

JOINT COMMITTEE ON THE NEAR AND MIDDLE EAST
SUBCOMMITTEE ON LAW AND SOCIAL STRUCTURE
PROJECT ON LAW AND SOCIAL STRUCTURE
IN THE CONTEMPORARY NEAR AND MIDDLE EAST:
(Partially supported by Grant No. AID/NE-G-1627)
A REPORT AND AN EVALUATION

Regions: NE
Law & Develop. 100
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Background and Purpose

The Project on Law and Social Structure is the product of discussions which took place over the course of several years in the Joint Committee on the Near and Middle East of the Social Science Research Council. The relationship of law and social structure in the contemporary Near and Middle East was only one of several items on the agenda of the Joint Committee under the general rubric of Hierarchy, Authority, and Justice, but so important and far-reaching were the issues raised that the Joint Committee decided to appoint a separate subcommittee (for membership, see Attachment I) solely to address the topic.

The study of law, justice, and related issues is not new to students of Middle Eastern societies, traditional or contemporary, and it was not the objective of the Subcommittee on Law and Social Structure simply to add to the considerable bibliography on the subject. Rather, the subcommittee intended to develop an integrated approach to the understanding of the relationship between law and social structures of different types in the contemporary Middle East. Heretofore these two have been the preserves of distinct groups of experts: lawyers and

legal historians on the one side and social scientists on the other. The subcommittee had, then, the task of not only integrating the work of these two groups in a common pursuit, but of making available the results of this integrative approach to scholars and others concerned with current policies and programs designed to improve the quality of life of the people in the area.

The subcommittee set about constructing both a theoretical and an operational framework for the implementation of its objectives. It understood from the outset that its own identification of problems, issues and topics for study and discussion was merely a provisional starting point, that the project, once provided with a point of departure, would constantly reshape and redefine itself with the progressive incorporation of other scholars with other points of view. So together with its first conceptual steps, the subcommittee took up the equally important task of identifying other experts from the U.S. and the Middle East who were already working in the same or similar areas of concern, of bringing them together in an appropriate setting for their mutual enlightenment and encouragement, of assisting, in whatever way seemed feasible, work already under way along integrative lines, and of disseminating the results of such work to as wide an audience as possible.

The subcommittee had at its disposal a wide range of techniques, some already tested and refined in the ongoing projects of the parent joint committee, others untried and even problematic. In the end, its choice fell upon the following:

1. Identification

The subcommittee members already had an initial network of contacts with scholars and experts here and abroad. But since the subcommittee chose to emphasize the recruitment of Middle Eastern scholars, it sent Prof. Charles Butterworth on a number of trips to the area precisely for the purpose of identifying area scholars and of informing them of and interesting them in the project.

2. Workshops and Conferences

With this broadened base of possible participants the subcommittee adopted the following format: a) preliminary workshops based on a draft statement of a particular problem, with the stated purpose of preparing a detailed and expanded agenda and identifying additional personnel; b) full-scale conference on specific issues of the over-all project with papers prepared and circulated in advance. The conferences were to have an expanded participation based in part on #1 above and their work was intended from the outset, as was made clear to the participants, to issue in publications.

3. Publication

The edited papers, benefiting from discussion at the conference when published ^{one} were intended to extend the work of the project to a wider audience and to stimulate additional research.

4. Training

The interaction of law and society, which is as obvious in the Middle East as it is in the U.S., is not widely studied in either venue, and though the process of discovering and bringing together the few experts working on the problem will doubtless enhance interest in the

question, the subcommittee chose also to commit part of its time and funds to the training of new scholars in the interdisciplinary study of law and society. The scale must necessarily be modest where both teachers and students are in such short supply and where methodology has to be devised even as the appropriate personnel are being identified. The subcommittee chose nonetheless to proceed with both Summer Training Institutes in the Middle East and Research Fellowships for area scholars at American Universities.

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Initial activities carried out by the joint committee for this project prior to appointment of the subcommittee included commissioning of an annotated bibliography on "The Relevance of Islamic Law for the Study of Hierarchy, Authority, and Justice in the Middle East;" a survey of scholars to assess the current research interests and activities of scholars to assess the current research interests and activities of scholars known to have some interest in the law in the Middle East as it related to social structure; the convening of two workshops, one on the laws of personal status and the second on property and Waqf; and the development of a five year plan for a program on law and social structure in the Middle East.

