

1 LEGAL SERVICES CORPORATION

2 BOARD OF DIRECTORS MEETING

3 October 29, 1982

4
5 The Board met in the Eighth Floor Board Room
6 at 733 15th Street, N.W., Washington, D.C. at 3:00 p.m.,
7 William Harvey, Chairman, Presiding.

8
9 PRESENT:

10 William Harvey Chairman
11 Clint Lyons Acting President and Chief
Executive Officer
12 Harold DeMoss, Esq. Member
13 Robert Stubbs Member
George Paras Member
14 David Satterfield Member
Clarence McKee, Esq. Member
15 Howard Dana, Jr., Esq. Member
William Olson, Esq. Member
16 Anne L. Slaughter Member
Frank Donatelli, Esq. Member
Dan Rathbun Member

17 ALSO PRESENT:

18 Legal Services Corporation

19 Mary Wieseman, Esq., Acting General Counsel
20 Michael Glomb, Esq.

21
22
23
24
25
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P R O C E E D I N G S

(3:15 p.m.)

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2
3 CHAIRMAN: Ladies and gentlemen, good after-
4 noon. The Corporation understand there's been a certain
5 amount of public notification and publicity concerning
6 this meeting. It's good to have you all here to observe
7 the proceedings.

8 I think that in view of the size of the audi-
9 ence and the interest which everyone has in these pro-
10 ceedings, it would be helpful at the beginning of the
11 meeting to remind the audience that we positively
12 encourage public participation in a regularly and order
13 fashion.

14 And there is a rule which speaks about this.
15 Indeed there seems to be a rule which speaks to almost
16 everything, and this is one of them. There's Rule
17 1601.23 of the Regulations of the Corporation which
18 states that members of the public may address a meeting
19 of the Board upon invitation of the Chairman unless the
20 Board directs otherwise. Than's an approximate quota-
21 tion.

22 During the course of this meeting I will allo-
23 cate time to call upon public participation and public
24 comments. And I see that our very efficient staff has
25 a microphone established for that purpose.

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1 The second item on the unadopted agenda --
2 at least the second thing I want to say -- is to extend
3 an invitation and welcome, rather, to extend a welcome,
4 to Mr. Frank Donatelli and to Mr. Dan Rathbun who
5 recently have been appointed to the Board by the
6 Presidents. Members of the Board, Frank and Dan, you
7 are most welcome here. And it's a pleasure to have you
8 here.

9 At the same time, I observe in the audience
10 a very distinguished member of this Board, recently a
11 member of this Board, Mrs. Josephine Worthy. And Jo,
12 it's very nice to see you again also.

13 (General Applause)

14 Now, Members of the Board, if we might turn
15 to the tentative revised agenda which I think is before
16 you.

17 MS. HOLLY: Mr. Chairman, before you adopt an
18 agenda, I would like to have an opportunity to speak.

19 CHAIRMAN: Thank you, but not at this time.
20 I want to proceed with the agenda item under our regula-
21 tion.

22 MS. HOLLY: Under your regulations, sir, I
23 would like to speak.

24 CHAIRMAN: Well, madam, the Chairman does not
25 extend an invitation to you to speak at this time.

1 MS. HOLLY: I would request other members of
2 the Board to --

3 CHAIRMAN: Fine, Clarence?

4 MR. MCKEE: I think we -- given the unusual
5 circumstances of this meeting and all of the uproar and
6 the great concerns throughout the Country apparently,
7 I think that anyone who has a point to make, a brief
8 point, to set a tone, we have had about eight or nine
9 hours to sit down and express our viewpoints among our-
10 selves. And I'm sure many people have come a long way
11 and if we could just, my colleagues would permit the
12 lady to have her point made.

13 CHAIRMAN: Sounds good to me. Everybody agree
14 to that?

15 BOARD GROUP: Yes.

16 CHAIRMAN: Would you please identify yourself?

17 MS. HOLLY: Yes. My name is Nellie Holly. I
18 am the President of the Board of the National Clients'
19 Council.

20 I am here today to speak to you specifically
21 about one of your regulations, Regulation 1004(a). I
22 will read to you. The Membership of the Board shall be
23 appointed so as to include eligible client and to be
24 generally representative of the organized buyer, attorn-
25 eys providing legal assistance to eligible clients, and

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1 the general public.

2 We had some discussions with you, the National
3 Clients' Council did, in Indianapolis about regulations,
4 enforcement of regulations. And at that point, at least
5 some of the members of this Board indicated a willingness
6 and an openness to be a sister to the Clients' Council in
7 looking at local program Board and helping to enforce the
8 regulations, in looking at the composition, in looking at
9 the client involvement in terms of priority setting and
10 other issues.

11 I would ask for you today to look at the composi-
12 tion of this Board. Our concern is that it is not properly
13 constituted. There are certainly not eligible clients on
14 this Board. And we would ask for you not to take any
15 decisions today as policy decisions. We feel the Board
16 is improperly constituted. And we would ask for you to
17 go with us to the President and request that he correct
18 the situation.

19 Thank you.

20 CHAIRMAN: I thank you, Ms. Holly, for your
21 statement.

22 I'd like to proceed now with --

23 MR. DORSEY: Mr. Chairman.

24 CHAIRMAN: Mr. Dorsey.

25 MR. DORSEY: If I might --

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1 CHAIRMAN: Just a moment. Clarence, you want --
2 the Board want to proceed with another statement?

3 MS. SMITH: I would like to hear from him.

4 CHAIRMAN: Fine. Go right ahead.

5 MR. DORSEY: Mr. Chairman, what I have to say
6 has to do with the question of involvement of those of
7 us here in the proceedings this afternoon. I don't think
8 it's fair to say that we are here as observers. The
9 things, looking at your agenda, that this Board will take
10 up are things that deal intimately with the delivery of
11 legal services and our attempts over the years to provide
12 legal services for people.

13 We would like to have a commitment from this
14 Board that before this Board takes action on any item on
15 the agenda that those of us in the audience who would like
16 to speak to that point would be permitted to speak before
17 this Board votes.

18 And that is a request on each of the items that
19 appear on the Board agenda. We would like to have done,
20 sir.

21 CHAIRMAN: I interpret your request, Mr. Dorsey,
22 to amend the agenda pursuant to -- I understand your
23 request. Thank you very much.

24 MR. OLSON: Mr. Chairman, at this time I'd like
25 to move the adoption of the tentative revised agenda --

1 MS. WORTHY: Mr. Chairman --

2 MR. OLSEN: I'd like to suggest, perhaps, that
3 point four might be held before point 3 because so many
4 people waited for assistance in this area. And perhaps
5 we could resolve ourselves in Executive session and get
6 this Presidential Search Committee report presented to
7 the Board and acted upon and that we may then go back into
8 the more substantive matters rather quickly.

9 So I would move the adoption of the agenda with
10 the movement of three to four and four to three.

11 MS. WORTHY: Mr. Chairman. I would like to
12 speak --

13 CHAIRMAN: Is there a second --

14 MS. WORTHY: -- before you about your agenda.
15 I think I deserve that much respect, being here and seeing
16 my fellow Board members and so many people being present,
17 with a very serious concern.

18 I -- I have a real hard feeling today within my
19 heart, not because things were done, but the way that they
20 were done. I feel that this is one of those things that
21 people do over a weekend or whatever when they plan to do
22 things that are wrong.

23 I don't want you to get me wrong. I do not mind
24 giving up my seat. I knew that was going to happen. But
25 the way the politics were played in order for that seat

1 to be taken. I am directing my talk to the Board. If the
2 White House gets that, fine.

3 I do not feel that the way things were done,
4 were done legal. I do not feel that my fellow Board
5 members have to go through and do things like that in
6 order, or comply with things like that, in order to get
7 me off a Board.

8 Evidently I was a threat to someone in order for
9 them to do those kinds of things to get me, to remove me
10 from this Board, a Board of people who I've loved and as
11 they came in, did not know anything about them, but loved
12 them, respected them, because they had taken an oath to
13 continue the preservation of the Legal Services Program.

14 But to continue that according to the Act and
15 according to the mandate that was given us to carry out,
16 I wonder how many of you can stand up right now and say,
17 we did what we were supposed to have done? I have some
18 real, real problems with thinking about if the issues of
19 poor people and clients around the Country are going to
20 still be considered.

21 I have some real problems with placing someone
22 in a position where it took me a whole year to learn the
23 issues that were out there. I am hoping that the young
24 man or the personnelist placed in that position was not
25 set up for failure.

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1 I am hoping that he can adhere to the issues
 2 concerning poor people and the people that you've been
 3 chosen to represent around this Country and make good
 4 decisions. I wish the Board all the luck in the world.
 5 But I'm hoping that you would take with that luck the
 6 understanding and the feeling of the people that you took
 7 an oath to represent.

8 I'm hoping that you are not in a position that
 9 you have to play politics with the poor people around the
 10 Country in order to accomplish anything. If you take that
 11 stand, you're not going to accomplish anything. We will
 12 be there.

13 I want to offer to you people and the people
 14 on the Board that I love and still respect, I wish you
 15 all the luck in the world. I hope you are concerned
 16 because I think you have taken time, some of you, to mind
 17 what your job was all about.

18 And I would hope that I helped guide you through
 19 that. I am sure that I did. I am hoping that you feel,
 20 will not feel that you would have to sell out anything in
 21 order to continue to do the work that you know that you
 22 took an oath to do.

23 I would hope that the strength of the Almighty
 24 will put their arms around you and guide you in the right
 25 way that you are supposed to go and in the legal way that

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1 you are supposed to go.

2 You will never forget these words. You will
3 never get rid of me. I'm just going from this Board to
4 another Board in Washington. So I'll still be around.

5 (General Applause)

6 I will still be around to let you know when you
7 are doing things wrong or when they are hurting people
8 if you don't realize that.

9 I have to say one more thing. Professional
10 people do not have to stoop low. That is in my book. May-
11 be they do. If I have to stoop and hurt one of you all,
12 then I need to get away from everything that I represent.
13 I would never do that.

14 People who have done that know what I am saying
15 and why I'm saying it from my heart today. Maybe someone
16 had a speech for me, but I cannot say that speech that
17 someone else had for me. Josephine Worthy said this
18 speech today.

19 And to all the people here that I love and have
20 worked with, I'll still be around. You can call me. I
21 will still be out there advocating for poor people and
22 for things that I think are right. I don't know of any
23 of the people who are present today, from the Senate or
24 wherever. And if you read the letter and the names that
25 were on there, you would recognize not only the Democrats

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1 respected and cared for me. Republicans' names were on
2 there too.

3 People who are really concerned with the way
4 that things were done. But I want to say to you that I
5 love you. Anytime you need to call me, I will be there.
6 If you're wrong, you will hear from me and other people
7 that care about the things that I care about.

8 (General Applause)

9 MS. BAILEY: Mr. Chairman?

10 CHAIRMAN: Just a moment, please. Does the
11 Board wish to hear this speaker?

12 MR. OLSEN: I'd like -- let's perhaps have this
13 as the last speaker. I'd like to at least get the agenda
14 enacted today.

15 MS. BAILEY: Thank you. That's exactly what I
16 wanted to talk to. I have a request to make of you.

17 First I want to tell you that in my opinion, I'm
18 sure as all of you we still live in a democracy. Demo-
19 cracy is a place where you have checks and balances,
20 where you have balance of power. One or a few people do
21 not make a decision about what's going on.

22 I'm asking you not to adopt your agenda, not to
23 do any of the decision-making today, to sit here and talk
24 and discuss with us the issues that are so important to
25 all of us, but not to vote until you are confirmed by the

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1 United States Senate as is called for. And although this
2 is legal -- I have heard it's legal -- I don't think it's
3 right. And I don't think in your hearts that you do
4 either. Wait for confirmation.

5 The second issue I want to point to, if I didn't
6 convince you on the first one, is that there are two brand
7 new people less than a week ago confirmed to this Board.
8 There is no way you can learn about the complexity of this
9 program in less than a week. You cannot vote on issues
10 today if you have just come on this Board.

11 I've been working with Legal Services for eight
12 years, and there's still a lot I don't know. Please, do
13 not take vote today. Please talk to us, get to know us.
14 Let us get to know you. When you're confirmed, we'll work
15 with you.

16 Thank you.

17 MR. OLSEN: Mr. Chairman, I renew my motion
18 to --

19 CHAIRMAN: Yes. I understand the motion, Mr.
20 Olson. The motion was made and seconded to adopt the
21 tentative agenda with the revision that Item No. 3 and
22 Item No. 4 be exchanged on the agenda. I would make only
23 one other suggestion to the Board, and that is that under
24 No. 7, items concerning policy guidelines and items con-
25 cerning the rehearing procedure also be similarly

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1 exchanged.

2 Pardon? Item 7, first page.

3 (Pause)

4 MR. OLSRN: Mr. Chairman, because I might --
5 let us get to the very important issues, the hearing
6 procedures first, and have more time with it. I would
7 concur in that.

8 CHAIRMAN: With those amendments, is the Board
9 ready to proceed to vote on the motion?

10 Those in favor, signify by saying aye.

11 (Chorus of ayes)

12 Opposed, the same sign.

13 (Pause)

14 The motion and the agenda are adopted.

15 The next item or the item on the agenda, Members
16 of the Board, the first item is the approval of the minutes
17 of the last meeting. Those minutes are established for
18 you or set out for you on page 8. This refers to the
19 minutes of the meeting of the Board of July 17, 1982.

20 The Chair would entertain a motion for the
21 approval of these minutes.

22 MR. McKEE: Mr. Chairman.

23 CHAIRMAN: Yes.

24 MR. McKEE: I see my name was omitted from the
25 records present at that meeting. If you could add it, I

1 would appreciate it.

2 CHAIRMAN: That's page 8 of the Appendix?

3 (Pause)

4 Are there other amendments to the minutes?

5 (Pause)

6 MR. DONATELLI: Go to the adoption.

7 CHAIRMAN: The motion is made. Is there a

8 second?

9 MR. OLSEN: Second.

10 CHAIRMAN: Discussion?

11 (Pause)

12 Hearing none, Chair requests a vote on the
13 motion which is to adopt the minutes as amended of July
14 17, 1982. Those in favor, signify by saying aye.

15 (Chorus of ayes)

16 Opposed, by the same sign.

17 (Pause)

18 The motion is carried.

19 The Chair would entertain a motion to -- well,
20 under 45 CFR, Section 1622.5(a) and (e), it was necessary
21 to receive a motion for an Executive Session. The Chair
22 would entertain a motion to go into Executive Session
23 for that purpose.

24 MR. DANA: Some question. What is the purpose
25 of an Executive Session?

1 CHAIRMAN: The purpose of an Executive Session
2 is to receive the report of the Presidential Search
3 Committee.

4 MR. DANA: The Presidential Search Committee has
5 met, and for the last eight hours --

6 (General Applause)

7 MR. DANA: -- eleven of us were present. Is it
8 necessary to -- and I address my fellow Board members --
9 is it necessary for us to go into Executive Session to
10 receive the report that we just agreed to?

11 MR. MCKEE: I don't think so, Mr. Chair -- Harvey.

12 CHAIRMAN: Fine. Whatever the Board wants is
13 fine with me. If you prefer not to have an Executive
14 Session --

15 MR. OLSEN: Mr. Chairman, I thought the norm
16 would be that the Board would receive the recommendation
17 and act upon it in Executive Session since it is a per-
18 sonnel matter and all personnel matters that we've ever
19 handled have been handled in that way. That would be my
20 thinking on it.

21 MR. LYONS: Mr. Chairman --

22 CHAIRMAN: The Chair would ask for a consensus --
23 go ahead, Clint.

24 MR. LYONS: Mr. Chairman, there may be a need
25 for us to confer with the General Counsel on this matter.

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1 It appears to me that provisions permitting the Executive
2 Session does go to personnel matters that relate to the
3 privacy of particular individuals. And if in fact the
4 Presidential Search Committee report does not fall within
5 the scope of that provision and talks specifically as the
6 purpose of an Executive Session, the discussion of per-
7 sonnel matters relating to the privacy of an individual,
8 then it may not be appropriate to do so.

9 So I would -- if you would, in order to avoid
10 any appearance of not proceeding readily, we may need to
11 confer with the General Counsel as to whether or not --

12 MR. McKEE: Mr. Chairman, I agree with Mr.
13 Lyons in terms of when there is a discussion of personnel
14 matters. I think they would be very appropriate and we
15 should confer with General Counsel. And I think in this
16 instance, we have already had Executive Session of the
17 Committee -- a discussion of the personnel matters and
18 how and what we have presented before us. That was just a
19 report, a straight objective report to the Board which
20 would not get into any discussion of personnel matters.

21 MR. PARAS: Mr. Chairman, do I understand the
22 agenda item to be simply a report on the conclusions and
23 recommendations of the Committee?

24 CHAIRMAN: That's correct. The question is, do
25 you want Executive Session for that reason or not.

1 MR. PARAS: If that is what the report will be,
2 I'm not interested in the Executive Session. So I would
3 join with Mr. McKee.

4 CHAIRMAN: Fine. Let's dispense with the
5 Executive Session and move to item No. 3 on the agenda,
6 which is the Report of the Presidential Search Committee.

7 MR. PARAS: Are we going to -- that's it now?
8 We're going to receive the report.

9 CHAIRMAN: That's right. We are going to receive
10 the report.

11 MR. COOK: Mr. Chairman, I would like to speak
12 before --

13 (Pause)

14 I'd like for a few moments to speak before we
15 deal with the issue of the Presidential Search --

16 CHAIRMAN: Excuse me, Mr. --

17 MR. COOK: This is Willie Cook of the Minority
18 Caucus of the --

19 CHAIRMAN: Just a moment, please.

20 MR. COOK: -- Legal Services.

21 CHAIRMAN: Pardon me. What is that name?

22 MR. COOK: I'm Willie Cook. I'm the Executive
23 Director for the Neighborhood Legal Services in D.C. And
24 I'm also --

25 CHAIRMAN: Just a moment, Mr. Cook. I want to

1 ask the Board -- Members of the Board, do you want to
2 receive these comments at this time?

3 Chairman: So moved.

4 MR. McKEE: Second.

5 CHAIRMAN: The Motion is made to receive and
6 accepted by the Chair as approved. Any vote to the con-
7 trary?

8 Mr. Cook, please proceed.

9 MR. COOK: I'll only take a few moments. But
10 I do want the Board to hear me about some views that I
11 have, some very strongly held views, as I have observed
12 this Board since December of 1981.

13 It is particularly relevant to the question of
14 the Presidential Search. I have been sitting in many of
15 these rooms in D.C. and in other places where this Board
16 has met either as a full Board or as a committee. And I
17 want to tell the members of this Board, new members
18 included, I am particularly outraged at this Board on a
19 number of fronts.

20 First of all, a number of things that this
21 Board has done in the past ten months outraged me as a
22 Black person, as a Black employee of this particular pro-
23 gram. I find it singularly outrageous that this Board,
24 for instance, is considering a man like Mr. D'Agostino
25 for the Presidency of this Corporation.

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1 If this Board does not understand what Mr.
2 D'Agostino means to people like me and other Blacks in
3 Legal Services in the Black community, I'd suggest that
4 either this Board is unsympathetic and particularly those
5 people who support Mr. D'Agostino, I would suggest that
6 his racist views, if shared by members of this Board, I
7 find particularly appalling.

