrawn from the grant account in accordance with regulations on the Deobligation of Grant Funds.

#### 8. Appendices

a. *Appendix 1*.—Revised Grant/Cooperative Agreement Award Form.

b. *Appendix 2*.—Revised Award Continuation Sheet.

c. *Appendix 3*.—Revised Award Transmittal Letter (Sample).

#### 9. Effective date

This policy shall guide planning for all awards and commitments beginning October 1, 1979.

HENRY S. DOGIN,  
Administrator.

I 4040.2  
Sept. 14, 1979

## APPENDIX 1. LEAA GRANT/COOPERATIVE AGREEMENT AWARD FORM

U.S. DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION		AWARD Grant Cooperative Agreement		PAGE ___ OF ___
1. GRANTEE NAME AND ADDRESS (Including Zip Code)		4. GRANT NUMBER		
1A. GRANTEE IRS/VENDOR NO.		5. Project Period: Budget Period:		
7. SUBGRANTEE NAME AND ADDRESS (Including Zip Code)		6. AWARD DATE	7. ACTION <input type="checkbox"/> INITIAL <input type="checkbox"/> SUPPLEMENTAL	
2A. SUBGRANTEE IRS/VENDOR NO.		8. SUPPLEMENT NUMBER		
3. PROJECT TITLE		9. PREVIOUS GRANT AMOUNT \$ _____		
		10. AMOUNT OF THIS AWARD \$ _____		
		11. TOTAL GRANT AWARD \$ _____		
12. SPECIAL CONDITIONS (Check, if applicable) <input type="checkbox"/> THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED _____ PAGE(S).				
13. STATUTORY AUTHORITY FOR GRANT <input type="checkbox"/> TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, 42 U.S.C. 3701, ET. SEQ., AS AMENDED. <input type="checkbox"/> TITLE II OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, 42 U.S.C. 5601, ET. SEQ., AS AMENDED. <input type="checkbox"/> OTHER (Specify): _____				
14. FUTURE FISCAL YEAR(S) SUPPORT: Second Year's Budget Period: _____ Amount of Funds: _____ Type of Funds: _____ Third Year's Budget Period: _____ Amount of Funds: _____ Type of Funds: _____				
15. METHOD OF PAYMENT THE GRANTEE WILL RECEIVE CASH VIA A LETTER OF CREDIT <input type="checkbox"/> YES <input type="checkbox"/> NO				
LEAA APPROVAL		GRANTEE ACCEPTANCE		
16. TYPED NAME AND TITLE OF APPROVING LEAA OFFICIAL		17. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL		
17. SIGNATURE OF APPROVING LEAA OFFICIAL		18. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL		18A. DATE
LEAA USE ONLY				
19. ACCOUNTING CLASSIFICATION CODE		20. DOCUMENT CONTROL NUMBER		
FISCAL YEAR	FUND CODE	RUD. ACT.	DIV. REC.	SUB. MDD

LEAA FORM 4000/7 (REV. 8-79)

I 4040.2  
Sept. 14, 1979

## APPENDIX 1. (CONT'D)

## AWARD INSTRUCTIONS

This form is to be used for all grants or cooperative agreements awarded by the Law Enforcement Assistance Administration (LEAA).

All items must be completed. If an item is not applicable for a particular grant or cooperative agreement, enter N/A.

If additional room is needed for any item or for special conditions, etc., use LEAA Form 4000/7A, Award Continuation Sheet.

Items 1 through 5 are self-explanatory.

Item 6. The Office of Congressional Liaison (CLO) assigns the award date for all grants and cooperative agreements awarded. The award date must be five (5) FULL WORKING DAYS after the grant is signed, not including the date of signature or the award date.

Item 7. Enter an "X" in the appropriate box to indicate either an initial or a supplemental award.

Item 8. If this is a supplemental award, enter the number of the supplement.

Item 9.

a. If this is an initial award, enter "-0-."

b. If the most recent modification to the amount of the grant was an AWARD (initial or supplemental), then the amount in block 9 must be the same as the amount in block 11 of the most recent grant or cooperative agreement.

c. If the most recent modification to the amount of the grant was a DEOBLIGATION or cooperative agreement, then the amount in block 9 must be the same as the amount in block 11 of the relevant adjustment notice.

Item 10. Enter the amount of this award.

Item 11. Enter the sum of the amounts in blocks 9 and 10.

Item 12. If special conditions or limitations are attached, place an "X" in the box and enter the number of attached pages in the space provided.

Item 13. Place an "X" in the applicable box to indicate the statutory authority under which the grant or cooperative agreement is awarded. If the "OTHER (SPECIFY)" box is checked, the applicable law must be cited in the space provided.

Items 14 and 15. Identify the amount and type of funds anticipated for future fiscal support, and indicate the method of funding, i.e., Letter of Credit or direct draw.

Items 16 and 17 are self-explanatory. If a second LEAA approval is desired, use the Grant Award - Continuation Sheet.

Items 18 and 19 are self-explanatory.

Items 20 and 21. These items are completed by the LEAA Operating Plan Holder or his designee.

I 4040.2  
Sept. 14, 1979

## APPENDIX 2. AWARD CONTINUATION SHEET

 U.S. DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION	AWARD CONTINUATION SHEET	PAGE ____ OF ____
	<input type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement	Project Number _____ AWARD DATE _____
[Empty space for continuation sheet content]		

LEAA FORM 4000/7A (REV. 5-78)

I 4040.2  
Sept. 14, 1979

## APPENDIX 3. AWARD TRANSMITTAL LETTER (SAMPLE)

 UNITED STATES DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION WASHINGTON, D. C. 20531
Dear _____ Subject: Grant Award We are pleased to inform you that the grant application entitled, _____ has been approved for the project period from _____ to _____ in the amount of \$ _____. Detailed budgets for each subsequent budget period identified on the grant award form must be submitted for approval to the following address: Control Desk Office of the Comptroller Law Enforcement Assistance Administration 633 Indiana Avenue, N.W. Washington, D.C. 20531 Two copies of the Grant Award with Special Conditions are enclosed. If you accept this grant award, sign and return the originals of the Grant Award and the Special Conditions to the Financial Management and Grant Administration Branch, Office of the Comptroller. Obligations and expenditures may be incurred on or after the first day of the official grant period. Also included are copies of the required LEAA guidelines and reporting forms (both progress and financial) with instructions on preparation of the forms, and the booklet, "COMMON SENSE About Project Management." All copies of progress and financial reports, as required under the terms of your grant, should be sent to the Financial Management and Grants Administration Branch, which will subsequently forward them to your Program Monitor. The required number of copies of the reports are: Progress Report - original and two copies (quarterly) Financial Status Report (H-1) - original and two copies (quarterly) Request for Advance or Reimbursement (H-3) - original and two copies (on a monthly basis as needed) Please note that a listing of minority banks is also enclosed. It is suggested that grantees investigate the possibility of using the local minority bank, if the required banking services can be provided without any appreciable increase in administrative costs. If you have any programmatic or administrative questions pertaining to this grant award, please feel free to contact _____ or _____ your Program Monitor, on _____ the Grant Management Specialist, on _____. Sincerely, HENRY S. DOGIN Administrator Enclosures:

(READ Exhibit 1a)

**FORD ADMINISTRATION STIFLES JUVENILE JUSTICE  
PROGRAM: PART II—1976**

**HEARING**

BEFORE THE

**SUBCOMMITTEE TO INVESTIGATE  
JUVENILE DELINQUENCY**

OF THE

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

NINETY-FOURTH CONGRESS

SECOND SESSION

Pursuant to S. Res. 375, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE  
UNITED STATES

OVERSIGHT AND REAUTHORIZATION OF THE JUVENILE  
JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974  
(PUBLIC LAW 93-415 AND S. 2212/PUBLIC LAW 94-503)

MAY 20, 1976

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1976

78-464 O

(READ Exhibit 1b)

10

in its provisions was at least one section that would have successfully dealt a death blow to one of the most significant features of the Juvenile Justice Act. We lost the battle in committee the other day to fully eliminate this aspect, but we will continue to fight the battle on the Senate floor for, I think, it is critical that we not turn back on the problem of juvenile crime, but that our efforts be accelerated. Indeed the outcome on this essential will determine whether we will undertake a major effort to defeat the extension of LEAA, which I hope will not be the case.

## S. 2212 DESIGNED AS "EXTINCTION" ACT

More recently the administration has proposed an extension of the Juvenile Justice Act. I must say, Mr. Velde, instead of the extension act, I think it would be more adequately described as the "extinction" act. It absolutely ignores and would even repeal some of the most important provisions of this act.

I am anxious to find out who is responsible for this, and why. Also, if it is possible to amicably change their position. Hopefully it will be, because I think we are all trying to accomplish the same thing.

Mr. Velde and Mr. Luger, who have given significant parts of their lives to fighting crime, have an understanding of the complexities of these problems. I don't want to leave you out of this, Mr. Scott, but I don't know much about your background. But those in the Department and the White House who are establishing policy do not understand. Perhaps you can advise us how we can do a better job of conveying the message to these recalcitrants.

Maybe it is like the story that our former colleague, Senator Ervin, used to relish telling. It was about the fellow having trouble leading a mule, until a neighbor came along and picked up a 2 by 4, and hit the mule in the head and whispered in his ear, then proceeded to lead the mule without any problem. When the owner of the mule said "Why did you do that?", the neighbor said, "Well, before he will listen to you, you have to get his attention."

I hope it is not necessary to do that with LEAA. I am sure that the three of us want to move in, at least, the same direction. But if we have to find something similar to a 2 by 4 to get the attention of those in the administration who are misguided or obstructive, frankly, I think we have a responsibility to do so.

I didn't come here to engage in a monolog. I am very anxious to have your participation.

So, gentlemen, why don't you proceed as you see fit.

**STATEMENT OF RICHARD W. VELDE, ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, ACCOMPANIED BY EDWARD W. SCOTT, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF MANAGEMENT AND FINANCE, U.S. DEPARTMENT OF JUSTICE**

Mr. VELDE. Thank you, Mr. Chairman. We do have prepared statements. With your permission, sir, I would be pleased to offer them for the record<sup>1</sup> at this time.

<sup>1</sup> See p. 18.

(READ Exhibit 1c)

11

I will initially limit my comments to the administration's request for extension of the Juvenile Justice and Delinquency Prevention Act. Mr. Luger will comment on the details of administration of the program.

In certain instances I have made decisions that I know the chairman is very much interested in. I would be pleased to comment on these matters. Mr. Scott and I can also attempt to address the stance of the administration, the Department of Justice, and LEAA regarding financing of the program.

Mr. Chairman, as you know, the administration, in response to the requirements of the Congressional Budget Act of 1974, submitted to Congress last Friday its proposal to extend the Juvenile Justice and Delinquency Prevention Act. This was 1 day prior to the deadline for submission established by the Budget Act.

[Testimony continues on p. 16.]

## EXHIBIT No. 3

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., May 14, 1976.

The VICE PRESIDENT,  
U.S. Senate,  
Washington, D.C.

DEAR MR. VICE PRESIDENT: I am pleased to forward for your consideration proposed "Juvenile Justice and Delinquency Prevention Amendments of 1977."

This proposed bill amends the Juvenile Justice and Delinquency Prevention Act of 1974 and extends the authority of the Law Enforcement Assistance Administration to administer the Act for an additional year. The bill provides additional funds to the Law Enforcement Assistance Administration to coordinate Federal juvenile delinquency programs and activities and to assist States, units of general local government, and private non-profit agencies, organizations, and institutions in their efforts to combat juvenile delinquency and improve the juvenile justice system.

The legislative proposal includes a number of amendments designed to strengthen the coordination of Federal efforts. The Federal Coordinating Council would become involved in the preparation of annual reports related to analysis, evaluation, and planning for Federal juvenile delinquency programs. LEAA runaway programs would be coordinated with Department of Health, Education and Welfare programs funded under the Runaway Youth Act.

In addition, significant changes are made in the formula grant program. The use of in-kind matching funds is prohibited and an assumption of cost provision is added to State plan requirements. Advanced technique programs would include programs designed to meet priority needs identified in a State's detailed study of needs. The requirement that status offenders be deinstitutionalized within two years is clarified with regard to the permissive, rather than mandatory, placement of such offenders in shelter facilities. The Administrator is granted authority to continue funding to those States which have achieved substantial compliance within the two-year time limitation for deinstitutionalization and evidenced on unequivocal commitment to achieving this objective within a reasonable time.

The bill provides that Special Emphasis school programs will be coordinated with the United States Office of Education. A new category of youth advocacy programs is added to the listing of Special Emphasis programs in order to focus upon this means of bringing improvements to the juvenile justice system.

The Administrator is authorized to permit up to 100 percent of a State's formula grant funds to be utilized as match for other Federal juvenile delinquency program grants. This will increase flexibility and permit maximum use of these funds in States which have been unable to fully utilize available Federal fund sources. The Administrator is further authorized to waive match for Indian tribes and other aboriginal groups where match funds are not available and to waive State liability where a State lacks jurisdiction to enforce grant agreements with Indian tribes.

The proposal authorizes \$50 million for Juvenile Justice Act programs through 1978. The maintenance of effort provisions of the Act, applicable to Crime Control Act funds expended for juvenile programs in 1972, are deleted.

(READ Exhibit 1d)

12

Finally, a number of the administrative provisions of the Crime Control Act are incorporated as administrative provisions applicable to the Juvenile Justice and Delinquency Prevention Act. The addition of these provisions permits LEAA to administer the two acts in a parallel fashion. The provisions include formalized rulemaking authority, hearing and appeal procedures, recordkeeping requirements, and restrictions on the disclosure of research and statistical information.

I recommend the prompt and favorable consideration of the proposed "Juvenile Justice and Delinquency Prevention Amendments of 1977." In addition to the bill, there is enclosed a section-by-section analysis.

The Office of Management and Budget has advised that there is no objection to the submission of this legislative proposal to the Congress.

Sincerely,

EDWARD H. LEVI,  
Attorney General.

A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Juvenile Justice and Delinquency Prevention Amendments of 1977".

Sec. 2, Title II, Part A of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended as follows:

(1) Section 201(g) is amended by deleting the word "first" and inserting the word "second" in lieu thereof.

(2) Section 204(b)(5) is amended by inserting in the first sentence after the words "Advisory Committee" the words "and the Coordinating Council".

(3) Section 204(b)(6) is amended by inserting after the words "Advisory Committee" the words "and the Coordinating Council".

(4) Section 204(f) is amended by inserting after the words "appropriate authority," and before the words "departments and agencies" the word "Federal".

(5) Section 204(g) is amended by deleting the word "part" and inserting the word "title" in lieu thereof.

(6) Section 204(j) is amended by inserting after the word "agency," the word "organization," and by deleting the word "part" and inserting the word "title" in lieu thereof.

(7) Section 204(k) is amended by deleting the word "part" and inserting the word "title" in lieu thereof, and by deleting the words "the Juvenile Delinquency Prevention Act (42 U.S.C. 3801 et seq.)" and inserting the words "Title III of this Act" in lieu thereof.

(8) Section 206(d) is amended by deleting the word "six" and inserting the word "four" in lieu thereof.

(9) Section 208(e) is amended by deleting the words "to the Administrator" and "the Administration of".

## PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

Sec. 3, Title II, Part B of such Act is amended as follows:

(1) Section 221 is amended by deleting the words "and local governments".

(2) Section 221 is further amended by inserting after the word "through" the words "grants and".

(3) The third sentence of section 222(c) is amended by deleting the words "local governments" and inserting the words "units of general local government or combinations thereof" in lieu thereof.

(4) The second sentence of section 222(d) is amended by deleting the words "or kind consistent with the maintenance of programs required by Section 261".

(5) Section 223(a)(4) is amended by deleting the words "local governments" the first time they occur and inserting the words "units of general local government or combinations thereof" in lieu thereof.

(6) Section 223(a)(5) is amended by inserting after the words "local government" the words "or combinations thereof".

(7) Section 223(a)(6) is amended by deleting the words "local government" and inserting the words "unit of general local government" in lieu thereof.

(8) Section 223(a)(6) is further amended by inserting after the words "local government's structure" and before the words "(hereinafter in this part" the words "or to a regional planning agency".

(Read Exhibit 1e)

(9) The first sentence of section 223(a)(10) is amended by deleting the words "or by the local government".

(10) The first sentence of section 223(a)(10) is further amended by inserting after the words "or through" the words "grants and".

(11) Section 223(a)(10) is further amended by deleting all of subparagraph (D) and inserting in lieu thereof the following:

"(D) projects designed to develop and implement the programs identified in the detailed study of needs formulated pursuant to paragraph (8);"

(12) Section 223(a)(12) is amended by deleting the word "must" and inserting the word "may" in lieu thereof.

(13) Section 223(a)(20) is amended by deleting the word "and" the last time it occurs.

(14) Section 223(a)(21) is redesignated as Section 223(a)(22).

(15) Immediately after paragraph (20) of Section 223(a) insert the following new paragraph:

"(21) demonstrate the willingness of the State and units of general local government to assume the costs of improvements funded under this part after a reasonable period of Federal assistance; and"

(16) Section 223(c) is amended by inserting the following sentence at the end thereof: "Failure to achieve compliance with the section 223(a)(12) requirement within the two year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance with the requirement and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time."

(17) Section 224(a)(5) is amended by deleting the word "and" the last time it occurs.

(18) Section 224(a)(6) is amended by placing a comma after the words "develop and implement" and inserting thereafter the words "in coordination with the United States Office of Education, Department of Health, Education and Welfare."

(19) Section 224(a)(6) is further amended by deleting the period at the end thereof and inserting in lieu thereof a semicolon followed by the word "and".

(20) Immediately after paragraph (6) of Section 224(a) insert the following new paragraph:

"(7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system."

(21) Section 227(a) is amended by deleting the words "State, public or private agency, institution, or individual (whether directly or through a State or local agency)" and inserting the words "public or private agency, organization, institution, or individual (whether directly or through a State planning agency)" in lieu thereof.

(22) Section 227(b) is amended by deleting the words "institution, or individual under this part (whether directly or through a State agency or local agency)" and inserting the words "organization, institution, or individual under this title (whether directly or through a State planning agency)" in lieu thereof.

(23) Section 228 is amended by deleting all of subsection (a). Subsections (b), (c), and (d) are redesignated as subsections (a), (b), and (c) respectively.

(24) Redesignated section 228(a) is amended by deleting the words "under this part" and inserting the words "by the Law Enforcement Assistance Administration" in lieu thereof.

(25) Redesignated section 228(a) is further amended by deleting the words "25 per centum of".

(26) Redesignated section 228(b) is amended by deleting the word "part" and inserting the word "title" in lieu thereof.

(27) Immediately after redesignated section 228(c) insert the following new paragraph:

"(d) In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent he deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary."

(READ Exhibit 1f)

"(e) If the Administrator determines, on the basis of information available to him during any fiscal year, that a portion of the funds granted to an applicant under this part for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 509 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, that portion shall be available for reallocation under section 224 of this title."

Part C—National Institute for Juvenile Justice and Delinquency Prevention

Sec. 4. Title II, Part C of such Act is amended as follows:

(1) Section 241 is amended by deleting all of subsection (e). Subsections (f) and (g) are redesignated as subsections (e) and (f) respectively.

(2) Redesignated section 241(f) is amended by inserting after "(4)" and before the words "enter into contracts" the words "make grants and".

(3) The subsection lettered "(b)" immediately following redesignated section 241(f) is redesignated subsection "(g)".

(4) Redesignated section 241(g) is amended by deleting "(g)(1)" which appears immediately after the word "subsection" and inserting "(f)(1)" in lieu thereof.

(5) Section 248 is deleted.

Part D—Authorization of Appropriation

Sec. 5. Title II, Part D of such Act is amended by redesignating the title of Part D "Administrative Provisions" and as follows:

(1) Section 261 is amended by deleting all of subsections (a) and (b) and inserting in lieu thereof the following:

"To carry out the purposes of this title there is authorized to be appropriated \$50,000,000 for the fiscal year ending September 30, 1978."

(2) Section 262(b) is amended by deleting the words "section 603" in the first sentence thereof and the words "Section 603" in the second sentence thereof and inserting the words "section 602" in the first sentence and the words "Section 602" in the second sentence in lieu thereof.

(3) Section 263 is redesignated as section 264.

(4) Immediately after section 262 insert the following new section:

"Sec. 263. The Administrative provisions of title I of the Omnibus Crime Control and Safe Streets Act of 1968, designated as Sections 501, 504, 507, 509, 510, 511, 516, 521, and 524(a) and (c) of such Act, are incorporated herein as administrative provisions applicable to this Act."

(5) Redesignated section 264 is amended by deleting the words "subsection (b)" in subsection (a) and inserting the words "subsections (b) and (c)" in lieu thereof.

(6) Redesignated section 264 is further amended by adding after subsection (b) a new subsection (c) as follows:

"(c) The amendments made by the Juvenile Justice and Delinquency Prevention Amendments of 1977 shall take effect on and after October 1, 1977."

Sec. 6. Title V, Part C of such Act is amended as follows:

(1) Section 544 is deleted.

#### SECTIONAL ANALYSIS

Section 1 provides that the Act may be cited as the "Juvenile Justice and Delinquency Prevention Amendments of 1977".

Section 2 amends Title II, Part A of the Juvenile Justice and Delinquency Prevention Act of 1974 in ten ways:

(1) Section 201(g) is the subject of a technical amendment.

(2) Section 204(b)(5) is amended to mandate the assistance of the Coordinating Council in the preparation of the annual analysis and evaluation of Federal juvenile delinquency programs.

(3) Section 204(b)(6) is amended to mandate the assistance of the Coordinating Council in the preparation of the annual comprehensive plan for Federal juvenile delinquency programs.

(4) Section 204(f) is amended to clarify that the Administrator's authority to request information, reports, studies, and surveys is limited to Federal departments and agencies.

(5) Section 204(g) is amended to authorize the Administrator to delegate his functions under all of Title II to any officer or employee of the Administration.

(6) Section 204(j) is amended to authorize the Administrator to utilize grants and contracts to carry out the purposes of Title II.

(READ Exhibit 1g)

(7) Section 204(k) is amended to require appropriate coordination between LEAA activities funded under Title II and Department of Health, Education, and Welfare programs funded under the Runaway Youth Act.

(8) Section 206(d) is amended to require a minimum of four annual meetings of the Coordinating Council.

(9) Section 208(e) is amended to make the title of the National Advisory Committee Subcommittee on Standards consistent with the subcommittee title used in section 247.

Section 3 amends Title II, Part B of the Act through twenty-eight separate provisions relating to Federal assistance programs:

(1) Section 221 is amended to reflect that the Administrator has authority to make formula grants only at the State (State planning agency) level.

(2) Section 221 is further amended to clarify that States have authority to make formula grant funds available to both public and private agencies through subgrants as well as contracts.

(3) Section 222(c) is amended to conform with the definitions of "units of general local government" and "combination" set forth in Section 103(8) and (9) of the Act.

(4) Section 222(d) is amended to provide that only cash may be utilized as matching funds for formula grants and to delete the reference to maintenance of effort.

(5) Section 223(a)(4) is amended to conform with the definitions of "unit of general local government" and "combination" set forth in Section 103(8) and (9) of the Act.

(6) Section 223(a)(5) is amended to provide that funds expended through programs of local government include programs sponsored or administered by combinations of local government.

(7) Section 223(a)(6) is amended to conform with the definition of "unit of general local government" set forth in Section 103(8) of the Act.

(8) Section 223(a)(6) is further amended to clarify that regional planning bodies may be designated by local chief executives as the "local agency" to perform planning and administration functions on behalf of the unit of general local government.

(9) Section 223(a)(10) is amended to again reflect that formula grants are made only at the State (State planning agency) level.

(10) Section 223(a)(10) is further amended to again clarify that States have authority to make formula grant funds available to both public and private agencies through subgrants as well as contracts.

(11) Section 223(a)(10) is further amended to delete drug and alcohol abuse programs from the list of advanced technique programs and substitute programs designed to meet the program priorities identified in the State's detailed study of needs.

(12) Section 223(a)(12) is amended to clarify that status offenders may, but need not, be placed in shelter facilities.

(13) Section 223(a)(20) is the subject of a technical amendment.

(14) Section 223(a)(21) is redesignated Section 223(a)(22).

(15) Section 223(a) is amended by adding a new paragraph (21) to require an assumption of cost provision in the State plan.

(16) Section 223(c) is amended to provide that the Administrator may continue to approve State plans, where a State has failed to achieve compliance with Section 223(a)(12), upon a determination that: (a) the State is in substantial compliance; and (b) the State has made an unequivocal commitment to achieving full compliance within a reasonable time.

(17) Section 224(a)(5) is the subject of a technical amendment.

(18) Section 224(a)(6) is amended to mandate coordination with the United States Department of Education in the development of Special Emphasis School programs.

(19) Section 224(a)(6) is also the subject of a technical amendment.

(20) Section 224(a) is amended by adding a new paragraph (7) authorizing the use of Special Emphasis funds for youth advocacy programs.

(21) Section 227(a) is amended to add public and private organizations to the list of entities affected by this subsection.

(22) Section 227(e) is amended to add public and private organizations to the list of entities affected by this subsection.

(READ Exhibit 1h)

(23) Section 228 is amended to delete the subsection (a) provision for continuation funding and to redesignate subsections (b), (c), and (d) as subsections (a), (b), and (c).

(24) Redesignated section 228(a) is amended to prohibit the use of formula grant funds to match LEAA funds.

(25) Redesignated section 228(a) is further amended to permit up to 100 percent of a State's formula grant funds to be used as match for other Federal juvenile delinquency program grants.

(26) Redesignated Section 228(b) is amended to permit the Administrator to require a matching contribution from recipients of National Institute grants and contracts under Part C of the Act.

(27) Section 228 is amended by adding two new subsections: (a) subsection (d) authorizes the Administrator to waive the non-Federal match for grants to Indian tribes or other aboriginal groups where they have insufficient funds. In addition, where a State lacks jurisdiction to enforce liability under State grant agreements with Indian tribes, the Administrator may waive the State's liability and proceed directly with the Indian tribe on settlement matters; and (b) subsection (e) provides for reallocation, as Special Emphasis funds, of any funds not required by a State or which become available following administrative action to terminate funding.

Section 4 amends Title II, Part C of the Act in six separate amendments related to the National Institute for Juvenile Justice and Delinquency Prevention:

(1) Section 241 is amended to delete the subsection (e) provision for delegation of authority by the Administrator to employees of the Institute and to redesignate subsections (f) and (g) as subsections (e) and (f).

(2) Redesignated section 241(f) is amended to clarify the Institute's authority to make grants as well as enter into contracts for the partial performance of Institute functions.

(3) Erroneously lettered subsection (b) is redesignated subsection (g).

(4) Redesignated subsection (g) is the subject of a technical amendment.

(5) Section 248 is deleted to remove duplicative restrictions on disclosure or transfer of juvenile records gathered for purposes of the Institute.

Section 5 amends Title II, Part D of the Act by changing the title of Part D to "Administrative Provisions" and in two other respects:

(1) Section 261 is amended by deleting subsections (a) and (b) relating to level of authorized funding and maintenance of effort and substituting a one year authorization at an appropriation level of \$50,000,000 for fiscal year 1978.

(2) Section 262(b) is amended to correct an erroneous statutory citation.

(3) Section 263 is redesignated section 264.

(4) A new section 263 is added which incorporates the administrative provisions of sections 501, 504, 507, 509, 510, 511, 516, 521, and 524(a) and (c) of the Omnibus Crime Control and Safe Streets Act into the Act as administrative provisions.

(5) Redesignated section 264 is the subject of a technical amendment.

(6) Redesignated section 264 is further amended to provide that the Amendments made by this Act shall be effective on and after October 1, 1977.

Section 6 amends Title V, Part C of the Act to delete the maintenance of effort provision.

[Testimony continued from p. 11.]

Mr. VELDE. As an aside, Mr. Chairman, I would respectfully submit that Congress might want to review the deadlines that it has imposed with respect to the Budget Act. LEAA's authorization legislation was recently being processed by both the House and Senate Judiciary Committees on the same day. At the same time, we were also pursuing our interests before both the House and Senate Appropriations Subcommittees. Hearings and markup sessions were occurring simultaneously. We had an additional requirement of submitting this new legislation virtually on the same day.

Having appropriations available to Federal agencies that administer funding programs at the beginning of the fiscal year—that is one of the major purposes of the Budget Act—is a laudable objective.

(READ Exhibit 2)

[From the Federal Register, Oct. 17, 1978]

U.S. DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

FUNDING OF JUVENILE-RELATED PROGRAMS PREVIOUSLY FUNDED UNDER THE CRIME CONTROL ACT

## Clarification of Policy

Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503 and Pub. L. 95-115) (hereinafter referred to as the Juvenile Justice Act), states as follows:

"In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

In many instances, however, juvenile-related programs funded initially under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, and Pub. L. 95-115) (hereinafter referred to as the Crime Control Act), have been unable to obtain continuation funding as a result of the assumption of cost feature contained in that legislation, section 303(a)(9), but not found in the Juvenile Justice Act.

LEAA's policy for continuation of juvenile-related projects initially funded under the Crime Control Act is intended to reflect both the continuation funding provision of the Juvenile Justice Act and the assumption of cost provision of the Crime Control Act (see LEAA Office of General Counsel Legal Opinion 76-14, Jan. 5, 1976).

The assumption of cost provision of the Crime Control Act requires that State and local governments demonstrate a willingness to assume the costs of funded projects after a reasonable period of Federal assistance. LEAA has determined that a reasonable period of assistance for juvenile justice and delinquency prevention projects may exceed the normal three year funding period established by State Planning Agency Grants Guideline M 4100.1F, Chapter 2, Paragraph 15, January 18, 1977. This determination is based on the continuation funding policy established by Congress for the Juvenile Justice Act and the historic difficulty of institutionalizing successful juvenile programs within State and local governments and providing adequate financial support.

Therefore, it is the policy of LEAA that States may modify their established assumption of cost policy for juvenile justice and delinquency prevention projects initially funded under the Crime Control Act to continue such projects beyond the State's policy for maximum length of funding—either from Crime Control Act Parts C and E or Juvenile Justice Act Part B formula grant funds—provided that the State planning agency determines that individual projects meet the following conditions:

(1) The State planning agency determination to extend the project must be based upon the following criteria:

1. The project has been evaluated and the evaluation indicates that the project is effective and is being operated efficiently.
2. Discontinuation would have a negative impact on State or local juvenile-related activities; and
3. The project has demonstrated a good faith effort to obtain funding elsewhere and intends to continue such efforts over the period of the extension.

(2) Extensions may be granted for 1 year with possible extension for 1 additional year.

JAMES M. H. GREGG,  
Assistant Administrator, Office  
of Planning and Management.

(READ Exhibit 3)

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
August 23, 1978.

Memorandum to: James M. H. Gregg, Assistant Administrator/OPM.

From: John M. Rector, Administrator/OJJDP.

Subject: Funding of programs previously funded under the Crime Control Act.

This is in reference to the memorandum from the Office of General Counsel regarding the above subject which you forwarded to me on August 14, 1978. In that memorandum, General Counsel concluded that Legal Opinion 76-14 was sound. A suggestion was made however as to a possible waiver policy where presumably funding subject to assumption of cost and non-supplantation would be available. Such an approach would I believe be unworkable.<sup>1</sup> More importantly, however, I do not believe that it is necessary since the principal underpinning of opinion 76-14 is, in my view, questionable.

Throughout the memorandum from General Counsel reference is made either directly or by implication to the assumption of cost provision contained in the Crime Control Act. Since there is no such expressed provision in the Juvenile Justice Act, the question as to its applicability becomes one of statutory construction. In our July 25, 1978 memo we expressed our views on this point as follows:

"To the extent that this opinion relies on the assumption of cost provision of the Crime Control Act it allows the legislative perspective of an entirely different act to dictate policy under JJCPA. Had Congress intended such a result, it could as it did with respect to other requirements (i.e. maintenance of effort) expressly said so. The fact that they chose not to strongly suggests that this feature should not apply.

I might point out that this approach as to legislative construction is not a novel one. In fact it was recognized and used by the Office of General Counsel in December, 1976 when they were faced with a question as to whether a requirement of the Juvenile Justice Act (deinstitutionalization of status offenders) should apply to or otherwise affect Part C funding under the Crime Control Act. In holding that it should not, the opinion (77-12) stated as follows:

"The Crime Control Act and the Juvenile Justice Act are separate acts, so that the provisions of one do not automatically apply to the other. The Crime Control Act contains no requirement similar to that established in Section 223(a)(12) of the Juvenile Justice Act."

The opinion then went on to reference the very principle that we are asserting here namely:

"(W)here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. (C. Sands, 2A Statutes and Statutory Construction § 51.02, at 291 (1973), quoting Western States Newspaper, Inc. v. Gehringer, 203 Cal. App. 2d 793, 22 Cal. Rptr. 144 (1962).)

We would submit that this rationale should apply with equal force in this situation.

Congress choose not to insert the assumption of cost provision in the Juvenile Justice and Delinquency Prevention Act, a choice which is indicative of the fact that they did not intend that it should apply.

This conclusion is buttressed by the perspective evidenced by Congress regarding the continuation of funding under the Juvenile Justice Act. Throughout the events that led to the passage of Public Law 93-415, some sort of permanency in funding was considered desirable.<sup>2</sup> As finally passed the Juvenile Justice Act in Section 228(a) stated:

"(a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

<sup>1</sup> Given what we perceive to be the magnitude of the problem, any systematic waiver would be problematic.

<sup>2</sup> See H. Rept. No. 93-1135, June 21, 1974, at 16.

The Congressional intent was to provide long-term funding. Given that intent, it would be incongruous indeed to hold that a provision such as assumption of cost which is diametrically opposed should apply. Nonetheless that is the operative effect of the opinion in question.<sup>3</sup> By this memorandum, I do not wish to suggest that factors such as maintenance of effort or non-supplantation should be disregarded.

It is my firm conviction that they would not be in conflict with a policy which would allow funding under the Juvenile Justice Act. Once these areas are satisfied, (maintenance of effort and non-supplantation) the assumption of cost feature should not in any way act as a constraint.

(READ Exhibit 4)

NATIONAL LEAGUE OF CITIES,  
U.S. CONFERENCE OF MAYORS,  
December 6, 1974.

JOHN RECTOR,  
Staff Director and Counsel to Subcommittee to Investigate Juvenile Delinquency,  
A-504 U.S. Senate, Washington, D.C.

DEAR JOHN: I'm enclosing minutes/remarks from the Juvenile Justice Act meeting you helped us with. We've had some very good feedback from it and have been able to become involved with LEAA in guideline development. Thanks for your help.

The Drug Abuse publication we talked about has not been published yet and I'm not able (since our project didn't write it) to send out draft copies. I will see that you get one when it is published.

Thanks again,

GORDON RALEY,  
Criminal Justice Project.

Enclosure.

Memorandum to: City Representatives.

From: Gordon Raley and Sandra Kelly.

Subject: Review of Issues from Juvenile Justice Act Working Meeting, November 11, 1974.

This is to briefly update your information regarding the status of the Juvenile Justice Act of 1974. We held a one-day working meeting with about ten city representatives on November 11, 1974. Fred Nader, the Acting Assistant Administrator of the Office of Juvenile Justice of LEAA; John Rector, Staff Director and Counsel to the Juvenile Delinquency Senate Subcommittee; and Don Slater and Larry Bailey of NLC/USCM were the invited resource people.

#### LEGISLATIVE HISTORY

As was indicated by the President's refusal to seek funds for the law, John Rector verified that the Juvenile Justice Act has had poor support from the White House. As originally conceived, the program would have been a \$1½ billion program operated out of the White House much like SAODAP. Basically, the White House didn't want it, and based on SAODAP's impact, its supporters didn't want it in the White House either. It was placed in HEW in March as the dollar figure fell to \$1 billion, then to \$600 million, then to its present level (\$380 million). It was finally placed in LEAA in compromise form. Even after S. 821 passed, several within the Administration (OMB and HEW) lobbied for presidential veto. John said that the line-up in the Appropriations Committee was such that it would probably deny any bid for new moneys. He did indicate, however, that moneys might be sought from the floor.

#### ORGANIZATIONAL DESCRIPTION

Coordination and planning for juvenile justice programs as mandated in the Juvenile Justice Act of 1974 rests in three major organizations: the Coordinating

<sup>3</sup>The inconsistency is demonstrated in other areas as well. Programs funded initially under Juvenile Justice money would not be subject to as rigid a constraint as that provided for in assumption of cost. The permanency of some juvenile related programs nonetheless will depend on the source of the initial funding, i.e. whether they were funded under the Crime Control Act or Juvenile Justice Act.

Council on Juvenile Justice and Delinquency Prevention, the National Advisory Committee, and LEAA.

The Coordinating Council on Juvenile Justice and Delinquency Prevention is an independent organization of the Executive branch made up of Cabinet members (HEW, LEAA, Labor, etc.) and chaired by the Attorney General. It must meet at least six times a year, and is responsible for concentrating all federal juvenile delinquency effort under the Office of Juvenile Justice. It specifies the involvement of these decision-makers to avoid 7th or 8th level personnel developing policy when they do not have the power to enact it.

The National Advisory Committee makes recommendations to the Administrator of LEAA regarding planning, policies, priorities, operations and management of all federal juvenile delinquency programs. One subcommittee will advise on Juvenile Justice Standards and another on the National Institute for Juvenile Justice.

Under the Administrator of LEAA, will be an Assistant Administrator, who will head the Office of Juvenile Justice and Delinquency Prevention. Under this position are two Deputy Assistant Administrators, one in charge of Programs, the other in charge of the National Institute for Juvenile Justice and Delinquency Prevention. The Office of Juvenile Justice will be responsible for coordinating funding and technical assistance to state and local agencies.

The National Institute for Juvenile Justice will be a data coordinating and training center. It will gather and disseminate pertinent data and information regarding delinquency and delinquency programs and will conduct research and evaluation of any aspect of juvenile delinquency, including projects assisted under this Act. The Institute will also seek to conduct a national training program for local and state personnel, patterned in scope after the FBI training program. This will be done through training workshops and technical training teams. The Institute will also be responsible for developing Standards for Juvenile Justice and suggesting action at federal, state and local levels for their implementation.

#### FUNDING IMPLICATIONS

##### Appropriation

The amount of appropriation was a key point of discussion through much of the session. Fred Nader said that since President Ford planned to seek no appropriation, the hands of LEAA were tied. He did say that a request to "reprogram" \$20 million in Safe Streets money was in process for fiscal year '75, but this money could be used only for things allowable under the Safe Streets Act. None of the new offices to be created could be administered with these funds and some of the "special emphasis" areas would be ineligible, although diversion programs would probably be eligible. If money is gained through reprogramming, its disbursement will not be bound by Juvenile Justice Act formulas.

Considerations of '76 guidelines and appropriations are already underway. Nader said plans were under development using four possible appropriation levels for '76: \$40 million, \$75 million, \$100 million, and \$125 million.

##### Part B Formula Grants

Nader provided a fund allocation flow chart to illustrate required disbursement levels to state and local governments. (See Table 2). He said that the level of Special Emphasis (Discretionary) monies would be kept at 25 percent to get maximum funds in action. However, he also pointed out later that about 15 percent of the total Part B appropriation would be needed to create and administer new offices created by the Act and that the general ratio of Formula Funds to Special Emphasis funds would be about 60 percent-40 percent.

Formula Funds to States will be distributed based on the number of persons in a state under the age of 18. Tables 3 and 4 show possible formula grant allocations to states with a \$40 million and \$125 million level of appropriation. These amounts were approximated by criminal justice staff and broken down into available monies for planning and local pass-through. It should be emphasized that they are only estimates. The formula used for deriving the estimates was:

No. of Persons under 18 in given State	×	Total Formula Funds Available to States	=	Estimate of State's Allocation	Given
Total No. of persons under 18 in United States					

Fifteen percent (15%) of the total estimate was figured to estimate available planning resources and sixty-six and two-thirds percent (66 $\frac{2}{3}$  percent) of the total estimate was used to estimate monies available for local pass-through. Table 5 provides a rough estimate of how much action money might be available to selected cities if *equitable* is defined using a city's percentage of state residents under 18. Again, none of these definitions and assumptions are definite. Other definitions of *equitable* might be juvenile crime rate, dropout rate, court activity, etc.

#### Planning Monies

The Law says that states must make planning money available to local units as needed on an equitable basis. Nader said decisions as to what equitable meant would have to be decided between the state and local planning unit. Several representatives expressed a desire for more LEAA leadership in this area. At least one SRA representative has suggested it might be "equitable" if no planning monies were given local planning units the first year due to scarcity of funds.

#### Pass-through

The law provides for a 66 $\frac{2}{3}$  percent pass-through to local units of government. It seems fairly clear in the Law (Sec. 223(a)(5)) that this pass-through percentage applies to the total of formula funds received by a given state. Again, however, at least one SPA representative has suggested that this percentage applies to that total remaining after state planning funds are subtracted and that planning funds to local units should be included in the percentage pass-through total. The reverse view would hold that the intent of Congress was to guarantee at least two-thirds of formula funds for programs preventing delinquency at the local level.

#### Pass-through Waiver

There has been appropriate concern that the last part of Section 223(a)(5) . . . "except that this provision (66 $\frac{2}{3}$ % pass-through) may be waived at the discretion of the Administrator for any State if the services for delinquent or potentially delinquent youth are organized primarily on a statewide basis;" might allow states to disregard the pass-through provision. Nader indicated that he saw this being utilized, if at all, only in small states (Rhode Island, Vermont, etc.) where all services are primarily on a state-wide basis. The working group felt that continued attention should be paid to this clause during guideline development.

#### Runaway funds

HEW seems to have some money (\$5 million) available now for runaway programs. There seems to be little coordination at this point between LEAA and HEW, but Nader said he felt applications could be submitted now. However, he did not know where they should be directed—perhaps somewhere within the Office of Youth Development (OYD).

#### Continuous funding

Unlike the Safe Streets Act, once a project is funded under the Juvenile Justice Act, it will be continued, unless it receives a bad evaluation, through the life of the legislation. There is no prescribed cut-off date requiring local institutionalization. This could have future implications for local evaluation capability and may allow for the development of more innovative projects which might not be initiated if there was fear it could not be institutionalized.

#### GUIDELINE DEVELOPMENT

By January 1, 1975, LEAA should arrive at internal guidelines. These should become final by June 30, 1975. Nader was not sure whether or not these guidelines would apply to HEW procedures. Also by January 1, the Attorney General should have met with the Secretary of HEW to agree on an orderly transition process. The transition of HEW JD programs to LEAA should be completed by June 30th. By December 5, 1974, the National Advisory Committee must be appointed. There is hope that the Assistant Administrator will be appointed soon after the new Congress convenes.

#### CONSTRUCTION

Fred Nader said he thought no construction funds would be approved but pointed to the difference between construction and renovation.

#### MAINTENANCE OF JD FUNDING LEVEL

There was some concern that the '72 funding level might be less than is spent currently. If this were so, and if little or no appropriation was made, there was fear that the overall funding level for JD in '75 and '76 might actually be reduced from the current level. LEAA's funding level in '72 was:

Block -----	\$117, 013, 735
Discretionary institute-----	19, 199, 599
Total -----	\$136, 213, 334

This would seem to be LEAA's \$140 million portion of the \$155 million referred to by President Ford in his White House Statement.

#### SEPARATION OF FACILITIES

The Law requires that State Plan provide that juveniles "not be detained or confined in any institution in which they have regular contact" with incarcerated adults who are either convicted or awaiting trial. The question was raised as to whether or not some states might refuse to participate rather than to comply with separation requirements. The point was made that it might cost more money to accomplish the separation than would be provided by the Law.

#### ISSUE SUMMARY

Generally it was agreed that the prospects of getting \$75 million for '75 were dismal. Twenty million dollars in reprogrammed money seems possible and there is some possibility of supplemental appropriations being sought on the floor of Congress. It was definitely agreed that efforts should begin now to get full appropriation for '76. NLC/USCM CJ Project Staff represented local interest at a Guideline Meeting in Atlanta as discussed. Partially as a result of our working meeting, we have been asked by LEAA to provide input during guideline development. Larry Bailey, of USCM, said City Representatives should make their Mayors and Congressmen aware of the present appropriation status of the Law and urge them to push for appropriation. The working group agreed that \$37 $\frac{1}{2}$  million should be sought for '75 to supplement reprogrammed money and that full appropriation (\$125 million) should be sought for '76 if the Law is to have any impact on delinquency in large cities.

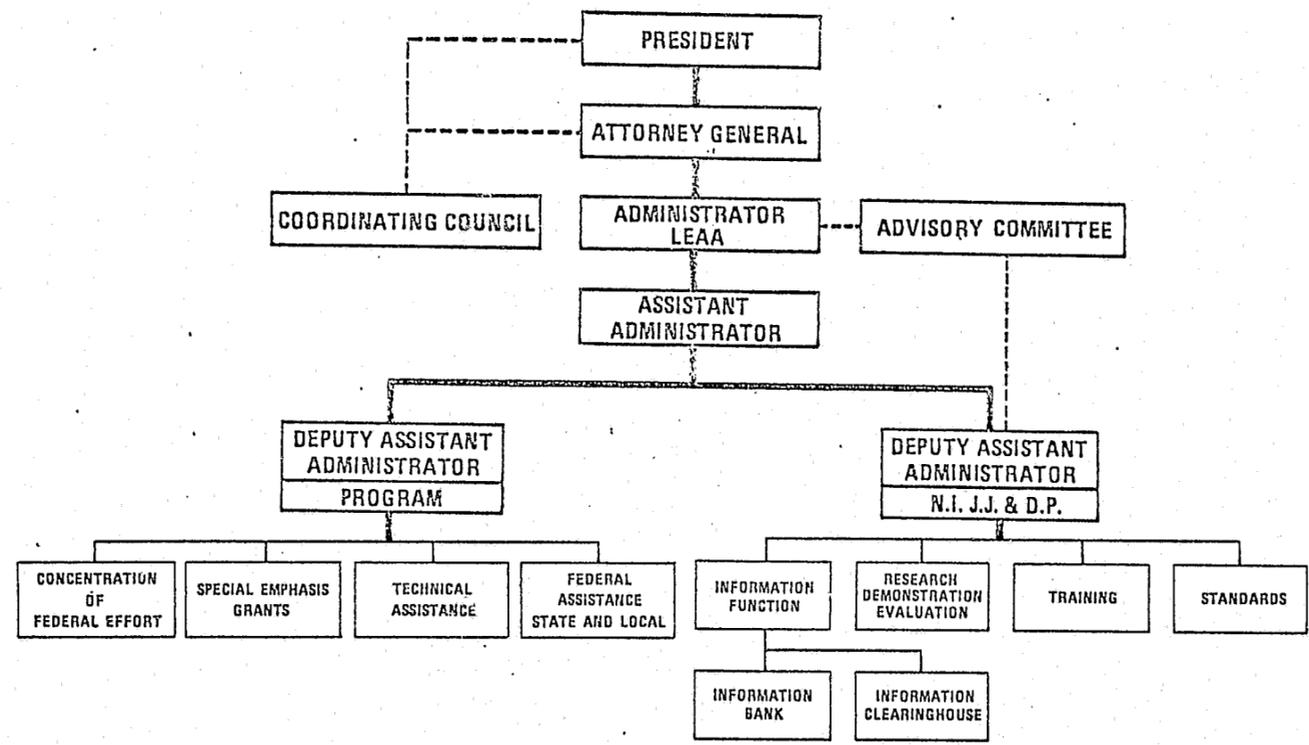


TABLE 1

Required Fund Allocation - Federal Assistance For State And Local Programs  
 ( Title II - Part B )

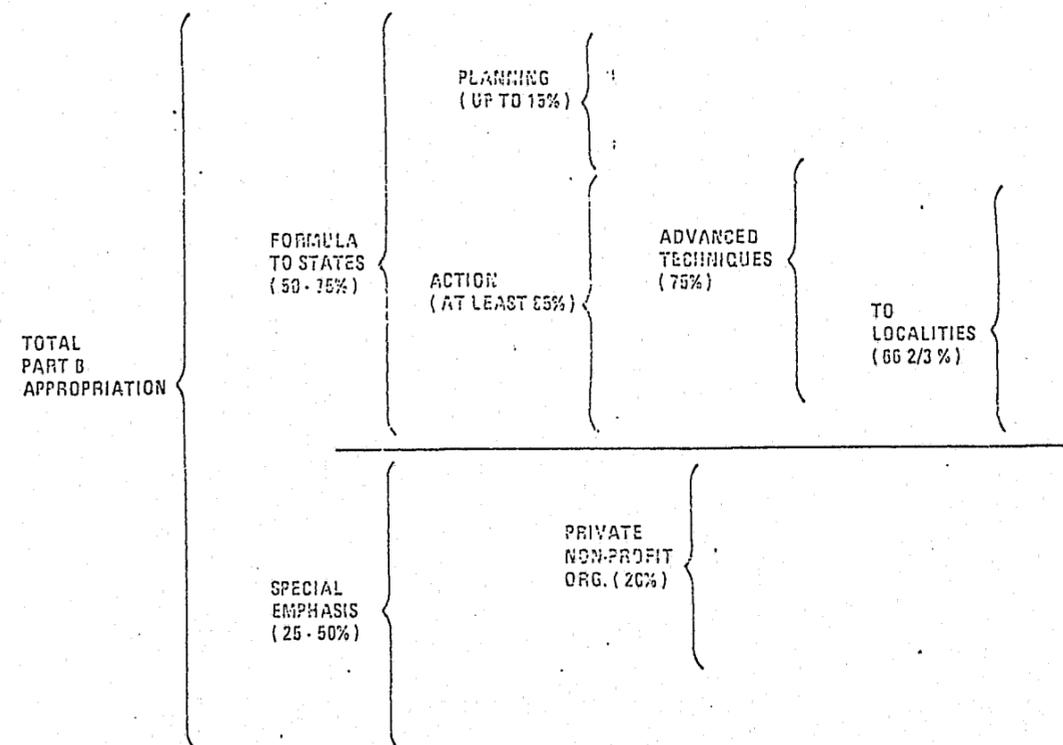


TABLE 2

TABLE 3.—ESTIMATED STATE FORMULA FUNDS  
[\$40,000,000 funding level]

State	Total allotment <sup>1</sup>	State planning funds <sup>2</sup>	Local passthrough <sup>3</sup>
Maine			
New Hampshire	\$200,000	\$30,000	\$133,400
Vermont	200,000	30,000	133,400
Massachusetts	200,000	30,000	133,400
Rhode Island	643,200	96,480	428,881
Connecticut	200,000	30,000	133,400
New York	348,000	52,200	232,116
New Jersey	1,994,400	299,160	1,330,265
Pennsylvania	828,000	124,200	552,276
Ohio	1,303,000	195,450	869,101
Indiana	1,269,600	190,440	846,823
Illinois	631,200	94,680	421,010
Michigan	1,300,800	195,120	867,634
Minnesota	1,113,600	167,040	742,771
Iowa	470,400	70,560	313,757
Missouri	333,600	50,040	222,511
North Dakota	532,800	79,920	355,378
South Dakota	200,000	30,000	133,400
Nebraska	200,000	30,000	133,400
Kansas	200,000	30,000	133,400
Delaware	249,600	37,440	166,483
Maryland	200,000	30,000	133,400
District of Columbia <sup>4</sup>	480,000	72,000	320,160
North Carolina	200,000	30,000	133,400
South Carolina	604,800	90,720	403,402
Georgia	328,800	49,320	219,310
Florida	573,600	86,040	382,591
Kentucky	756,000	113,400	504,252
Tennessee	384,000	57,600	256,128
Alabama	458,400	68,760	305,252
Mississippi	422,400	63,360	281,740
Arkansas	290,400	43,560	193,697
Louisiana	225,600	33,840	150,475
Oklahoma	477,600	71,640	318,559
Texas	290,400	43,560	281,740
Montana	1,401,600	210,240	934,867
Idaho	200,000	30,000	133,400
Wyoming	200,000	30,000	133,400
Colorado	200,000	30,000	133,400
New Mexico	276,000	41,400	184,092
Arizona	200,000	30,000	133,400
Utah	237,600	35,550	158,479
Nevada	200,000	30,000	133,400
Washington	200,000	30,000	133,400
Oregon	393,600	59,040	262,531
California	240,000	36,000	160,080
Alaska	2,280,000	342,000	1,520,760
Hawaii	200,000	30,000	133,400
	200,000	30,000	133,400

<sup>1</sup> Estimate based on population under age 18.  
<sup>2</sup> Estimate based on 15 percent of estimated State total.  
<sup>3</sup> Estimate based on 66% percent of estimated State total.  
<sup>4</sup> Minimum.  
<sup>5</sup> District of Columbia is defined as a State.

TABLE 4.—ESTIMATED STATE FORMULA FUNDS  
[\$125,000,000 funding level]

State	Total allotment <sup>1</sup>	State planning funds <sup>2</sup>	Local passthrough <sup>3</sup>
Maine			
New Hampshire	\$375,000	\$56,250	\$250,125
Vermont	277,500	41,625	185,093
Massachusetts	200,000	30,000	133,400
Rhode Island	2,010,000	301,500	1,340,670
Connecticut	322,500	48,375	215,108
New York	1,087,500	163,125	725,363
New Jersey	6,232,500	934,875	4,157,078
Pennsylvania	2,587,500	388,125	1,725,863
Ohio	4,073,500	610,875	2,716,358
Indiana	3,967,500	595,125	2,646,323
	1,972,500	295,875	1,315,657

Footnotes at end of table.

TABLE 4.—ESTIMATED STATE FORMULA FUNDS—CONTINUED  
[\$125,000,000 funding level]

State	Total allotment <sup>1</sup>	State planning funds <sup>2</sup>	Local passthrough <sup>3</sup>
Illinois	4,065,000	609,750	2,713,561
Michigan	3,480,000	522,000	2,321,160
Minnesota	1,470,000	220,000	980,490
Iowa	1,042,500	156,375	695,348
Missouri	1,665,000	249,750	1,110,555
North Dakota	240,000	36,000	160,080
South Dakota	255,000	38,250	170,085
Nebraska	547,500	82,125	365,183
Kansas	780,000	117,000	520,260
Delaware	210,000	31,500	140,070
Maryland	1,500,000	255,000	1,000,000
District of Columbia <sup>4</sup>	240,000	36,000	160,080
Virginia	1,725,000	258,750	1,150,575
West Virginia	622,500	93,375	4,152,075
North Carolina	1,890,000	283,500	1,260,630
South Carolina	1,027,500	154,125	685,343
Georgia	1,792,500	268,875	1,195,598
Florida	2,362,500	354,375	1,575,788
Kentucky	1,200,000	180,000	800,400
Tennessee	1,432,500	214,875	955,478
Alabama	1,320,000	198,000	880,440
Mississippi	907,500	136,125	605,303
Arkansas	705,000	105,750	470,235
Louisiana	1,492,500	223,875	995,498
Oklahoma	907,500	136,125	605,303
Texas	4,380,000	657,000	2,921,146
Montana	270,000	40,500	180,090
Idaho	292,500	43,875	195,148
Wyoming	200,000	30,000	133,400
Colorado	862,500	129,375	575,288
New Mexico	442,500	66,375	295,148
Arizona	742,500	111,375	495,248
Utah	472,500	70,875	315,158
Nevada	200,000	30,000	133,400
Washington	1,230,000	184,500	820,410
Oregon	750,000	112,500	500,250
California	7,125,000	1,068,750	4,752,375
Hawaii	300,000	45,000	200,100
Alaska	200,000	30,000	133,400

<sup>1</sup> Estimate based on population under age 18.  
<sup>2</sup> Estimate based on 15 percent of estimated State total.  
<sup>3</sup> Estimate based on 66% percent of estimated State total.  
<sup>4</sup> Minimum.  
<sup>5</sup> District of Columbia is defined as a State.

TABLE 5.—ESTIMATED FUNDS TO SELECTED CITIES<sup>1</sup>

City	City percent of State's population under 18	City action share of State passthrough	
		\$40,000,000	\$125,000,000
New Orleans	14.8	\$47,146	\$147,334
Los Angeles	10.1	153,597	479,990
Atlanta	9.7	37,111	152,851
Honolulu	35.5	47,357	71,036
Boston	9.9	42,459	132,726
Newark	6.0	33,137	103,552
Cincinnati	3.9	33,026	103,206
Omaha	24.4	32,550	89,105
San Antonio	6.3	58,897	184,032
New York	39.1	520,138	1,625,417
Tampa	4.0	20,170	63,031
Buffalo	2.5	33,257	103,926
Detroit	15.4	114,387	357,459
Denver	19.8	35,450	133,907

<sup>1</sup> Estimate based on city's percent of State youth under age 18.

(READ Exhibit 5)

## LAW ENFORCEMENT ASSISTANCE ADMINISTRATION—JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

## FACT SHEET

On September 7, 1974, the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, was signed into law. This Act authorized a program designed to combat juvenile delinquency and improve juvenile justice. The program is administered by the Law Enforcement Assistance Administration (LEAA) within the Department of Justice.

The Act substantially revised and extended existing Federal laws and agency responsibilities regarding juvenile delinquency. Principal responsibility for coordination of Federal juvenile delinquency prevention efforts was placed in LEAA, new organizational entities were established to conduct research and implement juvenile delinquency programs, and far-ranging new grant programs to combat delinquency and assist runaway youth were authorized.

Essentially, the Act created within LEAA a Juvenile Justice and Delinquency Prevention Office and a National Institute to conduct research, established an independent Coordinating Council and a National Advisory Committee, authorized new grant programs to deal with juvenile delinquency and runaway youth, and established a National Institute of Corrections within the Federal Bureau of Prisons. Additionally, the Federal Juvenile Code, that portion of the United States Criminal Code dealing with juveniles, was updated.

*Concentration of Federal Efforts.*—LEAA was given the responsibility of developing and implementing policy objectives for all Federal delinquency programs. Progress is to be monitored carefully and the results thoroughly evaluated.

*Coordinating Council.*—The Coordinating Council consists of representatives of Federal agencies administering programs which affect juveniles. These programs are coordinated so that wasteful duplication of effort and overlapping programs are eliminated.

*Juvenile Justice and Delinquency Prevention Office.*—This Office within LEAA is responsible for administering the delinquency prevention and juvenile justice programs authorized by the bill. It is headed by an Assistant Administrator appointed by the President.

*National Advisory Committee.*—A 21-member Advisory Committee, appointed by the President, advises the Office on various aspects of its operations. The members of the Advisory Committee are required to be knowledgeable in the areas of delinquency prevention and juvenile justice. A majority cannot be government officials, while seven members must be under age 26 at the time of their appointment.

*Formula Grants.*—Formula grant funds are allocated to states and territories on the basis of population of people under age eighteen. To be eligible, each state must submit a comprehensive plan which embodies some of the purposes of the Act. Once the plan is approved, each state determines how funds are to be used. Funds are administered by a state planning agency (SPA) previously established to administer LEAA programs. All applications for funds are to go to these SPA's. Seventy-five percent of funds are to be used for advanced techniques to combat delinquency.

*Discretionary Grants.*—From one-quarter to one-half of the available funds are to be used as a discretionary fund by LEAA. Grants and contracts are made to carry out various types of "Special Emphasis Prevention and Treatment Programs." Twenty percent of these funds are to go to private, nonprofit organizations who have had experience dealing with youth. Successful programs are to receive continued funding.

*National Institute for Juvenile Justice and Delinquency Prevention.*—This Institute within the Office serves as a research and information center and provides training in the treatment and control of juvenile offenders. Demonstration projects established by the Institute and other Federal juvenile programs are to be carefully evaluated. Standards for Juvenile Justice are being developed and implemented according to the terms of the Act.

*Runaway Program.*—A grant program to deal with the problems of runaway youth is administered by the Department of Health, Education, and Welfare. The program is designed to develop public and private programs for runaways. A

survey is to be made to determine the characteristics of the nation's runaway youth population.

*National Institute of Corrections.*—Established within the Federal Bureau of Prisons, the main purposes of this Institute include training of personnel who work with offenders, dissemination of information regarding corrections, and the provision of technical assistance for states and federal agencies.

*Juvenile Code.*—Chapter 403 of Title 18, United States Code, was revised to guarantee adequate protection of juvenile rights, and assure that Federal criminal procedures meet the needs of young people.

(Read Physical Exhibit A)

[Options Paper from the Juvenile Justice Task Force on the Issues Involved in the Reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 (as amended in 1977)]

## BACKGROUND OF THE ACT

The Juvenile Justice and Delinquency Prevention Act of 1974 signaled the first substantial financial assistance effort located in the Department of Justice and targeted at state and local governments to encourage reforms in their juvenile prevention and rehabilitation programs and at private nonprofit organizations to supplement public resources for troubled juveniles (see Appendix A for a brief historical sketch of the earlier federal efforts in this field). The Act was a Congressional initiative imposed on a reluctant Ford Administration.

In the main, our investigations have convinced us it has had beneficial, though modest, results; it has elevated the juvenile justice system to a place at the bargaining table with the rest of the criminal justice system and given it a new measure of respect and effectiveness. By incorporating juvenile justice planners into state criminal justice planning apparatus, the Act has begun to sensitize police, courts, and corrections to the importance of these younger offenders and nonoffender participants in the system. It may have resulted in juveniles receiving a bigger share of the total expenditures for crime prevention.

The 1974 Act started out slowly—the prior administration was forced by Congress to allocate \$25 million for fiscal year 1975; \$40 million for fiscal year 1976; and \$75 million for fiscal year 1977; President Carter's first budget request was \$75 million; in fiscal year 1979 it was \$100 million. The fiscal year 1980 allocation of \$50 million is being greeted with disappointment and accusations of retreat by many participants in the juvenile justice system and certain members of Congress.

The President's proposed budget for fiscal year 1980 breaks down as follows:

[Fiscal years, dollars amounts in millions]

	1979 actual	1980	Percent decrease
Formula grant program.....	\$63.7	\$30.4	53
Discretionary programs.....	36.3	19.6	46
(1) Special emphasis.....	21.3	10.1	53
(2) National Institute.....	11.0	5.5	50
(3) Technical assistance.....	3.0	3.0	0
(4) Concentration of effort.....	1.0	1.0	0

The 1974 JJDP Act had a definite philosophical bent. It was targeted toward diverting juveniles out of the juvenile justice system where possible, i.e., preventing juveniles from ever getting involved with police, courts, and corrections and providing alternatives for as many as feasible of those who do become involved to traditional confinement in detention centers and training schools. It insisted as a condition of participation that states within two years house all status offenders (those not accused of an adult crime) in shelter facilities (Section 223(a) (12)) rather than "detention or correctional facilities" and forbade any confined juvenile to be in "regular contact" with adult prisoners (Section 223(a) (13)). Furthermore, 75 percent of formula grants must be spent on "advanced techniques" laid down in the Act; states must appoint (21-33) person

advisory committees to advise the state planning boards on the use of money, and two-thirds of the money must be spent through the localities. In addition, states must maintain Crime Control Act expenditures on juvenile justice at the 1972 levels; a minimum of 25 percent of Part B grant funds must be allocated for "special emphasis grants" by the Office of Juvenile Justice and Delinquency Prevention, at least 20 percent of which must go to private non-profit grantees (Appendix A-1). The 1974 Act also created a National Institute of Juvenile Justice and Delinquency Prevention to prepare, collect, and disseminate data on treatment and control of juvenile offenders and to train youth workers in the juvenile justice system. The same 1974 Act continued HEW's role by creating a separate program under HEW's administration to provide 100 percent direct grants to states and private agencies to create runaway youth programs and facilities.