In May 1979 AID provided support for the Project on Law and Social Structures in the contemporary Middle East, under grant number AID/NE-G-1627 for \$400,000, to cover the organization of activities during a 24 month period and their implementation over 36 months. This report focuses on activities carried out with funds supplied under that grant along with funds provided by the Joint Committee on the Near and Middle East from its research planning funds granted by the Ford Foundation.

I. Status of Project

The five year project was designed with an extensive research planning agenda including eight subject areas, each to be the topic of one or more workshops and a conference (with each conference leading to a published volume); two summer institutes of about 6 weeks duration each to expand the number of scholars capable of doing research on law and social structure in the Middle East (tentatively one institute was to focus on dispute settlement and the other on social legislation); a program of fellowships for selected scholars to spend a year of post-doctoral or postlegal research training at an institution in the United States (with emphasis on training in legal subjects guided by American social scientists, or training in social science research that can be applied to law); and a program of research grants for Middle East and/or American scholars already trained to do research in aspects of law and social structure (about 4 or 5 awards per year).

The grant from AID provides funds for several activities: 4 workshops, 2 conferences plus associated publication costs, 1 summer institute, about 2 or 3 research training awards (for scholars from the region of study in the United States), and associated program organization and implementation costs. The following paragraphs describe (A) contracted activities completed to date, and (B) plan for completion of remaining contracted program activities.

A. PLSS Activities Support Primarily by the AID Grant Completed to Date

1. Workshops: Four workshops have been held: two on property and property rights; one each on taxation and social legislation. These workshops were attended by 6 to 10 experts on the designated topics from the United States and other areas. They were designed to help the subcommittee identify the most important aspects of the topics in question and to clarify its thinking so that it might plan formal conferences. The product of the workshops, then, were not formal reports. The staff and each committee member kept personal notes on the basis of which they developed the proposals for conferences. The proposals, then, constitute the summary record of the relevant workshop(s).

1a. Workshops on Property: Before the AID grant became effective, the subcommittee had convened a workshop on property which had been devoted almost entirely to reports on research on waqfs, the institution of endowed foundations found throughout Islam. While very important historically, waqfs have a relatively minor place in property law today. Accordingly, another workshop was convened to discuss property and property laws in the contemporary Middle East (See Attachment II for discussion outline, Attachment III for participants.)

In spite of the invitation to consider forms of property other than land, only one participant did so. The seven others presenting their research findings concentrated primarily on land as property. Their presentations were of great interest since they tried to avoid imposing Western legal concepts of property and property rights. The subcommittee, however, was not satisfied with the almost single-minded focus on land. Accordingly, it drew up 13 questions as the discussion

outline for another workshop, which was held over two days in October 1979. (See Attachments IV and V.)

The discussions in these three workshops provided sufficient materials so that the subcommittee was able to proceed with a very completely fleshed out plan for a conference on Conceptions of Property and Property Rights in the Contemporary Near and Middle East. (Attachment VI. The report on the conference is under 2. Conferences, below.)

lb. Workshop on Social Legislation: The subcommittee held a one-day workshop on May 2, 1980, on social legislation. A statement prepared by Jeswald Salacuse and reviewed by the subcommittee was circulated in advance to a number of invited participants. (For statement, see Attachment VII, for list of participants, Attachment VIII.)

Defined broadly, all law is social legislation, so the initial discussion attempted to confine the ^Cconcept within reasonable boundaries. The working definition finally settled on social legislation as law relating to employment (wages, hours, working conditions, etc.), unemployment (including steps taken to provide income maintenance such as insurance and social security legislation), and labor.

At the end of the day-long discussion, the subcommittee had a list of the names of a number of scholars, experts in one or another related topics, and the beginnings of a conference outline. At its meeting in September, it completed the proposal for the conference (Attachment IX) and identified a list of possible participants. The conference will take place September 25-29 at Rabat.

lc. Workshop on Taxation: The workshop on taxation was held on May 3, 1980, with the same participants as the workshop on social legislation,

held the previous day. One of the subcommittee members had prepared a set of statements and questions to guide and delimit the discussion. (See Attachment X.) Even with the statements, taxation touches so many aspects of social structure that it was difficult to stick to any one focus. Further, taxation in an oil-rich country like Saudi Arabia has a substantially different meaning than it does in impoverished countries like Egypt. The use of taxes to redistribute the wealth in either country would have consequences that could not be clearly foreseen. In fact, as one participant observed, taxation more than most other legislation is likely to produce unforeseen consequences that significantly alter the social structure of the society.

