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Review and Briefing on Legislative Analyst Report on the State Bar

Special Legislative Investigating Committee

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Special Legislative Investigating Committee
on the
State Bar
State Capitol, Room 2133
March 11, 1980

CHAIRMAN JACK R. FENTON: This is the first hearing of the Special Legislative Investigating Committee on the State Bar. This Committee has been charged with the responsibility of reviewing and making recommendations regarding the scope, efficacy and economy of the State Bar's activities. The Committee will be assisted in its duty by the Legislative Analyst, who has submitted to the Committee a report on the Bar's management practices, effectiveness of its program, and operational efficiency.

Before we start, I'd like to introduce the people who are here today. First, to my far left are two ex officio members from the State Bar: Frank Quevedo and Robert Raven. Next to Bob Raven is Assemblywoman Jean Moorhead, representing the City of Sacramento, and doing it very well. At my far right is Ray LeBov, one of the Committee's consultants, Richard Thomson, another consultant, William Kurlander of the State Bar, and my right hand man, Rubin Lopez. The other members will be here later.

The Legislative Analyst has made three general conclusions in the report: (1) Due to a lack of measurable program goals and inconsistent program cost and output data, the Analyst was unable to document the effectiveness of the Bar's programs; (2) The California State Bar's membership fees are generally higher than the fees of similar state bars; (3) The Bar's program cost-accounting and budgeting systems are deficient and preclude effective managerial control of costs.

The purpose of today's hearing is to review those conclusions and the report as a whole. And to accomplish that goal, we have representatives from the Legislative Analyst's office and the State Bar. Witnesses from the Legislative Analyst's office will brief us on the content, preparation, recommendations of their report.

Before beginning the testimony, we should remember that the scope of the Legislative Analyst's report was limited to the collection of data on, and analysis of, the Bar's administrative and management practices. The report does not include conclusions or recommendations as to the wisdom or validity of the Bar's programs or activities. Policy considerations regarding the Bar's activities will be a topic for future hearings, but will not be the subject of today's hearing.

First witness, Mr. William Hamm, our Legislative Analyst.

MR. WILLIAM HAMM: Good morning, Mr. Chairman and members. I'm here this morning to summarize, for the Committee, the results of our study of the State Bar of California. As you know, we were direc-

ted to undertake this study by Resolution Chapter 44, which was passed by the Legislature last year.

With me this morning are Tom Wiesendanger, who conducted the study, and Craig Brown, who supervised preparation of the study. Before getting into the findings, conclusions and recommendations that we have reported to you in our study, let me just give a little background about the State Bar and describe how we approached the directive that you gave us in Resolution Chapter 44.

Article VI, Section IX, of the State Constitution creates the State Bar as a public corporation, and it makes Bar membership mandatory for all practicing attorneys in California. The Bar is not a regular state agency, and, as a consequence, its expenditures are not reviewed and approved by the Legislature as part of the budget process each year. The Legislature, however, does set a ceiling on the membership fees that the Bar may charge practicing attorneys. The Bar is headquartered in San Francisco. It has approximately 330 authorized positions. And last year its expenditures amounted to 13.2 million dollars.

The Bar is an administrative arm of the California Supreme Court in matters of admission and discipline of attorneys, the crediting and monitoring of law schools, and in regulating legal specialization. These activities are mandated by statute or by court rules, and thus the Bar is required to undertake these activities. In addition to these mandatory activities, the Bar is authorized, but not required, to administer various other programs that the Bar deems necessary to advance the legal field.

California has the largest bar association in the United States. It has 64,000 active members at the present time. In contrast the New York bar, which is the second largest in the U. S., has 30,000 members. During the last decade, the California State Bar's membership has more than doubled.

In complying with the directive contained in Resolution Chapter 44, we took a look at the effectiveness of the Bar's programs, its management practices, and other subjects having to do with the operational efficiency of the Bar. We assigned one staff member full time to this study for a period of 6 months. We had another staff member assisting on the study on a half-time basis for approximately 2 months. We surveyed the Bar's operations by visiting its offices in San Francisco and Los Angeles on numerous occasions; by interviewing the staff of the Bar, both San Francisco and Los Angeles; by reviewing written material, historical financial records, and whatever the Bar could provide us that would help us in undertaking our task. We also conducted a telephone survey of the bars in 18 other states, just to give you a point of comparison for evaluating the scope of the California State Bar and the cost of membership in the Bar. In undertaking this study, we received the complete cooperation of the State Bar's management and staff. I would like to express my gratitude, and the gratitude of my staff, Mr. Chairman and members, to the State Bar for being so helpful in allowing us to comply with the directives that you gave us.

We did encounter, as you mentioned before, Mr. Chairman,

two major obstacles in carrying out our task. First, the Bar has not established measurable goals and objectives for its programs. As a result, we could not develop an analytical basis for documenting the effectiveness of these programs or determining whether or not the benefits resulting from the programs warranted the continued support of practicing attorneys through their membership fees. And because we couldn't develop an analytical basis for trying to judge the effectiveness of these programs, we chose not to try to make a subjective evaluation. We thought that simply went beyond our expertise and capability.

The second obstacle we faced in complying with your directive was that the Bar could not provide detailed budget data on its programs and activities on a consistent basis for prior years. As a consequence, we had to develop our own series, our own statistics in many cases, in order to provide the Legislature with some indication of what the historical trends were. And we have tried to note in our report, where we have...

CHAIRMAN FENTON: Pardon me, Mr. Hamm, allow me to introduce Assemblyman Bill McVittie, who also sits on this Committee. I'm sorry, go ahead.

MR. HAMM: Our report, as you know, contains substantial descriptive data on the growth of the Bar's program and staffing levels, on what the Bar is actively engaged in right now, and the structure and program of the Bar, as well as on the structure and program of other state bars.

In summarizing our principle findings and conclusions, Mr. Chairman and members, I will divide these findings and recommendations into three categories. First, those having to do with revenue and expenditure trends of the State Bar; secondly, those findings and conclusions having to do with the Bar's fiscal management procedures; and, third, the options for increased fiscal oversight of the California State Bar.

In the area of revenue and expenditure trends, our study turned up what we believe are significant findings. First, the Bar's expenditures have increased much more rapidly than state expenditures generally. Since 1960, the Bar's annual expenditures have increased 19 fold, from approximately 655 thousand dollars to 13.2 million dollars in 1979. This is laid out in the table on page 31 of our report. This rate of growth is equivalent to an 18 percent average annual rate of increase. Now, in contrast, state expenditures from the general fund, special fund and selected bond funds have increased nearly 8 fold over this same period of time, or at an average annual rate of 12 percent.

ASSEMBLYMAN BILL McVITTIE: Mr. Hamm, if I may. What you're trying to do is relate the State Bar to the state, but they are not necessarily the same in terms of their constituency, and in terms of expenditures. Wouldn't that be a fair statement?

MR. HAMM: You are quite right, Mr. McVittie. And as we indicate, the next thing that we tried to do is try to relate the

growth of the Bar to the growth of workload. We don't mean to imply that there is any correspondence between workload of the state and of the Bar.

The second finding that our study resulted in was that the Bar's expenditures have tended to increase more rapidly than can be accounted for, strictly by increases in prices or inflation, and increases in the number of Bar members. The Bar's expenditures, when adjusted for inflation, increased at an average annual rate of 12 percent between 1960 and 1979. This is also shown on page 31. Much of this growth can be attributed to increases in a number of active bar members. The number of active Bar members rose at an average annual rate of 7 percent during this 19 year period. Even if the Bar's general fund expenditures are adjusted for the effect of inflation and membership growth, however, they still show an uptrend. Over the 1960 to 1979 period, this uptrend was equivalent to an average annual rate of increase of approximately 4 percent. Now, we think this 4 percent rate of growth probably understates the actual rate of growth in the scope and level of the State Bar's activities for this reason: it doesn't reflect any adjustment for the economies of scale that the Bar may have achieved in serving a larger number of members. Such economies often, though not always, result when workload increases, because an agency is able to spread its overhead and fixed costs over a larger base, thereby reducing unit costs. We couldn't make a determination of whether or not the Bar was able to achieve any economies of scale when its membership increased significantly over this period. It's a possibility. Because we couldn't make an estimate, we ignored it.

ASSEMBLYMAN McVITTIE: Was there any intent, Mr. Hamm, to relate the additional expenditures, or percentage of increase in expenditures, to additional services provided by the State Bar.

MR. HAMM: Well, we assume, Mr. McVittie, that in all cases the increase in staffing and the increase in expenditures did indeed go for additional services provided to Bar members of the legal profession. We didn't make any attempt to evaluate whether or not those services were desirable. That's really a policy determination that the Legislature has to make.

The third finding in this area...

CHAIRMAN FENTON: If you gentlemen from the State Bar want to ask questions, just ask permission of the chair here.

MR. ROBERT RAVEN: Thank you, Mr. Chairman.

CHAIRMAN FENTON: Go ahead, Mr. Hamm.

MR. HAMM: The third finding in this area, Mr. Chairman and members of the Committee, is that most of the growth in the Bar's general fund expenditures appeared to have been due to increases in discretionary, rather than mandatory, programs. This is shown on chart 3 of our report, which appears on page 35. This chart shows that expenditures for the discipline program, which accounts for somewhere between 80 percent and 90 percent of those mandatory programs funded

by the general fund in the State Bar, decreased slightly during the 1973 and 1979 period when adjustments are made for increases in the rate of inflation and for membership increases. During the same period, expenditures for other general fund programs increased significantly, as the chart shows. These programs are primarily discretionary in nature.

Our fourth finding is that the number of general fund program staff members per 1000 active attorneys increased by 90 percent between 1969 and 1979. Mr. Chairman and members, let me just explain that the reason you see us shifting the time period covered is not because we're trying to make a particular point in choosing the dates accordingly. This is done because of the data that we have to work with. In many cases, as we explained in greater length in our report, we didn't have the consistent set of data, so we had to make the comparisons where the data existed. During this 10 year period, the number of general fund staff members increased from 1.43 staff members per 1000 active attorneys to 2.71 staff members per 1000 active attorneys. This is an increase of 90 percent over this period. The discipline program, which, as I noted a moment ago, accounts for most of the mandatory general fund expenditures, showed an increase in staffing level of approximately 82 percent over this 10 year period. Other general fund program staff levels, which are primarily in the discretionary category, increased 100 percent during that time period.

Our fifth finding in this area is that membership fees for all but the most junior practicing attorneys increased more rapidly than the rate of inflation since 1960. The fee paid by an individual attorney, as I think all members of the Committee know, is determined largely by how many years have passed since the attorney was admitted to the State Bar. Presently, the State Bar has a fee structure, a membership fee structure, that has four tiers, each geared to a specific seniority, if you will, of the practicing attorneys. Between 1960 and 1980 membership fees in these four tiers increased between 140 percent and 440 percent. This is shown on page 27 of our report and in a table that's included there. After we eliminate that portion of the increase that can be attributed to inflation, the fee increase ranges from 32 percent to 100 percent for active members who are admitted to the State Bar more than two years ago. For active attorneys who are admitted to the Bar within two years, that is the most junior members of the Bar, membership fees actually decreased when adjustments are made for the rate of inflation. They decreased by approximately 11 percent over this 20 year period.

Finally, we surveyed the membership fees charged by other state bars and we determined that the California State Bar's membership fees for both 1979 and 1980 are generally higher than those of comparable bars. This is discussed at some length in Chapter 3 of our report, and the information is summarized on page 76, where we take unified bars that we think can be compared to the State of California's Bar and compare the membership fees in each of these states.

