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JoAnne Beaman
Secretary, FSC

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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING

OCTOBER 30, 1982

The Board reconvened in the Eighth Floor Board Room at 733 15th Street, N.W., Washington, D.C., at 9:00 a.m., WILLIAM HARVEY, Chairman, presiding.

PRESENT:

- | | |
|------------------------|---|
| WILLIAM HARVEY | Chairman |
| CLINT LYONS | Acting President and
Chief Executive Officer |
| HAROLD DEMOSS, ESQ. | Member |
| ROBERT STUBBS | Member |
| GEORGE PARAS | Member |
| DAVID SATTERFIELD | Member |
| CLARENCE MCKEE, ESQ. | Member |
| HOWARD DANA, JR., ESQ. | Member |
| WILLIAM OLSON, ESQ. | Member |
| ANNE SLAUGHTER | Member |
| FRANK DONATELLI, ESQ. | Member |
| DAN RATHBUN | Member |

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ALSO PRESENT:

LEGAL SERVICES CORPORATION:

- MARY WIESEMAN, ESQ. Acting General Counsel
- BUCKEY ASKEW, ESQ. Acting Director of
 Field Services
- DENNIS DOUGHERTY, ESQ. Acting Director of
 Government Relations
- ALFREDA HARVEY Budget Director
- CHARLES RITTER Comptroller
- MICHAEL GLOMB, ESQ. Assistant General Counsel

- - -

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I N D E X

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MORNING SESSION

AFTERNOON SESSION

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PKF 1

P R O C E E D I N G S

2

9:15 a.m.

3

CHAIRMAN HARVEY: Ladies and gentlemen, good morning. I want to reconvene the meeting of the Board, after our recess last night.

6

I want to begin with the matter -- We have, of course, pending before us at this time a motion as amended and we're in the discussion of that. With the Board's permission, I'd like to interrupt discussion of that motion and relate to or go back to certain personnel matters.

12

First, I'm pleased to announce to the Board that Clint Lyons has accepted the offer as Acting President of the Corporation; and I think that's very pleasing news.

15

Secondly, we have another personnel matter to take care of, which is that Clint has been the Secretary of the Corporation, and the Board needs to appoint a Secretary of the Corporation, and also designate the Comptroller, Mr. Ritter.

20

We call on Howard Dana to make a motion on that purpose.

22

MR. DANA: Mr. Chairman, I would move that the Acting Secretary of the Corporation be the very capable Lee Ann Bunnstein, who has served the Presidential Search Committee faithfully for, I'm sorry to report, a very

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1 long time.

2 CHAIRMAN HARVEY: I think this would be effective
3 November 15th, Howard, would be the appropriate date due
4 to her contract term with the Board.

5 MR. DANA: The nomination is for a -- is to
6 serve a term coterminous with the Acting President. I
7 see no reason why she could not take office on accepting.

8 CHAIRMAN HARVEY: Instant.

9 MR. DANA: Is that appropriate?

10 ACTING PRESIDENT LYONS: Okay. Yeah. I think --
11 The only problem I had was I was not clear whether or not
12 employees that were nonpermanent have not completed pro-
13 bationary periods and could serve as officers; and that's
14 just a matter of a few days with Lee Ann, but I will
15 check that with the General Counsel.

16 MR. DANA: So my motion should -- should be
17 understood to be as soon as possible under the By-Laws
18 and law.

19 CHAIRMAN HARVEY: And I guess the other part
20 of this is the other officer, Mr. Ritter. And I think
21 that General Counsel --

22 MS. WIESEMAN: It's never been printed in the
23 By-Laws, but there was a resolution by the Board in 1978
24 that the Officers of the Corporation, in addition to
25 those indicated, be an Executive Vice-President, General

1 Counsel, a Director of Field Services, and a Director of
2 Program Support. This was a resolution of the Board of
3 Directors in 1978. It's never been published.