8 I do not plan to sit by as a member of this
9 community and allow this Board to select somebody like
10 Mr. D'Agostino or Mr. Regnery as President of this
11 Corporation. We in this community are sick and tired of
12 some of your actions. We are sick and tired of some of
13 the actions of your Chairman.

14 For instance, I sat in the Senate room while
15 your present Chairman was testifying before Senator
16 Hatch's Committee. And I heard him say to that Committee
17 that he was particularly proud of the role that he played
18 in filing an amicus brief on behalf of Mr. Bakke. Well
19 if your Chairman is particularly proud of that action, I
20 must say that I am particularly outraged at that particular
21 participation. And if your Chairman doesn't understand
22 that his role in the Bakke case and particularly his
23 speaking of that role in the way he did before Senator
24 Hatch's Committee is not the height of insensitivity to
25 many minorities in this particular program and particularly

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1 many Blacks, then I suggest that he perhaps should not be
2 the Chairman of this Board.

3 When you turn around and you even consider some-
4 body like Mr. D'Agostino in a very serious way, I have some
5 very serious questions about what this Board is all about,
6 what this Board's commitment is to this community, and
7 whether or not this Board ought to serve as a stewardship
8 for this particular program.

9 There are a lot of us who have not said a whole
10 lot over the last eleven months. We have sat here, and
11 we've watched you. We have watched what we consider to
12 be in many instances procedures and in many instances
13 actions that have cut us out.

14 We have watched and listened to some of the most
15 insensitive comments by some members of this Board. We
16 are tired of it. We are sick of it. We are disgusted.
17 We are outraged. We don't plan to remain silent any
18 longer.

19 We will not accept Mr. D'Agostino. We do not
20 accept Mr. Harvey. We will not accept Mr. Regnery. We
21 don't accept any on that list. We think that what you need
22 to do with this report is to receive it. You need to junk
23 it because it is absolutely worthless. The people on
24 that list are not worthy of leading this community. You
25 ought not to consider them seriously. And if any of you

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1 on this Board are serious about being a proponent for Legal
2 Services, you would simply send that report back and start
3 over.

4 Many of us have sat here, and we have held in a
5 lot that we have had to say about this particular Board,
6 the way it has progressed. We look with a good deal of
7 outrage at the activities of last week in which the White
8 House evidently rushed to add particular members on this
9 Board in preparation for today's vote.

10 We do not think that the new members on this
11 Board, for instance, have had the time, have had the
12 experience essential to deal with important issues sur-
13 rounding the Presidency.

14 I would like to know, what in the world is the
15 rush to change the Presidency of this Corporation? If,
16 as it should be, the President should be one who is a sup-
17 porter of Legal Services, then I ask you on what count does
18 Mr. D'Agostino qualify? Is his statement, both written
19 since he's left the Justice Department and while he was
20 there, does that not mean something to this Board about
21 this man's commitment?

22 If you consider Mr. Regnery a man who has pur-
23 poted to have said or at least to have agreed to the
24 abolishment of the Legal Services Corporation, what kind
25 of man is that to have as Chairman of the Board, I mean

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1 as President of the Corporation.

2 I would suggest to you that you take absolutely
3 no action on any of these candidates because many of them,
4 as we've indicated, are, I find, personally objectionable.
5 And I further think that you need to do something, some
6 very hard thinking about who you choose as Chair.

7 It may not make any difference to you, but it
8 means an awful lot to us. We do not a man in the Chair as
9 your present Chairman who takes the kind of view that he
10 takes, who perhaps doesn't understand that in taking some
11 of those views, which we consider to be, at least some of
12 us in the system, to be very insensitive and bordering on
13 racism. And we think that that is a very, very serious
14 thing to do.

15 And I would say, in terms of action for this
16 Board, you should probably do nothing. I would agree with
17 Ann Bailey, that what we probably ought to do today is to
18 have a general discussion in this room about the level of
19 frustration of those of us in the field in terms of the
20 stewardship of this Board.

21 We think you need to do some talking. You need
22 to do -- you need to educate yourselves. We most particu-
23 larly think that it would be inappropriate to be choosing
24 any of these people for Presidency of the Corporation.

25 (General Applause)

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1 MR. BROUDE: Mr. Chairman --

2 MR. DeMOSS: Mr. Chairman, I would like to make
3 an order of business to set some time limit. I certainly
4 think that we need to hear from the people, but I can see
5 that we could spend an awful lot of time. And this Board
6 needs to move on with making some of the decisions that
7 we have to make.

8 I would propose, therefore, that the Board
9 establish an order of business that each speaker from the
10 public be allotted three minutes, that someone on the
11 staff set a time and advise the Chairman when that time
12 has expired and ask the speaker to limit their comments
13 to that period of time.

14 If there's going to be a whole lot of them, it's
15 only fair to let everybody have a limited amount of time.
16 I so move.

17 CLARENCE MCKEE: Second.

18 CHAIRMAN: Any discussion on the motion?

19 (Pause)

20 Those in favor, signify by saying aye.

21 (Chorus of ayes)

22 Opposed, the same sign.

23 (Pause)

24 The motion is carried.

25 MR. BROUDE: Mr. Chairman, I'd like to speak.

1 CHAIRMAN: Just a moment.

2 (Pause)

3 Your name is, please?

4 MR. BROUDE: My name is Jim Broude.

5 CHAIRMAN: Jim Broude? All right.

6 MR. BROUDE: I'm President of the National
7 Organization of Legal Services Workers. And I come here
8 having been twice privileged in the last several years,
9 first to have been fortunate enough to have been a staff
10 attorney in South Bronx for eight long years and eight
11 wonderful years, and secondly, having been honored to have
12 been elected President of the union that represents
13 several thousand lawyers, paralegals and secretaries that
14 work in Legal Services offices across the Country.

15 I would support all the comments that went
16 before, particularly the recommendation of Willie Cook who
17 spoke before me. I have lived through some tough times
18 with the Legal Services Corporation, as has most of the
19 people in this room.

20 Frankly, I don't recall a tougher time than I
21 envision at this moment. And I'd like to tell you a couple
22 of reasons why.

23 A name that has not come up today, Ronald Regan,
24 is one I'd like to mention. Ronald Regan chose, for
25 reasons I think are quite clear to pack this Board of

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1 Directors in a manner that I find to be totally unprinci-
2 pled and totally indefensible. In the grand tradition of
3 midnight appointments, Mr. Donatelli and Mr. Rathbun were
4 added to this Board.

5 Not only is the process one that I find -- and
6 I believe most people in the Legal Services community
7 find to be totally unacceptable -- I think we should look
8 closely at what the Board looks like right now.

9 One, some of the criteria listed before us, is
10 there anybody here who is an attorney principally involved
11 in the delivery of legal services? I think not.

12 Is there a client from the Legal Services
13 community? Are there clients, as there should be? Clearly
14 there are not. But frankly, as a lawyer, I'm not talking
15 as a lawyer today. I'm not here to argue legal points.
16 I'm here to argue morality.

17 You're not speaking when you make decisions
18 today on the future just to the people in the room and the
19 people fortunate enough to work in Legal Services, but to
20 the millions of people who depend upon this kind of service
21 and to the millions of people who look at an institution
22 like Legal Services as one of the great, great bastions
23 of justice in this Country. You're speaking to all of
24 them.

25 Now, I think that even if the composition of

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1 the Board were technically appropriate that the most
2 principled courageous act that could be taken by this
3 Board today is one to defer action on anything. And you
4 are about to discuss the Presidential search. I don't
5 know how you cannot address the question of composition
6 before you go to the Presidential search question.

7 And secondly, I hope you do join with us in going
8 to President Reagan, asking him to withdraw the two most
9 recent nominations and to appoint eligible clients to this
10 Board, people who do in fact speak for the client
11 community.

12 Ronald Reagan speaks of a safety net. I guess
13 the Legal Services Corporation is the legal safety net.
14 He is attaching lead weight after lead weight to this
15 safety net that is already tattered and ruined. This is
16 our last opportunity to put that net back together.

17 I've heard a lot of criticisms, as have we all.
18 I've heard a lot of criticisms about those of us who work
19 in Legal Services. We're overly zealous. We go too hard
20 at the things we, the principles and issues we believe
21 in.

22 In fact, I will tell you the only valid criti-
23 cism is today we have not been zealous enough.

24 CHAIRMAN. Mr. Braude, your three minutes have
25 expired.

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1 MR. BRAUDE: I'd like to finish my statement,
2 Mr. Chair, if I may. Mr. Donatelli, that's not all right
3 with you? May I finish, please?

4 (Pause)

5 Now, I think I can speak on behalf of at least
6 most of the people who believe to the Legal Services
7 Union, and I am relatively certain most of the people in
8 the Legal Services community, in telling you that we will
9 one, not stay the course, so to speak. We are saying no
10 more, and we're going to return to zealous advocacy as
11 we should have been doing from day one.

12 We are here. We are here to stay. We will do
13 what we are paid to do. We will represent our interests
14 and our clients' interests zealously, strongly and
15 affirmatively. And we call on you in that regard to vote
16 immediately to halt any deliberations of this meeting and
17 join with us in going to President Ronald Reagan and say-
18 ing, let's restore this Board to its proper place, back
19 in the control of the people of the United States.

20 Thank you.

21 (General Applause)

22 MS. HAMILTON: Mr. President, may I speak?

23 CHAIRMAN: Mary Ellen?

24 MS. HAMILTON: Okay.

25 MR. MCKEE: Ladies and Gentlemen, this is Mary

1 Ellen Hamilton. And three months ago, she was named by
 2 the National Clients' Council as the Client Person of the
 3 Year. I'm sorry. But she has been for many, many years
 4 an outstanding leader of the client community in
 5 Louisiana.

6 She is a member today and all for the last
 7 ten weeks of the Advisory Panel that helped work in this
 8 process. And it is unfortunate that because of the
 9 controversy and the tension that surrounded it that Mrs.
 10 Hamilton, who has dedicated her life to this effort, has
 11 been accused by some people of being a part of a process.

12 And I think it should be known that there is
 13 no more dedicated a woman in this Country than Mrs.
 14 Hamilton and that she stood very firm in her role and
 15 she fought hard. So I want everybody to know that in
 16 case there are people saying things in a negative way about
 17 this morning.

18 MRS. HAMILTON: Thank you, Mr. McKee.

19 CHAIRMAN: Also, Mr. Smith. You want to be
 20 identified at this time?

21 MR. SMITH: Yes, I would like to.

22 CHAIRMAN: All right.

23 MR. SMITH: Would you like to, Mrs. --

24 MRS. HAMILTON: Yeah. First of all, I don't
 25 know if I need to thank the Board or thank the client

1 community. What I just went through the last day has been
2 very painful, attempting to pick a leader for a program
3 that I truly believe in and I truly need.

4 I'm speaking for the many, many clients around
5 the Country that you're supposed to be representing. As
6 Nell Holly told you in the very beginning, you're setting
7 yourself up very, very thin. This Board, you're taking
8 action to pick a president. And the clients across the
9 Country is talking about the composition of this Board.
10 And I'm not a lawyer, but I want to know from all you
11 lawyers on the Board, how can you do legal action when
12 you're out of compliance with your own regulations, that
13 you have talked about you must adhere to, you will help
14 the community to adhere to.

15 As I said before, there is no number one to, in
16 the whole process of -- there is none in my opinion.
17 I would like to ask this Board for two reasons alone
18 to go back and scrap the whole process.

19 Number one, I am a client. I know what I like
20 to lead me in the community. And I'm quite sure the
21 clients across the Country would have been calling me from
22 yesterday and today. They know what they want to lead
23 them in the community. Now Holly who's President of NCC
24 has told you, and Bailey, who is President of a many
25 organizations, but also a member of the Alliance for

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1 Legal Rights, a client organization, has told you, if you
2 don't listen to staff, are you going to listen to us,
3 who you're supposed to be representing?

4 I wish you would scrap the process, go back --
5 first get the Board in composition. There are some of us
6 that's willing and not afraid of Mr. Reagan to go with you
7 to him. We ask you to let us go and get this Board in
8 composition. Or do we have to do sue you to get in
9 composition?

10 (General Applause)

11 That's what I want to know. Do we have to sue
12 you? And the next thing I want to know is, how can you
13 pick that -- whoever you're picking out of the whole
14 five to be a part of this composition, do we have to sue
15 you on all the grounds that you're talking about?

16 I wish this Board -- you don't need to go into
17 Executive Session, do we? Just say we will go back all
18 over again and come out and do the process all over again.
19 There is no rush, 'cause you ain't confirmed nohow, and
20 you might not be confirmed after this.

21 (General Laughter and Applause)

22 So you need to take that into consideration.
23 Do we have to start getting on our Senators to not confirm
24 all of you? And we can do it, and you know how? I think
25 you all know in the last couple of days we know how to do

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1 it.

2 So I wish you would take -- and not that it's
3 that much better -- just go back over the process,

4 CHAIRMAN: Mr. Smith?

5 (General Applause)

6 MR. SMITH: Thank you. My name is Jody Smith.

7 And I am currently the Civil Division Director of the
8 National Legal Aid and Defender Association. However,
9 today I appear as an individual, a very concerned and
10 troubled individual.

11 Many of my concerns and troubles have already
12 been spoken to very eloquently by my co-community persons.
13 I want to be very direct and very pointed, that in regard
14 to Mr. D'Agostino's candidacy and Mr. Regnery's candidacy,
15 I am completely outraged and angered that they were in
16 the final five and apparently subject to some discussion
17 this morning.

18 I know that when I originally agreed to serve
19 as a part of your advisory process, I vowed that I would
20 remain true to a confidential pledge. Unfortunately,
21 last night I was unable to sleep. The reason I was unable
22 to sleep was because of the nightmare possibility of what
23 might transpire here today.

24 And in balance, I decided that my own personal
25 and professional integrity were more important than my vow

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1 of confidentiality. Publicly I want to share some of my
2 thought about Mr. D'Agostino and Mr. Regnery.

3 Mr. D'Agostino's comments are completely unfor-
4 givable racist statements, which not only offend me as an
5 African-American person but should offend all of you if
6 you're serious and true to our Democratic creed.

7 I also want to point out that during the hour
8 that we talked to him yesterday, I found nothing in his
9 comments or reactions to persuade me that he isn't a
10 racist. In fact, I walked away more persuaded than ever.

11 With regard to Mr. Regnery, he did call for
12 evolution of Legal Services, and I also found his responses
13 both unpersuasive and disingenuous. His attempts in the
14 interview were completely lacking from my perspective.

15 There are a number of essential qualities that
16 you have to have to have a president that can constructive-
17 ly and productively lead the community. I am aware of
18 some of those qualities because I have been a staff
19 attorney. I've been a Deputy Director, and I've worked
20 here at your Legal Services Corporation.

21 Those qualities include knowledge and understand-
22 ing of legal services as a programmatic concept, accom-
23 plished management ability, established creative leader-
24 ship capabilities, a background in Congressional relations
25 as well as Government relations, and a visionary

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1 programmatic concepts.

2 Now let just empathize that we do not have time
3 for anyone to learn how to do this job. There is no rush.
4 The Corporation has certainly done well, from my viewpoint,
5 over the last few months. And you have not chosen a
6 president.

7 Mr. Lyons has demonstrated unequivocally that he
8 has the capacity and the capability to lead this community
9 independent of whatever title you choose to give him or
10 not give him.

11 I urge you once again to reopen the process and
12 agree with Mary Ellen highly. None of the candidates are
13 worthy of taking the leadership reins of this community.

14 CHAIRMAN: Your time has expired, Mr. Smith.

15 MR. SMITH: Thank you.

16 (General Applause)

17 MR. PARAS: Mr. Chairman --

18 (General Applause)

19 MR. PARAS: Excuse me. Mr. Chairman, in view
20 of what we as a committee earlier and as a Board now know
21 will be contained in the report that's forthcoming and in
22 view of the comments, the nature of the comments that I'm
23 hearing, I would recommend to the Chair that you discon-
24 tinue public participation at this point until the report
25 is received. And it may have an effect upon it --

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1 MR. STUBBS: Please correct me if I am wrong,
2 but I understood the motion by Harold DeMoss was to give
3 all the speakers three minutes. Is that incorrect,
4 Harold?

5 MR. DeMOSS: I didn't think of the point that
6 George is raising. I --

7 MR. STUBBS: Did you have another motion you
8 wanted to make?

9 MR. DeMOSS: Well, I think George has made a
10 motion.

11 MR. PARAS: Well, I'll put it in the form of a
12 motion, that we resume our own order or business before
13 hearing from any other members of the public, at least
14 long enough to receive the report, because I think many
15 of the comments that I hear will be obviated by the
16 report --

17 CHAIRMAN: Is there a second to this motion?

18 MR. DeMOSS: I second it.

19 CHAIRMAN: Discussion?

20 (Pause)

21 Those in favor signify by saying aye.

22 (Chorus of ayes)

23 Opposed, the same sign.

24 MR. HOLLINGSWORTH: May I ask a question? It's
25 my understanding that no vote will be taken, however --

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1 CHAIRMAN: No. The motion is carried.

2 (Pause)

3 MR. DANA: My fellow Chairman and Members of
4 the Board, after meeting for ten months, the Presidential
5 Search Committee would like to present its report. The
6 report is divided into two parts:

7 First, it is the vote of the Committee, 8-2,
8 with the Chairman abstaining, to enter into negotiations
9 with Donald P. Board of Indiana for the Presidency of
10 the Corporation.

11 Secondly, we would like to name Clint Lyons to
12 be Acting President and Chief Executive Officer until Mr.
13 Board is able to come on board. The Board has not spoken
14 to either man concerning its recommendation.

15 CHAIRMAN: I would like to extend my thanks to
16 Harold Dana. The Chair requests a motion to adopt and
17 engage the report of the Search Committee.

18 MR. PARAS: I would move to approve, accept and
19 adopt the report of the Search and Screen Committee.

20 CHAIRMAN: Thank you, George. The motion is
21 approve, accept and adopt the report of the Chairman of
22 the Search and Screen Committee, the Special Committee,
23 and the Board shall engage in those negotiations with the
24 person so designated. Is that the gist of your motion?

25 MR. PARAS: That is my motion.

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MR. STUBBS: I second.

CHAIRMAN: There's a second.

(Pause)

Discussion by Board members, please.

MR. SLAUGHTER: I have some discussion. I would just like to say to this Board and to the members of the clients, that this vote was not unanimous. I did not vote, and I want it to go on record as saying I did not vote.

(General Applause)

CHAIRMAN: Board discussion on the motion?

(Pause)

George, you made the motion. Do you want to discuss your motion?

MR. PARAS: No. I have no reason to add any further comments to it. The report was very clear and concise. The topic was a very simple one. The report is in. And I recommend to this Board that it adopt the motion.

CHAIRMAN: Any further comments by the Members of the Board?

(Pause)

Very well. Hearing none, comments pursuant to 1610.3 from the members of the public, we are not now under the time limitation. So please be brief and give

1 me your comments.