The second category of findings and conclusions, Mr. Chairman and members, has to do with the Bar's fiscal management. First, we found that the State Bar is not subject to state accounting and

budgeting guidelines. The Bar is exempt by law from these accounting and budgeting guidelines. As a consequence, the only accounting standards that apply to the Bar's operations are those professional standards that apply to the Bar's auditors. The Bar has no budgeting standard. They're subject to no budgeting standards, again, because it has been exempted from the state budget guidelines by law.

Secondly, as the Chairman noted in his introduction, we did find that the Bar's current program cost accounting system is in some ways deficient because it does not accurately identify the cost of several major programs, and this is one of the things that handicapped us in trying to make comparisons between various years of the rate of growth in Bar activities and expenditures. As a result the current or future cost of the Bar's programs, for example, the discipline program or the cost of the annual meeting, is difficult to estimate, and we go into this in greater detail on pages 78 and 79 of the report.

Thirdly, the Bar's budgeting and budget control procedures we found to be deficient. At first, the budget lacks basic supporting documentation that the Legislature requires state agencies to submit: such things as position control statements, equipment lists, and justifications for increases in the level of expenditures or staffing. As a result, we think it is hard for the Board of Governors to exercise managerial control over how the Bar spends what we consider to be, at any rate, quasi-tax revenues. On the other hand, or in addition, we found inadequate control over how funds are spent once the Board of Governors has approved or adopted a budget for the State Bar. For example, we found that the Bar staff is not required to obtain approval from the Board of Governors before shifting funds between divisions, departments, or between major categories of expense, such as operating expenses and personnel. In our report, we identify some specific deficiencies and make recommendations for correcting these deficiencies. We'd be happy to go into that at an appropriate time.

CHAIRMAN FENTON: Mr. Hamm, I have to interrupt you again. I would like to introduce the Chairman of the Senate Judiciary Committee, Senator Bob Wilson.

MR. HAMM: Our fourth finding in this area is that the revenues that the Board anticipates during calendar year 1980 are only adequate to fund 94 percent of the expenditures contained in the Bar's approved budget. In other words, the 1980 budget for the Bar anticipates deficit spending of around 6 percent, or \$565,000. The Bar is financing this deficit like the State of California is financing its deficit in a general fund, by drawing down on an accumulated surplus. Our analysis of the Bar's budget indicates that this may be questionable to this extent: a portion of the surplus funds that are being used to make up for the gap between expenditures and revenues in 1980 may have come from the Admissions and Legal Specialization Program, and these two programs, the revenue rates under these two programs, are generally considered to be earmarked for those programs and, thus, would not normally be available to support general fund activities of the Bar. One of the recommendations we make in our study is that the Bar review the source of that general surplus and assure itself that the use of these funds underwrite the

cost of the general fund budget is appropriate.

SENATOR ROBERT WILSON: May I ask a question here?

CHAIRMAN FENTON: Senator Wilson.

SENATOR WILSON: I just had some dental work, so my voice will probably be somewhat slurred. Is the money that's used to fund the deficit, is that earmarked for something?

MR. HAMM: Well, we were not able to tell. The Bar has placed the full amount of the surplus funds in the general fund category, thus making it available to support any of the Bar's general fund activities. We're not certain that this was appropriate. We weren't able to track the source of those revenues, but to the extent a portion of that revenue came from either the Admissions Program or the Legal Specialization Programs, we would not consider that to be an appropriate treatment of the accumulated balances. We would think that those balances would have to be retained for use in the Admissions or Legal Specialization Programs, respectively. We just couldn't make a determination of where the money came from. I think the Board of Governors, however, needs to instruct the staff to make an analysis of that.

Our next finding in this area was that unless the Bar is able to restrain the growth in general fund spending, we think it is likely that an increase in membership dues will be necessary probably in 1981, although perhaps not until 1982. And this stems from the fact that in the current year, 1980, the Bar is not able to fund its on-going expenditures with its on-going revenues. By the end of this year the Bar in effect will have no surplus available to help make up such a gap in 1981. The surplus will have dropped \$365 if the revenue and expenditure estimates are correct.

CHAIRMAN FENTON: Have you compared the services that the California State Bar provides with services that other states provide? Am I premature in this question?

MR. HAMM: No, you're not, Mr. Chairman. We made an attempt to do this, and the table on page 68 and 69 indicates the results of our surveys. The key part of this table, Mr. Chairman and members, is that portion that is labeled "programs" along the side. This probably gives an impression of more scientific methodology that really existed. What we tried to determine was whether these other bar associations maintain a program with a title similar to the programs that California administers, but in many cases the underlying programs may have been different even though they had a similar name.

CHAIRMAN FENTON: So it's impossible, actually.

MR. HAMM: Well, no, it's possible, Mr. Chairman. It would have taken a lot more manpower and time than we had available.

CHAIRMAN FENTON: Did you go into the disciplines in the State Bar? For example, I feel that trial lawyers are more capable than anyone in taking care of their activities, their continuing education, and their program. In the disciplines that you found in the

State Bar, did you consider the possibility of some of these disciplines managing themselves, or did you just examine what services for the disciplines were to be found in the State Bar?

MR. HAMM: Primarily the latter, Mr. Chairman. I would acknowledge certainly, as the other 49 states indicate, there are many, many different ways to set up a bar association. In some states like Illinois, which is in some ways comparable to the State of California in that it's a large industrial state, they have a voluntary bar. Many states have a mandatory bar, but have the Supreme Court or an appellate court administering their discipline programs or the admission program. On the surface, there was no reason why various specialties within the Bar membership could not have their own programs for furthering their professional interest, rather than doing it on a consolidated basis, but we didn't try to evaluate whether that was good public policy or not.

CHAIRMAN FENTON: Mr. McVittie.

ASSEMBLYMAN McVITTIE: Mr. Hamm, the State of Illinois has a voluntary bar. I assume that they have some agency that still conducts licensing and discipline of attorneys which is independent of the voluntary bar in Illinois.

MR. HAMM: You are correct. The Supreme Court handles both in-house discipline and admits attorneys to membership in the state bar.

ASSEMBLYMAN McVITTIE: And that Supreme Court and/or their budget for those functions would be reviewed by the Illinois State Legislature.

MR. HAMM: You are correct.

ASSEMBLYMAN McVITTIE: So our situation is totally separate here in that we have an integrated bar. We have the so-called voluntary activities merged with the licensing and discipline.

MR. HAMM: Yes, that's quite right.

ASSEMBLYMAN McVITTIE: And isn't that a real concern when we say the state should review the State Bar budget when our system is a little bit different? We have a merger of both.

MR. HAMM: Well, I don't think so, if only because the California Legislature, in effect, establishes the authorization to collect fees that are mandatory on all practicing attorneys in the State of California. In other states, where membership in the bar is not required in order to practice or support of the bar association is not a requirement, there isn't this compulsion directed at attorneys to support the activities that may not be essential or may not be necessary for admission and disciplining, the so-called mandatory activities that California's engaged in. One alternative which we mention in our report but didn't try to pursue very far was that a distinction could be made between mandatory programs and discretionary programs. The Legislature or some other entity like the Supreme Court or the Judicial Council could attempt to exercise some fiscal oversight over

either mandatory or discretionary or both.

ASSEMBLYMAN McVITTIE: So that "mandatory dues" provision is the net that brings the fish in under the control of state government then?

MR. HAMM: Well, we think that's an important consideration for the Legislature, because you're the ones who alternately enact the legislation and increase the fee and require practicing attorneys to belong to the Bar.

CHAIRMAN FENTON: Senator Bob Beverly, a member of this Committee, has just come in.

SENATOR ROBERT G. BEVERLY: Good morning, Mr. Chairman.

CHAIRMAN FENTON: Good morning.

SENATOR BEVERLY: I was in a G. O. Committee meeting at the same time. That's why I wasn't here earlier.

MR. HAMM: The last finding that we have in this area is not so much a finding as it is just a concern that we think you need more information on, Mr. Chairman and members. We were not able to determine how the Bar intends to pay off its loans on its San Francisco headquarters building once the special assessment authorization expires. The Bar financed its San Francisco building with a 10 year loan that was taken out in 1977. The last payment is due in 1987. To date the loan has been amortized by the Bar's building fund, which collects an annual assessment of \$10 for each active member. The statutory authorization for special assessment expires at the end of 1982, and at that time the building fund will still have a liability that the Bar estimates to be approximately 2.7 million dollars. It will still be facing amortization payments of approximately \$662,000 a year until 1987, when it completely amortizes its loan. We were not able to determine how the Bar intends to get from here to there, and we think this is something that the Bar should speak to when it addresses the Committee.

CHAIRMAN FENTON: I was speaking to the President of the State Bar, Mr. Clifford, and he was very unhappy and curious as to why nobody from your staff contacted him as to discussing some of these matters. Mr. Clifford maintains that nobody tried to contact him to find out some of his views, or have him answer some of the questions. This seems very funny to me.

MR. HAMM: Mr. Chairman, perhaps one of my colleagues can assist me in this. I don't know who we pursued this with on the Bar staff or the Bar management. This is Tom Wiesendanger of the Analyst's Office.

MR. TOM WIESENDANGER: I indicated my willingness to talk to any of the Board of Governor members. However, I felt in our study it was best to talk to the Bar staff, as one only had a limited amount of time in which to do the study.

CHAIRMAN FENTON: For instance, when they could not give you

an answer as to how the Bar intended to pay off the building fund, it would seem to me that you would have gone to someone or tried to find somebody in the State Bar who might have had some answer for that particular question.

MR. WIESENDANGER: Mr. Chairman, I indicated my concerns to the State Bar staff and they could have relayed that to President Clifford.

CHAIRMAN FENTON: I'm not criticizing. I'm just curious as to how it didn't come about.

MR. HAMM: It's not a big deal to us. The important thing is that you be aware of just the fact that there's going to be a need to do something, either restrain expenditures, extend the authorization for the special assessment, or something. We're just flagging this as an issue that you may have to deal with.

Mr. Chairman and members, let me just briefly summarize our recommendation, our key recommendation in the area of fiscal oversight. Based on our review of the Bar's activities, we indeed believe that greater fiscal oversight of the State Bar is warranted. As Assemblyman McVittie indicated a moment ago, or as I indicated in response to his question, the key element of this is the fact that the Bar, in effect, is imposing what is something similar to a tax on anyone who wishes to practice law in the State of California. As a consequence, we think it's important that there be some reasonable set of assurances that that money is being used appropriately. This is the way it works for physicians in the State of California, who must make payments to the Board of Medical Quality Assurance in the nature of a membership fee. You indeed review the Medical Board's budget each year as part of the budget process. In addition, we think greater fiscal oversight is warranted. First, because we did find some deficiency in the accounting and budgeting system that we think should be corrected.

Secondly, although we fully acknowledge that it's very easy to go beyond what analysis can support in comparing dues paid by members of the California Bar with dues paid by members of other state bars, we did note, as I indicated before, that the State Bar dues are higher, generally, than those of comparable bar associations. We think this at least warrants greater fiscal oversight. And, finally, we think it is...

CHAIRMAN FENTON: Why would greater fiscal oversight be necessary because we charge more for members? Why's that?

MR. HAMM: In the absence of documented evidence or evidence that the State Bar is providing more necessary services, and that those services are producing benefits to the State of California or the practicing attorneys, that are commensurate with those dues, we think it raises a question as to whether or not the Bar has expanded its activities beyond where it needs to. We're not making any conclusions. We just think it requires some looking into.