4 ACTING PRESIDENT LYONS: That may be out of
5 date. The officers stated in the By-Laws are: --?

6 MS. WIESMAN: For a President, Secretary and
7 Treasurer, and a Comptroller.

8 MR. OLSON: Second the motion.

9 CHAIRMAN HARVEY: Any discussion?

10 MR. OLSON: I'm certainly supportive of that.
11 My understanding is that this would not interfere with
12 Lee Ann serving the Corporation as an employee --

13 It would not interfere with that?

14 CHAIRMAN HARVEY: That's right.

15 Those in favor, signify by saying "aye".

16 (CHORUS OF AYES.)

17 CHAIRMAN HARVEY: Opposed, same sign.

18 (NONE OPPOSED.)

19 CHAIRMAN HARVEY: The motion is passed.

20 We can return to the other business of the
21 meeting. When we recessed yesterday, to attempt to
22 refresh your recollection, members of the Board, we were
23 discussing a motion as amended; and the gist of the
24 motion is -- if you'll turn to Item 7 on your Agenda,
25 you will see there under Item 7 little dots which we've

1 designated as A,B,C and D at the top of the -- Page 2 of
 2 the Agenda. And all of those, on motion made, are
 3 pending for adoption. That is to say, the motion was to
 4 post these in the Federal Register, along with an amend-
 5 ment to this which is to post also an alternative class
 6 action regulation. And we stopped at the point where,
 7 as I recall it, Mr. Olson was saying that he would like
 8 the alternative class action posted. At that point, my
 9 memory fails, so discussion goes forward.

10 Bill, you may start, if you wish.

11 MR. OLSON: Just to recap, my understanding of
 12 where we are at the moment is that my motion to amend,
 13 which was seconded and on the floor for discussion, is
 14 now pending before the Board, to add the part of the
 15 draft of class action regulations to the staff draft,
 16 so that both can go forward to the Federal Register for
 17 publication in accordance with the principle we established
 18 earlier yesterday and have them both -- both the other
 19 versions published in it -- currently in the Federal
 20 Register.

21 I think we may well have finished debate on
 22 that issue yesterday.

23 CHAIRMAN HARVEY: Are you finished, Bill?

24 MR. OLSON: I'll speak to it, if anyone cares
 25 to, but I --

1 CHAIRMAN HARVEY: Let me perhaps sharpen the
2 focus of this just a bit, members of the Board.

3 The statute which was adopted -- adopted, states
4 (and I quote): "...None of the funds appropriated under
5 this Joint Resolution for the Legal Services Corporation
6 shall be used to bring a class action suit against the
7 Federal Government or any State or local government,
8 except in accordance with policies or regulations adopted
9 by the Board of Directors of the Legal Services Corpora-
10 tion."

11 That was effective October 2, 1982. There is
12 further language on this report. Here is the language
13 (and I quote it): "...Finally, the Committee amendment
14 provides that no funds appropriated under this Joint
15 Resolution may be used to bring a class action against
16 the Federal Government or any State or local government,
17 ~~unless~~ such action is brought in accordance with policies
18 and regulations adopted by the Board of the Corporation.

19 "Currently, local Agency Boards can authorize
20 class action suits. This Amendment will require that
21 the Board of Directors of the Corporation itself regulate
22 class action suits against other governmental bodies
23 through issuance of policies or regulations. This prohi-
24 bition assures the recipients must conform to Corporation
25 regulations in bringing class actions against the

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1 Government with these Federal funds.

2 "The Committee believes this will guard against
3 misuse of such actions, while permitting their use in
4 appropriate cases, thereby enhancing the efficient and
5 productive use of these funds." End of quote.

6 Those are, to my best knowledge, the statute
7 and Committee's comment on this -- in this area.

8 Howard?

9 MR. DANA: Bill Olson, do I understand your
10 motion to add this as the -- Let me ask the staff, I guess.

11 Have we determined that we can put out two?

12 MS. WIESEMAN: Yes. There's no problem with
13 publishing as many as we want.

14 MR. DANA: And is it clear that this will be
15 denominated a proposal of William F. Harvey?

16 MR. OLSON: Well, I'd like to have it, if the
17 ~~Chairman~~ would allow it, to be considered my proposal
18 as well, and --

19 CHAIRMAN HARVEY: Fine. That would be fine.

20 MR. OLSON: I don't know if we're going to do
21 that with respect to the other one, but if one has Mary
22 Wieseman's name on it and the other has the Chairman's
23 name on it, we can do it that way.