It also set up a National Coordinating Council composed of cabinet level officers, to be chaired by the Attorney General, to coordinate all juvenile delinquency programs in the Federal government (206(a)) and a National Advisory Committee (201-208) of 21 members, (appointed by the President) to meet quarterly and advise on planning, priorities, operations, and management of all Federal delinquency programs. It also contains "concentration of federal efforts" provisions designed to make the Administrator the key federal official dealing with the juvenile justice area. (A summary of the 1974 Act is found at Appendix B)

In 1977, at the beginning of the Carter Administration, the Act came up for reauthorization. Both Senator Bayh and the Administration drafted bills which varied somewhat but which were ultimately compromised along the following lines:

Neither proposal altered the policy thrust of the Act. The Administration of OJJDP was made a Level V Presidential appointee and was given the title of Associate instead of Assistant Administrator of LEAA. The head of OJJDP was given statutory authority to administer the formula grant programs and the National Institute for Juvenile Justice and Delinquency Prevention "subject to the direction of the Administrator of LEAA". The Administrator of LEAA was encouraged, but not required, to delegate additional authority to the Administrator of OJJDP for discretionary grants and funds provided to LEAA that are subject to the maintenance-of-effort provision.\*

Other provisions of the 77 Act were designed to strengthen the role of the Coordinating Council on Juvenile Justice and Delinquency Prevention and the Advisory Committees to the state planning agencies. The Act also extended the original two year deadline for state compliance with the deinstitutionalization provisions noted above by one year and allowed for continued eligibility for formula grants if a state had achieved at least 75 percent deinstitutionalization after the expiration of the additional year and had a commitment to full compliance within two additional years. The nonprofit share of the discretionary grants was increased from 20-30 percent with no match required for any recipient after fiscal year 1978. After fiscal year 1978, states need not match funds spent on activities but planning and administration required a 50 percent match (see Appendix C for a summary of the 1977 amendments).

The 1977 passage was relatively noncontroversial. The highlights of the Committees' reports consisted of an attack on the Ford Administration's attempts to ignore the Act, and its 1976 request that the "maintenance-of-effort" provision be repealed. The reports enthusiastically cited the new Administration's increased request for funds and Judge Bell's confirmation statement, "if we are going to do anything about crime in America, we have to start with the juveniles".

Since 1977, several controversial aspects of the law have come into focus. Extensive interviews with public and private grantees, LEAA and OJJDP officials, juvenile judges and advisory committee members, Hill staffers and others document the need for intensive focus on these problems prior to submission of a new authorization bill for the program. (See Appendix D for those interviewed).

Issue I.—Should the Juvenile Justice Program have a separate statutory basis or should it be an integral part of LEAA (or OJARS)?<sup>1</sup>

\*In the 1976 reauthorization of LEAA a 19.15 set-aside of total appropriations for juvenile programs was substituted for the former maintenance of effort provision. (See Issue V, infra)

<sup>1</sup>Congressman Conyers whose Subcommittee has authorization jurisdiction for LEAA (and JSIA) has introduced a bill which would consolidate OJJDP into a reorganized LEAA, thus relieving the Subcommittee on Economic Opportunity, chaired by Congressman Ike Andrews of North Carolina, from control of authorization for OJJDP. This would engender a jurisdictional fight which could only further cloud OJJDP's future.

## BACKGROUND

Although the '74 Act initially passed the Senate as Part F of Title III of the Crime Control Act, the House favored a separate statute. The Conference Committee accepted an independent Act in part so that the House Committee on Education and Labor could retain jurisdiction over the legislation. Some state criminal justice planners would prefer to see the independent authority in the JJDP Office and its presidentially appointed head abolished and programming authority for juveniles folded into LEAA. The National Conference of State Planning Agencies has recently voted to maintain a separate statute. The House and Senate staffers, as well as the National Association of County Officials, think that such a merger would be politically infeasible.

Option 1.—Retain a separate Juvenile Justice Act.

*Advantages*

Focuses attention on importance of juvenile justice program and thereby provides status better enabling the agency to carry out its responsibility to establish and coordinate Federal juvenile justice policy.

Underscores separate program administration responsibility.

Permits Senate Subcommittee and House Subcommittee on Economic Opportunity to retain jurisdiction over juvenile justice and avoids a turf fight on Capitol Hill.

By keeping the two programs discreet, you lessen the possibility of trade-offs and compromises between proponents of adult criminal justice system funding emphasis and juvenile justice funding emphasis and may increase overall Congressional support for the total package.

Option 2.—Establish a single act with a special juvenile justice subcomponent.

*Advantages*

Minimizes management and program relationship conflicts which have absorbed a considerable amount of time and energy during the past two years.

Allows Congress and the Judiciary Committee to consider the entire LEAA (or OJARS) program and its component parts in an integrated manner.

Facilitates review of compatibility of the goals and objectives of each Crime Control Act program component.

Permits LEAA, the Department, OMB, and the Congress to comprehensively review the LEAA program, assess progress, accomplishments, and problems, establish needed changes in management relationships and program priorities, and otherwise consider the interrelationships between all Act components.

Recognizes that prevention and treatment of juvenile delinquency and youth crime are matters that should be considered as an integral part of the law enforcement and criminal justice system, yet retains the juvenile justice program as a priority consideration of the LEAA program.

*Task force recommendations*

The Task Force believes that, in balance, both conceptual and political considerations militate toward maintaining a separate authorization for JJDP.

Issue II.—If there is a Separate JJDP Act should there be Parallel Authorization Periods?

## BACKGROUND

The Justice System Improvements Act (JSIA) proposes a four-year authorization period for the Act beginning with fiscal year 1980 (October 1, 1979). The Juvenile Justice Act expires one year later, at the end of Fiscal Year 1980. Assuming that a decision is made not to incorporate the Juvenile Justice Act program into the JSIA, it then must be determined whether the two Acts should have separate or parallel authorization periods. A parallel authorization would be for three years beginning with Fiscal Year 1981 (October 1, 1980). Separate authorization periods would be established by proposing an authorization period either longer or shorter than three years.

Option 1.—Separate Periods.

Permits limited Department and LEAA resources to focus on each Act in turn, permitting full attention and consideration to be given to the reauthorization of each piece of legislation.

Lessens the possibility of trade-offs and compromises between the proponents of adult criminal justice system funding emphasis and juvenile justice funding emphasis, and may increase total spending as suggested above.

Probably enhances the visibility and status of separate juvenile justice programs.

*Option 2.—Parallel Periods.*

Permits Congress to consider the entire LEAA program and its component parts in somewhat more integrated manner.

Facilitates review of compatibility of the goals and objectives of each Crime Control Act program component.

Recognizes the significant Crime Control Act focus on juvenile programming through the maintenance-of-effort provision, OJJDP involvement in development of LEAA juvenile justice policy, and the common system used for comprehensive planning and fund delivery at the State and local levels.

Most groups interviewed would favor parallel periods except possibly for the House Economic Opportunity Subcommittee who see it as a possible first step toward taking their jurisdiction away and putting it in the Judiciary Committee.

*Task force recommendations*

The Task Force believes that this may be more a technical problem than it is a policy one. If there are serious objections from the Andrews Subcommittee, it is probably not worth arguing about. Further consultations with the Subcommittee are necessary. Other things being equal, the Task Force would favor parallel periods, because the recipient states and localities would have to undergo only one learning process per reauthorization cycle.

*Issue III.—Should OJJDP be Relocated as a Peer with LEAA in the New OJARS Constellation?*

BACKGROUND

Congress removed the focus of federal juvenile delinquency programs from HEW in 1974 because of LEAA's emergence as the lead Federal agency in the implementation of crime control programs including those in the juvenile area between 1968 and 1974. LEAA had in place an existing network of 56 State planning agencies that had undertaken the crime and delinquency analysis necessary to develop a comprehensive approach to preventing and reducing crime and delinquency. Placing the program in LEAA avoided duplication at the Federal and State levels in planning and implementing programs. Congress also recognized that it was necessary to work within the law enforcement and criminal justice system to bring about the changes in the existing system that it intended, i.e., to get juveniles out of the justice system and into social programs run by governmental and private service providers.

Under the Department's proposed Justice System Improvements Act, the existing relationship between LEAA and OJJDP is intentionally not altered because of the imminence of OJJDP reauthorization. OJJDP would continue as a distinct entity within LEAA which would itself be one of three semi-autonomous subdivisions of OJARS.

*Option 1.—Leave OJJDP as a separate entity within LEAA, with LEAA one of the three major units reporting to the Office of Justice Assistance, Research and Statistics.*

*Advantages*

The Crime Control block program administered by LEAA and the JJDP formula program administered by OJJDP share a common delivery system—the network of State, regional and local planning units setup mainly as a result of the initial Safe Streets Act. Placing OJJDP within LEAA helps assure consistent federal guidance and leadership in State and local assistance programs.

Guards against duplication of effort at the State and local level as well as federal level by providing an organizational framework for a single planning and reporting process to the extent statutorily permissible, thereby helping keep down paperwork and administrative costs.

Simplifies communication and reporting channels for States and localities.

Recognizes the fundamental interrelationship of juvenile justice and delinquency prevention and crime control and criminal justice system improvement. Helps insure policy coordination in overlapping program areas.

*Disadvantages*

Placing OJJDP—with its separate statutory base and headed by a presidential appointee—within LEAA inevitably leads to conflict. At a minimum, it raises questions regarding the proper authority and role of the head of OJJDP vis-a-vis the head of LEAA.

May not given enough emphasis and visibility to juvenile justice programs as originally intended by Congress, since an extra layer of bureaucracy is interposed between OJJDP and the Department.

*Option 2.—Make OJJDP a fourth arm of OJARS on an equal footing with BJS, NIJ and LEAA.*

*Advantages*

May better reflect priority attention Congress originally intended to give to juvenile justice and is more consistent with its separate statutory authorization and the fact that it is headed by a Presidential appointee.

Recognizes different policy thrusts, different constituencies and different requirements of Juvenile Justice and Crime Control Act, yet allows for coordination under the auspices of OJARS, which is mandated that role. Coordination may be increased by recognizing these differences, putting the offices on equal plane, and forcing them to develop cooperative working agreements.

Helps ensure that the head of OJJDP, with policy responsibility for juvenile justice has the authority to carry out, and consequently be held accountable for, that policy.

Decreases levels of review in awarding grants and contracts; may speed up grant process.

*Disadvantages*

Proliferates number of semi-independent agencies, thereby increasing administrative complexity and cost.

Creating a separate area for a specific justice system component (juvenile justice and delinquency prevention) is logically inconsistent with the proposed restructuring along functional lines—i.e., statistics, research and assistance and may lead to pressure to make other program components of LEAA such as "community crime" separate semi-autonomous entities within OJARS.

Increases coordination problems. OJARS has limited ability to resolve conflict and insure coordination of Juvenile Justice and Crime Control Act programming (whether block or categorical funds), since LEAA and OJJDP would have statutorily independent grant and contract authority.

Creates dual communications and reporting channels for State and local governments participating in both the Juvenile Justice and Crime Control Act programs even if the state SPA's continue to serve as the delivery mechanisms for the formula grants from both programs.

There was general support for the "fourth box" option among all the groups (i.e., NACO, nonprofit groups, House and Senate Staffers, although the SPAs are opposed.) It would be important, however, to insure in any such restructuring against needless duplication of administrative services (legal, Congressional Liaison, audit, etc.). The exact nature of the relationship of support services to the three components proposed in the JSIA bill is being considered by other task groups now at work.

*Task force recommendations*

The LEAA members of the Task Force including the Acting Administrator favor retaining OJJDP as a subpart of LEAA rather than a fourth box under OJARS. John Rector believes the integrity of the juvenile justice component of federal efforts in the crime control assistance area could better be maintained by giving it a co-equal status with LEAA in the OJARS system, providing that the SPA's remain the delivery vehicle on the state level. Pat Waid concurs in that conclusion.

*Issue IV.—Should the JJDP program be transferred to HEW?*

BACKGROUND

A task force of the PRP (President's Reorganization Project) is currently considering ways in which to better coordinate and leverage the funding for all federal youth-oriented programs. Jack Watson is chairing a White House inter-agency committee that will attempt to coordinate a number of youth related programs and examine whether a structural reorganization is desirable. Among the proposals which this committee will consider is the consolidation of juvenile programs including OJJDP in HEW. By referring this question to this committee, the White House has in effect, however, delayed any reorganization decision until 1981 or later.

*Option.—Transfer of the Juvenile Justice Act programs to HEW**Advantages*

Could be the beginning of a broader effort to consolidate the now diffused youth-related programs.

The philosophy of the Juvenile Justice Act is more related to protecting and promoting the welfare of youthful offenders rather than a punishment implicit in the law enforcement and criminal justice systems.

*Disadvantages*

HEW's implementation of the 1968 predecessor act was lackluster at best. There is no reason to believe that its performance now would be much better. The department is too large already and the juvenile programs would receive little attention at a policy level.

Youthful offenders are part of the law enforcement process and their treatment needs to be closely coordinated with the police and the courts.

Juvenile programs would lose the added credibility they now have in the law enforcement community because of OJJDP's association with the Department of Justice and LEAA.

In general, most groups to whom we have spoken prefer to leave the program in Justice. However, more funds and priority attention are more important to most of them than is bureaucratic placement, particularly if the use of the State Planning Agencies as the delivery mechanism is continued.

*Task force recommendations*

The majority of Task Force members would oppose transfer to HEW. John Rector might favor it under certain circumstances. In light of the postponement of any such proposal by the PRP, no recommendation from the Department on this issue is necessary at this time.

*Issue V.—Should the maintenance of effort requirement be continued?*

## BACKGROUND

The 1974 Juvenile Justice Act amended the Crime Control Act to require LEAA to maintain its activities involving juveniles at at least the same level that it provided during fiscal year 1972.

The maintenance-of-effort provision was revised in 1976 to require that a percentage of Crime Control appropriations be utilized in the broadly defined area of juveniles, rather than a set dollar amount. In this way, it was expected that funding would increase in proportion to the actual appropriation of funds each fiscal year. The percentage figure was determined to be 19.15 percent, based on the share of total 1972 appropriations awarded to juvenile related programs.

In implementing the maintenance of effort provision, LEAA did not require that each State meet the 19.15 percent minimum; nor did it set specific quotas for national programs. The Agency's policy was to meet the requirement in the aggregate, rather than State-by-State or program by program.

The 1977 Amendments to the Juvenile Justice Act, as recommended by this Administration, did not change the maintenance-of-effort requirement, but the Conference Report seems to indicate that the conferees intended that the 19.15 percent minimum be applied to each Crime Control Act program component, including both formula and discretionary grant moneys. Accordingly, the fiscal year 1979 guidelines for State Planning Agencies were modified to require that each State allocate and expend at least 19.15 percent of its total LEAA funds for juvenile related programs.

*Option 1.—Eliminate the maintenance-of-effort requirement.*

*Advantages*

Monitoring for compliance with the maintenance-of-effort provision is difficult if not impossible. Major problems include obtaining subgrant expenditure data and determining the juvenile justice share of multi-purpose programs. As a result, the reliability of compliance reports is questionable, and administratively burdensome.

A separate "earmark" for juvenile justice adds to red tape, excessive administrative costs, and program complexity—all problems the Justice System Improvements Act attempts to overcome.

The 19.15 percent requirement limits State and local flexibility and the State's discretion to tailor Federal aid to their unique needs, resources and priorities. In some cases it may serve as a cap on their allocation; without it they would do more.

The maintenance-of-effort requirement may be unnecessary. While juvenile justice received a relatively small portion of Crime Control monies in the early years of the program (12 percent in fiscal year 1970; 14 percent in fiscal year 1971), there is no evidence that a more balanced funding pattern would not have emerged without the statutory requirement as State and local planning capabilities increased and as juvenile justice interests became better organized and better represented in the planning process. In light of the representational requirements, as well as the attention that has been focused on juvenile needs, it is unlikely that juvenile delinquency programs would not receive a fair share of Crime Control funds in the absence of a specific statutory requirement.

The budget process is a more appropriate means for assuring that the Federal Government is making a satisfactory effort in the area of juvenile justice and delinquency programs. It insures that the Administration and the Congress know the level of commitment that is being made.

*Disadvantages*

The maintenance-of-effort requirement assures that Juvenile Justice Act funds are used to supplement, rather than substitute for, Crime Control Act monies. Without such a requirement, there is no guarantee that the current level of effort would be maintained and that Crime Control funds would not be diverted from juvenile delinquency to other criminal justice programs.

The maintenance-of-effort requirement assures that juvenile justice is recognized as a national priority and that substantial resources are provided commensurate with the seriousness of the juvenile justice and delinquency problem. As total LEAA and JJDP funding decreases, this assurance becomes more important to the very survival of juvenile programs already initiated. This will be especially true if States pull out of JJDP due to budget cuts.

Many criminal justice programs either directly or indirectly affect juveniles. The maintenance-of-effort requirements helps insure that these programs are coordinated with and responsive to juvenile justice priorities.

An effort to eliminate the requirement will meet stiff political resistance in Congress; State Planning Agencies appear to be the only major interest strongly supporting its removal.

The maintenance-of-effort requirement has not been fully tested as yet, since LEAA has not effectively administered it. Guidelines for implementation need to be developed and responsibility clearly assigned.

*Option 2.—Eliminate the maintenance-of-effort requirement and raise the authorization and appropriation levels under the Juvenile Justice and Delinquency Prevention Act to reflect an amount at least equivalent to the 19.15 percent of Crime Control Act funds.*

*Advantages*

Assures that juvenile justice continue to be recognized as a national priority with funding requested as the Administration determines necessary and usable and appropriated as the Congress sees fit.

Simplifies administration of the Crime Control Act program, and increases the flexibility of States and localities in the use of Crime Control funds.

Focuses responsibility for total juvenile justice programming more clearly on the Office of Juvenile Justice; reduces potential policy conflicts between LEAA and OJJDP.

*Disadvantages*

Brings all juvenile justice monies under the Juvenile Justice and Delinquency Prevention Act which emphasized prevention, deinstitutionalization and non-traditional alternatives for youth as opposed to the Crime Control Act which tends to stress more traditional criminal justice system responses and to give more attention to serious offenders.

Lack of support for juvenile justice in the OMB and appropriations process almost certainly will lead to fewer total dollars being available for juveniles.

It would increase the isolation of juvenile justice and delinquency prevention from other criminal justice planning and programming, and weaken the ability

of the Office of Juvenile Justice to leverage and influence other criminal justice resources.

*Option 3.*—Retain the maintenance of effort requirement for the Crime Control block program only.

*Advantages*

Continues to give priority emphasis to juvenile justice.

Assures that JJ funds will not be used to support state and local action programs previously funded by Crime Control Act block monies.

Recognizes that several existing national programs in the special emphasis category are of a general support nature and that it is virtually impossible to prorate their expenditures for juvenile justice purposes.

Maintains the federal requirement for state programs, but gives the discretionary and research efforts more flexibility.

*Disadvantages*

May appear to be an additional retreat from commitment to juvenile justice and delinquency prevention as a national priority.

The current requirement is not a major problem at the national level, except in terms of accounting; 19.15 percent is a reasonable and equitable share for juvenile justice purposes.

*Option 4.*—Eliminate the maintenance-of-effort requirement, but provide that juvenile justice and delinquency prevention programs receive an "adequate share" of Crime Control block funds.

*Advantages*

Recognizes adequate funding as a policy goal, but removes arbitrary and largely unenforceable percentage minimum.

Gives more flexibility to States and localities.

Simplifies program administration.

Treats juvenile justice in a similar fashion as courts under the JSIA.

*Disadvantages*

Will appear to be a retreat from commitment to juvenile justice as national priority.

"Adequate share" may be difficult to define and enforce, and less effective than statutory minimum.

Most groups interviewed want to maintain the maintenance-of-effort provision as is despite confusion as to its application. The SPA's have tentatively said they favor its elimination.

*Task force recommendations*

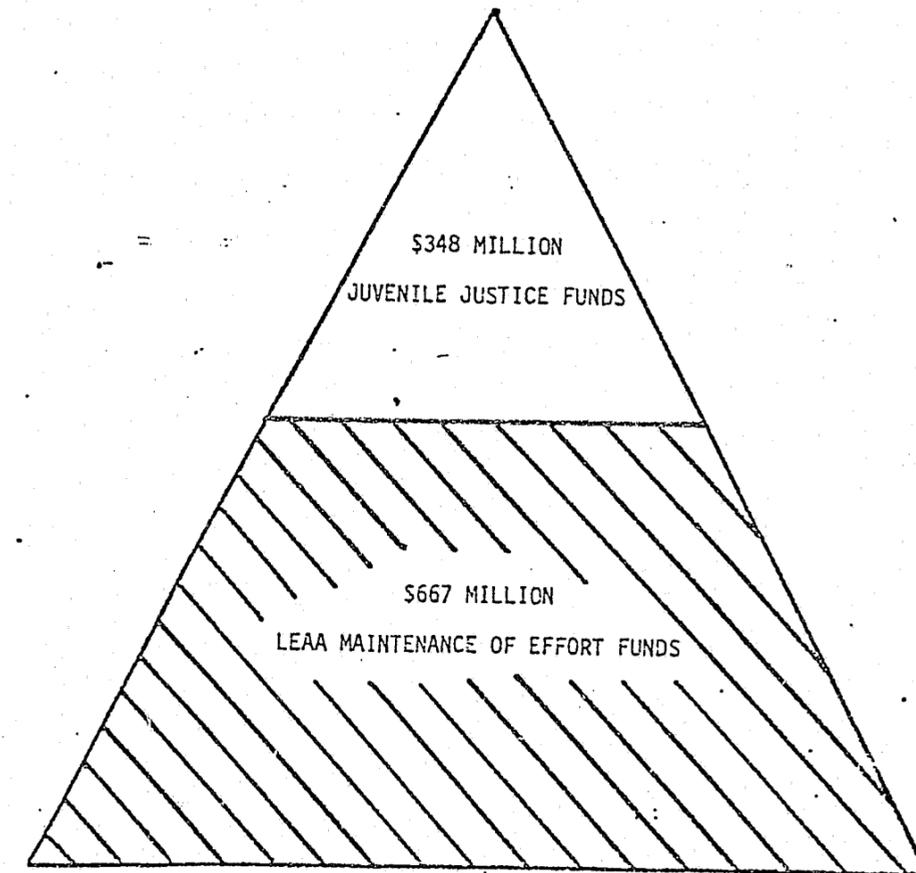
1. To simplify accounting, maintenance-of-effort should be rounded off to 20 percent.

2. LEAA should be encouraged to fund juvenile related programs over-and-above the maintenance-of-effort minimum.

3. Maintenance-of-effort should be made applicable to all LEAA formula grants, to priority grants and to discretionary grants, and to all other LEAA programs except research and evaluation. Language should be added that the research arm allocate an "adequate share" of its funds to juvenile related efforts.

4. The Administration of OJJDP should be required to issue guidelines for all LEAA-funded juvenile justice programs. These guidelines would be subject to disapproval by either the head of LEAA or the Administrator of OJARS, depending on whether OJJDP remains a subpart of LEAA or a semi-autonomous arm of OJARS. (See Issue VI, *infra*)

FEDERAL JUVENILE DELINQUENCY FUNDS AVAILABLE THROUGH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT\* (FISCAL YEARS 1975-79)



Source: Prepared by the Office of Juvenile Justice and Delinquency Prevention.

*Issue VI.*—Should the Act Continue to Require OJJDP to Exercise Policy Control over all Juvenile Programming in LEAA (or OJARS).

BACKGROUND

Section 527 of the Crime Control Act seems to provide the head of OJJDP with broad authority to set policy for the use of other LEAA funds which are applied to juvenile justice programs. It states:

"All programs concerned with juvenile delinquency and administered by the Administration shall be administered or subject to the policy direction of the office established by section 201(a) of the Juvenile Justice and Delinquency Prevention Act of 1974." [OJJDP]

Section 201(a) requires that "The Administrator (of LEAA) shall administer the provisions of this Act through [OJJDP]". The purpose of these provisions in conjunction with the "maintenance-of-effort" requirement in the Juvenile Justice and Delinquency Prevention Act, is to ensure coordinated and consistent programming of all LEAA juvenile justice-related programs. The statute also contains, however, what would appear to be conflicting language. Section 201(d)

\*Excludes Title III Funds.

specifies that the Administrator of OJJDP shall execute all necessary powers, "subject to the direction of the Administrator of LEAA" (emphasis added).

The confusion over the meaning of section 527 has had more implications in theory than in fact. In the few cases where OJJDP has attempted to exercise control over specific awards, it has soon found that it did not possess adequate resources to keep up with the task of monitoring, let alone approving, the day-to-day actions of the other offices. At the same time, OJJDP has been criticized internally at LEAA for failing to articulate its policy preferences in generalized written guidelines which other offices could use in meeting the spirit of section 527. The OJJDP Administrator counters that he was refused any delegated authority to issue any such agency-wide guidelines. Under an opinion of the LEAA General Counsel, the LEAA Administrator could negate such guidelines to the extent that they are inconsistent with the manner in which the Administrator chooses to implement section 527.

*Option 1.—Eliminate section 527.*

#### *Advantages*

Elimination of section 527 will clarify lines of authority within LEAA. It is always the responsibility of the Administrator to balance diverse policy needs, including those of juveniles, in directing his agency, and he must be trusted to do so fairly.

The question of where coordination authority should lodge within LEAA is essentially a management issue. It is inappropriate for Congress to decide such questions in a statute. The Executive Branch must have authority to change its structure in response to changing circumstances.

#### *Disadvantages*

History has shown that, both in HEW and in LEAA, juvenile justice concerns will always receive little attention from decision-makers unless mechanisms are established to give them special status. With all the problems that the LEAA Administrator must consider, this one will tend to be neglected and lack of consideration will result. Since 50 percent of all crime is committed by juveniles, attention to their needs is an important part of every law enforcement initiative.

Elimination of section 527 could be viewed as a symbolic denigration of the importance of juvenile justice within LEAA.

*Option 2.—Retain section 527 in its present form.*

#### *Advantages*

The existing language of section 527 may be sufficient if more coherent administration of its directive is adopted within LEAA. If OJJDP would make a concerted effort to provide generalized written guidance to other LEAA units, after appropriate consultation with the LEAA Administrator, overall coordination could be achieved without any change in the law.

There is little evidence that the section 527 issue has surfaced separately in Congress. Deciding to resolve any existing problems administratively could avoid muddying the reauthorization waters with additional issues.

#### *Disadvantages*

Retention of the existing language will be likely to continue to engender conflict between the OJJDP and LEAA Administrators.

Retention of the existing language could be viewed by the juvenile justice community as the intentional ignoring of an obvious problem.

#### *Task force recommendation*

The Task Force favors retaining Section 527 in its present form (Option 2) with the understanding that its recommendations contained in Issue V (supra) that would require OJJDP to issue guidelines for all LEAA funded juvenile justice programs are also adopted.

*Issue VII.—What Should the Proper Allocation be of Appropriation Between Formula and Special Emphasis Grants?*

#### BACKGROUND

At the present time, (64 percent) of JJDP appropriated funds are allocated to the states on a population formula basis; 22 percent are given out by the national office on a discretionary basis as special emphasis grants. State and local

officials believe, quite expectably, that formula funds which they control have the greater long-range impact since they result in programs jointly funded by states and localities. They contend that discretionary funds awarded to programs by OJJDP do not normally have replication potential once federal funds run out. There is current controversy over the use of discretionary funds pursuant to "unsolicited" grants which some criticize as being too large, awarded without notice to the jurisdictions which they will work in, employing out-of-state experts and personnel who often are not effective in-state and not giving all potential applicants an equal chance to compete. A question has therefore arisen about whether these statutory changes should be modified.

#### *Advantages of discretionary funds*

Discretionary funds, when used with focus, enable the Office of Juvenile Justice to identify and promote national goals and policy in delinquency control and prevention. Local and state funded programs tend not to deal with issues which have national ramifications. Moreover, projects funded locally do not yield information regarding program effectiveness essential to policy formulation and modification.

Special Emphasis Programs facilitate adoption of nationally recognized standards through development and implementation of demonstration projects, and transfer of technology.

New concepts in delinquency prevention and control can be developed, tested, and demonstrated, thus adding to the knowledge of state planning agencies and local jurisdictions regarding cost and effectiveness of varied approaches.

Program dollars are available to assist indigenous and other non-traditional agencies and organizations who lack access to state planning agencies, or who are excluded from participation because of the priority given to public youth serving and justice system agencies. This has reduced innovation and tended to maintain the status quo in programming.

Discretionary programs may have a multiplier effect when grant proposals which are not accepted to OJJDP are able to find alternative sources of funding once the proposal has been drawn up because of OJJDP's initiative.

#### *Advantages of formula funding*

Enables the responsible state agency to coordinate and prioritize juvenile justice needs.

Formula-funded projects are more likely to be on-going and to be picked-up by state and local programs if federal funds are not available.

Formula money, since it is given to a state agency headed by a person appointed directly by the governor, is able to engender more political support, both locally and in the Congress.

Formula programs are more consistent with the theory that the states and localities bear primary responsibility for operating the criminal and juvenile justice systems.

Most of those interviewed would be in favor of giving somewhat increased priority to the formula route: The SPA's have suggested a minimum allocation of 75 percent of the total appropriation to the formula programs (an increase of 11 percent). Others would come down on the side of more discretionary money, mainly the national nonprofit discretionary grantees. The House staffers say there will be early 1979 impact hearings on the use of these "unsolicited grant" funds. Non-participating states also favor increased funds for the special emphasis programs since they receive no formula money.

#### *Task force recommendations*

The Task Force recommends that the statutory allocation stay as it is, since it allows sufficient flexibility within the total budget allocation. (See Appendix E)

*Issue VIII.—Should the Juvenile Justice Act Require or Permit a Match from the Public or Private Recipient of Federal Funds.*

#### BACKGROUND

The Juvenile Justice and Delinquency Prevention Act of 1974 had the following match requirements:

- (1) Part A—Concentration of Federal Efforts—No match requirement.
- (2) Part B—Formula Grants—Maximum Federal share 90 percent, the non-Federal share to be in cash or kind.

(3) Part B—Special Emphasis—No match requirement.

(4) Part C—Institute—No match requirement.

The formula grant match provision represented a compromise between a Senate bill to match provision and a House bill requirement for 10 percent cash match.

Section 228(c) of the 1974 Act authorized the LEAA Administrator to require the recipient of any Part B grant or contract to contribute money, facilities, or services where it contributes to the purposes of Part B. Using this authority, the LEAA Administrator established a cash match "preference" for formula grant funds, permitting States to accept in-kind contributions only in limited circumstances.

The 1977 Amendments to the Juvenile Justice Act significantly altered the Part B match provisions.

The Senate bill (S. 1021) recognized both the difficulty of obtaining cash match for formula grant funds, particularly for private nonprofit agencies, and the "imaginative bookkeeping" that is fostered by in-kind match. Therefore, the Senate bill eliminated in-kind match and provided that formula grant programs and projects could be funded with up to 100 percent Federal funds. The House bill (H.R. 6111) provided that all financial assistance under the Act shall be 100 percent of approved costs. However, the House bill eliminated use of formula grant funds for planning and administration purposes.

In conference, it was agreed to retain the existing provisions for planning and administration funds and non-Federal match through fiscal year 1978. Thereafter, the non-Federal matching share for planning and administration funds was set at a minimum of 50 percent cash (dollar-for-dollar) and the Federal contribution to these activities limited to a maximum of 7.5 percent, rather than 15 percent, of a State's formula grant award. States were prohibited from requiring a non-Federal matching contribution for formula grant "action" programs.

The 1977 Amendments deleted the Section 228(c) optional match authority for special emphasis funds effective October 1, 1978 but extended the Administrator's authority to require a contribution for the Concentration of Federal Efforts and Institute programs.

*Option 1.*—It is recommended that the Administration bill retain the 50-50 match provision for formula grant planning and administration funds.

#### *Advantages*

Continues current requirement which has been accepted and implemented in over 50 jurisdictions.

Fosters State assumption of responsibility for the planning and administration function. These activities are properly the responsibility of those State and local governments that receive action funds.

Consistent with Justice System Improvements Act provision for administrative funds.

#### *Disadvantage*

Encourages States to do minimum planning and administration in order to reduce State and local level financial contribution.

*Option 2.*—It is recommended that the Administration bill retain the authority of the States to fund action programs with 100 percent Federal funds. However, consideration should be given to permitting States to require a cash matching contribution by changing the language of Section 222(e) from: "financial assistance . . . may be up to 100 per centum of the approved cost of any program or activity."

The effect of a change to permit States to establish a match requirement has these advantages:

- (1) allows the total dollar amount of financial resources devoted to juvenile justice programs to be substantially increased;
- (2) allows States to require a dollar commitment to funded projects;
- (3) enables States to use a decreasing Federal share as a means of encouraging grantees to seek and obtain continuation funding after Federal assistance terminates.

It appears that formula grant funding under the Juvenile Justice Act may not increase substantially in the near future. If the cost of funded projects is not assumed by grantees, the ability of State and local governments to undertake new or expanded program initiatives would be severely curtailed and a State's ability to achieve compliance with Sections 223(a) (12) and (13) would be im-

paired. If States have no mechanism available to encourage grantees to assume costs, many valuable projects could cease to operate when a program's established maximum period of Federal assistance has ended.

The disadvantage of this approach is that if a State establishes an across the board cash match policy, many private nonprofit agencies could be foreclosed from participation in the Juvenile Justice Act program. This disadvantage could be met in one of two ways, either by limiting the State's discretion to require match to public agencies or by establishing a statutory minimum percentage of formula grant funds that must be made available to private nonprofit agencies, organizations, or institutions. The latter method currently applies to Special Emphasis funds (Section 224 (c)), 30 percent of which must be made available to the private nonprofit sector without match. Mr. Rector favors retaining existing statutory language. If it is changed to allow for discretionary matching by the states, he would favor the 30 percent minimum requirement noted above.

*Issue IX.*—Are Statutory Changes Needed to Achieve Better Coordination and More Joint Funding Between Federal Delinquency Programs?

#### BACKGROUND

The provisions of the Juvenile Justice Act which attempt to set up a structure for the coordination of the many federal programs which deal with youth have been, by almost all accounts, among the most neglected. Yet many make a convincing case that they are the most important. There are currently some 167 separate federal programs touching on youth services, spending an estimated \$5 billion and placed in six different Departments. The current Act looks towards two mechanisms to facilitate coordination: the "Concentration of Federal Efforts" provisions contained in Section 204 of the Act and the Coordinating Council.

The Administrator (of LEAA) is directed by Section 204 to implement "overall policy and develop objectives and priorities for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research and improvement of the juvenile justice system in the United States."

The Administrator may enter into agreements "to utilize the services and facilities of any agency of the Federal Government . . . (and) transfer funds appropriated under the Act to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation . . ."

In theory, the other Departments and Agencies involved are to look to the Coordinating Committee chaired by the Attorney General for guidance in the broad outlines of their youth-related programs. This is a management device which has been utilized, in more or less the same form in a number of different statutes, including, for example, the Older Americans Act.

The results in the case of the Juvenile Justice Act and, indeed, in most other instances have been unsatisfactory. The reasons are several:

(1) Each agency, and in many cases, each program has its own set of constituency. Usually, these people are primarily concerned with obtaining funds to run their own on-going institutions. These constituencies strongly influence both the federal bureaucracy and the Congress. Decisions as to where to expand funds by the time they reach the top echelons of each Department have been shaped by these constituencies, often after an elaborate planning process. To expect these officials to conform to any central inter-departmental coordination process on an ad hoc basis has proven highly unrealistic.

(2) There has been, in addition, little effort to test the statute's coordination mechanism. There has been only about seven or eight interagency agreements entered into by OJJDP in four years. Offers by various agencies to arrange such agreements have been allegedly declined including most recently, a proposal for a joint program involving HUD, Labor, and OJJDP for delinquency prevention programs in public housing.

(3) There is no existing staff whose job it is to implement even low-level or technical cooperation, let alone general policy guidance. Suggestions made at the last meeting of the Coordinating Council for interested agencies to detail staff to perform this function have not been implemented. Even if a small interagency staff is designated to work on coordination, there is little chance that it will be able to coordinate various programs in any meaningful way in the absence of policy-level authority.

Most of those interviewed noted this lack of coordination and felt it to be among the most serious shortcomings of the Act. In an era of declining total monies, optional use of monies from other federal programs will become an increasingly appetizing substitute. The notion of one grant to a state recipient from all federal agencies without overlapping time cycles, eligibility requirements, reporting differences, evaluation differences, program standards is attractive.

*Option 1.—White House Coordination.*

*Advantages*

If effective coordination cannot work among individualistic, bureaucratic equals, then the logical solution is to raise the coordination function to a White House level.

Only someone speaking directly for the President can expect to command the attention of different Cabinet Departments and Agencies.

*Disadvantages*

The President has shown a strong resistance to any increase in the functions and size of the White House Office.

White House coordination has been tried in the past with only limited success i.e., in the drug abuse area in the Nixon Administration.

The Carter Administration has attempted to effect such White House coordination in only two areas. The first relates to the President's Executive Order of January, 1977 designating the Director of Central Intelligence as "Coordinator" of all intelligence programs (DIA, NSA, FBI, etc.) The Director of the CIA was given a separate suite of offices in the OEOB staffed by about 10 persons. The second involves the designation of the Administrator of AID as the overall "coordinator" of U.S. non-military aid (Treasury, State, Agriculture, ACTION and OPIC). This mechanism was created by Presidential Memorandum and whether the Administrator of AID will be given an office in the White House is still under discussion.

A more modest proposal for White House involvement in the juvenile area might be to amend the statute to allow the President to designate one of his principal staff members (Eizenstat or Watson) to replace the Attorney General as Chairman of the Coordinating Council and to detail one or two people from OJJDP to serve as staff for the Council. Even this idea, however, is not likely to be warmly received at the White House.

*Option 2.—Abolition of the Coordinating Council.*

*Advantage*

The Department should simply face-up to the fact that the Council has not been able to carry out its functions successfully and probably cannot do so in its present form. We should point out its shortcomings to the Congress and recommend that it be abolished. If this were done, we would not be in the position of paying lip service to coordination when little, if anything, was being accomplished.

*Disadvantages*

Although the coordination efforts have admittedly been unsuccessful thus far, the current statutory mechanisms can be made to work if there is a good faith effort to do so by policy-level officials. (See Appendix E for suggested alternative ways to utilize the Council).

Few areas of federal efforts are more in need of coordination and it would be irresponsible to abandon such attempts.

*Option 3.—Mandated Joint Funding.*

A third option would be to require that a certain percentage of discretionary funds or even formula grants be spent on joint funding projects involving other agencies.

*Task force recommendations*

1. The White House has decided in the last two weeks that there will be a coordinating group in the area of youth programs chaired by Jack Watson's deputy. Its functions remain to be defined and any structural alternative to the Coordinating Committee should wait its recommendations.

2. The statute should be amended to require 5-10 percent of its total funds be expended in joint interagency programs. (See Appendix E)

*Issue X.—Should "Detention or Correctional Facilities" now defined by regulation be amended by law to allow states more leeway in meeting the obligations of the Act?*

BACKGROUND

The most controversial aspect of the Act's administration is the definition of a detention or correctional facility under Sec. 223(a)(12). States may not place any child other than a juvenile offender into such facilities, i.e., a status offender or a dependent or neglected child. This is the provision requiring deinstitutionalization within 3 years of participating in the Act (at least 75 percent). States must also monitor the facilities into which such children are placed.

Although the Act does not itself define "detention or correctional facility," regulations issued in 1977 define such a facility to include:

(a) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders; or

(b) Any public or private facility, secure or nonsecure, which is also used for the lawful custody of accused or convicted adult criminal offenders; or

(c) Any nonsecure public or private facility that has a bed capacity for more than 20 accused or adjudicated juvenile offenders or nonoffenders unless:

1. The facility is community based and has a bed capacity for 40 or less; or

2. The facility is used exclusively for the lawful custody of status offenders or nonoffenders."

The Senate Report on the 1977 amendments predicted such a definition. Senate Report 95-165 (95th Congress, 1st Session, 60, 131). But the Conference report said nothing on the subject.

Although nonprofit grantees and NACO support the definitions, many states and private groups complain bitterly that they were not authorized by the Act itself which does not contemplate restrictions on size or location of facilities, but only on its secureness. They say that so rigid a definition of permissible facilities means that many private (religious and otherwise) facilities are excluded because of size even though they are far more acceptable than the training schools that many status offenders are now in. The issue has generated so many complaints that House staffers suggest the reauthorization itself could be endangered if they are not modified. Senate staffers also think the definitions too rigid and worry states will withdraw because the amount of money necessary to build or establish complying facilities is more than they draw from the Act. (See Appendix F)

As a result of these complaints, the Administrator of OJJDP has recommended modification of the guidelines. Drafting of these new regulations has been completed and they have been approved by LEAA. (See Appendix H.) The new regulations will remove any restrictions on size or community base as a prerequisite for funding eligibility. This would seem to be in line with the views of the House Subcommittee Chairman, Ike Andrews (See Appendix F). Mr. Dogin and Mr. Modlin believe that the definition of detention correctional facility should be placed in the new authorization statute to correct the problems which the states have voiced as to the uncertainty of the standards they will be expected to meet.

*Issue XI.—Should the Act be amended to Target Additional Funds on Programs for Serious Violent Juvenile Offenders?*

BACKGROUND

A question has been raised as to the desirability of placing a greater emphasis on the problem of serious juvenile offenders either in the reauthorization of the Crime Control Act or in the reauthorization of the Delinquency Prevention Act. It seems clear that programs for the most serious offenders can be undertaken pursuant to existing authority under either Act.

In general among those interviewed, the SPAs and State Criminal Justice Planners favored a specific emphasis on serious juvenile offenders in the law, House staffers thought it would help politically balance the present emphasis on nonoffenders; the chairman of the National Advisory Commission did not favor any such emphasis.

Data from several studies indicate that a very small proportion of juvenile offenders accounts for an extremely large volume of serious and violent juvenile crime. How to identify and effectively treat this small but dangerous group of youth presents both policy and programmatic difficulties. It seems essential that the problems this relatively small population creates be dealt with effectively.

However, it must be done in a way that does not include a substantial number of youths who are not in need of the same degree of attention and control as the most serious offenders.

One of the major policy aims of the Delinquency Prevention Act has been to keep less serious offenders out of contact with the most serious offenders and the procedures and institutions designed for the more serious offenders. There is relatively less emphasis on dealing effectively with the most serious offenders. This may stem in large part from our lack of basic knowledge concerning the behavior and treatment of serious offenders.

Among the approaches that have been suggested are the following:

1. More basic research into this area;
2. The careful development and testing of special programs for the most serious offenders. Specific authority for such research and development activity could be incorporated in Section 243 of the Delinquency Prevention Act and could also be used in the Sections of the Justice Systems Improvements Act dealing with research;
3. Standards for programs or processes that deal with the most serious offenders;
4. Programs which supplement or improve police, court, or corrections functions which impact serious juvenile offenders;
5. Special community based programs specifically designed for the most serious offenders whether in probation or parole status; and
6. Improve data and information concerning serious offenders in the justice system.

*Option 1.*—No Statutory Change.

*Advantages*

The current statute is sufficiently flexible to allow for attempts to deal with this portion of the population. Any new language emphasizing violent juveniles would lead to the expectation that we know how to effectively deal with the problem. We do not.

*Disadvantages*

Would fail to be responsive to a widely perceived need to devote more resources to this group.

The present Act's provisions are not adequate in giving policy direction to OJJDP to fund such experimental programs.

*Option 2.*—Amend the Act to Specifically Make Serious Offenders a Primary Target.

*Advantages*

Would be well received by Congress where violent crime is of great concern. Would require the Administrator to give this area priority attention which has not been the case thus far.

*Disadvantages*

Would divert scarce resources away from problems we know we can do something about i.e., deinstitutionalization and separation.

Would tend to turn the Juvenile Justice Act into simply a supplemental source of funds for law enforcement and prisons.

*Task force recommendation*

The Task Force favors option two. New statutory language should emphasize the problem of violent offenders and make it one of the Act's primary goals. Any mention of specific types of programs should, however, be avoided. Mr. Rector would oppose the indecision of such language in the statute. If Option 2 is adopted, however, he recommends that similar targeting language be included in the maintenance-of-effort portion of the Crime Control Act.

*Issue XII.*—Should the research functions of LEAA and OJJDP be consolidated?

**BACKGROUND**

Under current law there are two separate research institutes—the National Institute of Law Enforcement and Criminal Justice within LEAA (NILECJ) and the National Institute for Juvenile Justice and Delinquency Planning (NIJJDP) within OJJDP. Under the JJDP Act, NIJJDP is to function as the

source of information for new program ideas, as a training program provider, as a standard setter for programs and agencies in the field of juvenile justice, as a source of technical assistance, and as a program evaluator for the program office within OJJDP. NILECJ, on the other hand, does not have explicit, legislatively mandated standard setting functions as does NIJJDP. The focus of NIJJDP appears to be more on the research and evaluation of new program approaches while NILECJ is to pursue broad programs of both basic and applied research.

*Option 1.*—Continue a separate research program within OJJDP

*Advantages*

Recognizes the difference in the basic policy thrusts of the JJDP Act. Assures that the Administrator of OJJDP maintains control over the research and evaluation services for his programs.

*Disadvantages*

Is unnecessarily duplicative. Creates artificial distinction as to the approaches to criminal behavior between adults and juveniles.

*Option 2.*—Leave the training, technical assistance, evaluation, and standard setting function within OJJDP, but transfer basic research to the new National Institute of Justice.

*Advantages*

Gives the Administrator of OJJDP direct control over the evaluation of his programs and the providing of technical assistance to the clients of that Office. Consolidates basic research into one unit within the OJARS setting.

Basic research on criminal behavior cannot sensibly be separated on the basis of age.

*Disadvantages*

Would continue to provide separate locations for services that could better be placed together in a single office.

OJJDP by virtue of its separate statutory base is quite different from LEAA. Merger of the research functions would undermine this separate policy thrust.

*Option 3.*—Transfer all of NIJJDP's current functions to the National Institute of Justice.

*Advantages*

Adult and juvenile research needs to be fully integrated and are not now. Research on criminal behavior is not research that can be sensibly categorized by age level.

Maximizes the efficient use of limited resources.

*Disadvantages*

Would not give the Administrator of OJJDP any direct voice in the research, evaluation, training and technical assistance being conducted in his area of responsibility.

Would allow LEAA's successor (OJARS) to downplay the importance of juvenile research programs in favor of other criminal justice research activities.

*Task force recommendation*

The Task Force Recommends Option 2.

*Issue XIII.*—Miscellaneous Issues Raised in Discussions about the JJDP Act. Should there be a 5 year limit on funding instead of the "forever funding" guarantee now in the Act, especially as budgets decrease? The 5 year limit might also require at the end of 3 years that the recipient begin to phase in other funding.

The Task Force thinks this would be a good idea but it is sure to bring on some political opposition from the public and private recipients.

Should the National Advisory Committee have some required membership from state advisory committees to forge closer links with state programs? For local public officials?

The Task Force favors this. Should the National Advisory Committee be given the task for passing on grants as the NIC Advisory Committee does?

The Task Force thinks the NAC should pass on general program priorities but not specific grants.

Should the JJDP Act provide monies for states to subsidize counties and cities to provide deinstitutionalization alternatives or at least have an entitlement like OJARS for counties or cities of 100,000.

The significantly lower budget this year makes such alternatives impractical. If budgets were higher, however, this parallel to OJARS has much to commend it.

Should the Act modify the present requirement that juvenile court offenders cannot be mixed with adult court defendants despite age, record, etc. This has been a sore point with states like California who have Youth Corrections Authority laws which permit such mingling.<sup>1</sup>

The California situation is apparently unique and the arrangement now worked out between the Administrator and the California SPA seems to have solved the problem (See Appendix G).

The SPAs have proposed that the statute be amended to provide that each application, plan or amendment submitted to OJJDP for approval to the Office shall be deemed approved by the Office within ninety days after first received unless the Administration informs the applicant of the disapproval in whole or in part and the specific reasons therefore.

*Issue XIV.—What Should the Authorization Amounts Be?*

Because of the drastic reduction in the fiscal year 1980 budget for the JJDP program, the question of what reauthorization amounts will be in the Administration's bill will be an important one. There is widespread controversy about the justification for the fiscal year 1980 cut insofar as it was based upon assumptions that the states were not spending their allocated monies fast enough. (See Appendix H for the material presented by Senator Bayh to the President disputing the "fund flow" argument). The opponents of the cut argue that the LEAA figures are not up to date to reflect current expenditures, the JJDP funds are in date to reflect current expenditures, that JJDP funds are in fact being spent at the same levels as other LEAA programs, that there are special "startup" problems in community based alternatives to institutionalization and that the program is, for practical purposes, only 18 months old, and that the cuts will result in wholesale defection from the JJDP program by states.<sup>2</sup> The 50 percent cut in JJDP compared to 17.6 across the board in LEAA, is deeply resented by the Congressional supporters of the Act. It has apparently now been decided that Senator Bayh will resume jurisdiction over JJDP in his subcommittee so that the Administration can expect to have this issue fully aired. It is argued that since the funds are allocated to states to be spent over a three year period, only lapses at the end of three years should be the basis for computations. The percentage of fiscal year 1975 funds spent by the states is 87.5 percent (9/30/78).

It is premature to decide on an authorization figure now until we see what happens to Congressional efforts to restore the fiscal year 1980 JJDP budget and the nature of the ensuing debate, but tentatively the Task Force believes that the authorization should not go below the current level for fiscal year 1979 (175m), although this issue may engender a problem with OMB similar to that encountered in the JSIA bill.

APPENDICES

Appendix A—Historical Sketch of Federal Juvenile Justice Programs

Appendix B—Summary of Major Provisions of Pub. L. 93-415 The Juvenile Justice and Delinquency Prevention Act of 1974

Appendix C—Juvenile Justice and Delinquency Prevention Act Amendments in 1977

Appendix D—Persons Interviewed

Appendix E—Memo Re: Additional Matters Relating to fiscal year 1980 JJDP Act Reauthorization

Appendix F—Letter from the State of Colorado Executive Chambers

Appendix G—Letter from Ike Andrews, Chairman, Subcommittee on Economic Opportunity

Appendix H—Memo Re: Federal Register Publication—Change in Juvenile Detention and Correctional Facility Criteria

<sup>1</sup> An agreement has now been reached between OJJDP and California to deal with this problem.

<sup>2</sup> Mr. Rector wishes it recorded that during calendar year 1978 OJJDP obligated discretionary funds from fiscal years 1975, 1976, 1977 and 1978. At the beginning of fiscal year 1979, according to OJJDP figures only \$400,000 carry-over funds from these earlier fiscal years remained unexpended. All carry-over dollars were awarded during the first quarter of fiscal year 1979.

APPENDIX A

HISTORICAL SKETCH OF FEDERAL JUVENILE JUSTICE PROGRAMS

The Justice Department's role in juvenile delinquency programs began in 1961 when Congress at the urging of Attorney General Robert Kennedy passed the Juvenile Delinquency and Youth Offenses Control Act of 1961. This was a small demonstration program which lasted for three years and spent a total of \$19.2 million. It was not extended beyond its initial authorization.

The Congress turned its attention to the problems of delinquency again in 1968 when it passed the Juvenile Delinquency and Control Act of 1968. This legislation assigned primary responsibility for developing new programs to deal with delinquency to HEW. Under the provisions of this act, states were required to submit to HEW comprehensive plans prior to receiving funds. Problems in implementing this legislation began almost immediately after its enactment. The Congress had at the same time created LEAA under the Omnibus Crime Control and Safe Streets Act of 1968. During the next few years LEAA, which received vastly larger funds than did the HEW programs, came to dominate criminal justice planning. In 1971 the then Attorney General and the Secretary of HEW acknowledged to Congress the inadequacy of the coordination efforts between the two Departments in the juvenile area and agreed that the states should submit a single plan which would comply with the statutory requirements of both acts. HEW was to concentrate its efforts on prevention and rehabilitation while LEAA was to focus on programs within the juvenile correctional system. Over the next three years funding for the HEW programs was kept at a minimal level (\$5-10 million) while LEAA's operations continued to expand rapidly. As a result, by 1973, LEAA was funding considerably larger juvenile programs than HEW even though the statute gave HEW a much broader mandate.

In 1973, Senator Bayh as Chairman of the Senate Subcommittee on Juvenile Delinquency who was concerned about what he considered the inadequacy of the HEW programs, introduced legislation which would have established a new agency to fund juvenile programs and placed it within the Executive Office of the President. Because of the Administration's opposition, the legislation was not acted upon.

*The 1974 Act*

In the 93rd Congress Senator Bayh again introduced legislation dropping the idea of a White House office and instead proposing the establishment of the Office of Juvenile Justice and Delinquency Prevention headed by an Assistant Administrator within LEAA. The bill was passed by both Houses in July, 1974, and signed into law on September 7, 1974.

The legislative history of the statute evidenced two quite different, and possibly conflicting concerns. On the one hand there was an apparent recognition that programs dealing with serious juvenile offenders should be more effectively integrated into the rest of the criminal justice system. Thus the Senate report states:

"The social control of the juvenile and criminal justice system must be applied in dealing with this offender, and LEAA is the only Federal agency providing substantial assistance to the police, the courts, and the corrections agencies in their efforts to deal with juvenile crime." (S. Rept. No. 93-1011 at p. 34-35).

Other provisions of the Act, however, emphasized diversion from the juvenile justice system, community based alternatives to traditional incarceration, non-incarceration of status offenders, and the separation of detained juvenile and adult offenders. Under the bill HEW retained responsibility for funding the maintenance of temporary shelter facilities under the Runaway Youth Act.

During 1975 and 1976 the Ford Administration actively opposed appropriation of funds for the Juvenile Justice programs authorized under the 1974 Act. Over the Administration's objections Congress appropriated a total of about one-half of the authorized amounts during this period. The Administration actively sought repeal of the maintenance-of-effort provision while arguing, somewhat disingenuously, that funding for the Juvenile Justice Act was not required because adequate resources were being expended by LEAA precisely because of the maintenance of effort provision.

[Prepared by: Office of General Counsel, Law Enforcement Assistance Administration, August 19, 1974]

The Findings and Declaration of Purpose section indicates Congressional recognition that the problem of juvenile delinquency is inextricably woven into the law enforcement and criminal justice system and that there must be a centralized responsibility within the Federal Government to deal with the problem in a unified, systematic way.

The purposes of the Act, as stated by the Congress, are: (1) to provide the necessary resources, leadership, and coordination to develop and implement effective methods of preventing and reducing juvenile delinquency; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; and (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

The primary vehicle for accomplishing these purposes is Title II, Juvenile Justice and Delinquency Prevention. This title is divided into four parts:

- Part A—Juvenile Justice and Delinquency Prevention Office
- Part B—Federal Assistance for State and Local Programs
- Part C—National Institute for Juvenile Justice and Delinquency Prevention
- Part D—Authorization of Appropriations

#### *Part A—Juvenile Justice and Delinquency Prevention Office*

Section 201 creates the Office of Juvenile Justice and Delinquency Prevention (Office) within the Department of Justice, Law Enforcement Assistance Administration. At the head of the Office is an Assistant Administrator nominated by the President by and with the advice and consent of the Senate. Two Deputy Assistant Administrators are appointed by the Administrator of LEAA, one of whom is to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established under Section 241.

The duties of the Administrator are detailed in Section 204. These include implementation of overall policy, development of objectives and priorities for all Federal juvenile delinquency programs, assistance to operating agencies with direct program responsibility, evaluation of Federal juvenile delinquency programs, provision of technical assistance for all aspects of juvenile delinquency programs, and extensive reporting requirements to the President and the Congress.

Section 206 establishes a Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) composed of representatives of various Federal agencies. The function of the Council is to coordinate all Federal juvenile delinquency programs. An Executive Secretary and staff are provided for carrying out the day to day activities of the Council.

Section 207 establishes a National Advisory Committee for Juvenile Justice and Delinquency Prevention (Advisory Committee) consisting of twenty-one regular members. The regular members of the Advisory Committee are appointed by the President. The function of the Advisory Committee is to make recommendations to the Administrator with respect to planning, policy, priorities, operations, and management of all Federal juvenile delinquency programs. Subcommittees are designated to advise the Administrator on particular functions or aspects of the work of the Administration, serve as members of an Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention, and serve as an Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice pursuant to Section 247.

#### *Part B—Federal Assistance for State and Local Programs*

Subpart I of part B deals with Formula Grants.

Section 221 authorizes formula grants to States and local governments to assist them in the administration of juvenile delinquency projects and programs.

Section 222 requires that funds be allocated annually among the States on the basis of relative population of people under age eighteen. The minimum allotment is \$200,000 except that for certain territories (Virgin Islands, Guam, American Samoa, Trust Territory of the Pacific Islands) the minimum allotment is \$50,000. In accordance with regulations to be promulgated, no more than 15 percent of the total allotment to a State may be used for developing a State plan and for administration. Needed funds for planning and administration are to be made available to local governments on an equitable basis. Federal assistance is not to exceed 90 percent of the approved costs of assisted programs or activities. The non-Federal share is to be in cash or services.

Section 223 requires that a State plan be formulated to carry out the purposes of Part B which is consistent with Section 303(a) of the Safe Streets Act and which, in addition, meets twenty-one enumerated requirements. The Administrator will approve any State plan which meets the plan requirements.

Subpart II of Part B deals with Contracts and Categorical grants for Special Emphasis Prevention and Treatment Programs.

Section 224 authorizes the Administrator to make grants and enter into Contracts for purposes of six types of Special Emphasis Prevention and Treatment Programs. Such programs are to utilize between 25 and 50 percent of the total funds available annually for purposes of Part B.

Section 225 sets out application requirements and considerations for approval of grant applications for Special Emphasis Prevention and Treatment Program funds.

Sections 226-228 provide for withholding of funds, use of funds, and payments of funds under title II.

Under Section 227, use of title II funds for construction is limited to 50 percent of the cost of construction of innovative community-based facilities for less than twenty persons.

Section 228 permits the Administrator, where there is no other way to fund an essential juvenile delinquency program not funded under Part B, to authorize States to utilize 25 percent of available formula grant funds to meet the non-Federal matching share requirement for any other Federal juvenile delinquency program grant. In addition, the administrator may require, where it will contribute to the purposes of Part B, the recipient of any grant or contract to contribute money, facilities or services.

#### *Part C—National Institute for Juvenile Justice and Delinquency Prevention*

Section 241 establishes within the Office a National Institute for Juvenile Justice and Delinquency Prevention (Institute). Its activities are to be coordinated with the National Institute of Law Enforcement and Criminal Justice. The purpose of the Institute is to serve as a coordinating center for data regarding the treatment and control of juvenile offenders and to provide training on a National level in the treatment and control of juvenile offenders.

The functions of the Institute are delineated in Section 242—Information Function; Section 243—Research, Demonstration, and Evaluation Functions; and Section 244—Training Functions.

Section 247 requires that the Institute, in conjunction with the Advisory Committee on Standards for Juvenile Justice, review existing reports, data and standards relating to the juvenile system in the United States, and submit a report within one year to the President and Congress on action required to facilitate the adoption of recommended standards for juvenile justice on the Federal, State, and local levels.

Sections 249-251 detail the requirements for establishment of the National training program on methods and techniques for the prevention and treatment of juvenile delinquency.

#### *Part D—Authorization of Appropriations*

Section 261 authorizes a three year appropriation for purposes of title II: \$75 million for fiscal year 1975; \$125 million for fiscal year 1976; and \$150 million for fiscal year 1977. LEAA is required to maintain at least the 1972 level of funding for juvenile delinquency programs out of its appropriation under the Omnibus Crime Control and Safe Streets Act.

Section 262 provides for nondiscrimination with respect to programs funded with title II funds.

Title III of S. 821 establishes a separate "Runaway Youth Act" to be administered by the Department of Health, Education, and Welfare.

Title IV extends and amends the Juvenile Delinquency Prevention Act administered by the Department of Health, Education, and Welfare for one year in order to provide a transitional period for transfer of all prevention programs to the Law Enforcement Assistance Administration.

Title V contains three parts. Part A contains amendments to title 18 of the United States Code, the Federal Juvenile Delinquency Act. Part B establishes a National Institute of Corrections within the Federal Bureau of Prisons. Part C, conforming amendments, amends the Omnibus Crime Control and Safe Streets Act to reflect changes required by the Juvenile Justice and Delinquency Prevention Act. The major change is reflected in Section 542 which requires State Planning Agencies and regional planning units to include representatives of citizens, professional, and community organizations including organizations directly related to delinquency prevention in their composition.

#### APPENDIX C

##### JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AMENDMENTS OF 1977

[Prepared by Office of General Counsel Law Enforcement Assistance Administration and Office of Juvenile Justice and Delinquency Prevention Law Enforcement Assistance Administration]

On October 3, 1977, President Carter signed into law the Juvenile Justice Amendments of 1977 (Public Law 95-115). The Amendments reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974 for three additional years.

The major areas of change in the 1977 Amendments involve the use of formula grant program funds for planning and administration purposes, formula grant matching funds, the role of State advisory groups, formula grant pass-through requirements, the deinstitutionalization of status offenders requirement, provision for the confidentiality of program records, the role of the Office in formula grant development and plan review and approval, and new areas of program emphasis in the programs established under the 1974 Act.

##### *Office of Juvenile Justice and Delinquency Prevention*

Congress' concern about the role of the Office of Juvenile Justice and Delinquency Prevention in LEAA is reflected in new provisions that emphasize the intent of Congress that LEAA juvenile programs be administered through the Office. This was evidenced by the following statement in the Conference Report on the amendments:

"The conferees intend that the Department of Justice fully implement Section 527 of the 1974 Act so as to assure that all Crime Control Act juvenile programs are actually administered by the Administrator of the Office, or at least subject to the Office's policy direction and concurrence. In this regard, it is expected, as required by the 1976 maintenance of effort amendment and by comparable language in the 1974 Act, that each Crime Control Act program component on activity, including, but not limited to, all direct assistance, all collateral assistance, and management and operations, allocate at least 19.15 percent of its resources for juvenile justice and delinquency programs."

The executive head of the Office is designated as Associate Administrator of LEAA and as the Administrator of the Office of Juvenile Justice and funds will require at least a 10 percent non-Federal matching share. However, beginning with fiscal year 1979, the non-Federal matching share for planning and administration funds will be set at a minimum of 50 percent cash (dollar for dollar match) and the Federal contribution to these activities limited to a maximum of 7.5 percent, rather than 15 percent, of a State's formula grant award. The matching contribution may be made by the State or by a unit of general local government receiving planning and administration pass-through funds. Also beginning in fiscal year 1979, there will be no requirement that the balance of a State's formula grant funds, the program or "action" funds, be matched with any non-Federal contribution. In sum, beginning in fiscal year 1979, planning and administration activities will require a 50 percent cash match and funded program activities will require no match.

State advisory groups, established by the 1974 Act to advise and assist the State planning agency, are strengthened by the addition of new resources and

responsibilities. The reauthorization provides that 5 percent of the minimum annual allotment of any State (i.e., \$11,250) shall be available to assist the advisory group to carry out its functions. As with the National Advisory Committee, further examples of private agency interests that may be represented on the State advisory groups were added by the Amendments and provision made that at least three of the youth members must have been or currently be under the jurisdiction of the juvenile justice system.