CHAIRMAN FENTON: Wouldn't that be your same conclusion if we lawyers paid less? You'd still want to know whether we're getting what we are paying for?

MR. HAMM: I would certainly agree.

CHAIRMAN FENTON: All that I am saying is that the oversight isn't because we're paying more than other states, but, rather, the oversight is important because you haven't seen the justification for the amount of money that we're paying.

MR. HAMM: Mr. Chairman, you're quite right. I concede the point. We identified four options by which greater fiscal oversight could be provided to the activities of the Bar, and we can go into those if you like. The one that we recommend is, as I think you are aware, that the Bar expenditures be included in the state's budget as part of the Supreme Court's budget, so that it could be reviewed by the fiscal committee each year. We see four advantages from this alternative. First of all, it wouldn't require any new mechanism for providing greater fiscal oversight. The fiscal committee can sit and hear items and simply can accommodate this in their normal procedures.

Secondly, it would automatically extend state budgeting and accounting guidelines to the activities of the State Bar.

Third, and we think this is very important, it would enable the Department of Finance to require that the Bar collect the data necessary to permit greater evaluation of the Bar's programs and overcome some of the problems that we encountered in trying to advise you of the effectiveness of these programs.

And, finally, we think it would allow you to act on a request to increase the ceiling on membership fees with better assurance that the membership revenues are being spent wisely. I don't want to imply that they're not being spent wisely. As I indicated a moment ago, this would basically treat the State Bar in a manner similar to the way the Board of Medical Quality Assurance is treated, as well as other professional regulatory boards and commissions.

Mr. Chairman and members, that completes our prepared statement. We, of course, are at your disposal to answer any questions or elaborate on any specific recommendations we've made in our study.

CHAIRMAN FENTON: Let me see, Mr. Hamm, if I can conclude something. You're not saying we lawyers are not getting our money's worth. You haven't been able to find the proper way to analyze all the programs as such, and you haven't found the proper fiscal management procedures to be able to evaluate them properly to see whether we are getting what we're paying for.

MR. HAMM: That is correct, Mr. Chairman. That is absolutely correct.

CHAIRMAN FENTON: You say that with the system the way you found it, it's impossible for you to make the proper conclusion.

MR. HAMM: I would agree with you.

CHAIRMAN FENTON: I would like to see whether any of our ex-officio members have any questions.

MR. WILLIAM A. KURLANDER: It's Mr. Hamm, is that correct?

MR. HAMM: H-a-m-m.

MR. KURLANDER: I apologize; I just received this report late yesterday, and I got into it on the plane last night. Your chart on page 29 suggests that the membership fees have increased by almost double based on the inflationary rates since 1960. If you were to take 1965 as a base year, it seems to me, if I understand your chart correctly, if the membership fees were to be adjusted for inflation, the members of the Bar would be paying the same fees today that they were paying in 1965. Is that correct?

MR. HAMM: Just from eyeballing it, it appears as though that would certainly be the case. In fact, I would say that members with less than ten years since they were admitted to the Bar would be paying less in these terms. It looks to me that members with over ten years in the Bar would be paying slightly more. Your point is well taken. Any comparison of this type depends very heavily on the base year taken.

MR. KURLANDER: And if we throw into this pot the fact that there are a lot more mandated expenses of the State Bar since 1965, I think that's correct, isn't it?

MR. HAMM: I would not necessarily agree with that. Can we document that there are more mandated expenses?

MR. KURLANDER: I think we should, because, for example, the Commission on Judicial Nominees' Evaluation, taking one example, is a mandatory...

CHAIRMAN FENTON: I don't think you ever got into that. That's relatively new.

MR. CRAIG BROWN: When the bill was before the Legislature, I believe there was about a \$30,000 price tag put on that. In terms of a thirteen million dollar budget, that's pretty small.

MR. KURLANDER: At least I think you will agree we attorneys are paying no more in terms of fees, in terms of real dollars now, than we were in 1965.

MR. HAMM: You are quite right, and you were paying actually less than you were paying in 1978, because, as the chart shows, it has declined in the last three years.

MR. KURLANDER: Just one other question. In terms of discipline I think you indicated that the disciplinary staff has increased 82 percent or so since 1969. Did that take into consideration, or did you evaluate, the necessity for that increase in staff? I have reference to the Clark report and the policy decision that was made to shift from volunteer prosecutors to staff prosecutors for more efficient discipline procedures. Did you take that into consideration?

MR. HAMM: We did not take that into account, Mr. Kurlander.

ASSEMBLYMAN McVITTIE: Mr. Hamm, would I be correct in assuming that no state expenditures are incurred in connection with State Bar activities?

MR. BROWN: The public members' per diem is payed out of the budget act. \$25,000 in 1980-81.

ASSEMBLYMAN McVITTIE: So, relative to the total State Bar fund, that would be very insignificant.

MR. BROWN: That is correct.

CHAIRMAN FENTON: There's a maximum that could be paid out for that, if I remember correctly.

ASSEMBLYMAN McVITTIE: So then I'm looking at the State Bar relative to organizations such as the Board of Medical Quality Assurance. Once again, we have sort of a hybrid creature here, where our State Bar has functions comparable to the California Medical Association, an independent non-profit organization, plus the Board of Medical Quality Assurance. That is, the State Bar's functions are all together.

MR. HAMM: You are quite right. There is that distinction between the two organizations.

ASSEMBLYMAN McVITTIE: That's where we have some difficulty in determining whether or not you should have state control over the entire organization. Wouldn't that be correct?

MR. HAMM: Well, that's certainly a consideration, that's right.

ASSEMBLYMAN McVITTIE: There is a policy decision that would have to be made.

MR. HAMM: Oh, absolutely, absolutely.

ASSEMBLYMAN McVITTIE: Then, in terms of fiscal committee review -- having served as Chairman of the Subcommittee on Ways and Means for State Administration, where we have the Supreme Court budget, I'm just wondering whether we would get politics involved in the operation of the State Bar through these fiscal committees. An awful lot of subjective policy decisions are made by the State Bar Board of Governors in terms of legislation support or opposition.

CHAIRMAN FENTON: ~~But don't you think, Bill, we're getting politics involved now when we set our dues?~~

ASSEMBLYMAN McVITTIE: The point is this, in terms of the California Medical Association, they're independent of legislative review, and they determine which bills they support or oppose. The State Bar, being an integrated organization, does make subjective determinations in what they support or oppose. Then having them come in supporting or opposing certain legislation, and having those legislators review those activities, to me, just creates a conflict

there, perhaps a potential conflict of interest between the reviewers in terms of what the State Bar has actually done during the year. I just mention this, not as a question, but as a caveat, a query.

MR. HAMM: I would defer to your judgment on the political considerations here. I can't advise you on that. I would point out that you encountered the same kind of problems throughout the Department of Consumer Affairs, because there you have boards and commissions who take positions on bills quite frequently, and their budgets also come before the fiscal committee for review. The primary distinction that I see between the State Bar and the California Medical Association is that the state does not require practicing physicians to belong to the Medical Association or to support it. You can be a doctor and not belong to the Association. You can't practice law in this state without paying the dues according to the schedule shown in this report. I think that is a distinction, although not the only distinction that needs to be kept in mind.

CHAIRMAN FENTON: Mr. Raven, did you wish to ask a question?

MR. RAVEN: Yes, Mr. Chairman, I had one question. Mr. Hamm, I'm aware that documents, from Pricewater House and other accountants that we've consulted with over the years and who have set up our system, were made available. For example, I noted Mr. Wiesendanger got a copy of the Pricewater House recommendations designed to strengthen internal accounting controls and administration efficiency, dated March 5, 1979. Did you have an opportunity to meet with those people from Pricewater House and other people whom we've consulted with over the years, to determine whether or not, having in mind that we're a little different than most state agencies, that type of accounting procedure that's been set up by those people might do the job, from a cost-effective viewpoint, better than the control or the use of state agencies?

MR. HAMM: Well, I will turn that question over to Mr. Wiesendanger and let him answer it, because I don't know whether or not we talked to Pricewater House. But before I do, let me make an important point. On two or three occasions during the last six years, the Legislature has directed its Auditor General to review the fiscal controls that exist in the State Bar. On both occasions, and reiterated on a third occasion, the Auditor General and the Joint Legislative Audit Committee have recommended that the Bar Association, or the State Bar, adopt better fiscal control and better accounting techniques that will enable the Legislature to know where the money is going when it is asked to increase membership fees or the ceiling on membership fees. Now, as far as consulting with Pricewater House, Tom, can you speak to that?

MR. WIESENDANGER: The answer is "no."

CHAIRMAN FENTON: Wouldn't it have been logical to talk to them, since you were interested in the fiscal management and the control and the accounting procedures set up, or weren't you aware that they were assisting in setting the State Bar's accounting system? Wouldn't it have been logical to talk to them?

MR. HAMM: Mr. Chairman and members, there are a lot more

things we would have liked to have done in this study, but given the resources we had available and the time requirements that you gave us, we did as much as we could in order to at least come within six or seven days of meeting the deadline.

CHAIRMAN FENTON: I agree with you, Mr. Hamm, except it would seem to me, and I'm sure to all the members of the Committee, that one of the most important things here is that budgetary and accounting procedure. Since Mr. Raven says that they utilize Pricewater House, it would seem more logical that you would either talk to them and ask them why the system was set up sloppily.

MR. HAMM: I don't think we characterize it as being sloppy. It's my understanding...

CHAIRMAN FENTON: I'm just referring to Martini's headlines "Poor Fiscal Management". Mr. Martini at times is pretty accurate, at times not. I'm just quoting him today, and this is what he concludes.

MR. HAMM: We did not write that headline, didn't approve of it, of course, and I think we would have characterized the principal findings of our study a little bit differently, although we certainly recognize that others can draw different conclusions. I know that the Bar is making an effort to adopt the new accounting procedures that have been put out by the standard-setting organization -- I can't remember what the name is -- that apply to non-profit corporations of this type. We think that's all to the good. But the important thing, regardless of Pricewater House's conclusion, is that you, the members of the California Legislature, have to have some basis for seeing where funds are being spent on a program basis, and that was a key deficiency, as we see it from your standpoint.

CHAIRMAN FENTON: I'm not criticizing. We appreciate having the Legislative Analyst, the independence of it, and the assistance that you give us. But I'm just curious at this point. I am being constructively critical.

MR. HAMM: Perhaps I'm being too defensive on this. I think you're right.

CHAIRMAN FENTON: I understand the time restraint, and I know that you're involved in 7,000 different things with a limited staff. Mr. Kurlander wants to say something.

MR. KURLANDER: Mr. Hamm, you mentioned the Board of Medical Quality Assurance, and that raised a question that other attorneys have asked me in terms of what it costs doctors to discipline themselves and what it costs attorneys. I think, according to your figures, each member of the Bar pays about \$35 each to be disciplined, for the process. What did doctors pay under their different system?

MR. HAMM: I don't have those statistics here, Mr. Kurlander. I have the membership dues, if you would be interested in that, for both the Board of Medical Quality Assurance and the accountancy renewal.

MR. KURLANDER: What do the doctors pay?

MR. HAMM: The doctors pay \$144.00 every two years. This is a new fee schedule that extends through September, 1980.

MR. KURLANDER: Essentially doctors' fees go to discipline, isn't that correct?