24 MR. DeMOSS: We should get -- where we're pub-
25 lishing to, we ought to give them some sort of an identifying

1 kind of title on the draft. Call them drafts. I don't
2 care what you want to call them; but staff draft, or
3 Wieseman draft and Olson/Harvey draft, or whatever; just
4 so they would be officially designated, rather than just
5 one or the other of two alternatives.

6 ACTING PRESIDENT LYONS: May I, Mr. Chairman?
7 It seems to me that whatever we do ought to conform to,
8 as much as possible, our established structural procedure.
9 And it seems to me what we have here is a situation where
10 we have our operations and regulations which has con-
11 sidered a draft in concert with the staff support for
12 that, and has made a recommendation to the Board. How-
13 ever, there is a minority draft, if you will, submitted
14 by the Chairman and Mr. Olson; and it would seem to me
15 that we could so designate. You know, one draft being
16 the Committee's recommended draft to the Board, and the
17 ~~other~~ being a minority draft submitted by Messrs. Olson
18 and Harvey.

19 MR. DANA: That's acceptable. Could I ask a
20 question of the Chairman?

21 MR. DeMOSS: I don't think we need to be using
22 the term "minority". I don't know -- did it come as a
23 minority on that committee?

24 MR. OLSON: It did not, at least not for me, in
25 the sense that I'm not on the committee.

1 MR. DeMOSS: I think there's a connotation that
2 it has been looked at by the Committee and is kind of a
3 minority report coming out of the Committee to the Board.
4 And I don't think we ought to leave that impression.

5 So I would -- Don't label them as anything
6 except Staff Draft and Olson/Harvey Draft or something
7 like that.

8 MS. SLAUGHTER: I think it should be labeled
9 to the term that -- on the operation and regulation,
10 I think there should be a distinction between that draft
11 and what the operation and regulations recommended.
12 I think there should be differentiation between that.
13 I don't know how you would do it, but I think that
14 operations and regulations committee recommendations
15 should say that's where that recommendation came from.

16 CHAIRMAN HARVEY: How about Committee Draft
17 ~~and Board Member Draft?~~ Takes care of the structure and
18 the identification, doesn't it? I think it -- But if
19 you want greater specificity, that's fine with me.

20 MR. PARAS: Draft 1 and 2 wouldn't be a bad
21 idea.

22 MR. OLSON: I think that's the best idea we've
23 heard yet.

24 MS. SLAUGHTER: I don't think that would speak
25 to the difference in who recommended them.

1 CHAIRMAN HARVEY: If someone make a motion,
2 we'll settle this.

3 MR. OLSON: It's my amendment at the moment
4 that's before us. Howard made an inquiry of me. I would--

5 MR. DANA: And I'm continuing to ask some ques-
6 tions. If --

7 CHAIRMAN HARVEY: Have we settled -- Are we
8 resolved with the identification problems?

9 MR. DANA: I would like to leave that with the
10 staff and -- just as long as it is clear that there are
11 two drafts. The record ought to -- Actually, I made the
12 motion with respect to the other draft. The Harvey/Olson
13 draft on refunding is -- there ought to be a clear distinc-
14 tion as to which is which. I personally prefer the
15 Harvey/Olson --

16 CHAIRMAN HARVEY: Can we leave it -- take
17 Howard's suggestion and leave it to Clint and the staff
18 to designate these two documents? All right.

19 Howard, you have a question?

20 MR. DANA: Yes. Just checking on your -- just
21 inquiring. Under your proposal, you indicate that class
22 relief is sought exclusively for the benefit of individu-
23 als who are eligible for legal assistance, and their
24 consent to file a class action has been obtained in
25 advance of suit. Do you mean, by that, that each class

1 member consent in advance to the filing of the suit?