The Amendments require that a role be provided for the advisory group in plan development as well as review, that the advisory group may, upon request, advise the governor and legislature on matters related to its functions, and shall have an opportunity for review and comment on juvenile justice and delinquency prevention grant applications submitted to the State planning agency. SPA's are given additional authority to involve the advisory group in monitoring, compliance, and program review activities.

The American modify the requirement that 66% percent of the formula grant award be passed through to units of general local government or combinations thereof by including programs of local private agencies as eligible for direct award of such funds. However, as a prerequisite it is required that the private agency have applied for and been denied funding by the cognizant local unit of combination prior to applying to the State planning agency.

The key deinstitutionalization of status offenders requirement (§ 223(a)(12)) is modified to extend the two-year period for compliance to three years and to specify that failure to achieve compliance shall terminate a State's eligibility for funding unless the Administrator, with the concurrence of the Associate Administrator, determines that the State is in substantial compliance with the requirement (defined as 75 percent deinstitutionalization) and has made, through appropriate executive or legislative action, an unequivocal commitment to full compliance within a reasonable time (defined as not to exceed two additional years). In addition, the Amendments clarify that non-offenders, such as dependent and neglected children, are within the scope of the deinstitutionalization requirement and that both status offenders and non-offenders are within the scope of the Section 223(a)(13) requirement for separation of adult offenders from delinquent offenders in incarcerative institutions.

A new subpart (B) to Section 223(a)(12) requires an annual report to the Associate Administrator on the State's progress toward deinstitutionalization and a review of the State's progress in meeting the goal of insuring that status offenders, if placed in facilities, are placed in the least restrictive appropriate alternative, which is in reasonable proximity to the family and home community of the juvenile, and which provides services appropriate to the needs of the juvenile. Likewise, the Amendments provide that the SPA submit its analysis and evaluation, including any modification and the survey of needs, to the Associate Administrator. Similarly, the Associate Administrator may prescribe additional terms and conditions to assure the effectiveness of assisted programs.

##### *Special Emphasis Program*

The reauthorization provides that 25 percent of the total available Part B grant funds shall be available only for the special emphasis prevention and treatment program. Of those funds, the private non-profit agency minimum share has been increased from 20 percent to 30 percent. The Administrator retains the authority to require recipients of special emphasis funds to provide money, facilities, or services as a non-Federal matching share during fiscal year 1978 but special emphasis funds will become no-match funds beginning with fiscal year 1979.

Section 228 of the 1974 Act, stating that it was the policy of Congress that programs funded shall continue to receive financial assistance providing that the yearly evaluation of such programs was satisfactory, is left intact.

##### *Confidentiality of Program Records*

A significant new section is added by the Amendments to provide for confidentiality of program records in activities assisted by Juvenile Justice Act funds. This section, which complements Section 524(a) of the Omnibus Crime Control and Safe Streets Act of 1968, restricts disclosure of program records unless otherwise authorized by law, with the consent of the service recipient or legally-authorized representative, or as necessary to perform the functions required by the Act.

*National Institute for Juvenile Justice and Delinquency Prevention*

The Office's Institute is authorized to assist, through training, State advisory groups or comparable public or private citizen groups in non-participating States in the accomplishment of their objectives. The Institute is also authorized to expand its activities to include more specifically persons associated with law-related education programs, youth workers and representatives of private youth agencies and organizations. The reauthorization substitutes the Associate Administrator for the Deputy Associate Administrator as the recipient of Advisory Committee advice regarding overall policy and operations of the Institute.

*Administrative Provisions*

The 1977 Amendments establish a three-year authorization at authorized appropriation levels of \$150 million, \$175 million, and \$200 million for each of fiscal years 1978, 1979, and 1980. In addition, the Amendments incorporate a number of administrative provisions of the Omnibus Crime Control and Safe Streets Act as administrative provisions applicable to the Juvenile Justice and Delinquency Prevention Act. These provisions include formalized rulemaking authority, hearing and appeal procedures, civil rights compliance, recordkeeping requirements, and restrictions on the disclosure of research and statistical information. Additionally, the conferees strongly reaffirmed the original integrated approach contemplated for the Office and each of its component parts, especially as regards its Institute, which has helped assure success of its programs.

*New Program Authority and Emphasis*

The reauthorization expands the scope of the definition of prevention programming to include all youth who would benefit from delinquency prevention services. This precludes the need to identify a youth as "in danger of becoming delinquent" in order to establish eligibility for program services.

The formula grant program has a new emphasis on programs and services designed to encourage a diversity of alternatives within the juvenile justice system, a 24-hour intake screening, volunteer and crisis home programs, day treatment and home probation, youth advocacy programs aimed at improving services to youths, and programs and activities to establish and adopt standards for the improvement of juvenile justice.

The special emphasis program includes as new areas of funding authority the development of neighborhood courts or panels, the prevention of school violence and vandalism, youth advocacy programs, model youth employment programs, programs to assure due process in the juvenile justice system, assistance to State legislatures, and programs relating to juvenile delinquency and learning disabilities.

The Office's Institute for Juvenile Justice and Delinquency Prevention is authorized to conduct research to assess the role of family violence, sexual abuse or exploitation, and media violence in delinquency, interstate placement of juvenile offenders, the ameliorating role of recreation and the arts, and the extent and ramifications of disparate treatment of juveniles in the juvenile justice system on the basis of sex. In addition, the Institute is authorized to develop and support model State legislation to implement the mandates of the Act and the standards developed by the National Advisory Committee.

*Runaway Youth Act*

The Amendments also reauthorize the Runaway Youth Act for three years at authorized appropriation levels of \$25 million for each fiscal year. The President is authorized, after April 30, 1978, to transfer the Runaway Youth Act to ACTION or to the Office of Juvenile Justice and Delinquency Prevention.

*Conforming Amendments*

The Crime Control Act is amended to provide that the Chairman and at least two other citizen members of the advisory group shall be appointed to the SPA Supervisory Board and in addition that any SPA executive committee shall include proportional representation of advisory group/SPA agency members.

APPENDIX D

PERSONS INTERVIEWED

1. Daniel Beardsley, National League of Cities/Conference of Mayors
2. Marion Bennett and Don Myers, General Accounting Office

3. Alan Breed, former Director, National Institute of Juvenile Justice
4. Doug Cunningham, Director, California State Planning Agency
5. Peter Edelman, Director of Youth Services, State of N.Y.
6. Richard Geltman, Assistant Executive Director, National Conference of State Criminal Justice Planning Administrators
7. Josie Gittler, Senate Subcommittee on Juvenile Delinquency
8. Jim Gregg, former Acting Administrator, LEAA
9. Richard Harris, Director, Division of Justice and Crime Prevention, State of Virginia
10. Gwen Holden, National Conference of State Criminal Justice Planning Administrators
11. Don Murray and Rod O'Connor, National Association of Counties
12. Fred Nader, former Acting Administrator, OJJDP
13. Jim Parham, Deputy Assistant Secretary, HEW
14. Gordon Raley, House Subcommittee on Economic Opportunity
15. John Rector, Administrator, OJJDP
16. Jackie Reis, Director, Minnesota State Planning Agency
17. Judge William White, President, National Council of Juvenile and Family Court Judges
18. Bill Wolfe and Pat Gwaltney, President's Reorganization Project, OMB
19. Mildred Wurf and Christopher Mould, Interagency Collaboration on Youth

DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,

January 25, 1979.

Memorandum to: Patricia Wald, Assistant Attorney General, Office of Legislative Affairs.

From: John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention.

Subject: Additional matters relating to fiscal year 1980 JJDP Act Reauthorization.

*A. Flexibility of JJDP Sections Regarding Allocation of Moneys Within OJJDP*

The Act is comprised of three Parts, A, B and C. Part A provides authority for Concentration of Federal Efforts and Technical Assistance. Part B includes subpart I the Formula Grants and subpart II the Special Emphasis Prevention and Treatment Programs, Part C establishes the OJJDP Institute and its myriad functions including basic research, applied research, demonstration, information, evaluation, training and standards.

A common misunderstanding is that 25 percent of OJJDP funds are set aside for Special Emphasis Programs and that the remainder is allocated for the Formula Grant Program. Actually, the Act (see 224(b)) requires that 25 percent of Part B shall be available for Special Emphasis Programs. The statute is otherwise silent regarding the allocation of funds amongst the respective programs. The original Conference Report (1974) however indicated that the OJJDP Institute should never be allocated more than 10 percent of the total OJJDP appropriation and expressed a preference for an allocation closer to 5 percent.

There is wide discretion as to the amounts to be allocated for the Concentration of Federal Effort program and Technical Assistance and to a lesser extent discretion regarding the OJJDP Institute. Thus, many allocations are possible. It would be legal to provide no dollars for CFE, TA and the Institute, or to eliminate TA and fund such projects under the contract language of SE or to significantly increase CFE, as I attempted this year, and thereby diminish the total for Part B.

*B. Statutory Set Aside for Concentration of Federal Effort*

To accomplish this purpose Section 261 could be amended by the addition of a new subpart (c) which could read as follows:

"(c) No less than 5 percent of the total appropriation for the Act shall be available and expended to support the implementation of §§ 204 and 205.

*C. Technical Amendment*

It would make sense to relabel the B Subpart II programs. I recommend that "Priority Juvenile" be substituted for "Special Emphasis." This minor change would assure proper identity of our discretionary program and is more in line with the OJARS scheme.

## APPENDIX F

STATE OF COLORADO,  
Denver, January 20, 1978.

Mr. JOHN RECTOR,  
Administrator, Juvenile Justice Delinquency Prevention Administration, Wash-  
ington, D.C.

DEAR MR. RECTOR: The State of Colorado, on January 6, 1978, held a one-day Conference for key decision-makers in the Juvenile Justice sphere of activity to discuss, from a state perspective, how to continue to deinstitutionalize status offenders in Colorado. The purpose of this high level conference, which was co-sponsored by the Chief Justice of the Colorado Supreme Court, Edward P. Pringle and Governor Richard D. Lamm, had as participants the highest level administrators from both state and local agencies serving juveniles, important legislators and other significant actors in the juvenile justice system in Colorado. The staff work for the conference was largely accomplished by the Division of Criminal Justice, which is the State Planning Agency for the state, and, in part, staff from the Governor's office.

The frame of reference for the meeting was to assess the results of Colorado's efforts in recent years to better serve the status offenders. Part of the state's efforts to serve status offenders has been our voluntary participation in the Juvenile Justice and Delinquency Prevention Act since January 1, 1976.

A number of the participants were shocked and very upset at the definitions of institutions as recently published from your office. It was the opinion of a number of the participants that the numerous community-based programs established in recent years, many of them funded with private and state funds and some with LEAA funds, were very suitable deinstitutionalization alternatives to status offenders since these programs are removing them from jails and detention centers throughout the state. Your definition now defines a number of community-based programs as institutions and thus not satisfactory as an alternative to detention and jails.

We want to make it unequivocally clear that the State of Colorado considers these definitions unrealistic and unworkable and will not continue to participate in the program unless these definitions are revised forthwith. It is an affront to states like Colorado, who have initiated considerable efforts on their own and utilized LEAA funds only to augment these efforts, for you to conclude from 2,000 miles away that our efforts are a failure to deinstitutionalize by a mere change in definitions.

Consequently we urge you to change as soon as possible these unrealistic, unworkable and ill advised definitions and to cooperate with us, as we have often attempted in the past to cooperate with LEAA, to assist status offenders and not engage in a paper dispute wasting valuable time and resources. Status offenders in need of services are being neglected while our efforts are diverted by these unrealistic attempts at management by regulation.

Respectfully,

RICHARD D. LAMM,  
Governor.

EDWARD E. PRINGLE,  
Chief Justice, Colorado Supreme Court.

BETTY NEALE,  
Representative, Colorado State Legislature.

MORGAN SMITH,  
Representative, Colorado State Legislature.

## APPENDIX G

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON EDUCATION AND LABOR,  
Washington, D.C., January 19, 1979.

Hon. PATRICIA M. WALD,  
Assistant Attorney General, Legislative Affairs, U.S. Department of Justice,  
Washington, D.C.

DEAR Ms. WALD: Thank you for your letter of December 5, 1978, inviting my views regarding the developing controversy over the provisions of Section 223(a) (12) of the Juvenile Justice and Delinquency Prevention Act versus subsequent guidelines issued by the Office of Juvenile Justice and Delinquency Prevention

(OJJDP). While I certainly appreciate the opportunity to share my views with you as you draft the Administration's reauthorization bill, let me emphasize that any views presented at this time represent only my present understanding of the issue and should in no way be interpreted as a hard and fast position. Once oversight hearings are held this spring, the Subcommittee, and perhaps the Administration as well, should have a better grasp of the factors involved.

As I understand the issue, Section 223(a) (12) of the Act requires that States promise, in order to receive OJJDP formula funds, to remove about 75 percent of all status offenders and non-offenders from juvenile detention and correctional facilities within a three-year period of time, with an additional two years provided to totally meet the goal after the 75 percent objective is reached. While the Act does not define what juvenile detention and correctional facilities are, most of the people I talk to automatically think of jail lock-ups, state training schools, reform schools, or other secure, prison-like situations. Most people I talk to seem to have formed a consensus, which I also share, that removing status offenders and non-offenders from these types of facilities is a worthy and laudable goal.

However, I also understand that the guidelines issued by OJJDP go considerably farther. They would also define as correctional facilities non-secure facilities which exceed certain rather arbitrary bed-space limitations specified by OJJDP (20 beds in some situations or 40 beds in others). The Subcommittee has heard from a wide range of child-care facilities and organizations, many of which are church related, and most of which have never received OJJDP money, who are concerned that, because of the guidelines, they will be labeled as correctional facilities. I am not convinced that, when an overwhelming majority of the Members of the House passed the 1977 amendments, they foresaw the Kentucky Baptist Home for Boys or children's homes operated by Catholic Charities, Inc., being labeled as correctional facilities as a result. Frankly, I suspect most of us thought the term "juvenile detention and correctional facility" was fairly self-explanatory. Most of us did not foresee the dilemma caused by the more "sophisticated" definition provided by the Office in Chapter 3, paragraph 51, LEAA State Planning Agency Guideline Manual, M.4100.1F.

The dilemma, as I see it, has two sides. On the one hand, there are those who want Congress to demand that OJJDP recall the guidelines and rewrite them so that a clearer delineation is drawn between secure and non-secure facilities. In the absence of guideline changes, I suspect these individuals and organizations might then want clarifying amendments to the law itself.

On the other hand, I suspect there will be others who will say that changes to the Act might have the appearance of a "retreat" by Congress from the Act's mandate regarding the deinstitutionalization of status offenders. They will uphold that the Act as it exists, specifically Section 223(a) (12), is in the best interest of the children involved. They will contend that status offenders and non-offenders should not be held in any large facility, regardless of the services provided and regardless of whether that facility is secure or non-secure, supported by private or public funds, or operated as a profitmaking or non-profit enterprise.

I am sure those who drafted the guidelines, who I suspect share the views of the second group described above, had the best interest of the youth involved at heart. I'm sure we might all agree that ideally the more a facility resembles the family unit, the better it is for the status offender and non-offender. I do wonder, however, if the guidelines as currently written don't stretch the intent of Congress a bit in trying to accomplish everything at once. I have said on a number of occasions that I believe the status offender issue is not the only flag OJJDP should fly. Since compliance with the guidelines in question determines whether or not a State can participate in the first place, I wonder if the objectives of both groups could not sooner be attained if the provisions of the Act were interpreted differently. It seems reasonable to require States who want to receive funds from the Act to agree to remove status offenders from secure correctional and detention facilities as a prerequisite for participation. There seems to be a national consensus on this point which has existed for several years. Once States are participating, the funds from the Act could then be used to encourage them to improve non-secure facilities that are too large or too far from the child's family.

I also wonder if, in order to prevent this interpretation from being seen as a retreat on the part of Congress or the Administration from the mandates of the Act, that in the 1980 reauthorization amendments, participation in the

program should not be limited to those States who have totally removed status offenders and non-offenders from secure detention and correctional facilities. The Act will have been in existence for almost six years by that time and perhaps Congress and the Administration may want to emphasize that the time for compliance is at hand and the time for "trying" to comply past. At the same time, the requirement would be a reasonable one which could more easily be monitored than the rather complicated mandates existing in current guidelines.

The Subcommittee will be posing this question to all interested parties during the next year as we approach reauthorization in 1980, to see if it is an idea that has merit. We would certainly welcome your views and those of others in the Administration.

Sincerely,

IKE ANDREWS,  
Chairman.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUNDING MEMORANDUM,  
DECEMBER 19, 1978

1. *The Juvenile Justice Program in the Justice Department is one of the few creative federal programs to prevent crime.*—President Carter and Attorney General Bell have shown a long-term commitment to these programs to prevent juvenile crime and have stated their commitments in a number of strong public statements. The Democratic National Platform also stressed a commitment to funding and implementing the Juvenile Justice and Delinquency Prevention Act.

2. *The Juvenile Justice Program in every practical respect is only 18 months old.*—While the Nixon-Ford Administrations gave verbal support to the Act, they requested low levels of funding and made an effort to cut funding for the Act altogether. During the three-year period of 1975-1977 the Act authorized \$350 million, but these Administrations requested only \$10 million. The Congress appropriated \$140 million during the period. During the last year and one-half, under the Carter Administration, the program has finally received the support necessary to establish a record of funding to states. The budget request in 1978-1979 was \$175 million; the Act authorized \$325 million; Congress appropriated \$200 million.

3. *The record of fund flow to the States, under the Juvenile Justice Program, as begun during the last eighteen months, does not justify a budget cut.*—

a. The fund flow records (based on "H-1" reports submitted to the comptroller of LEAA) on which the budget cut has been defended, are not correct. A current eight-state survey which is attached to this memorandum indicates substantially greater fund flow than is reported in the comptroller's records. Several reasons, including late and incomplete reporting by grantees to states and by states to LEAA, may explain such errors, especially in such a new program.

b. Fund flow to the States under the Juvenile Justice Act is not below the levels realized in other LEAA programs, especially when considering the brief time that Federal funding has been available at meaningful levels. For example, in spite of the relative youth of the Juvenile Justice Program, even in 1977 almost half of the participating states were spending Juvenile Justice funds at a higher rate than was the case with LEAA Part E Corrections funds. The Office of Juvenile Justice expenditures by states now generally match the expected pattern for LEAA program funds in a three-year cycle of approximately 7-10 percent in the first year, 40 to 50 percent in the second year and the remainder in the third year.

4. *The proposed cut in the program at this time will not eliminate unused funds, but rather will destroy the program, because.*—

a. This program requires the states to satisfy very high standards in their juvenile justice systems. Without full funding at approximately current levels as many as 25 percent of the states will decline to adopt the standards and withdraw from the program.

b. The States, with few if any exceptions, will not replace Federal funds with State funds even to continue programs where States are in compliance with Federal standards. Seventy to 80 percent of Federal formula grant moneys are for continuation funding.

c. States will consider a reduction of Federal funding to be an act of bad faith in light of earlier commitments of Federal funds as an incentive for the

States to meet otherwise overly burdensome Federal standards. Forty-four of the 50 States are now participating in this program, but some of these States are reluctant to continue participating without a strong indication of a long-term commitment by the Federal government.

5. *If any cut at all is required in the Juvenile Justice Program budget, such a cut should be no greater than the percentage cuts in other LEAA programs.* As proposed, the Juvenile Justice budget would be reduced by 50 percent, while the proposed overall LEAA reduction is 17.6 percent. Assuming that there is ample reason to increase the budgets of some divisions within the Department of Justice other than LEAA, the resulting budget cut should be distributed evenly across the LEAA budget, resulting in a 17.6 percent cut (\$17.6 million) in the Office of Juvenile Justice budget and proportionate cuts in other LEAA programs.

H-REPORTS AS OF SEPT. 30, 1978, COMPARED TO ACTUAL

State	1975		1976		1977		1978	
	Award	Commitment	Award	Commitment	Award	Commitment	Award	Commitment
Connecticut:								
H-1	200,000	183,809	378,000	214,996	673,000	70,000	863,000	0
Actual	200,000	200,000	378,000	378,000	673,000	673,000	863,000	118,200
Vermont:								
H-1	200,000	200,000	250,000	247,408	200,000	157,640	225,000	0
Actual	200,000	200,000	250,000	250,000	200,000	195,830	225,000	25,245
Michigan:								
H-1	333,000	315,642	1,200,000	1,012,376	2,142,000	676,433	2,813,000	104,485
Actual	333,000	333,000	1,200,000	1,118,230	2,142,000	1,882,994	2,813,000	614,964
Massachusetts:								
H-1	200,000	200,000	693,000	609,591	1,236,000	508,062	1,617,000	27,721
Actual	200,000	200,000	693,000	684,552	1,236,000	1,197,281	1,617,000	64,181
Wisconsin:								
H-1	200,000	195,758	584,000	176,013	1,044,000	39,193	1,376,000	0
Actual	200,000	195,758	584,000	432,993	1,044,000	207,822	1,376,000	0
Montana:								
H-1	200,000	151,047	250,000	101,644	200,000	30,300	229,000	0
Actual	200,000	159,929	250,000	193,327	200,000	124,274	229,000	75,886
Indiana:								
H-1	200,000	166,018	679,000	126,959	1,213,000	385,420	1,598,000	9,961
Actual	200,000	200,000	679,000	650,000	1,213,000	1,000,000	1,598,000	1,200,000
Illinois:								
H-1	389,000	360,017	1,402,000	1,022,061	2,501,000	738,643	3,262,000	45,866
Actual	389,000	389,000	1,402,000	1,389,166	2,501,000	2,015,103	3,262,000	686,488
Total:								
H-1	1,922,000	1,772,291	5,436,000	3,511,048	19,209,000	2,605,391	11,983,000	188,633
Actual		1,877,687		5,096,268		7,296,304		2,784,964
Percent of total:								
H-1		92.1		64.1		28.1		15.1
Actual		98.1		94.1		79.1		23.1

1. A disproportionate share of the OMB ordered cut in DOJ's fiscal year 1980 budget request would come out of the LEAA budget; a disproportionate share of the LEAA budget cut would come out of OJJDP's budget, and a disproportionate share of the OJJDP budget cut would come out of the juvenile justice formula grant program rather than the special emphasis (discretionary) program.

[Dollar amounts in millions]

	Total LEAA budget	Total OJJDP budget	OJJDP formula grant program	Other OJJDP programs (special emphasis, etc.)
Fiscal year 1979	\$646	\$100	\$64	\$36
Fiscal year 1980 request	532	50	16	34
Amount of decrease	114	50	48	2
Percent of decrease	15	50	75	6

2. Although there are some fund flow in the juvenile justice formula grant program these problems are not severe.

The LEAA projected expenditure rate is 7-10 percent in the first year, 40-50 percent in the second year, and the remainder in the third year. LEAA Comptroller's Office figures indicate that the juvenile justice formula grant fund flow has basically adhered to this standard.

1975—24 of 42 participating states and territories had expended (as of 11/19/78) 90-100 percent of fiscal year 1975 funds awarded. (Note: fiscal year 1975 funds were not awarded until 8/75, and SPAs were obligating 1975 and 1976 funds at same time.)

1976—37 of the 42 participating states and territories had expended (as of 11/27/78) 40-50 percent of fiscal year 1976 funds awarded.

1977—40 of 42 participating states and territories had expended (as of 11/27/78) 7-10 percent of fiscal year 1977 funds awarded.

The LEAA Comptroller's official expenditure figures appear to considerably understate actual expenditures due to the way in which expenditure data is collected.

The criteria utilized by LEAA to evaluate fund flow is the percentage of funds expended or outlayed in a certain period of time. (If the Juvenile justice formula funds are not expended within three years from their receipt, they revert.) This is the criteria utilized for all programs where funds flow from the federal government to states. While this is an appropriate criteria for categorical grant programs where funds go directly to grantee without a planning and subgranting process, it is not an appropriate criteria for block grant programs where funds to go the SPAs which then subgrant these funds in accordance with a state plan. It can be contended that fund flow should be examined on the basis of obligation or commitment rate of the SPAs as well as the expenditure or outlay rate of the subgrantees.

To the extent that there are fund flow problems in the juvenile justice formula grant program, it should be noted that formula grant monies are utilized primarily for services. Funds for services of this type for which juvenile justice formula funds are utilized move much more slowly than funds for capital improvements, equipment, training and the like.

3. Fund flow in the juvenile justice formula grant program has been better than fund flow in the juvenile justice special emphasis program.

RATE OF EXPENDITURE, 1975-78

[In percent, fiscal years]

	1975	1976	1977	1978
Formula grant.....	81.9	56.6	33.1	2.6
Special emphasis.....	87.3	55.4	0	0

Source: LEAA budget division figures as of Nov. 17, 1978.

It should be noted that the above expenditure rates for the formula grant program which are based on official LEAA figures appear to understate actual expenditure rates due to the way in which data on formula grant expenditures is collected.

There is considerable variety in the expenditure rates for the formula grant program from state to state. In some states the expenditure rates are higher than the expenditure rates for the program as a whole.

4. It is undesirable and unwise to cut the juvenile justice formula grant program back to \$16 million (\$15.8 million) which represents a decrease of 75 percent.

The juvenile justice formula grant program is directed at enhancing the ability of state juvenile systems to deal more effectively with juvenile criminality. Such an effort is needed inasmuch as juveniles between the ages of 13 and 18 account for nearly 40 percent of serious crime even though they make up only 10 percent of the population.

Available state and local funds are inadequate to meet the need for programs and services directed at preventing and controlling juvenile delinquency. A strong juvenile justice formula grant program is particularly important in fiscal year 1980 because state and local dollars for juvenile services are becoming scarcer due to Proposition 13 type developments. (Juvenile services are not in the class

of services such as police or fire which will be maintained with local dollars because they are deemed essential and they are not in the class of services such as welfare which will be maintained with state dollars because the expenditure of state dollars generates receipt of federal dollars.)

The JJDP Act juvenile justice programs, particularly the formula grant program, have had a positive impact in encouraging more humane treatment of non-criminal youth. The JJDP Act makes a commitment on the part of a state to remove non-criminal youth from detention and correctional facilities a prerequisite to participation in the formula grant program. Some of the juvenile justice formula monies have been utilized to create alternatives to adult jails, secure detention facilities, training schools and other secure institutions. Most states must comply with the deinstitutionalization requirement by 1980. To withdraw funds from the formula grant program in fiscal year 1980 would be quite damaging and might elicit accusations of bad faith by the states.

The political visibility of the JJDP Act program rests on the formula grant component rather than the special emphasis component. Congress will be more receptive to appropriating funds which all participating states will receive on the basis of youth population than to appropriating funds which will be distributed unevenly to the states on a discretionary basis.

If the projected budget cut is retained many participating states may drop out due to the lack of adequate fiscal incentives.

DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
January 29, 1979.

Memorandum to: Henry S. Dogin, Deputy Administrator for Policy Development.  
From: John M. Rector, Associate Administrator, LEAA.  
Subject: Federal Register publication—Change in juvenile detention and correctional facility criteria.

Pursuant to I 1332.5 this memorandum presents the justification for publishing within the Federal Register a proposed change to the juvenile detention and correctional facility criteria, as contained in M 4100.1F, July 25, 1978. It was been determined that the proposed change is considered as significant when applying the criteria in paragraph 2 of DOJ Order No. 789-78, but is not subject to a regulatory analysis when compared to the criteria in paragraph 3 of the same order.

For you to understand how the criteria were developed, and why this Office intends to modify one criterion, I will describe the events which led to its promulgation. OJJDP developed its monitoring criteria during 1976. They were reviewed by the states in accordance with LEAA's clearance procedure prior to their adoption. The states offered little response, and the definition became part of LEAA's guidelines in May 1977. However, as the states began to monitor facilities, they also began to voice reactions to the definition. To provide a formal mechanism for states and other interested individuals and organizations to comment on them again, OJJDP published the criteria in the Federal Register on March 24, 1978. As a result of the responses received, OJJDP revised the criteria with the major change being to allow community-based facilities, or those with a bed capacity of 20 or less, to commingle status offenders, non-offenders, and delinquents. The current definition of juvenile detention or correctional facility consists of three criteria which states must use to identify such facilities in order to monitor them for compliance with Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Act of 1974, as amended. The definition, as promulgated through the Federal Register clearance procedure, and as contained in LEAA's State Planning Agency Grants Guideline M 4100.1F, Paragraph 52n, July 25, 1978, is as follows:

For the purpose of monitoring, a juvenile detention or correctional facility is:

(a) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders; or

(b) Any public or private facility, secure or non-secure, which is also used for the lawful custody of accused or convicted adult criminal offenders; or

(c) Any non-secure public or private facility that has a bed capacity for more than 20 accused or adjudicated juvenile offenders or non-offenders unless:

**CONTINUED**

**5 OF 7**

1. the facility is community-based and has a bed capacity for 40 or less; or
2. the facility is used exclusively for the lawful custody of status offenders or non-offenders.

Many of the responses to the March 24, 1978, Federal Register notice as well as subsequent correspondence questioned the total LEAA approach in defining "detention or correctional facilities." The primary concern is that the definitional framework developed in 1976 characterizes large, non-secure, non-community-based facilities as detention or correctional facilities. The agency attempted to enforce the prohibition regarding placement in detention or correctional facilities while simultaneously encouraging compliance with the affirmative activity regarding placement in shelter facilities (pre 77) and community-based facilities (post 77).

(It is noteworthy however that the Senate Committee Report indicates that the effort was bona fide.) These dual objectives of the statute are the heart of the Formula Grant program, but labeling non-secure facilities as "detention or correctional" is not the preferred way to encourage compliance. Changes I made in the guideline last year, including the elimination of the commingling prohibition in small community-based facilities and the expansion of the definition of small from 20 to 40, provided some relief, but not enough. The approach I presented in December, in which Department and LEAA policymakers concurred, does provide clearer definitions that more accurately reflect the dual Congressionally designated standards of the Act. A new subsection (b) will be added to paragraph 52n(2) which sets out the scope of 223(a)(12)(B) and separates it from 52n(2)(a) which is refocused in 223(a)(12)(A).

Though 223(a)(12)(B) is not the subject of 223(c) timetable for compliance for 223(a)(12)(A) this should not dilute or otherwise inhibit our efforts to encourage the reform associated with (B). In fact, the Conference Report (No. 95-368) on the 77 JJDP Act at p. 20 states:

"The Conferees strongly encourage the States to make every effort to achieve these goals within the time frame with regard to full compliance established by Section 223(a)(12)(A) and Section 223(c) of the Act."

Thus, the proposed change will eliminate non-secure, non-community-based institutions from the definition of "detention or correctional facilities" and will add a new separate section addressing this affirmative aspect of 223(a)(12).

This change is more consistent with the JJDP Act's philosophy and mandates dealing with the deinstitutionalization of youth. An expeditious implementation of this proposed change is desirable.

The JJDP Act promotes a sound, cost-effective and humane approach that requires changes in some aspects of the juvenile justice and child caring system. Such changes are often inconvenient and some are difficult to accomplish. However, it is inconsistent with the deinstitutionalization mandate of the JJDP Act to classify large non-secure, non-community-based facilities as being juvenile detention or correctional facilities. OJJDP and LEAA cannot support this practice and continue to fulfill our responsibilities in administering and implementing the JJDP Act.

The attached draft Federal Register announcement is being provided for your review and approval.

DEPARTMENT OF JUSTICE—LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[Proposed LEAA Guideline Revision for Implementation of the Formula Grant Provisions of Section 223(a)(12)(A), (B) and (14) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.]

Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, *etc. seq.*, proposes to issue a revision of the State Planning Agency Grants Guideline Manual, M 4100.1F, July 25, 1978, Chapter 3, Paragraph 52n(2).

On March 24, 1978, the Office of Juvenile Justice and Delinquency Prevention published within the Federal Register the criteria for determining a juvenile detention and correctional facility pursuant to implementation of Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as

amended. The Office invited interested persons to send comments to the Office of Juvenile Justice and Delinquency Prevention on or before April 25, 1978.

As a result of the comments received, the Office modified the criteria and published them in the August 16, 1978, Federal Register as promulgated in LEAA's Guideline Manual, M 4100.1F, July 25, 1978, Paragraph 52n(2). Changes included the elimination of the prohibition on commingling of non-offenders and delinquents in small, non-secure, community-based facilities and the expansion of the definition of small from 20 to 40.

However, these improvements did not correct all the deficiencies in the framework for the definition of "detention or correctional facilities" developed in 1976. The purpose of this notice is to propose additional changes designed to more accurately reflect the intent of Section 223(a)(12)(A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

It is OJJDP's intention to substitute the following clause to criterion (A) in paragraph 52n of Guideline Manual M 4100.1F, Change 3, which would prohibit the placement of status offenders and non-offenders in detention or correctional facilities in accord with Section 223(a)(12)(A) and if such juveniles are placed out of the home, require that such placements are in compliance with 223(a)(12)(B) of the Juvenile Justice and Delinquency Prevention Act:

52n(2)(a) For the purpose of monitoring, a juvenile detention or correctional facility is:

(i) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders; or

(ii) Any secure public or private facility which is also used for the lawful custody of accused or convicted criminal offenders.

(b) For the purpose of monitoring 223(a)(12)(B) of the Juvenile Justice and Delinquency Prevention Act regarding out of home placement for juveniles described in 223(a)(12)(A), such juveniles, if placed in facilities, must be placed in facilities which:

(i) are the least restrictive alternatives appropriate to the needs of the child and community;

(ii) are in reasonable proximity to the family and the home communities of such juveniles; and

(iii) comply with 103(1) of the Juvenile Justice and Delinquency Prevention Act, in that they must be community-based which means a small, open group home or other suitable place located near the juvenile's home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services.

In order to ensure that interested organizations, agencies and individuals have an opportunity to review the proposed guideline change, this notice and opportunity to submit written views, comments, impact statements, and specific recommendations is being provided.

Interested persons are invited to submit written comments or suggestions to Mr. John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Room 447, Washington, D.C. 20531.

(READ Physical Exhibit B) \*

**Project READ**  
American Correctional Association  
**ANNUAL REPORT**  
1976-1977

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\*Full text of report can be found in the subcommittee files.

(READ Physical Exhibit C) \*

**TO MAKE  
A DIFFERENCE**

A Report by Project READ

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(READ Physical Exhibit D)\*

# Continuing to Make a Difference

Janet K. Carsetti  
 Warren E. Heiss  
 Catherine Pierce



READ, Inc.  
 8605 Cameron Street, Suite 216 Silver Spring, Maryland 20910 (301) 585-8500

\*Full text of the report can be found in the subcommittee files.

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Janet K. Carsetti  
Director, Project READ

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Project READ

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Catherine Pierce  
Arts Coordinator, Project Read

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(LEAA Exhibit A)

JANUARY 5, 1979.

To: Henry S. Dogin, Deputy Administrator for Policy Development.  
 From: John M. Rector, Administrator, OJJDP.  
 Subject: Reprogramming Request.

The purpose of this memorandum is to answer questions raised in your memorandum of 12/29/78 concerning both this Office's fiscal year 1979 workplan (submitted to OPM on 12/4/78), and two requests for approval of a selected reprogramming of OJJDP program allocations (memos dated 10/31/78 and 12/4/78). Each of the answers are detailed to the extent possible, in accordance with the eight questions raised in your memorandum.

Also attached are copies of documents which may be of use to you in your consideration of both the Workplan and the reprogramming requests. The attached documents are as follows:

OJJDP Diversion Guideline  
 OJJDP Prevention Guideline  
 Listing of Prevention Grantees and Funding Levels  
 Track II Guideline (National)  
 Fiscal Year 1979 Program Plan  
 Fiscal Year 1979 Program Agenda Memo to Gregg (9/27/78)

I or the appropriate staff persons are available to answer any questions you may have concerning this response.

*Question 1.* What caused these decreases? What is the impact on the Prevention Program?

What projects and amounts were funded? All continuation? New grants?

#### Prevention

Current:	6,000
JJ -----	1,000
C -----	
Total -----	7,000
Proposed:	3,496
JJ -----	0
C -----	
Total -----	3,496

Answer. The decrease in the overall OJJDP allocation to Special Emphasis Prevention initiative is a result of this Office's decision not to support for a third term, the prevention program at a fiscal level consistent with its two previous funding periods. As you are probably aware, the program guideline for prevention as announced in November 1976, indicated that project funding would be available for a two year period (see F 4500.1E, Chap. 2, para. 28, pg. 61). OJJDP had initially proposed funding prevention for a total three year period, that proposal was rejected by the then existing LEAA administration. Later third year funding for the prevention program was subsequently approved. It was initially anticipated that the level of prevention funding would be consistent with the two previous levels of approximately \$6 million per year. Thus the third allocation of \$6 million for prevention in fiscal year 1979 (initially) was consistent. This Office has since determined that the prevention effort should be reduced in scope, and since there was no formal commitment of third year funding by OJJDP to grantees; third and final year funding could be made available to prevention grantees on a competitive basis. It should be noted that the Office has determined that certain of these projects will not require third year funding due to under spending in the past funding periods due to slow startups and reductions in implementation plans.

A listing of the prevention grantees and their current and past funding levels is attached.

All of the prevention grantees were slated for two year funding thus all represent continuation project efforts.

No new projects have been added to the prevention program since the original awards were made.

*Question 2.* Why wasn't Restitution included in JJ Special Emphasis and Part C in your original allocations? What funds were used in the past for the projects included in Restitution JJ and Part C? Why did OJJDP solicit, review and endorse applications in these areas when no funds were allocated? What is the expected impact of this Program?

As you are aware, Part C and JJ funds for the Restitution program had been allocated in the fiscal year 1978 OJJDP program plans. As indicated in the OJJDP request to reprogram JJ and Part C funds for Restitution, 23 such projects were funded in fiscal year 1978 for a total of \$13,244,532. Of that amount \$3,848,135 was Part C funds. These funds were awarded predominately for projects from which no match was required, or for projects operated by private nonprofit sector agencies. The latter group being ineligible as grantees under the Part E requirements. OJJDP had initially anticipated the following:

(a) funding all private non-profit agencies out of fiscal year 1978 Part C and/or JJ money, and,

(b) obtaining a waiver of the 10 percent match requirement relative to Crime Control Act funds, in order to pay for projects from whom only a 5 percent match would be required.

Due to delays in application processing and awards, OJJDP was not able to employ option (a) above, because all such projects were not properly certified and available for award in time to be awarded from available fiscal year 1978 funds. Option (b) was abandoned after this Office realized that there was not adequate time available to process the 5 percent waiver request necessary in order to reduce the 10 percent cash match requirement to 5 percent. In retrospect, OJJDP did not fully anticipate the degree of time or difficulty involved in execution of either of the above stated options. As a result, only fiscal year 1979 Part E funds were allocated to the Restitution program because it had been felt that only those projects which were eligible for Part E funding (including 10 percent match) would remain to be awarded in fiscal year 1979.

The Restitution program represents a new Special Emphasis initiative, announced in the Federal Register and published as Change 1 to the guide (dated 2/15/78); first awards under the Restitution program were made during the final quarter of fiscal year 1978. As mentioned earlier \$14,244,532 was awarded for Restitution projects. A breakout of those funds is as follows:

JJ -----	\$ 3,848,135
C -----	490,692
E -----	8,905,705
Total -----	13,244,532

OJJDP as indicated previously announced its Restitution program in February 1978. The announcement indicated total funds allocated to this program was \$30 million. The February Management Brief indicates that as of January 31, 1978, \$49,567,000 was allocated to MBO objective 1.207 Special Emphasis. This is the MBO program which represents the Restitution effort. The expected project impact remains unchanged from that anticipated in the original project guideline (already referenced).

*Question 3.* What is this program supposed to do? Why such a drastic increase? Are there any applications currently in house under Part C of this Program? Only Restitution (if approved) and Youth Advocacy will have greater allocations than this program. Is "Model Programs" that high a priority? Should it be?

Model Programs allow for funding of innovative and promising projects. This gives the agency the ability to address those areas highlighted in Section 224 (a) (1)-(10) and not otherwise the subject of a national initiative. Moreover, it provides greater access to funding by a diversity of groups and organizations as contemplated in the passage of the JJDP Act.

The increase in the funding allocated to Model programs is required in order to fund the continuation of projects existing in this category, as well as to provide funds for new proposals which currently exist as unsolicited concept papers. It is currently anticipated that the \$7.250 million level established for Model programs will be adequate to fund all proposals considered under this program. OJJDP currently anticipates being able to award grants eligible under Part C, at least the \$2.250 million level (Part C) allocated for Model programs. The Model program area is and should be a priority for these reasons.

*Question 4.* What is the current situation with this program since the Treanor and Miller grants were reduced and the Wooden grant was rejected? What do

you plan to do with the \$1.9 million that is now not needed in light of the aforementioned reductions and rejection?

At the time of submission of the OJJDP Workplan December 4, 1978, this Office did not anticipate the rejection of the above mentioned application. Thus at that time no immediate contingency proposal or application was developed. Instead, the Office will now reconsider funding program priorities which were included in the fiscal year 1979 Program Plan and/or were dropped from the Workplan because of the lack of available Office resources (e.g., limited staff, limited Part C and JJ funds, etc.). OJJDP admittedly, may have been overly optimistic when developing the fiscal year 1979 Program Plan, submitted in fiscal year 1978.

**Question 5.** Why are you eliminating these programs? What were your original plans for these? What caused you to change your mind? Based on what analysis?

The Alternative Education and Standards programs were originally submitted as components of the fiscal year 1979 Program Plan submitted in fiscal year 1978. Elimination of both programs from the fiscal year 1979 Workplan is a result of an Office decision to reduce the number of program priorities scheduled for development or implementation during fiscal year 1979. The objective of the Alternative Education initiative was to develop innovative alternative learning models for those youths who for selected reasons are unable to adjust and or be taught in the traditional educational environment. This initiative was also proposed as a means of addressing at a national level, the problem of unwarranted or unnecessary school suspension, expulsion, and dropout. OJJDP has to date, expended approximately \$6 million through a cooperative interagency program with the HEW—Office of Education, in support of projects designed to address the aforementioned and related types of educational/juvenile justice system problems. Other Office initiatives which focus on related educational alternatives are the Law-Related Education and the Learning Disabilities programs. The Office will continue its focus on the area of alternative educational services through the planning and implementation of the Youth Advocacy initiative which is currently being developed. Guideline announcement is scheduled for fiscal year 1979. Relative to the Standards program, this Office decided to delay any immediate program development efforts in this area until after the National Advisory Committee on Juvenile Justice and Delinquency Prevention completes its consideration of its national standards. Also, the Office had been informed that the American Bar Association would conclude consideration and final action on the IJA/ABA developed Standards during the past calendar year, to date no final action has been taken. The official findings of each of these bodies relative to their already developed (LEAA/OJJDP sponsored) recommended standards is very important to further OJJDP program development in the area of standards and standards implementation programs.

**Question 6.** Explain this more thoroughly than your October 31, 1978, memo. What grants does this include?

The Track II program is a Formula Grant and Technical Assistance Division (FGTA) initiative which was originally developed by the LEAA Regional Offices later transferred to and continued by FGTA after the regions closed. As indicated in the Track II guideline the program was designed to assist states with their design and implementation of program models which would contribute to statewide compliance with JJDP Act Sections 223a(12) and (13). OJJDP was delegated program authority for implementation and administration of the Track II program. At the end of fiscal year 1978 approximately \$450,000, remained unexpended in the Track II category (earlier reports from fiscal showed \$428,000—later changed). Also at the end of the fiscal year OJJDP had on hand applications in the Track II category awaiting final approval totalling approximately the same amount. Those applications are still awaiting final approval. Funds for the Track II program were allocated from the reverted fiscal year 1977 and fiscal year 1978 formula grant funds (reverted to Special Emphasis). OJJDP (Formula Grants division) had anticipated that the remaining applications being considered in the Track II category would be awarded prior to the end of fiscal year 1978, thus no allocation for Track II DF programming, was included in the fiscal year 1979 "current" OJJDP allocations. The reprogramming request, currently under consideration restores the remaining Track II funds, only. You will note that the fiscal year 1979 Workplan anticipates availability of fiscal year 1979 reverted formula funds (amount yet to be formally determined) and has included programs to be announced based upon availability of reverted fiscal year 1979 funds.

**Question 7.** Explain why the shifts from C to E and the increase.

As you will note from your review of the overall OJJDP allocations this Office has only a limited amount of Part C funds available in fiscal year 1979—approximately \$5 million and substantially more in Part E funds—approximately \$16 million. In order to reprogram needed Part C and JJ funds into the Restitution category and additional JJ funds into Track II and Model programs, it became necessary to reconsider the current allocations relative to type of funds budgeted per program category. The New Pride Replication project as planned is the OJJDP program which is considered most in concert with the required program character established for eligibility under the Part E section of the Crime Control Act. Therefore, the major share of funding support for New Pride was changed from Part C to Part E in the request for reprogramming. In order to assure continued opportunity for program access to private non-profit sector agencies (as grantees), it is necessary to maintain at least a percentage of Part C funds allocated to the New Pride Replication program. The project was initially limited to \$4 million only because of the original decision to use available Part C funds. With the necessity to reprogram OJJDP allocated funds came also the obvious and much needed opportunity to increase the level of funds allocated to this program through use of available Part E funds.

**Question 8.** What do you expect to do with this \$3.2 million of unaccounted for funds? Why didn't you plan for this money?

You will note that the fiscal year 1979 Program Plan included a series of program types to which no specific dollar levels were assigned. Initially OJJDP had anticipated including several more of these types of programs in the fiscal year 1979 Workplan. However, due to several factors (already mentioned) to include limited staff and program development resources, OJJDP's decision is to further streamline its funding priorities to only include those remaining in the fiscal year 1979 Workplan.

If OJJDP finds opportunity to amend current programming posture the Office will request the Administrator's approval to revise its fiscal year 1979 approved plans. The following is a list of programs which the Office had anticipated funding with available Part E funds:

#### JUVENILE JUSTICE SYSTEM REFORM

1. Development of Programs for Bureau of Prison's Compliance with JJDP Act, Sections 223a(12) (13) and (14).
2. Implementation of Judicial Decrees.
3. Community-Based Correctional Improvement Programs.

#### PART III: PLEADINGS, BRIEFS, INITIAL DECISION, AND FINAL DECISION

KARR & LYONS,  
Washington, D.C., December 21, 1979.

HENRY S. DOGIN,  
Chief Administrator, Law Enforcement Assistance Administration, Department  
of Justice, Washington, D.C.

DEAR MR. DOGIN: Pursuant to the provisions of 42 U.S.C. Sec. 3758(b) and 28 C.F.R. Sec. 18.1 et seq., READ, Inc., hereby requests a hearing on the rejection of its application, No. 9-1241-O-MD-J, for funding in fiscal year 1980. A copy of the December 5, 1979, rejection notice from James C. Howell, Director, National Institute for Juvenile Justice and Delinquency Prevention, to Dr. Janet Carsetti, Director of READ, Inc., is attached.

In accordance with an agreement reached on December 20, 1979, between John J. Wilson, Attorney Advisory, Office of General Counsel, Law Enforcement Assistance Administration, and Mona Lyons of this office, it is our understanding that this request for a hearing is sufficient to invoke the review procedures set forth in 28 C.F.R. Sec. 18.1 et seq., conditioned upon our prompt supplementation of this request to include the recitals required by 28 C.F.R. Sec. 18.41(b).

Please notice also that READ, Inc., requests that this proceeding be conducted by an independent administrative law judge rather than by a hearing examiner selected from within the Law Enforcement Assistance Administration.

Yours very truly,

JOHN W. KARR,

## Attachment

DEPARTMENT OF JUSTICE,  
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION,  
Washington, D.C., November 28, 1979.

Dr. JANET CARSETTI,  
Director, Project READ, Inc., 8605 Cameron Street, Suite 216,  
Silver Spring, Md.

DEAR DR. CARSETTI: This is in response to your grant application for continuation of "Project READ." I regret to inform you we are unable to offer continued LEAA support for your project at this time.

As we discussed by phone, your application was forwarded to the Special Emphasis Division of the Office of Juvenile Justice and Delinquency Prevention. While that Division had a strong interest in continuing the project, they have informed us that funds are not available to fund the project in fiscal year 1980.

Our fiscal year 1980 training priorities within NIJJDP have been established, and do not include the type of training activity under Project READ.

As we have discussed, there may be competitive Special Emphasis programs under which your project might qualify which are to be announced during fiscal year 1980. I suggest that you contact Ms. Marjorie Miller, Special Emphasis Division, to determine the most appropriate action guidelines under which you might apply.

Again, I regret we are unable to provide further assistance to Project READ at this time.

Sincerely,

JAMES C. HOWELL,  
Director, National Institute for Juvenile Justice  
and Delinquency Prevention.

KARR & LYONS,  
Washington, D.C., January 4, 1980.

HENRY S. DOGIN,  
Chief Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C.

DEAR MR. DOGIN: READ, Inc. hereby supplements its request for a hearing on the denial by the Office of Juvenile Justice and Delinquency Prevention (hereinafter referred to as "OJJDP") of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA") of Project READ's application for continuation funding in fiscal year 1980, to include the recitals required by 28 C.F.R. Sec. 18.41(b).

#### I. STATUTE AND REGULATIONS INVOLVED

READ, Inc. contends that the denial of its application for continuation funding by OJJDP constituted a violation of Sec. 228(a) of Title II of Public Law 93-415, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. Sec. 5638[a]), which provides:

"In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

Also implicated in this proceeding are two unpublished agency policy statements. The first is LEAA Instruction I 4510.2 (September 14, 1979). The second is a policy statement of the Special Emphasis Division of OJJDP to the effect that no further "unsolicited grant proposals" shall be accepted by that Division.

Additionally, READ, Inc. maintains that the manner by which its refunding application was considered and denied was in violation of various general principles of federal administrative law. See, e.g., *Boston Edison Co. v. F.P.C.*, 181 U.S. App. D.C. 222, 557, F.2d 845 (1977), *cert. denied*, 434 U.S. 956; *WAIT Radio v. F.C.C.*, 135 U.S. App. D.C. 317, 418 F.2d 1153 (1969).

#### II. STATEMENT OF FACTS

READ, Inc. (hereinafter referred to as "Project READ") is a non-profit organization whose purpose is to improve literacy among delinquent young people. Its goals, its methods, and its achievements were described thusly in its 1978 report:

"Project READ (Reading Efficiency and Delinquency) is a program of national scope designed to make survival in a literate society a reality for young people

who have entered the juvenile justice system. With a grant to READ, Inc., a private, non-profit, educational corporation, from the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, Project READ has provided teacher training and free paperback books to training institutions, alternative schools, and community-based programs across the country.

"The Project is based on the philosophy that young people under the age of 18 and in trouble with the law should be provided with the skills necessary for survival in a literate society. They must know how to complete job applications, read street and road signs, use telephone books, read newspapers, magazines, labels on food items, medicine bottles, and clothing. During its first year of operation, Project READ tested almost 5,000 youngsters in 47 states and the District of Columbia with a pre-post battery that included reading comprehension and decoding, verbal potential, phonics, and self-concept. Within a four-month period of reading paperback books and using functional reading packets, impressive gains were seen. The average student gained one year in reading level, seven months in verbal potential, and improved his/her self-concept. More importantly, all but thirteen percent of those tested enjoyed reading after being exposed to paperback books and non-stop reading.

"Project READ worked with 74 schools in 29 states during the second fourteen months of operation. Continuing to train teachers in motivational techniques for reluctant readers and to provide paperback books for youth. Project READ has once again met its goals. Significant gains were made by all students from pre to post-testing. The average student gained four months in mental ability and one year in reading level over a four month period. Additionally, improvement was seen in the attitude of students toward the reading process with thirteen percent more students considering themselves good readers by post-testing time."<sup>1</sup>

Project READ was initially funded by OJJDP in February 1976. It subsequently received continuation funding from OJJDP for fiscal years 1977, 1978, and 1979. Throughout that period, there was never the slightest hint that OJJDP found Project READ's performance to be anything other than satisfactory; to the contrary, as recently as September 19, 1979, the Director of OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (hereinafter referred to as "NIJJDP") stated that "[w]ithout a doubt, the project has been extremely successful."

Nevertheless, on November 28, 1979, the Director of NIJJDP—the same OJJDP employee who only two months earlier had described Project READ as an "extremely successful" program—informed Project READ's Director, Dr. Janet Carsetti, that OJJDP would not refund the project for fiscal year 1980. What follows is a chronological account of the events which preceded and culminated in OJJDP's decision to discontinue funding for Project READ, as best we presently understand them:<sup>2</sup>

1. On August 3, 1979, Project READ's Director, Dr. Janet Carsetti, met with James C. Howell, Director of NIJJDP; 1980 continuation funding for Project READ was one of the subjects discussed. Mr. Howell stated that the development of new "plans" and new "priorities" within NIJJDP, which were not then finalized, might require Project READ to obtain refunding through "alternative" sources. Mr. Howell characterized Project READ as a "great" program; stated

<sup>1</sup> Project READ report, "To Make a Difference" 1, 46 (1978). In 1979, Project READ added two new initiatives to complement its motivational reading program. The first, a higher education component, encourages graduate and undergraduate students in education to work with young people in the juvenile justice system. The second, an arts component, encourages development of theatre and arts programs for young people in trouble. As in previous years, Project READ's 1979 efforts continued to produce outstanding results; see its 1979 report, "Continuing to Make a Difference" (forthcoming in January 1980).

<sup>2</sup> This factual statement has been constructed from the recollections of Project READ's Director and staff; from documents in the possession of Project READ; and from representations made by LEAA/OJJDP employees at a meeting on Dec. 20, 1979, in the office of David West, Acting Associate Administrator of OJJDP. The December 20 meeting was chaired by John J. Wilson, Attorney Advisor, Office of General Counsel, LEAA. In attendance were Mr. West; Mr. James C. Howell, Director of NIJJDP; Emily Martin, Director of OJJDP's Special Emphasis Division; Mr. Vermont McKinney, Deputy Director of the Special Emphasis Division; Ms. Marjorie L. Miller, Juvenile Justice Specialist, Special Emphasis Division; Dr. Janet Carsetti, Director of Project READ; Ms. Catherine Pierce, Assistant Director of Project READ; counsel for Project READ; and Ms. Jill Porter, a member of the staff of Senator Charles McC. Mathias, Jr.

This statement does not, of course, purport to be Project READ's definitive or final view of the underlying facts.

that he would do whatever he could to insure its survival; suggested that OJJDP's Special Emphasis Division would be the most appropriate source of refunding; and asked Dr. Carsetti to submit Project READ's refunding application to OJJDP as soon as possible. Dr. Carsetti left this meeting believing that even though Project READ's continuation funding might have to be channeled through some unit of OJJDP other than NIJJDP, the granting of its funding application was nonetheless virtually assured. Later on that same day, Mr. Howell met with Ms. Marjorie L. Miller, Juvenile Justice Specialist, Special Emphasis Division, OJJDP, to discuss the refunding of Project READ through that unit of OJJDP. Ms. Miller reacted with enthusiasm.

2. On August 22, 1979, Project READ submitted its refunding application to OJJDP (No. 9-1241-O-MD-JJ). The application was clearly designated, on its face, as one for "continuation" funding.

3. On August 23, 1979, Mr. Howell notified Dr. Carsetti that he had received a copy of the application for refunding, and that he had forwarded a copy to Ms. Miller.

4. On August 28, 1979, Karen Taylor of the Financial Management and Grants Administration Branch of LEAA, notified Dr. Carsetti by letter that Project READ's application for refunding had been "entered into [LEAA's] processing system as of August 23, 1979. . . ." Ms. Taylor's letter further stated that "[a] copy of your application has been forwarded to the Office of Juvenile Justice and Delinquency Prevention for review. You will be contacted by that office and furnished the name of the person coordinating the review." No such name was ever furnished Project READ by OJJDP.

5. On September 14, 1979, Henry S. Dogin, Chief Administrator of LEAA, issued an "instruction" which, *inter alia*, declared it to be new LEAA policy that:

"Program objectives for which grants and other agreements may be made should be covered by program announcements. Competition for assistance shall be furthered to the maximum extent practicable by furnishing the public with sufficient and timely information, including publication of program information in the Federal Register." [LEAA Instruction 1 4510.2 (September 14, 1979), para. 4, p. 2.]

Project READ received neither actual nor constructive notice of Mr. Dogin's September 14, 1979, "instruction;" received neither actual nor constructive notice of the new LEAA policy contained therein; and received neither actual nor constructive notice of the procedures for making exceptions set forth in Para. 4.e. of the "instruction."

6. On September 19, 1979, Mr. Howell transmitted a memorandum to Emily Martin, Director of OJJDP's Special Emphasis Division. Mr. Howell's memorandum stated that "[m]y primary reason for the referral is that, given the success of the project, I believe its impact can be even greater if it were integrated with one or more of the above programs" as a specific component. \* \* \* I also believe the result would be to strengthen the parent program and result in a greater impact." Mr. Howell's memorandum mentioned no reason for the referral other than a desire to maximize Project READ's "impact." A copy of this memorandum was forwarded to Ms. Miller.

7. On October 5, 1979, Ms. Miller directed a memorandum to David D. West, Acting Associate Administrator of OJJDP; the memorandum was routed through Ms. Martin. The memorandum stated its "subject" to be: "Continuation of Program-Project READ. . . ." Similarly, the "issue" was framed as one of "continuation" of the program:

"Dr. Janet Carsetti, Director of Project READ has formally submitted a continuation application for her ongoing program, Project READ. NIJJDP has supported this program over the past few years.

\* \* \* \* \*

"This application was favorably reviewed by both NIJJDP and the Special Emphasis Division."

In its "summary" section, the memorandum observed, *inter alia*, that: "Dramatic increases have been achieved by students participating in Project READ. Despite a low budget (as compared to other federally funded literacy programs, and a limited staff), Project READ has worked with more than 40,000 young people in the juvenile justice system. . . ."

<sup>3</sup> The other "programs" referred to in Mr. Howell's Sept. 19, 1979, memorandum were the Youth Arts Initiative and the New Pride replication project, both of which are conducted through OJJDP's Special Emphasis Division.

The memorandum stated the "benefits" of continued funding to include these, among others:

"There is no other national effort in literacy and/or the arts for young people in the juvenile justice system. With the extremely successful results this Project has achieved, it would be advantageous to endorse continuation funding.

\* \* \* \* \*

"This is a program that should be singled out by OJJDP as a Special Emphasis Program that works. This program should be nominated for exemplary status."

The memorandum concluded with a "recommendation" which stated, in part:

"I feel this program is strong enough in its concept that we may request to Mr. Dogin to make an exception for this program and allow OJJDP to fund it under our authorization.

\* \* \* \* \*

"Project READ presently runs out of funds December 15, 1979. Continuation of this grant will allow for a smooth transition . . . without an interruption of program."

8. On or about the date of transmittal of Ms. Miller's memorandum, Ms. Miller telephoned Dr. Carsetti and requested the submission of a 9 month budget summary for Project READ. (At the December 20, 1979, meeting, *see* fn. 2 *supra*. Mr. Wilson stated that at the time Ms. Miller requested a 9 month budget from Project READ, there existed in LEAA a state of "flux" with respect to the new policy announced in Mr. Dogin's September 14, 1979, "instruction," *see* numbered para. 5 in the text above, and that "thought" was then being given to treating Project READ's application as one for "continuation" funding through the Special Emphasis Division<sup>4</sup> in OJJDP, so that the project would still be in existence when competitive guidelines were issued pursuant to Mr. Dogin's September 14 directive—presumably, sometime in mid or late 1980. According to Mr. Wilson, this alternative for refunding Project READ was eventually rejected because OJJDP concluded that "if we did it for Project READ, we would have to do it for everyone." The bases for that conclusion, if any existed, were not made known during the December 20 meeting.)

9. Ms. Martin did not forward Ms. Miller's October 5, 1979, memorandum to Mr. West, even though Mr. West was its addressee. (At the December 20, 1979, meeting, *see* fn. 2, *supra*, Ms. Martin stated that she did not transmit Mr. Miller's memorandum to Mr. West, first, because "the new policy [i.e., the new policy outlined in Mr. Dogin's directive of September 14, 1979] was then being developed," and second, because of an "internal policy" within the Special Emphasis Division of OJJDP not to accept "new unsolicited grant proposals." Presumably, the latter policy of the Special Emphasis Division was formulated in response to Mr. Dogin's September 14, 1979, "instruction." In any event, Project READ received neither actual nor constructive notice of the promulgation of this new policy by the Special Emphasis Division.)

10. On November 20, 1979, Vermont McKinney, Deputy Director of OJJDP's Special Emphasis Division, forwarded a memorandum to Mr. Howell, through Ms. Martin, which stated, *inter alia*:

"The application [i.e., Project READ's application for continuation funding from OJJDP] has been reviewed and has been determined to have merit. Unfortunately, we cannot make a recommendation for funding because it is now LEAA/OJJDP policy to award action grants through the issuance of published guidelines and competitive application review process. The only unsolicited projects<sup>5</sup> that are to be considered for continued support in fiscal year 1980, until they are able to compete, are action grants funded in Fiscal 1978 and 1979 with Special Emphasis Discretionary funds. Therefore, we regret at this time we are unable to provide assistance to Project READ."

11. On December 5, 1979, Dr. Carsetti received a letter from Mr. Howell, dated November 28, 1979. Mr. Howell stated that his letter was "in response to your

<sup>4</sup> Apparently, it is OJJDP's position that an application for "continuation" of previous NIJJDP funding is somewhat transformed into an "unsolicited proposal" if NIJJDP elects, as it did here, to refer the refunding application to the Special Emphasis Division; OJJDP takes this position even though NIJJDP and the Special Emphasis Division are both subordinate units within OJJDP.

<sup>5</sup> During the December 20 meeting, *see* fn. 2, *supra*, Mr. Wilson stated that no formal procedures have been established for the making of an exception to the new "internal policy" of the Special Emphasis Division, although Mr. Wilson presumed that such an exception could be sought and granted in an appropriate case.

<sup>6</sup> For the apparent basis on which OJJDP's Special Emphasis Division converted Project READ's application for continuation funding into an "unsolicited" new proposal, *see* fn. 4, *supra*.

grant application for continuation of 'Project READ,' and he concluded that "I regret to inform you that we are unable to offer continued LEAA support for your project at this time." According to Mr. Howell's November 28 letter, NIJJDP could not refund the program because "[o]ur Fiscal Year 1980 training priorities . . . have been established, and do not include the type of training activity under Project READ." Mr. Howel also stated that "[w]hile [the Special Emphasis] Division had a strong interest in continuing the project, they have informed us that funds are not available to fund the project in Fiscal Year 1980." Mr. Howell's letter did not expressly refer to the new LEAA/OJJDP policies which had materially affected the decision not to refund Project READ; nor did the letter refer to either the possibility of, or the procedure for, seeking an exception to those policies.

12. At the December 20, 1979, meeting, *see* fn. 2, *supra*, Mr. West stated that he had personally approved the decision not to continue funding Project READ, even though at the time he made that decision he had not read Ms. Miller's October 5, 1979, memorandum urging refunding and recommending referral of the matter to Mr. Dogin if the granting of an exception to general LEAA policy was necessary to accomplish that end. Mr. West's only stated reason for not reading Ms. Miller's memorandum, of which he was aware, was his unconcern with what he characterized as the "programmatics" aspects of Project READ. Mr. West also stated at the December 20 meeting that his approval of the decision not to except Project READ constituted a decision not to except Project READ from the operation of any LEAA/OJJDP policy; and in response to an inquiry from counsel for Project READ, Mr. West stated that his decision against the making of an exception for Project READ was irrevocable. As of December 20, 1979, Mr. West concededly still had not read Ms. Miller's memorandum which recommended the granting of such an exception if necessary to refund the project, and which set forth, in detail, the reasons for that recommendation.