MR. HAMM: It goes to a much more limited set of activities than the State Bar dues, no question about that. To the extent that they support the California Medical Association, they are paying more for the kind of representation that practicing attorneys receive in the State of California.

CHAIRMAN FENTON: Mr. McVittie.

ASSEMBLYMAN McVITTIE: I haven't read the article in the Los Angeles Daily Journal, Mr. Hamm. In terms of the accounting systems, I'm assuming that the State Bar system is that used in a normal operating situation of non-profit corporations. I'm further assuming, based on your testimony today, that what you'd like to have is an accounting system which is of a budgetary nature which is used by government agencies. If that's the case, then we're not really criticizing the State Bar for what they actually have; rather, you're talking about two different systems.

MR. HAMM: I would completely agree with that.

ASSEMBLYMAN McVITTIE: So, what you're suggesting is that the system that most of the state agencies use would provide a different type of information, a more controlled information. But be in terms of the present system with the State Bar people and the State Bar Board of Governors -- in terms of where they are right now, that system has been satisfactory and Pricewater House has reviewed their situation. So we can't criticize them for something they haven't been required to do.

MR. HAMM: We did not intend to criticize them for this.

ASSEMBLYMAN McVITTIE: I want to point this out because we are talking about newspaper headlines and all, and I think that it's important to point out that we have two different types of requirement systems that provide different types of information.

CHAIRMAN FENTON: That's what Mr. Hamm said. He didn't write the headlines. He's just analyzing the Bar's system, not being critical.

Senator Wilson.

SENATOR WILSON: One thing that I'm curious to see, if you could look into it, is having bar membership paid on a two year basis. It seems to me that that would cut down cost. I know that doctors have gone to it. And I think the accountants have gone to it. It seems to me that it would be much more efficient to have members pay two years at a time.

MR. HAMM: Senator Wilson, my colleague Tom Wiesendanger advises me that, although we didn't look at this, the Bar has studied this option and, perhaps, when they take the microphone, they might be able to respond to that.

CHAIRMAN FENTON: Mr. Quevedo.

MR. FRANK QUEVEDO: I had a question in looking at the report. When you talk about the surplus that was a carry-over, there's a statement that there has been no...

CHAIRMAN FENTON: What page are you referring to?

MR. QUEVEDO: I'm looking at page five. When you make reference to the carry-over balance from Legal Specialization, I remember clearly voting on this specific issue in terms of establishing what the carry-over balance was, and I remember voting on it last year, in calendar 1979. The issue of the carry-over balance surplus from Legal Specialization has been decided by the Board. I was curious as to whether we had transmitted that, have given you those documents or that information?

MR. HAMM: I understand that it has been decided by the Board, but to my knowledge the money has not been paid to the Legal Specialization program.

MR. QUEVEDO: Okay, but my understanding is different. I think when Mr. Clifford responds to it, he can address that specifically.

CHAIRMAN FENTON: Mr. Hamm, we would appreciate it if someone from your office would stay around when we bring Mr. Clifford up. Thank you.

Mr. Clifford.

MR. CHARLES H. CLIFFORD: Let me introduce Mr. Ethan Wagner of Winner/Wagner and Associates, our legislative support in Sacramento, and also my left, your right, Mr. Stuart Forsyth, the Assistant Executive Director of the State Bar for Finance and Operations.

I thank you, Mr. Chairman and members of the Committee, for the opportunity to address you on this subject. I would like first to point out that the process of the Legislative Analyst was sought by the State Bar almost two years ago. The questions that we were receiving from the membership and from the members of the Legislature were the same, year after year, and it didn't seem to me and to others that were involved at the time that the responses that were received were definitive and final. It was hoped that through the aid of the Legislative Analyst or some independent review body that we could, once and for all, put to rest the various questions that people had about what the State Bar did and didn't do. The report that you have before you does not make, which I normally would have otherwise hoped it would make, a definitive appraisal of whether we're doing a good, bad or indifferent job in the various functions that we have before us. The Board of Governors, all of them elected, all the lawyer

members elected by their constituents, are elected on issues that have to do with dues and programs and what we are doing and not doing. I feel that we are doing a good job, and that the proof is in the pudding.

Now, we heard this morning that it is difficult to compare the State Bar of California with other bars, and that seems somewhat difficult to swallow, but I think that in their telephone survey the Legislative Analyst found the same thing. You might have an integrated bar meaning everybody has to belong, but that integrated bar might not do discipline or that integrated bar might not do admissions, or might not do this or that. Some integrated bars, California not being one, have a special mandated dues of significant amount, \$35 to \$50 a lawyer, or what's known as institutional advertising, where they put ads on TV. So, comparing what they do and what we do, it is very difficult to do. One thing I feel competent in saying is that the State Bar of California has been the leader in integrated bars throughout the country. Going back to its formation in 1927, when we became such. We went on to the constitution in 1966. In 1973 you heard about the Clark Committee report, where former Justice Tom Clark of the U. S. Supreme Court and his committee found that lawyer discipline in the United States was a scandal. That was the conclusion of their report, with one exception, the State of California. Since then our disciplinary process, I think, has kept pace. That's just one example.

We talk about the great expenditures. One thing we ought to get perfectly clear. We talk now of a budget of thirteen million dollars. That is our expenditures, to be sure, but I think for purposes of this Committee we can talk in terms of expenditures of a little over eight million dollars, because that's what the lawyer, the practicing lawyers, pay for. When they say our expenditures have increased nineteen fold since 1960... in 1960 we're only talking about lawyers' dues at a very modest amount that we received in admissions and discipline. Since then, we have grants of close to a million dollars that we receive and pass on for things like the Law in a Free Society Program, which is the nation's leader in educational tools for grade schools and secondary schools, for volunteers and parole programs, for prison inmate programs. That thirteen million contains about five million dollars of additional income, which we didn't even consider in 1960. So it's not a fair comparison to use that thirteen million dollar figure today and whatever it was in 1960. There are five million dollars in there for admissions and discipline and all this other grant money.

Now, earlier I said it is difficult to compare the State of California with others, but if we did, you would have to go first to the integrated bars and then to those that do the things closest to us. Then you could compare. Now, another thing we heard which I think we ought to set straight is that California charges the highest dues. I deny that categorically. Well, remember, we had a four-tier dues structure, others have two, and so forth.

CHAIRMAN FENTON: Which states pay more than we do?

MR. CLIFFORD: Which state pays more than we do? Florida, Michigan, Oregon, Arizona and Washington.

CHAIRMAN FENTON: How much do they charge at the top tier?

MR. CLIFFORD: I don't know. The only fair way, Mr. Chairman, is to take their dues structure and to apply it to California lawyers. If you do that in each one of those states which would be the comparable states, comparable states to California -- not New York, which is not an integrated bar, not Illinois, which is not an integrated bar, but, rather, those states of Oregon, Michigan, Arizona, Florida and Washington -- now, the one that we did leave out, which is an integrated bar closest to us, is the Washington, D. C., bar, which was integrated two years ago...

CHAIRMAN FENTON: Let me ask a question. We have the largest bar in the country with 64,000. New York is next with 30,000...

MR. CLIFFORD: But that's not an integrated bar, Mr. Chairman.

CHAIRMAN FENTON: Okay. Let's go to Oregon, which is an integrated bar. You're telling me that Oregon from their membership revenue receives more money than we do. Right? I'm just trying to get figures straight. You're saying they get more from their members than we do. I bet you they don't.

MR. CLIFFORD: If you took Oregon's dues and applied it to California lawyers. So when you say which has higher, I think that is the only way you can compare who has higher dues.

CHAIRMAN FENTON: You mean if we charge what Oregon charged, then we would get nine million, five hundred and something. Is that what you're saying?

MR. CLIFFORD: Right. Or they are about ten percent higher than we are. That's the only way you can compare it.

CHAIRMAN FENTON: But don't we do the same thing? Theoretically, the more members you have, the more dues you get. If you had 100 people paying a certain amount, you had to have so much servicing for those 100 members. When you get to a larger number, the amount it cost to service each member, comparatively speaking, is less. So in California, which is much larger than Oregon, it should be cheaper to service us. Much cheaper than Oregon.

MR. CLIFFORD: I think we show that with the schedule before you. If you took Oregon's dues and applied it to California, there's an economy of scale there that I think we're realizing, and if you apply it to the rest of them...

CHAIRMAN FENTON: I think the important thing, Mr. Clifford, that Mr. Hamm brought out was that he couldn't compare our bar with other bars because, even though they had the title of what services they perform, he couldn't say whether they were providing more or less service in the field. So, really, you couldn't compare us with any others.

MR. CLIFFORD: I think that's correct.

CHAIRMAN FENTON: Right. I wish in your observations you'd direct yourself towards the basic criticism found in the report regarding the lack of fiscal control. I think that's where they got critical in the constructive sense.

MR. CLIFFORD: All right. I took their specific recommendations that are set forth throughout the report and put those down on a separate paper. There aren't that many, and I'd like to respond very shortly to each of them.

The first one is that the State Bar be required to follow state administrative guidelines in purchasing data processing equipment in order to maximize the benefits resulting from these expenditures. I don't know what the state administrative guidelines were. I do know the process that we followed in buying our computer, and that was first to hire, I believe it was, Arthur Anderson to make a study and report. Why did we even think of it? Because we were using an outside service, the service was getting more and more expensive, the service was getting slower and slower, the membership was getting madder and madder. We weren't getting our dues bills out. We weren't getting all the materials out...

CHAIRMAN FENTON: When did you hire him?

MR. CLIFFORD: We did hire Arthur Anderson.

CHAIRMAN FENTON: When?

MR. CLIFFORD: Oh, about three or four years ago, Mr. Chairman.

CHAIRMAN FENTON: In the report there was a recommendation that the Bar follow state administrative guidelines. The report indicates the Bar failed to analyze the cost effectiveness and possible applications of an in-house computer prior to acquiring one. According to the Analyst, this failure resulted in the Bar spending \$60,000 more in '79 than it did in '78 to process billing and financial data.

MR. CLIFFORD: Well, I know that I analyzed it. I am not very swift on things like computers or whether there is going to be savings or not. I went kicking and screaming, and I don't think I was alone in that when we did buy the computer. But I was convinced, as were others who voted in favor of it, and I think it was unanimous, after a long study -- I'm talking about four or five discussions at full board meetings as well as probably two years of committee meetings on what to do about this computer -- that both the service to the membership and the savings that we would realize in putting it into effect were worth it. We were then about 55,000 lawyers looking at 100,000, with service to those lawyers getting worse and worse with the outside service bureau, and we had to do something. I felt justified and I still feel justified about that.

CHAIRMAN FENTON: They're not talking about being justified. They just said that if you were required to follow state administrative guidelines, you would have done it differently. That's all they're saying.

MR. CLIFFORD: We would have done it.

CHAIRMAN FENTON: Pardon.

MR. CLIFFORD: We would have done it.

CHAIRMAN FENTON: Would have done what?

MR. CLIFFORD: We would have bought the computer.

CHAIRMAN FENTON: You may very well have. The Analyst seems to indicate that, if you had followed the guidelines, you wouldn't have had to spend \$60,000 more in '79. That's what I get from their report.

MR. CLIFFORD: Maybe Stuart can answer that.