2 Identify yourself.

3 MR. SCHACHT: Thank you, Mr. Chairman. My name
4 is Mark Schact. I am the Executive Director of the Farm-
5 worker Justice Fund, a nonprofit tax-exempt location,
6 located here in the District of Columbia, that provides
7 legal assistance to migrant and seasonal farmworkers at
8 no charge.

9 I'd like to bring to the Board's attention,
10 merely as a service, a series of facts which may be perti-
11 nent on the decision you're about to make. As I under-
12 stand it, you agreed in your report to nominate Mr.
13 Bogard who presently serves as General Counsel for
14 Stokely-Van Camp. I think the Board should be aware that
15 Stokely-VanCamp is presently a party in litigation pending
16 in the State of Illinois.

17 In two separate instances, migrant legal assist-
18 ance programs in the State of Illinois have challenged
19 labor policies and wage payment policies, other policies
20 related to the Farm Labor contracting operations of
21 Stokely-Van Camp.

22 And it seems to me that there is certainly the
23 appearance of conflict here, if not the serious substance
24 of actual conflict. Let me give you the citations of
25 those cases so that the Board can check them.

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The first case is de la Fuente v. Stokley-Van Camp. That's reported at 514 F. Supp. 68, which is a District Court opinion. It's a class action on behalf of more than a thousand farm workers brought in 1977. The case was decided in a bench trial. The Court found that Stokley and its crew leaders had engaged in numerous violations of FLRA, the Farm Labor Contractor Registration Act, which is 7 USC 2041 et seq. The Court awarded \$90 for each of the years from 1977 through 1979 to each member of the class who was affected by Stokley's undisclosed policy of docking asparagus piece-rate earnings and an additional \$100 to each of the one thousand class members for each year in 1977 to 1979 for Stokley's other violations of the Act.

Stokley is appealing this case, and I understand that in-house counsel are representing the company.

The other case is Costenada v. Stokley-Van Camp which was filed in 1980 in the Central District of Illinois. That number is 82-2086. In that case, a similar class action was filed against the company seeking damages for lost wages due to Stokley's continued practice of docking the piece wage rate of earnings of asparagus workers pursuant to an undisclosed policy.

In view of these facts, I think that the Board would do well to look more closely at the pending

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1 candidate.

2 CHAIRMAN: Thank you, three minutes. Next
3 speaker.

4 (General Applause)

5 CHAIRMAN: For the record, please identify your-
6 self.

7 MR. JOHNSON: My name is Dale Johnson. I'm from
8 New York City. Did you just hear what was said? And
9 this was after the search process was conducted with some
10 degree of secrecy with the inability for us to do, check
11 into an individual's credentials and backgrounds and to
12 aid you in your process of making sure that you have
13 selected the best possible person for the position. We
14 have spent a great deal of time during this search to
15 throw all of that down the tubes now and get someone who
16 may have serious problems with regard to his background
17 which further lead to a further waste of time.

18 Now we've heard a lot of comments, and they were
19 elevated at a very high plane. I'll try to speed up my
20 remarks to remain within the three-minute limit. But my
21 remarks primarily are directed to you, Mr. Harvey. And I
22 want the other Board members to hear them.

23 At the beginning of this meeting, I think we
24 saw a continuation of how you have wanted to conduct Board
25 meetings and run this corporation by cutting off debate,

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1 by cutting off input, and I wanted to congratulate -- and
2 I was heartened by the independence that was exercised at
3 the outset by some of the Board members.

4 Now that I hear about this eight to two vote, I
5 am again discouraged. However, I want to congratulate you
6 on your skill because obviously it wasn't the White House
7 alone who determined how many votes would be needed to
8 insure that this juggernaut would roll unimpeded. You
9 went and you placed what is obvious to everyone, strangers
10 to this corporation, the press, a very dedicated and
11 knowledgeable woman and replaced her with someone who
12 obviously doesn't have equal credentials.

13 If this was a private nonprofit-making corporation,
14 you would be laughed out of a board room, taking actions
15 like that.

16 (Pause)

17 I think that you have evidenced, Mr. Harvey, that
18 you are unqualified to serve as the Chairman of this
19 corporation if you are still considered to be a candidate,
20 that you have no respect for Board process. The mailgram
21 that you sent to me was the only contact that I've ever
22 had with you. You've usurped the Board's power without
23 even attempting to contact your senior staff here in
24 Washington to find out what they intended to do.

25 You expended a lot of money to do that, which was

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1 a waste of funds. You proposed a regulation limiting the
2 class action which is so restrictive that it's absurd. I
3 can't understand it. Why didn't you just come out and
4 say there would be no class actions instead of creating
5 that charade that you did in the paper?

6 I think that you all should be aware that if you
7 select a person like this to be your Chairman, that he
8 has restrained himself thus far, that this is the tip of
9 the iceberg. And I ask you to exercise an independent
10 judgment that you're here to do, you're all capable of
11 doing that. I wonder where Mr. Earl is? Here is a man
12 who came to our program, took the time and who has gone
13 around the Nation to find out what the true stories are
14 behind legal services as opposed to the alleged horror
15 that you have heard about and about the violations of
16 the rules and regulations that we have done.

17 Well I think, Mr. Harvey, you've done a pretty
18 good job of bending the rules yourself and setting a bad
19 example as to how to comply with rules.

20 (General Applause)

21 I ask you --

22 CHAIRMAN: Mr. Shocko, you're beyond your
23 three minutes.

24 MR. JOHNSON: It's Mr. Johnson. I don't know
25 who Mr. Shocko is. Maybe I have shocked you, but --

1 (General Laughter)

2 MR. JOHNSON: Please, listen to what the man
3 said. Give us an opportunity to find out more about your
4 proposed candidate, and we'll all be better off.

5 (General Applause)

6 CHAIRMAN: The Chair will entertain one more
7 comment at this time --

8 MR. RAY: Thank you.

9 CHAIRMAN: Identify yourself.

10 MR. RAY: My name is Denny Ray. I am the
11 Executive Director of Legal Services of North Carolina.
12 The report which was definitely brief by the Presidential
13 Search Committee was conspicuously lacking in any explana-
14 tion of why Donald Board was selected. What makes him
15 fit to lead this corporation? What is his knowledge
16 of legal services? What is his commitment to poor people?

17 Two members of the Advisory Committee, Mary Ellen
18 Hamilton and Jody Smith, have addressed you already today
19 to say they found none of the finalists to be qualified.
20 Two of those finalists, about whom you've already heard,
21 obviously were found to be offensive to the legal services
22 community.

23 And if that describes the level and tone of the
24 finalists, then it suggests that Donald Bogard himself is
25 not competent to lead this corporation. To what extent

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1 does he support zealous advocacy of the rights of poor
2 people? To what extent does he support using the law
3 creatively to change the conditions under which poor
4 people live?

5 To what extent does he support helping poor
6 people through our relationship with them to empower them-
7 selves so they are not dependent upon the public dole?
8 To what extent does he support a network of specialists
9 in poverty law who will advocate those interests? We have
10 heard none of this. And without that information, we
11 stand in judgment and find him lacking and find the
12 Committee lacking for choosing him.

13 (General Applause)

14 CHAIRMAN: The Chair will call for --

15 (General Applause)

16 CHAIRMAN: -- one more speaker. Yes, ma'am.

17 MS. LANIER: My name is Mary Lanier, and I'm a
18 client. I'm speaking for myself and other clients like
19 me across the Nation. And there is not one of you that is
20 an eligible client on that Board. You do not feel what
21 clients feel. You do not go through the problems that
22 clients have.

23 You know not what it is hardly to speak to a
24 client if you them, some of you. So how can you make
25 decisions for poor people? How can you live up to the

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1 part of the Constitution? I have rights as a part of the
2 Constitution. And the Board that structured it as it is
3 now, neither of you represent me as a client, and that
4 Board is not complete and illegal as long as there is not
5 clients on the Board.

6 And I'm asking you to get it together where the
7 Board should be equal to the point of serving clients, not
8 on the Board doing just what you all want to do in making
9 decisions the way you all want to make them because you're
10 not making them for poor people.

11 If there is not client representation on there
12 to give some of you all that have had a silver spoon in
13 your mouth and everything that you wanted, how can you
14 speak for poor people? How can you make decisions for
15 poor people if you do not have poor people clients repre-
16 sentation on the Board to give you some ideas about what
17 is happening?

18 If some of you all would even go out in the
19 community where the clients live and a feel -- if some of
20 you are really concerned, you would get out there and get
21 ready and get with clients and see what some of the things
22 are all about. How can you make decisions when you know
23 not what things are about? You hardly read about the
24 part of it, but yet and still you can make the decisions
25 and say what you want to say for the clients.

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1 I feel that the Constitution of the United
2 States, that people have rights. And I feel that if this
3 Board goes on its structure in the way that it's struc-
4 tured, it's unconstitutional as far as I'm concerned.

5 CHAIRMAN: Your three minutes have expired,
6 Ms. Mr. Lanier.

7 (General Applause)

8 MS. LANIER: And I'd just like to say --

9 (General Applause)

10 MS. LANIER: Give me a half a minute. Each of
11 you on the Board that -- do some soul searching within
12 yourself. And it's not one of you on there that I think
13 would find that you're within the rights of what the
14 supreme means.

15 I'm poor. I'm not poor by choice. I'm poor
16 because of some of the things that have went down through
17 this Country that have made us poor and we haven't been
18 able to rise above. And when there's people to represent
19 you, to try to help bring you up out of the gap and help
20 work together to make decisions for poor people, then you
21 join together as if -- they say when you try to lay a net
22 for someone, you might fall in that net yourself.

23 And I'm praying to God -- I tell you, I got out
24 of my sick bed to come here because I was discouraged of
25 what has gone down. And I will be disturbed until it's

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1 changed. And I will do whatever within my power that God
2 giveth me to do to help bring about that change for poor
3 people.

4 And as man, men and woman -- I only see one
5 woman on there -- which is unconstitutional.

6 (General Applause)

7 MS. LANIER: And if you can stand up and be
8 counted as men representing poor and do a little soul
9 searching asking am I for the rights of poor people? Am I
10 going to work towards poor people? Then I think you should
11 leave the Board because if you don't, if you stay on that
12 Board long enough, God going to move you off of there.

13 (General Applause)

14 MS. LANIER: You never know what tomorrow may
15 bring. You never know what the next minute may bring.
16 I'm asking you and I'm telling you, all of you're doing
17 a dangerous thing. And anytime that you take lives of
18 people in your hands, when you care more about your dog
19 than you do people, or about your cat more than you do
20 people, and then you can walk in church or call yourselves
21 saying prayers to God, but in your hearts you mean to do
22 this and mean to do that -- you know the devil is God too.

23 Now if you mean to do what's right, cool it.

24 (General Applause)

25 MS. LANIER: And from what I see now, it's

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1 little doubt unless some change -- of course, God can
2 change things in two seconds.

3 (General Applause)

4 CHAIRMAN: Is the Board ready to vote on the
5 motion.

6 MR. DANA: Mr. Chairman.

7 CHAIRMAN: Mr. Dana.

8 MR. DANA: I would move that the two questions
9 be divided and inverted in their order, such that we would
10 first call on Clint Lyons as the Acting President. And
11 then we would vote on Donald Bogard as the permanent
12 President.

13 (Pause)

14 MR. STUBBS: I would second the motion.

15 CHAIRMAN: Discussion on the motion? Does the
16 Board understand the motion?

17 (Pause)

18 It is to divide and invert the preceding motion
19 so that the -- and separate them -- wasn't that to
20 separate also?

21 (Pause)

22 So that the first motion is to vote on Clint
23 Lyons as the Acting President and then Donald Bogard as
24 the permanent President. Discussion on the motion to do
25 that.

1 Mr. Olsen.

2 MR. OLSEN: I would oppose the motion. I think
3 we ought to vote on the recommendation of the Committee
4 and act upon it as a coherent poll. And I think that --
5 I cannot understand why we would bring it up at this point.

6 CHAIRMAN: Clarence.

7 MR. MCKEE: Well, I tell you, there's a -- in
8 all these months and all the discussions and all the bomb-
9 shells, I guess the last thing that would help anything at
10 this moment is another bombshell about --

11 MS. HAMILTON: I can't hear you.

12 MR. MCKEE: I was stating, ma'am, that after
13 all the problems and concerns and frustrations of the last
14 twelve months and all the various surprises, probably the
15 last thing that the Legal Services community needs now is
16 another major issue or controversy, particularly when it
17 involves a search process which maybe you should have hired
18 some of the people who were speaking there in terms of
19 investigating people.

20 But I do not think at this time that it would
21 be -- given the information that we have, that has come
22 to light, I would proffer to just say as my good
23 colleague Mr. Olson did, charge on down the road with this.
24 I think at least that issue should be clearly looked at
25 and in consultation with people we need to.

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1 Now, I also don't want in any instance to kind
2 of give instant lynching justice to Mr. Bogard based upon
3 three or four statements which could be very, very valid,
4 and all of a sudden we go on that and say, goodbye. I
5 think that fair is fair, that I would proceed with part
6 one in terms of Mr. Lyons because the Corporation has to
7 run. He's done a fantastic job under great stress and
8 pressure.

9 Part two, in terms of Mr. Bogard, I don't know
10 what this is all about. The citation sounded very accur-
11 ate, but I know his phone is probably ringing now. And
12 I don't think we need another candidate or person having
13 to go through that or any of you out there having to worry
14 about making sure that this gets out, etcetera.

15 And I think that we should, at this point, try
16 to stop any more rumors and get to the basis of whatever
17 that issue is as soon as we can in fairness to Mr. Bogard.
18 And I would -- that's why I would oppose Bill's aspect and
19 proceed with part one of his motion and amend it by saying
20 take a look into Mr., this whole aspect of the situation
21 and report back to the Committee the results of that.

22 But no questions. Let's move on number one and
23 take a look at the situation that came to light today.

24 MR. DONATELLI: Question, Mr. Harvey.

25 CHAIRMAN: That's a nondiscussable motion. Those

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1 in favor of the motion as proposed, signify by saying aye.

2 (Chorus of ayes)

3 (Discussion as to content of motion)

4 CHAIRMAN: No. The motion is to cull the
5 question.

6 MR. STUBBS: To terminate debate.

7 CHAIRMAN: Those in favor of --

8 MR. STUBBS: Excuse me. On Mr. Dana's amendment --

9 CHAIRMAN: That's correct.

10 MR. STUBBS: -- which is to divide the question.

11 CHAIRMAN: Whis is to divide the question and
12 invert the consideration of it.

13 Those in favor of that motion, signify by saying
14 aye.

15 (Chorus of ayes)

16 CHAIRMAN: Opposed, the same sign.

17 (Pause)

18 The motion --

19 MR. STUBBS: That terminated debate, as I understand
20 it.

21 CHAIRMAN: That motion carried.

22 MR. STUBBS: Debate is terminated.

23 CHAIRMAN: Now those in favor of the motion,
24 signify by saying aye.

25 (Chorus of ayes)

1 CHAIRMAN: And opposed, by the same sign.

2 (Chorus of nos, ayes)

3 CHAIRMAN: The Chair calls for a division and a
4 show of hands. Those in favor of the motion, raise an
5 arm, please.

6 MS. SLAUGHTER: I think it's not clear to me
7 what you -- and I don't want to vote unless I'm very clear
8 on what you're voting on.

9 MR. DANA: We're voting on Mr. Dana's motion,
10 which is to separate the preceding motion, which was the
11 report of the Committee, and to take them in reverse
12 order, so that --

13 MR. DANA: To vote first on the interim. If my
14 motion passes, we would vote first on selection of Acting
15 President and second, on the recommendation on the perma-
16 nent President.

17 CHAIRMAN: That is correct. If this motion
18 passes, that is the next vote we'll take.

19 There was division on this. I'd like to see
20 a raising of hands, please.

21 (Pause)

22 Five. Those opposed, the same sign.

23 (Pause)

24 Five. The motion fails.

25 (Pause)

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1 Now, proceed to vote on motion originally offered
2 by Mr. Dana, the Chairman of the Selection Committee, which
3 is before you. Those in favor of the motion, signify by
4 saying aye.

5 (Chorus of ayes)

6 And opposed, the same sign.

7 (Aye)

8 CHAIRMAN: The motion is carried.

9 MR. PARAS: Pardon me, Mr. Chairman. Which
10 motion just carried?

11 (General Laughter)

12 CHAIRMAN: Thank you, George.

13 (General Laughter)

14 MR. PARAS: Have we now adopted the Committee
15 report?

16 CHAIRMAN: We have.

17 MR. PARAS: All right. All right. You said
18 Dana's motion. It was not Dana's motion.

19 CHAIRMAN: Well, it -- I beg your pardon. It
20 was Mr. Paras's motion to adopt the Committee report.

21 MR. PARAS: That's how I got confused.

22 CHAIRMAN: To adopt Mr. Dana's report.

23 We pass, move on to the next item on the agenda,
24 which is the election of the Board Chairman.

25 MR. STUBBS: Mr. Chairman?

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1 CHAIRMAN: Mr. Stubbs.

2 MR. STUBBS: I'd like to make a suggestion in
3 the form of a nomination that we nominate the Chairman to
4 continue as Chairman to serve until the first meeting
5 after confirmation.

6 (Pause)

7 CHAIRMAN: Does everyone understand that motion?

8 (Pause)

9 Bob, your motion was -- let's see -- nominate
10 the Chairman to continue as Chairman until after --

11 MR. STUBBS: First meeting after confirmation.

12 CHAIRMAN: First meeting after confirmation.

13 MR. STUBBS: After the first of the year. After
14 confirmation, whenever that may come.

15 VOICE: I second.

16 CHAIRMAN: The motion is seconded. Discussion
17 commencing on this side of the table and back up.

18 George Paras.

19 MR. PARAS: As I understand the motion, the
20 motion is to retain the current Chairman until the con-
21 firmation, the first meeting following the confirmation
22 or until expiration of our term, obviously, by implica-
23 tion, whichever comes first.

24 It would seem to me that that is a logical
25 motion, and I therefore support it.

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CHAIRMAN: I thank you. Any further comments from the Board?

(Pause)

The Chair wishes to recognize this gentleman for discussion at this time. Our time period is three minutes. State your name, please.

MR. BUTLER: I'm C.L. Butler, and I'm applying -- I'm a resident of the District of Columbia. But I'm gonna sum this thing up right quick. And I think that we all citizens know that the United States Constitution -- the United States Constitution lays down the general principle that we are the people. We are the ones that make our Government would be what it's like instead of a handful of dumb politicians.

And I think that we should as clients and as citizens should stand up. And when we see some dummies and want to push us down the drain, we say no, no. We not going to go a course that Ronald Reagan wants to go. We not going to go the course that Ronald Reagan is bidding this Board to go because we are poor people. We are born poor. We're going to die poor if sit back and let it be shoved down our throats.

If we don't take the first ten amendments of the United States Constitution, in knowing how our rights and demanding our rights, we others will be kicked. And so

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1 I'm willing to stand with every count and every alterna-
2 tive to achieve our rights. And that's what I got to
3 say, and I'm just saying we should not set back. We
4 should not be afraid to speak. I'm a blind man. But
5 yeah, Ronald Reagan done give me hell cause he done cut
6 me out my program.