13. A formal request for review was filed on December 21, 1979, and is supplemented herewith.

Finally, it is a matter of fact that NIJJDP and the Special Emphasis Division were both created as subordinate units within OJJDP by Title II of Public Law 93-415, The Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

#### IV. RELIEF REQUESTED

READ, Inc. seeks an order directing OJJDP to comply forthwith with the mandate of Sec. 228(a) of Title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. Sec. 5638[a]); alternatively, READ, Inc. seeks an order directing OJJDP to reconsider its denial of the application by READ, Inc. for continuation funding in fiscal year 1980.

READ, Inc. further requests that this review proceeding be expedited, as required by 28 C.F.R. Sec. 18.51(d).

Yours very truly,

JOHN W. KARR.

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
Washington, D.C., January 9, 1980.

JOHN W. KARR, Esq.  
Karr & Lyons, 625 Washington Building  
15th Street and New York Avenue, NW., Washington, D.C.

DEAR MR. KARR: This will acknowledge receipt of your letters of December 21, 1979 and January 4, 1980, to Henry S. Dogin, requesting a hearing on the rejection of an application for funding submitted to LEAA's Office of Juvenile Justice and Delinquency Prevention by READ, Inc., entitled "Project Read," Application No. 9-1241-O-MD-JJ.

On December 27, 1979, I was designated as Acting Administrator of the Law Enforcement Assistance Administration by order of Attorney General Benjamin Civiletti. This hearing will be held under the authority of Section 803(b) of the Justice System Improvement Act of 1979, 42 U.S.C. § 3701 *et seq.*, Pub. L. 96-157 and the LEAA Administrative Review Procedure Regulations (28 C.F.R. Part 18). The Justice System Improvement Act appeal procedure is applicable to agency actions taken under the Juvenile Justice and Delinquency Prevention Act

<sup>1</sup>By that statement, Mr. West apparently meant that he at all times recognized Project READ to be an extremely successful program.

of 1974, 42 U.S.C. § 5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503 and Public Law 95-115), through Section 262 of such Act.

In order to expedite this matter, I am on this date requesting that the Office of Personnel Management select and appoint an administrative law judge to hear this appeal. I am informed by agency counsel that the parties have agreed that there is no purpose to be served by authorizing an adjudicative investigation under 28 C.F.R. § 18.31(c). Therefore, this matter may proceed to an adjudicative hearing pursuant to 28 C.F.R. § 18.33.

Mr. Charles A. Lauer, Deputy General Counsel, and Mr. John J. Wilson, Attorney-Advisor, of the Office of General Counsel will represent the agency in the appeal. Please address future correspondence on this matter to the Office of General Counsel or the administrative law judge, as appropriate.

Sincerely,

HOMER F. BROOME, Jr.,  
Acting Administrator,  
Law Enforcement Assistance Administration.

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
Washington, D.C. January 9, 1980.

DIRECTOR, OFFICE OF ADMINISTRATIVE LAW JUDGE,  
U.S. Office of Personnel Management  
Washington, D.C.  
(Attention Ms. Mary Jane Little).

DEAR SIR: This is to request the use, on a reimbursable basis, of an administrative law judge selected by the U.S. Office of Personnel Management. An applicant for LEAA grant funds, READ, Inc., has been denied continuation grant funding and has requested a formal hearing on this matter.

It is provided in Section 803(b) of the Justice System Improvement Act of 1979, 42 U.S.C. Section 3701, *et seq.*, Public Law 96-157 that:

"(b) If a State grant application filed under part D of if any grant application filed under any other part of this title has been rejected or a State applicant under Part D or an applicant under any other part has been denied a grant or has had a grant, or any portion of a grant, discontinued, terminated or has been given a grant in a lesser amount that such applicant believes appropriate under the provisions of this title, the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration, as appropriate, shall notify the applicant or grantee of its action and set forth the reason for the action taken. Whenever such an applicant or grantee requests a hearing, the National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations, *including hearings on the record in accordance with section 554 of title 5, United States Code*, at such times and places as necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made with respect thereto shall be final and conclusive, except as otherwise provided herein." (italics supplied)

The Law Enforcement Assistance Administration is authorized under Section 810 of the Justice System Improvement Act to request the use of such administrative law judges selected by the Office of Personnel Management pursuant to Section 334 of Title 5, United States Code.

It is anticipated that the hearing will take no more than one day and be held in Washington, D.C. We would expect the hearing to be held between January 28 and February 15, 1980.

LEAA is interested in handling this matter as expeditiously as possible and appreciates your prompt attention. At your suggestion, John J. Wilson of the Office of General Counsel has contacted Judge Morton Needleman at the F.T.C. regarding the appeal. Charles A. Lauer, Deputy General Counsel of the Office of Justice Assistance, Research, and Statistics, or Mr. Wilson, is available to answer any questions that you may have on this matter. They can be reached at 724-6238.

Sincerely,

HOMER F. BROOME, Jr.,  
Acting Administrator,  
Law Enforcement Assistance Administration.

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, LAW ENFORCEMENT  
ASSISTANCE ADMINISTRATION

IN THE MATTER OF: READ, INC.

Prehearing brief of READ, Inc.

1. Introduction

READ, Inc. (hereinafter referred to as "Project READ") is a private, non-profit organization dedicated to providing delinquent young people with the literacy skills essential for self-sufficient survival in a literate society. Since its inception, Project READ has worked with approximately 40,000 troubled young people from 322 institutions, alternative schools, and community-based programs in 49 states and the District of Columbia moreover, some 600 teachers have participated in teacher training workshops conducted by Project READ.<sup>1</sup>

The project was first funded by the National Institute for Juvenile Justice and Delinquency Prevention (hereinafter referred to as "NIJJDP")<sup>2</sup> under the provisions of Title II of the Juvenile Justice and Delinquency Prevention Act<sup>3</sup> in 1976, when its director, Dr. Janet K. Carsetti, was employed by the American Correctional Association. Subsequently, the project was incorporated under the name "READ, Inc." as an independent entity. READ, Inc. received an initial one-year grant from NIJJDP in 1977; a second grant, which provided continuation funding for two additional years, was awarded in 1978.

However, on November 13, 1979, NIJJDP abruptly notified Project READ that no further continuation funding would be forthcoming from Title II monies. It is the legality of that action which Project READ challenges in this proceeding.<sup>4</sup>

II. NIJJDP's Termination Of Continuation Funding For Project READ Is In Violation Of Sec. 228(a) Of The Juvenile Justice And Delinquency Prevention Act of 1974, As Amended

In our view, the central question in this case is whether NIJJDP's refusal to provide Project READ with continuation funding for fiscal year 1980 constitutes a violation of Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5638[a]), which provides:

"In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

It is important to emphasize at the outset what the parties do not dispute: first, they do not dispute that from its inception, Project READ has been funded with grant monies under Title II of the Juvenile Justice and Delinquency Prevention Act of 1974; second, they do not dispute that from its inception, Project READ's yearly evaluations by OJJDP have been "satisfactory." Indeed, on the latter point, as recently as October 5, 1979, OJJDP was using superlative language to describe Project READ's performance:

[Project READ's continuation funding] application was favorably reviewed by both NIJJDP and the Special Emphasis Division [of OJJDP].

Dramatic increases have been achieved by students participating in Project READ. Despite a low budget (as compared to other federally funded literacy programs, and a limited staff), Project READ has worked with more than 40,000 young people in the juvenile justice system. . . .

<sup>1</sup> Annual Report of Project READ, "Continuing to Make a Difference," 46 (1980).

<sup>2</sup> NIJJDP was created by Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 as a component of the Office of Juvenile Justice and Delinquency Prevention (hereinafter referred to as "OJJDP"). The latter office was also created by the same Act as a unit of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA") of the Department of Justice.

<sup>3</sup> Public Law 93-415, 88 Stat. 1109 (1974), as amended by the Juvenile Justice Amendments of 1977, Public Law 95-115, 91 Stat. 1048 (42 U.S.C. Sec. 5601 et seq.).

<sup>4</sup> Because we anticipate no significant disputes about the factual circumstances surrounding NIJJDP's decision, we do not include a detailed statement of facts in this brief. The pertinent facts are fully set forth in our proposed stipulations and in our January 4, 1980, letter to Henry S. Dogin, which includes the statement of facts required by 28 C.F.R. Sec. 18.41(b).

There is no other national effort in literacy and/or the arts for young people in the juvenile justice system. With the extremely successful results this Project has achieved, it would be advantageous to endorse continuation funding.

This is a program that should be singled out by OJJDP as a Special Emphasis Program that works. This program should be nominated for exemplary status.<sup>5</sup>

Thus, given what is *not* in dispute here, we think that the application of Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act to the instant facts is a simple, straightforward exercise which produces the ineluctable conclusion that the refusal to continue funding Project READ was an unlawful act.

LEAA, however, apparently contends that Sec. 228(a) means something other than what it unambiguously says. Accordingly, we next examine whether the language of Sec. 228(a) carries some hidden meaning, or whether the Congress meant what it said when it enacted Sec. 228(a).

Our research has revealed no reported judicial decision construing Sec. 228(a). However, the legislative history of the Act demonstrates beyond peradventure that the Congress understood fully and meant exactly what it said in Sec. 228(a). Thus, the Senate report states that the section "sets forth the policy of Congress that programs should receive funding if evaluation is satisfactory." (S. Report No. 93-1011, 93d Congress, 2d session 62 (July 16, 1974).) Similarly, the House report says that "[t]his section provides for the long-term funding of programs assisted under the provisions of this Act. . . ." H.R. Rep. No. 93-1135, 93d Congress, 2d session 16 (June 21, 1974). And the Congressional Research Service summary of the legislative history of the Act states that the section means that "Title II funds are expected to be available on a continuing basis, subject to a satisfactory annual evaluation of the funded activity." Moore, "The Juvenile Justice and Delinquency Prevention Act of 1974, as Amended: Legislative History and Summary of Provisions" 26 (C.R.S. No. 77-233 ED, 1977).

Although the legislative history of the Act is sparse with respect to the reasons underlying the inclusion of Sec. 228(a)<sup>6</sup>, a summary and analysis of the Act,

<sup>5</sup> Memorandum from Marjorie L. Miller, Juvenile Justice Specialist, Special Emphasis Division, OJJDP, to David D. West, Acting Administrator of OJJDP, dated October 5, 1979 (emphasis in original).

<sup>6</sup> While there is little direct evidence in the legislative history to explain the reasons underlying the enactment of Sec. 228(a), there is much material from which its purposes may be inferred.

First, the Juvenile Justice and Delinquency Prevention Act of 1974 was in large part a response to what the Congress perceived to be ineffective administration of previous federal juvenile delinquency programs by the Department of Health, Education and Welfare. (For a history of those previous programs, see S. Rept. No. 93-1011, 93d Congress, 2d session 27-37 [July 16, 1974]; for expressions of Congressional frustration about their administration, see generally the debates on the 1974 Act, 120 Cong. Rec. H21882-H21906 [July 1, 1974], 120 Congressional Record S25148-S25193 [July 25, 1974].) The 1974 Act's principal sponsor, Senator Bayh, expressed his dissatisfaction at the administration of prior programs in this fashion: ". . . the job is not being done as it should be [by H.E.W.]. \* \* \* We have had too many double shuffles as far as our efforts to see that programs passed by this body to deal with juveniles are being administered properly." 120 Congressional Record S25165 (July 25, 1974). Senator Hruska observed that "[l]ack of . . . administrative accountability has hurt the Federal participation in juvenile delinquency efforts in the past." Id. Consequently, it seems obvious enough that Sec. 228(a) was enacted, in part, to restrict the excessive administrative discretion which the Congress believed had contributed to the failure of earlier federal juvenile delinquency legislation.

Second, it is clear from the legislative history of the 1974 Act that Congress meant to put an end to uncoordinated, piecemeal efforts in the area of delinquency prevention; the House and Senate reports and the floor debates are replete with references to the necessity of establishing "national priorities," in Senator Hruska's words, and then adhering to them. 120 Congressional Record S25165 (July 25, 1974). Indeed, HEW's admitted inability to administer grant programs of long duration was one of the reasons the Congress selected LEAA as the preferred agency to administer the 1974 Act; the Senate report, for example, cites this testimony on the point given by an H.E.W. official: "The witness stated that major support is available from LEAA on juvenile delinquency treatment programs on a continuing basis and that HEW's juvenile delinquency programs are merely demonstration-types with planned phase-out of individual programs." S. Rept. No. 93-1011, 93d Congress, 2d session, 32-33 (July 16, 1974) (footnote omitted) (emphasis supplied). Surely, in the light of that background, it is reasonable to assume that Sec. 228(a) was meant to express, *inter alia*, the Congressional conviction that effective programs, once begun, should be continued indefinitely.

Third, we note Senator Bayh's observation that the 1974 Act "provides . . . the incentives for States and local governments as well as public and private agencies to establish effective community-based services to reduce delinquency and to rehabilitate delinquents." 120 Congressional Record S25157 (July 25, 1974) (emphasis supplied). It seems quite likely to us that Sec. 228(a) was intended to be one of the "incentives" for "effective" performance mentioned by Senator Bayh. Obviously, the prospect of continued funding for so long as a grantee performs satisfactorily is a powerful spur to competent performance.

which was placed into the record of the Senate debates by its principal author, Senator Birch Bayh, does characterize Sec. 228(a) as being "of particular interest. . ." 120 Cong. Rec. S 25164 (July 25, 1974). That remark is not further elaborated, but it undoubtedly refers to the atypical nature of Sec. 228(a). Usually, grant programs created by Congress may be definitively characterized as either discretionary or mandatory. The former are those grant programs which "are in varying degree discretionary—varying in that the class potentially eligible may be small or large, that available funds may support few grants or many, that criteria of selection and conditions of the grant may be articulated in the statute or indicated by its legislative history or may be left essentially to administrative judgment." Willcox, "The Function and Nature of Grants," (22 Ad. L. Rev. 125, 128 (1969).) By contrast, "[t]he essential difference between a discretionary and an entitlement [or mandatory] grant is that there is a right to an entitlement grant if statutory and regulatory conditions are met. Award of an entitlement grant is not an action which is committed to agency discretion. Entitlement grant statutes are directory. They provide that an agency shall award a grant if the applicant meets the statutory requirements of the Act. . . ." Madden, "The Right to Receive Federal Grants and Assistance" (37 Fed. B.J. 17, 46 (1976).) But in Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, Congress created a hybrid combination of discretionary and entitlement grants—that is, the decision whether to award a Title II grant in the first instance rests within the discretion of LEAA; however, once the initial grant has been awarded, the grantee is entitled to continuation funding as a matter of right, conditioned only upon satisfactory program performance; and as we explain in footnote 6 below, there were sound and cogent reasons for so doing.

Nevertheless, the clear import of LEAA's position in the instant case is that despite Sec. 228(a), it may decline to provide continuation funding to a Title II grantee even though the grantee's performance has concededly been better than satisfactory. There is reason to believe that in the past, LEAA officials have taken a different view of the meaning of Sec. 228(a)—a view more consistent with its facial meaning. However, it is difficult to determine precisely what NIJJDP's past practices have been with respect to Title II continuation funding, since no criteria to govern continuation funding have ever been promulgated by that unit of OJJDP.<sup>7</sup> See our proposed stipulation No. 15. Thus, perforce, the only available evidence from which to derive OJJDP's interpretation and historical administration of Sec. 228(a) is the testimony of agency officials, and it is for that purpose that we shall call three such officials to testify at the hearing in this matter: David D. West, the Acting Administrator of OJJDP at the time Project READ was denied continuation funding; Henry S. Dogin, the Administrator of LEAA at that same time, and the sole official with authority to render a final decision on continuation funding for Project READ; and John M. Rector, now an attorney advisor in the Office for Improvement in the Administration of Justice of the United States Department of Justice, and the immediate past Administrator of OJJDP.<sup>8</sup>

At the conclusion of that testimony, we expect there to be a sufficient factual predicate for the conclusion that in the immediate past, LEAA has considered Sec. 228(a) to require the provision of continuation funding to Title II grantees who perform satisfactorily, and that the reversal of that policy with respect to Project READ's recent refunding application is a deviation from previous practice which cannot be rationally supported by the agency. And of course we shall also contend that no matter what LEAA's past practices, Sec. 228(a) on its face requires that Project READ be given continuation funding for fiscal year 1980.

### III. Alternatively, The Manner By Which READ, Inc.'s Application For Funding Was Considered And Denied Was Unlawful.

It is a fundamental principle of administrative law that application of new agency policies should be prospective—applicable only to matters arising after

<sup>7</sup> See also Willcox, The Function and Nature of Grants, supra, at 128: "In [mandatory or entitlement grant] programs payment may be demanded as a matter of legal right. . . ." These criteria have never been promulgated despite their requirement by Sec. 228(a).  
<sup>8</sup> Before his tenure as administrator of OJJDP, Mr. Rector served as staff director and chief counsel of the Senate Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary; he was also serving in that capacity at the time the Juvenile Justice and Delinquency Prevention Act of 1974 was written, debated, and enacted. At least Mr. Rector's view of the meaning of Sec. 228(a) has been clearly stated: once a program has received Title II funding, "it is entitled to get continued assistance subject to an annual evaluation." Rector, "Juvenile Justice: A Congressional Priority", 61 Judicature 8, 12 (1977) (emphasis supplied).

their promulgation—and that affected parties must receive either actual or constructive notice of the agency's change in policy. See, e.g., *Boston Edison Co. v. F.P.C.*, 181 U.S. App. D.C. 222, 226, 557 F.2d 845, 849 (1977), cert. denied, 434 U.S. 956.

"Although an administrative agency is not bound to rigid adherence to its precedents, it is equally essential that when it decides to reverse its course, it must give notice that the standard is being changed, . . . and apply the changed standard only to those actions taken by parties after the new standard has been proclaimed as in effect." [Citation omitted.]

In the instant case, Project READ received neither actual nor constructive notice of the issuance of LEAA Instruction I 4510.2 (September 14, 1979), a change in LEAA policy which materially affected LEAA's decision not to refund Project READ.<sup>10</sup> Moreover, Project READ received neither actual nor constructive notice of either the possibility or the procedure for making an exception which appears in Para. 4.e. of the September 14, 1979, "instruction."<sup>11</sup>

### IV. Conclusion

For the foregoing reasons, Project READ asks that an order be entered directing LEAA to comply with the mandate of Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 by providing fiscal year 1980 continuation funding to Project READ; alternatively, Project READ asks for an order directing LEAA to reconsider its decision to deny continuation funding for Project READ.

Respectfully submitted.

MONA LYONS,  
JOHN W. KARR,  
Attorneys for READ, Inc.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand-delivered this 25th day of January, 1980, to John J. Wilson, Esquire, Attorney for LEAA.

JOHN W. KARR.

U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC., ISSUE OF DENIAL OF A CONTINUATION GRANT APPLICATION FOR NATIONAL INSTITUTE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TRAINING FUNDS (PRE-HEARING BRIEF)

### A. Statement of Facts

On August 23, 1979, LEAA received an application from READ, Inc. for continuation funding of a project entitled "Project READ (Reading Enrichment through Arts and Drama)," a comprehensive literary and arts program for young people in the juvenile justice system. The application, No. 9-1241-0-MDJJ, was submitted to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) under Federal Program Number 16.501. Because it was a continuation grant application, it was routed to the cognizant OJJDP Division, the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP). The NIJJDP program is listed in the catalog of Federal Domestic Assistance as program number 16.518 (Attachment 1). The NIJJDP is established in the OJJDP, Law Enforcement Assistance Administration under Part C of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601, et seq., as amended (Public

<sup>10</sup> For the manner in which the issuance of the Sept. 14, 1979, "instruction" affected LEAA's decision not to refund Project READ, see the statement of facts in our Jan. 4, 1980, letter to Henry S. Dogin, at pp. 4-5.

<sup>11</sup> We note that even though Project READ was never informed about the possibility or procedure for seeking an exception, Ms. Miller nevertheless recommended to OJJDP's acting administrator, Mr. West, that an exception be granted if necessary to refund Project READ. Mr. West, however, without even reading Ms. Miller's recommendation, decided "irrevocably" against the granting of an exception. No reasons for that decision have ever been provided to Project READ, either orally or in writing. (See pp. 6, 8 of our Jan. 4, 1980, letter to Mr. Dogin.) The manner by which Mr. West reached that decision was, we maintain, impermissible under the holdings of cases such as *WAIT Radio v. F.O.C.*, 135 U.S. App. D.C. 317, 418 F.2d 1153 (1969).

Law 93-415, as amended by Public Law 94-503 and Public Law 95-115) (Juvenile Justice Act).

Project READ was initially funded by NIJJDP on February 16, 1976, in the amount of \$210,303, for the period from February 16, 1976 to March 31, 1977, through a grant to the American Correctional Association. The project received a continuation grant award on March 22, 1977 for the period from April 1, 1977 to March 31, 1978. A second continuation grant was subsequently awarded on December 15, 1977, in the amount of \$467,760, for the period December 15, 1977 to December 14, 1979 (subsequently receiving a no cost extension to June 30, 1980). The current application requested additional two year funding in the amount of \$601,535 to commence on January 1, 1980.

On August 3, 1979, Dr. James C. Howell, Director of the NIJJDP met with Dr. Janet Carsetti, Project Director for Project READ, to discuss the prospects for continuation funding support of Project READ through NIJJDP. Dr. Howell informed Dr. Carsetti that continuation funding through NIJJDP was "unlikely" because of a higher Institute program priority in the training area—the establishment of an NIJJDP training center program to carry out the mandate of Section 248(a) (42 U.S.C. 5659) of the Juvenile Justice Act. The commitment of \$825,000 to this new activity out of a total training budget of \$1,000,000, coupled with continuation of other high priority training activities, did not leave sufficient resources available for the continuation of Project READ.

Dr. Howell offered to assist the project in obtaining funding from other sources, such as HEW, the National Institute of Corrections, or the OJJDP Special Emphasis program, established under Part B, Subpart II of the Juvenile Justice Act (42 U.S.C. § 5634-5637). The Special Emphasis Program is listed in the Catalog of Federal Domestic Assistance as number 16.517 (Attachment 2). The Special Emphasis Division is an organizationally and fiscally separate unit within OJJDP. It has a program budget and program funding authority separate from that of NIJJDP. Dr. Howell suggested that a continuation application be submitted for Project READ with the understanding that it would be referred to other possible fund sources for review. At no time did Dr. Howell give any indication to Dr. Carsetti that funding was "virtually assured" through NIJJDP or other units of OJJDP.

Following the submission to LEAA of the READ, Inc., continuation application on August 23, 1979, Dr. Howell met with Ms. Margie Miller, Juvenile Justice Specialist, Special Emphasis Division. It was agreed that Special Emphasis would review the application in conjunction with the Youth Arts Initiative and Project New Pride.

On September 19, 1979, Dr. Howell forwarded the application to Emily C. Martin, Director of the Special Emphasis Division, for review (Attachment 3). Following staff review, the application was returned to NIJJDP on November 20, 1979.

As a result of the review, it was determined that, although the project was meritorious, no recommendation for funding could be made because of current LEAA/OJJDP policy to award action grants through published guidelines and a competitive application review process (Attachment 4). The basis for this determination was agency policy set forth in LEAA Instruction I 4510.2, September 14, 1979 (Attachment 5) and OJJDP's implementation of this policy for the continuation of unsolicited Special Emphasis grants set forth in a memorandum dated October 17, 1979, from David D. West, Acting Associate Administrator, OJJDP, to Emily C. Martin (Attachment 6).

The latter memorandum implemented the Instruction as it pertained to the Special Emphasis program, giving these grantees an opportunity to compete under an announced and competitive program for additional funding. The agency policy set forth in the above cited Instruction directed that "grant applications should be considered for categorical funding primarily in response to announced and published programs." The purpose of the policy was to further competition for assistance to the maximum extent practicable. While this policy permits exceptions, no determination was made by OJJDP staff to pursue an exception. That no exception would be pursued was affirmed by the Acting Associate Administrator, OJJDP, at a meeting between the parties to this action on December 20, 1979.

Upon receipt of the Special Emphasis Division memorandum of November 20, 1979, Dr. Howell sent a denial letter, dated November 28, 1979, to Dr. Carsetti

informing her that OJJDP would be unable to continue support for Project READ (Attachment 7). The letter stated, in part: "Our Fiscal Year 1980 training priorities within NIJJDP have been established, and do not include the type of training activity under Project READ."

Subsequent to this notice of denial and in response to a letter from Dr. Carsetti dated November 26, 1979, a meeting was arranged on December 20, 1979, between Dr. Carsetti and OJJDP staff to discuss the rejection action. At the end of the meeting, Acting Associate Administrator David West affirmed Dr. Howell's rejection letter, stating that he saw no basis for reconsideration of the rejection of the READ application. This appeal was filed following the meeting.

#### B. Legal Issues

I. *Section 228(a) of the Juvenile Justice Act Does Not Mandate Funding of Projects in Perpetuity.*—The appellant cites Section 228(a) (42 U.S.C. 5638(a)) of the Juvenile Justice Act as a basis for requesting an order directing OJJDP to continue funding of Project READ. Section 228(a) provides that:

"Sec. 228. (a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

This statutory provision is not mandatory. Rather, it states the policy of Congress for continuation which the Administration is to implement.

LEAA has implemented this provision through the establishment of policies that require advance notice to grantees of the total project period for which funding is contemplated. These policies, as they apply to Juvenile Justice Act funds, are fully consistent with Section 228(a). LEAA's Office of General Counsel, in an opinion letter dated February 24, 1976 (Attachment 8), set forth the legislative history of Section 228(a) and the legal basis for the implementation policy established in State Planning Agency Grants Guideline M 4100.1D, CHG 1, July 10, 1975, Chap. 3, Par. 82(o) (applicable to formula grants under Part B, Subpart I of the Juvenile Justice Act) and in Financial Management Guideline M 7100.1A, CHG 3, October 29, 1975, Chap. 7, Par. 12 (applicable to Special Emphasis Grants). The former guideline was revised in M 4100.1F, CHG 3, July 25, 1978, Chap. 3, Par. 52(s). Copies of these guideline provisions are appended as Attachments 9-11 respectively.

The policy established by the guidelines is that programs funded with formula grant and Special Emphasis funds will establish a minimum (or maximum) length of funding, that is a project period, for competitive programs under which individual project grant applications will be funded. This policy meets the underlying Congressional intent of Section 228(a) that funded projects be assured of "an orderly method of development, implementation and length of funding."

While these guideline policies have not been specifically made applicable to grants funded under the NIJJDP program, NIJJDP has followed the principles of this policy. NIJJDP has historically funded project activities through individual program solicitations, competitive unsolicited proposal cycles, and occasionally on a non-competitive basis. The READ project falls in this latter category. Projects funded on such a basis are generally funded from grant to grant with each grant being for a discrete project period. Absent a written commitment for future funding, applications for continuation funding must either compete for funding or be considered on an individual, non-competitive basis with such factors as availability of funds, success of the project in meeting its objectives, completion of project activity, consistency with Institute program priorities, etc., determining the continuation funding decision. Project READ had been funded for three separate and distinct project periods, the end of each such period representing the maximum commitment of fund support for the project. READ, Inc., has accepted three awards with specific termination dates, never asserting a right to receive continuation funding. Never has READ, Inc., complained, before now, that its grant by grant funding was inconsistent with the purposes underlying the Section 228(a) statutory policy or outside of the discretion of this agency in administering the Institute's discretionary grant program.

II. *READ, Inc., Has No Entitlement to Fifth and Sixth Year Funding.*—The case law clearly indicates that READ, Inc., has no legitimate claim of entitlement to fifth and sixth year funding. NIJJDP grants, awarded under the au-

thority of Section 241(e) (4) (42 U.S.C. 5651(e) (4)) of the Juvenile Justice Act are clearly discretionary grant funds. The court have never found that an individual applicant has a right to receive a discretionary grant and have refused to mandate the award of specific discretionary grants. The applicant for discretionary funds has a right to have its grant application rationally considered in accordance with law and have applied the Standards of 5 U.S.C. § 706 to determine whether denials of such grants are arbitrary, capricious, or not in accord with law or procedural requirements.

In *Clark v. Richardson*, 431 F. Supp. 105 (D.N.J. 1977) the court reviewed a challenge to the award of discretionary grants by the Economic Development Administration (EDA) to local governments. The court held that its review was limited to whether the Secretary "abused his discretion" in applying the statutory criteria of the authorizing legislation in the consideration of discretionary grant applications. The court also said that in reviewing agency action under the abuse of discretion standard, it must "confine itself to the issues of whether the agency action on the grants was consistent with the mandate of Congress and not arbitrary and capricious under the standards of 5 U.S.C. § 706." (431 F. Supp. at 125)

In *Mil-ka-ko Research and Development Corporation v. Office of Economic Opportunity*, 352 F. Supp. 169 (D.D.C. 1972), affirmed, 162 U.S. App. D.C. 97, 497 F.2d 684 (1974), an action was brought by grantees to review a decision denying their application to refund a discretionary project under the Economic Opportunity Act. The court, after studying the record and the enabling legislation establishing the program, concluded that rejection of the grant by the Office of Economic Opportunity was not arbitrary, capricious or without the support of substantial evidence (352 F. Supp. at 174).

The court went on to explain that a denial of an application for refunding is not a denial of a legitimate claim of entitlement, as would be the case in a termination of a grant, but is merely the disappointment of a unilateral expectation of a benefit. The plaintiff in such a case has no claim unless the agency has acted arbitrarily and capriciously in the exercise of its discretionary power not to refund the plaintiff. The court in reviewing the administrative decision may not substitute its judgment for that of the administrative decisionmaker. So long as the reasons given the agency provide an adequate explanation of the rationale for the denial of funding, the court must uphold the agency's decision. "It is enough that the Administrator has acted within the statutory bounds of his authority, and that his choice among possible alternative(s) . . . is one which a rational person could have made." *Mil-ka-ko, supra*, at 173.

In *National Consumer Information Center v. Gallegos*, 549 F.2d 828 (C.A.D.C. 1977), a consumer information organization brought an action against the director of the Community Services Administration to challenge the termination of funding of a program. The Court of Appeals held that the continued funding of the program was discretionary with the director, and that termination of funding did not constitute the denial of due process. The National Consumer Information Center (NCIC) argued that four years of funding had created a mutual understanding which rises to the status of a constitutionally protected right. The consumer group argued that it had received an informal representation from the director that NCIC would receive continued funding. The court found that even if this were true, it would not elevate NCIC's funding rights to a constitutional status that requires procedures in addition to those that are statutorily mandated. NCIC had always received grants on a year-to-year basis, and grants made on this basis, even over a period of years, cannot create more than a unilateral expectation of continued funding which is not entitled to constitutional protection.

In *City of Beaver Falls v. the Economic Development Administration*, 439 F. Supp. 851 (1977), the plaintiff city brought a suit against the Economic Development Administration to enjoin the payment of a grant (to another party). The Court held that the general scheme of the statute was to provide a method for funding by the Federal Government of local public works projects to be initiated by State, county, and local government units for the purpose of relieving the effects of unemployment in depressed areas. The court held that the congressional aim of this project was to provide jobs. No one particular grant applicant has a vested interest or any sort of monopoly. The legislation is concerned only that such projects are carried out, not who is doing them.

Had it been the intent of Congress to create a vested right for the plaintiff and thousands of other applicants under the . . . programs, it would have ap-

propriated sufficient amounts to fund all eligible project applications. This was not done. It is, therefore, doubtful that plaintiff's inability to fulfill a unilateral expectation of augmented . . . funding rises to the level of irreparable harm. [*City of Beaver Falls, supra* at 854]

In viewing the contentions of READ, Inc. against the facts and the law, it is apparent that its claim must fail. The success of any discretionary grant funded project in meeting its objectives is only one factor in an agency determination whether to continue funding a grant. No assurance of or commitment to continuation funding for Project READ was ever made by OJJDP. Dr. Howell had informed Dr. Carsetti of the unlikelihood of NIJJDP continuation funding prior to the submission of the application. Dr. Howell's request that the Special Emphasis Division review the application conferred no rights on the applicant and was done only as a matter of courtesy to the applicant. The applicant was in an entirely different position as to possible Special Emphasis funding than those existing Special Emphasis grantees eligible for continuation funding under OJJDP's policy applicable to Special Emphasis grantees. Further, Project READ was neither entitled to notification of internal agency policy applicable to future funding of categorical grant programs (I 4510.2, September 14, 1979) nor entitled to request or receive an exception to the established policy for Special Emphasis grant continuations. Discretion to request or approve exceptions is vested in the cognizant program office. Neither NIJJDP nor the Special Emphasis Division chose to request an exception because of funding limitations and new training program priorities for fiscal year 1980.

As the case law demonstrates, the discretionary funding of Project READ for three separate project periods conferred no vested right or entitlement to continue to receive funding beyond the end of the last project period.

Project READ, having only a unilateral expectation of receiving a continuation grant, must establish that the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accord with the law. The facts establish clearly that the agency did not act arbitrarily or capriciously in exercising its discretionary authority not to continue funding Project READ and acted in a manner consistent with the agency policy for the implementation of Section 228(a) of the Juvenile Justice Act. Changed priorities, specifically the decision to set aside \$825,000 of a total Fiscal Year 1980 training budget of \$1,000,000 for the establishment of a statutorily mandated national training center program, are ample justification for the determination not to continue the funding of Project READ.

CHARLES A. LAUER,  
Deputy General Counsel.  
JOHN J. WILSON,  
Office of General Counsel.

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, LAW ENFORCEMENT  
ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC.

Proposed Stipulations of READ, Inc.

*History of READ, Inc.*

1. Since 1976, READ, Inc. (hereinafter referred to as "Project READ") has received three consecutive grants from the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA") of the United States Department of Justice; all three grants were awarded pursuant to the provisions of Title II of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, 88 Stat. 1109, as amended by the Juvenile Justice Amendments of 1977, Public Law 95-115, 91 Stat. 1058 (42 U.S.C. Section 5601, *et seq.*).

2. The recipient of the first one-year grant, LEAA No. 76 JN-99-0017, was the American Correctional Association. A second one-year grant, LEAA No. 77 JN-99-0011, was awarded to Project READ, and the third grant, LEAA No. 78 JN-AX-0006, which provided continuation funding for a two-year period, was also awarded to Project READ.

3. Dr. Janet K. Carsetti has been the director of Project READ since its inception.

4. Project READ's performance of its obligations under each of these three grants has been fully satisfactory. Mr. James C. Howell, the Director of LEAA's National Institute for Juvenile and Delinquency Prevention and the agency official directly responsible for monitoring and evaluating Project READ performance, reported on September 19, 1979, that "[w]ithout a doubt, the project has been extremely successful." Further, Ms. Marjorie Miller, a Juvenile Justice Specialist employed in the Special Emphasis Division of LEAA's Office of Juvenile Justice and Delinquency Prevention, who also conducted an evaluation of Project READ, reported on October 5, 1979, that it was a program "that works" (emphasis in original) and that it "should be nominated for exemplary status."

5. Project READ's current grant monies will be fully expended as of January 31, 1980.

#### DENIAL OF CONTINUATION FUNDING

6. On August 22, 1979, Project READ submitted to LEAA, its application for continuation funding in fiscal year 1980.

7. On September 14, 1979, Henry S. Dogin, Chief Administrator of LEAA, issued *Instruction I-4510.2*, entitled "Program Announcement Standards for Categorical Grants", which, *inter alia*, declared it to be new LEAA policy that: "Program objectives for which grants and other agreements may be made should be covered by program announcements. Competition for assistance shall be furthered to the maximum extent practicable by furnishing the public with sufficient and timely information, including publication of program information in the Federal Register." [LEAA *Instruction I 4510.2* (September 14, 1979), para. 4, p. 2.]

8. Project READ received neither actual nor constructive notice of Mr. Dogin's September 14, 1979 "instruction" or of the new LEAA policy contained therein.

9. Paragraph 4.e. of the September 14, 1979 "instruction" provides for "exceptions" to the LEAA policy set forth therein.

10. Project READ received neither actual nor constructive notice of the existence of an "exception" policy or of the procedures for making exceptions.

11. On December 5, 1979, Dr. Carsetti received a letter from Mr. Howell, dated November 28, 1979. Mr. Howell stated that his letter was "in response to your grant application for continuation of Project READ" and he concluded that "I regret to inform you that we are unable to offer continued LEAA support for your project at this time."

12. The only reason supplied by Mr. Howell in his November 28, 1979, letter for the decision not to provide continuation funding for Project READ were that the "Fiscal Year 1980 training priorities" of LEAA's National Institute for Juvenile Justice and Delinquency Prevention "have been established, and do not include the type of training activity under Project READ." Mr. Howell's letter further stated that "[w]hile [LEAA's Special Emphasis] Division has a strong interest in continuing the project, they have informed us that funds are not available to fund the project in fiscal year 1980."

13. Mr. Howell's November 28, 1979, letter to Dr. Carsetti did not refer to the September 14, 1979, "instruction" or to the exception provision set forth therein.

14. The November 28, 1979, letter from Mr. Howell was the only notice Project READ received from LEAA concerning the denial of continuation funding.

#### LACK OF CONTINUATION FUNDING CRITERIA

15. There are no LEAA regulations or guidelines, published or unpublished, which establish criteria for continuation funding of projects funded by the National Institute for Juvenile Justice and Delinquency Prevention under Title II of the Juvenile Justice and Delinquency Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended.

Respectfully submitted,

MONA LYONS,  
JOHN W. KARR,  
Attorneys for READ, Inc.

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Proposed Stipulations of READ, Inc., was delivered by hand this 25th day of January, 1980, to John Wilson, Counsel for LEAA, Office of General Counsel, United States Department of Justice, Washington, D.C. 20531.

JOHN W. KARR.

#### UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC.

#### Stipulations of Parties

##### History of READ, Inc. Funding

1. Since 1976, READ, Inc. (hereinafter referred to as "Project READ") has received three consecutive grants from the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA") of the United States Department of Justice; all three grants were awarded pursuant to the provisions of Title II Part C of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, 88 Stat. 1109, as amended by the Juvenile Justice Amendments of 1977, Public Law 95-115, 91 Stat. 1048 (42 U.S.C. Sec. 5601, *et seq.*).

2. The recipient of the first one-year grant, LEAA No. 76 JN-99-0017, in the amount of \$210,303 was the American Correctional Association. A second one-year grant, LEAA No. 77 JN-99-0011, in the amount of \$218,632 was awarded to Project READ. The third grant, LEAA No. 78 JN-AX-0006, which was in the amount of \$467,760 and provided continuation funding for a two-year period, was also awarded to Project READ.

3. Dr. Janet K. Carsetti has been the director of Project READ since its inception.

4. Project READ's performance of its obligations under each of these three grants has been fully satisfactory. Dr. James C. Howell, the Director of LEAA's National Institute for Juvenile Justice and Delinquency Prevention (hereinafter NIJJDP) and the agency official directly responsible for monitoring and evaluating Project READ's performance, reported on September 19, 1979, that "(w)ithout a doubt, the project has been extremely successful." Further, Ms. Marjorie Miller, a Juvenile Justice Specialist employed in the Special Emphasis Division of LEAA's Office of Juvenile Justice and Delinquency Prevention (hereinafter OJJDP) reported on October 5, 1979, that Project READ was a program "that works" (emphasis in original) and that it "should be nominated for exemplary status."

5. On or about January 9, 1980, Project READ received a no cost extension of its current grant to June 30, 1980. However, by Project READ's calculations, current grant funds will be fully expended by January 31, 1980.

#### DENIAL OF CONTINUATION FUNDING

6. On August 3, 1979, Dr. James C. Howell, Director of NIJJDP, informed Dr. Carsetti that continuation funding from NIJJDP for Project READ was "unlikely" but offered to assist Project READ in obtaining continuation funding from other sources.

7. On August 22, 1979, Project READ submitted to LEAA its application for continuation funding for two additional years, in the amount of \$601,535.

8. On September 14, 1979, Henry S. Dogin, then Administrator of LEAA, issued *Instruction I-4510.2*, entitled "Program Announcement Standards for Categorical Grants", which, *inter alia*, declared it to be LEAA policy that:

"Program objectives for which grants and other agreements may be made should be covered by program announcements. Competition for assistance shall be furthered to the maximum extent practicable by furnishing the public with sufficient and timely information, including publication of program information in the Federal Register." [LEAA *Instruction I 4510.2* (September 14, 1979), para. 4, p. 2.]

9. Project READ received neither actual nor constructive notice of Mr. Dogin's September 14, 1979 "instruction" or of the new LEAA policy contained therein.

10. Paragraph 4.e. of the September 14, 1979 "instruction" provides for "exceptions" to the LEAA policy set forth therein.

11. Project READ received neither actual nor constructive notice of the existence of an "exception" policy or of the procedures for making exceptions.

12. On December 5, 1979, Dr. Carsetti received a letter from Dr. Howell, dated November 28, 1979. Dr. Howell stated that his letter was "in response to your grant application for continuation of Project READ" and he concluded that "I

regret to inform you that we are unable to offer continued LEAA support for your project at this time."

13. The reason supplied by Dr. Howell in his November 28, 1979, letter for the decision not to provide continuation funding from NIJJDP for Project READ was that the "Fiscal Year 1980 training priorities" of NIJJDP "have been established, and to not include the type of training activity under Project READ." Dr. Howell's letter further stated that "[w]hile [LEAA's Special Emphasis] Division has a strong interest in continuing the project, they have informed us that funds are not available to fund the project in Fiscal Year 1980."

14. Dr. Howell's November 28, 1979, letter to Dr. Carsetti did not refer to the September 14, 1979, "instruction" or to the exception provision set forth therein.

15. The November 28, 1979, letter from Dr. Howell was the only written notice Project READ received from LEAA concerning the denial of continuation funding.

16. On December 20, 1979, OJJDP Acting Associate Administrator David D. West, at a meeting between the parties affirmed the rejection action, stating that he saw no basis for reconsideration of the Project READ application.

#### LACK OF CONTINUATION FUNDING CRITERIA

1. There are no LEAA regulations or guidelines which establish criteria for continuation funding of Project READ by the National Institute of Juvenile Justice and Delinquency Prevention under Title II, Part C of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, 88 Stat. 1109, as amended by the Juvenile Justice Amendments of 1977, Public Law 95-115, 91 Stat. 1048 (42 U.S.C. Sec. 5601, *et seq.*).

#### DOCUMENTS

1. The parties stipulate to the authenticity of the documents identified in the attached list.

*Attorneys for Project READ.*

*Office of LEAA General Counsel.*

Catalog of Federal Domestic Assistance—Program 16.518—National Institute for Juvenile Justice and Delinquency Prevention  
 Catalog of Federal Domestic Assistance—Program 16.517—Special Emphasis Prevention and Treatment Programs  
 Memorandum dated September 19, 1979 from James C. Howell to Emily Martin, Subject: Project READ review  
 Memorandum dated November 20, 1979 from Vermont McKinney to James Howell, Subject: Project READ Continuation  
 LEAA Instruction I 4510.2, September 14, 1979—"Program Announcement Standards for Categorical Grants"  
 LEAA Instruction I 4560.4, September 14, 1979—"Competitive Categorical Grant Application Review Policy"  
 LEAA Instruction I 4040.2, September 14, 1979—"The Project Period System of Obligor Funds for Categorical Grants and Cooperative Agreements"  
 Memorandum dated October 17, 1979 from David West to Emily Martin, Subject: Continuation of Unsolicited Grants  
 Letter dated November 28, 1979 from James Howell to Janet Carsetti rejecting Project READ grant application  
 Letter dated February 24, 1976 from Thomas J. Madden to John Rector regarding LEAA implementation of Section 228(a) of Juvenile Justice Act  
 LEAA State Planning Agency Grants Guidelines M 4100.1F CHG 1, Chap. 3, Par. 52 o, May 20, 1977—Continuation Support Policy under the Formula Grant program  
 LEAA State Planning Agency Grants Guidelines M 4100.1F CHG 3, Chap. 3, Par. 52 s, July 25, 1978—Revised Continuation Support policy under the Formula Grant program  
 LEAA Financial Guideline M 7100.1A CHG 3, Chap. 7, Par. 12, October 29, 1975—Continuation Support policy under the Special Emphasis Program  
 Fiscal Year 1980 Subprogram Plan—National Institute for Juvenile Justice and Delinquency Prevention  
 Memorandum dated October 5, 1979 from Marjie Miller to David West through Emily Martin, Subject: Continuation of Program—Project READ

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC.

Post-Hearing Brief of READ, Inc.

The principal issue in this case is whether Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974,<sup>1</sup> which provides that program funded under Title II of the Act "shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory," has been violated by the refusal of the Office of Juvenile Justice and Delinquency Prevention<sup>2</sup> to provide continuation funding to READ, Inc.,<sup>3</sup> a Title II grantee, even though OJJDP concedes that Project READ's performance under three previous Title II grants "has been fully satisfactory."<sup>4</sup>

Simply put, the dispute between Project READ and OJJDP turns on their respective readings of Sec. 228(a): Project READ views Sec. 228(a) to be a mandatory instruction from Congress to the agency,<sup>5</sup> while OJJDP takes it to be a merely discretionary directive. Accordingly, at the conclusion of the hearing in this matter, counsel were asked to submit briefs addressing the "legislative history or background"<sup>6</sup> of Sec. 228(a), with a list included of the materials thought by counsel to constitute the relevant history and background. We think the pertinent documents to be these:

1. *Hearings on H.R. 6265, H.R. 9298, and H.R. 15276, To Provide a Comprehensive, Coordinated Approach to the Problems of Juvenile Delinquency and for Other Purposes Before the Subcommittee on Equal Opportunity of the House Committee on Education and Labor, 93d Congress, 2d session (1974).*

2. *The Juvenile Justice and Delinquency Prevention Act: Hearings on S. 3148 and S. 821 Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 92d Congress, 2d session and 93d Congress, 1st session (1972-1973).*

3. House Reports: No. 93-1135 accompanying H.R. 15276 (Comm. on Education and Labor) and No. 93-1298 (Comm. of Conference).

4. Senate Reports: No. 93-1011 (Comm. on Judiciary) and No. 1103 (Committee of Conference).

5. 120 Congressional Record (1974):

July 1, H.R. 15276 considered and passed House.

July 25, considered and passed Senate as S. 821.

July 31, S. 821 considered and passed House, amended, in lieu of H.R. 15276.

August 19, Senate agreed to conference report.

August 21, House agreed to conference report.

6. 10 weekly compilation of Presidential Documents No. 37, Presidential statement (Sept. 8, 1974).

What follows is our extraction and analysis of excerpts from the documents listed above, excerpts which demonstrate—we think beyond peradventure—that Congress designed Sec. 228(a) with care and precision to rectify funding problems which had severely undermined previous federal efforts in the area of juvenile delinquency.<sup>7</sup>

<sup>1</sup> Public Law 93-415, 88 Stat. 1109 (1974), as amended by the Juvenile Justice Amendments of 1977, Public Law 95-115, 91 Stat. 1048 (42 U.S.C. Sec. 5601 *et seq.*) Sec. 228(a), 42 U.S.C. Sec. 5638(a), provides in its entirety:

"In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

<sup>2</sup> Referred to hereinafter as "OJJDP."

<sup>3</sup> Referred to hereinafter as "Project READ."

<sup>4</sup> Stipulations of Parties, para. 4.

<sup>5</sup> Project READ's understanding of Sec. 228(a) was strongly supported by the testimony of John M. Rector, who has not only served as chief administrator of OJJDP, but who also was the principal draftsman of the Act. Because of Mr. Rector's latter role, his testimony should be given substantial weight. See 2A Sutherland, *Statutory Construction* Sec. 48.12 (4th Ed.).

<sup>6</sup> *Association of National Advertisers v. F.T.C.*, — F.2d — (D.C. Cir. No. 78-1421, Dec. 27, 1979) (slip op. at p. 25).

<sup>7</sup> Given that Senator Birch Bayh was the principal Congressional sponsor of the 1974 Act and of the several related bills which preceded it, our discussion will principally focus on proceedings in the Senate.

On February 8, 1972, Senator Birch Bayh introduced S. 3148, a bill which was a forerunner of the legislation eventually enacted as the Juvenile Justice and Delinquency Prevention Act of 1974.<sup>8</sup> Upon its introduction, Senator Bayh described the bill as one which recognized that "nothing short of restructuring the entire Federal effort will produce the desperately needed national leadership in the fight against delinquency," and one which would authorize "substantial new resources to develop and implement effective delinquency prevention, treatment, and rehabilitation programs."<sup>9</sup>

S. 3148 contained no language similar to that which later appeared in the 1974 Act as Sec. 228(a); rather, the 1972 bill was completely silent on the subject of continuation funding for programs initiated under its aegis. However, when hearings on S. 3148 were held before the Subcommittee to Investigate Juvenile Delinquency of the Senate Judiciary Committee, the lack of any expressly stated Congressional policy on continuation funding for grantees quickly emerged as one of the principal criticisms of S. 3148. For example, on May 16, 1972, Robert B. Langworthy, a member of the National Board of the YMCA and chairman of its Juvenile Justice Advisory Commission, appeared before the Subcommittee accompanied by, among others, Julius Jones, director of a YMCA-sponsored residential facility for young people referred by juvenile courts, and Richard Booze, Director of the National Center for Youth Outreach Workers. In his prepared statement, Mr. Langworthy suggested that "[p]rovisions should be made for longer term funding of programs" as a significant means of "strengthening" the bill's capacity to achieve its goal to not only develop but also to implement effective programs,<sup>10</sup> a suggestion which was explored by Senator Bayh in the following colloquy with Mr. Langworthy, Mr. Jones and Mr. Booze:

"[Mr. LANGWORTHY] We also encounter, as you know, many other private agencies and also other kinds of agencies where there is a fear problem resulting from programs being funded for only 1 year at a time. It seems that about the time you have got your program funded and are getting well underway you are beginning to have to start to work on funding for the following year. There is an inordinate amount of staff time and volunteer board members' time spent in worrying about the ensuing year's funding when the funding is provided for only 1 year at a time.

"The only thoughts we would have about the bill would be that maybe there could be a little sharper focus on the major intent of the bill, to indicate that its major intent is for delinquency prevention programs as well as for treatment programs. And also that there be the provision for long-term funding of programs, which we would hope might be set for 2 years or more.

"Senator BAYH. Then the question, of course, resolves itself into the limited funds for these programs. It will be necessary to double or triple the available funds if we are going to have all of these basic programs. LEAA has limited its jurisdiction to those youths who are within the juvenile justice system. HEW has jurisdiction of delinquency prevention programs but most of the funds are in LEAA. I suppose that is why LEAA would not refund the Chattanooga program. That is why our bill, S. 3148, establishes a program emphasizing prevention but not limiting who is covered by a program. Do we have a general agreement that a coordinated, unified approach to delinquency is better?

"Mr. JONES. It is much better because we have learned that it is more traumatic for the offender to treat him for 1 year in a program similar to what we were doing, and then have it cut off and eliminated, and possibly it would be better to send him to an institution for 6 months because all of a sudden we cast him back onto the street from which we rescued him. And this business of not knowing from one 12-month period to the next what we will be doing a year later, I think, would be eliminated by this bill.

"Senator BAYH. Let me be the devil's advocate. Don't I, as a responsible legislator, have a responsibility of seeing that the program is functioning properly before I extend it? Would it be possible to provide for 1 year as a probationary period, and after the program has proven it is effective, then extend the program for 2, 3, or 4 years?

"Mr. JONES. Then we have no problem with that.

<sup>8</sup> The complete text of S. 3148 appears in "The Juvenile Justice and Delinquency Prevention Act: Hearings on S. 3148 and S. 821 Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary," 92 Congress, 2d session and 93d Congress, 1st session 7-42 (1972-1973).

<sup>9</sup> Id., at 42 (emphasis supplied).

<sup>10</sup> Id., at 181.

"Mr. BOOZE. That would be a lot more acceptable than the current situation. There is absolutely no difficulty in terms of asking a program to prove itself. What we are talking about is how ridiculous it is for a highly qualified person, who is qualified enough to direct a program, having to spend from 2, 3, or 4 months of his time involved in refunding efforts, rather than running or directing the program.

"Senator BAYH. Isn't it reasonable to suggest that there should be some period of time in which the YMCA's demonstrate that a program will work, once an agency has established a working program meeting reasonable criteria, then the program will be funded as long as it continues to meet these criteria? Maybe there should be an annual review, but, not the current situation where it is never clear whether a program will be refunded. Is that a reasonable program?

"Mr. LANGWORTHY. We think that is extremely reasonable. We think there should be review every year to make sure the program is doing what it was set up to do. But, we feel that having no idea at all whether we are going to get refunded makes it very difficult to run that program, makes it very difficult to get the best staff and it just interferes with the efficiency and success of the program in many, many ways, not only in this area but in so many other areas in Government funding that some of us have been involved in, as individuals.

"Senator BAYH. I appreciate the critique about the multiyear funding. Let us work together on some language which can accomplish what we all recognize is the goal.

"Mr. BOOZE. Senator, there is one other aspect too, and that is that because the funding picture is so dim there are many agencies who would like to take advantage of the training offered by the national center that are reluctant to get involved in these kinds of programs because they do not want to have to go through the hassle of refunding from year to year.

"Mr. LANGWORTHY. And because they know that if they do not get refunded, then their agency is blamed by the constituency and the blame does not rest on the Federal agency that declined to refund them. The blame is placed on the YMCA or the Boys' Club or whatever agency it is that has to close down the program at the end of the year: a program that seems to be doing a good job. They do not want to go through that risk to their own financial solvency of maybe being put into the position of almost having to continue out of their own very slim budgetary resources, and this is why many very worthwhile agencies do not want to get involved.

"Senator BAYH. Let us work out some language with your help, please, on this multiyear funding with review, which requires everybody to stretch to meet the standards, but does not require a lot of red tape. I appreciate your criticism about the funding level. The funding level in our bills are pragmatic but we know, though, that we are not going to get nearly the dollars we want, so perhaps we should raise the level."<sup>11</sup>

The importance of the continuation funding problem was also stressed by Dr. Rhetta M. Arter of the National Board of the YWCA. Dr. Arter's prepared statement observed:

"Apparently, efforts to induce local governments to assume financial responsibility for projects "pump-primed" by Federal funding have established policies that keep private sponsoring organizations under relentless *refund* pressures. The myth that permanent funding might become available miraculously through non-Federal sources after one or two years of Federal aid is built into guidelines, applications, and award conditions. The result is not continuity of funding through other sources; it is rather the wasteful termination of short-term projects. This whole problem calls for assessment in relation to legislation designed to encourage and stabilize community-based projects."<sup>12</sup>

Dr. Arter and Senator Bayh then engaged in this exchange:

"[Dr. ARTER]. The other item that I would bring to your attention is that we continued to struggle not only with initial funding but with refunding. And we hope to be able to submit to this committee a supplementary statement to that one already filed to try to bring to your attention some of the refunding problems that we are now having. We have selected—

"Senator BAYH. I hate to interrupt but we need to know about the problems of refunding. I cannot think of anything that does more to demolish the hopes

<sup>11</sup> Id., at 156, 157, 174-176.

<sup>12</sup> Id., at 277 (emphasis in original).

of a community, particularly the volunteers who are giving their time and effort to accomplishing certain goals, than to deny a successful program refunding.

"So, if you could give us a chapter and verse on the YWCA's experience in refunding, it would be a great help to us.

"Dr. ARTER. We would like to, and we certainly hope we assess it in the light of the potential damage to the many young people to whom we feel we have made a commitment and a promise."<sup>13</sup>

S. 3148 was not reported to the floor during the Ninety-Second Congress; consequently, in the Ninety-Third Congress, on February 3, 1973, Senator Bayh and Senator Marlowe Cook introduced S. 821, the second version of what would ultimately be enacted into law in the form of the 1974 Act. This second bill responded to the testimony given in the earlier hearings on the necessity of directly confronting the question of continuation funding, and it fulfilled Senator Bayh's earlier pledge to "work out some language"<sup>14</sup> to address the issue. In its Sec. 407(b), S. 821 provided:<sup>15</sup>

"In accordance with criteria set forth by the Director, grants or contracts may provide for long-term funding, provided that such grants or contracts provide for yearly evaluation to ascertain if the goals of such grants or contracts are being achieved." [Emphasis supplied.]

Once again, in his remarks upon introduction of the bill, Senator Bayh emphasized that its purpose was not only development, but also "implementation" of effective programs to combat juvenile delinquency.<sup>16</sup>

And again, in hearings on the new, revised bill, witnesses repeatedly returned to the importance of guaranteeing continuation funding for successful programs. Thus, Flora Rothman, a member of the National Board of the National Council of Jewish Women, observed:

"What is happening in various parts of the country is that we are finding a fragmented system, a disorganized system and we are also finding that States and local governments are making their plans not on the basis of where the real needs are but where they believe funds will be available. We do not think that this is the way these problems can be approached or dealt with.

"[W]e . . . approve of the inclusion of the provision for long-term funding because we feel that this would encourage an improved system and not merely innovation for innovation's sake."<sup>17</sup>

Similarly, Frank K. Jones, Executive Director of the National Legal Aid and Defender Association, commented:

"We approve particularly of the provision for long-term funding . . . which would give greater stability and effectiveness to these programs, but would still be subject to annual evaluation. One of the difficulties that the Legal Services Program has always had, and that the Corporation for Public Broadcasting is now wrestling with, is the lack of multiple-year funding so that plans can be made for stable, long-range programs."<sup>18</sup>

And Robert D. Cain, Jr., Director of the Division of Juvenile Corrections, Department of Health and Social Services of Delaware, stated in testimony on behalf of the National Association of State Juvenile Delinquency Program Administrators:

" . . . both in terms of public and private agencies, we feel that the provision for long-term funding is especially important. Many programs have financial assistance which is based on 1-year grants, and it takes so long to prepare the grant application, to justify the program and maintain the reports that are required that by the time the program is partially implemented, it is time to start thinking about the second year funding and evaluating what has already happened and the procedural and mechanical aspects of this really precludes sound and in-depth treatment programs."<sup>19</sup>

Similar expressions came to Senator Bayh in letters which were placed into the hearing record. The Governor of Montana, Thomas L. Judge, wrote that "Montana has made a good beginning in these areas, but it will take more funds,

<sup>13</sup> Id. at 263.

<sup>14</sup> Id. at 176.

<sup>15</sup> The complete text of S. 821 appears at id., 309-356.

<sup>16</sup> Id. at 359.

<sup>17</sup> Id. at 443, 445.

<sup>18</sup> Id. at 537-538.

<sup>19</sup> Id. at 403.

more understanding laws and *continuing support* to insure the ultimate success of the nation's youth programs."<sup>20</sup> G. Raymond Nichols, Director, State Probation and Parole, Department of Mental Health and Corrections of Maine, wrote that "[y]our bill would do much to assist both the public and private sector in establishing innovative plans to treat this growing problem through both long term funding and the national leadership which will be provided by the Act."<sup>21</sup>

Other witnesses provided graphic illustrations of the havoc wrought when effective juvenile delinquency are not refunded. William E. Aull, President of the YMCA of Honolulu, Hawaii, testified:

"A definite problem we have always had with the Federal Government in any of their programs is the funding of the programs and the fact that they are normally only given on a 12-month basis.

"As you can appreciate, it makes it very difficult to hire people when they are not certain whether they are going to be in a program past the 12-month period. This has happened to us several times, especially under the Model Cities bill, and it has happened to us again right now.

"The first time this happened the State of Hawaii and the private foundations stepped in and carried the program until the Federal Government came back with funds at a later date. This will not happen again because the State does not have the money at the present time and the foundations are, very frankly, getting a little tired of getting into areas where they feel that the State and Federal Government should do the work."<sup>22</sup>

The Mayor of South Bend, Indiana, Jerry L. Miller, offered this example:

"Senator BAYH. How are Federal dollars coordinated at the local level? I remember participating in the dedication ceremony where one of the national juvenile delinquency grants was utilized there by the local Y.

"How is that program working? How does the overall federal coordination look?

Mayor MILLER. You are talking about the youth advocacy program which was funded through the Local Urban Coalition, and it was not through county or city government. It was through the Urban Coalition.

"It has been a good working program, and there are problems as there have been with all programs. But, overall, it has been very successful, and it is now in its last year of funding. Instead of going through the Urban Coalition in 1974, we will go through the YMCA, effective, I think, the 1st of July. Now that it is on its last year of funding it more or less has to wind down and it is not as accurate as it has been in the past.

"One of the accomplishments was the injunction that was filed by the youth advocacy program against the Indiana Boys School because of mistreatment of five juveniles, and for the actual lack of some type of rehabilitation program. It was upheld in the courts and has caused the State of Indiana and the Indiana Boys School to reform. This has to be a repayment for all of the Federal money that was sent from Washington to Indiana for reform of the Indiana Boys School.

"Senator BAYH. And there has been no message coming from Washington that funds will be available to continue the program? What is its status?

"Mayor MILLER. The status, as I see it at this time, is that it is in its last funded year.

"Senator BAYH. Does that make sense to you?

"Mayor MILLER. I think that with the new juvenile prevention program we hope to have, it should be combined with the Youth Advocacy and Youth Service Bureau and some of the other agencies so they can be funded on a broader basis. I will be happy to do some research and send you detailed information.

"Senator BAYH. I was very impressed at its inception, and you seem to think that it has worked well. Yet, for reasons not known to me or you, the funds are being terminated, which does not make much sense."<sup>23</sup>

Other examples were supplied by letters which were placed into the record. Ann Heberger, Chairman of the League of Women Voters of Kansas, wrote:

" . . . funding is of vital importance. If there were a real guarantee that funds would come from the Federal government, it would enable citizens' groups and

<sup>20</sup> Id. at 793 (emphasis supplied).

<sup>21</sup> Id. at 789.

<sup>22</sup> Id. at 600.

<sup>23</sup> Id. at 580.

local governments to provide for means of diverting more children from the juvenile system, arrange for better methods for those in need of prevention services and implement community-based services. There have been some attempts in the area of pre-delinquency treatment with elementary school counselors, but funds are about to run out, and so are the programs. Probation subsidy is one area that no one in our State government is even willing to discuss. There are a few programs that YDDPA has funded, but because of the amount of money needed, these funds now have to go through a state agency, and with the constant threat of funds being withdrawn by the Federal government, these programs, local in nature, are in jeopardy."<sup>24</sup>

Margaret K. Clark, Director of Administration and Public Relations of the Boys' Town Homes of Maryland, sketched the funding plight of that organization:

"Our greatest need is for financial assistance which your bill would provide.

"The successful passage of this bill is of vital importance to existing facilities such as Boy's Town Homes of Maryland. \* \* \* While LEAA funds cover a portion of our costs, these funds are only awarded for the first three years of a program such as ours. We are presently on our third round, and this source of income will terminate entirely in June 1974.

"Our continuing problem is diminishing income.

"Most important to us is the fact that LEAA only funds for three years—and we must look to the future when LEAA funding terminates."<sup>25</sup>

And James E. Ensign, Director of the Youth Counseling Center in Chattanooga, Tennessee, wrote: "We just received notice this week that our Project will close June 30, 1973. This is another result of the federal cutbacks and the local use of revenue sharing \* \* \* Your emphasis on comprehensive, overall strategy must be brought to bear on the local level. Fragmented approaches can never really turn the tide in this important battle."<sup>26</sup>

Against the backdrop of the testimonies just described, it is not surprising that when Richard Velde, then the Associate Administrator of the Law Enforcement Assistance Administration, appeared before the Subcommittee to oppose, *inter alia*, the funding mechanisms set forth in S. 821, his position was sharply challenged by Senator Bayh. Mr. Velde's major theme in 1973 was exactly that articulated some six years later by the agency witnesses who testified in the instant proceeding, i.e., the necessity of maintaining "flexibility" in the allocation of funds; his testimony provoked this sharp exchange with Senator Bayh:

"Mr. VELDE. . . we prefer the States to have flexibility, to retain flexibility.