MR. STUART FORSYTH: Yes, if I may, Mr. Chairman. Perhaps I can add a little bit in this particular area. I think it's important to note the phraseology and language that has been used by the Legislative Analyst in the report. They say in that acquiring the computer, the Bar did not follow the kind of systematic process that state agencies generally follow. They in essence are recommending that the State Bar of California follow the state administrative procedure and guidelines in data processing equipment purchasing. I personally don't know what those guidelines are. We did not have the time since receiving the report to look at them, but in essence what they're saying is that the Bar did not proceed in a proper manner or did not study the implementation of the computer. Also, I think you need to look at why does the state have these guidelines. The report itself says to avoid cost overruns and the purchase of ineffective or unusable systems. There's no cost overrun in the State Bar computer. The \$60,000 increase in expenditure that you're talking about is a capitalization expense of starting up with the equipment.

But let's look at the results. Do we have a cost overrun? Do we have an ineffective or unusable system in the State Bar of California. We have, according to the Leg. Analyst's own figures in the very back of the report, since introduction of the computer system, a year by year drop in the per capita cost of maintaining membership records alone. We've reduced the personnel in the membership records department from 12 persons to 10 persons. We've increased the speed and accuracy with which membership information is provided. We've utilized the computer for financial information. We've recently brought on the Legal Specialization Membership Program, which has again resulted in prompter billings, the collection of some old debts that were not collected earlier, and the additional interest income which has resulted from it. We also have a tool, in-house now, which we can use to expand into other areas within the organization. And the report itself recognizes that the State Bar is now engaged in a study of utilization of this equipment, which has already proven to be cost-effective, in even more areas throughout the organization.

MR. CLIFFORD: The second item is the recommendation that would determine what general fund balances are properly attributable, first to Admissions, and then to Specialization. We voted last year, I know I did, a definite sum that belongs to Specialization and is part of Specialization's budget and for them to use. Now, I can't tell you whether that shows up on an accounting function as a separate item, but it sure should. Because in everybody's mind, mine and

everybody else's, that separation and acknowledgement of credit and debit has been done. I would hope that the records so indicate. I'll look at the treasurer of the State Bar and ask him whether it does or not.

MR. QUEVEDO: It does.

CHAIRMAN FENTON: Frank is your treasurer?

MR. CLIFFORD: Frank is our treasurer. Very good with the sums.

CHAIRMAN FENTON: Mr. Hamm, if Mr. Clifford or any of his people makes any statement that you people want to refute, you can bring somebody up here. You people know much more about it than we do. Mr. Clifford, let us give them an opportunity to get in a dialogue with you people on these points we want to learn about. Go ahead.

Do you want to answer his first point relative to the computer?

MR. BROWN: I think our response to that is that they are still doing analysis of how they are going to use it. That seemed to indicate to us that they hadn't looked at all the possible applications about a machine that fits whatever they are going to use it for. I agree in many cases to what they said, that it has speeded up some of their processes and stuff. Our point is that, by taking a systematic look in the way state agencies do, you may buy a machine that fits exactly your needs, so that you do not spend \$60,000 more after you buy than before.

CHAIRMAN FENTON: Senator Wilson.

SENATOR WILSON: That seems a little bit unfair to me in some respects. My office has an automatic typewriter. We got it for a specific purpose. There are other purposes that we may use it for, which we didn't contemplate when we got the machine. That's not to say that it was a poor expenditure to buy the machine, because it suits our original purpose.

MR. BROWN: I think our point is -- that's true, we agree. Our point is that if we were to go ahead and let the Legislature get into this process, this is the kind of information we would need to do an evaluation of it. It's similar to that in other state agencies. When we set up the study we agreed that we would use state agency guidelines as the basis of comparison, and that's essentially what we used here. We point out that some of the conclusions of the Arthur Anderson study, which they referred to, they categorically rejected. For instance, certain things that Arthur Anderson said should be done manually, because it couldn't be done cheaper manually, the Bar went ahead and automated some of those functions.

CHAIRMAN FENTON: Mr. McVittie.

ASSEMBLYMAN McVITTIE: I just wonder if we are being unfair in criticizing the State Bar here. If they had a national consulting firm to review their data processing program and make recommendations and they apparently followed it, then...

CHAIRMAN FENTON: Excuse me. He just said in some instances they didn't.

ASSEMBLYMAN McVITTIE: Well, in most instances. How can we say that they should have followed straight guidelines and they haven't been operating as a state agency? In fact, many state agencies have their own problems, such as the Department of Health with Medi-Cal, and the Attorney General's office with their computers. So, it seems to me that we have to keep everything in perspective here. We are talking about maybe, if they have a system, we'd like this. But let's be careful not to criticize them when they haven't had these guidelines and they haven't been subject to them.

MR. FORSYTH: That's true, I agree.

CHAIRMAN FENTON: Mr. Raven.

MR. RAVEN: And isn't it also true that the innovation has been so rapid in this high technology that it is imperative that you constantly study it. For example, two years ago, we sent two partners all over the United States and Canada, looked at every firm on word processing on a computer for financing. We came back and thought we had the best system going and it would last for five years. It lasted two years. It's been very good. We saved a lot of money on it, and now there's something much better. Isn't that the history of data processing?

MR. BROWN: That's true. That is why we are suggesting a systematic look at how you get it before you get in.

MR. RAVEN: The study must be on an on-going basis. In other words, the fact that we are studying now is to our credit, not something against us.

MR. BROWN: My point was that it indicates that you bought maybe more machine than you identified the needs for at the time.

CHAIRMAN FENTON: Well, do the state agencies always have to follow your guidelines? Are they bound by them?

MR. BROWN: Section 4 of the Budget Act.

CHAIRMAN FENTON: That binds them? Mr. McVittie just indicated that they had their own independent consultant giving them advice. I presume the consultant was an expert in the field. Wouldn't his advice be just as good as administrative guidelines?

MR. BROWN: That's probably true. I guess our other point was there was not a competitive bid. They went out to competitive bid but they rejected all those bids. The second time they went out there was not a request for proposal. At least to our knowledge. It was not supplied to us. There were two bids put in, one by Arthur Anderson, who did the study, one by the firm that eventually got it. Had they gone out for a widely divergent request for a proposal, they might have gotten other options. We are not going to be overly critical about this. We are suggesting that if future applications are made, the state administrative guidelines are a good place to start in seeing what steps

should be taken. I think that's the extent of our recommendation.

CHAIRMAN FENTON: Well, there's no compulsion for the state that you take the lowest bid in anything.

MR. BROWN: There is not.

CHAIRMAN FENTON: You evaluate the proposals and you take the best bid. One of the considerations might be the overall cost. Okay, Charlie, go ahead, please.

MR. CLIFFORD: In the area of special funds, we are getting a legal opinion on the special fund for admissions. Whether it says we do or we are mandated to maintain admission money in this special fund or not really is probably immaterial. The majority of the Board is saying admissions pay for themselves. I think all of the Board says admissions pays for themselves. If they have a surplus, they use it the next year and adjust accordingly. But what the amount of that surplus is, nobody really knows. They have put it all in one basket since 1927, and now they want to separate it and go back and give them a credit, I guess. We went back last year to 1968, but then there's some quarrels over whether there has been proper allocation of all overhead to admissions and so forth. It is some figure, Mr. Chairman, members of the Committee.

CHAIRMAN FENTON: What's the difference if you have a carry-over? If you have enough money to take care of admissions, for instance, what's the difference in looking for carry-over of the surplus?

MR. BROWN: The point is the fees that are set are used to defray the cost of the Admissions Program. So, if you take fees that you generate out of the Admissions Program and use them for general fund programs, when you go back in next year, you don't have a surplus, if you had one, or a deficit...

CHAIRMAN FENTON: I'm lost. The fees that I pay to the State Bar are just for admission?

MR. BROWN: No, no. An applicant.

CHAIRMAN FENTON: The applicant's admission. Fine. Now we take those fees, and we have sufficient funds to take care of all of our admission costs. What's the difference if we have a carry-over for that program as long as there are sufficient funds to carry out a program? What's the difference which program they carry the funds over from?

MR. BROWN: I guess our basis was that the legislation which allows them to establish a fee said they should be used to defray the expenses of the program. I think that's consistent with what Mr. Clifford just said, that the fees charged the applicant should cover the cost of the testing process and not used somewhere else.

CHAIRMAN FENTON: I see.

MR. CLIFFORD: We agree with all of this, Mr. Chairman. It is just finding out what the amount is. What is the proper amount, and we'll get it in. We've been working on this for two years.

CHAIRMAN FENTON: I see. Senator Wilson.

SENATOR WILSON: What you're saying then is, the way your accounting is set up, you really can't separate out the costs for admission from the cost of the rest of the program. Therefore, when people pay their fee to take the bar exam, you can't really separate that out, and, therefore, you don't know whether they are paying total costs or not paying the total cost.

MR. CLIFFORD: We can today, and we are doing it right now on a current basis. The question is, how much has admissions accumulated in a...

SENATOR WILSON: In a period of time when you could not make that determination.

MR. CLIFFORD: When we did not make that determination.

MR. BROWN: They just threw everything into the basket.

MR. CLIFFORD: We're doing it now.

SENATOR WILSON: Okay, so that money then is going to be earmarked and will not be put into the general fund.

CHAIRMAN FENTON: So, if you find that the fee for applicants is more than needed for admission, then, presumably, you would cut that fee.

MR. CLIFFORD: Cut it next year.

SENATOR WILSON: So what years are you talking about?

MR. BROWN: The point is the 1978 carry-over surplus which is being used for the general fund. It is not known where the surplus came from. And I think our point is you ought to put that issue to bed, even if you have to bury it and forget it. If we can't tell right away, you ought to put it to bed before you spend that money on general fund programs, which is what the budget is doing.

CHAIRMAN FENTON: Excuse me, one minute. "Put it to bed before you spend it." Tell me what you are saying now?

MR. BROWN: Make a decision. There is \$564,000 in the surplus pot, and everybody, I think, agrees, we don't know where that came from.

CHAIRMAN FENTON: All right then, why don't we just conclude we don't know where it came from, and we'll just call it a surplus? Then from this point on the Bar will have the accounting procedures where they are able to tell how much it costs for admission, so that they can then allocate whatever it is to support the program, and, if necessary, raise or lower particular fees? That's not a problem for you, is it?

MR. FORSYTH: That's correct.

MR. CLIFFORD: My only point was that we have addressed this

over the last several years... not successfully, but we have been working and we are conscious of it.

MR. QUEVEDO: I'm just going to add that back in 1977-78 this issue was raised by the staff. The staff flagged it as an issue that they wanted to examine. It is not easy at all to go back ten years when dealing with the admissions program for whatever reason and try to determine what money we used for what. It just is that the accounting system -- and I think that would be a criticism that we would make of it ourselves -- was not set up to really separate these things out.

CHAIRMAN FENTON: But we can at least conclude, Frank, that from now on you've got a system that can tell us from here on out where we are going. That's our concern, and that's the Legislative Analyst's concern. That's why I said, let's put to bed the past years and just go from where we are.

[UNIDENTIFIED VOICE]: We'd love to forget it, but if the people in Admissions don't want us to...

CHAIRMAN FENTON: We understand that. Senator Wilson.

SENATOR WILSON: We had the Smith bill. It went to the Governor's desk, and that bill was vetoed. It came back with another bill which eventually became a bill that I authored, which made a reduction from that in the first Smith bill. Now I had contemplated at that time that the Bar then would adjust its budget to be in keeping with the revenues that would come pursuant to that bill. But what appears happened is that you were taking the surplus that you had and using that to offset the reduction between the first Smith bill and the bill that subsequently passed. I don't think that was the intent of the Legislature, that the spending level not decrease. It was my thought that it would decrease to meet the decrease in funding that you received from the new bar schedule that was in that bill.