Taxation was on the agenda for the September meeting of the subcommittee. A decision was then made that because the topic was so complex and touched on so many other aspects of the relation of law to social structure it would be premature to hold a conference until the other topics had been examined.

2. Conferences: The conferences planned in this project are closed to all except invited participants numbering between 20 and 30 scholars and other appropriate persons. Papers of 25 to 40 pages each are prepared and circulated in advance so that the time at the conference can be spent in discussion of the papers. Each conference lasts three or four days.

2a. Conference on Property Law and Property Rights in the Contemporary Near and Middle East: This conference was held November 29 - December 3, 1980 at the Rockefeller Foundation Bellagio Study and Conference Center, Lake Como, Italy. The nineteen participants were guests of the Founda-

tion which meant that only transportation costs and reproduction of the papers were charged to the AID grant. The participants were from the disciplines of anthropology, civil engineering, history, law, political science, and sociology, from the countries of Egypt, England, France, Israel, Lebanon, Morocco, Tunisia, and the United States.

(Attachment XI.) The conference was planned on the assumption that property, broadly defined, is so intimately related to social structure that its further examination would lead to a better understanding of the interaction of law and society. (Program, Attachment XII.)

The first part of the conference centered on divergencies between traditional and contemporary concepts of property, on the divergencies between customary law and statute law with respect to property, on the way property is perceived within political parties and movements, and on the way statute law has had to be adjusted so that forms of property which have recently been developed fall within its purview, all in the context of how they affect or are affected by social structure.

The second part of the conference was devoted to an examination of state and foreign interventions affecting property and property rights. Specific attention was paid to state ownership and control of property, technology transfer, the effects of demographic policies, and oil regulation and oil revenue policies.

Although laws do exist to provide for the holding and transfer of wealth or for the enforcement of property rights, it is generally recognized that human ingenuity exercised outside of or even against the norms of the formal legal system provides for other means of realizing the same objectives. When disputes about land holdings, water distribu-

tion, tax rights, housing, or credit arise, there are formal and informal means to settle them. So, the final part of the conference was devoted to a series of specific case studies of property and property rights giving particular emphasis to comparison between what the law says and how it operates in practice, the problems created by divergencies between the two, and what, if anything, such divergencies reveal about the social structure.

At the end of the conference, Laura Nader, University of California, Berkeley, presented a summary of the major discussion, gave an overall critique of the papers, and suggested a framework in which to present the papers to a wider audience in a symposium volume. Following the conference, the subcommittee met and appointed Ann Elizabeth Mayer editor.

This conference demonstrated the feasibility and utility of intellectual exchanges between scholars of different countries, focussing as equals and without national pressures on problems that are difficult to conceptualize and understand empirically. Much was learned by the participants, perhaps especially by members of the subcommittee who have been looking at law and social structure in the larger context, in particular because several paper presenters were urged to broaden their conceptual frameworks in order to deal with other aspects of law and social structure, and because other authors were challenged to think about how their empirical data might illuminate broader societal concerns, including the improvement of the quality of life of people in the area.

2b. Conference on Social Legislation: The second major conference funded under the grant will be devoted to social legislation in the

Middle East and will be held September 25-29, 1981 in Rabat, Morocco. As noted above, following the model of preparation set by the subcommittee, this conference was preceded by a workshop on the topic.

Approximately twenty scholars (Attachment XIII) from diverse disciplines and various Middle Eastern countries have agreed to attend the conference and prepare papers. The conference will focus on three principal areas: (1) concepts and ideologies of social legislation, which will examine the place of social legislation in Islamic thought in general and specifically in the political ideologies of Yemen, Egypt, and Libya; (2) social legislation and the socio-economic order, which will consider the interaction of social legislation with patterns of production, distribution of wealth, foreign investment, and migration; and (3) social legislation and power, a topic which encompasses the role of labor unions, the state apparatus, and social classes. As was the case in the property conference, it is expected that the papers from the conference on social legislation, after revision, will be published in a volume.