"Senator BAYH. In other words, the flexibility to do a miserable job dealing with the problems of juvenile delinquency.

"Senator BAYH. I would like to ask one rather philosophical question about your observation that we want to give States flexibility. I certainly want as much flexibility as possible within certain national guidelines, so we can deal with the problems we do not yet fully understand. I don't pretend to hold a magic wand or to know all of the answers, but this committee and other committees have studied this problem over the last couple of years, and I think that some of us are reasonably well versed. The staff and members of this committee have called upon a wide variety of people and organizations that know more about the problems of young people at the community level than I do sitting here.

"The provisions of S. 821, which the administration opposes, are not the brainchild of the Senator of Indiana. They are the result of the combined opinions of various organizations and experts that deal with these problems day in and day out. I have many areas to cover, and this is just one which both of us are concerned about. These people have literally given their lifetime to dealing with the problems of young people.

"We can't ever solve all of the problems; the Federal Government can't answer all the questions nor can the States. We have to have community people providing answers. The volunteer leadership of these community groups strongly supports this legislation. Now, doesn't it cause you to pause and wonder if maybe the administration isn't out of step? Did you talk to any of these people

<sup>24</sup> Id., at 800.

<sup>25</sup> Id., at 815-816 (emphasis in original).

<sup>26</sup> Id., at 803-804.

in any of these organizations out in the community who have been working with these young people, and did you ask them why they support this legislation, before you made the decision that you are going to oppose it?

"I am not worried about the wording of this legislation. I have talked to all of these people, they helped put this legislation together. This is going to help them deal with young people.

"Mr. VELDE. We prefer and support the approach which gives the responsibility to States and local governments, who are responsible for criminal justice in this country and juvenile justice, the flexibility to allocate Federal resources, block grants in this case, according to their best judgment as to what their needs are. As the testimony indicates, there has been steadily increasing percentages of LEAA resources devoted to juvenile justice and we think that trend will continue. We argue that the flexibility should be retained and is needed so that each State can deal with its conditions and the problems as best they can, that is our point.

"We're not opposed to Federal resources and LEAA resources going to juvenile delinquency. But, we think there must be flexibility and we support the comprehensive planning process that is the key element of our program which allows the States to identify the needs, assess their own problems, set their priorities and make their subgrant awards. Under that process increasing amounts have been and are being spent on juvenile delinquency or juvenile justice programs. That is our point, that is our position, Mr. Chairman.

"Senator BAYH. Your position is a consistent one and I commend you for your consistency.

"I do think, though, that you're going down the wrong road.  
". . . I suggest that whatever we're doing now is wrong and maybe the time has come to accept the judgment of these nonbureaucrats. . . .

"The true test is the effort that this Government is going to make to try to help young people so they live constructive rather than wasted lives. The amount of resources we spend will have a bearing on this. We have to increase the amount of resources; we have to show the States, the people, and the youth that we mean business."<sup>27</sup>

Testimony like the foregoing by Mr. Velde plainly did little to reassure Congress that new juvenile delinquency legislation would be administered in a manner sympathetic to Congressional intent.<sup>28</sup> The resulting Congressional decision to vest overly expansive discretion in the agency ultimately selected to administer the new legislation was pithily stated during the 1973 hearings by the co-sponsor of S. 821, Senator Marlowe Cook:

" . . . we do not want a program that is going to be totally bureaucratized because this is what really bothers me, and you can see all of my colleagues saying that well, we are just creating another bureaucracy, and you are starting with the Federal Government, and then you are going to the State government, and then you are going to the local government, and you are going to have guidelines at the Federal level, and guidelines at the State level, and we are going out with the same fellow at the local level, and the same fellow in the welfare department, the same juvenile judge, and the situation where he has got to fill out forms and he has got to meet a certain standard before he can take advantage of a situation, and these are the things that I want to overcome. In other words, I would like to have a record of saying this is one piece of legislation that we do not want bureaucratized, that we do not want to send this thing downtown if it is signed by the President, and have that thing in it that says the agency shall establish such and such rules and regulations, and promulgate such rules and regulations as shall be necessary to put this thing into operation. Bingo. There is our dead end. . . ."<sup>29</sup>

Given the skepticism toward "bureaucratization" of this legislation so eloquently expressed by Senator Cook, it is hardly surprising that when S. 821 was ultimately reported to the Senate for debate and action, the discretionary language of its Sec. 407(b), which had provided that "grants or contracts may provide for long term funding," had been altered to the mandatory language

<sup>27</sup> Id., at 654, 659-662.

<sup>28</sup> See also the exchanges between Senator Bayh and Stanley B. Thomas, then the Acting Assistant Secretary for Human Development, Department of Health, Education, and Welfare, at id., 724-739.

<sup>29</sup> Id., at 476.

which now appears in Sec. 228(a): "programs . . . shall continue to receive financial assistance. . . ." (Emphasis supplied.)

After what we believe to have been an exhaustive search, we have located no other federal grant legislation which includes language similar to that of Sec. 228(a).<sup>31</sup> That, however, is hardly surprising, for as Senator Bayh put it during the 1973 hearings, the Juvenile Justice and Delinquency Prevention Act was meant "to make an entirely new history, . . . to cross over new horizons and thus expand opportunities, not to limit."<sup>32</sup> Accordingly, we do not believe that the mandatory wording of Sec. 228(a) was mere Congressional whimsy. Rather, we think that the legislative history canvassed above makes it clear that Congress—because of its concern about ineffective administration of previous federal juvenile delinquency programs, because of its concern with the disastrous effects of "start and stop" funding, because of its resolve to limit agency discretion in the administration of this innovative legislation, because, as Senator Bayh put it, the Congress fully intended to show that "we mean business"<sup>33</sup>—for all of those reasons, Sec. 228(a) was enacted in its present mandatory form precisely to insure that effective programs, once begun, would continue without destructive interruption.<sup>34</sup>

Indeed, READ Physical Exhibits B, C and D—the three annual reports issued by Project READ—dramatically illustrate what Congress hoped to achieve by the Juvenile Justice and Delinquency Prevention Act of 1974. As Project READ gained momentum over the course of its four years of life, as it refined and perfected its techniques, it began to reach ever-increasing numbers of young people in trouble, and at the same time it began to obtain ever-increasing effectiveness from its literacy programs. This case likewise illustrates dramatically why Congress included Sec. 228(a) within the 1974 Act: a Title II grantee, performing with "exemplary" effectiveness,<sup>35</sup> is now faced, for no cogent reason, with extinction.

Congress did not intend that result, and this tribunal should not permit it.<sup>36</sup>

Respectfully submitted.

MONA LYONS, JOHN W. KARR,  
Attorneys for READ, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief of READ, Inc. was delivered by hand this 15th day of February, 1980, to John J. Wilson, Attorney-Adviser, Office of General Counsel, Law Enforcement Assistance Administration, Washington, D.C.

MONA LYONS.

<sup>30</sup> In the version initially passed by the House of Representatives on July 10, 1974, what was to become Sec. 228(a) in the final enactment also was couched in mandatory language: "In accordance with criteria established by the Secretary, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance except that such assistance shall not continue if the yearly evaluation of such programs is not satisfactory." [H.R. 15276, Sec. 223(a) (emphasis supplied)].

<sup>31</sup> But see Sec. 501(b) of P.L. 95-478, 92 Stat. 1558 (Oct. 18, 1978), which provided: "Any project receiving funds under title VII of the Older Americans Act of 1965, as in effect on the day before the effective date of this Act, shall continue to receive such funds under part C of title III of such Act, as amended by this Act, if such project meets the requirements and criteria established in such title III, as amended by this Act, except that a State, pursuant to regulations prescribed by the Commissioner on Aging, shall not discontinue the payment of such funds to a project unless such State, after a hearing (if requested by the person responsible for administering such project), determines that such project has not carried out activities supported by such funds with demonstrated effectiveness." As we understand it, this language was meant to insure continued funding for grantees during a transition period from programs as previously mandated by the Older Americans Act of 1965 to new programs required by 1978 revisions to that legislation.

See also *National Consumer Information Center v. Gallegos*, 549 F.2d 828 (D.C. Cir. 1977) for an analysis of similar mandatory language in the Economic Opportunity Act of 1964, which was later amended to vest refunding discretion in the agency.

<sup>32</sup> 1973 Hearings at 537.

<sup>33</sup> *Id.*, at 662.

<sup>34</sup> Notwithstanding their protestations to the contrary, we think LEAA officials understood precisely what Congress meant by Sec. 228(a). Why else would Attorney General Edward Levi have asked the Congress to repeal Section 228(a) in 1976? READ Exhibit No. 1a-e; see p. 1c, subsec. 23 and page 1e, subsec. 23. And, indeed, why else would the Justice Department task force chaired by the Assistant Attorney General for Legislative Affairs, Patricia Wald, have suggested to Attorney General Benjamin Civiletti that he consider whether the "forever funding guarantee" of Sec. 228(a) should be amended to establish a 5-year limit on funding? READ Physical Exhibit A, pp. 28-29.

<sup>35</sup> The characterization is, of course, OJJDP's. See *Stipulations of Parties*, para. 4.

<sup>36</sup> Project READ continues to rely also on the claims set forth in its Trial Brief at pp. 8-9 and fn. 11.

U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE ASSISTANCE, RESEARCH,  
AND STATISTICS LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
IN THE MATTER OF READ, INC., ISSUE OF DENIAL OF A CONTINUATION GRANT  
APPLICATION FOR NATIONAL INSTITUTE OF JUVENILE JUSTICE AND DELINQUENCY  
PREVENTION TRAINING FUNDS

Post Hearing Brief

This brief is intended to: (1) review the legislative history of Section 228(a) (42 U.S.C. 5638(a)) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub.L. 94-503 and Pub.L. 95-115)—hereinafter Juvenile Justice Act; (2) review LEAA's implementation of Section 228(a); (3) establish the legal basis for judicial deference to the Agency's interpretation and implementation of the Juvenile Justice Act; (4) demonstrate that READ Inc.'s position on Section 228(a) is in error; and (5) review the legal basis for the National Institute for Juvenile Justice and Delinquency Prevention (Institute) denial of the READ, Inc., application. Because the record establishes that the Agency's action in the denial of refunding of Project READ meets the standard of 5 U.S.C. 706 2(A) in that it was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," the denial should be permitted to stand.

*Legislative History of Section 223(a)*

Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5678(a)) provides as follows:

"Sec. 228. (a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."

In reviewing the legislative history of this provision, it becomes apparent that there is an almost total lack of any clear or definitive statement of Congressional purpose or intent throughout hearings on the legislation or in the materials making up the legislative history proper (committee reports, floor debates, conference committee).

Hearings on the House bill were held between March and May of 1974 (Juvenile Justice and Delinquency Prevention and Runaway Youth, Hearings before the Subcommittee on Equal Opportunities of the Committee on Education and Labor on H.R. 6265 and H.R. 9298—1974). These hearings do not reflect an overriding concern with demonstration versus long-term funding of programs. Dr. James A. Bush commented on page 143 of the House hearings on the need to move beyond a demonstration mode in the funding of delinquency programs in the school: "Filed away in many committee reports and governmental summaries of demonstration projects on this subject, are well defined and creative programs that are no longer funded. This pattern contributes to the lack of continuity in policy and program toward eliminating the rapid rising rate of violence and delinquency among youths."

However, Dr. Bush's recommendations for action do not address long-term Federal support for programs. (p. 144).

On page 250 of the House Committee Hearings, Marjorie Duckery, President of the Girls' Clubs of America, noted her concern with short-term funding for demonstration purposes and recommends funding for "a long term commitment to youth."

Our review of the Senate Subcommittee hearings (The Juvenile Justice and Delinquency Prevention Act—S. 3148 and S. 821, Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary) held between May and June of 1973 also do not reflect a major concern with continuation funding. In a prepared statement, Stanley B. Thomas, Jr., of the Department of Health, Education, and Welfare noted that LEAA funding for juvenile justice is "... continuing and supportive in nature, with a funding level higher than DHEW's demonstration program." (Senate Report, *Supra* at p. 740.) Mr. Thomas also noted that LEAA support was awarded for juvenile delinquency prevention programs "on a continuing basis" as contrasted to DHEW funding of a "project demonstration type."

The LEAA funding referred to by Mr. Thomas was support under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. These funds were

awarded under an assumption of cost requirement which limited project funding to 3-4 years. For this reason, it would appear that the "continuing" support referred to by Mr. Thomas was not meant as a reference to length of individual project support, but as funding for action activities on a larger scale than DHEW's demonstration funding.

Senate bill S. 3148, introduced by Senator Bayh on February 8, 1972 (Senate Report, Supra, at p. 7) does not address the length of funding support. However, S. 821, introduced February 8, 1973 by Senator Bayh (Senate Report, Supra, at S. 309), contained a new provision applicable only to Special Emphasis and Formula Grant funds which provided as follows:

"(Section 407) (b) In accordance with criteria set forth by the Director, grants or contracts may provide for long-term funding, provided that such grants or contracts provide for yearly evaluation to ascertain if the goals of such grants or contracts are being achieved." (Senate Report, Supra, at p. 376.)

The Section by Section analysis of this bill states, "This subsection authorizes long-term funding for grants providing that provision is made for yearly evaluation." (Senate Report, Supra, at 388.)

On June 12, 1974, the House Subcommittee on Education and Labor ordered H.R. 15276 reported to the House Floor. This bill's Section 228(a) language was substantially similar to Section 228(a) of the Juvenile Justice Act (117 Cong. Rec. H 5087, June 12, 1974):

SEC. 223. (a) In accordance with criteria established by the Secretary, it is the policy of the Congress that programs funded under this title shall continue to receive financial assistance, except that such assistance shall not continue if the yearly evaluation of such programs is not satisfactory.

Again, the requirement did not apply to the Institute program authorized by Title III, but only to the grant programs authorized by Title II. The House Report (H.R. 93-1135, June 21, 1974), in its Section-by-Section summary noted: "Sec. 223. Payments—This Section provides for the long-term funding of programs assisted under the provisions of this Act;"

This Section remained in the House bill as passed by the House on July 31, 1974 (117 Cong. Rec., H 7430, July 31, 1974).

Senate bill S. 821 was introduced on the Senate floor on May 30, 1974 and was subsequently amended on July 18, 1974. The language of Section 487(a) of the Senate bill was identical to the current Section 228(a) provision. The Senate Committee report on the bill (S. Rep. No. 93-1011, July 16, 1974) contains the following explanation of Section 487:

"Section 487 sets forth the policy of Congress that programs *should* receive continuation funding if evaluation is satisfactory." (Emphasis supplied) p. 62.

This language is clearly less than unequivocal with regard to the nature of Section 487(a). It indicates a directory rather than a mandatory intent.

Again, however, it is important to note that in the Senate bill as amended on July 18, 1974 (117 Cong. Rec., S. 12832, July 18, 1974) and as passed on July 25, 1974 (117 Cong. Rec., S. 13510, July 25, 1974) the language of Section 487(a) did not apply to the Institute program because that program was established by a separate title of the bill.

Senator Roman Hruska, a co-sponsor of S. 821, indicates his understanding that Section 487 is directory in a floor statement on July 25, 1974:

"Section 487 sets forth the policy of Congress that programs *should* receive continued funding if evaluation is satisfactory." (Emphasis added) (117 Cong. Rec. S. 13503, July 25, 1974)

On July 25, 1974, in explaining the rationale for the Section 487 continuation policy, Senator Birch Bayh, also a co-sponsor of the Senate bill stated:

"Most of the Indiana Youth Service Bureaus are local non-profit agencies that have proven that private agencies can present an effective way to deal with youth in trouble. Such programs may be funded directly by the State under the new part F. These youth service bureaus have had problems in the past in obtaining information concerning the length of funding contemplated by LEAA. Under the new part F, the policy of Congress is clearly stated that projects which are successfully evaluated shall receive continued funding. With the passage of the part F, this policy should be implemented so that programs such as youth service bureaus will be able to work out with LEAA an orderly method of development, implementation and length of funding." (117 Cong. Rec., S. 13491, July 25, 1974)

The Conference Committee Report on the House (H.R. 15276) and Senate (S. 821) bills (S. Rep. 93-1103, April 16, 1974) does not address Section 228(a)

although it adopted the Senate bill language. Instead of placing the Juvenile Justice Act program within the Omnibus Crime Control and Safe Streets Act, as proposed by the Senate bill, the Conference bill was established as separate, free standing legislation. In renumbering the bill's provisions following the Conference, the Institute was legislatively established under Part C of Title II. This was the first time that the continuation Section became applicable to the Institute program. Therefore, it appears that only through an inadvertent drafting technicality does the Institute come within the terms of Section 228(a). It is the Agency's position that the Institute program was never intended to be covered by Section 228(a), that this latent ambiguity in the Statute should be recognized, and that, as a matter of law, Section 228(a) should be declared inapplicable to the Institute program under Title II, Part C, of the Juvenile Justice Act.

It has been recognized as a general rule of statutory construction that if statutory provisions are clear and unambiguous on their fact, it is impermissible to use the legislative history to interpret them. However, C. Dallas Sands, in his authoritative work, *Statutes and Statutory Construction*, states on page 4 that:

"A rule of statutory interpretation which is frequently encountered asserts that a statute which is clear and unambiguous on its face need not and cannot be interpreted by a court and that only those statutes which are of doubtful meaning are subject to the process of statutory interpretation... Because issues as to what a statute means or what a legislature intended are essentially issues of fact, even though they are decided by the judge and not by a jury, a court should never exclude relevant and probative evidence from consideration." (emphasis added)

It would, therefore, not be exceeding judicial authority to look beyond the words of this statute to determine what Congress actually intended with regard to the applicability of Section 228(a). In confirming this authority, many court cases have stated that the judiciary has a right and an obligation to explore the legislative history. In *N.L.R.B. v. Radio and Television Broadcast Union, Local 1212*, 272 F.2d. 713 at 715 (2d. Cir. 1959) the court stated, "Although the language of the enactment is unambiguous, the legislative history is not thereby rendered immaterial."

In another case involving a conviction for transporting paraphernalia for use in bookmaking, the trial court did not look at the legislative history to determine what was intended by the words "newspaper or other similar publication." Rather, the trial court used a colloquial definition from Webster's Dictionary. The court on appeal stated, "In order to ascertain that intent [of the legislature], resort must be had to the legislative history even though the language of the statute appears to be plain." *United States v. Kelly*, 328 F.2d. 227 at 237 (1964).

Although seemingly paradox, it is not unusual, and as has been demonstrated, is frequently expected, that the judge will examine the legislative history to determine the legislature's intentions in formulating a statute which appears to be plain and unambiguous. It is probable that the reason for this is to determine for a fact that what the legislature intended is what they wrote. In *United States v. Kelly* (Supra) the plain words of the statute did not mean to Congress what they meant to the ordinary person. An analogous situation could arise with even the plainest of statutes. The Section 228(a) provision is not among the plainest of statutes, since two interpretations of the same provision have been advanced. Therefore, it is the agency's contention that delving into the pertinent legislative history to determine the applicability, as well as the underlying purpose, of the Section is within the bounds of the inquiry.

Even if Section 228(a) is determined to be applicable to the Institute program, Senator Bayh's previously quoted floor Statement of July 25, 1974, explaining the rationale for the Section 228(a) requirement, is a clear indication that the Section was intended to be implemented in a manner that would establish a project period system for action programs funded under the Act. The reference to "problems in the past in obtaining information concerning the length of funding contemplated by LEAA" implies an expectation that LEAA will provide information on length of program funding in advance. It does not imply an open ended subsidy of projects. The Senator's statement that the policy should be implemented so that programs "will be able to work out with LEAA an orderly method of development, implementation and length of funding" implies a beginning, middle, and end to funding to meet an identified problem. It does not imply an open ended subsidy of projects. As will be demonstrated below, LEAA did in fact implement Section 228(a) in a manner fully meeting Senator Bayh's expressed intent.

#### Other Federal Legislation

At the Hearing, John Rector testified that the concept for Section 228(a) was "in a bill, S. 3148, that Senator Bayh introduced in February of 1972. To the best of my recollection the specific language was based on the Economic Opportunity Act, the '64 Act." (Transcript p. 197-198).

As noted previously, S. 3148, February 8, 1972, did not address continuation funding.

Our review of the Economic Opportunity Act of 1964 (Public Law 84-452, August 20, 1964) did not reveal any continuation language parallel to Section 228(a). Nor did we find parallel language in any subsequent amendments to the Economic Opportunity Act. In fact, the Economic Opportunity Act Amendments of 1972 (Public Law 92-424, September 19, 1972), the amendment closest in time to the appearance of the Section 228(a) provision in the Senate bill of February 8, 1973 and the subsequent House bill provision of June 12, 1974, provided in Title IX—Evaluation, Section 901, that evaluation of program effectiveness would be no more than a factor for consideration in determining whether to continue programs funded under the Economic Opportunity Act:

"(901) (b) The Director shall to the extent feasible develop and publish standards for evaluation of program effectiveness in achieving the objectives of this Act. He shall consider to the extent to which such standards have been met in deciding whether to renew or supplement financial assistance authorized under any section of this Act.

This statutory provision remains in effect.

In reviewing other Federal grant legislation, we consulted an authoritative work on Federal grants entitled "Rights and Remedies Under Federal Grants" by Richard B. Cappalli, BNA, 1979. In Chapter 12, Cappalli explores "Rights of Applicants for Federal Grants." He notes that some Federal grant programs, though not Formula (entitlement) based, intend to provide continuing Federal support. Cappalli's observation is instructive:

"Though not established on a formula grant basis, some programs are intended to provide continuing federal support for services whose need is not expected to dwindle or disappear. For political or financial reasons, the recipient is not expected or required to assume an increasing percentage of project costs; rather, the federal share of expenses remains constant. Though this type of program vests discretion on initial and continuation funding in the administrator, it is similar to formula programs in the expectation of continuing congressional appropriations and the implicit presumption that grantees which abide by federal requirements will be regularly refunded. They approach but do not quite reach a mandated grant. The difficulty of predetermining by formula a reasonable grant amount for each recipient appears to be the main reason why a formula system is not used in many service programs. A second reason is that various organizations, both governmental and private, may be able to accomplish the project goals, and competition among service providers is considered beneficial." (Cappalli, *Supra*, at 304-305)

Cappalli cites as examples of programs intended to provide continuation support the following:

"Public Works and Economic Development Act of 1965, 42 U.S.C. §§ 3121-3246h; § 329 Public Health Service Act, 42 U.S.C. § 254b (migrant health services); Title VII, Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 3221-3261, as rewritten by § 101 Education Amendments of 1973, Public Law 95-561, No. 1, 1978 (bilingual education)."

Our review of these statutes does not indicate that these programs were intended to provide continuation support in perpetuity or that language similar to that of Section 228(a) was employed. It appears that a construction of Section 228(a) which establishes and mandates a discretionary funding program up to the point of initial funding and a formula (entitlement) grant program for all fund recipients would make the Juvenile Justice Act program unique among the 700 plus grant programs administered by Federal departments and agencies. (Cappalli, *Supra* at p. 9)

#### LEAA Implementation of Section 228(a)

LEAA's primary vehicle for implementation of Section 228(a) following passage of the Juvenile Justice Act on September 7, 1974, was through the formulation of guideline policy provisions applicable to the Part B Formula and Special Emphasis grant programs. (See Joint Exhibits 11a-b and 7a-b)

Joint Exhibit 10a-c clearly sets forth the legal rationale for the agency's Section 228(a) continuation policy. This LEAA General Counsel opinion letter of February 24, 1976, establishes the Agency Counsel's view that the policy adopted is consistent with the law:

"... we did not feel that the statute contemplated that the States and LEAA would be tied to funding every program and project, regardless of its nature, for an indefinite period of time."

Therefore, the letter points out, agency policy was formulated to meet four specific objectives. These objectives implement Section 228(a) in a manner consistent with the Congressional intent indicated in the legislative history materials reviewed in the prior Section. The following factors, established in the hearing record, add additional support to the validity and congressional acceptance of the LEAA legal and policy implementation of Section 228(a):

(1) John Rector, as Staff Director of the cognizant Senate Subcommittee, testified that he took no steps to overturn or clarify the legal analysis offered by the LEAA General Counsel in February of 1975. (Transcript p. 158)

(2) John Rector did not alter or modify the thrust of these guideline policies during the two years he was the Administrator of the Office of Juvenile Justice and Delinquency Prevention. (Transcript, p. 165)

(3) The LEAA policy guidelines were consistent with LEAA Administrator Henry Dogin's view of the legislation. (Transcript, p. 22)

(4) The LEAA policy guidelines were consistent with former OJJDP Acting Administrator David West's interpretation and understanding of the legislation. (Transcript, pp. 359-360)

(5) No Congressional criticism of the LEAA continuation policy and practice was introduced in evidence.

(6) No effort was made by the Congress during the reauthorization of the Juvenile Justice Act in 1977 to modify Section 228(a) to reflect a congressional intent to fund recipients in perpetuity. (Transcript, p. 164) It stretches credibility to suggest, given an agency policy alleged to be inconsistent with Congressional intent and implemented for over two years through published agency policy guidelines, that Congress failed to change Section 228(a) because, as John Rector claimed: "The Section didn't need changing. The practices of the agency needed changing." (Transcript, p. 164)

Section 228(a) vests authority in the LEAA Administrator to establish criteria to implement the congressional policy for program continuation. The policy guidelines (Exhibits 7a-b, 11a-b, and 12) accomplish this mandate for programs funded by states with formula grant funds and programs funded with Special Emphasis grant funds. Project READ was funded as an unsolicited project application rather than as a part of an announced program. Therefore, there was no requirement or obligation for LEAA to establish advance written criteria with regard to either initial or continuation funding of the project. Rather, continuation grants for individual unsolicited projects such as Project READ are considered on a project basis with no rights in the grantee other than those established by the terms of the prior grant award.

#### Agency Interpretation and Implementation of Statute Entitled to Deference

The caselaw establishes the principle that legislative interpretations of an agency charged with implementation of a Statute are entitled to judicial deference. The Supreme Court in the case of *Udall v. Tallman* (380 U.S. 1, 85 S. Ct. 792, 13 L.Ed.2d. 616 (1965)), stated the rule as follows:

"When faced with a problem of statutory construction, this court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'" 85 S. Ct. 801 (quote within a quote taken from *Unemployment Commission of Territory of Alaska v. Aragon*, 329 U.S. 143, 153, 67 S. Ct. 245, 250, 91 L.Ed. 136 (1946))."

The court then pointed out that where agency interpretation involves a contemporaneous construction additional deference is due:

"Particularly is the respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with

the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new." 85 S. Ct. 801 (quote within a quote taken from *Power Reactor Rev. Co. v. Int'l Union of Electricians* 367 U.S. 396, 408, 81 S. Ct. 1529, 1535, 6 L.Ed.2d. 924 (1961)."

Finally, the court, in upholding the agency interpretation, refused to substitute its judgment where the agency interpretation was reasonably within the terms of the Statute:

"In the practical administration of the Act the officers of the land department have adopted and given effect to the latter view. They adopted it before the present controversy arose and was thought of and, except for a departure soon reconsidered and corrected, they have adhered to and followed it ever since. If not the only reasonable construction of the Act, it is at least an admissible one. It therefore comes within the rule that the practical construction given to an Act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect and, if acted upon for a number of years will not be disturbed except for cogent reasons, 85 S. Ct. 802 (quote from *McLaren v. Fleischer* 256 U.S. 470, 480-481, 41 S. Ct. 577, 578, 65 L.Ed.1052 (1921)."

A recent Supreme Court case, *Chemehuevi Tribe of Indians, et. al. v. Federal Power Commission, et al.*, 420 U.S. 395 95 S. Ct. 1066, 43 L.Ed.2d 279 (1975), affirmed the general rule with respect to agency interpretation:

"Such a long standing uniform construction by the agency charged with administration of the Federal Power Act, particularly when it involves a contemporaneous construction of the Act by the officials charged with the responsibility of setting its machinery in motion, is entitled to great respect." (420 U.S. 395, 410)

The court added an additional dimension to the rule in this case, establishing the principle that congressional inaction in amending an Act under which the agency construction was formulated enhances the deference due the agency interpretation:

"The deference due this long standing administrative construction is enhanced by the fact that Congress gave no indication of its dissatisfaction with the agency's interpretation of the scope of its licensing jurisdiction when it amended the Act in 1930." (420 U.S. 395, 410)

In the instant case, LEAA's implementation of Section 228(a) was pursuant to authority vested in the agency by that Section. Its construction was reasonably contemporaneous with the Act's passage on September 7, 1974. The agency policy guidelines represent a reasonable construction of the language of Section 228(a), particularly when viewed in the light of the legislative history. Finally, Congress reauthorized the Juvenile Justice Act in 1977 with no indication, through the Statute or legislative history of the reauthorization, that it was dissatisfied with the agency's interpretation or policy implementation of Section 228(a).

It is the agency position that the legislative history establishes a firm legal basis for the LEAA interpretation and policy implementation of Section 228(a). Further, LEAA's implementation of Section 228(a) is entitled, under the law, to great deference. Therefore, we must conclude that READ, Inc.'s claims that the agency failed to act in accordance with law, under the 5 U.S.C. 706 2(A) standard, must fail.

#### *READ, Inc., Interpretation of Section 228(a)*

READ, Inc., contended at the hearing that Section 228(a) should be read to mandate continuation funding for any project that "satisfies the quid pro quo . . . That its annual yearly evaluation is satisfactory." (Transcript p. 6-7). Counsel for READ argued that the stipulation that "there are no LEAA regulations or guidelines which establish criteria for continuation funding or Project READ" places the agency in violation of Section 228(a):

"I'm saying that we don't even have to get to the question of criteria because they have admitted they don't have any." (Transcript p. 10).

The agency stipulated only to the fact that there are no "LEAA regulations or guidelines" establishing criteria, not criteria do not exist or were not applied to the consideration of Project READ's continuation application.

The agency is not required by Section 228(a) to establish written continuation criteria through guidelines or regulations. Where guidelines or regulations are required the statute so specifies (see 42 U.S.C. 5632(a), (c), (e), 42 U.S.C. 5633(a), and 42 U.S.C.(b)). Statutory criteria for application approval are

specified for the Special Emphasis program (42 U.S.C. 5635(c)). No statutory criteria are specified for the Institute program. Therefore, the agency contends that the Institute, through its delegated authority, is authorized to establish any reasonable criteria related to the statutory mission of the program in making determinations for initial and continuation funding.

READ, Inc., contends that Section 228(a) operates to remove discretion from the agency for continuation funding of Project READ. Yet the statutory language conferring authority in the Administrator to award funds is not mandatory in nature. 42 U.S.C. 5614(j) provides general grant and contract authority:

"(j) The Administrator is authorized to make grants to, or enter into contracts with any public or private agency, organization, institution, or individual to carry out the purposes of this title."

42 U.S.C. 5651(e) authorizes the Institute to make grants and contracts:

"(4) make grants and enter into contracts with public or private agencies, organizations, or individuals for the partial performance of any functions of the Institute;"

In addition, 42 U.S.C. 5654(1) provides specific discretionary authority under which the READ, Inc., training program was funded:

"The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

"(1) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer personnel, and other persons who are or who are preparing to work with juveniles and juvenile offenders;"

It is the agency's position that these statutory provisions are permissive and authorizing in their terms. They do not mandate grant or contract awards but rather vest full discretionary authority in the Administrator and the Institute to determine whether and to whom to award grants and contracts. Authority for denial of grants is delegated to program head. (Transcript p. 21). The program office thus has the delegated authority to determine criteria to be applied in the review of applications for funding. As will be demonstrated below, reasonable criteria were in fact applied by the Institute to the Project READ application.

#### *John Rector's Testimony*

John Rector was the only witness called by READ, Inc. to give testimony on the interpretation of Section 228(a). Mr. Rector stated his view

" . . . that what Congress intended was that once projects were funded they were funded for an indefinite period subject to the receipt of unsatisfactory evaluation . . . (or) repeal of the statute by Congress . . . (or) untoward fiscal reports." (Transcript p. 114-115)

He stated that "continuation was a major issue at the staff level and elsewhere during consideration of the 1974 Act." (Transcript p. 115) Yet the legislative history never states in definitive terms that a Federal subsidy program of the type described by Mr. Rector was ever envisioned by the Congress.

READ exhibits were introduced through Mr. Rector that sought to establish other interpretations or understandings of the impact of Section 228(a). These materials, READ Exhibits 1-5b and READ Physical Exhibit A, have no value as agency policy or guidance in implementing Section 228(a) and no value as legislative history.

The United States Court of Appeals in *Association of National Advertisers, Inc., et. al. v. Federal Trade Commission, et al.*, Opinion No. 79-1117, December 27, 1979, considered a document outside of the normal legislative history materials in interpreting congressional intent. This document was an explanatory letter from the Chairman of the Administrative Conference of the United States to Congressman Moss defining a specific term which was subsequently used in a Congressional Conference Report. What the court did was to use non-legislative history background material as an aid to understanding and filling out the legislative history.

The READ Exhibits, on the other hand, are documents which are in no way reflective of congressional intent and are post enactment in terms of time. They are simply not "legislative history" in any sense of the word. In addition, READ Exhibits 1-5c are unrelated to an understanding of Section 228(a). They deal only with efforts to reconcile the existing LEAA/OJJDP continuation policy with the Crime Control Act assumption of cost requirement. READ Exhibit 5 a-b is a "fact sheet" of no interpretative or policy value. READ Exhibit 4 a-1 is a review

by a League of Cities/Conference of Mayors staff member of issues raised by the passage of the Juvenile Justice Act some two months previously. Cross examination of Mr. Rector established that the issue raised by the staff member under the heading "Continuous Funding" at 4e of the Exhibit may have been suggested by Mr. Rector himself in his remarks to that group (Transcript p. 194).

Mr. Rector testified that policy direction for all juvenile justice matters under the Juvenile Justice Act resides with the Administrator of OJJDP (Transcript p. 160). Yet Mr. Rector, as Administrator of OJJDP, failed to modify the LEAA guideline policy in a manner consistent with his avowed understanding of the Section 228(a) provision. While he testified there was no inconsistency between his July 25, 1978 revision of M4100.1F (See Joint Exhibit 12) and his view of what Section 228(a) requires, it is obvious that a requirement that States establish *minimum* periods of funding for programs does not operate to guarantee any recipient funding beyond the established minimum. (See testimony of David West at Transcript pp. 362-363)

While Mr. Rector was initially certain of Section 228(a)'s applicability to all funds, he was uncertain when it came to specifics:

(1) on applicability to technical assistance—"if you can eliminate the need, maybe that begins to draw a parameter on the duration intended by the Section." (Transcript p. 169)

(2) on applicability to contracts—"I am not saying that it (Section 228(a)) doesn't apply. But its application might create unique circumstances." (Transcript p. 170)

(3) on applicability to fund transfers—"That is difficult to answer." (Transcript p. 170)

Even on grants, Mr. Rector's record as Administrator of OJJDP did not comport with his testimony at the hearings as to his view of Section 228(a).

Mr. Rector stated in cross examination that Special Emphasis prevention projects required continuation in fiscal year 1979:

"I would agree that barring performance evaluation problems that if the various prevention projects were not funded in fiscal '79 that that violated 228(a)." (Transcript p. 185)

The agency then offered LEAA Exhibit 1, a memorandum from Mr. Rector to Mr. Dogin in which Mr. Rector requested a decrease in OJJDP's prevention continuation budget from \$6 million to \$3 million. His stated rationale was as follows:

"This office has since determined that the prevention effort should be reduced in scope, and since there is no formal commitment of third year funding by OJJDP to grantees; third and final year funding could be made available to prevention grantees on a competitive basis." (LEAA Exhibit 1b)

When asked how this statement squares with his stated views on the proper interpretation of Section 228(a) Mr. Rector stated, "It doesn't appear to square with it." (Transcript p. 188). When asked whether he was recommending an action to Mr. Dogin that was inconsistent with his interpretation of Section 228(a) Mr. Rector stated, "It certainly appears that way." (Transcript p. 189)

In presenting its witnesses, the Agency established that Mr. Rector failed to follow his stated view of the Section 228(a) requirement for refunding of the Deinstitutionalization Program (Transcript p. 327-329), the Restitution Initiative (Transcript p. 329-331), and the Prevention Program (Transcript p. 331-335).

The point of this review is to suggest that Mr. Rector's views on Section 228(a)'s proper implementation were inconsistent or contradictory in their application. As evidence of congressional intent they are of little value.

#### *Basis for Institute Denial of Refunding of Project READ*

The agency has established its position that the denial action by the Institute on the application of Project READ was not in conflict with Section 228(a) of the Juvenile Justice Act and was therefore "in accordance with law."

The agency further contends that the evidence establishes that the denial action was not arbitrary, capricious or an abuse of discretion, the standard of review established by 5 U.S.C. § 706(2) (A). The denial of refunding for Project READ resulted from a legitimate establishment of Institute funding priorities. These priorities were established in response to congressional mandate and, in establishing and implementing its program priorities, the Institute treated Project READ in a manner no different from other Institute fund recipient under consideration for continuation grant awards.

Cappalli, in Chapter 12 of *Rights and Remedies under Federal Grants*, *Supra*, explores the rights of applicants for refunding. He points out that continuation decisions generally include such criteria as whether the grantee has satisfied its legal obligations, whether the project has demonstrated its effectiveness, whether it continues to offer promise for success, and whether it has made changes proposed by the grantor. (Cappalli, *Supra* at 302). Cappalli then goes on to state, however, that:

"Even if all the above criteria are satisfied, the grantee is still not assured continued aid. Its project must continue to fall within Federal agency priorities. Considerable discretion is vested in the administering agency to determine the specific types of projects it will fund in carrying out the grant-in-aid statute's broad policies and goals. As the agency gathers experience and information, its grant focus will shift. The fact that a project fits within the agency's priorities one year does not preclude a denial of continuation support when in a subsequent year the agency decides to move in new directions." (Cappalli, *Supra*, at p. 303)

While Cappalli recognizes the hardship involved in negative refunding decisions, he concludes:

"Yet, at bottom, the applicant for refunding has no greater rights, either substantive or procedural, than applicants for initial competitive grants. No 'right' to refunding emerges from the grant-in-aid statutes or the administrative regulations." Cappalli, *Supra* at p. 304

Testimony at the hearing by LEAA Administrator Henry Dogin underscored the agency's need to have the flexibility to consider priorities and available funds in making grant funding decisions:

"It still could be meritorious and it still could be worthy, but if other considerations, other competing priorities and lack of dollars prohibit the Juvenile Justice office from going to the Institute head, going to his boss, it could never get to me for funding. So, worthiness may be a wonderful thing, but there just may not be enough dollars. But, essentially, that's the call of the program office." (Transcript p. 51)

Dr. James Howell, Director of the Institute, detailed the fact that Project READ received its initial funding as an interim training project under the permissive authority of Section 244(1) of the Juvenile Justice Act (Transcript p. 251-252). As early as 1978, Dr. Howell had discussed continuation funding prospects for Project READ as they related to Institute priorities and legislative mandates. (Transcript p. 255-256). On August 3, 1979, Dr. Howell informed Dr. Janet Carsetti, Director of Project READ of the grant's chances for refunding:

"... I told her that in my judgment it was extremely unlikely that we would provide continuation funding for the period that she was interested in because of several reasons; mainly the change in our priorities. I indicated to her that we must establish the training and that we had to give priority to those specific legislative mandates with respect to the training center and that this activity in light of that, READ's activity, had low priority for us." (Transcript p. 257-258)

Dr. Howell gave Project READ no assurance of NIJJDP continuation funding. It is not contended by READ, Inc., that Project READ ever relied upon any perceived right to funding under Section 228(a) or that it otherwise had any expectation or assurance of such continuation.

Dr. Howell further testified as to the process and procedure for determining program priorities. His testimony established that the Institute Program Plan for Fiscal Year 1980 (Joint Exhibit 3a-j) was approved on September 11, 1979 (Transcript p. 252).

This Institute Program Plan set aside \$1 million for training, with \$325,000 set aside to establish a training center mandated by Section 248(a) of the Act (Transcript p. 266). Section 248(a) states:

"Sec. 248. (a) The Associate Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency. . . ."

Dr. Howell gave further testimony establishing the basis for the Institute consideration of training of juvenile court judges as a higher priority than Project READ for the balance of \$175,000 in training funds (Transcript p. 267-268). Project READ was not singled out for disparate treatment by the Institute. Other Institute grants had been discontinued in the past due to changed Institute priorities. Dr. Howell testified on this point:

"... in the training area itself in fiscal year 1979, we declined to provide continuation funding for four prevention training projects that we had funded

in fiscal year 1978. We initially funded them for one year. The grantees inquired as to the prospects for continuation funding and we indicated to them that we would not be able to provide continuation funding because we wanted to move on to establish the training center. That was one of the major reasons that I gave them. There were other projects as well. In the training area, for example, the training project up at Harvard called the Harvard—well, called the Deinstitutionalization Training Project, I just recently went up there on a site visit and informed them that we would not be able to provide continuation funding again, primarily because of our need to establish the training center. There have been other projects outside the training area research evaluation projects. I could list a number of them if given time, if you would like." (Transcript p. 270-271.)

This testimony demonstrates that the Institute's carefully considered priority setting process (the Program Plan development process) was not used to single out Project READ.

Dr. Howell also testified as to the criteria used by the Institute in determining whether to continue grants to Institute grantees beyond the established project period:

"Well, there are several factors such as availability of funds, whether or not the project successfully completed or—successfully met its objectives as established in the grant. Thirdly, whether the activity was completed or not, that was initially funded. Then our relationship of the activities to our priorities. I believe that may not cover all the factors but those are certainly the main ones." (Transcript p. 271)

These four criteria form the basis for the Institute's review of unsolicited non-competitive grant continuation applications. We contend that the formulation and application of such criteria to projects such as Project READ, which were initially funded non-competitively and not in response to an announced program, is within the proper discretion of the program office. They constitute the criteria referred to in Section 228(a) to the extent that requirement is applicable to Project READ. This comports with a literal reading of Section 228(a) and demonstrates actual compliance with the Section by the Institute in its consideration of Project READ.

In the area of priority setting, Dr. Howell's testimony highlights both the critical nature of this activity due to limited funds and the comprehensiveness of the Institute's mandates and the unworkable nature of the subsidy concept as applied to the Institute Program:

"We have a very comprehensive set of legislative mandates. We have to go on to other things. There is no way with our limited budget that we can meet all of our legislative mandates so we have to address some of them in a sequential fashion. So unless you had something like a geometric increase in funds and staff, we wouldn't be able to meet our mandated responsibilities. It would just seem to me to be unworkable for training projects, for research, evaluation projects. Those are typically completed; certainly in the case of those kinds of projects. We would fund indefinitely a clearinghouse activity. That wouldn't present—or might not present a problem. I don't know, but in most instances it would seem to me it would be unworkable. (Transcript p. 273)

Another major point that merits comment is the question of whether Project READ should have been included among the Special Emphasis Division grantees receiving short-term continuation funding. The Special Emphasis non-competitive grantees were being phased-out in order to implement the competition policy established by the LEAA Administrator (Joint Exhibits 13 a-c and 14 a-b) on September 14, 1979. This was also being done, in part, because of problems that had occurred in the award of unsolicited Special Emphasis proposals under the prior OJJDP Administrator. (Transcript p. 320, 353 and 364). Project READ, on the other hand, was not affected by the competition policy in terms of the Institute's decision not to refund the project. Rather, Project READ was not continued because of the change in Institute priorities for fiscal year 1980. Therefore, the rationale for giving the Special Emphasis grantees interim funding was not applicable to Project READ.

#### Standard of Review

The agency's prehearing brief reviewed the case law to establish its position that READ, Inc. has no right or entitlement to continuation funding under the Institute's discretionary categorical funding program. It is our position that

the agency's interpretation of Section 228(a) is sound and is entitled to judicial deference. That interpretation, simply stated, is that Section 228(a) does not convert programs and projects, once funded, from a discretionary to an entitlement status. Further, Section 228(a) does not require that formal guidelines or regulations be promulgated to set forth continuation funding criteria for non-competitive project grantees such as Project READ.

The discretion granted to the Administrator under Section 228(a), and delegated to the program office (OJJDP), to establish criteria for continuation manifests a Congressional intent to permit long-term funding and yet enable the agency to select recipients in a relatively unfettered manner on the basis of criteria consistent with the statutory goals and objectives of the program.

The following analysis of the standard of review assumes that the agency's interpretation and implementation of Section 228(a) is "in accordance with law."

The courts have examined grant denials under other laws permitting administrative agencies to exercise discretion, and have concluded that the agency decision should be upheld if it was not rendered in an "arbitrary and capricious" manner. Central to the courts' adoption of this narrow standard of review is the fact that, in a discretionary program of the sort at issue here, the applicant does not have a vested right to the funds disbursed under the program. See *City of Beaver Falls v. Economic Development Administration*, 439 F.Supp. 851 (W.D. Pa., (1977)); *City of Benton Harbor v. Rich*, 429 F.Supp. 1096 (W.D. Mich. 1977); and *Mil-Ka-Ko Research and Development Corporation v. Office of Economic Opportunity*, 352 F.Supp. 169 (D.D.C. 1972), aff'd 497 F.2d 684 (D.C. Cir. 1974). Because the statutes in these cases granted discretion to the Federal agencies involved, and because that discretion would not violate any "right" of an applicant to the funds being disbursed, the courts concluded that their reviews should properly be confined to the question of whether "the agency provide[d] an adequate explanation of the underlying rationale of its decision." *Mil-Ka-Ko, supra*, at 173.

A Department of Commerce decision under the Public Works program was reviewed under the "arbitrary and capricious" standard in *Clark v. Richardson*, 431 F.Supp. 105 (D.N.J. 1977). The court concisely delineated the scope of its authority in such a context:

"The administration of the Act, by the E.D.A., I find, was satisfactory. It is not within my power to say what the best plan for implementing the Act would have been. This court must confine itself to the issue of whether it is consistent with the mandates of Congress and not arbitrary or capricious. I find that it is not. My role is, of course, made easier by the vast discretion given to the Secretary of Commerce by the Act. Section 103(a), 42 U.S.C. § 8702. *Clark, supra*." (Emphasis added)

The standard of review applied to grant programs such as the one at issue here and the Public Works program is also applied to Government procurement decisions, for the same reasons. As explained in *M. Steinthal & Co. v. Seamans*, 455 F.2d 1289 (D.C. Cir. 1971).

"The court is obligated to restrict its inquiry to a determination of whether the procurement agency's decision had a reasonable basis. This inquiry must fully take into account the discretion that is typically accorded officials in the procurement agencies by statutes and regulations. *Steinthal*, at 1301 (footnote omitted). See also *Wheelabrator Corp. v. Chafee*, 455 F.2d 1306 (D.C. Cir. 1971)."

The decisions of the lower courts cited above are consistent with the approach the Supreme Court has taken to judicial review of all informal agency adjudications. In *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), the Court held that, in such circumstances, the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, requires that the "actual choice made was not 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' 5 U.S.C. § 706(2) (A) . . . To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. (Citations omitted). Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Overton Park*, at 416. See also *Camp v. Pitts*, 411 U.S. 138, 141 (1973).

The agency's determination should, therefore, be sustained even if two inconsistent conclusions can be drawn from the evidence. See *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966).

Because we believe that the record in this case amply demonstrates that the Agency's decision was reached in a thorough, fair, and well-reasoned manner, we urge you to recommend upholding the denial of the READ, Inc. application. Respectfully submitted.

CHARLES A. LAUER,  
Deputy General Counsel.

February 15, 1980.

JOHN J. WILSON,  
Attorney-Advisor,  
Office of Justice Assistance,  
Research, and Statistics.

February 15, 1980.

UNITED STATES OF AMERICA, BEFORE DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

[Denial of Application, No. 9-1241-0-MD-JJ]

IN THE MATTER OF READ, INC.

Initial Decision

By Morton Needelman, Administrative Law Judge,  
John J. Wilson, Counsel for LEAA,  
Mona Lyons and John W. Karr, Counsel for READ, Inc.

I—STATEMENT OF THE CASE

READ, Inc., of Silver Spring, Maryland, alleges that the Department of Justice's Law Enforcement Assistance Administration (hereinafter "LEAA") has improperly discontinued a grant of funds to its Project READ in violation of Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (hereinafter "Juvenile Justice Act") which provides:

"In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory."<sup>1</sup>

Invoking the review procedure of Section 262 of the Juvenile Justice Act,<sup>2</sup> READ, Inc. seeks an order directing LEAA to comply with Section 228(a) by providing fiscal year 1980 funding. Alternatively, READ, Inc. asks for an order directing LEAA to reconsider its decision to deny continuation of funding.

In answer, LEAA contends that the agency did not act arbitrarily or capriciously in exercising its discretionary authority to discontinue giving funds to Project READ. According to LEAA, changed priorities and severe budgetary restraints were ample justifications for reaching the decision not to continue the financial assistance. LEAA further argues that it acted in a manner fully consistent with the agency's policy for the implementation of Section 228(a).

Prior to the start of the hearings, a factual stipulation was entered into the record. Hearings were held on January 30 and 31, when testimony was taken about the circumstances surrounding the termination of Project READ funding, the legislative history of Section 228(a), and LEAA policy in implementing this section of the statute. During the hearings counsel on both sides were given full opportunity to be heard and to subpoena, examine, and cross-examine witnesses. Joint exhibits, LEAA exhibits, and READ exhibits were received into evidence. The record was closed on January 31, 1980. Post-hearing briefs were filed on February 15.

<sup>1</sup> 42 U.S.C. § 5638.

<sup>2</sup> 42 U.S.C. 5672. Section 262 of the Juvenile Justice Act adopts the administrative review procedures applicable to a grant discontinuance which appear in the Omnibus Crime Control and Safe Streets Act of 1968 and the Justice System Improvement Act of 1979. These procedures are set forth in § 803 of the 1979 Act, 42 U.S.C. § 3783, and are codified in 28 C.F.R. Part 18.

After reviewing all the evidence and the briefs submitted by the parties, I make the following findings of fact:<sup>3</sup>

II—FINDINGS OF FACT

Project READ Funding

1. The Juvenile Justice Act of 1974 is the primary Federal Government legislation dealing with the problem of juvenile delinquency.<sup>4</sup>
2. The purpose of the Act is to treat the juvenile delinquency problem in a comprehensive, unified, and systematic way. The Act was targeted toward diverting juveniles out of the juvenile justice system by preventing youngsters from ever getting involved with police, courts, and corrections officials in the first place and, wherever feasible, providing alternatives to traditional confinement in detention centers and training schools. To accomplish these objectives Title II establishes within LEAA an Office of Juvenile Justice and Delinquency Prevention (OJJDP), and within OJJDP a National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP). Title II programs are also carried out by an office within OJJDP called Special Emphasis Division.<sup>5</sup>
3. The funding of Project READ and the discontinuance of that funding involves decisions and review of decisions by persons located in LEAA, OJJDP, NIJJDP and Special Emphasis Division.<sup>6</sup>
4. Project READ was awarded three grants by NIJJDP as follows:  
\$210,303 for the year 1976  
\$218,632 for the year 1977  
\$467,760 for the two years, Jan. 1978 to Dec. 1979.<sup>7</sup>
5. Each of the three LEAA grants to Project READ was for a specific, one-year period.<sup>8</sup>
6. The grants to Project READ were made pursuant to Part C, Section 244(1), of Title II which authorizes the development by NIJJDP of training programs for professionals who work with youngsters in trouble.<sup>9</sup>

<sup>3</sup> Abbreviations used throughout this Initial Decision in citing to the record are "Stip" (Stipulation between counsel for the parties, entered into the record on Jan. 10, 1980), "Tr." (Transcript of testimony), "JX" (Joint Exhibits entered into the record on Jan. 30, 1980), "RX" (READ Exhibits), and "LX" (LEAA Exhibits). "READ Phys. Exh." refers to the READ Physical Exhibits A-G.

The following witnesses from the Department of Justice testified:

	Called by—	Tr.
Henry S. Dogin, Acting Director, Office of Justice Assistance, Research, and Statistics (OJARS), formerly Administrator, LEAA.	READ.....	18-62.
David D. West, Director, Formula Grants and Technical Assistance Division, Office of Justice and Delinquency Prevention (OJJDP), formerly Acting Director, OJJDP, LEAA.	READ and LEAA.	62-111, 358-381.
John M. Rector, Office for Improvement in the Administration of Justice, formerly Director, Office of Juvenile Justice and Delinquency Prevention (OJJDP), LEAA.	READ.....	112-209.
James C. Howell, Director, National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), LEAA. Also, Deputy Associate Administrator of OJJDP and LEAA.	LEAA.....	246-316.
Emily Martin, Director, Special Emphasis Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), LEAA.	LEAA.....	317-358.

<sup>4</sup> READ Phys. Exh. A, p. 35.

<sup>5</sup> READ Phys. Exh. A, pp. 1-3.

<sup>6</sup> For purposes of this proceeding, it is of no consequence that LEAA itself recently has been made part of the Office of Justice Assistance, Research and Statistics (OJARS) within the Department of Justice. As it happens, the Acting Director of OJARS is Henry S. Dogin, Administrator of LEAA at the time the instant funding controversy arose. Tr. 18, 160-161.

<sup>7</sup> The 1976 grant was to the American Correctional Association which originated Project READ. Stip. ¶ 2.

<sup>8</sup> Tr. 255-256.

<sup>9</sup> 42 U.S.C. 5654. See Stip. ¶ 1; READ Phys. Exh. D, p. 9; Tr. 252; see also JX1 for range of programs which NIJJDP may fund. Broadly stated, these activities are in the areas of research and evaluation of juvenile justice and delinquency prevention activities, training, clearinghouse for information, and development of standards for administration of juvenile justice. Tr. 249-250.

7. The work done by Project READ is also authorized by Section 224, Subpart II, Part B of Title II which directs LEAA to "develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs" and specifically to "develop and implement programs relating to juvenile delinquency and learning disabilities."<sup>10</sup> Grants under Section 224 are administered by NIJJDP's sister unit, Special Emphasis Division.<sup>11</sup>

#### Project READ Performance

8. There is no dispute that Project READ gave the government excellent value for its money. Thus, a juvenile justice specialist within the Special Emphasis Division of OJJDP in the course of reviewing the continuation application filed by READ, Inc. concluded:

"This is one program that should be singled out by OJJDP as a Special Emphasis program that works. This program should be nominated for exemplary status."<sup>12</sup>

9. This highly laudatory evaluation within Special Emphasis Division was based upon an assessment of the project's philosophy, accomplishments, innovations, leadership, and compatibility with other programs (See Findings 10 to 17).<sup>13</sup> According to Special Emphasis Division, Project READ (an acronym for Reading Efficiency and Delinquency) is premised on the philosophy that:

"... young people in the juvenile justice system need to be provided with the skills necessary for self-sufficient survival in a literate society.  
"They must, for example, be able to complete a job application, read a lease, read street and road signs, use a telephone book, read newspapers, read labels on prescription medicine, food packages, and more. But to be literate is knowing more than how to read and write. The concept of literacy should be expanded to include fundamental learning skills which train the senses and enrich our emotions.  
"Sensitivity, respect for other people, the confidence to express oneself, self-discipline, and self appreciation are qualities equally basic to becoming independent and leading productive life."<sup>14</sup>

11. Proceeding from this philosophy, Project READ collected data showing the overwhelming deficiencies of youngsters in the juvenile justice system in the language arts and communication skills. These data reveal that amongst a surveyed troubled youth population with an average chronological age of 16, the average reading level was fifth grade; that 19 percent of this population scored below the fourth grade in reading; and that while the average self concept score was well within the acceptable range, 38 percent of the population considered themselves as "poor readers." From these data Project READ concluded that "... while these young people possessed the ability to read, they are not motivated to do so ... at least until they are given highly motivating books; taught by new and different techniques; and allowed to practice reading during the school day."<sup>15</sup>

12. Having identified a significant literacy problem amongst incarcerated youngsters, Project READ used the LEAA grants to train teachers in methods and techniques for teaching reluctant readers. In addition, Project READ provided testing material for diagnosing reading problems, supplied teachers and troubled youngsters with resources and books for improving reading skills, and assisted schools of higher education in developing programs for teachers working in the juvenile justice system. Recently, Project READ developed an innovative arts component which was praised by Special Emphasis Division for its delinquency prevention potential.<sup>16</sup>

13. As reported by Special Emphasis Division, the scope of Project READ's work was impressive:  
"Despite a low budget (as compared with other federally funded literacy programs and a limited staff), Project READ has worked with more than 40,000 young people in the juvenile justice system, and in 322 schools representing 49 states and the District of Columbia."<sup>17</sup>

<sup>10</sup> 42 U.S.C. 5634. See READ Phys. Exh. D, p. 9; see also Tr. 98, 194-196.  
<sup>11</sup> JX's 6A-6B; Tr. 318. While NIJJDP are separate entities, they are listed in the catalog of Federal Domestic Assistance as "Related Programs." JX1  
<sup>12</sup> JX8F; Stip. ¶ 4.  
<sup>13</sup> JX8E.  
<sup>14</sup> JX's 8B-8C.  
<sup>15</sup> JX8D.  
<sup>16</sup> JX8C.

14. The accomplishments of Project READ were recognized by Special Emphasis Division. It gave the project credit for the training of over 400 teachers and attributed to the project significant gains by the youngsters in reading level, mental age, attitude toward reading, and ability generally to function in a literate system.<sup>17</sup>

15. The leadership of Project READ was singled out for praise by Special Emphasis Division. Both Dr. Janet Carsetti, the director, and Catherine Pierce, the proposed assistant director, had worked directly with troubled youth at the national and local levels. Dr. Carsetti was the director of the American Bar Association's Clearinghouse for Offender Literacy Programs and is a nationally recognized expert on correctional educational programs. Catherine Pierce was the assistant director of the ABA Female Offender Resource Center and co-authored "Little Sisters and the Law," a comprehensive look at the treatment received by young women in the juvenile justice system. Special Emphasis Division concluded that: "Both of these women have dedicated an extensive amount of time and effort to improve conditions for troubled youth."<sup>18</sup>

16. From an organizational standpoint, Special Emphasis Division concluded that Project READ was compatible with other projects especially one known as "Project New Pride," which had found "the educational training and efforts of Project READ to be extremely successful."<sup>19</sup>

17. Finally, Special Emphasis Division commented on the uniqueness of the Project READ program:

"There is no other national effort for literacy and/or the arts for young people in the juvenile justice system. With the extremely successful results this project has achieved, it would be advantageous to endorse continuation funding."<sup>20</sup>

18. There is no evidence in this record that Special Emphasis Division overstated the performance of Project READ. Even before the evaluation reported in Findings 8 to 17, Dr. Howell of NIJJDP, who had primary responsibility for monitoring the progress of Project READ, said, "Without a doubt the project has been extremely successful";<sup>21</sup> further, he testified herein, "we never knew that the project would be as successful as it has been."<sup>22</sup> Dr. Howell seemed to anticipate Special Emphasis Division's recommendation respecting an administrative realignment of the program. He said that "given the success of the project, I believe its impact can be even greater if it were integrated" into the so-called "New Pride" project.<sup>23</sup>

19. At no level of the Justice Department's involvement in juvenile justice—OJARS, LEAA, OJJDP, NIJJDP or Special Emphasis Division—was any substantive assessment made of Project READ which differs from the evaluation reported in Findings 8 to 17. In this proceeding, counsel for LEAA stipulated that "Project READ's performance of its obligations under each of these three grants has been fully satisfactory."<sup>24</sup>

#### Discontinuance of Project READ Funding

20. Notwithstanding the highly acclaimed achievements of project READ, on August 3, 1979, Dr. Howell informed Dr. Janet Carsetti, director of Project READ, that continuation funding from NIJJDP for Project READ was unlikely.<sup>25</sup>

<sup>17</sup> JX's 8C-8D.

<sup>18</sup> JX8E.

<sup>19</sup> JX8D.

<sup>20</sup> JX8E.

<sup>21</sup> JX2; Stip. ¶ 4; Tr. 254.

<sup>22</sup> Tr. 311.

<sup>23</sup> JX2. During the course of his testimony Dr. Howell made a half-hearted effort to create some doubts about the effectiveness of Project READ. Dr. Howell said that there is no proof that Project READ's admitted success in reducing illiteracy amongst troubled youngsters has had any effect on reducing juvenile delinquency. Tr. 290-291, 310-311. Dr. Howell, however, acknowledged that he has no proof that any program of OJJDP (for example, training of family court judges) has had any direct impact on reducing juvenile delinquency. Tr. 311-314. Based upon the fact that LEAA presented no evidence indicating that the grant was discontinued because the agency believes that literacy and delinquency are not related, I have concluded that this part of Dr. Howell's testimony is a postcomplaint rationalization entitled to no weight. See Tr. 290-291. I was equally unimpressed by Dr. Howell's claim that he had put Dr. Carsetti on notice that HEW may be an appropriate place for Project READ to obtain funding. Tr. 255. Given the clear statement in the legislative history that OJJDP was being created as a central point for the funding of juvenile delinquency prevention programs, and the explicit rejecting of such a role for HEW (except for the provision for runaway youth in Title III of the Juvenile Justice Act), I doubt that this suggestion represented a viable alternative source of funding for Project READ. See Tr. 314 and discussion at Note 78, *infra*.

<sup>24</sup> Stip. ¶ 4.

<sup>25</sup> Stip. ¶ 6.

21. Despite Dr. Howell's gloomy forecast, Project READ submitted its application to LEAA on August 22, 1979 for two additional years funding (Jan. 1980-Dec. 1981) in the amount of \$601,535.<sup>20</sup>

22. On November 28, 1979, Dr. Howell wrote to Dr. Carsetti, "I regret to inform you that we are unable to offer continued LEAA support for your project at this time."<sup>21</sup> The letter also stated that no support would be forthcoming from Special Emphasis Division, NIJJDP's sister division within LEAA's juvenile justice organization.<sup>22</sup>

23. On December 20, 1979, David West, the Acting Associate Administrator for OJJDP (organizationally, Dr. Howell's NIJJDP and Special Emphasis Division are subordinate units in OJJDP) told Dr. Carsetti that there was no basis for reconsidering the Project READ continuation application either as an NIJJDP project or a Special Emphasis project.<sup>23</sup>

24. Project READ was authorized by OJJDP to spend funds already granted until June 30, 1980. However, those funds had been fully expended by January 31, 1980.<sup>24</sup>

25. LEAA funding is the sole financial support for Project READ and without that support the project faces extinction.<sup>25</sup>

#### *The Background of the Discontinuance Decision*

26. The reason given by Dr. Howell in his November 28, 1979 letter for the decision not to provide continuation funding from NIJJDP for Project READ was that "Fiscal year 1980 training priorities of NIJJDP have been established, and do not include the type of training activity under Project READ."<sup>26</sup> Dr. Howell's letter added that NIJJDP's sister division within OJJDP, Special Emphasis Division, had a strong interest in continuing Project READ but Special Emphasis officials had informed Dr. Howell that there were no funds available for the project in fiscal year 1980.<sup>27</sup>

The background of the decisions reported by Dr. Howell on November 28, 1979 was developed during the hearings (see Findings 27 to 35).