2 CHAIRMAN HARVEY: First, a question. Does the
3 Board want to discuss this in detail?

4 MS. SLAUGHTER: Yes, because I have some ques-
5 tions I want to ask.

6 CHAIRMAN HARVEY: Okay.

7 MR. DANA: I just want to know if -- I just
8 want to understand this --

9 CHAIRMAN HARVEY: Your question is, that each
10 person shall consent to the suit? The answer's yes.

11 MR. DANA: Fine. Thanks.

12 MS. SLAUGHTER: Okay. My questions -- My
13 questions are the time that it would take you to -- you
14 have three different items on here.

15 What is the time limit that it would take for
16 them to -- to file these -- to get all this cleared, in
17 ~~trying to~~ file such an action, the recipient -- except
18 executive regulations determine that the governmental
19 entity is not likely to change the policy.

20 And then on the next page, prior to filing such
21 an action, the recipient essentially has determined ...
22 Okay, the time limit for them to get permission for this
23 might result -- say, if it was a rent strike or if it
24 had to deal with, maybe, the gas or the light bill -- the
25 time that it would take them to file this suit, the people

1 could be evicted by that time. That's what I'm saying --
2 they have to do all of these before that they can get
3 permission to file a class action. Is that what you're
4 saying? And I'm dealing with how long will it take them
5 to do this? If they have to go through all three of these
6 operations.

7 CHAIRMAN HARVEY: Insofar as a specific suit
8 is concerned, of course, I can't answer your question
9 because I don't know what the suit would be. Insofar as
10 the more general part of your question, the answer is
11 yes, that this would -- this would be required as we now
12 have requirements to meet before a class action can be
13 filed.

14 Insofar as other forms of legal relief is con-
15 cerned, this doesn't affect those forms of legal relief,
16 such as a joinder of parties who have common claims or
17 ~~common~~ rights to be vindicated. So that's the best answer
18 I can give you.

19 MS SLAUGHTER: Thank you. That's all I have.

20 CHAIRMAN HARVEY: All right. Any of the Board--
21 Bill?

22 MR. OLSON: Mr. Chairman, with respect to the
23 substance of all this, I think it's very difficult for us
24 to -- unless we go through both of them and compare them
25 side by side, which is fine with me -- it would be very

1 difficult to answer a host of questions like the one posed
2 by Howard with respect to class -- consent being obtained
3 in advance. I think that we run into problems of giving
4 notice to the client. We run into problems of giving
5 people even an opportunity to include themselves or opt
6 out. The whole process of consent is very complex, which
7 you know, I don't think any of us can -- I'm not a class
8 action expert, and I don't know what the best way in which
9 to handle this is.

10 I think that this is one approach, and I'd like
11 to have this offered. I don't think it's possible to
12 give short answers; and I think the Chairman would concur,
13 with respect to all of these issues. This is a complex
14 area. If we want to spend the next couple of hours on
15 it --

16 CHAIRMAN HARVEY: My feeling about this -- I'm
17 not set in cement on this. I don't think you are either,
18 Bill. I want the Board to, in good faith, to comply with
19 the statutory mandate we received, publish this, receive
20 all the comments we can possibly receive, and rework this
21 or the staff proposal, into something acceptable to the
22 Board. That's what I have in mind.

23 MR. McKEE: I agree.

24 MR. OLSON: I concur, and I think that what
25 we're trying to do is struggle to implement the intent,

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1 the will of the Congress in the best way that we can.
 2 We've been given certain indications by Congress in terms
 3 of what they expected us to do, and I think we're all
 4 trying to be faithful to that, to the best of our ability.
 5 And as Bill says, none of these are locked in cement,
 6 and not a single word, I would think, of either proposal
 7 is locked in cement. And I think we ought to look forward
 8 to those comments, and then be able to make an informed
 9 decision. And perhaps we may even get some further input
 10 from Denny Dougherty in terms of Congressional relations,
 11 and Mary Wieseaman, our General Counsel. I look forward
 12 to their comments, too, on both of these.