2c. Conference on the Family, Law, and Change: The initial grant from AID provided for only two conferences but the subcommittee's program anticipated eight. In the expectation that additional support would be found, the subcommittee at its meeting in February, 1981, completed initial plans a third conference to be held during 1982.

One of the subcommittee's first workshops, prior to receiving the AID grant, had been on the laws of personal status and it concluded that another workshop was not necessary before laying out the framework for a conference to focus on the family, law, and change. The committee

completed an outline of the conference (Attachment XIV) and compiled a preliminary list of possible participants which will be finalized at its next meeting.

B. Plans for Completing Remaining Activities Specified in the AID Grant

1. Workshops: The grant provided for five workshops. As noted, four have been held using AID support, and the subcommittee decided a further workshop on the laws of personal status was not needed prior to planning of the conference on family, law, and change. Since workshops are not an end in themselves but a preliminary to conferences, the subcommittee has not planned any further workshops pending certainty about future funding. If the grant is renewed, the subcommittee will request that the workshop fund balance be used for further workshops in 1982 and 1983. Otherwise, it will request permission to use the workshop balance as partial funding for the conference on family, law, and change.

2. Conferences: The conference on social legislation to be held in September, 1981 will complete the two provided by the AID grant. As noted, funds for the third conference have not yet been secured.

3. Summer Institute: The subcommittee has devoted much attention to the task of organizing a six-week summer institute for approximately 16 scholars. Short-term institutes are difficult to carry out in the best of circumstances; the problems here are compounded because this attempt involves organizing a faculty to cover new subject matter, bringing together institute participants from at least a few and hopefully several different nations, and arranging for the institute to be held outside the United States. The particular political circumstances in the Middle East have

also added a complication to the original plan to hold the first institute in Cairo. For these reasons, and to enhance the chances of a successful summer institute, the subcommittee decided that more time should be given to planning, and the institute is now scheduled for the summer of 1982.

The summer institute is intended to train younger scholars already engaged in the study of the contemporary Near and Middle East to look at the field from the point of view of the relationship between law and social structure. In the summer of 1981, for a period of five weeks (June 15-July 16), up to sixteen legal scholars and social scientists who have already completed formal studies, are about to be engaged in, or have completed writing doctoral theses, will participate in a series of seminars. Half of the participants are to come from countries in the Near and Middle East and half from the United States. Ideally, the institute will alert social scientists and humanists to think about how attention in this research to legal questions will enrich their understanding of the area and will encourage legal scholars to consider in their research how law affects and is affected by the social structure.

To identify potential participants from the countries of the Near and Middle East, the institute will be announced in September 1981 in universities in the area. In addition, information will be sent to law schools and social science departments in universities in England, France, Germany, Italy, Spain, and Switzerland to alert Middle East scholars there. For students in the United States, in the social sciences and law schools, information and applications will also be mailed in September. Decisions will be announced by early in 1982.

The summer institute faculty will consist of three persons,

one of whom will be coordinator. The faculty will come from the countries of the Near and Middle East from the United States. It is expected that whatever their scholarly disciplines, the faculty members will be familiar with the different research methods appropriate to the subject and the area. Although English will be the primary language of instruction, it is hoped that all of the faculty will be able to communicate in Arabic as well as in English. The site for the seminar will probably be Amman. Hossam Issa ⁷ is slated to be the director.

4. Fellowships: The funds available for research training awards are modest, and will not provide training for more than three or four fellows for nine months each. The subcommittee waited until after Professor Butterworth had had the opportunity to visit the field and acquaint the scholars he had identified with the nature of the subcommittee's programs, and until after the subcommittee had had the opportunity to hold its first conference and get a better feel for the intellectual nature of the training that would best serve to advance the field. The plan now is to circularize the field in the late summer of 1981 to solicit applicants, to review applications in the late fall or early winter and to provide the fellowships for any appropriate period of nine months or more during 1982 and 1983. The draft of the circular approved at the last meeting is Attachment _____.

II. Subcommittee Review of Project

It may be useful to summarize the experiences of the subcommittee in the organization and initial implementation of the project. At the outset it should be remembered that the subcommittee, like the parent

committee and all Council committees, is a voluntary group meeting without compensation. It has met between two and three times a year, providing guidance to project activities but not continuous administrative supervision. An initial error was in not asking in the budget for enough support to provide for full-time staffing at the level of expertise that was recognized to be very important and in retrospect is seen to be essential. If the project is to be continued, it is imperative that there be full-time staff to provide the continuous attention that the next phases will require.