27. Sometime in 1979 NIJJDP decided to establish a training center to carry out the mandate of Section 248 of the Juvenile Justice Act. Approximately \$825,000 was allocated for this objective. It was then decided that Project READ and all other training activities would have to compete for the remaining \$175,000 which NIJJDP had earmarked for training.<sup>28</sup>

28. There was no adequate explanation offered on the record as to why Project READ was confined solely to the \$1 million "training activity" designation by NIJJDP, or how the project would have fared had it not been so restricted. The Administrator of LEAA testified that perhaps Project READ should not have been limited to the \$1 million, and the availability of other funds may or may not have been considered in the review process.<sup>29</sup>

29. NIJJDP's Fiscal Year 1980 budget is \$11 million.<sup>30</sup>

30. From its cramped budgetary cubby-hole at NIJJDP, Project READ was shunted next to NIJJDP's sister division, Special Emphasis, which previously had reviewed the project enthusiastically (see Findings 8 to 17). At Special Emphasis Division, however, this earlier enthusiasm was tempered by a decision to adhere to an LEAA policy of awarding grants through published guidelines and competitive application review.<sup>31</sup> While Special Emphasis Division allowed certain exceptions to this policy (as permitted in the LEAA policy statement itself),<sup>32</sup> and the staff of Special Emphasis recommended an exception for Project READ,<sup>33</sup> OJJDP had established a policy that exceptions could only

<sup>20</sup> Stip. ¶ 7.

<sup>21</sup> Stip. ¶ 12.

<sup>22</sup> Stip. ¶ 13.

<sup>23</sup> Stip. ¶ 16; Tr. 366-368.

<sup>24</sup> Stip. ¶ 5.

<sup>25</sup> See Tr. 243-244.

<sup>26</sup> Stip. ¶ 13; JX5.

<sup>27</sup> Stip. ¶ 13; JX5.

<sup>28</sup> Tr. 263-268; JX's 3A-3J.

<sup>29</sup> Tr. 55-56. See also Tr. 174-175.

<sup>30</sup> The legislative history of the Juvenile Justice Act establishes that NIJJDP shall receive no more than 11 percent of total OJJDP appropriations. Tr. 172-173, 248-249.

<sup>31</sup> Stip. ¶ 8; Tr. 324; JX's 9A-9B.

<sup>32</sup> JX's 14A-14B; Stip. ¶ 10; Tr. 30-42, 48.

<sup>33</sup> "I feel this program is strong enough in its concept that we may request to Mr. Dogin to make an exception of this program and allow OJJDP to fund it under our authorization." JX8F.

be granted to Special Emphasis' own projects and not to those of a sister division (NIJJDP). NIJJDP projects were designated as new, unsolicited applications rather than continuing applications eligible for a Special Emphasis exception.<sup>40</sup> The Director of Special Emphasis felt that she had met her "responsibility by getting it [Project READ] back to the Institute [NIJJDP]."<sup>41</sup>

31. Special Emphasis had available \$15 million for grants in FY 1980.<sup>42</sup> Under the statute, the work done by Project READ qualified for the discretionary funds controlled by Special Emphasis, assuming Special Emphasis had wanted to finance the project.<sup>43</sup>

32. Once NIJJDP and Special Emphasis Division decided not to fund Project READ, subsequent review by Mr. West, the Director of OJJDP, did not consider the substantive merits of the project. Mr. West did not have first-hand knowledge of the project,<sup>44</sup> and performance by Project READ was not a factor in his decision to discontinue the project.<sup>45</sup> His review merely confirmed that the determination by Special Emphasis not to extend its continuation policy (or exceptions to that policy) to an NIJJDP project was consistent with his own directives.<sup>46</sup>

33. Mr. West conceded that had he so desired, funds for Project READ could have been found either by placing the program within the exceptions to the Special Emphasis continuation policy, or by finding funds in some part of the NIJJDP budget.<sup>47</sup>

34. The final decision to deny funding to Project READ was made by Mr. West.<sup>48</sup>

35. Henry Dogin, the Administrator of LEAA at the time of the discontinuance of funding, knew absolutely nothing about Project READ, and had not reviewed the decision to deny the funds.<sup>49</sup>

#### *LEAA Policy Respecting 228(a)*

36. There are no LEAA regulations or guidelines which establish criteria for continuation of funding for Project READ by NIJJDP.<sup>50</sup>

37. Although there are no formal regulations or guidelines, LEAA officials say that in compliance with Section 228(a) continuation decisions (including the decision to discontinue Project READ) routinely take into account such factors as (a) availability of funds; (b) the success of the project in meeting its objectives; (c) whether the project was completed; and (d) other priorities.<sup>51</sup>

38. As an alternative position LEAA counsel argues that Section 228(a) does not apply to the NIJJDP grant to Project READ.<sup>52</sup>

39. From time to time LEAA has attempted to come to grips with the policy behind Section 228(a) through announcements relating to the funding of projects other than the Project READ situation—i.e., formula grants to the States and grants made by Special Emphasis Division (Findings 40 to 43).

40. In October 1975, OJJDP adopted financial guidelines applicable to formula grants to the States and Special Emphasis grants which attempted to reconcile 228(a), the concept of a project period, and the practice of granting of an award for a period which may be less than a project period. First, the guidelines state:

"The Juvenile Justice Delinquency Prevention Act establishes the policy that programs funded under it shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactorily."

Then the Guidelines provide the following mechanism for termination:

"(b) Preparation.—In preparing applications, applicants shall not request support for a project beyond the time period stated in the program announcement."

\* \* \* \* \*

<sup>40</sup> JX's 4, 9A-9B; Tr. 70-73, 78-79, 84-85, 89-91, 323-326, 337.

<sup>41</sup> Tr. 339.

<sup>42</sup> Tr. 75.

<sup>43</sup> Tr. 98.

<sup>44</sup> Tr. 98.

<sup>45</sup> Tr. 110.

<sup>46</sup> Tr. 70-73, 84-85, 88-91.

<sup>47</sup> Tr. 93-94. See also Tr. 53, 171-172, 174-175 for indication that with proper planning funds could have been found for Project READ.

<sup>48</sup> Tr. 22, 64.

<sup>49</sup> Tr. 21, 26, 33.

<sup>50</sup> Stip. page 4, ¶ 1.

<sup>51</sup> Tr. 262, 271.

<sup>52</sup> Brief of LEAA 5. See discussion at Note 88, infra.

"(e) *Termination*.—An award shall terminate automatically upon completion of the period set forth in the final application, unless extended. In addition, a project may be terminated prematurely, if:

"(1) The level of Federal funding under the JJDP Act is decreased materially, or

"(2) The applicant fails to comply with the terms and conditions of the award, or

"(3) The applicant fails to receive a satisfactory yearly evaluation.

"(f) *Continuation Funding*.—Grantees shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory. Withdrawal of Federal support would be indicated if the grantee failed in a material way to comply with the terms and conditions of the award; or, if for some reason not necessarily within the grantees control, it was established that continued funding was not in the best interest of the government.

"(g) *Extensions*.—Extensions of the project period shall be considered only when the original project period was approved for a period shorter than needed to complete the project or the results of the project seem so fruitful as to warrant support beyond that originally intended."<sup>53</sup>

The Director of Special Emphasis testified that the financial guidelines cited above mean that projects are eligible for funds for a projected project, awards are given on a one or two year basis, and applications for continuance are judged on performance, the extent to which objectives have been achieved, and the likelihood of objectives being achieved if additional time is given. Occasionally, projects are extended beyond the originally stated projected project period.<sup>54</sup>

41. On February 24, 1976 the General Counsel of LEAA said that while the statute did not require indefinite funding for every project, neither did it permit establishment of a set period of funding. He believed that the requirements of Section 228(a) could be met by guidelines for grants to the States and Special Emphasis grants which accomplish the following:

1. Require establishment of a projected length of project support based upon the nature of the activity, the nature of the applicants, and judgments regarding the appropriateness of long-term cost assumption.

2. Set forth the expected length of project funding in the program announcement or plan.

3. Provide for continuation funding throughout the established period for project funding unless stated grounds for premature termination, consistent with the statute, were found to exist.

4. Provide for extensions beyond the approved project period where the results of the project are so fruitful as to warrant continued support.<sup>55</sup>

42. On May 20, 1977 under the heading "Continuation Support" the agency's grant guidelines for the States adopted verbatim the language of Section 228(a) as an "act requirement," but again, as in the case of the 1975 guidelines (Finding 40) provision was made for termination at the end of the award period and for extensions "when the original project period was approved for a period shorter than needed to complete the project or the results of the project seem so fruitful as to warrant support beyond that originally intended."<sup>56</sup>

43. On July 25, 1978 the grant guidelines for States were amended to read "Pursuant to Section 228(a) of the JJDP Act the State Planning Agency shall: (1) Indicate the minimum duration of each JJDP program; (2) Indicate the minimum number of years that funding may be requested and received for projects in each program."<sup>57</sup> Since the amended guidelines did not indicate that the minimum period would be tantamount to a maximum period, the guidelines are not necessarily inconsistent with the policy of Section 228(a).<sup>58</sup>

44. In addition to the continuation policies relating to formula grants and Special Emphasis grants, LEAA has adopted several other positions relating to Section 228(a) generally (Findings 45 to 52).

<sup>53</sup> JX's 7A-7B.

<sup>54</sup> Tr. 321-322.

<sup>55</sup> JX10B.

<sup>56</sup> JX's 11A-11B.

<sup>57</sup> JX12.

<sup>58</sup> Compare Tr. 46-47 (the amended guidelines do not mandate continued funding) with Tr. 167-168 (the amended guidelines do not prohibit continued funding).

45. On May 14, 1976 the Attorney General asked Congress to delete Section 228(a).<sup>59</sup>

46. The effort to delete Section 228(a) failed. In September 1976, a Department of Justice "Fact Sheet" covering the Juvenile Justice Act reported "Successful programs are to receive continued funding."<sup>60</sup>

47. The 1977 amendments to the Juvenile Justice Act prepared by LEAA left Section 228(a) intact.<sup>61</sup>

48. On October 17, 1978, LEAA published in the Federal Register a notice stating that juvenile-related programs funded under the Crime Control Act, which ordinarily would not be funded beyond a three-year period, were eligible for continuation funding under Section 228(a) of the Juvenile Justice Act.<sup>62</sup>

49. An internal Justice Department task force, headed by the Assistant Attorney General For Legislative Affairs concluded in February 1979 that the Juvenile Justice Act contained a "forever funding guarantee," and suggested that the Attorney General consider a 5-year limit on funding.<sup>63</sup>

50. Mr. Dogin, the former Administrator of LEAA (and current Director of OJARS) interpreted the language of 228(a) as meaning that continuation of funding is permitted but programs need not be funded forever.<sup>64</sup>

51. LEAA officials argue in this proceeding that notwithstanding the mandatory language of 228(a) ("shall"), they retain full discretion because grants are made pursuant to sections of the statute which "authorize" but do not require payments.<sup>65</sup>

52. It is the position of LEAA administrators that Section 228(a) cannot be interpreted as mandating continued funding for successful projects. Such a reading of the statute would mean that problems in the juvenile justice field could not be attacked in a sequential fashion because of prior commitments to existing programs, and innovative programs could not be funded because of pre-existing allocations of scarce funds.<sup>66</sup>

### III—DISCUSSION

At issue here is compliance with Section 228(a) of Title II of the Juvenile Justice Act which provides that in accordance with criteria established by the Administrator, it is the policy of Congress that juvenile delinquency programs funded under Title II shall continue to receive financial assistance provided that the yearly evaluation of such programs is satisfactory.

It is undisputed that the performance of Project READ, a grantee under Title II, was more than just satisfactory; it was exemplary in both conception and execution.<sup>67</sup> Nevertheless, LEAA would discontinue funding the program based on what it regards as a proper exercise of its discretionary powers. Curtailing the exercise of that discretion, according to the agency, would unduly hamper LEAA by interfering with its ability to set priorities, initiate promising new programs and make allocations amongst scarce resources on the basis of valid policy considerations.

From the viewpoint of READ, Inc., in the name of unbridled discretion the agency has in effect gratuitously amended an act of Congress to the point that the statute has been turned on its head and now reads that in accordance with whatever criteria the Administrator may choose to establish (or not establish), it is the policy of Congress that programs funded under Title II may continue to receive financial assistance even if the yearly evaluation of such programs exceeds any standard for judging performance.

Before discussing the main points of the parties, it is necessary at the outset to take up the misdirected claim advanced by LEAA that rejection of its position must inevitably mean the creation of a class of favored wards—grantees who once having received funding are then in possession of a vested right which must be subsidized in perpetuity.<sup>68</sup> Putting aside the fact that on the record of this case

<sup>59</sup> RX1C.

<sup>60</sup> RX5B.

<sup>61</sup> READ Phys. Exh. A, p. 41.

<sup>62</sup> RX2.

<sup>63</sup> READ Phys. Exh. A, p. 28-29; Tr. 129-130.

<sup>64</sup> Tr. 23-25, 48-49.

<sup>65</sup> Tr. 252-253. See also Tr. 349.

<sup>66</sup> Tr. 24-25, 272-273, 335-336, 372-376.

<sup>67</sup> Findings 8 to 19.

<sup>68</sup> See Tr. 57-58, 326; LEAA Brief at 22.

Project READ is the very antithesis of the undeserved government hand-out, no claim is made by READ, Inc. that Congress intended anything to last in perpetuity, including the existence of grantors or grantees of LEAA funds. What READ, Inc. does say is that so long as LEAA has the responsibility for administering Title II it cannot simply ignore the law (or repeal it administratively<sup>69</sup>); it must comply with Section 228(a) whether it likes it or not. Should compliance result in the continued funding of a patently worthwhile project, this is hardly a result to be avoided since continuation is precisely what Congress intended when it issued a "mandatory instruction" to continue successful projects.<sup>70</sup>

Read, Inc.'s view of the legislative history—that Congress mandated that successful projects receive continued assistance and that LEAA has no discretion in eliminating such assistance if performance is satisfactory<sup>71</sup>—was substantially supported by the testimony of John Rector. Mr. Rector was the Staff Director and Chief Counsel of the Senate Subcommittee to Investigate Juvenile Delinquency. It was from this Subcommittee that the "Bayh Act" (the Juvenile Justice Act of 1974) emerged. According to Mr. Rector's view of the legislative history, Congress was so concerned about encouraging long-term programs that funding of existing programs may only be discontinued by LEAA if (1) the program is being administered improperly or illegally; (2) its performance based on monitoring by LEAA program supervisors is unacceptable; or (3) Congress repeals the statute.<sup>72</sup>

Mr. Rector's (and READ's) account of the legislative history leaves so little room for the exercise of discretion that to follow this view would mean that the agency would be hopelessly immobilized should it be forced to choose between several worthwhile projects were appropriations to be drastically cut.<sup>73</sup> The legislative history does not support such an extreme restraint on agency flexibility. But neither does it support the agency's view that its discretion is essentially without limit. What it does show is that Congress intended that the agency's discretion be tempered by the following consideration:<sup>74</sup>

1. Juvenile justice programs traditionally faced a continuity problem. While other crime projects usually had come under the wing of State and local governments, juvenile justice reform programs had been forced to scratch for scarce private and voluntary support. This historic difference between the administration of juvenile and other crime programs is reflected in the different approaches taken by Congress in the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice Act of 1974. Under the Safe Streets Act costs are assumed by State and local governments in 3 to 4 years. The "assumption of cost" concept was specifically rejected in the Juvenile Justice Act in favor of 228(a) which directs continued indefinite federal funding.<sup>75</sup> That 228(a) reflects a congressional purpose to institutionalize carefully chosen and successful private, non-profit juvenile programs which prior to the enactment of the statute had faced an uncertain future, is also shown by the results of a meeting which took

<sup>69</sup> See Note 88, *infra*.

<sup>70</sup> READ Brief at 1-2.

<sup>71</sup> See Tr. 8, 304; READ Brief at 1-2.

<sup>72</sup> Tr. 114-117, 126, 144-147. Mr. Rector's view of the legislative history was not recently arrived at nor litigation-inspired. He expressed similar views in 1973 when he was OJJDP Director (RX3E), but he admitted on cross-examination that there have been occasions when he, as Director, may have acted in a manner inconsistent with this interpretation of 228(a) (Tr. 188-189). These inconsistencies may be attributable in part to the use of Crime Control Act funds (and the assumption of cost philosophy) during the early years of OJJDP (Tr. 118-119, 125-126, 190-191), and a desire to obtain some funds for projects which otherwise would get none (Tr. 188-190).

<sup>73</sup> In addition to testimony and exhibits relating to legislative history, the legislative materials reviewed were the Juvenile Justice and Delinquency Prevention Act—S. 3148 and S. 821: Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 2d session, 92d Congress, and 1st session, 93d Congress (1972-73) [hereinafter Senate Hearings]; Juvenile Justice and Delinquency Prevention and Runaway Youth: Hearings before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor on H.R. 6265 and H.R. 9298, 2d session, 93d Congress (1974) [hereinafter House Hearings]; S. Rep. No. 93-1011, 93d Congress, 2d session, reprinted in [1974] U.S. Code Congress and Ad News, pp. 5283-5333 [hereinafter S. Rep.]; S. Rept. No. 93-1103, 93d Congress, 2d session (Conference Report) (1974) [hereinafter S. Conf. Rep.]; H. Rep. No. 93-1135, 93d Congress, 2d session (1974) [hereinafter H. Rep.]; Rep. No. 93-1298, 93d Congress, 2d session (Conference Report) (1974) [hereinafter H. Conf. Rep.]; and 120 Congressional Record (1974).

<sup>74</sup> See Tr. 8-9, 12-13.

<sup>75</sup> RX's 2, 3A-3C; JX's 10A-10B; Tr. 48-49, 114-117, 154-155, 161-162, 175-176; H. Rep. 6; Senate Hearings 51 (remarks of Senator Bayh), 277 (Statement of Rhett M. Aster).

place soon after the passage of the Juvenile Justice Act of 1974. Present were Mr. Rector (then Staff Director and Counsel to the Juvenile Delinquency Senate Subcommittee which had drafted the legislation and later to become director of OJJDP), Fred Nader (Acting Assistant Administrator of OJJDP) and representatives of the National League of Cities and the United States Conference of Mayors, organizations which had sponsored the 1974 Act. From this meeting emerged an understanding of the purpose of Section 228(a) which Mr. Rector adopted as OJJDP director, and which he identified during the hearings as consistent with his own understanding of the act:

"Unlike the Safe Streets Act, once a project is funded under the Juvenile Justice Act, it will be continued, unless it receives a bad evaluation, through the life of the legislation. There is no prescribed cut-off date requiring local institutionalization. This could have future implications for local evaluation capability and may allow for the development of more innovative projects which might not be initiated if there was fear it could not be institutionalized."<sup>76</sup>

2. The emphasis on continued funding in the Juvenile Justice Act came in response to the plea made during the congressional hearings that the lack of continuity in juvenile justice programs had devastating effects not only on the youngsters participating in these programs but also on the project organizers as well. Just as a program was making some progress it was a disheartening blow to the youngsters to see the support precipitously removed. Moreover, the private agency providing the program was faced with the prospect of years of wasted effort and a threat to its credibility.<sup>77</sup>

3. Another theme heard during the hearings prior to enactment of the 1974 Act was that Federal government's involvement in juvenile delinquency (especially on the part of the Department of Health, Education, and Welfare in administering the Juvenile Delinquency Prevention and Control Act of 1968) consisted largely of endless agonizing over the causes of juvenile delinquency with the result that practically all effort was expended on "stop-and-start" pilot or demonstration projects. While the congressional drafters thought that there would still be room for some research, the sponsors essentially wanted LEAA to put in place, and keep in place, long-term action programs that delivered services.<sup>78</sup>

4. The legislative history emphatically does not support the argument of LEAA officials that 228(a) should be interpreted merely as allowing funding for more than one year, but does not mandate anything more. As introduced in the 93d Congress on February 3, 1973, S. 821 originally contained the following language in Section 407(b):

"In accordance with criteria set forth by the Director, grants or contracts may provide for long-term funding, provided that such grants or contracts provide for yearly evaluation to ascertain if the goals of such grants or contracts are being achieved."<sup>79</sup>

Following the introduction of the bill, there was additional testimony about the need for stability, continuing support, and the havoc wrought when effective juvenile delinquency programs are not refunded.<sup>80</sup> In response to this testimony the discretionary language of 407(b) was replaced with the final stronger version of 228(a):

5. I can find no clear indication in the legislative history that the term "yearly evaluation" in 228(a) means routine monitoring only, or that it was intended as a limitation on the agency's right to assess funded programs for their contribution to the prevention and control of juvenile delinquency even if performance is satisfactory as determined by routine monitoring.<sup>81</sup>

<sup>76</sup> RX4E; Tr. 150-151.

<sup>77</sup> Senate Hearings 175-176 (statement of Robert B. Langworthy); House Hearings 236, 254 (statement of T. George Silcott); Tr. 57.

<sup>78</sup> Tr. 114-117, 174-175, 201-202; S. Rep. 5283, 5292-93, 5297; H. Rep. 3; Senate Hearings 359 (remarks of Senator Bayh); House Hearings 158-159 (statement of Senator Bayh), 229-230, 236 (statement of T. George Silcott).

<sup>79</sup> Senate Hearings 350 [emphasis added].

<sup>80</sup> Senate Hearings 403 (statement of Robert D. Cain), 537-538 (statement of Frank M. Jones), 580 (statement of Jerry J. Miller), 600 (statement of William E. Aull), 803-804 (statement of William J. Ensign), 815-816 (letter of Margaret K. Clark).

<sup>81</sup> The strongest support for the routine "monitoring" interpretation may exist in the agency's own guidelines for formula and Special Emphasis grants which define "satisfactory yearly evaluation" as referring to "those activities defined as monitoring." JX's 11B, 12; see also Tr. 118, 203-04. But in the course of the hearings on the Juvenile Justice Act, Senator Bayh said it was perfectly proper to demand that programs prove they are effective before extending their lives. Senate Hearings 175 (remarks of Senator Bayh). I am assuming that "effective" in this context means effective in reducing juvenile delinquency.

Whether the policy behind section 228(a) as revealed in the legislative history outlined above can be met by publishing a projected length of project support as was done for formula and Special Emphasis grants (and thus at least putting grantees on notice that there may be no support at the end of the projected length) or by using minimum grant periods<sup>82</sup> are questions that need not be answered here, since Project READ was funded in neither one of these ways. Project READ was given year-to-year grants, and the issue here is whether the policy behind 228(a) favoring continuation was adequately considered as the agency decided not to continue funding the project at the end of its last yearly termination date. In a word, the record shows a total disregard of 228(a) in this instance.

I reach this conclusion notwithstanding the claim of LEAA administrators that certain general criteria consistent with 228(a) are used routinely in making continuation decisions and were applied here.<sup>83</sup> But the account given by LEAA officials of how the decision to discontinue was *actually* reached does not add up to even token compliance with the statute or any general criteria. As far as I can determine, no criteria were used which come close to reflecting the statutory policy.<sup>84</sup> The record shows that the project was discontinued on the basis of insular considerations which are diametrically opposed to the broad congressional directive to continue worthwhile projects. Thus, LEAA administrators decided not to support the program by—

(a) Confining Project READ to an especially small budgetary pigeon-hole where its survival was dependent on its ability to compete against another mandated program.<sup>85</sup>

(b) Imposing retroactively internal competitive bidding policies which have nothing to do with the performance of existing programs, and then not adequately considering an exception to the bidding policy for Project READ.<sup>86</sup>

(c) Relegating its continued existence to hair-splitting as to which unit of OJJDP was administratively responsible for the project—NIJJDP or Special Emphasis. Once designated an NIJJDP project it could then not avail itself of certain Special Emphasis "exceptions" to the "competitive bid" policy despite Special Emphasis' high regard for the project.<sup>87</sup>

This neglect of the statutory policy revealed in the discontinuation scenario is so egregious that perhaps it can best be explained by the argument of counsel for LEAA that 228(a) simply does not apply to the grant by NIJJDP to Project READ.<sup>88</sup>

It must be emphasized that I am not saying that an evaluation from a perspective which is more receptive to the policy of 228(a) would necessarily reach the conclusion that Project READ must continue to receive LEAA funds. If, on the one hand, the Administrator determines that literacy had nothing to do with delinquency (despite the statutory language and the legislative history indicating such a linkage),<sup>89</sup> or, on the other hand, he decides that de-

<sup>82</sup> See Findings 40 to 43.

<sup>83</sup> See Finding 37.

<sup>84</sup> For purposes of this discussion, it is immaterial that the statutory requirement for "criteria" may mean that the Administrator must spell out formally in advance any standards which will be used to determine whether funding for a particular project is discontinued. In this instance not only were there no prior existing criteria specifically applicable to Project READ, but the evaluation process itself apparently applied no criteria, formally established or otherwise, which gave due consideration to the statutory policy.

<sup>85</sup> Findings 26 to 29. See also Tr. 155.

<sup>86</sup> Findings 30-34. See also Tr. 208-209.

<sup>87</sup> Finding 30.

<sup>88</sup> Counsel for LEAA have argued here that Congress never intended that Section 228(a) be applied to Part C of the Juvenile Justice Act, that is, the programs which come under NIJJDP. The claim is made that Part C of Title II (establishing NIJJDP) was brought under 228(a) at the last minute and represents a numbering mistake made by Congress. If, as counsel maintain, Section 228(a) which by its terms covers all of Title II, was never intended to embrace NIJJDP, then this "inadvertent drafting technicality" or "latent ambiguity" (Brief of LEAA 5) should be called to the attention of Congress immediately since the Administrative Law Judge respectfully declines the invitation to repeal the Act on such flimsy grounds. The agency's conviction that 228(a) does not apply to Part C may have led it to believe that the imposition on Project READ of a set period of funding with no adequate provision for continuation review was acceptable although its General Counsel had warned that the statute would not permit similar action in making formula and Special Emphasis grants. See Finding 41.

<sup>89</sup> See § 224(a)(11) which authorizes LEAA to "develop and implement programs relating to juvenile delinquency and learning disabilities," and 224(a)(2) "to develop and maintain community-based alternatives to traditional forms of institutionalization." 42 U.S.C. 5634. See also Tr. 253-54; S. Rep. 5283, 5287; Senate Hearings 71, 74-75 (statement of Arnold Schuchter); 120 Cong. Rec. 25182 (1974) (remarks of Sen. Brock).

linquency is indeed related to literacy, but that another organization could do a better job, I see nothing in Section 228(a) or the legislative history which requires him to continue to fund a project which he believes is not accomplishing the basic statutory objective.<sup>90</sup> But on the record of this proceeding there was no attempt to reconcile a possible clash between the express congressional admonition to continue successful projects, and the unstated but inherent obligation residing with the Administrator to measure the effectiveness of even successful programs as against the overall congressional objective to reduce delinquency.

As it happens, no one with overall responsibility for compliance with Section 228(a) made a critical assessment of the NIJJDP decision, or reviewed the Special Emphasis determination, or in any way purported to scrutinize the merits and demerits of the program with due consideration given to the congressional policy that worthwhile projects be continued.<sup>91</sup> If such a review had been made, there is evidence in the record that LEAA policymakers could have found funds for Project READ, and that neither NIJJDP's assignment of the project to a particularly tight budgetary niche, nor Special Emphasis' parochial view of its exemption policy would have been controlling.<sup>92</sup>

The deficiencies outlined above cannot be papered over by invoking the legal rubrics "committed to agency discretion" of 701(a)(2) of APA, or the "arbitrary and capricious" standard of 706(2)(A) of APA, or the concept of judicial "deference" to an agency's interpretation of its own statute. In the first place, 701(a)(2) may be invoked only in those rare circumstances in which the statute leaves no doubt that Congress intended that there be no review of agency discretion because there is no law to apply. *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). Here, there clearly is law to apply—the directive in 228(a) itself—and, therefore, 701(a)(2) is inapplicable. Moreover, it is by no means certain that the "arbitrary and capricious" standard of 706(2)(A), which refers to the scope of judicial review, is germane at this stage. The issue here is not whether an appellate court should second-guess an exercise of agency discretion, but instead whether the agency itself has met its burden of demonstrating compliance with a specific statutory provision. On the entire record of this proceeding and for the reasons given above, I have concluded that there has been no compliance with Section 228(a) in this instance.

Moreover, even if the standard of 706(2)(A) does apply, as LEAA contends, I would conclude that by ignoring the policy behind 228(a) the agency has acted in an arbitrary and capricious manner and thus has abused whatever discretion it may have. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

Finally, LEAA contends that its interpretation and implementation of Section 228(a) (and, by implication, its legislative history) are entitled to judicial deference as a matter of law. Again, since this matter is still within the administrative review stage where the key question is whether LEAA's actions as shown by the record are in compliance with the statute, the applicability of notions of judicial deference to agency expertise is questionable. In any event, to the extent that some deference to the agency's interpretation of its statute may be appropriate, the cases involving judicial review of agency action do not compel the adoption of LEAA's interpretation of the statute. It is well established that administrative construction of a statutory provision which is inconsistent with the plain terms of the statute, its legislative history, and the purposes of the overall statutory scheme will not be sustained by the courts. *Chemical Workers v. Pittsburgh Class*, 404 U.S. 157 (1971); *NLRB v. Radio and Television Broadcast Engineers Union*, 272 F.2d 713 (2d Cir. 1959); see also *Zuber v. Allen*, 396 U.S. 168 (1969). Citing *Udall v. Tallman*, 380 U.S. 1 (1965) and *Chemehuevi Tribe of Indians v. Federal Power Commission*, 420 U.S. 395 (1975), LEAA claims, however, that its interpretation of its statute is entitled to considerable weight as a "reasonably contemporaneous" construction of a statute with whose administration it is charged.<sup>93</sup>

In the cases cited for this proposition the policies adopted by the agencies had been enunciated consistently and applied over a substantial period of time

<sup>90</sup> This kind of evaluation, suggested by the Director of Special Emphasis, is, I believe, consistent with the purpose of 228(a). See Tr. 351-52. It was not used as grounds for rejection of Project READ. Tr. 352-56.

<sup>91</sup> See, e.g., Tr. 340.

<sup>92</sup> See Findings 28, 33.

<sup>93</sup> Brief at 11-12.

(in the *Chemehuevi Tribe* case, 54 years).<sup>64</sup> See also *Sawbe v. Bustos*, 419 U.S. 65 (1964); *Power Reactor Co. v. Electricians*, 367 U.S. 396 (1961); *Cammarano v. United States*, 358 U.S. 498 (1959); *Massachusetts Mutual Life Insurance Co. v. United States*, 288 U.S. 269 (1933). With regard to Section 228(a), LEAA's interpretation has been, at best, ambiguous and changing,<sup>65</sup> and as applied to Project READ, no criteria for the implementation of that provision had been announced prior to OJJDP's determination to discontinue funding.<sup>66</sup>

The failure of Congress to alter Section 228(a) in its 1977 amendments to the Act has also been suggested by the agency as a sign of congressional acquiescence in LEAA's interpretation of the statute. Not only has LEAA's interpretation of that Section been uneven, as noted above, but the agency also attempted to have Section 228(a) repealed.<sup>67</sup>

By leaving the Section intact in the 1977 Amendments despite LEAA misgivings, Congress may, in fact, have been indicating not only its disagreement with the agency's legislative recommendation, but also the position now advanced by LEAA: namely, that refunding decisions are completely within the agency's discretion. See *Chemehuevi Tribe of Indians v. Federal Power Commission*, *supra* (FPC's unsuccessful legislative attempts to broaden jurisdiction indicative of original legislative intent). Moreover, since there is no showing of congressional awareness of agency construction or of actual practice, mere inaction on the part of Congress provides scant indication of congressional approval. *Zuber v. Allen*, *supra*; *Sawbe v. Bustos*, 419 U.S. 65, 80 (White, J., dissenting). In light of the relatively short life of the Juvenile Justice Act, even congressional scrutiny of the agency's construction of the statute (which is in itself uncertain) cannot be presumed.

#### IV—CONCLUSIONS AND RECOMMENDATIONS

The discontinuance of funding to Project READ was done improperly since the requirements of Section 228(a) of the Juvenile Justice Act were not adequately considered. Accordingly, I recommend that the Administrator reconsider the decision and give the project a hard look with the letter and spirit of 228(a) in mind.

MORTON NEEDELMAN,  
Administrative Law Judge.

March 3, 1980.

KARR & LYONS,  
Washington, D.C., March 11, 1980.

Re In the Matter of READ, Inc., Denial of Application No. 9-1241-0-MD-JJ.

HOMER F. BROOME, Jr.,  
Acting Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C.

DEAR MR. BROOME: Enclosed is the response of READ, Inc., to the Initial Decision in the above-captioned proceeding.

We are somewhat uncertain as to the future procedural course of this matter. The first sentence of 28 C.F.R. Sec. 18.57 provides: "Upon receipt of the recommendations of the hearing examiner, the Administration will review the proceedings pursuant to Sec. 18.7 [sic]." However, no section numbered "18.7" appears within Part 18 of Title 28 of the Code of Federal Regulations. If the mention of "Sec. 18.7" in Sec. 18.57 is actually meant to refer to Sec. 18.71, which "generally" concerns review by the Administration of hearing examiners' recommendations, the ambiguity is not removed. Sec. 18.71 refers to "review under the Administration's rules and regulations," but the applicable "rules and regulations" are not otherwise specified. Accordingly, we would appreciate being apprised of the precise procedural framework within which this case will proceed to resolution by the agency. We are particularly concerned about two points.

First, we request an opportunity to make an oral presentation to you before you reach your ultimate decision.

<sup>64</sup> Moreover, *Udall v. Tallman* involved the Secretary of the Interior's interpretation of an Executive order and the Department's own regulations.

<sup>65</sup> Findings 36 to 52.

<sup>66</sup> Finding 36.

<sup>67</sup> Finding 45.

Second, although 28 C.F.R. Sec. 18.57 requires the parties to submit their responses to the recommendations of the hearing examiner or administrative law judge within 30 days after the date such recommendations are submitted (in this case, on or before April 3, 1980), Part 18 does not specify any time certain within which the Administrator must render a final decision. However, Part 18 does recognize repeatedly the necessity that review of a grant denial be conducted expeditiously. See, e.g., 28 C.F.R. Secs. 18.51(d) and 18.52(c)(11). Given that it has already been some four months since the denial of the grant application of READ, Inc., and given also that READ, Inc. has been without any monies whatsoever for some two months, we urge very prompt action on your part.

Finally, we ask that this letter, as well as the enclosed response to Initial Decision, be incorporated into the record of this proceeding.

Sincerely,

MONA LYONS,  
Attorney for READ, Inc.

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, LAW ENFORCEMENT  
ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC.

#### Response of READ, Inc. to Initial Decision

Pursuant to 28 C.F.R. Sec. 18.57, READ Inc.<sup>1</sup> hereby responds to the Initial Decision of the administrative law judge, filed on March 3, 1980. In the view of Project READ, the administrative law judge's findings of fact<sup>2</sup> and conclusions of law<sup>3</sup> are unassailably correct. Accordingly, we request written acceptance by the Administrator of the Law Enforcement Assistance Administration,<sup>4</sup> pursuant to 28 C.F.R. Sec. 18.71, of the administrative law judge's findings of fact and conclusions of law, without modification; and based thereon, we ask for a determination by the Administrator of LEAA that the Office of Juvenile Justice and Delinquency Prevention<sup>5</sup> must forthwith approve Project READ's application for continuation funding, No. 9-1241-0-MD-JJ.

The reasons why the Administrator must reach that result, on this record, require no extensive elaboration here, given the detailed and altogether persuasive discussion of the facts and the issues by the administrative law judge. We do, however, urge the Administrator to consider additionally the numerous recent communications to LEAA and OJJDP by individuals and organizations concerned about the continued existence of Project READ, copies of which are annexed hereto as Group Exhibit A. These letters are remarkable for the sheer diversity of their writers, who reside in every region of the United States, and who include teachers of troubled youth, in both institutional and alternative school settings; college and university faculty members and administrators; artists and administrators of arts programs for young people in trouble; book and magazine publishers; judges; juvenile court probation officials and workers; lawyers experienced in juvenile court matters; officials of juvenile programs administered by state and local governments; a United States Senator; private consultants to juvenile programs; administrators and workers in private non-profit organizations concerned with troubled youth; and, most significant of all, young people who have directly benefited from the activities of Project READ. Despite the variety of their backgrounds, the authors of these letters are unanimous in the substance of their plea to LEAA: all attest that Project READ has offered unique and meaningful assistance to young people in trouble, and all agree that it is essential that continued existence of Project READ be assured through refunding by OJJDP.

In the Senate hearings which preceded enactment of the Juvenile Justice and Delinquency Prevention Act of 1974, its principal sponsor, Senator Birch Bayh, expressed the view that "the time has come to accept the judgment of . . . non-bureaucrats" about effective methods to respond to the problem of juvenile de-

<sup>1</sup> Referred to hereinafter as "Project READ."

<sup>2</sup> The administrative law judge's findings of fact appear at pp. 4-24 of his *Initial Decision*.

<sup>3</sup> The administrative law judge's conclusions of law appear at pp. 25-39 of his *Initial Decision*.

<sup>4</sup> Referred to hereinafter as "LEAA."

<sup>5</sup> Referred to hereinafter as "OJJDP."

linquency.<sup>6</sup> Group Exhibit A represents the considered judgment of knowledgeable "nonbureaucrats" about the worth of Project READ, and if the Administrator does indeed listen to that judgment, we are confident of the outcome of this proceeding.

Finally, we think it appropriate to offer an additional comment in response to one statement which appears in the agency's post-hearing brief, namely, the agency's assertion that "[i]t is not contended by READ, Inc., that Project READ ever relied upon any perceived right to funding under Section 228(a) [of the Juvenile and Delinquency Prevention Act of 1974, as amended] or that it otherwise had any expectation or assurance of such continuation."<sup>7</sup> The implications of that statement are extremely troubling. LEAA appears to be saying that absent some sort of express declaration by a grantee that it expects OJJDP to abide by the terms of the statute which created the agency, OJJDP is relieved of any obligation to obey the law. The Administrator should forcefully repudiate that startling position.

For the reasons set forth in the Initial Decision of the administrative law judge, and for the additional reasons stated herein, we urge acceptance by the Administrator of the administrative law judge's Initial Decision, and the prompt issuance of a directive to OJJDP to approve Project READ's application for continuation funding.

Respectfully submitted.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response of READ, Inc. to Initial Decision was delivered by hand this 11th day of March, 1980, to John J. Wilson, Attorney-Adviser, Office of General Counsel Law Enforcement Assistance Administration, Washington, D.C.

GROUP EXHIBIT A

MISSOURI DIVISION OF YOUTH SERVICES,  
DEPARTMENT OF SOCIAL SERVICES,  
January 24, 1980.

DELMINA WOODS REGIONAL FACILITY,  
Law Enforcement Assistance Administration, Forsyth, Mo.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I would like to express my dismay on hearing that your agency has decided not to support Project READ anymore. I know of no other organization performing this most valuable work, and I know they cannot continue it without public assistance.

We are a juvenile treatment program run by the Missouri Division of Youth Services. When we opened 2½ years ago, we were fortunate enough to be accepted into the Project READ program. Our staff was trained at their expense, and we received many helpful tools for teaching basic reading and writing skills. Most important, we were able to supplement our meager library with hundreds of up-to-date paperbacks of high interest to our "reluctant learners". Each youth felt some ownership in this since they helped choose future titles and were permitted to take two books home upon release. This may seem minor to you, but many of our youth had never owned a book, generally due to poor family circumstances or prior lack of interest and ability.

Project READ also provided a daily structure for "painless" reading improvement. Pre- and post-tests established for us that the project was bettering our students' reading scores. (I am sure that READ has data which will confirm this.) We still continue our daily reading periods, but without new books and

<sup>6</sup> The Juvenile Justice and Delinquency Prevention Act: Hearings on S. 3148 and S. 821 Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 92d Congress, 2d session and 93d Congress, 1st session, 725 (1972-73).

<sup>7</sup> Post-Hearing Brief of LEAA, at p. 19.

periodic bulletins from READ, enthusiasm has dropped noticeably. Unfortunately, our budget does not allow us the luxury of new reading books twice a year: most of our education funds go into textbooks and the equipment necessary to a new education program.

To put it bluntly, if Project READ is denied funding, I feel a valuable link will have been severed between the limited world of our disadvantaged youth and the "outside world" of traditional culture and socio-economic opportunity. I am sure you will agree that knowledge is still a major key to power, whether it be economic power or the power of self-mastery.

Please reconsider your decision to terminate Project READ's funding: these people are performing a valuable and irreplaceable service. I am sure there are many organizations in a similar or even worse financial situation than ours.

Sincerely,

RICHARD SCHAEFFER,  
Teacher IV,  
Missouri Division of Youth Services.

The undersigned staff and students of Delmina Woods are in agreement with the sentiments expressed in this letter.

STAFF

Karu Boyke  
Marie King  
Michael Gankow  
Gary A. Blakey  
Carmie Chadwick  
Jeane Jones  
Gloria Flowers  
Paul Schulte  
Betsy J. Smith  
Dorothy D. Drake  
Edward A. Janis  
Dorothy Caywood  
William D. Dobb  
Paula Fottner  
Jan. Sander

STUDENTS

Jim Campbell  
Bill Douglas  
Russell Sartor  
James Anderson  
Dane Reyes  
Matthew E. Ray  
Jeff Wilson  
Eugene Carpenter  
John McCayman  
Jonda Cates  
Janet Sparks  
Shuri Parley  
Rhonda Baumgardner  
Ara Bricker  
Josh Meathouse  
Rick Bartlett  
Tim Yates  
Lanell Taylor

WESTERN ILLINOIS UNIVERSITY,  
Macomb, Ill., February 22, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law  
Enforcement Assistance Administration, Washington, D.C.

DEAR SIR: I am writing this letter to express my admiration of Dr. Janet Carsetti as a fellow professional and to demonstrate my extreme distress that her highly successful program may not be refunded.

As director of the Corrections and Alternative Education Program at Western Illinois University, I know the frustration of educating the reluctant and alienated youth in our schools and institutions. Dr. Carsetti's efforts have been widely recognized as one of the few truly successful programs. Not only the youth, but adults in helper roles become enthusiastic and supportive of learning (particularly reading). I have personal knowledge of her successful efforts based on several experiences:

1. We have placed interns and student teachers at several institutions where Dr. Carsetti has presented workshops and left an enthusiastic and revitalized staff which in turn was extremely helpful to our students.

2. Several of our graduates have been employed at institutions where they subsequently have been exposed to workshop experiences provided by Dr. Carsetti. Without an exception, they are enthusiastic, loyal supporters of her ideas.

3. Having met Dr. Carsetti several years ago, and having been aware of her outstanding success with students and staff, we were anxious to become a cooperating institution of higher education. Last year Dr. Carsetti visited Macomb on two occasions. In midwinter, she spent two days in Macomb and made presentations to several groups of teachers in the schools, as well as presentations to future teachers (students in various classes). She positively inspired those to whom she spoke. Later last year (during summer session), she returned to present a week-long workshop which was the highpoint of our summer program. Participants in the workshop are continually calling to strongly urge that she return to Western.

I frequently speak with a number of correctional educators across the nation. Most of them know and strongly endorse Dr. Carsetti's work. Those who do not know her work want to contact her immediately to initiate involvement. As you know, reading is so critical to the entire educational process, that successful programs like Janet Carsetti's are much in demand. Furthermore, as chairman of the Juvenile Advisory Board to the Illinois Department of Corrections, I know the responsibility placed on education in the total correctional process. It is beyond my comprehension that so successful a program in the recognized critical area of reading would not be offered continued support. I am absolutely amazed that its termination is even considered.

Needless to say at this point, I urge you in the strongest sense to continue the funding of Dr. Janet Carsetti's efforts to provide meaningful, successful reading experiences to our alienated youth. In the same arena, her inspiration and ability to generate enthusiasm in professionals can never be replaced.

Sincerely,

JOSEPH S. KERSTING,  
Director, Corrections and Alternative Education Program.

WESTERN ILLINOIS UNIVERSITY,  
Macomb, Ill., July 13, 1979.

Mr. DAVID WEST,  
Acting Administrator, Office of Juvenile Justice and Delinquency Prevention,  
Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. WEST: This letter is meant to convey to you the extremely positive experience which we here at Western Illinois University have had with Dr. Janet Carsetti and her READ, Inc. Program.

Dr. Carsetti and her consultants recently completed a workshop called Motivation for the Reluctant Learner which created an atmosphere of enthusiasm among participants second to none. This is not our first experience with Dr. Carsetti, nor is it different from what we expected from her. Our total involvements with her over the past several years have caused us to regard her with high respect and to anticipate only the best. We recognize that Dr. Carsetti's program fills a gap which we would have difficulty in providing for our own teacher education program. While we are proud of our Corrections and Alternative Education Teacher

Training Program here at Western Illinois University, it is obvious that our students profited greatly from Dr. Carsetti's specialized skills.

One thing we have noted from the recent workshop is that Dr. Carsetti's special message is profitable for a wide range of teachers—not only corrections educators and educators in specialized institutions or disadvantaged situations, but also for the concerned classroom teacher who would like to prevent students from going in those directions.

Accordingly, while this letter is intended to voice enthusiastic support for Dr. Carsetti's program as it now is, we would also like to suggest the possibility that her specialized skills may be made available more broadly to teachers who are interested in preventative programs for public school students.

Sincerely,

Dr. JOSEPH S. KERSTING,  
Chairman, Educational Foundations Department.

FORT MADISON COMMUNITY SCHOOL DISTRICT,  
Fort Madison, Iowa, February 28, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR SIR: It is with great disbelief that I have learned of the OJJDP's decision to no longer offer continued LEAA support for Project READ.

I was a participant in the Project's Phoenix Workshop in September, 1978, and found it to be extremely beneficial to me as a teacher at the Creative Learning Center. The services given, materials supplied, books furnished and ideas shared by all provided experiences that can be implemented on a daily basis with the youth at my school.

The Creative Learning Center is an Alternative High School in the Fort Madison Community School District that provides services to youth (troubled for a variety of reasons) in grades 9-12.

Our students are continuing to reap the benefits from the project and find it very positive reinforcement to know that there are programs such as READ which offer aid to the youth on a continual basis.

Hopefully, your office will reconsider your decision and support the continuation of Project READ.

Sincerely,

BEVERLY G. LINK,  
Teacher.

DEPARTMENT OF HUMAN RESOURCES,  
CHILDREN'S SERVICES DIVISION,  
Woodburn, Ore., February 21, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I am writing this letter in support of the PROJECT READ program.

I have not participated in the reading program with my students. We did have a project of writing poetry in class and my student's poetry was sent to them for publishing in READ'S newspaper.

This was really a big deal for the students to have their poetry published along with other students in similar situations.

I have to mention one instance. I had one student who didn't think he could write anything. It took quite a bit of encouraging on my part. One of his poems was selected and published (a Haiku). He was no longer in my program but I sent him a copy of the newspaper—he was elated to see it! This, I feel, was a big boost for him. If you knew the student, you would understand better how I feel.

From the contact I have had with Project READ, I see it as a valuable source and would encourage the continuation of such a program.

Sincerely,

BENNETT K. HOLT, Jr.  
Resident Superintendent.  
CHARLENE F. ANDREWS,  
English Teacher.

STATE OF ALABAMA.  
ALABAMA YOUTH SERVICES—CHALKVILLE CAMPUS,  
Birmingham, Ala., February 1, 1980.

MR. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: We are writing you to express our deep concern over the decision made by OJJDP to discontinue LEAA support for Project READ. Frankly, we are surprised that such a decision has been made. At a time when government support of projects must answer to questions of overall effectiveness and relative cost per person served, we think your agency should know that Project READ is, without exception, the singly most helpful and cost-effective federally funded program with which we have been involved.

Our first contact with project READ began in 1976 with our being trained to establish test scores on our students. These scores were used in our program to diagnose and assess the students' reading deficiencies as well as to provide concrete measurable data on the effectiveness of the project. Additionally, our small but frequently used library was more than doubled through the gift of thousands of popular paperback books. Not only have we enlarged our library, but hundreds of these books have gone home with students who discovered the pleasures of reading, through another program we began with assistance provided by Project READ—"Sustained Silent Reading."

We have received many hours of inservice training in motivating reluctant readers, developing learning centers and games, and using a language experience approach to teaching reading. You might be interested to know that the help we received continues to aid our students. Today, a music activity, a technique we learned from Project READ, helped four 15 year old non-readers to listen for initial consonant sounds.

As administrator of OJJDP, you surely are aware that Project READ is the only nation-wide program dedicated to improving literacy of young people in the juvenile justice system. We feel strongly that these young people need the extra "boost" that Project READ has provided through literacy training and contact with the arts, and that for some it may be their last chance to overcome an inability to read, write, or express feelings appropriately.

As two teachers who have seen the results that Project READ has been able to effect, we strongly urge you to reconsider the decision to eliminate funding for this most worthwhile program.

Sincerely,

KATHY OLIVE.  
SONDRA P. TITTLE.

ALABAMA YOUTH SERVICES,  
Birmingham, Ala., January 29, 1980.

MR. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I am writing regarding the status of Project READ, a program which has been funded by OJJDP since 1976.

Our facility began receiving services through Project READ in the fall of 1976. During the time the READ staff assisted us we received thousands of paperback books for our students, free of charge, donated by publishing companies through the project. We also received staff in-service training in functional reading instruction, making reading packets, developing instructional games, language experience instruction and teaching reading in all content areas.

Additionally, the Project READ staff assisted our teachers in pre- and post-testing all our students in reading. The READ staff further administered a self-concept pre- and post-assessment to all our students. The information derived from these measures provided us with valuable assistance in treatment planning and implementation.

I, along with the entire staff here at Chalkville, am very disturbed to learn that Project READ's funding through your office is not being continued. It is our opinion that of all the federally funded programs with which we have worked, Project READ is without question one of the most responsible, effective and productive. The work they have done in the past years provides assistance as well

as valuable statistical data unequalled by any other program. The loss of the Project due to non-funding seems completely ill-advised and irresponsible, in our judgment.

At a time when effective programming in the area of juvenile delinquency and delinquency prevention is at a minimum, we find ourselves unable to understand the reasoning for discontinuing a well-established, cost-effective, productive and professionally excellent program such as Project READ. We feel that all of us striving to provide adequate rehabilitative services to juveniles are suffering a great loss.

It is hoped that your office will reconsider the decision to discontinue the funding of Project READ, so that the excellent work now in effect will in no way be interrupted.

Sincerely,

ELLEN DOSSETT,  
Academic Principal.

LIONEL R. BARRETT, JR., P. C.,  
February 25, 1980.

Re Project R.E.A.D.

MR. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: It has come to my attention that Project R.E.A.D. which had previously been funded through OJJDP for the past few years is not scheduled for refunding in fiscal 1980.

Since I was in law school, I have been primarily interested in all aspects of the criminal problem and particularly questions pertaining to the cause and prevention of crime. In 1972 I served as Legal Counsel on the Court's TASK Force of the National Advisory Commission on Criminal Justice Standards and Goals with primary responsibility being in the area of possible alternatives to the criminal justice process for dealing with aberrant behavior. From 1976 until 1978 in Nashville, TN I was director of an L.E.A.A. "Treatment Alternatives to Street Crimes" grant, the general purpose of which I imagine you are familiar. I am presently in private criminal practice in Nashville.

It has been my observation that violent and other compulsive criminal behavior, particularly among the economically and socially deprived, is most commonly caused by the frustration and anxiety that grow from feelings of powerlessness. I have also observed that nothing is more conducive to a feeling of powerlessness among this group than illiteracy. It is for this reason that I regret the termination of any efforts to reduce illiteracy in this country.

I hope the decision to terminate Project R.E.A.D. will be reevaluated and consideration given to the future reinstatement of this worthwhile endeavor. I will follow future developments with interest.

Sincerely yours,

WILLIAM P. REDICK, JR.  
MIDDLEBURY COLLEGE,  
Middlebury, Vt., February 22, 1980.

MR. IRA SCHWARTZ,  
Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I write in relation to Project Read, a grantee of your office whose petition for re-funding is, I understand, currently under review. I write to urge continued support for Project Read.

I write out of two interests. I have served for seven years, three as Chairman of, the Vermont Council on the Humanities and Public Issues, a National Endowment for the Humanities state-based program. Throughout the period of our existence we have funded many programs which had at heart the matter of juvenile justice. We have sponsored forums on family violence, persons in need of supervision, the values and legal concepts which underlie the way courts look at parent-child relationships and the like. We as a council are keenly aware that rehabilitation and an affirmative reentry into the community are the most vital matters of all. And this is where Project Read has been and is increasingly more important. I am, for instance, very favorably im-

pressed by the direction struck in one of Project Read's most recent publications: *Troubled Youth and the Arts: A Resource Guide*.

I speak also out of a conviction that what happens to youth is crucial for the entire life of a person. This is a conviction reinforced by literary study. Wordsworth said it succinctly, "The child is father of the man." Dostoyevsky, in "The Brothers Karamazov" speaks of instructive force of affirmative childhood experience ". . . some good, sacred memory, preserved from childhood, is perhaps the best education. If a man carries many such memories with him into life, he is saved to the end of his days, and if one has only one good memory left in one's heart, even that may sometime be the means of saving us." Blake tells of the terrible results of deprivation and denial.

In every cry of every man,  
In every infant's cry of fear,  
In every voice, in every ban,  
The mind-forged manacles I hear.

It is important the constructive work of Project Read be continued. Please give it favorable consideration.

Sincerely,

DAVID J. LITTLEFIELD,  
*Stewart Professor of English Literature.*

ELLIS, MAFFEI & SMITH,  
*Annapolis, Md., February 6, 1980.*

Mr. IRA SCHWARTZ,  
*Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.*

DEAR MR. SCHWARTZ: I am writing to ask you to reevaluate the decision not to refund Project READ, sponsored by the National Institute of Juvenile Justice and Delinquency Prevention.

I view project READ to be one of the more promising and innovative programs for dealing with the problems of juvenile delinquency and delinquent youths. My perspective is as an attorney and juvenile justice planner, and it is seasoned by practical experience as both prosecutor and defender of youth.

I began my legal career as a prosecutor for the Juvenile Division of the Office of Corporation Counsel for the District of Columbia. Later, I took a position as director of a clinical law program at Antioch School of Law, representing abused and delinquent youths in the Superior Court of the District of Columbia. I have acted as a consultant on juvenile projects for the District of Columbia Law Revision Commission, the District of Columbia Office of Criminal Justice Plans and Analysis and the American Bar Association.

I was surprised to learn that this valuable project was forced into an adversary position with your agency in order to keep its program alive. While I am not aware of the outcome of that controversy, I urge you to take the positive step of refunding Project READ.

Sincerely,

JOHN GREGORY SMITH.

LEHIGH UNIVERSITY,  
*Bethlehem, Pa., March 3, 1980.*

Dr. IRA SCHWARTZ,  
*Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.*

DEAR DR. SCHWARTZ: I am enclosing for your information a letter of commendation which was written following Dr. Janet Carsetti's involvement in programs on our campus during the 1979 summer terms. The programs which were offered by Dr. Carsetti and staff were rated by the graduate students as one of the finest professional development activities in which they have been involved. Dr. Carsetti not only displayed all the necessary characteristics of a top educational leader, but she communicated to the field the tremendous work in which Project READ has been involved.

It is important, I believe, that the Office of Juvenile Justice and Delinquency Prevention be given as much visibility as is possible in relation to the successful achievement of its mission. Dr. Carsetti and the Project READ staff certainly do this for you. The national effort aimed at helping our youth develop an un-

derstanding of the value of literacy and the arts is commendable. I hope you will continue to support projects like READ which encourage quality professionals such as Dr. Carsetti in professional development efforts.

Enclosure.

Dr. NORMAN H. SAM,  
*Director,*

LEHIGH UNIVERSITY,  
*Bethlehem, Pa., July 2, 1979.*

Dr. DAVID WEST,  
*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.*

DEAR DR. WEST: We recently had on our campus a program which we sponsored in cooperation with Project READ. Approximately 20 graduate education students were enrolled in this one-week program and had an opportunity to work with Dr. Janet K. Carsetti and other staff members.

The feedback from these students has been excellent and we certainly feel the work being done by this project deserves a high level of visibility and should be communicated to educators in the field. I think these materials have great meaning for teachers presently in the classroom and are extremely useful for young people preparing to teach.

I hope the staff will continue its fine work.

Sincerely,

NORMAN H. SAM,  
*Director.*

Enclosure.

INTERNATIONAL YOUTH CENTER,  
*Tucson, Ariz., February 26, 1980.*

Mr. IRA SCHWARTZ,  
*Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.*

DEAR MR. SCHWARTZ: I am a special education teacher at a community based rehabilitation program for delinquent Indian youths. For the past 18 months, I have been involved with Project READ.

Through Project READ, I have learned many invaluable methods for motivating reluctant readers. The paperback books provided by READ are among the highest-interest materials I have ever used as an educator. I have had students ask for extensions of the non-stop reading period because they were so engrossed with the reading matter: students with histories of repeated school failures and low reading achievement.

I honestly feel that if a young person is not functionally literate in the society in which he lives, then his self-sufficiency—and ultimately his self-concept—may be adversely affected, resulting in negative behaviors toward the society he cannot successfully deal with. I am also a firm believer in the concept of "bibliotherapy," which stresses that books are therapeutic, and that troubled persons may resolve some problems by reading literature that relates to the problems. These philosophies go along with those expressed (and acted upon) by Project READ.

Test results made periodically have shown that my students are increasing their reading proficiency at a significantly greater rate than the national average, which may, in part or whole, be due to the influence of Project READ.

Please continue funding Project READ!

Sincerely,

PHYLLIS A. COWMAN,  
*Academic Instructor.*

CANAN, BURNS & O'TOOLE,  
*Washington, D.C., February 5, 1980.*

Mr. IRA SCHWARTZ,  
*Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.*

DEAR MR. SCHWARTZ: During the past three years our law firm has been involved extensively in the representation of juveniles before the court system in the

District of Columbia. Mr. Canan has been the past President of the Family Trial Lawyers Association of the Superior Court of Washington, D.C. Our collective interests date back several years and we have all had significant experience in this area of law and are familiar with the problems that young people face in the District of Columbia.

Because of our experience and knowledge of the needs of the youth of this city we were disappointed to learn that Project Read has been defunded. It is in my opinion one of the more worthwhile programs that has been funded through the LEAA and I would hope that your decision to date is not irrevocable and that funding can be reinstated for this very worthy program.

Warmest regards,

EIKANAH J. BURNS.

THEATRE WITHOUT BARS,  
Trenton, N.J., February 15, 1980.

DEAR MR. SCHWARTZ: It has recently come to my attention that the Office of Juvenile Justice and Delinquency Prevention has decided to discontinue funding for Project READ. As the Director of an arts-remotivational program working with juvenile offenders in New Jersey, I am disturbed by this news.

Through ten years experience in the prison/art field, I am convinced that the arts offer one of the most viable solutions to the problems of the juvenile offender. The arts-in-education process offers much to the youthful offender in providing remotivational impetus and redirection to their lives. Through workshops dealing with human and social values, basic attitudes can be uncovered, which, when revealed, are then subject to study and understanding, and hence, change. Art workshops have proven successful in motivating juveniles and preparing them for release with the life skills necessary to compete.

The traditional therapeutic processes and vocational and educational training programs have not worked with this group in the past. The most impressive results have been accomplished through more "non-traditional" means, and specifically the arts. I will be more than happy to provide you with statistics on our success rate, attesting to this fact, as well as other documentation concerning the field of arts remotivation and its effectiveness.

It is not only Project READ I am concerned about, though I think very highly of their work. It is the field of arts remotivation that needs defending. I believe that it is one of the most viable therapeutic processes available and should receive more attention and financial support, not less.

Perhaps the Office of Juvenile Justice and Delinquency Prevention can research this area in more depth? I will be happy to lend my expertise to assist in this research study, as I am sure would other competent professionals in this field.

I do hope your office and LEAA will reconsider their funding priorities concerning Project READ.

If you require further information or have any questions at all, feel free to contact me anytime.

Thank you very much for your attention in this matter.

Sincerely,

THEA LAMMERS,  
Director.

ANTIOCH SCHOOL OF LAW,  
Washington, D.C., February 21, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency, L.E.A.A., Washington, D.C.

DEAR MR. SCHWARTZ: This is to support the refunding of Project R.E.A.D.

I am a professor at the Antioch School of Law and have been for six years. As you may know, Antioch is not only a law school but also a Legal Services law firm. Accordingly, I have supervised students working on juvenile delinquency cases in the District of Columbia. Previously, I was a juvenile prosecutor with the Office of the Corporation Counsel.

In my experience I have found that many delinquents have reading problems. I have also found that there is a derth of reading programs for these needy youths. It is my understanding that Project R.E.A.D. is an effective reading program.

In my opinion this program should be continued.  
Sincerely,

BARRY F. KOWALSKI,  
Faculty Chairperson.

GIRLS CLUB OF OMAHA,  
Omaha, Nebr., February 26, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: The Girls Club of Omaha became aware of Read Incorporated through its publication "Trouble Youth & the Arts: A Resource Guide." We expected that particular publication to be exciting to our agency because one of our programs was included. What we did not anticipate was the value of the resource guide to the rest of our programming. Agencies have a tendency toward ethnocentrism that limits sharing hard won knowledge gained via experience. The Read Resource Guide is one way to bridge that gap for the Girls Club of Omaha. Judging by the requests from other agencies seeking additional information on the featured Girls Club program, it works for that way for them too. Read Incorporated has the ability to lay solid ground-for agency networking. It is a valuable resource and we request its funding be extended.

Sincerely,

MARY HENG,  
Executive Director.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA,  
Washington, D.C., January 31, 1980.

Re: Continuation of Project READ, Inc.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR IRA: It was with regret that I learned recently of the Office of Juvenile Justice and Delinquency Prevention decision to discontinue financial support for Project READ.

During the past few years, Project READ has played an important supportive role to the Social Services Division of D.C. Superior Court in its delivery of youth services. Among other efforts, Project READ has provided the Division with technical assistance, consultation services, program materials, and on occasion, direct services to juveniles. An example of the latter was the Howard Theatre Performing Arts Workshop in which fifteen juveniles under Court supervision were personally exposed to theatrical arts training.

As Director of the Social Services Division for D.C. Superior Court, I wish to offer my support of Project READ as the primary national effort in literacy training and the arts for young people in the juvenile justice system. I urge the Office of Juvenile Justice and Delinquency Prevention of LEAA to continue sponsorship of Project READ. Thank you for your attention to this request.

Sincerely,

ALAN M. SCHUMAN,  
Director, Social Services Division.

JUVENILE COURT,  
Jefferson, La.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I am writing on behalf of Project READ. It is my understanding that project funds have been discontinued. This is disturbing news to me. I have been working specifically with adolescent delinquents for the past ten years. It has been my experience that the major common fault which leads to delinquent activity is lack of self-concept. This stems primarily from repeated failures with-in our societies structure. A key factor is low reading ability. At the same time the best tool utilized to improve self-concept is improvement of reading skills.

Project READ is the only program that recognized the importance of this major deficiency and set out to bring it to the attention of the entire country. If there is anything that can be done to aide in the continuation of these efforts, every avenue should be explored. Your help will be much appreciated. Thank you for your consideration of this matter.

Sincerely,

Mrs. JACQUELIN KRAMER,  
Vocational Specialist.