13 CHAIRMAN HARVEY: Thank you. If there are no
 14 other comments from the Board, I'd like to call on this
 15 lady.

16 MS. VARGAS: Thank you, Mr. Chairman.

17 CHAIRMAN HARVEY: Three minutes is our rule.
 18 Your name, please?

19 MS. VARGAS: My name is Ellen Josephine Vargas.
 20 I'm with the National Legal Aid and Defenders Association.

21 I would like to respectfully suggest that you
 22 not publish the draft which has been denominated as the
 23 Harvey draft, for the very simple reason that it is
 24 totally out of compliance with the Act. The continuing
 25 resolution explicitly contemplates that class actions be

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1 allowed. The Congress specifically rejected the provi-
2 sions of H.R. 3480 which would have forbade class actions
3 against Government entities. Instead, it adopted a
4 provision which is amplified by history, which does allow
5 class action.

6 The Harvey draft, and I do think it is worth
7 a little discussion, especially for the people here who
8 may not be very familiar with what a class action is and
9 how it works -- The Harvey draft would make it absolutely
10 impossible to file a class action under any circumstance.

11 You begin with the requirement that the notice
12 of every class member be obtained. As was brought up,
13 that is a practical impossibility. In fact, and I address
14 this to the nonlawyers on the Board, assuming that the
15 lawyers know this, one of the requirements of Rule 23 is
16 that the class be so numerous, the joinder is impractical.

17 If you can get the consent of every potential
18 class member, you can nearly automatically join them all,
19 making class action inappropriate under Rule 23.

20 We go on from there. The Rule would also
21 require that no additional funds -- that the Executive
22 Director be able to certify that no additional funds,
23 possibly be raised by taxing authority, be diverted from
24 any other program or come from any other place. No
25 Executive Director of a program with any integrity could

1 possibly certify this in any action that involves the
2 expenditure of funds illegally withheld or whatever.

3 I suggest that, if this Board is, in fact,
4 serious about complying with the intent of Congress,
5 this is one of the clearest and easiest issues which is
6 for you. Congress intends that there be class actions.
7 The Harvey draft makes, as some of us were discussing
8 earlier, the only conceivable class action could be in
9 a very small taxing authority where every eligible client
10 consents to a suit to lower taxes. That is the one class
11 action that I could imagine.

12 Class actions are a procedural device. Nothing
13 more, nothing less. They have a key role in the effective
14 representation of clients. I urge that this Board take
15 its responsibility seriously in complying, within this
16 case, unambiguous Congressional intent; perhaps take a
17 ~~few~~ more minutes, understand what is involved in the
18 class action issue; and then publish the staff draft
19 which is a responsible effort to comply with Congress,
20 and not throw out to the field a draft which makes class
21 action litigation impossible.

22 Thank you.

23 CHAIRMAN HARVEY: Thank you, Ellen.

24 Prepare to vote on these motions amended. Bill?

25 MR. OLSON: I look forward to receiving those

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1 kinds of comments in writing. I think that there's one
2 also comment that I make, which is that we want to make
3 sure that the scope of the regulation that we ultimately
4 adopt -- and in fact, we may -- I don't think by putting
5 this out as a regulation, it precludes us from, at a
6 later time, implementing this as a grant condition or
7 through any other vehicle as well, but that we would
8 limit it to what the Congress intended us to do. I
9 think that's what all of us are trying to do, and I think
10 that we should look forward to those comments, but I
11 think even the little I know about class actions is at
12 odds with one representation made with respect to the
13 size of the class. And I think we need to get some addi-
14 tional staff work done on this, and we'll get this the
15 next time. That's what this is all about, notice and
16 comment. And we're putting it out for notice and comment,
17 ~~and that's what we should do.~~

18 CHAIRMAN HARVEY: All right. Is the Board ready
19 to vote, or do you want to discuss it further. Frank?
20 The question has been called for.

21 Those in favor of calling the question, signify
22 by saying "aye".

23 (CHORUS OF AYES.)

24 CHAIRMAN HARVEY: Opposed, the same sign?

25 (NONE OPPOSED.)

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CHAIRMAN HARVEY: Those in favor of the amendment, signify by saying "Aye".

(CHORUS OF AYES.)

CHAIRMAN HARVEY: Opposed, by the same sign?

MR. DANA: Aye.

CHAIRMAN HARVEY: Amendment passes. Those in favor of the motion as amended, signify --

MR. OLSON: Mr. Chairman, I don't think we've closed debate on the motion itself.

CHAIRMAN HARVEY: Beg your pardon. You're right. Does the Board want -- desire -- Go ahead, Bill.