MR. CLIFFORD: The process, as I recall, Senator Wilson, was that on the 14th of September, we had an additional \$350,000 reduction in the budget. Up to that time, we had the first \$350,000 reduction in budget, and we were working on the 1981 reduction in income. We were working on the 1980 budget and concluded we could do it. I don't recall that we had a large surplus, but I think we did a little bit. When the second one came along, we had two months to find out where we were going to get that money. We immediately started reductions at that time. The cuts approximated the \$350,000 that we lost on the 14th of September, not expecting to have lost it. So, I think we did make the reductions at that time as the result of your bill. I think we made ~~additional reductions on top of the ones we have made from January to September 1979, for 1980.~~ We then made an additional \$350,000.

SENATOR WILSON: Where did this other money come in?

MR. CLIFFORD: Pardon.

SENATOR WILSON: You're talking about the money that the Analyst believes is an overage from admission charges, I thought, to make up the loss that has occasioned the Bar because the Bar dues were not that which you contemplated originally.

MR. CLIFFORD: No, we didn't spend admissions money. It was some sort of a surplus, I don't know where it was, but I didn't think it was admissions money.

SENATOR WILSON: Well, isn't that part of the pie? In other words, your budget would be, I think, six percent lower if it were not for these funds. In other words, we reduced the size of your budget, but you didn't reduce it, because what you took is the money that you had available in the surplus to make up the difference.

CHAIRMAN FENTON: I think that they already had the budget to use the surplus. What he is saying, Bob, is that when your bill passed, whatever you reduced the dues by, they reduced the budget by the same amount.

SENATOR WILSON: If they had it reduced, though, by the amount of the decrease in revenues, then you wouldn't have to use all the \$586,000, whatever the figure was.

CHAIRMAN FENTON: Well, except that when they originally set up the budget, evidently they were using the surplus. So when your bill passed and had a reduction in income, whatever reduction they had, they never reduced the budget. This is what I understand he is saying.

SENATOR WILSON: That doesn't make sense to me.

MR. KURLANDER: I think I can answer that.

CHAIRMAN FENTON: All right, go ahead, Bill.

MR. KURLANDER: I think the surplus is something that was accumulated over the last ten or twenty-year period, and it is sort of a hidden surplus, and it is something that Admissions claims it is entitled to. But it isn't a surplus that was accumulated in any one year.

SENATOR WILSON: I understand that. That's not the issue. What I am saying is that we reduced the size of the budget, and, it was thought, I think, by the Legislature, that when we reduced the Bar membership fee, that that in turn would trigger a reduction in the budget of the Bar. But the Bar took that money that was a surplus to offset the reduction...

CHAIRMAN FENTON: No, what I understand, Bob, is that they had set a budget before your bill in which they already were utilizing the surplus. Am I right?

MR. CLIFFORD: Most of it, as I remember.

SENATOR WILSON: No, but let me ask this. How much of a reduction was there as the result between the Smith bill and the Wilson bill?

CHAIRMAN FENTON: You reduced the budget \$350,000. How much loss of revenue was there?

MR. HAMM: \$350,000.

CHAIRMAN FENTON: So, there was a \$350,000 loss. As a result of that, you reduced the budget \$350,000.

MR. CLIFFORD: Right. That's my recollection of it, and I'm not very good at this.

CHAIRMAN FENTON: Is there anybody here that knows for sure?

MR. QUEVEDO: I was just going to add that when the budget was put together, there was a carry-over that was accumulated prior to calendar fiscal 1979.

CHAIRMAN FENTON: No. His question, Frank, is that when his bill passed, he made a reduction of \$350,000 in income. Did you then reduce the budget \$350,000 after the passage of his bill?

MR. QUEVEDO: Yes, sir, we did.

SENATOR WILSON: Okay. So, in other words, then had you not done that, you would not have been able to operate because of the fact you took the \$560,000, wherever that figure was, and had you not made the reduction, you would have needed approximately \$900,000.

MR. QUEVEDO: If we had not included the carry-over in the fiscal 1980 budget and added the reduction that was mandated by your bill, it is conceivable that we would be operating in 1980 in a reduced fashion, yes, sir.

SENATOR WILSON: No, you would have a deficit then of \$350,000.

MR. QUEVEDO: We voted not to engage in a deficit budget.

CHAIRMAN FENTON: No, he said that if you had not reduced the budget \$350,000 -- I presume you were using all the surplus -- you would have been \$350,000 in the hole.

SENATOR WILSON: That's one of the controversies of lawyers, and I think maybe the Bar is treated unfairly in that, because the position has been taken by many attorneys whom I know that what the Bar did is simply use that surplus to offset the reduction that came about from the Governor's Office.

CHAIRMAN FENTON: Okay. Is there anyone here who definitively can answer his question? If not, we are going to have to do it another time. Do you understand what his question is? Were you committing the surplus before his bill, so that after his bill passed, you had to cut \$350,000? Or did you use the surplus afterwards to help compensate for this \$350,000?

MR. CLIFFORD: No, that was already gone, Mr. Chairman.

CHAIRMAN FENTON: There was no more surplus.

MR. BROWN: Our understanding was that they already had planned to use the surplus.

CHAIRMAN FENTON: Before his bill?

MR. BROWN: Before your bill. When your bill came out, they consumed the surplus. So they had to reduce the budget.

CHAIRMAN FENTON: So they had to have \$350,000 or go into a deficit. That's what he said. So they did reduce it as a result of your bill.

MR. BROWN: Our point was that they were planning, forget which bill -- they were still planning to spend 6 percent more than they were taking in on a one-year basis. When they face next year's budget, they don't have a 6 percent cushion. So they either cut a further 6 percent or get higher dues.

CHAIRMAN FENTON: Do you have your answer now? Okay, Charlie.

MR. CLIFFORD: The next item is that they recommend that the 1981 budget include schedules and budget request justification. We further recommend that the Bar develop budget justifications which would include workload projections. Let me tell you, from my experience, how the budgetary process works. I have not served my three years... I have not served on the Finance Operations Committee, so my experience comes as a Board member when these things are brought before the Board. I am aware that Finance and Operation, like this body, as a separate committee, works much longer and in much closer control and touch with budgetary matters than the Board does as a whole. We review every committee annually. Of the 23 standing committees, we review them. We set a sunset provision, three years, and they are finished on every committee, standing committees, of the State Bar and converted one committee to a section. Every committee, when reviewed, is asked, "Are you able, do you think to stand on your own, or at least stand somewhat on your own and work as a section?" Sections, remember, have the ability to charge dues. We have five or six of them now, and from their dues they are able to support...

CHAIRMAN FENTON: Wait a minute, Charlie. Let's take number three. You disagree that your budget should include control statements? Let's take item three.

MR. CLIFFORD: Where are you?

CHAIRMAN FENTON: Page 80. The Bar's 1981 budget should include control statements. Do you have a problem with that?

MR. CLIFFORD: We do have it. That's what I am saying.

CHAIRMAN FENTON: Why?

MR. CLIFFORD: We do have the procedures that they are otherwise calling for.

CHAIRMAN FENTON: Well, then you don't have any problem with that.

MR. CLIFFORD: I don't have any problem.

CHAIRMAN FENTON: Do you have any problem with equipment

purchase schedules that the budget should carry and cover?

MR. CLIFFORD: No.

CHAIRMAN FENTON: Do you have any problem with adequate justification for budget requests? Then let's go on with something that you have a problem with.

MR. QUEVEDO: I think the point is, Mr. Chairman, that we do in fact -- the process for approving any budgetary item that the State Bar goes through is -- I chaired the Finance and Operations Committee this year and have sat on the Finance and Operations Committee for the last three years. Every committee is asked to go over the budget, in detail, of the various divisions that would fall under the jurisdiction of the various policy committees. Those budgets are then submitted to Finance and Operations for another review. Next, those budgets went back to the policy committees with whatever recommendations were being made by Finance and Operations. Then they come back one more time, and finally went to the Board as a total budget package. But in every instance, the policy committee, I assume it is that way in the Legislature, which works with the details, had all of the detailed information they would want and need in determining what the level of budget should be.

CHAIRMAN FENTON: Well, Frank, then why wasn't it made available to the Analyst? Evidently, they said it wasn't available.

MR. BROWN: In our review, again, we use state standards when we're reviewing the budgets for state agencies for the fiscal committee. For example, if, from all the documentation made available for us, if you as a member of one of these review committees wanted to know how the, say, request for travel allocation for a certain department varied from what their plans have been in the current year, and what they actually spent in the previous year, there was no indication of documentation. We're not saying that that wasn't available and the staff couldn't answer that kind of question. But in the documentation there was not information available, in any documentation that we got that would track from "actual" to "projected" to "requested" by line items.

MR. QUEVEDO: It's been my experience in the past three and a half years, having been part of the CoBen-Quevedo crew that cut dues back in 1978, based on some information that wasn't all together very accurate, that many of us on the Finance and Operations Committee, and that includes Mel, are very picky about every single item that comes before us. Including why we are getting so many copies of the Daily Journal? Why are we going to spend money for professional fees? Why outside printing? Why this kind of travel? I can't speak for the other policy committees, I can speak for one of the policy committees which I have sat on this year. I think we went into incredible detail in making certain that everything that we could possibly think of was justified. I'm very familiar, for example, with the admission thing. I know, for example, that we knew how many postage stamps the Admissions Program was going to project using in fiscal 1980. So, from my experience, and having sat with the process for three and a half years, I find that there's incredible detail provided.

CHAIRMAN FENTON: Then there wouldn't be any problem in your

complying with the recommendation that you develop a budget justification system that somebody can see. Is there?

MR. FORSYTH: No, Mr. Chairman, I think the Board doesn't have any problems with the thrust of the recommendation. I think what we have here, again, is a concern where the Legislative Analyst is working from a presumption, in essence, that all the details, all of the schedules, all of the information did not flow to the full Board of Governors in exactly the way it flows in the state process. But the process that Mr. Quevedo has described indicates that the Board policy committees as committees got into even more detailed financial information than that system would have resulted in for the Board as a whole, because they got down to the budget worksheet.

CHAIRMAN FENTON: What's wrong in their recommendation, making a statement showing the justification for the budget process? That isn't that difficult, is it? What you do, and I am not an accountant, is that you take a past year, you take a projection, and then you make a recommendation, don't you? Isn't that the way you said it works? That's what he's talking about, a justification system. I guess you say, in 1979-80, we had this amount; we're projecting in 1979-80-81 that we're going to need this amount. Therefore, we're recommending that we have to have this.

MR. CLIFFORD: That's exactly what we do.

CHAIRMAN FENTON: They couldn't find it, evidently.

MR. FORSYTH: They couldn't find it in documentation at the Board of Governors' level.

CHAIRMAN FENTON: What would have been wrong with the Board having it when it adopts a budget? It should be available for us to see why the Board makes its recommendation. That's all he's saying. You have no problem with that, do you? Okay, then let's move on.

MR. CLIFFORD: The next one is really two. One, that we be able to reserve a hundred seventy thousand dollars and, two, that we make our allowance at 4.2 percent for salary savings. Both good recommendations. I think a hundred seventy is a little low. I think it should be more than that. And I think 4.2 is a little high, because the average looks to be about 2 percent of our salary. So something in the neighborhood of more than a hundred seventy thousand dollars is a surplus and a little bit...

CHAIRMAN FENTON: 4.3, it says, Charlie.