RUTHERFORD HOUSE,  
Shreveport, La., February 15, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR SIR: We take this opportunity to urge you to continue your support of Project Read.

Operating as a community based facility for court committed adolescents, our program has been greatly enhanced through the utilization of artists provided by the Shreveport Regional Arts Council Community Services. The services furnished were drama workshop and dance.

Our residents attend School-Away-From-School #6, which is run for their exclusive benefit. However, we view that total individual development can be expanded through the use of the arts.

Although we have not directly participated in Project Read, we have benefited from their pamphlets and books.

Very truly yours,

ROZ PROVIZER,  
Principal.

INTERNATIONAL ART OF JAZZ, INC.,  
Stony Brook, N.Y., February 22, 1980.

Mr. IRA SCHWARTZ,  
Office of Juvenile Justice and Delinquency Prevention, LEAA,  
Washington, D.C.

DEAR MR. SCHWARTZ: As one concerned with creative programs for young people, especially troubled ones, I am aware of Project Read and its outstanding record of accomplishment. I am also aware that funding for the continuance of Project Read's programs has been denied by your agency. I am writing to protest, and to urge you to reconsider that decision.

Troubled Youth and the Arts: A Resource Guide is a unique and invaluable contribution to every youth advocacy organization/institution in the United States. I wonder if you are aware of how skillfully essential program information has been camouflaged by government policies and personnel? In her publication, Catherine Pierce has shed light on some of the best kept secrets in Washington! It is possible that because of her efforts, many people may now benefit from programs no one ever knew existed.

Through our own delinquency prevention program in New York State, IAJ has had a chance to see the dramatic contribution the arts experience can make in youth development. Because the artist is perceived as a "free spirit," one outside "the system," he/she enjoys an enviable credibility with young people and a concomitant ability to communicate with them. The arts and the artists provide fresh and effective vehicles for delinquency prevention.

I cannot write in support of Project Read without expressing shock that an agency administering funds for delinquency prevention should be so disinterested or insensitive as to abruptly halt a program with a demonstrated record of success. Some years ago Aaron Wildavsky wrote a prescription for violence. In essence: "Promise them a lot; deliver a little. Institute a number of underfunded programs and abandon them at the first indication of improvement . . ."

I am aware that LEAA is an administrative agency. What I want to know, however, is LEAA for delinquency prevention, or doesn't anyone there care one way or the other?

Forgive me if I sound harsh. The arts are so important for youth development and literacy that I cannot be mild in my disappointment that Project Read was not refunded. Arts programs that work need to be expanded, not disbanded. It is essential that our government become part of the solution, rather than part of the problem. I write in the hope that you can find the solution for Project Read.

Sincerely,

ANN H. SNEED.

CROSSROADS CENTER,  
Decatur, Ala., February 22, 1980.

IRA SCHWARTZ,  
Administrator, Office of JJDP, Law Enforcement Assistance Administration,  
NW., Washington, D.C.

DEAR MR. SCHWARTZ: I just wanted to affirm my support for Project READ of Columbia, Maryland. Since one of our teachers and I received training at their hands we have been able to accomplish improvement and interest in reading as never before. Further, the books they have selected for our students have provided excellent springboards for discussion. No one else is serving local programs like they are doing. I trust you will be able to assist them in their efforts.

Sincerely yours,

ASA H. SPARKS,  
Director.

THE UNIVERSITY OF MICHIGAN,  
Ann Arbor, Mich., February 8, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: During the last four years, the most successful large project in the United States aimed at teaching literacy to students at any level in any kind of school has been Dr. Janet Carsetti's Project READ. I am able to say this because I am entirely familiar with Dr. Carsetti's work, and I am equally familiar with every large project for reluctant readers that has been undertaken during the last two decades in this country. As a consultant during that time to many and various parts of the federal government, I am aware of no expense of public funds which has been better justified in terms of fulfilling its explicit and worthy intent. In my view, termination of federal funding for Project READ is unwise and unjust; I advocate continued, increased support.

Sincerely,

DANIEL FADER,  
Chairman, BOB.

STUDENT DEVELOPMENT CENTER,  
Oak Park, Mich., February 13, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR SIR: I am writing to urge continued support for Project READ and any similar educational services for out of school youth or youth who are in danger of having their education prematurely terminated.

I believe the success of the Project READ teacher training and the free paperback book program in Oak Park speak for themselves. The students who participated benefited in objective terms as measured by standardized reading test, as well as gaining insight and appreciation for arts and for the relationships between literacy and the arts. The staff who participated have the experience and the expertise. We continue to use the methods and techniques learned from Project READ, but we cannot find funding for the free paperback program; and thus we are able to do less this year than last.

My concerns are that there are not sufficient funds for agencies to continue what they have started and that there are hundreds of programs in the country that will never realize any benefits from the success of the Project READ experience due to lack of funding.

Please recognize the need for large scale investment in the literacy of our youth and approve LEAA support for Project READ and any similar projects.  
Sincerely,

HAROLD J. MAKINEN.

ARENA STAGE,  
Washington, D.C., January 15, 1979.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, LEAA,  
Washington, D.C.

DEAR MR. SCHWARTZ: During Living Stage's fourteen years of creating environments that actively encourage the imaginative artistry of people from the ages of 2 to 103, we have worked extensively with young people in trouble with society.

We have found that when young men and women experience their creative energies, when they can use their bodies, voices, hearts and minds to express and communicate their deepest feelings, a sense of pride, dignity, beauty, and courage begin to awaken in them. The phenomenon of success, perhaps for the first time in their lives, starts to live.

As a theatre director and educator for 35 years, I feel that human and monetary resources must be engaged in helping our children re-discover their sense of importance as productive, fully participating citizens of our society. Art is the radar of communication of the human spirit, and the art of theatre is the discipline that deals the most directly with the human dilemma.

Living Stage has been working with Project Read for the past two years. Last spring we collaborated on a theatre arts-humanities project working with 13-14 year olds who were in trouble with the law. It was a successful ten week program. We saw radical changes in the children's attitudes, and a positive self-concept image began to emerge from these "forgotten" people. Catherine Pierce of Project Read administered the program, and I found her commitment, dedication, intelligence and organizational acumen to be consistent with the thrust of the program. Ms. Pierce is a rare human being.

I humanely urge you to continue to fund Project Read so that they may bring some fresh air, sanity, hope and creative wisdom into the juvenile justice system.

I'd be more than happy to meet with you in order to further discuss how the arts can play an essential role in helping our children.

Sincerely,

ROBERT ALEXANDER,  
Director, Living Stage.

NEW DIRECTIONS FOR YOUNG WOMEN,  
Tucson, Ariz., February 1, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: In our work as advocates for females involved in the juvenile justice system, we have had the opportunity to become acquainted with the efforts of Project READ in Silver Spring, Maryland.

As the only national effort in literacy and the arts for young people in the juvenile justice system, Project READ provides an outstanding model for working with troubled youth.

Project READ has demonstrated the success of its programs over the past four years, to provide educational services for out-of-school youth and thus deserves recognition and continued funding.

It seems unjustifiable that this project should be discontinued at a time when the country is searching for workable methods of dealing with youth in trouble with the law. As a successful model, the work of Project READ becomes crucial.

We believe strongly in their efforts and urge you to give this project your most serious consideration.

Sincerely,

CAROL E. ZIMMERMAN,  
Executive Director.  
RUTH CROW,  
Project Director.

McCOMB, Miss., January 26, 1980.

Re READ, Inc.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR SIR: During more than twenty years in the criminal justice system, I have observed that the majority of criminal defendants are school drop-outs, usually because they are functional illiterates without the basic skills required in a literate society. We can not expect them to succeed in vocational training or in the job market until they can read and write with some proficiency.

The accomplishments of Project READ are outstanding. This program should be expanded if we are to have any reasonable expectation of diverting young offenders out of the criminal justice system into a productive and demanding society.

Sincerely,

JOE N. FIGOTT.

EDEN THEATRICAL WORKSHOP,  
Denver, Colo., February 11, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: This letter is in support of the continuation of Project READ. I am familiar with their early efforts in Denver and later our small community-based organization has benefitted immensely from publications, which gave us ideas as to how to more effectively link the arts with education; particularly for the low income youth we serve.

The impact of such work is sometimes more difficult to measure when youth have been kept too busy to become a statistic in the juvenile justice system.

I would hope that LEAA would continue to find support for Project READ so that through them a network of youth across the nation will be reached.

Sincerely,

LUCY M. WALKER,  
President/Director.

GUIDE,  
January 31, 1980.

Dr. JANET K. CARSETTI,  
READ, Inc.,  
Silver Spring, Md.

DEAR DR. CARSETTI: Guide is very sorry that Project Read is not being refunded by LEAA monies. Although Guide's participation was minimal we had a strong belief in the importance of the work you were doing and its potential for helping many youth who find school distasteful.

The youth at the Guide Shelter Home who did participate in READ still love the silent reading period which we instituted at your recommendation. Also, one of our residents claimed that she never knew how to read nor enjoyed reading until she spent time at our Shelter Home. She even returned to Guide's Learning Center for a few months after she moved back home with her parents.

It is our sincere hope that some sources of funding will be found to assist the continuation of READ. We also hope we will be in touch with you again in the future.

Sincerely,

RICHARD A. WUNDERLICH, Ph. D.,  
Director, GUIDE.

OFFICE OF JUVENILE JUSTICE LEAA,  
Washington, D.C.

KARMA ACADEMY FOR GIRLS,  
January 23, 1980.

DEAR MR. SCHWARTZ: I am writing in support of Project Read, a LEAA funded literacy program, that has provided paperback books for our students and teacher training in reading for our faculty. The interest in reading and the

ability to read has shown dramatic increases due to Karma's participation in this program. Our students are placed at Karma by the Juvenile Courts or Department of Social Services. They usually enter with little interest in reading. Many read their first book when they own a paperback of their choice supplied by Project Read.

Because of our success with this program we are continuing the Project Read approach using contributions to buy paperbacks for our students. I urge you to reconsider your decision to terminate this fine program so that other students in trouble may have the benefits that our students have experienced through ownership of paperback books.

With studies showing the correlation between illiteracy and delinquency, it seems important to continue a program that attacks illiteracy in young people involved with the juvenile justice system.

Sincerely,

MARY E. GRUBB,  
Head Teacher/Karma.

UNIVERSITY OF MARYLAND,  
College Park, January 21, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law  
Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: It has come to my attention that LEAA has decided to discontinue its support for Project READ. I have just examined Project READ's 1978-79 Report of Activities and would like to share some of my perceptions with you.

First, the project has been able to obtain what I consider to be fantastic results in achievement for youth who have a record of very poor achievement.

Second, when a project can positively influence self concept as a learner, then achievement results tend to continue to improve. Project READ's attention to self concept has been unusual and successful.

Third, there is really no other national effort to serve these youth as Project READ has. We try to work with volunteers in prison settings and we know the very difficult nature of obtaining success with such ventures. They tend to be short lived, poorly financed, and frustrating for the tutors and the prisoners.

I have followed the progress made by Project READ for several years and I can attest to its quality. I therefore urge you to give every possible consideration for continued support of Project READ.

Sincerely,

ROBERT M. WILSON,  
Professor and Director of the Reading Center.

BOYS CLUBS OF AMERICA,  
New York, N.Y., February 5, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law  
Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: This is in regard to project READ. I understand that you are unable to continue support for project READ and this is unfortunate.

I of course, am not in a position to dictate how your office should disperse its funds. I just want to make the point that the lack of reading skills is one of the major factors that is keeping our young people from fulfilling their potential.

With the decrease in young people in our population, each and every one of our American youngsters is going to be vital to the continued development of America. Since the lack of reading skills is a stumbling block in our society, I would urge you to promote any reading programs that would help to overcome this problem.

Thank you for your consideration.

Sincerely,

WILLIAM J. LAVERY,  
Director.

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., November 19, 1979.

Mr. HENRY DOGIN,  
Chief Administrator,  
Law Enforcement Assistance Administration,  
U.S. Department of Justice,  
Washington, D.C.

DEAR MR. DOGIN: In September, I wrote you a letter supporting the continued funding of Project READ, a national literacy program for young people in the juvenile justice system. A proposal for re-funding of this project was submitted to LEAA's Office of Juvenile Justice and Delinquency Prevention on August 23, 1979. The 90-day period in which LEAA must act on this proposal will end on Friday, November 23.

Although Project READ staff have not received anything in writing, they have learned informally that a decision was made within OJJDP not to re-fund the project. They have been told that they will not be re-funded because the proposal for re-funding was submitted on a noncompetitive basis and that a recent decision to not provide continued support for such projects has recently been made within OJJDP. Nevertheless, I am told that indeed exceptions are made and certain projects do receive support on a non-competitive basis, i.e., the National Center for Juvenile Court Judges.

Furthermore, the Director of Project READ, Dr. Janet Carsetti, received every assurance that the project would receive continued support from her project monitor, Mr. Buddy Howell. She was asked to submit a full proposal at the beginning of August. A decision was apparently made within OJJDP to re-fund the program within the Special Emphasis Division rather than the Training Division where the project has received all prior support. Due to internal decisions, the Special Emphasis Division has apparently determined that this project does not fit within its guidelines.

Education programs for troubled youths are badly needed and it seems to me that this particular one is worthy of your support. For some time now, the federal government has shirked its responsibility for serving this particular population of out-of-school troubled children and youth. However, the Juvenile Justice Act of 1974 clearly mandates OJJDP to provide such support.

Project READ has been supported by LEAA since February 1976, demonstrating continued success for four years. Just last week, two small grants were given to Project READ. Both are contingent upon future funding and would provide books for young people and support an arts program for troubled youth in the District of Columbia. I hope that Project READ will not have to turn away that money.

I look forward to hearing from you on any future developments on this matter. If you have any further questions, please contact Jill Porter of my staff (224-7113).

With best wishes,  
Sincerely,

CHARLES MCC. MATHIAS, Jr., U.S. Senator.

NEW YORK STATE EXECUTIVE DEPARTMENT,  
DIVISION FOR YOUTH,  
Albany, N.Y., January 25, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law  
Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I have recently been made aware of the fact that the Office of Juvenile Justice and Delinquency Prevention has discontinued LEAA support for Project READ. I assume this was done on the basis of establishing priorities within your agency to most effectively utilize available funding.

However, based upon the benefits that both education staff and residents of the New York State Division for Youth have derived from Project READ material and training, I strongly encourage you to renew your support for the project.

There can be no greater priority, for us as a nation, than providing education services. Project READ has had a very positive impact in the area of literacy on youth who, for the most part, have had few successful experiences with education.

I wholeheartedly endorse the efforts of Dr. Janet K. Carsetti and her staff and hope support for Project READ, by your agency, will again be made available.

Sincerely,

CAROLE J. SINGER,  
Coordinator of Reading Programs.

COUNCIL OF THE DISTRICT OF COLUMBIA,  
Washington, D.C., January 25, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I recently learned that the Juvenile Justice and Delinquency Fund for Project READ "Grant 78-JN-AX-0006" is in jeopardy. As one who is involved in the creation of public policy and programs in the District of Columbia, I urge you to continue funding Project READ. The fruits of the project are clear to many residents of the Washington area, both young and old. It is programs such as Project READ which assist communities in preventing juvenile delinquency rather than merely addressing the problems of trouble youth after they have been found delinquent.

If there is anything more I can do to promote the continuation of Project READ, please let me know.

Sincerely,

GREGORY E. MIZE,  
Staff Director and Counsel  
Committee on the Judiciary.

NEY,  
Indiantown, Fla., February 7, 1980.

DEAR MR. SCHWARTZ: It is certainly surprising to learn that there is any question of the continued funding of Project READ.

I have myself made a trip to Washington, D.C., to observe the techniques of Dr. Carsetti and see some of the activities of the pupils. I spent three days there last May and Dr. Carsetti kindly elaborated upon any points of relevance to my own work in the same field. She arranged to take me to see a drama therapy program which I found extraordinarily fine. We also visited one of the schools where the enrollment was voluntary. I was able to talk with students and teachers after the non-stop reading session.

At that time I was working as consultant to a Black program in Palm Beach county called Project Rescue. We should have sent teachers to Dr. Carsetti to be trained in the very powerful form of remediation, but had not the funds to do so.

I think that in view of our national educational and crime problems (which are known to be closely related) there should be unlimited funds available for a program such as READ; the reduction in recidivism alone would be worth any amount. Furthermore, if the schools would learn to benefit from this effective method of teaching reading, we would be better off as a nation in every way. Economically it makes more sense to pay for the teaching of reading than to pay the endless keep in prison or the welfare checks for unemployables.

Sincerely,

MARIAN W. NEY.

LITERACY ACTION OF WASHINGTON, D.C., INC.,  
Washington, D.C., February 5, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: This letter serves to endorse Project READ, Inc. in its efforts to provide literacy and arts support services to young people in the juvenile justice system.

As a program serving the illiterate population of the District of Columbia, Literacy Action has received ongoing support from Project READ through its functional reading materials distribution, and the training of volunteers.

Literacy Action urges the Office of Juvenile Justice and Delinquency Prevention to continue support for Project READ. Such programs as READ are seriously needed, as has been demonstrated.

It is a pleasure not only to endorse the Project, but also to anticipate its continuation and expansion of services to agencies such as ourselves.

Thank you for your attention to this matter.

Sincerely,

MICHAEL R. FOX,  
Executive Director.

OCTOBER 15, 1979.

Mr. HENRY DOGIN,  
Chief Administrator, Law Enforcement Assistance Administration, Washington, D.C.

Dr. JAMES HOWELL,  
Deputy Associate Administrator, National Institute for Juvenile Justice and Delinquency Prevention, Washington, D.C.

GENTLEMEN: This is to urge approval of a two-phase continuation grant application submitted to you by READ, Inc.

As you are aware, READ, Inc. has demonstrated its ability to work with delinquent youth. The results of its literacy program have been dramatic. Further, the results were achieved with relatively low cost, easily replicated methods.

In its present application, READ, Inc. proposes a program of theater and arts for delinquent youth. I have reviewed their proposal and conferred informally with members of the Superior Court Social Services Division on it. The program appears worthy of demonstration. READ Inc. does not advance frivolous innovation and can be relied upon to complete any project in accord with professional standards.

Sincerely,

SYLVIA BACON,  
Associate Judge, Superior Court  
of the District of Columbia, Washington, D.C.

ASSOCIATION OF AMERICAN PUBLISHERS, INC.,  
New York, N.Y., February 11, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: As the Chairman of the Association of American Publishers Mass Market Paperback Education Committee, I am writing in behalf of that group to urge the Office of Juvenile Justice and Delinquency Prevention to refund Project READ under the leadership of Janet Carsetti. As publishers of paperback books for educational programs, we are cognizant of many funded programs in schools. Project READ is the best national effort to improve reading and Ms. Carsetti should be permitted to continue the gains she has made.

This target audience of troubled youth needs positive ways to improve self-image and to develop skills for future employment. I believe that reading skills will increase individual understanding, promote growth, and help to establish identification with the goals of our society.

The most serious problems of our society are youth unemployment and delinquency. How can your agency afford to ignore this excellent program?

We have listed on the attached page the publishers represented on our committee. We hope we shall be hearing from you very soon and that it will not only be found appropriate to provide funds to maintain the project, but that you will see fit to extend it to additional institutions.

Sincerely,

ADELE SATZ,  
Chairman, Educational Marketing Committee,  
Mass Market Paperback Division.

## MASS PAPERBACK DIVISION

*Educational Marketing*

Adele Satz (Chairperson), New American Library, 1633 Broadway, New York, N.Y. 10019.

Mary Frundt, Ace Books, 360 Park Avenue South, New York, N.Y. 10010.

Sue Coil, Avon Books, 959 Eighth Avenue, New York, N.Y. 10019.

Nancy Bergman, Ballantine Books, 201 East 50th Street, New York, N.Y. 10022.

Barbara Marcus/Doris Bass, Bantam Books, 666 Fifth Avenue, New York, N.Y. 10019. Alternate: Michele Rapkin.

Betsy Gould/Katherine Santone, Dell Publishing Co., 245 East 47th Street, New York, N.Y. 10017. Alternate: Sherri Zolt.

Gerda Roensch, Condor Publishing Co., 29 East Main Street, Westport, Conn. 06880.

Andrea Stein/Jane Papps, Doubleday & Co., 245 Park Avenue, New York, N.Y. 10017. Alternate: Nan Meyer.

Susan Scott, Houghton Mifflin Co., 2 Park Street, Boston, Mass 02107.

Dan Farley/Harry Simmons, Penguin Books, 625 Madison Avenue, New York, N.Y. 10022. Alternate: Serena Kahn.

Andrea Graham, Pocket Books, 1230 Avenue of the Americas, New York, N.Y. 10020. Alternate: Gene Spieler/Hilda Dworkin.

Chrissie Lossing, BJ Publishing Group, 200 Madison Avenue, New York, N.Y. 10016. Alternate: Laurel Davis.

John Zales, CBS/Fawcett Books, 1515 Broadway, New York, N.Y. 10036. Alternate: Gayle Greeno.

Nancy Lipscomb, Warner Books, 75 Rockefeller Plaza, New York, N.Y. 10019.

Harry Arader, IPDA, 350 Madison Avenue, New York, N.Y. 10017.

Scholastic Book Services, 50 West 44th Street, New York, N.Y. 10036. Alternate: Connie Castleberry.

Sigi Friedman, Simon & Schuster, Inc., 1230 Avenue of the Americas, New York, N.Y. 10020. Alternate: Chuck Davis/Susan Scott.

DEPARTMENT OF YOUTH AUTHORITY,  
Sacramento, Calif., February 20, 1980.

Mr. IRA SCHWARTZ,  
Director, Office of Juvenile Justice and Delinquency Prevention, LEAA, Washington, D.C.

DEAR Mr. SCHWARTZ: By now, you must be somewhat used to letters from strangers that open with congratulations and close with strong suggestions on how you should operate the office.

So while not quite a stranger, Congratulations!

As to how to operate the office, I have two observations:

1. *Westinghouse Delinquency Prevention Studies*.—These studies are dynamite. Anything OJJDP could do to further "merchandise" the conclusions of the Westinghouse reports would be strongly applauded by those of us in the field of prevention. An example of what could happen as a result is the enclosed delinquency prevention RFP for \$200,000 based in part on those studies—a good example of leveraging federal dollars.

2. *Project Read*.—This project has resulted in more results (help for kids, capacity building for schools and good PR for OJJDP) per LEAA dollar than any project with which I am familiar. Janet Carsetti is probably the best project manager that I have experienced at either the state or federal level. Support for this program is clearly in the best interests of OJJDP.

Cordially,

JOSEPH W. PHELAN,  
Administrator.

P.S. Ira, I really was pleased with your appointment and to know that OJJDP is in good hands. There is so much potential for the thing that the office should be about. Please give my regards to staff. You have a good bunch of people working for you; I frequently miss them.

STATE OF NORTH CAROLINA,  
DEPARTMENT OF HUMAN RESOURCES,  
Columbia, Md., February 10, 1980.

DEAR CATHERINE: Thank you for sending us a copy of your new project Read publication. It is a splendid resource guide for anyone who works with children. The students here at the Juvenile Evaluation Center got a real thrill seeing some of their projects featured in the chapter on my program.

As you know schools are for many children difficult and sometimes cruel places to have to adjust to. Training schools though can be particularly brutal. It is through arts programs such as the one here and ingenious efforts like Project Read that children begin to discover how much satisfaction and pure "fun" learning and working with each other can be. I sense that the people at Project Read really understand the especially unique challenge we all have to try and reach and redeem our country's "troubled children". After all it's probably the last opportunity society will have to instill and nurture some of the ethical moral and spiritual attitudes and values it considers essential for productive and healthy citizens.

Programs such as Project Read allow students to nurture and develop their own interests through the world of books and literature. It is the only program I know of that makes reading for children like mine here at the Center, irresistibly attractive. I have seen students who otherwise would never read absolutely clamor for the "paperbacks" Project Read has sent us.

I sincerely hope the program can and will continue. After all what more precious resource does our country have than its children. What more noble purpose could the government commit its resources to than insuring that its future, its children, know how to read. Thanks.

Sincerely,

FOX WATSON,  
Juvenile Evaluation Center.

READER'S DIGEST,  
Pleasantville, N.Y., February 12, 1980.

Mr. IRA SCHWARTZ,  
Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR Mr. SCHWARTZ: I was appalled to hear that funds for Project Read had been cut off. I am writing to appeal that decision and hope they can be reinstated.

Project Read gives service to people who really need help. They are poor and in trouble and they need the help and forward motion that has been provided to them by Project Read. There would surely be less need for other, more ominous help expended on them later if Project Read is continued.

Project Read is already in existence and has a proven record. I feel it would be criminal to let an organization like this erode away for lack of support. I urge you to do whatever you can to channel funds to them again.

I have met Dr. Janet Carsetti, director of the program, at the library of Congress where we are both on a committee to promote reading, an activity sponsored by the Library's Center for the Book. There are many luminaries on the committee—authors Barbara Tuchman and Herman Wouk, the Librarian of Congress himself, respected executives from Doubleday and Time Life, and so on. But there is no one there who can come close to matching Dr. Carsetti's passion and dedication to the work she has done so successfully for the past years. She is a dynamic force for literacy in this country, and to have her inactive would be as damaging to our efforts to get more people reading as burning a million books.

Please reconsider.

Sincerely,

FEBRUARY 8, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice, and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR Mr. SCHWARTZ: As editor of NEW WINGS, the national classroom magazine for young people, I was shocked to learn that the Office of Juvenile Justice and Delinquency Prevention has discontinued funding for Project READ. My

professional concern with enlarging young people's interest in reading should explain my shock and my dismay at this ill-considered decision. Project READ is a remarkable program that has reached over 40,000 troubled young people across the nation. It has demonstrably, indeed dramatically, enlarged their interest in reading; thereby equipping them with the most fundamental survival skill of all—literacy.

I strongly urge you to reconsider your decision. I know that everyone who knows of Project READ and shares its commitment to renewing young people's interest in reading would do the same.

Sincerely,

DAVID REID,  
Editor.

CBS SCHOOL PUBLISHING,  
New York, N.Y., February 4, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I have just learned that the funding for Project Read by LEAA is not continuing.

I do hope a re-examination of the proposal can be forthcoming since the contribution they are making clearly aids young people in gaining the basic skills required to rechart their lives.

Sincerely,

THOMAS J. MURPHY.

NEW JERSEY STATE DEPARTMENT OF CORRECTIONS,  
January 30, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I am urging LEAA to continue its support for Project READ. In addition to its providing direct services to two New Jersey facilities, it has indirectly aided all the pre-dispositional facilities and many of the State juvenile training schools. It has done so in a number of ways. Project READ has developed materials and methods for teaching reading to a group of youth who are notoriously difficult to teach. There is more work to be done in the field and more people to be reached.

Sincerely yours,

SUSAN ROTH,  
Educational Consultant,  
Juvenile Detention and Monitoring Unit.

ALSTON-WILKES SOCIETY,  
Charleston, S.C., October 15, 1979.

Mr. HENRY DOGIN,  
Chief Administrator, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. DOGIN: I am writing in support of a continuation funding proposal submitted by READ, Inc., of Silver Spring, Maryland. Our agency has been actively involved with juveniles for about ten years. The biggest problem encountered in working with these youth is their learning problems, especially reading difficulty.

Throughout the United States, I do not know of a finer program dealing with this problem than READ, Inc. Their innovative approaches to reading are remarkable. Positive funding of this project would be greatly appreciated by our agency and others across the United States.

With kind regards, I am  
Sincerely yours,

PARKER EVATT,  
Executive Director.

JUVENILE SERVICES PROGRAM, INC.,  
St. Petersburg, Fla., January 22, 1980.

IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: I have just recently been informed by Dr. Janet K. Carsetti, Director For Read Inc., that they will no longer be assisting us in providing reading materials to the troubled youth we work with. Read Inc. has been providing us with assistance since June of 1979.

We have found this assistance invaluable in trying to make an impact on the reading habits and proficiency of the juvenile offenders. We currently provide services to about 2,500 juvenile delinquents and potential delinquents and reading improvement is a very important part of those services.

We certainly feel that our efforts will face some very serious obstacles in providing reading remediation.

I would like to encourage you to reconsider your decision and to make OJJDP funds available to Read Inc. for the next funding year.

If you should need any further information, please do not hesitate to contact me at (813 821-2443).

Sincerely,

PETER PARRADO,  
Executive Director.

JANUARY 24, 1980.

Mr. IRA SCHWARTZ,  
Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Washington, D.C.

DEAR MR. SCHWARTZ: During the past two years, I have been administering/organizing/developing an alternative high school program for out of school youth (or potential dropouts). My staff and I have been extremely interested in procuring services from Project Read. The services that the Project offered were precisely what our program was needing. Unfortunately, we were unable to receive all services due to lack of funding. The contact we did have with them, however, was excellent. They were willing to provide us with publications that had been developed by them for out population.

The need to provide educational services for out of school youth is evident if one looks at current research on delinquency and its correlation to the dropout rate. Project Read was, in my opinion, one of the most effective and motivating programs for troubled youth. I hope the decision to fund the program will be changed.

Sincerely,

JOANN OBIS,  
Associate Director,  
Alternative Education Program.

KARR & LYONS,  
Washington, D.C., April 11, 1980.

Re In the Matter of READ, Inc.

HOMER F. BROOME, JR.,  
Acting Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C.

DEAR MR. BROOME: On April 3, 1980, LEAA counsel filed a response to the Initial Decision of the administrative law judge in the above-captioned proceeding. Pursuant to the provisions of 28 C.F.R. Secs. 18.57 and 18.71, you are now required to review the proceeding and to render a final decision. The purpose of this letter is to request that your decision be made as expeditiously as possible.

The issues raised by this matter are uncomplicated and straightforward, and thus should not require any extensive period of deliberation; nevertheless, despite the relative simplicity of the questions presented for your decision, their prompt resolution is of major importance to a considerable number of people. For example, the Director and Assistant Director of the program have refrained from seeking other employment pending your final action, and any protracted delay in reaching your decision would only greatly increase the uncertainty and financial strain with which they have lived since OJJDP's Novem-

ber 1979, decision not to refund the program. Much more important, however, are the numerous young people who are being deprived of the services of READ, Inc., while this proceeding pends. For many of those young people, participation in the programs of READ, Inc. was their first real stride toward literacy; the attached letter from one such youth is a poignant and representative statement of their feelings about OJJDP's decision to terminate funding for READ, Inc. Under the circumstances, we think that general principles of administrative law require the fastest possible decision by you, cf. *MCI Telecommunications v. F.C.C.*, — F.2d — (D.C. Cir. No. 79-1119, decided April 1, 1980) (slip op. at 41-43), and we are altogether certain that a swift decision is dictated by principles of fundamental fairness, equity, and decency.

We are constrained to add that we thought it necessary to write this letter in part because of the recent performance by LEAA counsel, who took the entire 30 days allotted him under the governing regulations to file a response to the Initial Decision and then produced nothing more than a six-page re-write of his previously filed memoranda. We sincerely hope that the agency is not waging a war of attrition against READ, Inc.; in any event, we reiterate that time is of the essence.

We ask that this letter be included in the record of this proceeding.

Sincerely,

MONA LYONS.

Chaddock Boys Schol  
205 South 24<sup>th</sup>  
Quincy Ill. 62301

Dear, project read,

I would like to thank you for your organization because I really liked the books you sent. I know the government sheet you have, but keep trying. I like to read the books as much as you like to give them.

Thanks,

David Lee

U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

IN THE MATTER OF READ, INC., ISSUE OF DENIAL OF A CONTINUATION GRANT APPLICATION FOR NATIONAL INSTITUTE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TRAINING FUNDS

*Response to Hearing Examiner's Recommendations*

Pursuant to 28 C.F.R. § 18.57, this document is offered to the Administration in response to the Hearing Examiner's "Initial Decision" dated March 3, 1980,

in the above entitled matter. Agency counsel disagrees with a number of the findings and determinations of the Hearing Examiner, takes exception to his recommendations, and will offer alternatives thereto.

*Alternative Findings and Determinations*

*I. Alternative Statement of the Case*

READ, Inc., of Silver Spring, brought an action against LEAA alleging that Project READ was not given continuation funding consideration as provided by Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974.

LEAA argues that it did not discontinue funding of Project READ in violation of Section 228(a) of the Juvenile Justice Act. The agency maintains that it followed established agency policy and practice for continuation funding and that funding criteria applied to Project READ were consistent with Section 228(a). The Institute had changed its budget priorities for training in order to meet its legislative mandate under Section 248 to establish a training center. LEAA contends that it did not act arbitrarily or capriciously in exercising its discretionary authority not to continue Project READ because of the criteria of changed priorities.

*II. Alternative Findings of Fact*

Except as noted below, we either concur in or have no comment on the Hearing Examiner's proposed findings of fact. References to Findings numbered 1-52 follow those proposed by the Hearing Examiner.

2. The Special Emphasis Division is a "sub-unit" of OJJDP rather than an "Office."

5. The Third Project READ grant was for a two year period (Stip. 2).

7. The entire finding should be amended to read as follows:

The authority to fund Project READ was Section 244 of the Juvenile Justice Act. (Tr. 252.) Some Aspects of the project may have been fundable with Special Emphasis funds (Tr. 261.) However, READ, Inc., applied only to NIJJDP for funding and was not an applicant for Special Emphasis funds (Tr. p. 260.) The funding authority of the Institute and the Special Emphasis Division are not overlapping. (Tr. 261).

9. The entire finding should be amended to read as follows:

"This highly laudatory evaluation by a mid-level juvenile justice specialist within the Special Emphasis Division was based solely on a review of the READ, Inc. continuation application and was not an evaluation or review of project performance based on monitoring data or information. (Jx. 8.)

10-17. The findings should be deleted on the grounds that they are irrelevant to a resolution of the issues.

18. All words before "Dr. Howell," the first time it occurs, should be deleted. The footnote numbered 23 should be deleted after the cite to Jx2. Dr. Howell did not attempt in his testimony to create doubts about project READ's effectiveness. He merely pointed out, in response to READ counsel's effort to link school and delinquency program authority to Project READ, that there was no evidence of a link between illiteracy and delinquency.

Dr. Howell never asserted that either Project READ or the judges training program were "prevention" programs or were required or expected to demonstrate a link between their activities and a reduction in delinquency. Dr. Howell's statement was not, therefore, a "rationalization" or motivation for any action taken by NIJJDP.

19. The first sentence should be deleted because it is not supported by the hearing record.

27-29 These proposed findings should be deleted and the following inserted: "NIJJDP's 1980 Program Plan proposed to establish a training center in response to the mandate of Section 248 of the Juvenile Justice Act. \$825,000 was allocated for this objective from a total of \$1 million set aside for training (Tr. 264). Training is one of four functional areas of the NIJJDP statutory program (Tr. 261-263) \$11 million was available through Congressional appropriations to fund all Institute programs in Fiscal 1980 (Tr. 172-173, 248-249). NIJJDP goes through an elaborate priority setting process to determine priorities and total fund allocations to these four areas as well as the priorities within each funding category (Tr. 261-264). This careful planning process resulted in there being

inadequate funds available in the training portion of the program plan to continue funding of Project READ (Tr. 264). Funding of the training center was pursuant to legislative mandate while funding of READ, Inc., was pursuant to permissive statutory authority. Judges training was determined to be a higher priority. Thus, limited funds, coupled with established Institute priorities were the basis for the decision not to include Project READ in the Fiscal Year 1980 Program Plan.

30-31 Strike these findings because under revised finding 7, infra, READ, Inc., an applicant for Special Emphasis funds.

37. Delete the words "say that in compliance with Section 228(a) continuation decisions (including the decision to discontinue Project READ)" because they fail to establish the factual basis for the agency position.

38. Delete this finding because it is immaterial.

39. Delete the words "attempted to" in order to find that LEAA Guidelines did meet the Section 228(a) policy.

45. Add at end of this Sentence the following words: "and substitute an assumption of cost policy which would establish a maximum period of funding for all projects. This is not inconsistent with the agency position."

46-49 Delete these findings as they are irrelevant, immaterial and of no positive value to a resolution of the issues.

52. Change the first sentence of this finding to read as follows: "It is the position of LEAA that Section 228(a) cannot be interpreted as a blanket mandate for continued funding for successful projects." The change reflects that LEAA does not contend that Section 228(a) is not a mandate, but rather that the agency is authorized to establish and apply reasonable criteria for continuation determinations.

#### DISCUSSION AND CONCLUSIONS OF LAW

LEAA stipulated that the performance of Project READ was satisfactory. This, however, is not the issue. Rather, the critical issue is whether the agency's implementation and application of Section 228(a) to Project READ was consistent with the law. We do not claim, as the Hearing Examiner asserts on page 28 of the recommendation, that agency discretion is "essentially without limit." The agency brief demonstrates that the agency's actions were consistent with the limits set by Section 228(a), as implemented by LEAA, and that such implementation was within the scope of the agency's authority to implement the statute.

The Hearing Examiner's findings on the intent of Congress in enacting Section 228(a) are based primarily on non-legislative history materials of dubious value. They are inadequate to overcome the legal principles cited in the agency brief as applicable to the agency's authority to implement the statute.

The Hearing Examiner's conclusion that Section 228(a) would permit an evaluation of a project's effectiveness in "reducing juvenile delinquency" as a basis for continuation funding is unacceptable. The reduction of juvenile delinquency is but one of many possible objectives of any particular program or project funded under the Act. The link between learning disabilities and delinquency has absolutely nothing to do with Project READ because illiteracy is not a learning disability. As Dr. Howell testified, there is no research linking illiteracy and delinquency.

#### PROPOSED CONCLUSIONS OF LAW

1. Section 228(a) of the Juvenile Justice Act was intended to be implemented in a manner that would establish a project period system for action programs funded under the Act. Section 228(a) requires that LEAA provide information on length of program funding in advance. It does not require a subsidy of projects by guaranteeing funding based only on a satisfactory annual evaluation of effectiveness. Rather, Section 228(a) by its terms permits other relevant criteria to be established and considered in determining the length of project funding.

2. Section 228(a) authorizes the LEAA administrator to establish criteria to implement the Congressional policy for program continuation.

3. There is no legal requirement or obligation under Section 228(a) for LEAA to establish written criteria for continuation funding of unsolicited non-competitive projects.

4. Section 228(a) establishes no right to continuation funding in READ, Inc. beyond those rights established by the terms and conditions of the grant award.

5. The agency's interpretation and implementation of Section 228(a) is entitled to deference because it is charged with the administration of the statute, involves a contemporaneous construction of the law, was reasonably within the terms of the statute, was a long-standing construction, and was not questioned by the Congress during reauthorization of the statute in 1977.

6. In establishing criteria for initial or continuation funding of Institute programs and projects, the agency may establish reasonable criteria related to the statutory mission of the Institute program.

8. The authorization provisions of the Juvenile Justice Act related to the award of categorical grants and contracts are permissive and authorizing in their terms. They do not establish an entitlement to funds absent clear and specific language.

9. The denial of continuation funding to Project READ was not arbitrary, capricious or an abuse of discretion under the standard established by 5 U.S.C. § 706(2) (A) because:

(1) whether a project falls within established agency priorities is a proper criteria to apply to a grant continuation determination;

(2) an applicant for refunding has no greater procedural or substantive rights than an applicant for initial funding;

(3) Project READ was given no assurance or reasonable expectation of continued funding;

(4) Project READ was not subjected to disparate treatment by the Institute; and

(5) the Institute's criteria for review of unsolicited non-competitive continuation applications, as applied to Project READ, fulfill the requirements of Section 228(a).

In sum, Project READ had no right or entitlement to continuation funding under the NIJJDP discretionary categorical grant program. Section 228(a) does not convert programs and projects, once funded, from a discretionary to an entitlement status. LEAA's implementation of Section 228(a) is consistent with the Congressional intent established by the Act's legislative history and is fully in accordance with law.

#### RECOMMENDATION

We urge you to adopt the above proposed findings of fact and conclusions of law. The supporting reasons for the proposed conclusions of law are fully stated in the agency's post hearing brief.

Our recommendation is that the Administration uphold the denial of the READ, Inc. application for refunding.

CHARLES A. LAUER,  
Deputy General Counsel.  
JOHN J. WILSON,  
Attorney-Adviser.

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
Washington, D.C., April 15, 1980.

MONA LYONS, ESQUIRE,  
Karr & Lyons, 625 Washington Building, 15th Street and New York Avenue  
NW., Washington, D.C.

DEAR Ms LYONS: This will acknowledge receipt of your letter of March 11, 1980, enclosing the response of READ, Inc. to the recommendation of the Hearing Examiner in the matter of the READ, Inc. grant denial.

As to the procedural course, the reference in Section 18.57 of 28 C.F.R. Part 18, the LEAA Administrative Review Procedure, to Section 18.7 is an apparent reference to the procedures encompassed by Sections 18.71 through 18.73 of the Regulation. The reference in Section 18.71 to the "Administration's rules and regulations" is a reference to the totality of 28 C.F.R. part 18. There are no other agency rules and regulations related to the administrative review of grant denials.

With regard to your concerns, I assure you that the Administration's review and the final agency determination will proceed with due regard to Project READ's funding status while allowing sufficient time for a full and careful review of the record. I do not, at this point, see a need for oral presentations.

However, should I subsequently determine that this would be of assistance to me, I will notify you.  
Sincerely,

HOMER F. BROOME, Jr.,  
Acting Administrator.

KARR & LYONS,  
Washington, D.C., July 16, 1980.

MARY K. JOLLY, Esq.,  
Russell Senate Office Building,  
Washington, D.C.

DEAR MARY: Enclosed is a copy of the decision of the Administrator of LEAA in In the Matter of READ, Inc.; this is the final document in the official record of the administrative proceedings in the Project READ case. However, in the interest of completeness, perhaps you should add a concluding comment that the administrator's decision was effectuated by the award of a grant, for the period July 1, 1980, to June 30, 1981, in the amount of \$250,000, plus pre-agreement costs.  
Sincerely,

WILLIAM G. MCLAIN.

U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
WASHINGTON, D.C.

(Denial of Application No. 9-1244-0-MD-JJ)

IN THE MATTER OF READ, INC.

Decision of the Administrator

This decision comes as result of the adjudicative hearing conducted on January 30 and 31, 1980, pursuant to 28 C.F.R. 18.33. Having reviewed the entire record, I hereby adopt, except as modified below, the Findings of Fact and Conclusions of Law as determined and recommended by the Administrative Law Judge in his Initial Decision of March 3, 1980.

Findings 1-4 adopted.

Finding 5 to read: The first and second grants were for a specific one-year period. The third grant was for a two-year period.

Finding 6 adopted.

Finding 7 adopted.

Findings 8-18 deleted.

Finding 19 to read: In this proceeding, counsel for LEAA stipulated that "Project READ's performance of its obligations under each of these three grants has been fully satisfactory."

Findings 20-27 adopted. Finding 20 modified by deleting the words "Notwithstanding the highly acclaimed achievements of Project READ."

Finding 28 deleted.

Finding 30 deleted.

Findings 31-36 adopted.

Findings 37-39 deleted.

Findings 40-45 adopted, with finding 45 modified by adding to the end the following words: "and substitute an assumption of cost policy which would establish a maximum period of funding for all projects. This is not inconsistent with the agency position."

Findings 46-49 deleted.

Findings 50-52 adopted.

The Conclusions of Law of the Administrative Law Judge are adopted. The Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) will develop criteria for the National Institute for Juvenile Justice and Delinquency Prevention which specify the elements necessary to evaluate a project being considered for continuation.

Project READ is to be re-evaluated based upon the written criteria developed. Recognizing that the process for developing and publishing criteria will take a period of time, the Administrator, OJJDP will provide to Project READ limited funds as he deems appropriate to permit continued operation until the re-evaluation.

HOMER F. BROOME, Jr.,  
Acting Administrator,  
Law Enforcement Assistance Administration.

APPENDIX

(Excerpts from Public Law 93-415—Sept. 7, 1974)

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

\* \* \* \* \*

PAYMENTS

SEC. 228. (a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

(b) At the discretion of the Administrator, when there is no other way to fund an essential juvenile delinquency program not funded under this part, the State may utilize 25 per centum of the formula grant funds available to it under this part to meet the non-Federal matching share requirement for any other Federal juvenile delinquency program grant.

(c) Whenever the Administrator determines that it will contribute to the purposes of this part, he may require the recipient of any grant or contract to contribute money, facilities, or services.

(d) Payments under this part, pursuant to a grant or contract, may be made after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursements, in such installments and on such conditions as the Administrator may determine.

\* \* \* \* \*

(Excerpts from Public Law 95-115—Oct. 3, 1977)

JUVENILE JUSTICE AMENDMENTS OF 1977

\* \* \* \* \*

FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

SEC. 4. \* \* \* \*

\* \* \* \* \*

(g) (1) Section 228(b) of the Act is amended by striking out "under this part" and inserting in lieu thereof "by the Law Enforcement Assistance Administration."

(2) Section 228(c) of the Act is amended to read as follows:

"(c) Whenever the Administrator determines that it will contribute to the purposes of part A or part C, he may require the recipient of any grant or contract to contribute money, facilities, or services."

(3) (A) Section 228 of the Act is amended by adding at the end thereof the following new subsections:

"(e) Except as provided in the second sentence of section 222(c), financial assistance extended under the provisions of this title shall be 100 per centum of the approved costs of any program or activity.

"(f) In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent he deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary.

"(g) If the Administrator determines, on the basis of information available to him during any fiscal year, that a portion of the funds granted to an applicant under this part for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, that portion shall be available for reallocation under section 224 of this title."

(B) Section 228(e) of the Act, as added by subparagraph (A), shall take effect October 1, 1978.

\* \* \* \* \*

UNITED STATES  
DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE  
ADMINISTRATION

# Change

M 7100.1A CHG 3

October 29, 1975

Cancellation

Subject: FINANCIAL MANAGEMENT FOR PLANNING AND ACTION GRANTS Date: After Filing

1. **PURPOSE.** This change transmits a new chapter to the subject manual. It describes the applicability of the manual to the Juvenile Justice and Delinquency Prevention Act.
2. **FILING.** LEAA grants are subject to the requirements in effect at the time of issuance. Therefore, it is recommended that any changes (along with removed pages) to the manual be retained by the addressee. This procedure would provide a complete resource for monitoring action grants.

PAGE CONTROL CHART

Remove Page	Date	Insert Page	Date
ix	December 18, 1974	ix and x	Oct. 29, 1975
		Chapter 7 1 thru 13	Oct. 29, 1975

*Richard W. Velde*  
RICHARD W. VELDE  
Administrator

Distribution: State Planning Agencies; All Central and Regional Office Professional Personnel  
Initiated By: Policy and Procedures Division Office of the Comptroller

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CHAPTER 7. APPLICABILITY OF THE REQUIREMENTS OF THIS MANUAL TO JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, P.L. 93-415

1. APPLICABILITY. Since it is anticipated that grants under the Juvenile Justice and Delinquency Prevention Act will normally be applied for through, and administered by, State Planning Agencies, the provisions of M 7100.1A relating to subgrantees will be directly applicable to projects receiving funds under this Act, subject to the exceptions or clarifications which follow in this chapter.
2. STATE PLANNING AGENCY SUPERVISION AND MONITORING RESPONSIBILITY. As LEAA's grantee, the State Planning Agency has responsibility for assuring proper administration of subgrants under the Juvenile Justice and Delinquency Prevention program including responsibility for:
  - a. Proper conduct of the financial affairs of any subgrantee or contractor insofar as they relate to programs or projects for which Formula and Special Emphasis Prevention and Treatment program funds have been made available, and
  - b. Default in which the State Planning Agency may be held accountable for improper use of grant funds.
3. OBLIGATION OF FEDERAL FUNDS FOR JUVENILE JUSTICE AND DELINQUENCY. Federal funds under the Juvenile Justice and Delinquency Prevention Act shall be obligated and thereby made available to the grantee at the time the grant is awarded. The funds may only be utilized for the purposes contemplated in the Juvenile Justice and Delinquency Prevention application and award, and only for expenditure or obligation by the State or its subgrantees within the period stipulated in the grant award or generally prescribed by the Administration for these types of funds.
4. PLANNING AND ADMINISTRATION USES OF JJDP FUNDS.
  - a. Authority. The Act authorizes each State Planning Agency to utilize a sum not in excess of 15 percent of its total annual allotment of funds under Subpart I of Part B of Title II to develop a State Plan and to pay that portion of the expenditures which are necessary for efficient administration. The Act requires that the State Planning Agency make available to local governments on an equitable basis such authorized funds as are needed for planning and administration purposes.
  - b. Definitions. The following are defined as "local governments" for purpose of implementation of this paragraph:

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- (1) "Units of general local government" as defined in Section 103 (8) of the Act.
  - (2) "Combinations of units of general local government" as defined in Section 103 (9) of the Act.
  - (3) Regional Planning Units established within the State pursuant to the Crime Control Act of 1973.
- c. State Planning Agency Responsibilities. The State Planning Agency must make local governments directly aware of the availability of planning and administration funds and assure that such funds, if any, are allocated to local governments on an equitable basis.
- d. Planning Fund Application Requirements. The State Planning Agency, in its application for planning and administration funds available under Section 222(c) of the Act shall specify:
- (1) The portion, if any, not in excess of 15 percent, of its allotment which it proposes to utilize solely for planning purposes.
  - (2) The allocation of the planning funds designated under paragraph 4 d(1) which it proposes to make between and among state and local governments for planning purposes.
  - (3) The equitable basis used by the State Planning Agency in determining the proposed allocation to be made under paragraph 4 d(2). The justification required hereunder shall address each of the following criteria:
    - (a) The level of government at which the planning, conception and development of Juvenile Justice and Delinquency Prevention programs takes place in the State.
    - (b) The level of government at which Juvenile Justice and Delinquency Prevention programs are implemented in the State.
    - (c) The level of government which shares the financial responsibility for the cost of Juvenile Justice and Delinquency Prevention programs implemented at the local level and the proportion of that cost responsibility which the State and the local governments share respectively.

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- (d) The extent of the local government's delinquency problem as determined by a variety of factors deemed relevant to a particular state, for example:
- 1 Juvenile population
  - 2 Rate of crime committed by juveniles
  - 3 Juvenile Court activity
  - 4 Number on unofficial probation
  - 5 Number on official probation
  - 6 Rate of recidivism
  - 7 Rate of institutional commitments
  - 8 Number of detainees in shelter and detention facilities and in jail;
  - 9 Juvenile unemployment rate;
  - 10 Juvenile school dropout rate.
- e. Planning Allocation to Local Governments.
- (1) Fiscal year 1975. For these grants awarded from the FY 75 appropriation, LEAA anticipates that the states may determine the local share requirement to be inappropriate in that adherence to the requirement would not contribute to efficient plan development. It is the responsibility of the state to substantiate this determination by submitting to the cognizant regional office a full statement setting forth the facts and reasons why the state deems this requirement to be inappropriate, or why it does not contribute to efficient plan development.
  - (2) Fiscal year 1976 and subsequent fiscal years. For those grant awarded from FY 76 and subsequent appropriations the criteria set forth in paragraph 4 c and d shall apply.

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5. GRANTEE CONTRIBUTIONS AND MATCHING SHARES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT.

- a. General. This paragraph sets forth instructions and principles for determining the amount of State, local, and private contributions required as matching shares under the Act, and for determining the value and propriety of State, local and private contributions actually made. The allowability of costs funded with matching contributions is determined in the same manner and under the same principles as the allowability of costs funded from the Federal grant.
- b. Records. Records must be maintained which show the amount and timing of contributions. These records are subject to audit and exceptions in the same manner and to the same extent as books and records dealing with the receipt and disposition of Federal grant funds. With regard to Formula Grants, the State has primary responsibility for compliance with requirements regarding matching shares. For Special Emphasis grants the grantee and subgrantee or the contractual recipient of Federal funds will have such responsibility.
- c. Timing of Contributions. Matching contributions need not be made in exact time concurrence and proportion with withdrawal and expenditure of Federal funds. However, the full grantee matching share must be expended by the end of the period that Federal funds are available for expenditure under an approved program or project.

6. DETERMINING CONTRIBUTION RATIOS.

- a. Formula Grants. Federal funds awarded to the States under Subpart I may not exceed 90 percent of the costs of projects and programs funded. The non-Federal share of such costs, therefore, must be at least 10 percent, applied by the State on one of the following aggregation bases:
- (1) For Subgrants to State Agencies or Units of Local Government.
- (a) A unit of government basis, i.e., by city, county, or by State Agency;
- (b) A program-by-program or project-by-project basis if the State Supervisory Board adopts this procedure; or
- (c) A combination of the above if the State Supervisory Board adopts this procedure as a formula AND with prior approval of the Regional Office.

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(2) For Projects Administered By Private Agencies.

- (a) A project-by project-basis;
- (b) An agency-by-agency basis if a given private agency is the recipient of support from more than one subgrant; or
- (c) A program-by-program basis if the State Supervisory Board adopts this procedure.
- b. Special Emphasis Grants. All applicants for grants under Subpart II must be prepared to provide at least 10 percent of the total project cost. At the discretion of the Administrator, LEAD, Federal funds awarded under Subpart II may be used to pay up to 100 percent of the cost of projects funded thereunder. Where the Administrator determines that the grantee has a unique facility, capability or service that is necessary to the efficient and judicious operation of the funded project or program, he may require the grantee to furnish such facility, capability or service as a matching contribution. Such determination shall be made on a grant-by-grant basis.

7. SOURCE AND TYPE OF FUNDS.

- a. Formula Subgrants to State Agencies and Units of Local Government. Match for these grants must consist of cash appropriated or otherwise supplied by a state or unit of local government or contributed by a private agency subgrantee. This cash may be used to pay any permissible project cost.
- b. Formula Projects Administered by Private Agencies. For those grants wherein a private agency is involved in the execution and management of the project, match must consist of cash contributed by the subgrantee or otherwise supplied by some other source. This requirement may be waived by the cognizant Regional Office (for Subpart I grants) in whole or in part and in-kind match substituted if:
- (1) The project otherwise meets the criteria of the Act.
- (2) It is consistent with the State Plan.
- (3) It is meritorious, i.e., it will help alleviate the juvenile delinquency problem.
- (4) A demonstrated and determined good faith effort has been made to find cash match.

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- (5) No other reasonable alternative exists except to allow in-kind match.
- c. Determinations (1) through (5) above shall be reviewed annually by the SPA.
- d. Special Emphasis Grants to State Agencies and Units of Local Government. The principles outlined in paragraph 7a shall apply.
- e. Special Emphasis Grants to Private Agencies. The principles outlined in paragraph 7b shall apply. Requests for waiver of the requirements shall be submitted to the Administrator, LEAA, for approval.
8. ACCOUNTING AND DOCUMENTATION FOR THE NON-SUPPLANTING REQUIREMENT.
- a. The Juvenile Justice and Delinquency Prevention Act requires that Federal funds made available be so used as to supplement and increase (but not supplant), to the extent feasible and practical, the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs supported by JJDP funds, and will in no event replace such State, local, and other non-Federal funds. The key difference between the non-supplanting requirement of the Crime Control Act and the Juvenile Justice Delinquency Act is the addition in the latter of the words "other non-Federal funds" to the type of funds that may not be supplanted.
- b. To comply with this requirement, State Planning Agencies shall follow the non-supplanting requirements and process described in chapter 2, paragraph 7, excepting that the certification by subgrantees shall deal with Juvenile Justice and Delinquency Prevention expenditures and not with expenditures for law enforcement.
9. PRIVATE AGENCY ELIGIBILITY FOR SPECIAL EMPHASIS PREVENTION AND TREATMENT FUNDS. The Juvenile Justice and Delinquency Prevention Act authorizes the award of Special Emphasis Prevention and Treatment funds by grant or contract to public and private non-profit agencies organizations, and institutions.
- a. Definition of Private Agency. To qualify for special Emphasis Prevention and Treatment funds under the Juvenile Justice Delinquency Prevention Act, a private non-profit agency, organization or institution is defined as any corporation, foundation, trust, association, cooperative, accredited institution of higher education, and any other agency, organization or institution which is operated primarily for scientific, educational, service, charitable, or

- similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of Section 501(c)(3) of the 1954 Internal Revenue Code.
- b. Experience in Dealing With Youth. This requirement is defined as any non-profit agency, organization or institution which has been in existence for at least two years before the submission date of a grant application and to have established program services for youth related to the program or project for which funding is sought in order to qualify for funds.
- (1) This requirement is applicable only to grants or contracts that are awarded for Special Emphasis Prevention and Treatment Programs.
- (2) In rare and unusual circumstances the two year requirement may be waived by the Administrator if a project meets all the statutory requirements for Special Emphasis Prevention and Treatment Programs; is meritorious; and, is financially and programatically acceptable.
- c. Considerations for Approval of Application. In addition to the requirements outlined in paragraph 9 a and b, all applications for grants and contracts under the Special Emphasis Prevention and Treatment Programs must meet the statutory requirements outlined in Section 225, P.L. 93-415, Juvenile Justice and Delinquency Prevention Act of 1974. Accordingly, each application shall:
- (1) Provide that the program for which assistance is sought will be administered by or under the supervision of the applicant;
- (2) Set forth a program for carrying out one or more of the purposes set forth in Section 224, P.L. 93-415;
- (3) Provide for the proper and efficient administration of such program;
- (4) Provide for regular evaluation of such program;
- (5) Indicate that the applicant has requested the review of the application from the State Planning Agency and local agency designated in Section 223, P.L. 93-415, when appropriate, and indicate the response of such agency to the request for review and comment on the application;

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- (6) Provide that regular reports on the program shall be sent to the Administrator and, when appropriate, to the local agency.
- (7) Provide for such fiscal control and fund accounting procedures as may be necessary to assure prudent use, proper disbursement, and accurate accounting of funds received.

10. IDENTIFICATION OF CONSTRUCTION PROGRAMS.

- a. Definition. The term construction means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such activities (including architects' fees but not the cost of acquisition of land for buildings (Section 103(10) of the Juvenile Justice Delinquency Prevention Act). Initial equipment includes heating, plumbing and air-conditioning and electrical equipment, elevator, and other building-related equipment and fixtures but does not include removable machinery or equipment (e.g., office equipment, reproduction equipment, etc.) not inherently a part of the building or facility. The latter may be funded at applicable statutory ratios for the programs in which such equipment and machinery will be used.
- b. Exceptions. The following should be noted:
  - (1) Construction programs and projects funded under the Juvenile Justice and Delinquency Prevention Act are limited to construction of innovative community based facilities for less than 20 people (Section 227(a)(2) of the Juvenile Justice and Delinquency Prevention Act). Facilities include both buildings and parts or sections of a building to be used for a particular program or project.
  - (2) Erection of new buildings is not permitted with Juvenile Justice and Delinquency Prevention funds.
  - (3) Use of Juvenile Justice and Delinquency Prevention funds for construction is equally applicable to programs or projects using Formula (Section 223) or Special Emphasis Prevention and Treatment Program (Sections 224, 225) funds.
- c. Requirement. Any program or project, or component thereof, which involves the acquisition, expansion, remodeling and alteration of existing buildings or other physical facilities should be deemed a construction program for purposes of applicability of the minimum 50 percent grantee contribution to costs (Section 227(2) of the Juvenile Justice Delinquency Prevention Act). To the extent that construction is included in any Juvenile Justice and Delinquency Prevention program or project submitted for a Formula or Special

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Emphasis grant and such construction is not described as a separate program, the State Planning Agency or grantee must specify in its program description that a dual contribution ratio will be applied to construction costs (50-50) and other program costs (90-10) within the larger program.

d. Qualifications. The following should be noted:

- (1) Minor remodeling or repairs to existing facilities need not be treated as construction programs subject to the 50 percent contribution minimum. Minor remodeling or repairs is defined as the modification of existing space and utilities within a completed structure. The proposed changes should adapt the space to be occupied to the needs of the grant program and the building or part of the building must be owned or leased by the grantee and available for occupancy. When the cost of minor remodeling or repairs is in excess of \$5,000 for any building or facility, the grantee or subgrantee shall submit a written request to LEAA seeking a determination that such work is subject to the "minor remodeling and repair" exception and that the construction matching ratio need not be applied.
- (2) Projects for architectural studies or design which do not include a construction component may be funded at the 90-10 contribution ratio. Where the project includes both actual construction and architectural or other design costs the 50-50 contribution ratio must be used.
- (3) Section 103(10) of the Juvenile Justice and Delinquency Prevention Act provides that no portion of Federal construction grant funds shall be used for the acquisition of land. States and/or grantees should, therefore, consider absorbing land acquisition costs within their share of construction project costs. However, the cost or value of (a) land already beneficially owned by the State and/or grantee prior to the fiscal year in which a construction project is approved or (b) which the State and/or grantee holds under a grant or patent from the United States for which no consideration was given, may not count as a matching share contribution. Land for which consideration was given to the United States must be valued at acquisition cost.
- (4) The cost of a construction project includes the cost of site preparation, including demolition of existing structures. Any proceeds realized from site preparation activities (e.g., salvage value of structures demolished or the proceeds from sale of timber) should be applied to reduce the total cost of the construction project.

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- (5) Payment of relocation costs shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Refer to Guideline G 4061.1A, dated November 28, 1972, for a detailed explanation of costs for relocation assistance and relocation payments. In the near future, this guideline shall be replaced by Guideline G 4061.1B.
- (6) For special fiscal conditions for construction program grants see chapter 1, paragraph 5.
- e. Source and Types of Funds. Match for construction programs and/or projects awarded to public agencies must consist of cash appropriated by the grantee or contributed by a private agency or individual. This requirement may be waived by the Administrator, in whole or in part for grants awarded to private agencies and in-kind match substituted if:
- (1) The program and/or project otherwise meets the criteria of the Act.
  - (2) It is consistent with the State Plan.
  - (3) It is meritorious, i.e., it will help alleviate the juvenile delinquency problem.
  - (4) A demonstrated and determined good faith effort has been made to find a cash match.
  - (5) No other reasonable alternative exists except to allow in-kind match.
- f. Determinations (1) through (5) above shall be reviewed annually.
11. USE OF FUNDS AS MATCH FOR OTHER PROGRAMS.
- a. Authority. The Juvenile Justice and Delinquency Prevention Act provides that the Administrator may authorize up to 25 percent of the Formula Grant to each State to be used to provide the required non-Federal share for other Federally funded Juvenile Delinquency projects or programs when such projects or programs are essential and there is no other way to fund them.

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- b. Criteria. Formula Grant funds may be used as match for another Federally funded project or program if:
- (1) It is "essential". A project or program shall be deemed "essential" if, in the opinion of the Administrator, it will substantially fulfill one or more of the goals or objectives set forth in the State's Plan.
  - (2) There is "no other way" to fund such project or program. This criteria will be deemed satisfied, if, in the opinion of the Administrator, the applicant has explored all reasonable alternative sources of matching funds and has been unable to secure the required matching funds. A project or program whose major implementing agency is a public or governmental body is not eligible to use Act funds as match unless it can demonstrate that the appropriate State or local government cannot supply the needed funds. The mere denial of funds by the relevant appropriating body is not, in itself, sufficient.
- c. Application. The application to the Administrator for authority to use Juvenile Justice and Delinquency Prevention Act funds as match shall include:
- (1) The name of the Federal funding agency.
  - (2) The name of the grantee.
  - (3) The name of the implementing agency.
  - (4) A statement of the goals and objectives of the project or program.
  - (5) A summary of how the grantee plans to achieve these goals and objectives.
  - (6) Reference to the applicable State Plan section and a summary of other projects and programs operating thereunder.
  - (7) Alternative funding sources explored for match.
  - (8) Results of such explorations, including rationale, if available, for denial of funds.
  - (9) Amount of match required, and amount of Act funds requested to meet such match.