The lack of full-time staff in the first phase was not fatal although it probably meant that progress was somewhat slower than might otherwise have been the case. The identification of competent researchers with a potential interest in the relation of law to social structure is by nature a slow process, however, and thinking through the implications and ramifications of, for example, the relation of property and concepts of property rights to social structure, necessarily takes time. In fact, it is likely that the success of the property conference was directly related to the long gestation required to bring it about.

Even with only partial staffing, the beginnings of an international network of scholars from the region, Europe and the United States have been established, a base upon which future planning may be solidly built. Given full-time staff, the pace of these activities may be expected to quicken. As these activities, described below, take place, the field of law and social structure, now barely nascent, can be expected to come into full existence as a new, different, and extremely significant interdisciplinary means of understanding the ways societies are structured and how they function. This task cannot be accomplished, however, unless there is provision for full-time staff.

III. Subcommittee plans for the next phase of the project

While recognizing the difficulties encountered in the initial phase of the project, the subcommittee, backed by the joint committee, is encouraged by the results achieved thus far and is determined to advance the project into its second phase. Thanks to the activities of the initial phase, structures and programs are now in place to generate additional knowledge and encourage relevant work of U.S., European, and Middle Eastern scholars.

The subcommittee intends to keep the same general format of workshops and conferences. The workshops contribute significantly to the planning of the conferences by helping to delineate the subject matter and to identify those who can and will prepare papers on specified topics. The workshops also provide opportunities to assess the capabilities of scholars hitherto unknown to the members of the subcommittee. In short, experience to date suggests that the stepwise progression -- from subcommittee discussion of topics to one-day workshops to conferences to review and revisions of conference papers for publication -- is a productive and valid approach and one that is most likely to result in the relatively rapid development of a field that otherwise might never come into existence.

The subcommittee views the second phase of the project as including the following activities:

1. Workshops and conferences. At least three and possibly four conferences are proposed, to be preceded where needed by preparatory workshops, during the period 1982-1985. The conference topics include family, law, and change, already in an advanced stage of planning thanks to an early workshop on the laws of personal status; courts and other dispute settlement mechanisms, on which one workshop was held in 1979, but

which will probably require a second before a comprehensive conference can be planned; legal pluralism, a topic which was not included in the original proposal but which has assumed increasing significance in the subcommittee's discussions of other aspects of the project and in some countries of the area is a phenomenon quite different in degree if not in kind from anything existing in the west; and international migration and law, a topic on which surprisingly little research has as yet taken place. The subcommittee, of course, expects to publish volumes of papers from each conference.

2. Program of Research Training Fellowships: Although it has not yet implemented the first three or four awards, the subcommittee is convinced, on the basis of Charles Butterworth's investigations, that it is essential to provide specific research training to increase the very small numbers of scholars trained to do research in law and social structure. Accordingly, it wishes to continue the program of training fellowships at a substantially increased level of funding to provide for greater numbers.

3. Summer Institutes: Although the first institute will not take place until 1982, the subcommittee is so confident about its importance as a training mechanism that it wishes to hold a second, either in 1983 or 1984 in the expectation that the examples of two institutes will make it possible for special summer training institutes to find a permanent home in a university in the area.

4. Research Grants for U.S. Nationals

Although support was not secured for this part of the project, the subcommittee still believes it is a vital component and will continue to seek funds so that researchers in the United States can be funded to work in the area on projects of mutual interest.

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5. Other activities in the planning stage

a. Expansion to other world regions. The subcommittee would like to encourage comparable research planning in other muslim countries not in the Near and Middle East. It would also like to be able to add a comparative component to other non-muslim parts of the non-western world.

b. Association of scholars concerned with law and social structure. The subcommittee believes it would be useful to encourage scholars with common interests to meet in conjunction with MESA annually to present papers and discuss shared concerns. It would also like to encourage a similar informal association of scholars in the area when the numbers are great enough to make such an association feasible.