MR. OLSON: When we started off on this process of finding out how we could best implement the will of the Congress, there was a -- some staff work done which indicated that the best possible way to implement the Board composition rider would be way of grant condition, ~~and that~~ that would be legal and appropriate and, indeed, be the easiest way to go.

Then in a recent memorandum in the Board book, there is a suggestion that, indeed, that we should proceed by way of regulation to amendment of Regulation 1607, which is at odds with the memorandum of October 13th.

I, in my own mind, don't know why the earlier view isn't better.

MS. WIESEMAN: They're both -- We intend to do

1 both. The reason we -- the grant condition will be part
2 of the grant; but the reason we want to move to amend
3 the regulations is, as an abundance of caution, that the
4 grantees cannot say we're requiring them to do something
5 that violates the regulation.

6 So by publishing the change in the regulation --
7 'cause the regulations currently do not permit the govern-
8 ing bodies to be composed in the manner the continuing
9 resolution requires. So just out of an abundance of
10 caution, we are changing the regulations to comply with
11 continuing resolution, but at the same time notifying the
12 programs, by grant condition, that they must come into
13 compliance or submit a plan, to come into compliance with
14 the governing body continuing resolution.

15 MR. OLSON: Would that same answer obtain in
16 the case of class actions whereby we could insert a grant
17 ~~condition~~ in that area as well?

18 MR. WIESEMAN: Well, the continuing resolution
19 with respect to grants -- I mean, with respect to class
20 action specifically provides that they accept -- that
21 they may not be brought except in accordance with poli-
22 cies or regulations adopted by the Board of Directors,
23 which is not a grant condition, as I would understand it.
24 I think that the Congress is saying you must publish the
25 kinds of policies and procedures, just as we had the same

1 discussion with respect to the other regulations, that
2 they must be published, there must be notice for comment.
3 It cannot be done, in my opinion, by grant condition.

4 CHAIRMAN HARVEY: Clarence. Bill, you finished?
5 May, you finished?

6 MR. OLSON: No. No, I'm not.

7 CHAIRMAN HARVEY: Oh, I'm sorry.

8 MR. OLSON: I'm not sure I understand that.
9 I remember the language of the continuing resolution.
10 Perhaps it was the conference report that was just what
11 you said. It said by way of policy or regulation. In
12 other words, it's my view that we could do it by policy,
13 just pass it at a meeting and it would be in effect to
14 govern class actions. Is that not accurate?

15 MS. WIESEMAN: Well, we currently have regula-
16 tions with respect to class actions in Part 1617 of the
17 regulation. We would be in the same position as -- We
18 would be amending those by additional regulation. Because
19 the policies of the Board -- It says, policies or regula-
20 tions of the Board. It is our opinion that the Congress
21 intended that they be published in accordance with
22 1008 (e) of our statute for comment and then be re-presented
23 to the Board for discussion after the comment, and then
24 made final regulations.

25 It is a change. It's a new -- It would impose

1 new restrictions on the grantees, and that -- that should
2 be done, in our opinion, by regulation.

3 MR. OLSON: Okay, then, the last question would
4 be with respect to lobbying. Is there any reason you
5 can think of why we cannot insert a grant condition with
6 respect to lobbying? Since it's a prohibition that's
7 implicit -- that's expressed in the C.R.

8 MS. WIESEMAN: I don't even think we need a
9 grant condition. I think every grantee must comply with
10 the law as it's in effect. When they receive their
11 grant, they're under the law that is in effect at the time
12 the grant is given, and no regulation can be -- can super-
13 cede the law. The regulation would not be in consonance
14 with the law. So they're bound by it, in any case, as
15 soon as they get the money, January 1, 1983. I don't
16 think we need a grant condition for that.

17 We could make it a grant condition, but I don't
18 think it's necessary. I think there's notice. The law
19 has been changed, and every program has been notified.

20 MR. OLSON: Thank you.

21 CHAIRMAN HARVEY: Clarence.

22 MR. McKEE: This may be self-explanable, but
23 on Page 5 of your package, -- page 87. It is the last
24 sentence of the second paragraph. It says, "... The suit
25 could not be maintained if the purpose is to benefit a

1 broader group than eligible clients."