MR. CLIFFORD: Somewhere around 2 percent is more like it. Other than that we have no problem with that. We'd like to do it. The next one is that the Bar conform to state budgeting practicing and not budget cash revenues to fund non-cash depreciation expenses. I'll buy that. I don't know what it is.

MR. QUEVEDO: I think I'll yield to Mr. Forsyth for questions on that.

CHAIRMAN FENTON: You have no problem with that. Okay. Go on.

MR. CLIFFORD: Next, "We recommend that the Bar institute effective budget control procedures along the lines adopted by the Legislature."

CHAIRMAN FENTON: First, let me ask the Legislative Analyst, and then you can answer. What makes the process we use so good? I've seen things around here for sixteen years that leads me to say that would not be the logical conclusion.

MR. BROWN: I think you're absolutely correct, that that isn't the only way to go. However, that was the comparison base we agreed to use in the beginning. That's the base we're used to working with.

MR. CLIFFORD: Our budgetary review process is done monthly. The whole Board gets a statement monthly. F and O Committee goes over the line by line budget monthly. Staff calls to their attention any variances from budget whether there be a shortfall or an overspending on either side of the ledger, and they've analyzed that. There are no additions to staff without the approval of the F and O Committee.

CHAIRMAN FENTON: Well, it says here that when one division spends more funds than they're authorized, no reports need to be made. You mean, you allow them to spend more than you authorize?

MR. FORSYTH: No, sir.

CHAIRMAN FENTON: Well, that's what it says here under seven. I assumed that they couldn't spend more than authorized without prior approval from the Board. It would seem to me, as a paying member of the Bar, that you would set up that procedure. But that isn't what the Analyst indicates in his report.

MR. FORSYTH: In terms of fiscal control information, we have no problems with recommendations for tightening fiscal controls. We're trying to move in that direction. Whether it's the state system or another system is not important.

CHAIRMAN FENTON: Okay. Under your present system, can a division spend more than they have in their budget?

MR. FORSYTH: Not in terms of the total budget, and certainly not in any item without it being fully reported to the Board of Governors.

CHAIRMAN FENTON: You're not answering my question. I didn't ask you whether they had to report after they had spent it. I asked you whether they could spend it without prior approval of the Board.

MR. FORSYTH: There have been instances in the past where there have been some cost overruns in some programs. That's correct.

CHAIRMAN FENTON: Okay, Charlie. You can answer that.

MR. FORSYTH: I didn't want to characterize them as cost overruns.

CHAIRMAN FENTON: I assume you agree that you should have a system in which a department will have to come in and justify an over-

run. Otherwise, as the Senator says, there's no sense in our cutting the budget, cutting your fees, and then allowing you to overrun it. That doesn't make much sense. Okay. Now you go to a systematic committee work evaluation.

MR. CLIFFORD: Systematic committee work evaluation procedure should be instituted in the Board...

CHAIRMAN FENTON: I'm sorry, Mr. McVittie.

ASSEMBLYMAN McVITTIE: I have a question of the Analyst. If the State Board of Governors adopt the so-called budget control procedures, will they have to change their method of accounting?

MR. BROWN: I do not believe they will; however, it's possible.

ASSEMBLYMAN McVITTIE: How do you use the same data then, with two separate sets of statements, unless they go ahead and adopt the state system accounting through state agencies. Then they have a problem in terms of their Board of Governors, because the Board of Governors use certain information in the form they currently have. Also, they have a problem with their accountants, because the CPA is used to dealing with private, non-profit organizations, and not with state agencies. What are we going to do about that?

MR. BROWN: I believe those things need to be looked into. I think our underlying concern, though, is that the Board approve budget augmentation.

ASSEMBLYMAN McVITTIE: You have to be careful that we don't mandate something on the State Bar when we don't know what the consequences are.

CHAIRMAN FENTON: Well, by the same token, if you are going to allow any division head to exceed his budget without prior approval of the Board, that causes problems. We understand that sometimes you may have an emergency.

ASSEMBLYMAN McVITTIE: We're talking about two different sets of...

CHAIRMAN FENTON: No, no, I already made the observation that the State Bar isn't necessarily going to be able to run the same way the state operates. We understand that. But we're only talking now about the division head being able to overspend and then reporting to the Board.

ASSEMBLYMAN McVITTIE: Just so we don't tie the State Bar down to so-called budget control procedures, which are predicated on the accounting system that state agencies use when they're not a state agency.

CHAIRMAN FENTON: No, we understand that, that's no problem. Bob, do you have something?

MR. RAVEN: I'll pass at this point.

MR. FORSYTH: Mr. Chairman, if I may. I'd like to put this

discussion in a little bit of perspective. Because of Frank's excellent comment about cost overrun issues here, let's take a very close look at what the three controls are that are being recommended for an imposition here, and what in essence happens. Mr. Chairman, you used a good example, a department head cannot choose to incur tremendous obligations without in essence getting authorization from the Board of Governors. But that can happen under the state procedures. In essence, now, a state department can have a cost overrun without getting approval from this legislative body, which adopts the budget. The control mechanism in the state is Section 28 of the 1979 Budget Act. It permits the Department of Finance to authorize increases in expenditures above those reflected in the approved budget and requires it to notify the Legislature of such actions.

MR. McVITTIE: However, if we disagree, we have a hearing on it, and they won't spend that money.

MR. FORSYTH: That's correct, and that's exactly what happens with the Board of Governors, because the Board Committee on Finance and Operations is receiving monthly fiscal reporting on all the activities within the Bar. What I'm saying is that the same principal, as is applicable in the state, is exactly the principle that the State Bar of California is using although not exactly in the same framework.

The second control mechanism recommended requires the Department of Finance to notify the Legislature when it approves agency expenditures at a rate which will create the need for a deficiency appropriation. The same mechanism was used in the State Bar of California. Third control, Section 27...

CHAIRMAN FENTON: What is the same mechanism? Whom does the division head go to in that situation? Who in the State Bar hierarchy is comparable to the Director of Finance?

MR. FORSYTH: The executive director of the State Bar.

CHAIRMAN FENTON: I don't buy that. I, as a member of the State Bar, would rather that the division head had to go to the state, or to your board to justify it, rather than going to the executive director. I've dealt with plenty of executive directors throughout all the state and I don't approve of any executive director having that authority. That's my personal opinion.

MR. QUEVEDO: If I could clarify that, Mr. Chairman. It has been my experience again over the three and a half years that any time there's an augmentation to the budget, for example, if there is a request for additional staffing, all of those requests come through the policy committee and Finance and Operations before going to the Board. Every month we request from staff an explanation on any negative or positive variances that may exist in the budget. As part of the budget resolution that was adopted this past December, part of that resolution mandated, even though I think it was given, that there be a monthly review by Finance and Operations of the entire operating statement of the State Bar. So that we do not get into problems. So that we do not at the end of the year have cost overruns. And if there are positive variances occurring in certain areas, that we can shift things around. It has happened over the past couple of years, for example, in the area

of sections that are, in quote, "somewhat self supporting". Many times we would look there and they would calendarize an item, for example. They would say, "We're going to spend \$12,000." They're going to spend a thousand a year, and in reality they probably should have looked a little bit more deeply and determined they were going to spend three thousand in December and three thousand in some other month. So every month we ask the Finance Department to pull those items, and I would submit that the Finance and Operations Committee is a pretty tough committee and asks a lot of questions, and not all the time do we feel that we get the answers on first pass. And we forced staff to go back and come back to us. Secondly, there's a regular quarterly review that I think every entity, I assume in the public sector, certainly in the private sector, undergoes regular quarterly reviews of where the budget sits. So all of these things come to Finance and Operations. I don't know how much mail and phone calls, I must talk with Stuart almost daily, so the control mechanism is the Finance and Operations Committee.

CHAIRMAN FENTON: Who approves the budget for the State Bar, the Board?

MR. QUEVEDO: The Board.

CHAIRMAN FENTON: Then it would seem to me that even if what you say is true the recommendation should be made to the Board. The Board in the final analysis should make the decision. That's why I'm saying. You're allowing that committee to make the decisions, to say "Go ahead. You can spend more."

MR. QUEVEDO: The next step is that all of those decisions of Finance and Operations come to the Board of Governors.

CHAIRMAN FENTON: I have no quarrel with you people making a recommendation, but I am saying, let the Board be the responsible one to make the final decision. That's their recommendation.

MR. QUEVEDO: Every operating statement, Mr. Chairman, comes to the Board and is reviewed by the Board. As a regular thing, it's on the consent agenda, but I can assure you that there are very few operating statements that go unchallenged by people on the Board of Governors.

CHAIRMAN FENTON: What I'm saying is that there are so many lawyer critics throughout the state that are unhappy with the operation of the Bar that, if they were to know that the division heads can spend more than they were budgeted and then get approval, this would only solidify their position. That's what I'm saying to you.

MR. QUEVEDO: I understand now.

CHAIRMAN FENTON: Go ahead, Charlie.

MR. CLIFFORD: The next item is systematic committee evaluation procedure. I mentioned to you earlier that every committee is reviewed annually.

CHAIRMAN FENTON: Well, that's what Frank just said. Some of them do it quarterly.

MR. CLIFFORD: No, this is the activities of the committees of the State Bar.

CHAIRMAN FENTON: Okay. I understand.

MR. CLIFFORD: They have to submit an annual report. They are reviewed by a committee of the State Bar, the Lawyer Services Committee or the Public Affairs Committee. It depends.

CHAIRMAN FENTON: Why didn't they find this in their investigation?

MR. CLIFFORD: I don't know. Nobody asked me. I would tell you the procedure. We look over every one of their budgets.

MR. BROWN: I think we found that in the 1979 budget. We're just saying that it's a good idea and it ought to continue.

CHAIRMAN FENTON: I see. All right, go ahead, Charlie.

MR. CLIFFORD: Next, "We recommend that the Bar review the cost of its employee benefits package in comparison with the cost of the benefits received by state employees." What was done was a check list: you get a dental plan, and you get a health plan, and you get life insurance, and so forth, but there was no cost analysis of our plan versus the state plan. I think if you did it, you would find that our plans cost less than the State Bar plans cost in the aggregate.

CHAIRMAN FENTON: So then, there is no problem in showing your members your plan is better. There's no problem in your comparing your plan with the state's.

MR. CLIFFORD: We haven't done it. We got this late Friday. But looking at it very quickly, our overhead factor is a lot less than what it would be in private industry in San Francisco.

The next is that "We recommend the Bar review its per diem to ensure that it does not overcompensate its employees for necessary cost incurred while traveling on official business." I would point out that, although we are a state agency, we do not get state rates in hotels. If we went to the Bonaventure, your employees would pay \$32 and State Bar employees would pay \$63 for the very same room.

CHAIRMAN FENTON: Why can't we do something about that?

MR. CLIFFORD: I believe we've tried and they refuse to give it to us.

CHAIRMAN FENTON: Is there anything we can do legislatively?

MR. QUEVEDO: It's a whim of the hotel, Mr. Chairman. Sometimes my secretary can talk the Boneventure into giving me...

CHAIRMAN FENTON: Can't we do something legislatively? You can't? It would be a big saving if we could.

MR. QUEVEDO: It would be a tremendous saving.

MR. CLIFFORD: I don't think our per diem is enough, myself, in looking at it.

CHAIRMAN FENTON: It would be a great help anyhow, if you go from 30 something to 63.

MR. CLIFFORD: This is also applicable. The per diem is also applicable to the volunteers. They get the same as the State Bar employees get, so if we could get them all...