7 (General Applause)

8 CHAIRMAN: Thank you very much.

9 Further comments before voting?

10 (Pause)

11 Those in favor of the motion, signify by saying
12 aye.

13 (Chorus of ayes)

14 MR. DEMOSS: What is the motion?

15 MR. BRAUDE: If I may, Mr. Chairman --

16 CHAIRMAN: Those opposed, the same sign?

17 MR. BRAUDE: Explain the motion --

18 (Pause)

19 Mr. Chairman, if I may?

20 CHAIRMAN: Just a moment, Mr. Braude. There is
21 a request from a Board member to explain the motion. Is
22 that your request, Harold?

23 MR. DeMOSS: Yes. I thought we had voted, but
24 maybe we didn't. I'm sorry.

25 CHAIRMAN: I don't think we have.

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1 MR. DeMOSS: Okay.

2 CHAIRMAN: The motion is -- the essence of Bob's
3 motion is to retain the present Chairman until the first
4 meeting of the Board after confirmation. Is that correct?

5 MR. STUBBS: Yes.

6 CHAIRMAN: All right. That's the motion.

7 VOICE: If I may, Mr. Chairman --

8 MR. BRANDE: Mr. Chairman. Discussion is closed,
9 We've moved the question already, so we should proceed to
10 a vote.

11 CHAIRMAN: You're correct. We have.

12 MR. STUBBS: Is it not appropriate for comments
13 from the floor, Mr. Chairman?

14 CHAIRMAN: No, not at this time. The question
15 was called for, and let's proceed to vote on this
16 motion.

17 (Pause)

18 MR. McKEE: It might be of some value, if I may,
19 if you can suspend whatever procedure --

20 MR. BRANDE: It's out of order.

21 CHAIRMAN: I think it's a good idea. Three
22 minutes worth.

23 MR. BRAUDE: I'm not commenting upon the nomina-
24 tion of you, Mr. Chairman, to continue as Chair. I have
25 just sat through something that I find absolutely beyond

1 belief, the selection of the President of the Corporation.

2 One, there was a serious question raised by a
3 number of very sincere people about composition of the
4 Board, to which not one single person on this Board spoke.
5 As legal people, as many of you are, I would assume that
6 an issue like that should at least engender a decent amount
7 of conversation.

8 Two, serious charges were leveled against your
9 choide as President of the Corporation. Mr. McKee very
10 correctly said, let's, without indicting the gentleman,
11 -- I know very little about him -- let's investigate these.

12 If a Legal Services lawyer was representing a
13 client and someone raised an issue about eligibility and
14 you heard and that Legal Services attorney was told the
15 client wasn't eligible and the Legal Services attorney
16 said, well, I here he's not eligible but I'll represent
17 him anyway, I guarantee you that the people on this Board
18 would be the first ones to say, it's outrageous there
19 wasn't an investigation. It's outrageous you didn't look
20 into the charges. And you clearly can't proceed.

21 Forget parliamentary procedure. It is incredible
22 to me that the most serious act that you have taken since
23 you have sat on this Board, the selection of a person to
24 lead this community was done one, under the conditions I
25 mentioned and two, while I think a significant number of

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1 people on the Board didn't even know what question they
2 were voting on. And they proceeded to vote anyway.

3 (General Applause)

4 I will finish by saying, I think you have an
5 opportunity to restore a little bit of credibility in
6 yourselves. Not as a parliamentarian am I speaking, not
7 as a lawyer, but as someone who believes deeply in the
8 Legal Services community.

9 I think you have no option but to rescind the
10 action you've just taken and do an intelligent investiga-
11 tion of the composition question and an intelligent inves-
12 tigation of what Mr. McKee raised which also engendered
13 absolutely no conversation.

14 I think that's supported probably by every
15 single person in the Legal Services community, and I would
16 ask that you support it as well.

17 (General Applause)

18 CHAIRMAN: Thank you, Mr. Braude.

19 MR. SIZEMORE: Mr. Chairman --

20 CHAIRMAN: The Chair rules that we're prepared
21 to vote on the pending motion, if you would, please. And
22 we'll return to you at the earliest opportunity.

23 MR. SIZEMORE: I understood that -- I understood
24 we were going to be allowed three minutes to speak on the
25 issues. And I'd like to speak on the issue of, frankly,

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1 of your continuation as Chairman of this Board.

2 CHAIRMAN: Well --

3 MR. DONATELLI: Mr. Chairman, the question of
4 this person is out of order.

5 CHAIRMAN: Just a moment. It is out of order,
6 but -- Members of the Board, do you want to entertain
7 this speaker or not?

8 MS. SLAUGHTER: I suggest we let him speak.

9 MR. OLSEN: If we do that, let's make this the
10 last speaker. We've culled the question. This is nothing
11 unusual. I think we've got to go to a vote, and let this
12 be the last speaker.

13 CHAIRMAN: Your name again, please?

14 MR. SIZEMORE: My name is John Sizemore. I'm
15 the Director of East Arkansas Legal Services. I wasn't
16 going to speak until this James Watt revisited routine we
17 just went through took place.

18 Given the arrogant, irresponsible manner in
19 which you selected the person to lead this Corporation
20 and now the effort to slide in a new enemy of this program
21 as Chairman of your Board, I cannot be silent.

22 No one doubts that Ronald Reagan pledged to
23 abolish us when he was elected President. Thank God, he
24 hasn't received -- he hasn't succeeded in that. No one
25 doubts that the Chairman of this Board has absolutely no

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1 empathy for the poor folks that we're trying to represent
2 and is part of the continuing Reagan program to abolish us.

3 I urge members of this Board to please seriously
4 think about this before turning this man as the Chairman
5 of your body, particularly given what you've just done in
6 terms of naming a President. It is outrageous.

7 (General Applause)

8 CHAIRMAN: Very well. The question's been
9 called for to proceed to vote on the motion pending.

10 Those in favor, signify by saying aye.

11 (Chorus of ayes)

12 And opposed, the same sign.

13 MR. DANA: No.

14 CHAIRMAN: I hear a voice of dissent. The
15 motion is carried.

16 The next item on the agenda, members of the
17 Board, is the approval of a by-law establishing the Vice
18 Chairman of the Board. That by-law item is before you at
19 page 128 in your book.

20 (Off the record)

21 MR. RAY: While you're doing that, you're not
22 even going to deign to tell us who Mr. Bogard is? You're
23 not going to give us any information about him? That is
24 the height of arrogance, gentlemen. And I exclude you,
25 Ms. Slaughter, from that.

1 Serious questions are raised. You could at
2 least have the decency to respond with some factual infor-
3 mation. All we know about him is that he's a lawyer with
4 Stokley-Van Camp Corporation. He may be an expert in
5 pork-and-beans law. What the hell does that have to do
6 with poverty law?

7 Why don't you at least act as if you can react
8 to what we're saying?

9 (General Applause)

10 CHAIRMAN: Well, members of the Board, you have
11 before you the by-law revision on page 128.

12 (Pause)

13 MS. SLAUGHTER: Mr Chairman, I think that they
14 deserve to know about Mr. Bogard inasmuch as we have over-
15 looked some of the things that they have brought before
16 us. I think that they have the right to observe, to hear
17 about Mr. Bogard. At this point.

18 (General Applause)

19 CHAIRMAN: Well, does the Board want to entertain
20 this discussion at this time?

21 (Pause)

22 Is there a consensus for doing this?

23 MR. OLSEN: Mr. Chairman, perhaps you could just
24 make a brief statement yourself, and then we can proceed
25 to consider the matter that is on the floor.

1 CHAIRMAN: Well, I'd be happy to do it. I
2 think I'll call on the Chairman of the Search Committee,
3 Howard Dana, to make a statement concerning Mr. Bogard.

4 (Pause)

5 MS. HAMILTON: Mr. Chairman? May I ask a ques-
6 tion?

7 (Pause)

8 Since the Chairman of the Search Committee is
9 over there, I would like to know, will the Board in
10 their deliberation of giving the people some information
11 on Mr. Bogard, will it be sure and give the results of
12 the President's Search Advisory Committee Report too
13 because I think that the people really need to know that
14 Mr. Bogard only got one vote and it was from Indiana from
15 the lawyer who told you all he only voted for him because
16 he knew him. And that was the only reason for voting for
17 him.

18 And I don't know why I was selected for this
19 Committee, and really right now I'm so outraged until I
20 really -- my heart is beating out away because of the
21 fact that that man didn't get no consideration. And this
22 Board that wasted my time, got me out of my sick bed to
23 come back here to Washington. I'm very outraged.

24 I might end up in the hospital, but I'm still
25 outraged. And I think that you should give -- and if you

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1 don't have it, I have it here for you -- the way everybody
2 on the Committee voted.

3 CHAIRMAN: Howard, you want to discuss the veto
4 of Mr. Bogard?

5 (Pause)

6 MR. DANA: Mr. Chairman, Donald P. Bogard pre-
7 sently is a Director of the Litigation Section of Stokley-
8 Van Camp, Inc. of Indianapolis, Indiana. Prior to that,
9 he was in the office of the Attorney General of the State
10 of Indiana. Prior to that, he was the Executive Assistant
11 Attorney General, Chief of the Federal Litigation section
12 of the State of Indiana.

13 (Pause)

14 Prior to that, he was the Executive Assistant,
15 Attorney General, Chief, Federal Litigation Section in the
16 State of Indiana. Prior to that, he was Assistant Attorney
17 General, Chief, Federal Litigation Section in the State of
18 Indiana.

19 Prior to that, he was the Deputy Attorney
20 General, Chief, Federal Litigation Section, in the State
21 of Indiana. Prior to that, he was the Deputy Attorney
22 General in the State of Indiana.

23 (Pause)

24 (General Laughter)

25 He -- and I think that it would be -- that is

1 the -- that is what his resume reveals. I think that it
2 would be helpful if the Chairman of the Board who can
3 really fill in better than I, his background and his
4 professional competence and credentials for this job.

5 Bill?

6 CHAIRMAN: I would be happy to do that. I'll
7 make a few comments and give this to Mr. Lyons and request
8 that copies of this resume be run and distributed and
9 made available to all persons in the audience by hopefully
10 tomorrow when we meet in the morning.

11 (Pause)

12 I think that -- yeah, I think they both are the
13 same.

14 (Pause)

15 Mr. Bogard impressed the Board very much in his
16 presentation. I should say the Committee, both the
17 Committee -- and I trust, the Advisory Committee -- he
18 was highly reputed and highly spoken about by members of
19 the Committee.

20 And his hour discussion or hour and a half pre-
21 sentation, it was disclosed that he was born and raised
22 in the State of Indiana where he attended law school,
23 where he attended a public high school and attended public
24 college.

25 He worked his way through college and through

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1 law school. He is married and has two children. He for
2 several years was, as Howard just said, an attorney in the
3 Office of the Attorney General of that State. He is
4 presently on the staff of Stokley-Van Camp.

5 He is -- I've forgotten his age -- about 40 years
6 old, I think. And that's a brief summary of this indi-
7 vidual. He's had vast experience in litigation, in trial
8 work and in appellate work in all states and all Federal
9 courts, including the Supreme Court of the United States.

10 He has substantial personal experience during
11 the course of his life with persons who qualify clearly as
12 clients and eligible clients under the statute and the
13 act pursuant to which we function. And I'll make these
14 other data available to you in due course.

15 We have before us, members of the Board, the
16 approval of a by-law which is on page 128.

17 (Transcript continued on the next page.)
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MS. HOLDEN: Excuse me, Mr. Chairman --

CHAIRMAN: We need a motion to accept the by-law as published.

MR. DONATELLI: So moved.

MR. DELLOS: Second.

CHAIRMAN: All right. The motion is made and seconded to accept the by-laws as published. Discussion on this motion?

(Pause)

MR. SATTERFIELD: Mr. Chairman, was there any comment received as a result of publication of the by-law provisions?

CHAIRMAN: Clint, do you know the answer to that question?

MR. LYONS: No. There was none.

CHAIRMAN: There was no public comment received.

(Pause)

Any Board discussion of this motion?

(Pause)

MR. OLSEN: Move the question.

CHAIRMAN: Question has been called for, seconded. Those in favor, signify by saying aye.

(Chorus of ayes)

Those opposed, the same sign.

(Pause)

1 The motion is passed, which brings us thus to
2 the election of the Vice Chairman of the Board.

3 MR. DANA: Mr. Chairman?

4 CHAIRMAN: Yes, Howard.

5 MR. DANA: It gives me a great deal of pleasure
6 to nominate Clarence McKee as Vice Chairman of this Board.
7 None of us have worked harder in understanding this program
8 this last year.

9 Clarence is, except when he's travelling on Legal
10 Services business, is present here in Washington, would be
11 a great help to the Chairman, I know, and to the President
12 of the Corporation, to have his counsel and advice present
13 in close proximity which the Chairman is not available.

14 And therefore, I would encourage you to elect
15 Clarence McKee to First Vice President of this Corporation.

16 MR. STUBBS: I'd like to second --

17 CHAIRMAN: Vice Chairman.

18 MR. STUBBS: I'd like to second the nomination,
19 Mr. Chairman.

20 CHAIRMAN: All right.

21 (Pause)

22 You have comments to make, Bob?

23 MR. STUBBS: I think that having worked with Mr.
24 McKee for almost a year now on the same committee, I would
25 second wholeheartedly Mr. Dana's comments as to his

1 interest and his inquiry into the operations of this
2 organization, his interest and his commitment to the
3 objectives that Congress has set forth.

4 I find that his presence in Washington would be
5 of great advantage to us. And I urge my colleagues to
6 vote in his favor.

7 CHAIRMAN: Any further comments or discussion?

8 (Pause)

9 Hearing none, is the Board prepared to vote on
10 the nomination of Clarence McKee as the Board's First
11 Vice Chairman?

12 Those in -- Madame speaker, do you wish to
13 address this motion?

14 MS. HOLDEN: Mr. Chairman, I wanted to address
15 what was said about the qualifications of Mr. Donald
16 Bogard, if I may at this time.

17 CHAIRMAN: You give me a few minutes, and we'll
18 return to the subject. I'd be happy to.

19 The motion on the floor is the selection of
20 Clarence McKee as the Board's First Vice Chairman. Those
21 in favor of the motion, signify by saying aye.

22 (Chorus of ayes)

23 And opposed, the same sign?

24 (Pause)

25 The motion is carried. Clarence, I congratulate

1 you on your Vice Chairmanship.

2 This brings us -- yes, Harold DeMoss.

3 MR. DeMOSS: I have heard and I am somewhat
4 bothered by the questions that have been raised from the
5 audience as to the composition of this Board and eligi-
6 bility matters. It is my impression -- and that's all it
7 is -- from my knowledge of the Act and the by-laws that
8 the question of eligibility is not a matter for this
9 Board to decide. But I am not sure in that, and I would
10 like to ask the Chairman to request the General Counsel
11 to, as quickly as she can, to get in a position to advise
12 us as to whether or not there is any responsibility on
13 this Board to question the eligibility or credentials of
14 anyone that is appointed to this Board by the President.

15 As I say, it is my impression that we do not
16 have that power. And consequently, if that be the case,
17 I think many of you in the audience need to be aware of
18 that. And I would ask if the Chair would request the
19 President and the staff to take a quick look at that and
20 advise us as a result of that at some later time during
21 these proceedings.

22 CHAIRMAN: Well, the Chair would be happy to
23 receive your request, Harold, and relay it to Clint and
24 to the General Counsel.

25 VOICE: Will it be answered today?

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1 CHAIRMAN: I'd like to recognize this lady
2 right here. What is your name, please?

3 MS. HOLDEN: My name is Charlotte Holden. I'm
4 a lawyer with the Neighborhood Legal Services Program here
5 in Washington, D.C. I've been with that program for the
6 past eight years and currently am a managing attorney of
7 our local field offices there.

8 As part of my job responsibilities during the
9 past three years, I've been on our Staff Hiring Committee
10 at Neighborhood Legal Services. And one of my jobs is to
11 interview prospective Legal Services lawyers who have
12 applied for jobs at Legal Services.

13 When I was listening to the qualifications of
14 Mr. Donald Bogard for the position as President of the
15 Legal Services Corporation, I know that he would never be
16 hired as a Legal Services lawyer in Neighborhood Legal
17 Services in Washington, D.C.

18 (General Laughter)

19 The criteria that we look for in hiring someone,
20 our commitment, the concept of justice for poor people,
21 Legal Services background and experience, experience in
22 the poverty community and legal experience generally. I
23 submit that it is particularly outrageous for someone
24 who doesn't even meet the day-to-day criteria that our
25 lawyers have to meet to be chosen to lead this organization.

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1 I would like to know from the Board what the
2 criteria are for a person who's going to be selected as
3 the President of this Corporation? Exactly what are you
4 looking for? Without that, I don't see how meaningful
5 choice can be made.

6 Thank you.

7 (General Applause)

8 CHAIRMAN: Thank you, Ms. Holden.

9 Now we are within about five minutes of our
10 recess for this afternoon. I'd like to devote the rest
11 of this time to comments from the public. And -- your
12 name, please?

13 MR. WATTS: My name is Rodney Watts. I'm the
14 Executive Director of Wayne County Neighborhood Legal
15 Services in Detroit. I guess I don't have the distinction
16 of being a member of the press, and it would appear that
17 we're at the point in the agenda where some of the more
18 substantive issues are going to be addressed. That's why
19 I came to Washington.

20 And quite frankly, I'd like to have a copy of
21 that document that contains page 8 and 128 and 83 and 49
22 and 89, etcetera. Where do I get one?

23 CHAIRMAN: Well, I thought, Mr. Watts, that the
24 Board Book -- that's it.

25 MR. LYONS: Okay, we'll make some more available

1 We did have some here.

2 CHAIRMAN: They've all been taken.

3 MR. LYONS: They've all been taken. We will copy
4 some more and have them available tomorrow.

5 MR. WATTS: Thank you.

6 MR. STUBBS: Mr. Chairman?

7 CHAIRMAN: Yes. Bob?

8 MR. STUBBS: I missed something a minute ago
9 when you were talking about our schedule?

10 CHAIRMAN: Right. I said that we were within
11 about five minutes of recess for the afternoon at 5 o'clock
12 and --

13 MR. STUBBS: Excuse me. Will we return this
14 evening?

15 (Pause)

16 No. There's no plan to return this evening.

17 MR. DeMOSS: Mr. Chairman, let me say that I am
18 aware that Mr. Stubbs cannot be available tomorrow. I
19 have an obligation which will necessitate me leaving here
20 at noon tomorrow. And if it makes no objection to the
21 rest of the Board members, I would like for us to see us
22 get as much done as we can now.

23 I realize that none of us have had lunch, but
24 that's probably good for me. And I, rather than adhering
25 to an arbitrary 5 o'clock recess time, I'd like to see us

1 proceed. We may need a break, but I would like to see us
2 proceed to use as much of the time as we are here. And
3 when those, all of us may not be able to be here for all
4 of tomorrow.

5 CHAIRMAN: That's quite agreeable with me.

6 MS. HAMILTON: Mr. Chairman --

7 CHAIRMAN: Bob, is that agreeable with you?

8 MR. STUBBS: That would suit me fine, Mr.
9 Chairman.

10 CHAIRMAN: Shall we take up item 7, committee
11 reports and the like?

12 (Pause)

13 Okay. Well, let's take -- I might say to the
14 members of the public, what Harold just said is correct.
15 We've been going since early morning. And I think it's
16 time for about a five-minute recess. And we'll return
17 until -- when -- 6 o'clock? A 15-minute recess and
18 return until, return at 5:15. How about outer time limit?
19 6:15?