BUDGET
Project on Law and Social Structure

	Year I		Year II	
	Number	Amount	Number	Amount
<u>1.</u> <u>COMMITTEE PROGRAM:</u>				
<u>Workshops</u> @ \$2,500 each	2	\$ 5,000	3	\$ 7,500
<u>Conferences</u> @ \$25,000 each	1	25,000	1	25,000
Translation & publication		5,000		5,000
<u>Summer Institutes</u>	-0-	-0-	1	75,000
TOTAL COMMITTEE PROGRAM COSTS		<u>\$35,000</u>		<u>\$112,500</u>
<u>2.</u> <u>GRANT AND FELLOWSHIP PROGRAM:</u>				
<u>Fellowships for Area Scholars</u> <u>to Study in U.S.</u>				
<u>Grants for Postdoctoral Research</u>		-0-		\$ 51,097
TOTAL GRANT AND FELLOWSHIP PROGRAM		<u>-0-</u>		<u>\$ 51,097</u>
<u>3.</u> <u>PROGRAM ADMINISTRATION:</u>				
<u>Meetings of Subcommittee on Law</u> (7 members, \$5,000/meeting)	2	\$10,000	2	\$10,000
<u>Salaries and Benefits (@ 25%)</u>				
Professional Staff (Full-time)	1	22,500	1	23,750
Professional Staff (Part-time)	1	4,000	1	4,500
Secretary (Half-time)	1	6,250	1	6,875
<u>Staff Travel</u>		5,000		5,000
<u>Materials & Duplicating Costs</u>		1,500		2,000
<u>Telephone & Postage</u>		500		600
TOTAL PROGRAM ADMINISTRATIVE COSTS		<u>\$49,750</u>		<u>\$52,725</u>
INDIRECT COST FOR PROGRAM AND PROGRAM ADMINISTRATION (38.5% HEW negotiated rate)		\$32,628		\$63,611
INDIRECT COST FOR GRANT AND FELLOWSHIP PROGRAM (5% rate requested)		<u>-0-</u>		<u>2,689</u>
TOTAL COSTS		<u>\$ 117,378</u>		<u>\$282,622</u>

FOOTNOTES

1.

In view of the smaller budget, instead of seven workshops during the two years we are budgeting only for five, with the expectation that support for the other two can be met from other sources. Because the committee's plans are further advanced than they were when the proposal was submitted, it is now expected that the first formal conference, on Property, will take place in Year I. The budget has been revised accordingly.

It is still expected that the first summer institute can take place in the summer of 1980. If not, funds will still need to be set aside so that planning for it may take place. It may be held in the summer of 1981.

2.

The original budget provided \$120,000 for each year for fellowships and grants for up to eight persons from the area. If it is not possible to find additional support elsewhere, there will be only one competition during the two-year period rather than the two projected in the original proposal. If only the present sum is available, the number of scholars who can be supported will be reduced to four or five and the stipends will also be reduced.

3.

The administration expenses remain substantially as originally submitted. The addition of a full-time staff member is so important to the success of the enterprise that no changes have been made in that line. The amount requested for part-time Council professional staff, who will maintain responsibility for the overall administration of the project, has been reduced. It must be made up from other sources.

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<u>Summer Institutes</u>	-0-	-0-	1	75,000
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Social Science Research Council

605 Third Avenue, New York, N.Y. 10016

Ronald J. Peteck
Controller
(212) 557-9471

5 May 1981

Mr. Franklin H. Moulton, Grants Officer
Regional Operations Division-NE
Office of Contract Management
Department of State
Agency for International Development
Washington, D.C. 20523

Re: Grant #AID/NE-G-1627

Dear Mr. Moulton:

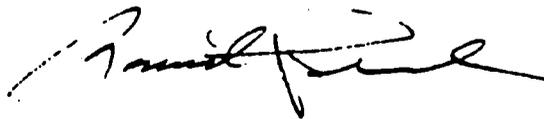
In comparing the actual expenditures with the budget for Year II (6/1/80-5/31/81), I project unexpended balances at 5/31/81 to be as follows:

a) Personnel	\$7,500
b) Travel	7,000
c) Publication Costs	5,000
d) Duplication, Telephone, etc.	1,000

In Year III, the Council is committed under the grant to conduct a conference and summer institute and to award a number of postdoctoral grants. In reviewing the budget for Year III, I find that administrative costs were not provided for in connection with these activities. Therefore, we now request that the unexpended balances for program administration and related indirect costs in Year II be carried over to Year III.

Thank you for your consideration in this matter.

Sincerely yours,



5/11/81 Per Pam Johnson - don't want in the budget
Send resolutions attached,