CHAIRMAN FENTON: Get your legal minds together and see if there's something that we might be able to do legislatively.

MR. QUEVEDO: We'll take our legal and non-legal minds together, Mr. Chairman.

MR. CLIFFORD: Number eleven: "We recommend that the Bar advise the Legislature of how it intends to fund the building fund obligation after 1982." Obviously, we're going to have to come back here. It may be a special building fund.

SENATOR WILSON: Mr. Chairman, can I go back to the per diem? As to state employees, let's say they go over to San Francisco and come back in the same day, then they will ask for the same per diem as if they were to spend the night...

MR. BROWN: That is not so.

CHAIRMAN FENTON: They have to do it by hours. Does the Bar set per diem on an hourly basis, 24-hour basis, as state employees do?

MR. FORSYTH: No, the State Bar and the state systems are not truly comparable. It's a little bit of apples and a little bit of oranges.

CHAIRMAN FENTON: What if one of your employees goes to San Francisco and then comes back here on the same day? What does he get, the full day's per diem?

MR. CLIFFORD: No, our employees receive only the per diem for the portion of the day that they are gone on State Bar business. If they are gone during breakfast, they receive breakfast. If they're gone during lunch, they receive lunch. If they are gone during breakfast, lunch and dinner, but less than 24 hours, they do receive the three meals if they have gone during those meal periods.

SENATOR WILSON: What does that mean?

CHAIRMAN FENTON: The amount.

MR. FORSYTH: I'm sorry. The amounts are four dollars for breakfast, six dollars for lunch, and \$12.50 for dinner. Total potential meal per diem of \$22.50.

Also, the State Bar and hotel cost is not a per diem amount. It is an actual cost, up to \$35 in the hotel. So if the hotel charges \$25, for example, they get \$25. They do not get a set amount.

CHAIRMAN FENTON: They get reimbursed up to the actual cost up to \$35. If they go higher, they're on their own.

MR. FORSYTH: My understanding of the state system is that it is a per diem on the hotel, in essence. For example, a state employee, should the employee choose to do so, could stay in a private residence and, nonetheless, collect the per diem. State Bar employees cannot do that.

MR. BROWN: On your comparable trip, less than a 24-hour day, state employees do not get lunch. They get the overtime meal rates for breakfast and dinner. If they're gone an hour and a half before the normal working hours, they can get breakfast, or an hour and a half after the normal working day, they can get dinner. I think the maximum dinner is either \$7.50 or \$5.50.

MR. CLIFFORD: The next one was, what we're going to do with the building fund. A number of years ago, more than I care to think, we're talking back about 20 years, the decision was made to build their own buildings. Why? One, because it's a state agency, we didn't have to pay real property taxes. Two, the interest we pay on our indebtedness is tax exempt.

CHAIRMAN FENTON: What's the interest rate, by the way?

MR. CLIFFORD: Our interest rate right now is 7 percent per annum.

ASSEMBLYMAN McVITTIE: Are you stipulating that you're a state agency?

CHAIRMAN FENTON: For certain purposes they are, for certain purposes they're not.

MR. CLIFFORD: Our tax lawyers advise us that the interest we pay on the indebtedness that we owe is exempt for federal and state tax purposes, and, secondly, we are not required to pay real and personal property taxes. Given those two factors, it makes financial sense, or it did at the time, and it probably still does to buy property and to build our own buildings. We've done that. We recognize that we have no authorization beyond 1982 to charge our membership to liquidate this indebtedness. But now we are charging \$10 a year. By the time we come back in 1982 maybe it might be \$9 to \$8 a year per member. Maybe we just might meld it all into the dues bill and not have a separate one. I don't know. We'll come back again.

ASSEMBLYMAN McVITTIE: Couldn't you refinance over a long period of time?

MR. QUEVEDO: At one time there was some discussion about doing that, when interest rates were a little bit different a year and a half or so ago, because we were offered by a bank, to remain anonymous, a five and one half to six percent loan. But the decision was made at

that time by the full Board, Mr. Chairman, to continue the payment of the building as it was started. Now, looking back, we probably should have listened to Jack Stutman. We didn't.

MR. CLIFFORD: The last item is that "We recommend the Bar be included in the state's budget process, as part of the Supreme Court's budget."

CHAIRMAN FENTON: You agree with that one?

MR. CLIFFORD: No, we do not.

CHAIRMAN FENTON: Oh, I thought you said "we recommend." You mean, "they recommend." I see.

MR. CLIFFORD: No, at this time I don't think we can. I don't think the cases are made for our fiscal...

CHAIRMAN FENTON: You'd rather come to us every year the way you do now.

MR. CLIFFORD: I think, over a period of time, Mr. Chairman and members of the Committee, we can convince you that it is not necessary to come to you each time, but to establish a level on built-in inflationary factors, up or down, as the case may be, and let the Bar dues stay as it is. Then it can be set in accordance with the needs by the Board. I think the Board has acted responsibly over the last few years in setting the budget and setting the amount of the fees. In spite of the fact that we suffered a seven hundred thousand dollars reduction in 1980 dues, we're still alive. We would like to see that improved. But to add another different layer of accounting and fiscal controls, namely, going to, I guess, the Judicial Council and the Supreme Court and having them review our budget, and then having you review our budget, we think is unjustified in light of our history and what we've done. So, no, we can't accept that premise; I can't accept that premise. The full Board, of course, doesn't have an opportunity to review this. But, from my point of view, we can't accept it.

CHAIRMAN FENTON: I would say you're probably echoing their view, too. Anybody have any questions?

MR. CLIFFORD: Now, I will say, as an alternative to their recommendation, Mr. Chairman -- you and Mr. McVittie and Ms. Moorhead were at Monterey at the time we discussed the possibility of enlarging the governing functions of the State Bar -- to continue with a Board of Governors of 16 lawyers as we did, almost the same number in 1927, when we now have seventy thousand members, working on a hundred thousand, doesn't seem to be too wise. If there can be an enlargement of the structure, necessarily there would be an enlargement of the review process of the budget of the State Bar. I think we're working towards that end. I can't tell you what it's going to be. I think we're going to get there.

CHAIRMAN FENTON: Mr. McVittie.

ASSEMBLYMAN McVITTIE: I tend to agree with your thoughts about

the mandatory review by legislative fiscal committees. However, I would assume the State Bar has no objection to an oversight function by the Judiciary Committee of both houses.

MR. CLIFFORD: Not at all.

ASSEMBLYMAN McVITTIE: That is, to cooperate with the State Bar to review the budget, and perhaps jointly to have some kind of public hearing on an annual basis, but not changing it or modifying.

CHAIRMAN FENTON: They'd prefer not doing it annually, but maybe every four or five years.

ASSEMBLYMAN McVITTIE: Isn't that a function at this point in time?

CHAIRMAN FENTON: Right now it is with the oversight committee.

MR. CLIFFORD: The State Bar has sought this kind of review.

CHAIRMAN FENTON: Frank.

MR. QUEVEDO: I'm just going to point out, Mr. Chairman, that, particularly this past year, in deciding, in trying to reach a conclusion about the fee structure and the fee levels, the Finance and Operations Committee, on behalf of the Board of Governors, communicated on two separate occasions with every organized bar in the State of California. We wrote to each of them, providing them with information on our proposed budget for fiscal '80 and '81, comparing us to various bar associations around the country, where it was important. I continue to believe this, it is important to involve the various organized bars around the state, before we reach certain sorts of conclusions, that are, in effect, making impact on the membership of the Bar. And we did that, and I think with one exception. Stu can correct me, but I think with one, maybe two, exceptions, the organized bars that responded, and I'm including organized bars like Los Angeles, Beverly Hills, San Francisco, Orange County, some of the bars in San Diego, responded in favor of adopting a two-tier fee structure with the level of fees that were included in the proposal. We did that, and it would be my view, and I think other members of the Board share this, to continue that kind of process, that kind of interaction with the organized bars around the state. We've done that. I think we've done a terrific job in that regard. I don't say we've always done that, Mr. Chairman, but I think particularly this past year, for whatever kind of motivation we had, I think that if you would talk to the local bars, they would tell you they had a lot of information about what we were doing, about our budgetary process, about the fee structure and the level of fees.

CHAIRMAN FENTON: I think part of the problem that the State Bar has with its members is the lack of knowledge and failures in communication. Because of the lack of knowledge, the majority of the members of the State Bar believe that they don't benefit directly from anything that the State Bar does. These members are really the critics of the system. Maybe they're justified. Maybe not. I know a lot of lawyers in my district who don't engage in local bar activities and don't get involved. It seems they always criticize the State Bar for taking their dues and not getting anything in return.

MR. QUEVEDO: I think that's true, Mr. Chairman. It's a very difficult thing to establish credibility and a communication link with any of the local bars. In the district that I'm from myself, and Bill Winke and Gar Schallenberger before him, we meet regularly as do other Board members. I know Kevin Midlam in San Diego does the same thing. Bob Raven, Charlie Clifford and Henry Der do in San Francisco. I know that Bill Kurlander meets regularly with the trustees of the L. A. County board. We meet regularly and go over the various items on the agenda. We try to do it before the fact. But in any case we meet with all the bar presidents in our district, as often as we can in a structured kind of way and go over exactly what the activities are of the Bar. We catch a lot of flak every now and then over some views that each of us might have about different subjects. I always encourage those critics, those lawyers who might disagree with the position that I have, to write to the members of the Board, because there are 22 people on the Board, not just myself and Bill Winke, and we may think one way about a certain issue and some of the local bar leaders or some of the members of the Bar in that area might think differently. It has worked on several issues, where people in district eight, for example, have written lots of letters on certain issues and the Board of Governors, its majority, has supported their position.

MR. RAVEN: Mr. Chairman, on this point, the recommendation that our budget become part of the Supreme Court budget, I would make this point. I hesitate to make it with a future judge present, but I think it is very important that the members that go from the State Bar to the Judicial Council be very independent. I have been critical in the past that I don't think they have been independent enough, that they tend to get co-opted by the system when they go on the Judicial Council. To put us in a position where we might well become hostage to that process, I think, would be a bad one. I think that one way of keeping us independent is not to subject us to Judicial Council and the Supreme Court with respect to our budget at this time. Thank you,

CHAIRMAN FENTON: Mr. Kurlander, do you have any observations?

MR. KURLANDER: No observations.

CHAIRMAN FENTON: Yes, Mr. Clifford.

MR. CLIFFORD: Mr. Chairman, I wanted to thank you and members of the Committee for the opportunity to discuss this and point out that I think the State Bar and the Legislative Analyst are not that far apart on many, many issues. We are basically heartened by the report. None of our programs were found to be deficient. I think we have a hard-working bunch of volunteers, and we appreciate the time of the Committee in reviewing the report and listening to us. We look forward to continued contact on this and other matters and on the dues bill that is coming up, too.

CHAIRMAN FENTON: Mr. Hamm, on behalf of the members of the Committee, I want to thank you for your analysis and help. We look forward to your continued assistance. We want to thank you members of the State Bar and you ex-officio members. Hopefully we can achieve a compromise of some nature which will take care of the critics.

Again, let me repeat, particularly to Board members of the State Bar, I haven't found any voting members of this Committee who are predisposed to any particular solution or conclusion that the oversight committee is going to come to. There seems to be some apprehension that we want to emasculate the State Bar. I can tell you that I have spoken to all the members and that is not true. Hopefully, after proper deliberation, we will come up with what we think is the best system possible under the circumstances. This meeting is adjourned.

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