20 MR. STUBBS: Well I think we could get maybe
21 to another appropriate break point in the agenda.

22 CHAIRMAN: Okay. That's fine.

23 MS. HAMILTON: Mr. Chairman?

24 CHAIRMAN: We're going to take a 15-minute
25 recess, and we'll be right back.

1 (Whereupon, a recess was taken.)

2 (Back on the record)

3 CHAIRMAN: We move to item 7 on the Agenda.

4 First, we have a request from Mr. DeMoss for a ruling from
5 the General Counsel, Mary Wieseeman. Are you aware of the
6 request from the Chairman and from Board member DeMoss?

7 MS. WIESEMAN: Yes, I am, Mr. Chairman.

8 CHAIRMAN: And are you prepared to respond to
9 his request?

10 MS. WIESEMAN: Yes, I am, Mr. Chairman.

11 CHAIRMAN: Would you please proceed?

12 MS. WIESEMAN: Under the Act the Board is
13 appointed by the President and subject to confirmation by
14 the Senate. It is part of the opinion of the General
15 Counsel that the Board itself has no authority to judge
16 the qualifications of its members. In recent case of
17 McCalpin v. Dana, while not precisely on point, the Court
18 did hold that the political process first must seize the
19 eligibility of the particular Board members and then at
20 point, the Court reserve for itself after that process
21 the power to review that at a later point.

22 In other words, part of the McCalpin decision
23 was dismissed without prejudice, but the Court clearly
24 held, I believe, the initial decision with respect to
25 eligibilities of first, of the President in appointing,

1 and then, of the Senate in the confirmation process.

2 CHAIRMAN: All right, Harold, does that answer
3 your question?

4 MR. DeMOSS: Thank you. I hope --

5 MS. WIESEMAN: It's hard for a lawyer to talk in
6 everyday common language, but the Act particularly provides
7 that the Corporation, under Section 1004(a), "... the
8 Corporation shall have a Board of Directors, eleven voting
9 members, appointed by the President with the advise and
10 consent of the Senate," and it is our opinion that that
11 process is the process of selection that the Board itself
12 has no responsibility or authority to review the eligi-
13 bility of other Board members.

14 MS. HAMILTON: This is the Act, which the Presi-
15 dent went by. This is the Regulations, which the Board
16 went by.

17 MS. WIESEMAN: This is actually Section 1004(a)
18 of the Act, which provides for the President to appoint
19 Board members and for them to be subject to confirmation
20 by the Senate. The question of the eligibilities within
21 Section 1004(a) is, in my opinion, for the President and
22 the Senate to make that determination, not for the Board
23 of Directors to make the determination.

24 MR. PANDYA: Mr. Chairman, would the Board allow
25 me to speak for a short time?

1 CHAIRMAN: No, not at this time. We're going to
2 proceed with Item 7 unless the Board wants to hear you
3 speak at this time.

4 MR. PANDYA: It's a point, I think, that speci-
5 fically links up with the General Council's opinion as
6 to the legal constitution of the Board and also addresses
7 some concerns about the regulations that the Board will
8 be dealing with. Whatever the legal merit --

9 CHAIRMAN: Just a moment, please. Your name --

10 MR. PANDYA: My name is Amit Pandya. I'm a
11 former employee of the Legal Services program who was
12 laid off because of funding difficulties. I am presently
13 unemployed. I'm an attorney.

14 CHAIRMAN: One moment. This gentleman wants to
15 speak concerning this issue.

16 MR. PANDYA: Well, if you'll bear with me, I
17 think the connection will be quite clear.

18 CHAIRMAN: What is the Board's pleasure with
19 this issue?

20 MS. SLAUGHTER: Proceed.

21 CHAIRMAN: Proceed.

22 MR. PANDYA: Thank you very much indeed. It
23 seems to me that regardless of the legal merits that are
24 addressed by the General Counsel's opinion as to your
25 legal constitution, that there is something else that is

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1 at play here, too, which is the extent to which you exer-
2 cise genuine authority. I mean, you certainly have the
3 authority of your office, but it seems to me that there
4 is a moral authority that you will exercise if it is
5 perceived by the community that is served by you that you
6 indeed make your decisions according to regular processes.

7 Now, what I've heard in all the public comments
8 that have been made is that there is severe doubt on pre-
9 cisely that score. And, the way that that -- I think this
10 relates to whatever regulations you learned is very simply
11 this: If you don't have the moral authority, if we look
12 at you and think, "these guys became in some kind of
13 irregular fashion, then when you ask, well it won't be
14 me, but people like me, when you ask us to live by certain
15 restrictions which would be part of these regulations,
16 then there will be a fundamental disrespect for your
17 authority. And I think you will find a kind of anarchy,
18 basically, a disjuncture that we don't need.

19 I think it is understood generally that your
20 Agenda for the Corporation and ours are somewhat distinct.
21 But at the same time, it seems to me that at precisely
22 this juncture we need to behave in such a way that shows
23 we are sensitive to each others concerns. This, I have
24 not seen.

25 And the summary way in which you have made

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1 important decisions for the Corporation and yet not really
2 responded to the concerns that were raised. Specifically,
3 if I may illustrate, I felt that your account of Mr.
4 Bogard's qualifications really was irrelevant to the
5 question of what his qualifications are to lead the
6 Legal Services Corporation.

7 Thank you.

8 CHAIRMAN: Thank you. We're to proceed with
9 item 7, Bob.

10 MR. STUBBS: Mr. Chairman, I should preface the
11 consideration of the Regulation issue with these remarks,
12 if I may. In an indirect way, as far back as May with the
13 meeting of the Committee in Atlanta, we were concerned
14 with the possible imposition of restrictions upon the
15 Congress as those restrictions had been set out in 3480.

16 And at that time, because of the possibility
17 of time constraints included in such restrictions, we
18 asked General Counsel and the officers of the Corporation
19 to prepare some preliminary studies to insure that the
20 Corporation could comply with the Congress should there
21 be such restrictions imposed by law.

22 The immediate direction then given to counsel
23 was to develop a response to the Moorehead Amendment rela-
24 tive to legislative advocacy and related activities which
25 had largely been left aside by the staff. The staff

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1 prepared for our meeting in Minneapolis a rather compre-
2 hensive analysis both of the lobbying provisions of the
3 Corporation as well as of the Moorehead Amendment and pro-
4 posed certain regulations to the Committee.

5 It was our judgment at the time that they did
6 not fully reflect what we perceived to be the restraints
7 that should be imposed. Accordingly, we have requested
8 counsel to prepare regulations for further consideration
9 by the Committee embracing not merely the Moorehead
10 Amendment but also the broader consideration of legislative
11 advocacy. This was done at the meeting in Alberquerque
12 in which the Committee adopted the view towards submitting
13 to the Board a regulation relative to legislative advocacy
14 which in our judgment complied with the law and also
15 incorporated the terms of the Moorehead Amendment.

16 As you may recall, that was the time when the
17 Congress passed a continuing and set a number of additional
18 restrictions, one of which related to lobbying.

19 CHAIRMAN: We ask General Counsel and Mr. Lyons
20 to proceed apace to develop the response that the Board
21 might consider as to each of those restrictions in the
22 continuing resolution that were not in our judgment self-
23 executed.

24 At the same time, we suggested that the priority
25 item was the question of refunding which it seemed to us

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1 was foremost in the minds of many members of the Board as
2 well as of the staff.

3 We also asked for such additions as were neces-
4 sary by the staff to accommodate the changes made in legis-
5 lative advocacy in the continuing resolution and to look
6 with great care at the other aspects of the continuing
7 resolution's restrictions which might require additional
8 proposals.

9 In response to those requests by the Committee,
10 General Counsel and staff have prepared several proposals
11 relative to those areas of the continuing resolution in
12 particular, which seem to us to require new regulations.

13 In the meantime, both Mr. Lyons and I communi-
14 cated with you and other members of the Board, suggesting
15 the necessity that we act almost as an informal committee
16 of the whole, if necessary, to get as much work done as
17 possible on these restrictions in order that they might be
18 considered at an early time.

19 In this respect, you and Mr. Olson have provided
20 us with drafts, both of the refunding and also of the
21 matter relating to class actions. What I would like to
22 ask General Counsel to do now, Mr. Chairman, is to summar-
23 ize in particular the proposal relative to refunding pre-
24 pared by the Counsel's office and then if I may, ask Mr.
25 Olson to summarize the provisions in the draft which you

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1 and he have co-authored, a draft incidentally which is not
2 remarkable or is different although there are some differ-
3 ences in the time restraints imposed are different.

4 Now with that introduction -- I apologize for
5 wordiness -- I'd like to ask Ms. Wieseman to go ahead.

6 CHAIRMAN: Appreciate it very much, Bob. Mary,
7 before you comment, I'd like to clear up in my own mind
8 if there's a distinction between, of course, grantees and
9 I think they're on a calendar year base and corporations
10 on a fiscal October 1 basis. So these restrictions are
11 now in effect. Is that correct insofar as the Corporation
12 is concerned?

13 MS. WIESEMAN: Insofar as the Corporation use of
14 funds is concerned, yes. But the grantees do not receive
15 the 1983 funds which were appropriated under the continuing
16 resolution until the grants for, on January 1, 1983 go
17 into effect.

18 But the Corporation began its fiscal year
19 October 1st with the 1983 funds.

20 CHAIRMAN: Okay. So those restrictions are not
21 applicable as far as we are concerned, but as to grantees
22 on January 1st. Is that --

23 MS. WIESEMAN: That's correct.

24 CHAIRMAN: Okay.

25 MR. STUBBS: I might say too, Mr. Chairman, that

1 those of us on the Regulations Committee discussed with
2 Mr. Lyons and with Ms. Wieseman the possibility that we
3 might not be able to comply with the general procedure in
4 terms of time required properly to disseminate comment and
5 all this other stuff with respect to proposed regulations.

6 And our suggestion was that in the event we did
7 run short of time, rather than ignore the intent of the
8 Congress as was spelled out, we would recommend that the
9 grant procedure include limitations on the use of those
10 grants to comply fully with the restrictions imposed by
11 the Congress.

12 I don't know that we are yet into those time
13 constraints. But that was an alternative consideration.

14 CHAIRMAN: All right. Thank you. Mary?

15 MS. WIESEMAN: Thank you. With respect to the
16 last statement of Mr. Stubbs, it is the opinion of our
17 office that the, with regard to refunding procedures, that
18 the Corporation's required under the Act, Section 1008(e)
19 to publish the proposed regulations for comment.

20 The Act does not provide the specific time
21 period for which comments, they must be published for
22 comment. However, in the past, almost uniformly, that
23 comment period was at least 30 days. We would recommend a
24 30-day comment period in this instance because of the
25 importance of these regulations.

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1 After the comment period, there would be some
2 period of time required to respond to the comments. That
3 could be shortened because we don't have much time. But we
4 do need some time to respond to comments which we are sure
5 to receive many.

6 And then the Act provides that no regulation
7 may become effective until 30 days after publication. So
8 the time periods are clearly set out, we believe. And
9 we're bound by them by the statute and that so within that
10 time frame for issuing regulations, that would be the
11 initial part of my presentation on the denial or the
12 hearings for refunding.

13 I believe as a practical matter the Board could
14 adopt for and instruct the staff to publish proposed
15 regulations on the refunding. And we would suggest that
16 that publication be for a 30-day comment period.

17 With regard to the content of the refunding
18 regulations, what we attempted to do is two things. One
19 was, respond to the continuing resolution by implementing
20 new regulations, provide for a more flexible, quicker and
21 more informal hearing procedure.

22 We believe the continuing resolution clearly
23 requires the Corporation to set up some hearing procedure
24 on the question of denial refunding. That is the intent
25 of our regulations.

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1 We also did not try to deal with it this time
2 for time constraints and other reasons the issues of the
3 terminations and suspensions. We have -- in your Board
4 Book we have -- Section 1606 is set out. We have made the
5 changes to delete the denial of refunding language. And
6 there is one errata sheet which I believe you all have,
7 page 70 and 70A. One section was dropped in the typing.

8 But the only thing we did with those regulations
9 on terminations or suspensions was to take out the
10 references to refunding and to change the independent
11 hearing examiner definition.

12 With regard to the refunding hearing procedures,
13 we believe that there is a requirement of the hearing
14 procedure that there have to be grounds for denial of
15 refund. We utilized the same grounds that are in our
16 current regulations for two reasons. One, because
17 Congress when it said you must set up procedures for
18 denial of refunding, we believe, was aware that we did
19 have regulations defining what a denial of refunding was.

20 Therefore, there was a history which Congress is
21 saying, you must set up hearing procedures to implement
22 a denial of refunding.

23 The second reason is that the current regula-
24 tions on the grounds give the Board great flexibility in
25 determining what is a ground for denial of refunding,

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1 particularly the first reason, that is, that it may well
2 implement a rule or regulation policy of the Board.

3 The difference between Mr. Olson's and Mr.
4 Harvey's draft and ours is, we left it as broadly open
5 for the Board to make the funding decisions and make the
6 policy decisions to give us guidance in terms of what
7 should be the process or the standard for denial of
8 refunding. And it's contained within that first ground.
9 And we believe that this gives the Board all the flexi-
10 bility that it needs to guide the staff in determining
11 what will be the grounds for denial of refunding.

12 Further, on those grounds, we also added that
13 those grounds will not be subject to review in any hearing
14 procedure except insofar as there is an allegations that
15 they do not comply with the statutes and regulations or
16 we didn't go through the correct procedure in adopting
17 the policies.

18 So we believe the Board has great flexibility
19 within the grounds for denial of refunding, to set the
20 policy, to set the funding criteria that the Board wants.

21 Now the hearing procedure itself is, we have an
22 informal conference in our procedures where the other
23 draft does not. The reason for that is that we attempt,
24 before we have to appoint a presiding officer, to settle
25 the matter.

1 I understand -- and I haven't been involved in
2 it -- but in the last year, two cases for denial of refund-
3 ing were settled at an informal conference without the
4 necessity of appointment a Hearing Officer. So that it
5 shortened the process. We think anytime you can shorten
6 the process, that's the reason we have it in. We think
7 it's helpful.

8 If that doesn't work, we go on to the next step,
9 the Presiding Officer of the hearing is appointed. Now
10 the Presiding Officer, because of the continuing resolu-
11 tion, in our opinion does not have to be totally inde-
12 pendent of the Corporation. He must, of course, or she
13 must, of course, be impartial and must not be involved in
14 the decision-making process itself. But we think the
15 continuing resolution gives the Corporation the authority
16 to appoint as the Presiding Officer an employee of the
17 Corporation.

18 The employee -- the Presiding Officer in our
19 set of regulations is clearly circumscribed, we believe,
20 in his authority. Under our current regulations, the
21 Presiding Officer has great discretion to receive evidence
22 to admit parties who want to intervene, to take evidence.
23 It's a very wide open hearing under our current procedures.
24 And the Presiding Officer is independent of the Corpora-
25 tion and can issue whatever rules during the course of the

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1 hearing that he or she desires.

2 The purpose of changing that was to circumscribe
3 the Presiding Officer's authority. We have two procedures,
4 an informal hearing procedure. And what we -- what the
5 regulations were meant to do is have a record. We want to
6 know, what are the grounds for denial of refunding? What
7 is the reason that the grantee thinks they're entitled to
8 refunding?

9 We wanted to have the briefs of each side sub-
10 mitted to the Presiding Officer. We want the issues
11 narrowed. We want all of this done before there's any
12 oral presentations by anyone. I think anybody who's been
13 in litigation knows that if you can narrow the issues, if
14 you have your exhibits, you have everything on the table,
15 the hearing itself can be much shorter. So that's the
16 reason for the summary procedure.

17 We also provide that there will be no evidentiary
18 hearing unless there's a material question of fact. And
19 the Presiding Officer must make that determination if
20 either side says there's no need for evidence. Again,
21 that could come into play, we think, in many instances
22 where it's funding policy that is being implemented.
23 There's no need for a factual presentation.

24 The same idea is a motion for summary judgment.
25 We don't think we need evidence in each case. We don't

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1 think the Hearing Officer should be able to take evidence
2 in every case. That's why we have the two-step procedure.
3 However, if there is a material question of fact, obviously
4 the only way that you can resolve it is through evidence.
5 So that's the more formal evidentiary proceeding.

6 Hopefully, most of the cases will go under the
7 informal procedure and will be decided on the record that
8 each party is required to cooperate in making, and it will
9 be a clear -- the issues will be presented clearly -- and
10 the decision will not take a great deal of time. An oral
11 presentation would be more in the nature of an argument
12 as opposed to evidentiary.

13 We also don't have any provisions in our proposal
14 for intervention, and that again is to streamline the
15 procedure, not to permit parties who are not directly
16 involved in the process to intervene.

17 We do not have, and perhaps should have, the
18 provision in our regulations or proposed regulations,
19 that Mr. Harvey and Mr. Olson have concerning the, attack-
20 ing the Presiding Officer, his eligibility to be the
21 Presiding Officer. That is in our current regulations.
22 We think it's inherent in the process that the Presiding
23 Officer, one, can object to the Presiding Officer and it
24 would have to be decided on the record and a decision
25 would have to be made. We didn't spell that out in our

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1 regulations. Maybe we should. It's in our current
2 regulations. So we think that is inherent in the process.

3 And then the burden of proof, we have changed
4 from our current regulations. We have the burden -- cur-
5 rently under our regulations, it's on the Corporation in
6 every instance. We have switched the burden of proof
7 to make it on the recipient. We're talking about a denial
8 of refunding. We're not talking about a termination for
9 cause.

10 We've switched the -- the burden of proof,
11 preponderance of the evidence, we think also that that
12 coupled with the idea that the rules, policies and regu-
13 lations of the Corporation are not subject to de novo
14 review in the hearing process, will make the hearing
15 procedure a flexible and a one that can be handled in a
16 reasonable period of time, we hope for 90 days. The
17 guidelines we have that the decisions would be made in 90
18 days, within 90 days. Hopefully it can be done much
19 quicker than that. But that is the outside that we would
20 hope that the decisions can be made.

21 And, of course, then there's the procedure for
22 the recommended decision and the review by the President
23 of the Corporation, which are pretty much the same as the
24 current regulations.

25 (Pause)

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1 CHAIRMAN: Mary, thank you. I want to lead off
 2 with a question concerning the language of this statute
 3 since the conferees are agreed that none of the funds
 4 available under this joint resolution for Legal Services
 5 Corporation shall be available for a full adversarial
 6 hearing in advance of denial of an application for refund-
 7 ing.

8 How do you interpret full adversarial hearing
 9 in reference to each of these proposals?

10 MS. WIESEMAN: Uh-huh.

11 CHAIRMAN: I have a feeling about this, that
 12 maybe each of them has more than what the Congress wants
 13 here.

14 MS. WIESEMAN: Well, I think that with all due
 15 respect, ours has less of the full adversarial hearing
 16 than the other proposal has. I think when they're talking
 17 about the full adversarial hearing, they're talking about
 18 the regulations that we currently have that provide that
 19 there will be an evidentiary hearing in every case, that
 20 the Presiding Officer has great authority to allow inter-
 21 vention to, and to permit wide-ranging list of issues to
 22 be decided.