October 29, 1975

(10) Percentage of Formula Grant represented by requested amounts,

(11) Approval of State Supervisory Board, based upon a determination that the program or project is "essential" and that there is "no other way" to fund that program or project.

12. CONTINUATION SUPPORT.

- a. Authority. The Juvenile Justice Delinquency Prevention Act establishes the policy that programs funded under it shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.
- b. Applicability. This policy applies to formula grants and to Special Emphasis Prevention and Treatment grants.
- c. Procedures.
- (1) Special Emphasis and Treatment Programs.
- (a) Announcement. Juvenile Justice and Delinquency Prevention Programs announced in the LEAA Guide for Discretionary Programs shall indicate the number of years (usually in 12 month segments) for which an applicant may request support for a project.
- (b) Preparation. In preparing applications, applicants shall not request support for a project beyond the time period stated in the program announcement.
- (c) Receipt. Upon receipt of an application the cognizant LEAA office shall negotiate with the applicant the total project period for which a project shall be approved. The length of the project shall be determined by LEAA on the basis of two primary considerations: the length of time required to complete the project, and the number of original and continuation applications desirable for the proper management of a particular Special Emphasis and Prevention and Treatment Program. The length of the project period, therefore, may be less than the period requested by the applicant or stated in the Discretionary Guideline program announcement. Project periods shall be divided into budget periods. These budget periods are the intervals of time into which the project period is divided for budgetary purposes. Budget periods are 12 months long except for the first and last budget period which may vary.

October 29, 1975

M 7100.1A CHG 3

- (d) Notification. If approved, a grant shall be awarded to the applicant in an amount and for a project period determined by LEAA to be necessary for the project. The award of the first budget period shall be considered a notification of LEAA's intention to support the grantee for the duration of the negotiated project period unless terminated prematurely.
- (e) Termination. An award shall terminate automatically upon completion of the period set forth in the final application, unless extended. In addition, a project may be terminated prematurely, if;
- (1) The level of Federal funding under the JJDP Act is decreased materially, or
  - (2) The applicant fails to comply with the terms and conditions of the award, or
  - (3) The applicant fails to receive a satisfactory yearly evaluation.
- (f) Continuation Funding. Grantees shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory. Withdrawal of Federal support would be indicated if the grantee failed in a material way to comply with the terms and conditions of the award; or, if for some reason not necessarily within the grantees control, it was established that continued funding was not in the best interest of the government.
- (g) Extensions. Extensions of the project period shall be considered only when the original project period was approved for a period shorter than needed to complete the project or the results of the project seem so fruitful as to warrant support beyond that originally intended.
- (2) Formula Grant Funds. For principles and procedures applicable to continuation support for subgrants awarded by the State from JJDP formula grants program refer to Guideline Manual for State Planning Agency Grants, M 4100.1E, Chapter 3, paragraph 77.0.

[From the Juvenile Court Newsletter, April 1977]

PROJECT IMPROVES DELINQUENTS' READING SKILLS

Functionally illiterate juveniles in 148 correctional institutions dramatically improved their reading skills after only four months in Project READ, a program financed by the Law Enforcement Assistance Administration.

Project READ, an acronym for Reading Efficiency and Delinquency, involved 4,330 juvenile offenders in 47 states and the District of Columbia. It was launched in February, 1976, with a \$210,303 grant for LEAA's National Institute for Juvenile Justice and Delinquency Prevention.

Tests of 2,463 students after four months in the program showed an average increase in mental age from 11 years, 10 months to 12 years, 5 months, and an increase in reading level from fourth to fifth grade. Such an increase generally takes about three times as long to accomplish, according to Project READ officials.

Even a one-month gain is considered an impressive increase, because the mental age of the students was an average of four years behind chronological age, the officials said.

According to Project READ's findings, the average incarcerated juvenile is 16 years old, reads at a fourth-grade level (generally considered functionally illiterate), and has the potential to perform at a sixth-grade level.

"Our hope is to assist teachers in developing the skills and materials to help juvenile offenders learn to read and write so they can be successful in school work and in life," said Joe Phelan, director of training for the institute.

"The program provides instructors the training materials to teach reading and supplies free paperback books for students to practice their skills without any pressure on when and what they read.

Some 60,000 paperbacks with 1,800 different titles have been distributed to the participating institutions.

The "best sellers" are *Go Ask Alice*, *Soul Brothers and Sister Lou*, *Brian's Song*, *Runaway's Dairy*, *Sarah T.: Portrait of a Teenage Alcoholic*, *Jaws*, *Cool Cat*, *Ripley's Believe It or Not*, and *Teacup Full of Roses*.

Although LEAA funds provided most of the books, materials also have been donated by publishers and corporations. Distribution to all institutions was provided free by philanthropist-publisher Ivan Ludington of Detroit, who for many years has helped children learn to read.

"Some of the institutions involved in the program had few books in their libraries to begin with," said Dr. Janet Carsetti, director of Project READ, based in Silver Springs, Maryland.

"At the other extreme, there was a library with 10,000 hardbound books which was never open to juveniles because nobody was available to supervise circulation."

Project READ is basically designed to help juveniles, some of whom cannot read at all, deal with such everyday reading as newspapers, magazines, road signs, job applications and food package directions.

"Without any assistance in learning to read better before release, many of these juveniles will fall into the mass of those hard-pressed to find employment or schooling," said Dr. James C. Howell, director of the institute. "Their chances of successfully returning to normal life following incarceration are likely to be greatly increased by Project READ."

Sondra Tittle, an instructor at the Alabama Youth Services facility, Chalkville, Alabama, said she works mainly with youths who picked up most of their language skills from illiterate parents or parents with limited vocabularies.

"Some who come here are nonreaders and have a very limited spoken vocabulary," she said. "They get a lot more assistance here than in public schools where often they are labeled problems and put back in a corner because they can't read."

The essence of the paperback reading approach is to allow students free choice of books they "own." Often they are received as a prize for some activity. During the school day, a period of "sustained silent reading" is provided.

"The freedom of the use of these materials has been the key to their value," wrote Martha Smith, former superintendent of the Alexander, Arkansas, Training School for Girls.

"We find books are being used over and over again by many girls. They are being read avidly and continuously by the great majority of our students."

Project READ uses everyday items such as comic strips, TV guides and clothing labels to help teach reading.

Another technique, the Language Experience Approach, permits students to have their "speech" put into print by a teacher. Frequently, nonreaders can read back their own "speech" even though they are unable to read books.

At the Macon, Georgia, Youth Development Center, reading is taught throughout the school. The home economics teacher uses music games to reinforce recipes; the cosmetology teacher makes functional reading packets from hair dye packages; and the physical education department has ads for exercise machines to make "functional" reading packets.

A successful venture of the O.H. Cloe facility in Stockton, California, is peer tutoring. The juvenile—selected on the basis of good behavior and good academic performance—is paid to teach fellow students reading. Half the pay is received weekly, the other half is retained until release. Some of the young peer tutors have received as much as \$300.

Project READ will continue during 1977 at 40 of the 148 test institutions displaying the greatest need for help. In addition, the program will be expanded to 15 community day-care centers, 15 alternative schools, and 10 private institutions for children.

Awards have been made to the project from the Department of Health, Education, and Welfare's Right to Read Program. The citations were for "Outstanding Contribution to the Development of Literacy in the United States." The Program has been recognized by the Education Paperback Association, American Association of Publishers and the National Home Library Foundation.

U.S. GOVERNMENT,  
DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
August 23, 1976.

To: James M. H. Gregg, Assistant Administrator/OPM.  
From: John M. Rector, Administrator/OJJDP.

Subject: Funding of Programs Previously Funded Under the Crime Control Act.

This is in reference to the memorandum from the Office of General Counsel regarding the above subject which you forwarded to me on August 14, 1978. In that memorandum, General Counsel concluded that Legal Opinion 76-14 was sound. A suggestion was made however as to a possible waiver policy where presumably funding subject to assumption of cost and non-supplantation would be available. Such an approach would I believe be unworkable.<sup>1</sup> More importantly, however, I do not believe that it is necessary since the principal underpinning of opinion 76-14 is, in my view, questionable.

Throughout the memorandum from General Counsel reference is made either directly or by implication to the assumption of cost provision contained in the Crime Control Act. Since there is no such expressed provision in the Juvenile Justice Act, the question as to its applicability becomes one of statutory construction. In our July 25, 1978 memo we expressed our views on this point as follows:

To the extent that this opinion relies on the assumption of cost provision of the Crime Control Act it allows the legislative perspective of an entirely different act to dictate policy under JJCPA. Had Congress intended such a result, it could as it did with respect to other requirements (i.e. maintenance of effort) expressly said so. The fact that they chose not to strongly suggests that this feature should not apply.

I might point out that this approach as to legislative construction is not a novel one. In fact it was recognized and used by the Office of General Counsel in December, 1976 when they were faced with a question as to whether a requirement of the Juvenile Justice Act (deinstitutionalization of status offenders) should apply to or otherwise affect Part C funding under the Crime Control Act. In holding that it should not, the opinion (77-12) stated as follows:

The Crime Control Act and the Juvenile Justice Act are separate acts, so that the provisions of one do not automatically apply to the other. The Crime Control Act contains no requirement similar to that established in Section 223 (a) (12) of the Juvenile Justice Act.

<sup>1</sup> Given what we perceive to be the magnitude of the problem, any systematic waiver would be problematic.

The opinion then went on to reference the very principle that we are asserting here namely:

(W) here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. (C. Sands, 2A Statutes and Statutory Construction 51.02, at 291 (1973), quoting Western States Newspaper, Inc. v. Gehringer, 203 Cal. App. 2d 793, 22 Cal. Rptr. 144 (1962).)

We would submit that this rationale should apply with equal force in this situation.

Congress chose not to insert the assumption of cost provision in the Juvenile Justice and Delinquency Prevention Act, a choice which is indicative of the fact that they did not intend that it should apply.

This conclusion is buttressed by the perspective evidenced by Congress regarding the continuation of funding under the Juvenile Justice Act. Throughout the events that led to the passage of Public Law 93-415, some sort of permanency in funding was considered desirable.<sup>2</sup> As finally passed the Juvenile Justice Act in Section 228(a) stated:

(a) In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

The Congressional intent was to provide long-term funding. Given that intent, it would be incongruous indeed to hold that a provision such as assumption of cost which is diametrically opposed should apply. Nonetheless that is the operative effect of the opinion in question.<sup>3</sup> By this memorandum, I do not wish to suggest that factors such as maintenance of effort or non-supplantation should be disregarded.

It is my firm conviction that they would not be in conflict with a policy which would allow funding under the Juvenile Justice Act. Once these areas are satisfied, (maintenance of effort and non-supplantation) the assumption of cost feature should not in any way act as a constraint.

[From the Federal Register, Oct. 17, 1978]

DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
FUNDING OF JUVENILE-RELATED PROGRAMS PREVIOUSLY FUNDED UNDER THE CRIME CONTROL ACT

*Clarification of Policy*

Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq., as amended (Public Law 93-415, as amended by Public Law 94-503 and Public Law 95-115) (hereinafter referred to as the Juvenile Justice Act), states as follows:

In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

In many instances, however, juvenile-related programs funded initially under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3704, et seq., as amended (Public Law 90-351, as amended by Public Law 93-83, Public Law 93-415, Public Law 94-430, Public Law 94-503, and Public Law 95-115) (hereinafter referred to as the Crime Control Act), have been unable to obtain continuation funding as a result of the assumption of cost feature contained in that legislation, section 303(a) (9), but not found in the Juvenile Justice Act.

LEAA's policy for continuation of juvenile-related projects initially funded under the Crime Control Act is intended to reflect both the continuation funding provision of the Juvenile Justice Act and the assumption of cost provision of the Crime Control Act (see LEAA Office of General Counsel Legal Opinion 76-14, Jan. 5, 1976).

<sup>2</sup> See House Rep. No. 93-1135, June 21, 1974, at 16.

<sup>3</sup> The inconsistency is demonstrated in other areas as well. Programs funded initially under Juvenile Justice money would not be subject to as rigid a constraint as that provided for in assumption of cost. The permanency of some juvenile related programs nonetheless will depend on the source of the initial funding, that is, whether they were funded under the Crime Control Act or Juvenile Justice Act.

The assumption of cost provision of the Crime Control Act requires that State and local governments demonstrate a willingness to assume the cost of funded projects after a reasonable period of Federal assistance. LEAA has determined that a reasonable period of assistance for juvenile justice and delinquency prevention projects may exceed the normal three year funding period established by State Planning Agency Grants Guideline M4100.IF, Chapter 2, Paragraph 15, January 18, 1977. This determination is based on the continuation funding policy established by Congress for the Juvenile Justice Act and the historic difficulty or institutionalizing successful juvenile programs within State and local governments and providing adequate financial support.

Therefore, it is the policy of LEAA that States may modify their established assumption of cost policy for juvenile justice and delinquency prevention projects initially funded under the Crime Control Act to continue such projects beyond the State's policy for maximum length of funding—either from Crime Control Act Parts C and E or Juvenile Justice Act Part B formula grant funds—provided that the State planning agency determines that individual projects meet the following conditions:

(1) The State planning agency determination to extend the project must be based upon the following criteria:

1. The project has been evaluated and the evaluation indicates that the project is effective and is being operated efficiently;
2. Discontinuation would have a negative impact on State or local juvenile-related activities; and
3. The project has demonstrated a good faith effort to obtain funding elsewhere and intends to continue such efforts over the period of the extension.

(2) Extensions may be granted for 1 year with possible extension for 1 additional year.

JAMES M. H. GREGG,  
Assistant Administrator, Office  
of Planning and Management.

STATE OF NEW JERSEY,  
MONTCLAIR STATE COLLEGE,  
January 24, 1980.

HON. EDWARD M. KENNEDY,  
U.S. Senator from Massachusetts,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR KENNEDY: During the past several years an important project has been funded by the Office of Juvenile Justice and Delinquency Prevention (U.S. Department of Justice). This effort, known as Project R.E.A.D. (Reading Efficiency and Delinquency), has provided literacy training to almost 5,000 young people each year in nearly every state. Through Project R.E.A.D., young people in the juvenile justice system have been provided with books and other learning materials to upgrade their reading, writing, and other communication skills. Teachers working with these youngsters have received extensive training to implement Project R.E.A.D. components.

As an independent evaluator for Project R.E.A.D., I have been impressed with not only the impact the project has had but also with the efficiency of operation. There are few projects which are attacking directly the literacy problems and the special teaching/learning difficulties represented in this population.

It was distressing to learn that the Office of Juvenile Justice and Delinquency Prevention has seen fit not to refund Project R.E.A.D. The reasons for this lack of refunding have not been made clear. The Director of Project R.E.A.D., Dr. Janet Carsetti, has begun the formal appeal process. The appeal process will take time, and in the interim the flow of services of Project R.E.A.D. will be lost.

I am asking for your help in reestablishing the funding for Project R.E.A.D. I am willing to meet with you or with appropriate members of your staff to provide more complete details.

Thank you for your cooperation in this matter.

Very truly yours,

WARREN E. HEISS, Ed.D.  
Professor, Department of Communication,  
Sciences and Disorders.

[From Troubled Youth and the Arts; A Resource Guide by READ, Inc.]



U.S. Department of Justice  
Law Enforcement Assistance Administration  
Office of Juvenile Justice and Delinquency  
Prevention

Washington, D.C. 20531

July 3, 1980

The Honorable Birch Bayh  
Chairman  
Subcommittee on the Constitution  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to submit for the information of the Subcommittee two draft policy statements prepared by the Office of Juvenile Justice and Delinquency Prevention.

The first document relates to a finding of compliance by individual states with the deinstitutionalization provision of section 223 (a) (12) (A) of the JJDP Act. It presents to those states which request a finding of full compliance with *de minimis* exception, the criteria and information which OJJDP will use in making this determination. The second paper proposes an OJJDP policy with respect to the continuation of programs funded under the JJDP Act, in accordance with section 228 (a).

It is our intention to publish both of these statements in the Federal Register after interested parties have had an opportunity to review them. We hope to be able to publish each in final form before the end of July. Any comments submitted on behalf of the Subcommittee would be welcomed.

Sincerely,

  
Ira M. Schwartz  
Administrator

EDWARD M. KENNEDY, MASS., CHAIRMAN  
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JOSEPH R. BIDEN, JR., W. VA.  
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KEVIN O. FAHEY, CHIEF COUNSEL AND EXECUTIVE DIRECTOR  
MARY K. JOLLY, STAFF DIRECTOR AND COUNSEL  
MARCIA ATCHESON, GENERAL COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION  
WASHINGTON, D.C. 20510

July 10, 1980

Ira M. Schwartz  
Administrator  
Office of Juvenile Justice  
and Delinquency Prevention  
Department of Justice  
633 Indiana Avenue, N.W., Room 442  
Washington, D.C. 20531

Dear Mr. Administrator:

I am in receipt of the two draft policy statements prepared by your Office relative to *De Minimis* exceptions to full compliance with the deinstitutionalization requirements of the Juvenile Justice Act, section 223(a) (12) (A) and grant continuation, section 228(a) of the Act.

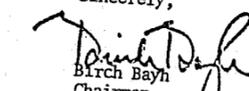
Given the particular importance of these two documents and the past misinterpretation by the Agency, it is my view, as author of the Act and Chairman of the oversight Subcommittee, that publication in the Federal Register to solicit public comment for a period of at least 60 to 90 days is essential.

In order to avoid any misunderstanding, these brief comments with regard to process in no way substitutes for the detailed comments on both of these documents to be submitted on behalf of the Subcommittee, subsequent to their initial publication in the Federal Register.

The Subcommittee realizes, as I am sure you do also, that these two sections of the Act are crucial to the entire thrust of the Juvenile Justice Act. Publication in the Federal Register will enable all interested parties the fullest opportunity to carefully review and comment on the draft policy statements within a set period of time.

I look forward to working with you and your staff on these important issues in the near future.

Sincerely,

  
Birch Bayh  
Chairman

EDWARD M. KENNEDY, MASS., CHAIRMAN  
 BIRCH BAYH, IND.  
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STEPHEN BREYER, CHIEF COUNSEL  
 ANNE LOGAN, STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEE ON THE CONSTITUTION  
 WASHINGTON, D.C. 20510

July 17, 1980

Homer F. Broome, Jr.  
 Administrator  
 Law Enforcement Assistance Administration  
 Department of Justice  
 635 Indiana Avenue, N.W., Room 1300  
 Washington, D.C. 20531

Dear Homer:

Attached is correspondence regarding the Juvenile Justice and Delinquency Prevention Act and draft policy guidelines intended to be promulgated by the Office of Juvenile Justice.

I have been informed today that the Office will publish these guidelines in preliminary form in the Federal Register, at my request. I do wish to impress upon you the necessity for an adequate period of comment for the public. As you can note in my letter to Ira, the Subcommittee request is for a minimum publication period of 60 days to 90 days. I hope that when you are in a position to review these guidelines before their insertion into the Federal Register in preliminary form, that you also agree that a 60 to 90 day comment period is in the best interest of all those interested parties who want to comment.

Should you have any questions, please do not hesitate to contact me or Mary Jolly of my staff, 224-8191.

With warm regards,

Sincerely,

*Birch*  
 Birch Bayh  
 Chairman

Enclosure

SUBCOMMITTEE  
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 STROM THURMOND, S.C.  
 ALAN K. SIMPSON, WYO.



U.S. Department of Justice  
 Law Enforcement Assistance Administration  
 Office of Juvenile Justice and Delinquency  
 Prevention

Washington, D.C. 20531

JUL 18 1980

The Honorable Birch Bayh  
 United States Senate  
 Washington, DC 20510

Dear Senator Bayh:

I am writing in response to your letter of July 10, 1980, wherein you recommended that our recent request for your comments on two draft OJJDP policy statements not take the place of publication in the Federal Register for public comment.

Please be assured that OJJDP had already planned the publication of these draft policies, namely De Minimis exceptions to full compliance with deinstitutionalization and the grant continuation policy, in the Federal Register within two weeks.

Thank you for your continued interest in and support for the Office of Juvenile Justice and Delinquency Prevention.

Sincerely,

*Ira M. Schwartz*

Ira M. Schwartz  
 Administrator  
 Office of Juvenile Justice and  
 Delinquency Prevention

## DEPARTMENT OF JUSTICE

Law Enforcement Assistance  
AdministrationContinuation Policy for All Grants  
Awarded Pursuant to the Juvenile  
Justice and Delinquency Prevention  
Act of 1974

AGENCY: Law Enforcement Assistance  
Administration, Justice.

ACTION: Request for public comment on  
proposed continuation policy.

SUMMARY: Notice is hereby given that  
the Office of Juvenile Justice and  
Delinquency Prevention, Law  
Enforcement Assistance Administration,  
pursuant to the Juvenile Justice and  
Delinquency Prevention Act of 1974, as  
amended, proposes to announce a  
Continuation Policy for all grants  
awarded under the authority of the  
Juvenile Justice and Delinquency  
Prevention Act.

The Office of Juvenile Justice and  
Delinquency Prevention invites any  
interested comments and will consider  
such comments before the final  
publication of this policy. This policy is  
being announced for sixty days. All  
comments must be received within sixty  
days after publication.

For any additional information, please  
contact Mr. Vermont R. McKinney, at  
202-724-7755, Office of Juvenile Justice  
and Delinquency Prevention, 633  
Indiana Avenue, N.W., Washington,  
D.C. 20531. The proposed text follows:

Ira M. Schwartz,  
Administrator, Office of Juvenile Justice and  
Delinquency Prevention.

Grant Continuation Policy of the Office  
of Juvenile Justice and Delinquency  
Prevention (OJJDP)

Section 228(a) of the Juvenile Justice  
and Delinquency Prevention Act of 1974,  
42 U.S.C. Section 5601, *et seq.*, as  
amended (Pub. L. 93-415, as amended by  
Pub. L. 94-503 and Pub. L. 95-115)

provides the following general policy  
with respect to the continuation of  
programs funded under the Act:

Section 228(a) in accordance with criteria  
established by the Administrator, it is the  
policy of Congress that programs funded  
under this title shall continue to receive  
financial assistance providing that the yearly  
evaluation of such programs is satisfactory.

The basis for this Congressional  
policy was a finding that juvenile justice  
program and project grantees have  
traditionally had difficulty in achieving  
continuity of funding, particularly in  
obtaining state or local government  
support when private or Federal  
government fund sources have ceased to

be available. The OJJDP policy reflects a  
Congressional purpose to  
institutionalize carefully chosen and  
successful programs and projects, in  
particular, action programs and projects  
operated by public agencies and private  
non-profit organizations that result in an  
improvement of or the direct delivery of  
services to juveniles.

## Policy

It is the policy of OJJDP that, subject  
to the limitations and exclusions noted  
below, action programs and projects  
funded through grants awarded under  
the Juvenile Justice Act will be eligible  
for continuation funding based on the  
general criteria specified below and any  
additional criteria for continuation  
specified in program continuation  
announcements issued by the Office of  
Juvenile Justice and Delinquency  
Prevention and published in the Federal  
Register. Projects that are continued will  
be funded at a level necessary to sustain  
essential project activities whether  
below, at, or above prior funding levels  
as OJJDP determines to be appropriate  
and necessary to successful  
continuation.

OJJDP will announce annually in the  
Federal Register the eligible  
continuation program areas, the level of  
funds that will be available, application

submission deadlines, and any  
additional criteria which applicants  
must meet in order to qualify to receive  
continuation funding. Where fund  
limitations and program priorities do not  
permit the funding of eligible projects  
within a continuation program, a  
competitive continuation will be rated  
and ranked in accordance with both the  
general criteria and any additional  
criteria that have been established for  
the particular program. Only those  
applicants receiving the highest scores  
up to the level of funds available for  
continuation of the particular program  
would then receive continuation  
funding.

This policy does not apply to OJJDP  
contractors or recipients of funds under  
cooperative agreements because of the  
nature of activities carried out under  
those funding instruments. It also does  
not apply to sub-recipients (sub-grantees  
or contractors) of OJJDP grantees.

## Program Coverage and Exclusions

The Office of Juvenile Justice and  
Delinquency Prevention administers five  
programs under the authority of the  
Juvenile Justice Act:

1. Formula Grant.
2. Concentration of Federal Efforts.
3. Technical Assistance.
4. Special Emphasis Prevention and  
Treatment.
5. National Institute for Juvenile Justice and  
Delinquency Prevention.

## Formula Grant Program

Under the formula grant program  
established in Part B, Subpart I of the  
Act, sections 221-223, LEAA regulations  
(28 CFR 31.703(l)) require that the State  
Council establish a minimum project  
period for each juvenile justice and  
delinquency prevention program  
described in the state plan. Projects  
funded under the program are then  
entitled to funding for the established  
project period unless there is a  
substantial decrease in formula grant  
funding to the state, the applicant fails  
to comply with the terms and conditions  
of the grant award, or fails to receive a  
satisfactory annual evaluation.

The criteria established herein for  
continuation funding are not applicable  
to the formula grant program. However,  
State Councils, with the assistance and  
advice of the State Advisory Group, are  
strongly encouraged to formulate a  
specific policy to govern the  
continuation of action programs and  
projects funded with formula grant  
funds beyond the minimum period of  
funding established in the state plan.  
State policy should be consistent with  
the policy established herein as  
applicable to programs and projects  
awarded and administered directly by  
OJJDP.

## Concentration of Federal Effort

Funds under this program are used  
primarily for the support of the Federal  
Coordinating Council on Juvenile Justice  
and Delinquency Prevention and the  
National Advisory Committee for  
Juvenile Justice and Delinquency  
Prevention.

These funds may also be used to  
assist operating agencies, to support  
evaluations and studies of Federal  
programs and activities, to implement  
coordinated Federal juvenile  
delinquency programs and support  
evaluations and studies of Federal  
programs and activities, to implement  
coordinated Federal juvenile  
delinquency programs and activities, to  
develop reports, to provide technical  
assistance at the Federal level, and to  
enter into joint funding agreements with  
other Federal agencies.

Because of the administrative nature  
of most of these activities and the  
demonstration purpose behind the  
funding of coordinated or jointly funded  
action programs and projects which  
might be funded under Concentration of  
Federal Efforts authority, these funds  
shall not be subject to the continuation  
policy and criteria specified herein  
unless specifically provided in a  
program announcement issued by OJJDP.

## Technical Assistance

The purpose of the OJJDP technical  
assistance program is to assist state and  
local governments, juvenile courts,

public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs. By its nature, technical assistance is a discrete activity to be provided by a technical assistance provider to identifiable recipients over a specific period of time. Therefore, all OJJDP technical assistance grants will be funded only for the period of time specified in the applicable program announcement plus any extensions or refunding necessary to complete the technical assistance activity.

#### *Special Emphasis Prevention and Treatment*

Under the Special Emphasis Prevention and Treatment Program established in Part B, Subpart II of the Act, sections 224-225, the LEAA Financial Guideline currently provides that Special Emphasis programs announced in the LEAA Discretionary Grants Guideline shall indicate the number of years for which an applicant may request support for a project (M. 7100.1A, CHG-3, Chap. 7, Par. 12, October 29, 1975). This Guideline established a maximum initial project period of support. Projects funded under announced Special Emphasis programs whose project period expires on or after October 1, 1980, shall be eligible to apply for continuation funding under program continuation announcements issued by OJJDP, using the general criteria established under this policy for continuation determinations, provided that the program under which the project was funded is an action program intended to result in an improvement of or the direct delivery of services to juveniles. Action programs are those programs designed to employ specific methods and strategies to achieve identified objectives within a specified time frame.

From time to time, Special Emphasis funds will be used to support research and development programs in conjunction with the National Institute for Juvenile Justice and Delinquency Prevention. Such programs are designed to test methodology and strategy and

refine program approaches for the purpose of replication if the program is effective. Projects funded under programs designated in advance as research and development programs are not eligible for continuation based on the criteria established under this policy. They will be funded only for the specific period of time needed to demonstrate the efficacy of a particular program approach, i.e. the project period plus any extensions or refunding necessary to complete the project.

#### **National Institute for Juvenile Justice and Delinquency Prevention**

The National Institute for Juvenile Justice and Delinquency Prevention, established under Part C of the Act has statutory authority to perform the following functions:

- (1) Information collection and dissemination
- (2) Research
- (3) Program evaluation
- (4) Demonstration of innovative techniques and methods for the prevention and treatment of delinquency
- (5) Training
- (6) Development of standards for juvenile justice and model state legislation.

The functions designated under (1), (2), (3), and (6) above represent discrete or time-limited activities for which the rationale for continuation funding is inapplicable. Where funds for such activities are awarded by the Institute, funding length shall be in accordance with the applicable program announcement and award document. The length of funding for projects funded under programs designated as demonstrations (4) shall similarly be determined by the program announcement and award document and excluded from the continuation policy. Demonstration programs serve a limited purpose and are intended, by the nature of their design, to be funded only for the period of time needed to demonstrate the efficacy of particular innovative techniques and methods which have been identified as having a

potential to contribute to the prevention and treatment of delinquency.

Training programs and project grants (5) that are funded by the Institute shall be subject to the general continuation policy and criteria set forth herein where the objective of the training program or project is to provide ongoing training that will result in an improvement of or the direct delivery of services to youth.

#### **Continuation Criteria**

The following general criteria will be utilized by OJJDP in determining eligibility of projects for continuation funding under programs that qualify for continuation consideration under the above OJJDP policy:

(1) There has been a satisfactory evaluation of program or project performance as established by:

(a) project level monitoring of fiscal and program performance; and, if available,

(b) project level evaluation of the success of project implementation (process) and the success of the project in meeting its goals and objectives (impact); and, if available,

(c) program level evaluation of whether the program under which the project was funded has achieved anticipated results;

(2) The project has satisfactorily complied with the terms and conditions of the grant award;

(3) The project has proven to be cost effective in meeting the objectives of the program and has significantly contributed to meeting the goals and objectives of the Act and the program priorities established by OJJDP;

(4) The grantee has documented the need for continuation of project services or activities in order to achieve desired project outcomes and objectives;

(5) The grantee has documented efforts to obtain funding from governmental or private sources and has submitted an acceptable plan to continue such efforts over the project period of the continuation funding;

(6) Availability of appropriated funds for the OJJDP program under which the program and project were funded; and

(7) The rank order of the project where a competitive continuation program is announced by OJJDP.

[FR Doc. 80-23951 Filed 8-7-80; 8:45 am]

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## United States Senate

COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEE ON THE CONSTITUTION  
 WASHINGTON, D.C. 20510

October 6, 1980

Ira M. Schwartz  
 Administrator  
 Office of Juvenile Justice and  
 Delinquency Prevention  
 Law Enforcement Assistance Administration  
 Department of Justice  
 633 Indiana Avenue, N.W.  
 Washington, D.C. 20531

Dear Mr. Schwartz:

RE: Proposed continuation policy for all grants awarded pursuant  
 to the Juvenile Justice and Delinquency Prevention Act of 1974.

It seemed reasonable to expect that the clear legislative history of  
 Section 228 of the Juvenile Justice and Delinquency Prevention Act of 1974,  
 only recently reaffirmed in litigation generated by the Office of Juvenile  
 Justice and Delinquency Prevention's disregard of the provision, would be  
 reflected in the subject proposal. My review has, however, led to the dis-  
 heartening conclusion that the proposal ignores not only the letter of the  
 law, but also does not reflect even a reasonable attempt to balance osten-  
 sibly conflicting interests.

What follows is not intended to be a detailed response, but an  
 itemization of deficiencies, any one of which alone would be sufficient basis  
 for the proposal's rejection.

The proposal:

1. Exempts all cooperative agreements and contracts;
2. Exempts from eligibility all but a few special emphasis programs  
 and training programs and then only if they are "Action Programs";
3. Subjects even eligible programs to non-statutory general criteria  
 including ironically, the Crime Control Act's assumption-of-cost policy in lieu  
 of which the continuation policy in question was provided by Congress; and
4. Subjects eligible programs to additional unspecified criteria as well  
 as "Office Priorities".

In plain English your proposal substitutes "may" for "shall".

SUBCOMMITTEE  
 BIRCH BAYH, IND., CHAIRMAN  
 HOWARD M. METTENBAUM, OHIO  
 DENNIS DE CONCIH, ARIZ.  
 HOWELL HEFLIN, ALA.  
 ORRIN G. MATCH, UTAH  
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 ALAN H. SHAFER, WYO.  
 KEVIN G. FAHEY, CHIEF COUNSEL AND EXECUTIVE DIRECTOR  
 MARY K. JOLLY, STAFF DIRECTOR AND COUNSEL  
 MARCIA ATCHERSON, GENERAL COUNSEL

Additional concerns include the proposals conceivable retroactive  
 application, the failure to address the matter of continuation funding for  
 current so-called unsolicited grants, and the failure to acknowledge that  
 the Office of Juvenile Justice and Delinquency Prevention allocates its own  
 appropriations and should as a first step in that process set aside funds to  
 comply with Section 228 of the Juvenile Justice and Delinquency Prevention  
 Act of 1974.

I do commend the Office for responding to my request that such a vital  
 guideline appear in the Federal Register as a proposal rather than as a final  
 guideline as you originally intended. Thus, its incomplete status will help  
 facilitate a final guideline that is consistent with the legislative history  
 of this section in question, by the Office.

In that regard, as oversight Chairman, I am requesting that an appropriate  
 proposal be submitted within 30 days to the Federal Register for public comment  
 for no less than 60 days.

I look forward to working with you and the Office on this proposal of  
 great import to not only the Congress, but also to the numerous young people  
 and adults who care for them on a daily basis.

Sincerely,

  
 Birch Bayh  
 Chairman

cc: Homer F. Broome, Jr.  
 Administrator  
 Law Enforcement Assistance Administration  
 Department of Justice  
 633 Indiana Avenue, N.W.  
 Washington, D.C. 20531

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OF COUNSEL  
 JOHN GREGORY SMITH

October 7, 1980

Ira M. Schwartz  
 Administrator, Office of Juvenile Justice  
 and Delinquency Prevention  
 Law Enforcement Assistance Administration  
 United States Department of Justice  
 Washington, D.C.

Dear Mr. Schwartz:

The D.C. Coalition for Youth, Washington, D.C., has asked us to respond in its behalf to your invitation, which appeared at 45 FED. REG. 52947 (August 8, 1980), for public comment on the proposed continuation policy of the Office of Juvenile Justice and Delinquency Prevention for grants awarded under the authority of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The D.C. Coalition for Youth is a past and present recipient of formula grant funds awarded under the Juvenile Justice and Delinquency Prevention Act, and it is extremely concerned by the exclusion of the formula grant program from the proposed continuation policy. The proposed continuation policy is being promulgated pursuant to the requirement of Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act, which provides that "[i]n accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory." (Emphasis supplied.) The "title" referred to in Sec. 228(a) is Title II of the Act; the formula grant program was, of course, created under Title II. We think it self-evident that Sec. 228(a) is, by its terms, applicable to the formula grant program, and it therefore follows that any continuation funding policies, criteria or guidelines adopted by OJJDP

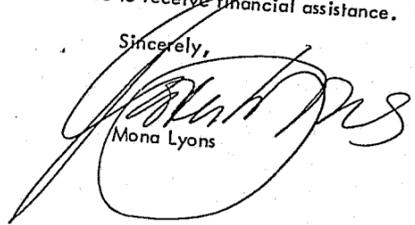
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Page 2.

must also be made applicable to the formula grant program.

We urge you to make the requisite revisions to bring the proposed continuation policy into conformity with the clear Congressional directive that formula grant recipients who perform satisfactorily, like all other Title II grantees, shall continue to receive financial assistance.

Sincerely,

  
 Mona Lyons

Received by \_\_\_\_\_  
 Date \_\_\_\_\_

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October 7, 1980

Ira M. Schwartz  
 Administrator, Office of Juvenile Justice and  
 Delinquency Administration  
 Law Enforcement Assistance Administration  
 United States Department of Justice  
 Washington, D.C.

Dear Mr. Schwartz:

This letter constitutes the response of our client, READ, Inc. (hereinafter, "Project Read"), to your invitation, which appeared at 45 FED. REG. 52947 (August 8, 1980), for public comment on the proposed continuation policy of the Office of Juvenile Justice and Delinquency Prevention (hereinafter, "OJJDP") for grants awarded under the authority of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

As you may recall, Project READ was awarded three grants by the National Institute for Juvenile Justice and Delinquency Prevention (hereinafter, "NIJJDP") for the years 1976 through 1979. However, in November, 1979, Project READ was informed by NIJJDP that no additional continuation funding would be forthcoming from any unit of OJJDP, notwithstanding OJJDP's conclusion that Project READ's performance under its previous grants had been superlative. Project READ then invoked the review procedure of Sec. 262 of the Juvenile Justice and Delinquency Prevention Act; the Project's principal contention was that OJJDP's refusal to provide continuation funding violated Sec. 228(a) of the Act, which provides that "[i]n accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under [Title II of the Act] shall continue to receive financial assistance providing that the yearly evalua-

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tion of such programs is satisfactory." On March 3, 1980, Administrative Law Judge Morton Needelman issued a decision which concluded that OJJDP's discontinuance of funding to Project READ had indeed violated the requirements of Sec. 228(a), and the dispute was ultimately brought to an end when NIJJDP awarded another one-year grant to Project READ.

In the six-year history of the Juvenile Justice and Delinquency Prevention Act, the administrative proceeding initiated by Project READ was the first, and at least to date, the only test of the intent and meaning of Sec. 228(a), and we believe that Project READ's unique experience has provided it with a particularly acute perspective from which to comment on OJJDP's present effort to promulgate criteria to comply with the directive of Sec. 228(a). <sup>1/</sup> Regrettably, Project READ has concluded that, as presently written, OJJDP's proposed continuation guidelines fall woefully short of the mark set by Sec. 228(a). <sup>2/</sup>

To begin with, it is far from clear that the broad sweep of the proposed continuation "policy" is even remotely consonant with what Congress contemplated when it directed the Administrator of OJJDP to establish continuation "criteria." Under one fair reading of Sec. 228(a), the term "criteria", as it is used in the first clause of the Section, simply refers to standards by which to conduct the "yearly evaluation," mandated by the Section's second clause, to determine whether a program has performed in a "satisfactory" manner. There is support for such a reading in the legislative history of the Juvenile Justice and Delinquency Prevention Act; in 1973, when Senator Birch Bayh introduced S. 821 (the second version of the legislation that would eventually be enacted into law in the form of the 1974 Act), Sec. 407(b) of the bill provided:

<sup>1/</sup> Indeed, it is as a direct consequence of the Project READ litigation that OJJDP is belatedly moving, some six years after the enactment of the Juvenile Justice and Delinquency Prevention Act, to formulate the continuation criteria required by Sec. 228(a).

<sup>2/</sup> Our use of the adverb "regrettably" is not mere rhetoric. More than most organizations and individuals who will be affected by OJJDP's continuation policy, Project READ understands the terrible price paid by a grantee, and more importantly, by the young people who are the beneficiaries of the grantee's services, when continuation funding is improperly denied. Accordingly, Project READ had hoped that OJJDP's proposed continuation policy would be sufficiently responsive to the spirit and the letter of Sec. 228(a) to prevent a recurrence of what happened to Project READ, and it truly is only with regret that Project READ has concluded that the proposed policy simply does not meet the mandate of Sec. 228(a).

In accordance with criteria set forth by the Director, grants or contracts may provide for long-term funding, provided that such grants or contracts provide for yearly evaluation to ascertain if the goals of such grants or contracts are being achieved. [Emphasis supplied.]

Sec. 407(b) of S. 821 was, of course, the forerunner of the present Act's Sec. 228(a), and when the language of Sec. 228(a) is viewed in the context supplied by the more expansive language of its earlier form, it is reasonable to conclude that Sec. 228(a) means simply that OJJDP's Administrator is to establish standards by which to measure the satisfactoriness, or lack of it, of a grantee's performance; and if that reading is correct, then it surely follows that Congress did not intend Sec. 228(a) to be a grant of authority to OJJDP to take the sort of free-wheeling approach to continuation funding reflected by the proposed "policy." <sup>3/</sup>

Moreover, even assuming *arguendo* that Congress did mean to authorize OJJDP to promulgate a broad-gauged continuation "policy," the proposed policy is nonetheless sharply antagonistic to both the intent and meaning of Sec. 228(a). When the Juvenile Justice and Delinquency Prevention Act came before the Senate for debate and a vote on July 25, 1974, Senator Bayh pungently remarked that "[w]e have had too many double shuffles as far as our efforts to see that programs passed by this body to deal with juveniles are being administered properly." <sup>4/</sup> We are constrained to say that OJJDP's proposed continuation policy is yet another administrative double shuffle; as we read it, the proposed policy merely formalizes a variety of previously inchoate "policies" and practices which have already been criticized by Judge Needelman as contrary to the directive of Sec. 228(a).

In his review of the "discontinuation scenario" in the Project READ case, Judge Needelman found a "neglect of the statutory policy" of Sec. 228(a) which he characterized as "egregious" <sup>5/</sup>; and because it is in-

<sup>3/</sup> A narrow reading of the "criteria" clause of Sec. 228(a) is, of course, entirely consistent with one of the principal Congressional objectives underlying the Section, *viz.*, to constrict OJJDP's discretion with respect to continuation funding decisions. Furthermore, as Judge Needelman observed at p. 32, n. 81 of his *Initial Decision* in the Project READ litigation (hereinafter cited as "*Initial Decision*"), there is support for that reading of the Section in OJJDP's past practices and guidelines in the administration of formula and Special Emphasis grants.

<sup>4/</sup> 120 CONG. REC. S25165 (July 25, 1974).

<sup>5/</sup> *Initial Decision*, p. 34.

structive and revealing to compare that "discontinuation scenario" with the currently proposed continuation policy, we quote Judge Needelman's account of it at some length:

The record shows that Project READ was discontinued on the basis of insular considerations which are diametrically opposed to the broad congressional directive to continue worthwhile projects. Thus, LEAA administrators decided not to support the program by --

(a) Confining Project READ to an especially small budgetary pigeon-hole where its survival was dependent on its ability to compete against another mandated program.

(b) Imposing retroactively internal competitive bidding policies which have nothing to do with the performance of existing programs, and then not adequately considering an exception to the bidding policy for Project READ.

(c) Relegating its continued existence to hair-splitting as to which unit of OJJDP was administratively responsible for the project -- NIJJDP or Special Emphasis. Once designated an NIJJDP project it could then not avail itself of certain Special Emphasis "exceptions" to the "competitive bid" policy despite Special Emphasis' high regard for the project. <sup>6/</sup>

Additionally, Judge Needelman noted that OJJDP's "changed priorities" played a significant role in the scenario. <sup>7/</sup> Judge Needelman concluded, however, that the Congressional policy expressed in Sec. 228(a) could not be disregarded merely on that basis; he thought Sec. 228(a) to be a Congressional mandate that OJJDP carefully weigh and select its priorities before a program is initially funded:

Another theme heard during the hearings prior to enactment of the 1974 Act was that Federal government's involvement in juvenile delinquency (especially

<sup>6/</sup> *Id.*, pp. 33-34 (footnotes omitted).

<sup>7/</sup> *Id.*, pp. 2, 14, 18, 24-25.

on the part of the Department of Health, Education, and Welfare in administering the Juvenile Delinquency Prevention and Control Act of 1968) consisted largely of endless agonizing over the causes of juvenile delinquency with the result that practically all effort was expended on "stop-and-start" pilot or demonstration projects. While the congressional drafters thought that there would still be room for some research, the sponsors essentially wanted LEAA to put in place, and keep in place, long-term action programs that delivered services. [8/]

Now, just some few months after the decision in the Project READ dispute, OJJDP has proposed a continuation policy which mirrors the same "insular considerations" criticized by Judge Needelman. For example, general criterion No. 6 would make a grantee's continuation funding turn on the "[a]vailability of appropriated funds for the OJJDP program under which the program and project were funded" -- exactly the same "budgetary pigeon-hole" approach condemned by Judge Needelman. And again, in the second paragraph of the general policy statement and in general criterion No. 3, OJJDP returns to the position that continuation funding may be made to depend on OJJDP's shifting "priorities" -- likewise a notion discredited by Judge Needelman 9/; then, to compound the error, OJJDP states, in the second paragraph of the general policy statement and in general criterion No. 7, that where "program priorities do not permit the funding of eligible projects within a continuation program," recipients of continuation funding will be selected through a "competitive" process -- despite Judge Needelman's sharp misgivings

8/  
Id., p. 30 (footnote omitted).

9/  
Judge Needelman was clearly unimpressed by OJJDP's suggestion that Sec. 228(a) must sometimes be blinked at because innovation in juvenile delinquency programs will be stifled unless OJJDP is permitted to change its "priorities." See p. 29 of the Initial Decision, where Judge Needelman approvingly quotes this statement by Mr. John Rector, a former Administrator of OJJDP:

Unlike the Safe Streets Act, once a project is funded under the Juvenile Justice Act, it will be continued, unless it receives a bad evaluation, through the life of the legislation. There is no [cont. on p. 6]

Page 6.  
about the inconsistency between previous OJJDP "competition" schemes and the requirements of Sec. 228(a). Other flaws are readily apparent: the requirement in general criterion No. 1 of time-consuming "self-evaluations," which will only divert the attention and energy of grantees from where it should be directed -- providing services to young people; the complete lack of any exception procedure, despite Judge Needelman's criticism of OJJDP's failure to consider an exception in the Project READ matter; and perhaps most startling of all, the placing, in general criterion No. 4, of the burden on grantees to demonstrate entitlement to continuation funding. 10/

We are also especially troubled by general criterion No. 5, which provides that to be eligible for continuation funding, a grantee must "document [ ] efforts to obtain funding from governmental or private sources and...submit [ ] an acceptable plan to continue such efforts over the project period of the continuation funding." In our view, the "assumption of cost" philosophy reflected by this criterion would substantially subvert both the letter and the spirit of Sec. 228(a). Plainly, the approach to continuation funding required by Sec. 228(a) is altogether incompatible with "assumption of cost" principles; as Judge Needelman commented, "[t]he 'assumption of cost' concept was specifically rejected in the Juvenile Justice Act in favor of 228(a) which directs continued indefinite federal

9/  
[cont. from p. 5]

prescribed cut-off date requiring local institutionalization. This could have future implications for local evaluation capability and may allow for the development of more innovative projects which might not be initiated if there was fear it could not be institutionalized.

Under that very cogent analysis, there is no tension between the requirements of Sec. 228(a) and the development of innovative programs; to the contrary, Sec. 228(a) is a spur to innovation.

10/  
During the hearings which preceded enactment of the Juvenile Justice and Delinquency Prevention Act, Senator Bayh stated that Sec. 228(a) was meant to rectify "the current situation where it is never clear whether a program will be refunded." The Juvenile Justice and Delinquency Prevention Act: Hearings on S. 3148 and S. 821 Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 92d Cong., 2d Sess. & 93d Cong., 1st Sess., p. 175 (hereinafter cited as "Hearings"). Taken altogether, OJJDP's proposed continuation policy and its accompanying general criteria can only cause the very uncertainty that Sec. 228(a) was meant to prevent.

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funding." 11/ Furthermore, not only is this criterion contrary to the facial meaning of Sec. 228(a), it undermines one of the Section's major goals, viz., to relieve juvenile justice programs of the time-consuming necessity and pressure of fund-raising so they might get on with the business of serving troubled young people. In 1972, when Senator Bayh introduced S. 3148, the first version of what later became law in the form of the Juvenile Justice and Delinquency Prevention Act of 1974, the bill did not contain any continuation funding provision; however, when hearings were held on S. 3148, the need for such a provision was noted in this illuminating exchange among Senator Bayh, Robert B. Langworthy of the YMCA, and Richard Booze, Director of the National Center for Youth Outreach Workers:

[Mr. Langworthy]: There is an inordinate amount of staff time and volunteer board members' time spent in worrying about the ensuing year's funding when funding is provided for only 1 year at a time.

\* \* \*

[Mr. Booze]: What we are talking about is how ridiculous it is for a highly qualified person, who is qualified enough to direct a program, having to spend 2, 3, or 4 months of his time involved in re-funding efforts, rather than running or directing the program.

\* \* \*

[Senator Bayh]: Let us work out some language... on this multiyear funding with review, which requires everybody to stretch to meet the standards, but does not require a lot of red tape. [12/]

It was in response to those observations, among others, that Sec. 228(a) was ultimately included in the Juvenile Justice and Delinquency Prevention Act; nevertheless, OJJDP now proposes in general criterion No. 5 to tie grantees up in the "red tape" of attempting (and of documenting those attempts) to obtain alternative sources of funding, with an inevitable diminution in time spent in

11/  
Initial Decision, pp. 28-29.

12/  
Hearings, pp. 156, 157, 176. See also, e.g., the testimony of Dr. Rhetta M. Arter of the YWCA, *id.*, p. 277.

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actually providing services to young people. Simply put, general criterion No. 5 is utterly irreconcilable with Sec. 228(a).

We believe we have demonstrated that OJJDP's proposed continuation policy is inconsistent with the particular requirements of Sec. 228(a) of the Juvenile Justice and Delinquency Prevention Act, and we end our remarks with the observation that the proposed policy is also at odds with the Act's general intent (1) to minimize OJJDP's discretionary power and (2) to minimize unnecessary administrative burdens on grantees. Those Congressional purposes were nowhere better expressed than in the following statement by a co-sponsor of the Act, Senator Marlowe Cook:

...we do not want a program that is going to be totally bureaucratized because this is what really bothers me, and you can see all of my colleagues saying that well, we are just creating another bureaucracy, and you are...going to have guidelines at the Federal level, and guidelines at the State level, and we are going out with the same fellow at the local level, and the same fellow in the welfare department, the same juvenile judge, and the situation where he has got to fill out forms and he has got to meet a certain standard before he can take advantage of [the provisions of the Act], and these are the things that I want to overcome. In other words, I would like to have a record of saying this is one piece of legislation that we do not want bureaucratized, that we do not want to send this thing downtown and if it is signed by the President, and have that thing in it that says the agency shall establish such and such rules and regulations, and promulgate such rules and regulations as shall be necessary to put this thing into operation. Bingo. There is our dead end.... [13/]

OJJDP's proposed continuation policy represents the very sort of "total bureaucratization" decried by Senator Cook; the proposed policy is,

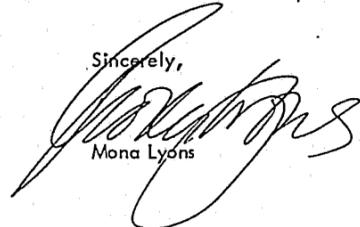
13/  
*Id.*, p. 476.

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in Senator Cook's words, a "dead end." Project READ urges that the proposed continuation policy be discarded in its entirety, and that OJJDP undertake a fresh effort to formulate criteria sensitive to the spirit as well as the letter of Sec. 228(a).

Sincerely,



Mona Lyons

Received by \_\_\_\_\_

Date \_\_\_\_\_

SENATOR BAYH CONGRATULATES JOHN M. RECTOR ON NOMINATION  
AND CONFIRMATION AS ADMINISTRATOR OF THE  
OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION

United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 95<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 123

WASHINGTON, THURSDAY, JULY 28, 1977

No. 129

## Senate

Mr. BAYH. Mr. President, I wish to bring to the attention of my colleagues an article written by John M. Rector, entitled "Juvenile Justice: A Congressional Priority"—Judicature, Volume 61, Number 1/June-July 1977.

As my colleagues who have worked with John since 1971 know, before being nominated by President Carter and confirmed by the Senate as the administrator of the Office of Juvenile Justice and Delinquency Prevention in the Department of Justice, he excelled as my staff director and chief counsel of the Subcommittee to Investigate Juvenile Delinquency. As a senior member of our staff, John worked long and hard. He clearly demonstrated his total commitment to the struggle for human rights for America's children. Our immediate loss of John Rector's keen sense of justice and injustice that he brought to his work with us, is offset by the contribution I know he will make in his new assignment on President Carter's team, where he will certainly be an asset to Attorney General Bell and a friend to the youth of our Nation.

The Juvenile Justice Amendments of 1977 guarantee the continuity and stability of the 1974 Act and under the direction of John Rector the Office of Juvenile Justice and Delinquency Prevention will begin a new era.

Mr. President, it is with great pride that I ask you and my colleagues to join me in congratulating John for his significant contribution to our body and to wish him our best in his new responsibilities as administrator of the Office of Juvenile Justice and Delinquency Prevention. I ask unanimous consent that a copy of Mr. Rector's article appear in the Record at this point.

There being no objection, the article was ordered to be printed in the Record, as follows:

### JUVENILE JUSTICE: A CONGRESSIONAL PRIORITY

(By John M. Rector)

When young people confront our juvenile justice system, injustice is a frequent result. The system does not provide the individualized justice promised by reformers at the turn of the century; it does not help the many non-criminal status offenders who fall into its jurisdiction; and it does not protect communities from juvenile crime.

The statistics on juvenile delinquency are alarming and growing worse. Of the 8 million arrests made nationally in 1976, 26 per cent were of persons under 18 years of age. The peak age for arrests for violent crime was 16, followed by 15 and 17. Arrests in this category have tripled since 1965. The peak age for arrests for major property crime was 18, followed by 17, 16 and 19. But juvenile crime statistics tell only part of the juvenile justice story. Nearly half of those in the system are not charged with even minor criminal conduct.

I will forego reciting the standard litany of horror stories that illustrate the sordid and even brutal manner in which we as a nation indiscriminately respond to children in trouble—from those who are abandoned and homeless to those who threaten public

safety. Rather, it is my purpose to discuss the background and prospects of a Congressional and citizen initiative developed in response to the inconsistencies of our present system.

For years, persons familiar with juvenile procedure have raised basic questions. Why do we subject juveniles to stricter laws than adults? Why do we impose more severe penalties on juveniles who commit non-criminal offenses? Why is the concept of preventive detention thought to violate basic liberties when proposed for adults but seldom questioned when implemented for juveniles? When more than half the serious crime is committed by juveniles, why is delinquency prevention assigned such low priority by most community leaders and policy makers? There are no satisfactory answers.

In the midst of the Watergate era, Congress sent the Juvenile Justice and Delinquency Prevention Act of 1974 to the White House for signature. This Act had been developed and supported by citizen groups throughout the country and by strong bipartisan majorities in Congress. It was designed to help states, localities and public and private agencies to develop and conduct effective delinquency prevention programs, to divert more juveniles from the juvenile justice system to traditional detention and correctional facilities. It was developed during a four-year investigation of the federal response to juvenile crime conducted by the United States Senate Subcommittee to Investigate Juvenile Delinquency under the direction of Senator Birch Bayh.





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Similarly, Attorney General Bell made a strong commitment to the full implementation of the Act during the course of the Senate Judiciary Committee confirmation hearing. He stated that he plans to establish a national criminal justice policy, the most important part of which will be juvenile justice. "If we are going to do anything about crime in America," he said, "we have to start with juveniles."

The Juvenile Justice Act has been a catalyst for a long overdue and healthy assessment of current policy and practices. Additionally, it has stimulated the development of criteria for imposing incarceration while stressing certainty of punishment for serious offenders.

The Government Accounting Office has called the Act the most promising and cost-effective federal crime prevention program. No one would claim that the Act is a panacea. There are no federal answers to the problems of juvenile crime and delinquency. Its authors did not intend to divert attention from major reforms aimed at ameliorating the poverty, unemployment, sexism and racism so relevant to the quality of life and opportunities for our youth. None were they naive about the capacity for resistance to change, especially by those entrenched and sustained by the status quo.

Still, by the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974, Congress has called upon the states, localities, public and private agencies and others to reassess the national policies which have made institutionalization the favored alternative far too often.

FOOTNOTES

<sup>1</sup> JUVENILE DELINQUENCY ANNUAL REPORT, 95th Congress, 1st Session, Report No. 95-17, 25 (1976).

<sup>2</sup> Such cases comprise—though firm figures are not available—no less than one third and perhaps close to one half the workload of America's juvenile courts. In one county of better than 600,000 population, a thorough study in connection with a diversion program revealed that non-criminal behavior cases accounted for 40 percent of all minors detained and 72 percent of court-ordered out-of-home placements and commitments. American Bar Association—Institute of Judicial Administration, Juvenile Justice Standards Project, Tentative Draft, Standards Relating to Noncriminal Misdemeanors 1-3 (New York: Bellinger Publishing Co, 1977).

<sup>3</sup> Today virtually every state empowers its juvenile courts to exercise authority over children who do not commit crimes but are "incorrigible," "ungovernable" or beyond control of their parents or custodians. Children who fall into this category are often called "status" offenders since they harm no one other than themselves and are punished for merely "being" something, most status offenses of children are not illegal if committed by adults. Children are therefore subject to possible punishment and loss of liberty for acts which are not prohibited for adults. Alan Busaman, THE RISERS OF YOUNG PEOPLE 83-84 (American Civil Liberties Union: March, 1977).

<sup>4</sup> Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5001.

<sup>5</sup> The Senate vote was 88-1; the House voted 824-20.

<sup>6</sup> Rosemary C. Sarri and Robert D. Vintner, JUSTICE FOR WHOM? VARIETIES OF JUVENILE CORRECTIONAL APPROACHES IN THE JUVENILE JUSTICE SYSTEM 161-173, M. E. Zelnik, ed. (Beverly Hills: Sage Publications, 1976).

<sup>7</sup> ANNUAL REPORT, supra n. 1 at 28-29.

<sup>8</sup> Milton Rector and David Gilman, HOW DID WE GET HERE AND WHERE ARE WE GOING—THE FUTURE OF THE JUVENILE COURT SYSTEM, 1 CRIMINAL JUSTICE REVIEW 77 at 83.

<sup>9</sup> In fiscal 1974, 542,500 juveniles were admitted to detention centers and training

schools. ANNUAL REPORT, supra n. 1, Table VII, 25. At least another 500,000 youths are held in adult jails each year. For every ten youths incarcerated in all types of facilities, nine are in jails or detention units. See Sarri and Vintner, supra n. 5 at 172.

<sup>10</sup> See Patricia Wald, "Status Offenders: Saturday's Children," presented September 3, 1976 to the 84th Annual Convention of the American Psychological Association, 1, "... To FORM A MORE EFFECTIVE UNION..." JUSTICE FOR AMERICAN WOMEN, Report of the National Commission on the Observance of International Women's Year, 158-159 (1976). Birch Bayh, Girls in Trouble: Second Class Delinquents, 1 THE WOMAN'S ORGANIZATION REPORT 6-7 (March/April 1977).

<sup>11</sup> Even a cursory review of the handling of young women reveals the present application of the double standard. See U.S. LEAA, CURSORY IN CURSORY, REPORT ON THE JUVENILE DETENTION AND CORRECTION FACILITIES CENSUS OF 1971, 6 (1974). FEMALE OFFENDERS: FACTS AND FIGURES, FEDERAL OFFENDER RESOURCE CENTER, NATIONAL OFFENDER SERVICE COORDINATION PROGRAM, AMERICAN BAR ASSOCIATION, (1976).

<sup>12</sup> See also ABA-JJA supra n. 2 at 18. "The Juvenile Justice Standards Project's New York City Study found that although girls only accounted for 22 percent of the total F-NIS sample, they accounted for 100 percent of the cases involving allegations of prostitution, promiscuity, 'cohabiting' and 'general sex impropriety' (whatever that may mean, if anything)."

<sup>13</sup> "Some youth policies will have to be based on a greater acceptance of young people on their own terms, a willingness to live with a variety of life styles, and a recognition of the fact that young people of our society are not necessarily confused, troubled, sick or vicious. These attitudes cannot emerge within the context of the present juvenile justice system with its paternalistic, patronizing even hostile philosophy." Edwin M. Schur, BARRACADES: EXPLORING THE DELINQUENCY PROBLEM, 168 (New York: Praeger, 1973).

<sup>14</sup> "The curse of juvenile courts has always been their lack of appropriate disposition resources for a variety of problem children they handle. The availability of detention facilities for holding juveniles indefinitely in lieu of a proper final placement has thus provided a convenient device for avoiding reform. . . . If a juvenile justice system in fact has no resources to treat or rehabilitate a juvenile, the dilemma ought to be faced in open court and the juvenile released. . . ." Patricia M. Wald, PUNITIVE DETENTION FOR JUVENILES, FUTURE OF JUVENILE JUSTICE FOR THE CHILD 126-127 (1976).

<sup>15</sup> The center has published an introductory pamphlet on monitoring which they used at their Citizen Survey and Visitation Training Seminar on January 24, 1977. It may be obtained from the Juvenile Justice Center of Pennsylvania, 1902 Hittenshouse Square, Philadelphia, Pennsylvania 19108.

<sup>16</sup> "The law provides increased visibility to the problem and a focal point for juvenile delinquency activities in the federal government by creating an Office of Juvenile Justice and Delinquency Prevention. For the first time, there will be an organizational unit that can identify existing and needed resources, identify and set priorities, and develop strategies to implement a comprehensive attack on juvenile delinquency. Also, for the first time, specific efforts to both prevent and control juvenile delinquency will be the responsibility of one agency. This should provide for innovative prevention programs." Testimony of Elmer B. Staats, Comptroller General of the United States, April 29, 1976, in FORD ADMINISTRATION STRATEGIES: JUVENILE JUSTICE PROGRAMS, Vol. 1, p. 13. (Hearings of the Senate Subcommittee on Subversive Juvenile Delinquency).

<sup>17</sup> Once a program receives formula or special emphasis grants, it is entitled to get continued assistance subject to an annual evaluation.

<sup>18</sup> The committee with consist of 21 members, the majority of them from the private sector, and one-third of them under age 26.

<sup>19</sup> The Senate vote was 61-27 on July 23, 1976.

<sup>20</sup> The LEAA fiscal year 1976 budget was \$865 million; when Congress reauthorized LEAA last fall, it reduced the budget for fiscal year 1977 to \$753 million.

<sup>21</sup> Speech before the Mexican-American Legal Defense Fund in San Francisco, California, February 16, 1977.

<sup>22</sup> "No reforms or alternatives can rescue these institutions from their historical excesses," according to William Wayne, a federal district court judge in Tyler, Texas, in Peter Schrag and Diane Divoky, THE NEW JUVENILE JUSTICE AT WORK, 2 CIVIL LIBERTIES REVIEW 74.

<sup>23</sup> Unpublished testimony before the subcommittee on April 27, 1977, chaired by Senator John Culver of Iowa, pp. 4-5.

<sup>24</sup> Carter's action fulfilled a campaign promise. When candidate Jimmy Carter was asked last October by the American Bar Association whether he favored an increased share of LEAA and other federal funds for juvenile justice and delinquency prevention, he responded in the affirmative and added, "Both the commentators and the statistical evidence now point to the fact that court reform, corrections and juvenile justice are the critical elements in improving crime control." 82 A.B.A.J. 1275 (October, 1976).

<sup>25</sup> Hearings on the Prospective Nomination of Griffin B. Bell of Georgia to be Attorney General of the Senate Committee on the Judiciary, 95th Congress, 1st Session, January 11, 1977, p. 77.

<sup>26</sup> Clear criteria limiting admission to detention should help to eliminate the need for expensive consultative services or the development of extraordinarily complicated processing. By providing intake personnel on an around-the-clock basis as the 1974 Act encourages, the savings could be significant.

<sup>27</sup> Staats, supra n. 14 at 4.

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"Raisin in the Sun" (poem) by Langston Hughes

**END**