23 Our current regulations do provide for a very
 24 wide-ranging evidentiary hearing. What we tried to -- we
 25 believe that most hearings can be summary in nature, can

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1 be on the record. A hearing obviously requires some sub-
2 mission to an officer and a decision based on that, I
3 think. And we believe that some kind of oral presentation
4 is helpful in any kind of decision like that but that the
5 norm should be unless there is a material question of
6 fact, you don't take evidence. You don't cross-examine
7 witnesses. You don't need to go through that.

8 So -- but if there is a material question of
9 fact, I don't see how you can have a decision without
10 presenting some evidence and making a decision on that
11 material question of fact. And that's why that is in
12 there.

13 Hopefully, in many cases, most cases, that will
14 not be necessary. But I think we need to have the author-
15 ity to do that or the hearing should be a sham if there's
16 a material question of fact we can't make a decision on.

17 CHAIRMAN: But, let's see, you said that --
18 your proposal contains a lesser form of hearing than the
19 one which, the alternative proposal by Mr. Olson and
20 myself?

21 MS. WIESEMAN: I believe it does because our
22 proposal is two-step and says that you will not take
23 evidence unless you make the determination there's a
24 material question of fact.

25 As I read the other proposal, that the Presiding

1 Officer has the authority to take evidence, to allow the
2 parties to examine and cross-examine witnesses, to present
3 evidence, and it does not provide for a pre-hearing tight-
4 ening or focusing on issues that the proposal we made did
5 so that it seems to me that without that pre-hearing focus-
6 ing on the issues that you would more likely have to have
7 an evidentiary hearing than under the proposal that we
8 made.

9 CHAIRMAN: I see. Okay. Bill?

10 MR. OLSEN: I guess this is the point that Bob
11 was alluding to --

12 CHAIRMAN: Yes.

13 MR. OLSEN: -- or go forward with. I don't mean
14 to crank you, Bill. We've worked on this together, but
15 let me go ahead with a brief description. And then if
16 you have something you want to add, that's fine.

17 I think that Mary was right, that there are
18 many, many more similarities than there are differences
19 between these documents. What I want to do is go back to
20 what we're trying to accomplish and set up the groundwork
21 and explain what I think that this approach is, that we've
22 recommended, is superior and indeed essential to follow
23 in order to be in compliance with the restrictions of the
24 continuing resolution.

25 It's very important. I think I'm just going to

1 read again the sentence that the conference report included
 2 with respect to that. It said, "The conferees are agreed
 3 that none of the funds available under this joint resolu-
 4 tion for the Legal Services Corporation shall be available
 5 for a full adversarial hearing in advance of the denial of
 6 any application for refunding. The conferees are also
 7 agreed that prior to the denial of any application for
 8 refunding, the corporation shall insure that the applicant
 9 has been given a reasonable notice and an opportunity for
 10 a timely and fair hearing pursuant to regulations promul-
 11 gated by the Corporation."

12 And this is in Mary Wiseman, Mary's memo in the
 13 Board Book. When you take a look at that memo, you com-
 14 pare, that language in the conference report and you also
 15 take a look at what Mary had been saying -- and I think
 16 that's very valid -- with respect to when these restric-
 17 tions will go into effect, I think it's clear that since
 18 the Corporation began using Fiscal '83 money on October 1,
 19 then the regulations were in effect at this time. It's
 20 not something that we can postpone until some time in the
 21 future.

22 If it has to do with the restriction on a
 23 recipient that's not receiving any of the funds until
 24 calendar 1983, then the argument can clearly be made, I
 25 think, that it's an arguable case that none of these

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1 restrictions would apply to them until they start drying
2 down Fiscal '83 money.

3 But with respect to the Corporation core staff,
4 the people who would be paying the bills with respect to
5 these adversarial hearings, in my opinion the statute now
6 prohibits us from the use of the funds for this purpose,
7 as of today, in fact, as of the first day of the fiscal
8 year.

9 Now if that's true, what we did was to go back
10 to the legal precedents of the Corporation in an effort to
11 find out how to implement that. And strangely enough, a
12 very similar situation arose before. There was a reference
13 in the memo that we sent out which was an opinion letter
14 of Alice Daniels of November 1, 1976, which was a compari-
15 son between the method of promulgating regulations to
16 implement Section 1011 and the method of promulgating
17 rules, regulations and guidelines under the statute under
18 1008(e).

19 And we find from a review of that memo -- and
20 I'll the relevant section -- that the procedures that
21 we're talking about here with respect to a hearing prior to
22 denial of refunding are not the kind of procedures that
23 have to go out for notice and comment under Section 1008
24 (e) of the Act.

25 In fact, Alice Daniels' memo, which is right on

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1 point on this, opinion of the General Counsel of the Legal
2 Services Corporation did some time ago on November 1, 1976
3 says: These provisions show that in the Act, the terms
4 rules, regulations and guidelines refer to directives
5 issued by the Corporation to govern the conduct of recipi-
6 ents.

7 Section 1008(e) of the Act requires that the
8 Corporation to afford notice and a reasonable opportunity
9 to comment prior to issuing rules, regulations and guide-
10 lines and requires their publication 30 days before the
11 effective date.

12 In contrast, Section 1011 -- and this is the
13 procedures for denial of refunding that we're dealing
14 with -- requires the Corporation to prescribe procedures
15 to insure grantees that financial assistance will not be
16 terminated and an application for refunding will not be
17 denied.

18 The procedures referred to in Section 1011 are
19 not intended to govern the conduct of recipients. Failure
20 to abide by them cannot result in the loss of funding
21 because they serve an entirely different purpose than the
22 "rules, regulations, guidelines." They are not subject
23 to the notice and publication requirements of 1008(e).

24 The same issue was raised in an opinion letter
25 by Alice Daniels again on May 15, 1978, which was just

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1 located. And it again says that memoranda and other
2 internal documents intended solely to govern the conduct of
3 LSC personnel are not within Section 1008(e) and need not
4 be published.

5 Now, if this is true, we have the authority here
6 today -- and I believe we do on these two prior rulings of
7 the General Counsel -- that we have the authority to pro-
8 ceed to adopt the procedures by which the staff would
9 handle these administrative internal procedures of govern-
10 ing the implementation of this particular rider in the
11 continuing resolution.

12 And I think we have the obligation to adopt
13 such a procedure here today. Now as a backup in essence
14 and because of the fact that there may be some people who
15 disagree with Alice Daniels' memoranda as the proper way
16 to proceed and there's -- whenever there are lawyers, it's
17 always impossible to know exactly the way it's going to
18 come down.

19 What I think we ought to do today -- and I'd
20 like to propose we do today, Mr. Chairman -- is to adopt
21 this memorandum that we circulated as a procedure to be
22 in effect now, in essence, to govern the hearings that
23 would occur as of now.

24 I think this is the first Board meeting since
25 the continuing resolution went into effect. And we have

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1 the obligation to proceed and implement the restriction
2 at the earliest possible time. So -- and this would be
3 the earliest possible vehicle that we have for the promul-
4 gation of this proposal in accordance with Alice Daniels'
5 memo.

6 Now, let me say that I think that -- as I said,
7 because lawyers can always disagree -- what we might want
8 to do and what they did at the time, is to also go out
9 with a request for comment and publish it in the Federal
10 Register and propose it as a proposed temporary regulation
11 in that case. And I think that makes sense because I
12 think we can get the benefit of the wisdom of people who
13 would comment on such a regulation. We can put it out for
14 notice and comment if indeed at some point down the road
15 a Judge says you should have gone out for notice and
16 comment. Well, we've begun the process. And indeed the
17 ~~process~~ process is under way, and we'll come back at a December
18 Board meeting and evaluate every comment that will be
19 received in response to this Federal Register notice
20 and make whatever changes in the procedures that would
21 have to be made.

22 So in my opinion, on the procedural issue, as to
23 how we proceed, we ought to use the vehicle that's before
24 us to implement as quickly as possible the will of the
25 Congress, but simultaneously as a back-up in case some

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1 judge at a later time would disagree, to put it out for
2 notice and comment in the Federal Register and consider it
3 again at our next Board meeting.

4 Now, I think I ought to end that subject before
5 we discuss the substantive differences before these reso-
6 lutions if anyone would like to discuss that issue, Mr.
7 Chairman. It's your privilege.

8 CHAIRMAN: I take it -- is this a motion?

9 MR. OLSEN: Actually I think that --

10 CHAIRMAN: What do you want to do?

11 MR. OLSEN: I'd like to move that we adopt as
12 a procedure the regulation, Section 1625, as set out in
13 the green sheets here and simultaneously adopt as a pro-
14 posed regulation the same document and put it out for
15 notice and comment in the Federal Register at the earliest
16 possible time, hopefully, Monday, or whenever the Federal
17 Register is published.

18 And then in that way, we would have implemented
19 the regulation, or the restriction, under the Act and
20 simultaneously covered ourselves with respect to the legal
21 arguments that Alice Daniels' memos, which I think we can
22 rely on at this point, and might not be in accordance with
23 what some judge down the road might decide.

24 So I would move that a two-part procedure be
25 followed.

1 MR. HOLLINGSWORTH: Mr. Chairman --

2 CHAIRMAN: Second on this?

3 MR. LYONS: Is it permissible to indicate to the
4 Board, we do have a General Counsel here, and the staff
5 has read this particular recommendation on this. And it
6 is our opinion that indeed, such a procedure is not con-
7 sistent with our requirements. And it is not clearly the
8 intent of Congress.

9 Congress clearly indicated that the applicant
10 has to be given a reasonable notice and opportunity for a
11 timely staff hearing pursuant to regulations promulgated
12 by the Corporation.

13 Now it may be that Bill's position is distinguish-
14 able, as he references it to the Alice Daniels memo, and
15 the Corporation being at a difference on them, that's a
16 different circumstance. But I really think that it would
17 be important before the Board gets into a substantive
18 discussion of them, to have a clear response from the
19 General Counsel as to the legality and her opinion and the
20 intent of Congress.

21 MR. OLSON: Mr. Chairman, I would just ask that
22 the motion be, that you asked if there is a second, that
23 the motion -- because I'd like to at least get it on the
24 floor for discussion purposes before we begin to do our
25 lawyering which all --

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1 CHAIRMAN: I did ask if there -- was there a
2 second?

3 MR. MCKFE: I'll second.

4 CHAIRMAN: Okay. I'd like to call -- I don't
5 way to bypass you again, but I'd like to call Mary to
6 respond to Clint's inquiry, please.

7 MS. WIESEMAN: I do have for the Board a copy
8 of the memorandum of Alice Daniel which Mr. Olson has
9 just talked about and our comments on that which I will
10 pass around so the Board can see that.

11 It is our position in that memorandum that the
12 initial 1976 memorandum of Alice Daniel is not applicable
13 here, first, because the Congress said specifically in our
14 continuing resolution that we would implement this by
15 regulation.

16 They obviously knew that under Section 1008(e)
17 of our act, that we can't issue regulations without going
18 through the process that they require us to go through to
19 issue regulations. And that's the Congressional intent
20 in both of those areas.

21 Two, following the Alice Daniel memo of '76,
22 there was a change in 1011, and that change was to require
23 the independent hearing officer. When it was changed in
24 1977, the Congress added in 1011, you must implement the
25 independent hearing examiner provision by regulation.

1 They changed the statute.

2 So therefore, giving the Corporation the duty
3 to implement that provision by regulation, we think it
4 clearly envisions that the entire 1011 as it is in effect
5 was to be implemented by regulation.

6 And thirdly, the later opinion of Alice Daniel
7 says that any corporate policy or decision, no matter what
8 you call it, if it's going to affect grantees, if it's
9 going to affect third parties and make them conform in
10 some manner to the process that you have set up, you have
11 to go through the regulation, the publication and the
12 comment process.

13 And that's exactly what these refunding regula-
14 tions are doing. We are changing the rules. We are
15 changing the standards. And we're changing the time
16 frame. We're affecting the grantees, and I don't see how
17 we can say that these regulations are just internal pro-
18 cess. They are in fact very profoundly affecting the
19 grantees in their rights.

20 So I think that it is our opinion that the,
21 they have to be implemented under Section 1008(e) of the
22 Act.

23 CHAIRMAN: Okay. Thank you very much.

24 MS. WIESEMAN: And if anybody would be interest-
25 ed in --

1 (Pause)

2 CHAIRMAN: Bill?

3 MR. OLSON: Just a very brief response. I think
4 all of us hate to be our lawyer, but in this case I'll make
5 an exception since we disagree on the, on the law.

6 I would first of all say that the continuing
7 resolution does use the word regulation, as Mary points
8 out. But that to interpret the use of that word so as to
9 come under the scope of Section 100(e) would be over --
10 we'd be reading something into the statute that isn't
11 there.

12 In other words, my opinion is that it's quite
13 clear from all the legislative history in relying on this
14 continuing resolution that the Congress wanted this
15 implemented with the beginning of Fiscal '83 funds, now.
16 And for this old procedure to be on the books and in
17 effect in my opinion, for one day longer than it has to
18 be, would be wrong. It's not what the Congress wanted.

19 It's so to interpret -- in other words, to
20 interpret the continuing regulation in a way to paralyze
21 us into an action until sometime around the effective date,
22 around or after the first of the year, would be to inter-
23 pret the continuing resolution in a way so as to give it
24 zero effect whatsoever.

25 And I think that's clearly not for 1983 grants

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1 and contracts. And that's not what really what the
2 Congress wanted, how they wanted us to interpret it, in
3 my opinion.

4 Secondly, -- and I don't know about the inde-
5 pendent hearing examiner issue -- but I would submit the
6 same arguments apply. We cannot interpret this so as to
7 eviscerate it.

8 And the third point would be with respect to
9 governing the conduct. Well that's exactly what Alice
10 Daniel's memo of November 1, 1976 was about. It said,
11 this kind of regulation does not govern the conduct of
12 recipients. It's an internal procedure. It governs us.
13 And therefore, this goes into effect. The same thing is
14 true with respect to parallel provisions in the Adminis-
15 trative Procedures Act, as she pointed out in another memo.
16 And I think that with all due respect -- and I will read
17 your memo very quickly -- but with all due respect, I
18 substantially disagree. And I would hate for us to act in
19 a way that would not implement what the Congress, I think,
20 expected us to implement.

21 CHAIRMAN: Okay, further discussion. We'll
22 start here with Mr. Dana.

23 MR. DANA: I've done enough talking.

24 MR. STUBBS: Mr. Chairman?

25 CHAIRMAN: You don't want recognition?

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1 MR. DANA: No.

2 CHAIRMAN: Bob?

3 MR. STUBBS: If I may, let me ask Mr. Olson a
4 couple of questions on his construction of it.

5 If I understood you initially, you made a dis-
6 tinction between procedures and regulations, as to those
7 things which affect the Corporation's staff or the
8 Corporation itself and those which affected other persons.
9 Am I correct in that?

10 MR. OLSEN: Yeah, that -- well, that's not my
11 distinction. It's Alice Daniel's.

12 MR. STUBBS: But it's the one that you accepted?

13 MR. OLSEN: Yes.

14 MR. STUBBS: Well, insofar as what your proposal
15 would do as to Corporation officers, I think it's con-
16 sistent with the opinion to which you're making reference.
17 But insofar as it undertakes to regulate or to impact upon
18 interests of other persons, I think it's outside the scope
19 of what she said.

20 It seems to me that that is a matter affecting
21 third persons. And they are very definitely matters
22 which affect them in the proposals, in the power of a
23 Presiding Officer or the actions of third parties them-
24 selves in the proceedings we have to the extent they are
25 different from existing regulations.

1 And I think those can be separated from items
2 which do relate specifically, for example, to the Presi-
3 dent, which do relate specifically to functions of the
4 staff in terms of notice, in terms of preparation of
5 materials and things such as that.

6 It seems to me that those could be immediately
7 implemented, as you suggest, by procedure. But when it
8 goes to affecting rights which are already present under
9 existing regulations, that the Congress specification
10 means that we give notice of it.

11 And now -- I further think that you are talking
12 about money that becomes available at the first of the
13 year, aren't you?

14 MR. OLSEN: Well, I'm talking about money that
15 is now being committed by the Corporation as of October
16 1st, since we're on a fiscal year and since our fiscal
17 year ~~just~~ began on October 1st.

18 MR. STUBBS: Are we committing money under that
19 appropriation to anything other than our own staff opera-
20 tions and ongoing corporate functions?

21 MR. OLSEN: Well that's exactly what we are
22 spending fiscal '83 money on, the internal staff func-
23 tions.

24 MR. STUBBS: That's right. And to the extent
25 that it affects staff operations, I don't have any quarrel

1 with that. But my suggestion is that until we go out
2 with outside money or money outside of the immediate needs
3 of the Corporation, there's really no need for rushing
4 this thing, and my understanding is there won't be any
5 money going out until the first of the year or thereabouts
6 anyway.

7 MR. OLSEN: Well, but the problem is with the
8 procedure outlined by the memorandum in the Board Book
9 would today have us adopt for notice and comment a regula-
10 tion. We would come back some 30 days after the item had
11 appeared in the Federal Register as a Board to evaluate
12 the comments and revise the regulation and put it into
13 effect. And then it would go into effect some 30 days
14 after our Board met, in other words, after the first of
15 the year.

16 And what I'm saying is that I think to interpret
17 the continuing resolution so as to require us not to put
18 this thing into effect until after next year's funds are
19 gone, would be inconsistent with what the Congress had
20 expected.

21 MR. STUBBS: But these procedures are intended
22 to govern recipients.

23 MR. OLSEN: They are exactly comparable with
24 the kinds of regulations that -- they govern the conduct
25 of people in the field only incidentally and to the same

1 extent that the regulations implementing 1011 did, that
2 Alice Daniel was referring to in this memo. They are of
3 identical -- they are comparable. They're on all fours.

4 MR. STUBBS: I -- in agreeing with you on it

5 --

6 CHAIRMAN: Clint, I'm going to ride you just a
7 second here.

8 MR. LYONS: It seems to me that we have to
9 separate out the issues here. The threshold question and
10 how do you legally implement the will of Congress?
11 Congress did not intend to proceed in a manner that was
12 inconsistent with the procedures in its mandate in setting
13 up how we were to implement its will in these restric-
14 tions.

15 But it seems to me that there is no more funda-
16 mental matter affecting grantees than, you know, their
17 ~~refunding~~ refunding. That's what is at the bottom of this whole
18 regulation and this whole restriction. One is the money
19 that is sent out, and two, the flexibility that this Board
20 would have in regulating the conduct of grantees in the
21 expenditure of that money.

22 I assume that the reason you would implement
23 your flexibility and deny refunding is that the conduct of
24 the grantees in the past year was not suitable under the
25 Act, the regulations, policies, or guidelines of the

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1 Corporation.

2 So I cannot imagine a provision that is more
3 fundamental with respect to the impact on grantees than
4 this.

5 Secondly, we, over the past month, were in
6 negotiations at the Hill on this particular restriction.
7 And the reports I got back were that the Congress was
8 very clear in its intent that we issue regulations to
9 implement these restrictions.

10 It is inconceivable to me that where we have
11 been on the Hill, entered into the negotiations, gotten
12 a clear intent, that we would rely on a memorandum by the
13 General Counsel some four or five years ago and not go
14 directly to. We have Dennis here. He's been on the
15 Hill discussing this matter. And what he has reported
16 back to me that legally it is no question that the
17 Congress intended for us to implement these restrictions,
18 or this particular restriction by regulation.

19 And secondly, on a political level, it would be
20 a serious, serious mistake, in terms of the Congress, if
21 we did not do so. They could change the regulations in
22 a couple of months. And, you know, it may be that we
23 want, if we're talking about the intent of Congress, maybe
24 we might want to talk to Dennis who is on the Hill regard-
25 ing that.

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1 MR. OLSON: Mr. Chairman, I think that's a wise
2 choice. I think that it's clear that Clint disagrees with
3 the Alice Daniel memo finding that the procedures intended
4 and not intended to govern the conduct of recipients. He
5 says in essence that there is no other regulation that
6 could more govern their conduct.

7 Well, it's a legal position with which I dis-
8 agree. I don't think it's well founded based on the prior
9 opinions of General Counsel. And I don't see anything in
10 the continuing resolution and in all the legislative
11 history which we can, provided, that would indicate to
12 me a, that the Congress did not want us to go forward.

13 I would ask this one question. Clint, if there
14 was a denial of refunding tomorrow, would you -- and the
15 recipient chose to file a, procedures pursuant to the
16 current regulations in effect -- do you believe there
17 should be a full-blown adversarial hearing at this time?
18 Post October 1?

19 MR. LYONS: It seems to me, Bill, that the first
20 question, that there is no question that the particular
21 requirement of Congress pertaining to this restriction,
22 applies to how the Corporation will conduct its hearings.

23 But on a second level, given that, the Congress
24 intends for us -- you have to take the Act, the restrict-
25 ive riders, in their totality -- and the threshold question

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1 is whether or not we legally implement the will of
2 Congress.

3 And it seems to me that our job right now is to
4 address those issues, and if there were -- it's a totally
5 theoretical question. We have no such procedures pending
6 right now. But it seems to me that our job is to see
7 at the threshold level how we can, one, to legally imple-
8 ment the will of Congress, and two, to make sure that
9 absent that, in implementing, that we do not, that we
10 work out ways in which we are not in clear violation.
11 We are not in violation of the statute.

12 MR. OLSEN: I think we should first state the
13 question again because I think it's an important question
14 which the answer was not clear to me as to what your
15 position was. If there was a denial of refunding today,
16 would it be your view that a full adversarial hearing set
17 forth in the regulations that are now part of the CFR
18 would be conducted?

19 MR. LYONS: Let me be very precise.

20 (Pause)

21 It is my view that until we can legally imple-
22 ment the will of Congress, i.e., through regulation, that
23 we cannot, we cannot proceed in the manner that is con-
24 tained in this amendment, this change.

25 The threshold issue is, throughout our history

1 of law is that the substance of the law must be implement-
2 ed, but you must proceed legally in doing so. And it seems
3 to me the legal requirements put in by components of our
4 Act and by the express language of Congress in the
5 Conference Manager's Report, it clearly says, the appli-
6 cant has been given reasonable notice and an opportunity
7 for timely failure, pursuant to regulations promulgated
8 by the Corporation. You tell me how to get around that
9 internal conflict.

10 MR. OLSEN: Mr. Chairman, I would respond --
11 and it's the last time -- and we will let somebody else
12 talk. But I would just say that what you're really saying
13 Clint, I think, is that until 70 days go by, under
14 Section 1008(e) of the Act which was in effect before this
15 continuing resolution passed, that you don't, that you
16 believe you must do exactly what the conferees prohibited.
17 In other words, we must spend the money on a full adver-
18 sarial hearing in advance of the denial of any application
19 for refunding, despite the fact the conferees said none
20 of the funds shall be used in that way.

21 In other words, we have to do -- in order to
22 comply with Section 1008(e), we have to violate the terms
23 of the Conference Report.

24 MR. LYONS: Bill, you're setting an extreme
25 option. We do not have to -- we can apply that particular

1 provision by waiting to -- we can deny -- we can extend a
2 grant. We don't have to give a program refunding at a
3 given date.

4 We can extend a grant and then address the ques-
5 tion, the final question of refunding when the regulations
6 are implemented. There are a number of options in dealing
7 with this question aside from presenting the extreme --
8 you know, are you saying to me the Congress always pre-
9 sents you with neat little packages where -- they presented
10 us which is an apparent conflict. But it's only apparent.
11 It's not legal because at the threshold, we have got to
12 proceed in implementing a substantive body of law.

13 Now I'm not that lawyer in that I've been a
14 manager over the last few years. So I'm going to let my
15 General Counsel do that. But even being limited in my
16 legal career over the last couple of years, it seems
17 fairly clear to me.

18 MR. OLSEN: If you're not the best lawyer, I
19 wouldn't want to go up against anybody better --

20 (General Laughter)

21 -- because you're doing a fine job. But I just
22 fundamentally disagree that this is a reasonable interpre-
23 tation of what the Congress ordered us to do.

24 MR. LYONS: Well I will agree that we have a
25 disagreement.

1 (Pause)

2 CHAIRMAN: Harold.

3 MR. DeMOSS: Mr Chairman, it seems to me like
4 -- and I recognize the legal and interpretative skill of
5 Bill Olson, and he has certainly been in it far more than
6 I have. But it seems to me that on this issue, we ought
7 to come down on the side of doing our best to comply with
8 the Congress's requirement and intent and at the same
9 time of making sure that the grantees and contractors are
10 afforded a form of opportunity to be heard and to make
11 their decisions.

12 Now what I want to ask is, are we -- do we have
13 to do everything between now and January the 1st -- I mean,
14 do we have to publish these proposed regulations, have
15 them out for 30 days and get them back, adopt final regu-
16 lations, and then have no applicable regulations for
17 another 30 days, in which event we are running beyond, in
18 my judgment, the 60 days that remain between now and the
19 end of the year?

20 Do we have an alternative? And what I -- I want
21 to be sure is that if we go through this publication pro-
22 cedure, I'm inclined to go with Counsel and the staff on
23 that recommendation -- but I want to know that if we go
24 that way, can we so condition any grants that this Board
25 may finally instruct or authorize the President to issue

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1 so that it is made clear that these restrictive provisions
2 are applicable thereto and that the, that we would then be
3 in a position to address the question which is the heart
4 of everything here of what changes can we make in funding
5 level and be operating under our new procedures and not
6 under anything that has been in existence in the past.

7 (Pause)

8 MR. STUBBS: Can I ask a footnote to that? Is
9 there not an emergency rule procedure that might be
10 expedited or used to expedite --

11 MS. WIESEMAN: We're not under the APA which
12 has the emergency provision in it, the Administrative
13 Procedure Act. We are not under the Administrative
14 Procedure Act. Our statute is 1008(e) which says that we
15 must publish and this cannot be effective for 30 days.

16 If we were under the Administrative Procedure
17 Act, ~~they~~ do have emergency provisions. But we don't
18 have that.

19 CHAIRMAN: Okay.

20 MR. LYONS: Can I give --

21 MR. DeMOSS: Would you answer my question?

22 MS. WIESEMAN: I think it is a programmatic
23 question which Clint wanted to answer, but I think there
24 are ways -- okay.

25 MR. LYONS: I think we are talking about a

1 denial of refunding. If there is a point in time when
2 the issues of refunding are addressed, it seems to me that
3 it is a simple matter to say to our grantees that the
4 matter of general boilerplate grant conditions or whatever
5 that in order to be in compliance with the restriction,
6 that the issue of, finally, of refunding will not be
7 addressed until January 30th, something like that, at
8 which time, from the first of November forward, publica-
9 tion, time for comment, subsequent action by the Board
10 with the 30-day implementation and effective date, which
11 I calculated earlier to be around January 15th or 16th, we
12 would have solved this very practical problem that
13 Congress gave us of giving us a restriction in a continu-
14 ing resolution that is in place for two and a half months
15 and telling us, you know, implement it but follow the
16 law procedurally in doing so.

17 So, if you understand what I'm saying is that
18 the issue applies to the denial of refunding, and the
19 monies we spend, we are prohibited from spending money
20 to provide full adversarial hearings prior to a determina-
21 tion of denial of refunding.

22 So the threshold issue is denial of refunding.
23 And what I am suggesting to you is that we could have,
24 indicate as a condition of our grant that the issues of,
25 found issues of refunding or denial of refunding, will not

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1 take place on January 1st. They will take place on
2 January 30th. And we send the money out with that amount
3 which will give us flexibility then to say, when we
4 address those questions, these restrictions do apply to
5 corporations not written under those restrictions.

6 CHAIRMAN: The question I'd like to ask, Clint,
7 to see if I'm clear -- I'm not certain I am at this hour --
8 but to see if I'm clear on what you've said. Does it
9 follow from what you've said, then, you're recommending
10 that the grants be allocated to January 1 be granted or
11 made on a monthly basis until this becomes effective?
12 Is that the gift of what you said?

13 MR. LYONS: No. It is not a matter of -- it's
14 a term -- what I'm simply suggesting is that we have a
15 general grant condition that allows us to proceed legally
16 in implementing the restrictions. And that general grant
17 ~~condition~~ would simply say to our grantee regarding that
18 we are in effect giving you this money, but with respect
19 to the issue of denial of refunding, we will not address
20 that issue to provide any hearings in that regard until
21 the continuing resolution restrictions are in effect.

22 CHAIRMAN: So all of the money would be in
23 hand -- under the grant?

24 MR. LYONS: No, the money -- only -- the money
25 goes out on a monthly basis. It seems to me that general

1 grant conditions protect the Corporation if at the time
2 the Corporation gets its regulations in place, it wants to
3 address the issue of final refunding of a grant, then it
4 could do so under procedures set out in the restrictions
5 of the continuing resolution.

6 CHAIRMAN: You are an excellent lawyer, and I
7 now understand.

8 Clarence is next.

9 MR. OLSEN: No, no, no. The other point is that
10 -- I would submit that there is a problem with that that
11 hasn't been, wasn't addressed by what Clint said. If our
12 Board meets in December, early December, and at that time
13 normally the budget is before the Corporation, and budget
14 decisions are made and decisions on refunding are made,
15 and under the current regulation, under the regulation
16 Mary wrote and under the regulation we wrote the decision
17 not to refund is a denial of refunding, the decision, not
18 to stop the cessation of the funds, but the decision.

19 So in other words, if there were an early
20 December Board meeting and at that time this regulation
21 were not in effect and this procedure were not in effect,
22 a decision was made to deny refunding to any organization
23 in the world, in this recipient at all, then under -- I
24 believe what you said, your interpretation of the statute
25 was that the full-blown adversarial hearings would go into

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1 effect. The only way we could finesse the issue would be
2 to not make any decisions on denials of refunding in
3 December.

4 MR. LYONS: Bill, simply what we will be doing
5 was deferring -- to defer a final decision on the issue
6 of final refunding until such time as our regulations
7 permit. And in that way, there would not be any dis-
8 crepancy. We would be into compliance. And at the time
9 that regulations were in place, then we could address the
10 issue of final refunding of grantees.

11 And it seems to me that conceptually --

12 MR. OLSEN: Because you said the money is issued
13 on a month-to-mon-to-month basis --

14 MR. LYONS: I mean we send out a check every --
15 we don't give people a lump sum amount of money for the
16 whole year. We send out the checks, and they accept the
17 checks on the condition, on the condition that we must be
18 in compliance of the law. We don't want to disrupt
19 service. So a final decision with respect to refunding
20 would not be there until the regulations are in place.
21 But we're giving you money and that's the understanding,
22 that you accept the money and we are just deferring that
23 threshold question that I'm talking about in making a
24 final decision on the issue of refunding.

25 VOICE: I was awfully surprised that many

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1 recipients refused funds under this condition.

2 CHAIRMAN: Well --

3 VOICE: Now you're back on the question --

4 CHAIRMAN: Frank --

5 MR. DONATELLI: I just wanted to ask a practical
6 question, if I can, to Mr. Lyons. Do you have any figures
7 as to how many grants are up between, how many grants are
8 due for refunding between today and January 15th?

9 MR. LYONS: They are all in January 1st.

10 (Pause)

11 MS. SLAUGHTER: May I say something in support
12 of the, Mr. Stubbs' committee? What Mr. Lyons and what
13 Mary are saying makes complete sense to me. And we are
14 bickering backwards and forwards wasting time. What he's
15 saying makes sense. And I understand fully what has been
16 saying and what Mary is saying. And we are just going
17 backwards and forwards over the same question.

18 CHAIRMAN: Clarence?

19 MR. MCKEE: We had this discussion throughout
20 the city --

21 (Pause)

22 -- or at another meeting. And I think Mary was
23 asked quite frankly -- grants conditions weakened,
24 imposed grant provisions -- one month or two months.
25 When they sign it and they cash the check, they accept

1 that condition. This is the same discussion we had before.

2 CHAIRMAN: Indianapolis --

3 MS. WIESEMAN: Well, just for purposes of the
4 statute, it says that guidelines must be published --

5 MR. McKEE: That's right.

6 MS. WIESEMAN: -- and it doesn't say procedures.

7 MR. McKEE: I know. But my point is, if I were
8 to say, for example, or if somebody should argue that
9 we're really playing with words, that a procedure, set of
10 policies or guidelines, and therefore were you to call it
11 any other name, the guidelines. Because that is a possi-
12 bility, the change that we thought, getting into a situa-
13 tion where it relates back to -- Congress says do X.

14 VOICE: We who have been critical in the past
15 and the Board, when they got a mandate like that, some
16 people thought that the Board or the Corporation tried
17 to ~~duck~~ around it and various and statements --

18 VOICE: I don't want to get into a situation
19 where given a different Board, that what we do or whatever
20 the masses seem to do is really, could be interpreted by
21 Mr. Smith, or anyone else that we're trying to play games
22 with his words when they had a specific mandate.

23 And if he has to air, I think it's airing on
24 the side of letting people have a say on it, keeping in
25 mind conditions and statements about --

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1 In both -- now obviously we didn't put both of
2 them on -- in both packages, with concerns in the same
3 city, I asked Mr. Bloom, I ask you on this page 53 --
4 I mentioned the figure 10 per cent and \$40,000. And the
5 original language I think in our statute is \$20,000.

6 My point was in terms of enforcement of some-
7 thing and trying to figure out what this grantee gets in
8 money -- let's say somebody gets \$100,000 or whatever.
9 Are you saying that the denial of refunding, if we take
10 away or deny \$10,000 -- that's what the 10 per cent would
11 be -- or purporting it's \$400,000, you use 10 per cent --
12 if you take away \$40,000, which would support at least
13 two salaries, for denial of refunding, it's tripping it
14 at a very, very low level, the whole process.

15 And I asked you at that meeting that I hoped
16 you would play with this and perhaps if not necessarily
17 leave it 10 per cent or change it. I think that percent-
18 age figure should be kind of left open for flexibility
19 to trigger all these decisions for thirty or forty
20 thousand dollars out of \$500,000.

21 And I would recommend that that 10 per cent
22 be left blank and let people determine what it should be.
23 I have that concern about it being a low pinnacle to
24 figure all these administrative figures.

25 In both documents in terms of intervenors --

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1 intervenors are the world -- like comments. You can have
2 a thousand people, the program is cut off, and everybody
3 in this world's going to be sending you tons and tons of
4 paper.

5 I would recommend that -- I'm restricting inter-
6 venors to people who I would think would be kind of
7 directly affected by what's going on, not so much
8 philosophically concerned. That would be the clients of
9 the programs or in the area or the local program in the
10 state to restrict the number of people --

11 CHAIRMAN: Just a moment, Howard. Do you want
12 a response, in terms of what you're asking at this time
13 from Mary, Clint?

14 MR. LYONS: Yes.

15 CHAIRMAN: Did I understand you to say that?

16 (Pause)

17 Do you want to let Howard intervene before you
18 get any response?

19 MR. LYONS: Yes.

20 CHAIRMAN: Okay. Howard, intervene.

21 MR. DANA: Thank you. Clint, am I right that
22 there are no pending anticipated defunding proceedings
23 as far as you're aware?

24 MR. LYONS: There are no pending anticipated
25 --

1 MS. WIESEMAN: Actually we --

2 MR. OLSEN: We may have one which may be coming up
3 soon. But --

4 MS. WIESEMAN: We have a termination letter that
5 just went out yesterday for a program, but it's not a
6 denial of refunding. So we have a procedure that we just
7 --

8 MR. DANA: And am I correct -- and I also, like
9 Clarence, forget the City. But it seems to me that it
10 may have been Houston, in which we discussed the possi-
11 bility of issuing one or two month contracts at the
12 beginning of the year until the continuing resolution,
13 until the regulations are in place.

14 If we issue a one-month or a two-month contract
15 at the same or reasonably comparable level, is that a
16 denial of refunding?

17 MR. LYONS: I don't believe so, Howard.

18 MS. WIESEMAN: It's the amount. There has been
19 in the past what's called short funding for a shorter
20 period of time. As long as it's at the same level, the
21 period of time is not a denial of refunding, changing the
22 period of time.

23 MR. DANA: It would seem to me that if that is
24 true, this Board would not be or the Corporation would
25 not be in any way hampered -- it might be delayed, but it

1 wouldn't be hampered for a whole year, this Board or the
2 next Board. And we could or it could extend contracts
3 for a reasonably short period of time until our new regu-
4 lations are in place and then act under those new regula-
5 tions.

6 If that's a correct statement, then I would --
7 I would move that -- I would say that I, on balance,
8 preferred the Harvey Olson draft as at least a working
9 copy, with all due respect to the Chairman. I think that
10 it gives us more options, and -- but I would be reluctant
11 to vote on it at all until we get those comments, whether
12 or not we had to.

13 So I would move to amend his motion to restruc-
14 ture it so that we are putting it out for comments in
15 accordance with our procedures and the procedures under
16 the statute. And I so move.

17 ~~MR. OLSEN:~~ MR. OLSEN: As a proposed regulation?

18 MR. DANA: As a proposed regulation for comment.

19 CHAIRMAN: That's an amendment to the motion
20 which Howard has made. Second and discussion continuing.

21 Yes. Bill?

22 MR. OLSEN: I would like to make an inquiry of
23 the General Counsel with respect to Howard's point which
24 I thought was well taken. In 1606.2(b) there is a defini-
25 tion of the terms of denial of refunding which is pretty

1 much on point. And I would like to get an interpretation
 2 from General Counsel as to whether Subsection 3 which say
 3 that a denial of funding means after expiration of its
 4 current grant or contract, a recipient will be provided
 5 with financial assistance, subject to a new condition or
 6 restriction that is not generally applicable to all
 7 recipients in the same class and that would significantly
 8 reduce the ability of the recipient to maintain the qual-
 9 ity and quantity of its current legal assistance through
 10 eligible clients.

11 My question would be whether this kind of a
 12 condition in the grant instrument Clint and Howard have
 13 discussed would be of a type generally applicable to all
 14 recipients in the same class and therefore, not triggering
 15 this denial of refunding, a definition under Section
 16 1606.2?

17 MS. WIESEMAN: The intent would be that it would
 18 be generally applicable to all recipients of the same
 19 class, is what I believe I hear the Board saying, that
 20 every program would be either as a grant condition or
 21 short funding so that it would not trigger this particular
 22 section of the regulations.

23 MR. OLSEN: In a further inquiry, just to nail
 24 this down with respect to the definition of the denial
 25 of refunding under Subsection (b), will have its annual

1 level of financial support reduced, I take it your opinion
2 as General Counsel is that a short-term funding is not
3 at the same annual level, is not a denial of refunding
4 under this definition.

5 MS. WIESEMAN: That's right, and it has been the
6 position of the General Counsel historically, that that
7 is not a denial of refunding. I believe I sent you an
8 opinion of Al Senior which stated that sometime in 1977,
9 he issued an opinion of that exactly.

10 CHAIRMAN: Okay. With some trepidation, the
11 Chair asks, are you ready to vote?

12 (Pause)

13 No. Clint!

14 MR. LYONS: One point of clarification, that the
15 motion incorporates the staff, publishing comments --

16 MR. DANA: No. My motion did not. I'm
17 ~~purposely~~ happy to add it, but it seems to me that, that
18 they are, according to Bob, very similar. And the comments
19 can, I think, can draw the attention. I don't think it's
20 necessary to put out two. That might even be more confus-
21 ing than putting out one and seeking comments on it.

22 MR. STJBBS: I went through -- Mr. Chairman, this is
23 a response to that. I've gone through, and best as I can
24 tell, there are differences. There is a significance in
25 terms of time within which the procedures would be

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1 effective, 90 days under the staff program, 60 outside
2 on the Harvey-Olson suggestion.

3 There are differences as to the qualifications
4 of the Presiding Officer, whether or not challenge is a
5 substantive question to be allowed. There are some
6 different language as to what would be reached in terms of
7 one speech, in terms of carryover funds, the other
8 does not.

9 There are -- there is a significant difference
10 as to the options available to the Presiding Officer and
11 to the President in the review, i.e., changing the
12 recipient of funds. There are some significant differ-
13 ences.

14 I think while I'm pleased with the work that was
15 done by the staff in the time available -- and they were
16 rushed rapidly into this -- that I find some advantages
17 in the terseness of language in the Harvey Olson structure
18 And other than the items I've mentioned, I don't see,
19 unless I've missed them, any major items of substance
20 in which they differ.

21 The appearance is to me that there is a more,
22 a greater emphasis on the part of the staff's program
23 towards -- let's call it, without being specific, a fair-
24 ness concept -- whereas I think the emphasis in the Green
25 edition is in getting a quick, short, precise procedure

1 that can be implemented without delay, that would be
2 directly to the point and yet at the same time would give
3 full opportunity to anybody to complain.

4 It seems to me that the differences that exist
5 now can be those that we could work out, those that we
6 want to work out, in connection with whatever input we
7 get from the field to have our regulations.

8 That is very wordy.

9 CHAIRMAN: Okay. Just a moment, please. Harold
10 DeMoss.

11 MR. DeMOSS: Let me ask you a question. Are the
12 time differentials that you're talking about, that's
13 internal to the procedure of the hearing, not to how
14 quickly we can get them into effect?

15 VOICE: Correct.

16 MR. DeMOSS: So they're two separate things?

17 VOICE: I request --

18 CHAIRMAN: Just a second. Are there Board
19 comments? Your name, please?

20 MR. MILLER: My name is Dean Miller. I'm from
21 the Legal Services Program in New Jersey. I'd like to
22 address specifically the question of the differences
23 between the two drafts in arguing for the position of
24 the staff draft rather than the Green draft be published.

25 CHAIRMAN: Three minutes worth, Mr. Miller.

1 (Pause)

2 Let's go for three minutes.

3 MR. MILLER: Let me give it a context.

4 CHAIRMAN: Okay.

5 MR. MILLER: Part of what's gone on earlier
6 today here is a message to the community which has already
7 been written. Part of this publication around denial of
8 refunding is another message to the community.

9 There is -- I think it's fair to say -- on the
10 part of clients and programs no single more critical
11 question than whether they're going to be around next
12 year, a basic fundamental issue.

13 If some of the few differences that exist that
14 I want to highlight to Mr. Stubbs didn't point out are
15 published, it's going to send one kind of message, and
16 the message is a vastly greater interest, I would say,
17 ~~on the part~~ of Washington in the defunding of programs
18 specifically, what's taken out in the Green draft that's
19 in the staff draft.

20 One, no requirement that there be substantial
21 noncompliance or substantial failure. That's gone. A
22 program could be defunded under the Green draft for any
23 noncompliance, trivial or otherwise. Is that something you
24 really intend? Is that a message you want to deliver?

25 Number two, there is no -- in the staff draft

1 in existing regulations, there is an opportunity for
2 notice and to correct defaulting conduct on the part of
3 the program. Both of those requirements are deleted from
4 the Green draft. Is that the kind of message that you
5 want to deliver to field programs about what your inten-
6 tions are going to be? That's two.

7 There are others around special condition as
8 the note indicates. The special condition trigger is
9 eliminated. The special condition trigger relates only
10 to those special conditions which substantially reduce
11 the ability of the recipient to provide quality, quantity
12 and quality of legal assistance. In other words, it's
13 not any special condition, any trivial special condition.
14 It's one that would have a massive impact. Is that the
15 kind of message you want to deliver?

16 I really think that there are some substantive
17 ~~differences~~ differences between the two that are important, that are
18 important in the larger context that I was talking about.
19 I think those issues are going to get focused on in any
20 case because if programs don't -- if draft A is focused
21 on, there are going to be comments by people who advocate
22 those kinds of changes. And I do think it's important
23 to go with the staff draft for the reasons indicated.

24 Thank you.

25 (Pause)

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1 CHAIRMAN: Bill.

2 MR. OLSEN: Just only one word. I think that
3 it's true, that regardless of which draft we put out,
4 that we're going to receive substantially the same com-
5 ments, that's the language these matters were put out for
6 notice and comment.

7 I'd like to simply in a sentence reaffirm. I
8 appreciate what Howard's been saying and what Clint's been
9 saying. And I think that -- I'm not saying that there's
10 any less willingness to comply with the mandate of the
11 Congress on behalf of anyone who advances the position
12 of advancement, Howard, but in all candor, I think that
13 we should try to do the best we can, consistent with the
14 appropriate opinions of the General Counsel, the appropri-
15 ate regulations, to move expeditiously.

16 I think the one thing that Congress has been
17 frustrated with has been the Board and the Corporation not
18 moving with all due dispatch to implement the kinds of
19 restrictions that are placed on the program or whatever
20 kinds of laws and such might be in effect are continued
21 or are proposed the amendment and urge others to and that
22 we proceed with the procedures and go with that route.

23 I think we've had an excellent hearing of these
24 issues, and I look forward to the next meeting because
25 either way, we will revisit the issues next meeting.

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1 CHAIRMAN: When we revisit the issues next
2 meeting, we'll be coming back to the Board and the
3 Corporation long before that.

4 MR. OLSON: Well, except 30-day publication that
5 Howard notes?

6 VOICE: We will discuss it at the next --

7 CHAIRMAN: Okay.

8 MR. STUBBS: Counsel, is there any reason why
9 we can't publish both? There's probably a cost factor.

10 MS. WIESEMAN: I don't think there would be any
11 prohibition why we couldn't publish both.

12 MR. STUBBS: There's no problem with that at
13 all.

14 MS. WIESEMAN: And it might get comments on
15 why one is preferable to the other, that you wouldn't get
16 by publishing one. That might be helpful.

17 MR. STUBBS: It seems to me like, that we're
18 all searching for a resolution to a very tough problem,
19 and I hope those of you in the community appreciate the
20 fact that this is a tough problem of implementation of
21 what Congress said they want done.

22 And we're searching for those sets of circum-
23 stances that will permit us to move forward as expedi-
24 tiously as we can because I believe with Bill Olson that
25 that is what Congress wants us to do. But at the same

1 time, I personally feel that we don't want to so shorten
2 or take an act that would cut off the opportunity to hear
3 fully from the client community.

4 So would you accept an amendment to the motion
5 that we simply publish both the staff version and the
6 Green version for comment and we'll take them both up
7 and resolve the problem at the next Board meeting.

8 MR. DANA: I would do so with the understanding
9 that the -- if for some reason the Federal Register won't
10 take two on the same subject, that we publish the Green
11 one so that we can get the comments and find out what it
12 is that the Green one does and under those circumstances,
13 we could rely on the people who will be making comments
14 to compare and contrast it with the document that the
15 Federal Register wouldn't publish.

16 If they would publish both, I would certainly
17 think they both ought to go in there. And I would accept
18 that amendment.

19 CHAIRMAN: Discussion on the amendment to the
20 amendment?

21 MR. DANA: I accepted it, and I would move the
22 question on the amendment.

23 CHAIRMAN: So moved, nondebatable. Those in
24 favor of terminating discussion on the amendments, signify
25 by saying aye.

1 (Chorus of ayes)

2 CHAIRMAN: And opposed, the same sign.

3 (Pause)

4 To the amendment itself, those in favor of the
5 amendment, signify by saying aye.

6 (Chorus of ayes)

7 CHAIRMAN: Opposed, the same sign.

8 MR. RATHBURN: Nay.

9 (Pause)

10 CHAIRMAN: And what is the status of the ori-
11 ginal motion?

12 MR. DANA: The motion now is to put both out for
13 comment with a caveat that if the Federal Register will
14 only take one, we put the Green one out first.

15 CHAIRMAN: Are you prepared -- is it the con-
16 sensus of the Board to prepare to vote on this?

17 (Pause)

18 Those in favor, signify by saying aye.

19 (Chorus of ayes)

20 CHAIRMAN: Opposed, the same sign.

21 (Pause)

22 The motion is amended as carried.

23 (Pause)

24 MR. DANA: Mr. Chairman, we have several other
25 proposals pending, and I -- and the Chairman of the

1 Regulations Committee is here tonight but gone tomorrow,
2 And it would -- I don't want to do anything that is per-
3 ceived as precipitous, but I do think that it, that we
4 should send out the staff comments or the staff proposals
5 implementing the continuing resolution for comment as
6 well, just in dealing with the one.

7 And I would -- I just want to make very clear
8 and as part of my motion, I would like to state what I
9 understand to be the case. And that is that since the
10 Corporation itself is complying with the continuing reso-
11 lution, the Corporation is -- well, I don't need to do
12 it right now, and I don't want to mix several things.

13 But it would be my intention to move at some
14 point that the Corporation be authorized to draw down
15 enough monies from the continuing resolution to operate
16 internally, that we should, that the Corporation should
17 ~~not~~ and would not issue any contracts for using FY '83
18 continuing resolution funds until certainly after the
19 next Board meeting and preferably after the, we have
20 granter rider provisions which enforce all of the continu-
21 ing resolution provisions attached to any extended
22 contract.

23 I would move that now, but I -- or at some
24 point -- and that should be, I think it shouldn't be tied
25 to my real motion which is -- I apologize for that -- that

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1 we put the other staff's proposals out for comment in the
2 same way that we have put out the denial of refunding
3 regulations. And I would so move.

4 In particular, we are dealing with -- yes, we
5 are dealing with the --

6 CHAIRMAN: What about the one at the top of the
7 next page?

8 MR. DANA: That's -- let me go to the letters.
9 It's 7a, b, c and d. Okay? And the top of the next page
10 is d.

11 CHAIRMAN: Is d, right. That would be fine.

12 CHAIRMAN: Bob, you seconded, didn't you?

13 MR. STUBBS: I second it with the qualification
14 that I'm not allowed to participate in the class action.

15 CHAIRMAN: I don't know. Somebody might see you
16 in a class action.

17 (Pause)

18 MR. DANA: I think you ought to have someone else
19 second it.

20 MR. MCKEE: I second.

21 CHAIRMAN: The motion is made and seconded. My
22 request in this matter is to -- I would ask that the
23 motion embrace the material distributed to you by myself
24 in the class action.

25 (Pause)

1 MR. DANA: I guess the Federal Register will
2 accept two of them.

3 (Pause)

4 Candidly I would just as soon the motion not
5 contain that class action provision. I think that -- I
6 just would prefer not to issue that, but I think that we
7 certainly could debate it. And I'm reluctant to get into
8 a debate tonight.

9 We're going to be meeting tomorrow, and I would
10 -- I think it might be appropriate to -- at least I would
11 prefer not to add it to my motion. I'd like to treat it
12 separately because I have frankly some concerns with it.

13 MR. OLSEN: Then I'd like to move to amend your
14 motion to include Bill's draft with respect to class
15 actions which we're going to request for comments on the
16 Broadus range of this as we just adopted and also we
17 shouldn't exclude this. And if it was good policy before,
18 it's great policy now. So I'd move to publish this as
19 well, if accepted by the Federal Register.

20 CHAIRMAN: Moved and seconded to amend Howard's
21 motion for discussion on the amendment.

22 MR. PARAS: Bill, when did we receive your
23 addition, your amendment?

24 MR. MCKEE: You don't know when you received it?

25 MR. OLSEN: I think it was October 25th.

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1 I don't know when you received it, but I mailed
2 it on October 25th.

3 VOICE: Are we going -- we are going to discuss
4 --

5 CHAIRMAN: Further comment? We're on the amend-
6 ment now. Yes? And Clarence.

7 MR. McKEE: I didn't know Howard's particular
8 reason was. Class actions are probably the most, in terms
9 of this prohibition, -- class actions in this issue
10 has engendered the tedious debate and concerns everything
11 that we've had by everybody.

12 I think that that has to be because you have to
13 explain what -- as you explained the differences between
14 the staff -- and the fund, the two differences. I think
15 you have to have a full statement of explanation of what
16 how your practice differs from the staff practice just
17 because of the nature of the issues is a perception that
18 Congress has barred all class actions against Federal,
19 state and local governments. It hasn't. It's the way
20 they do it pursuant to regulations of this Board.

21 That means that they're very, very important,
22 so I think we have to give the same expression as that
23 class action particularly and compare the two and you
24 express your two passages that we did on the last one.

25 (Pause)

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1 CHAIRMAN: Further comment?

2 MR. PARAS: Bill, I might say I didn't receive
3 that because if you mailed it on the 25th, I was on my
4 way here the next day. So that's why I don't have it.

5 CHAIRMAN: I had the same problem with the Board
6 Book.

7 MR. PARAS: For that reason, I simply won't
8 vote on this.

9 MR. MCKEE: I just didn't want to get into
10 where you say, yes, we're going to spend X or Y on this
11 issue and not have a discussion of what the staff has
12 talked about on class actions involving Federal, state
13 and local government and what this other package --

14 CHAIRMAN: Well, I think the original origin
15 of this was the presence of Bob Stubbs which your
16 presence will disappear tomorrow. And he's just said he
17 can't discuss class actions.

18 MR. STUBBS: I have not evaluated or made any
19 effort to. I asked that Clarence who is on our Regula-
20 tions Committee look at it since I'm the most popular
21 class action defendant in Georgia. And I thought it would
22 be inappropriate to --

23 CHAIRMAN: Then what -- how does the Board
24 receive the gentle suggestion of recessing until tomorrow
25 and taking this issue from this motion up at that time?

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1 MR. MCKEE: I would have no problem unless you
2 have a problem with it because you're leaving. And from
3 the nature of the issue, you wanted to be here.

4 MR. STUBBS: I will be here until noon.

5 CHAIRMAN: All right. Fine. Three hours
6 probably will do it.

7 (General Laughter)

8 MR. MCKEE: I think it's just too important to
9 say, yes, we'll put them out, because this is very, very,
10 very controversial.

11 CHAIRMAN: I don't mean to be facetious. I
12 agree with what Clarence is saying, and I think that the
13 history of class actions and legislation with reference to
14 it in Legal Services Corporation and by the Congress in
15 a political context says to the Corporation, get your
16 act together.

17 And it says that there is enormous satisfaction
18 with what the Corporation has done in the past. And it
19 says to me that an individual who strongly prefers to
20 see the Corporation continue in a funded position and
21 continue without much of the acrimony directed at it in
22 the class action area, that the Corporation Board of
23 Directors must respond to a mandate to us.

24 And quite frankly, I'm not certain -- I feel
25 fairly certain the staff does not -- and I'm not even

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1 certain that mine does. It is not an easy area to address
2 I don't propose this as the be-all, end-all class action
3 work, but it is a sincere effort to comply with the mandate
4 of the Congress and to bring the Board within compliance
5 with the mandate of the Congress, in my judgment, for
6 which reason is proposed.

7 Implementation of this class action, I also
8 think, will de-fang the tremendous controversy which
9 exists and has existed since 1975 and before that time
10 with reference to an area which statistically is a very
11 small area of functioning corporations' activities. But
12 in a public policy sense it's very significant. And in
13 an attitudinal sense among attorneys and grantees, it is
14 very significant also.

15 So I quite agree. I think it is very important.

16 MR. STUBBS: Let me ask a question on this, and
17 I've been searching through this mound of paper to try to
18 get it back in front of me. And I can't find it.

19 It is my understanding that what Congress said
20 is that none of these funds will be used for class actions
21 against Federal or state governments or local governments,
22 Federal, state or local governments, except as may be
23 permitted by regulation of this Board.

24 CHAIRMAN: That's right.

25 MR. LYONS: Bob, let's be precise on --

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1 VOICE: On the language?

2 MR. LYONS: The language is that according to
3 policy implemented by the Board. I think there is a
4 quality of difference in that, the way you stated this,
5 to give the impression that there is an option this Board
6 has that would not permit class actions at all. And I
7 don't think that's true.

8 MR. DANA: Mr. Chairman --

9 MR. STUBBS: I was simply hoping that this was
10 not a time fuse that had to be dealt with. I gather from
11 what you say, Clint, that it is of the same category as
12 the other regulation, that we should not wait. There
13 needs to be some implementing regulation. And we go on
14 and address this thing tomorrow or whenever we can get to
15 it.

16 MR. DANA: Mr. Chairman, I think your suggestion
17 of recessing at this time is excellent. And if we've been
18 at it for some time. So I will --

19 CHAIRMAN: Twelve hours. I have twelve hours.

20 MR. DANA: If it's -- if you want to criticize
21 me for making a motion while there is another one on the
22 floor, I would move we recess.

23 MR. STUBBS: Mr. Chairman, I thank you. And my
24 colleagues are extending this meeting as a courtesy to me.
25 I appreciate it very much. And I regret I can't be here

1 with you tomorrow.

2 CHAIRMAN: We are recessed until 9, going on
3 9:15 or 20 in the morning.

4 (Whereupon, at 7:10 o'clock p.m., the meeting
5 was recessed, to reconvene at 9:15 a.m. o'clock
6 tomorrow morning, Saturday, October 30, 1982.)

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This is to certify that the foregoing transcript
In the matter of : Bpard of Directors Meeting

Before: Legal Services Corporation

Date: October 29, 1982

Place: Eighth Floor Board Room
733 15th Street, N.W.
Washington, D.C.

represents the full and complete proceedings of the
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