2 Now would you define what you mean -- I know I--
 3 I still have a problem -- what "broader" means; but in
 4 many -- How do you distinguish what the purpose is, in
 5 terms of a suit? For example, you have a certain limited
 6 number of a class, for example, that will benefit a much
 7 broader group of people. And how strict would that be
 8 in terms of a definition that, say, if I was a project
 9 director analyzing, well, is this purpose to benefit
 10 Group "X", even though it benefits a group that's a bit
 11 larger. How do you -- Isn't that a fine distinction to
 12 make?

13 MS. WIESEMAN: It is a fine distinction. The
 14 proposed regulation specifically says "primarily to
 15 benefit" eligible clients. It's our position that you
 16 couldn't -- that it's very difficult to say "would only
 17 benefit", in any case, eligible clients, or make that
 18 kind of certification. It's a judgment question. We
 19 expect the -- Under our regulation, the Executive Directors
 20 would make a good faith judgment in reviewing the nature
 21 of the law suit, the potential class and, in accordance
 22 with our proposal, that they have to document this, that
 23 in fact they believe that it would primarily benefit
 24 eligible clients, that not exclusively but primarily, and
 25 make some judgment on that in an individual case.

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1 It's not easy, but we believe that -- In some
2 cases, it may be a close question; in other cases, it
3 may not be close at all, but that the judgment must be
4 made.

5 MS. SLAUGHTER: But it has to benefit eligible
6 clients.

7 MS. WIESEMAN: That's right. Primarily, for
8 the benefit -- The class action may not be brought unless
9 there's a -- unless it primarily will benefit eligible
10 clients.

11 CHAIRMAN HARVEY: Thank you. Other questions
12 from the Board?

13 This gentleman has a -- Your name, please?

14 MR. HOLLINGSWORTH. Don Hollingsworth, Director
15 of Central Arkansas Legal Services.

16 CHAIRMAN HARVEY: Three minutes, please, Don.

17 MR. HOLLINGSWORTH: Okay. And before that,
18 practiced with Legal Services in Memphis, Tennessee.

19 I just want to tell you that I have this feeling
20 inside of me of just total disappointment when I see this
21 Board sitting here getting ready to put out these regula-
22 tions for comment. And on governing bodies, there has
23 been no discussion about minority and women on local
24 Boards. And let me just use a few examples, and especi-
25 ally for new members of the Board and those of you who've

1 never practiced law in the South.

2 One of the bar associations, which is not my
3 service area, but which will have appointing power under
4 this regulation because it's a large bar, rural deep
5 South -- They got their first black lawyer in their
6 county, oh, about two years ago.

7 Now when someone gets licensed to practice in
8 rural deep South counties and you have a local bar associa-
9 tion, they will welcome you with open arms; and if you'll
10 pay your \$5 or \$20 a year, they want you to join. Well,
11 this new lawyer happened to have black skin, so what did
12 they do? At their monthly meeting at the country club,
13 they had a closed session to vote to see whether they
14 would accept him as a member.

15 Your regulation on governing bodies gets no
16 guarantee for minority and female members of governing
17 ~~bodies~~. And in those service areas, a huge percentage,
18 usually a vast majority, of eligible clients of the South
19 are black. And you all sit here and say you're going to
20 fulfill the will of Congress. And I hear no mention of
21 it. But it's all too obvious just looking here at what
22 this Board's composed of.

23 Now I wish somebody would show some concern for
24 clients, especially in the rural deep South. And I can
25 tell you some of the best people that have tried to make

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1 equal justice a reality in the South have been black
2 individuals who have served years and years on boards,
3 and you're getting ready to kick them off. And you
4 ought to say that. But nothing Congress did in the
5 restriction keeps you, in my opinion, from making some
6 assurance that there is going to be minority and female
7 representation. And please remember that the few minority
8 bar associations in the South are very small and, in most
9 places, they're nonexistent.

10 Thank you.

11 CHAIRMAN HARVEY: Mr. McKee?

12 MR. McKEE: Sir, if you had waited about twenty
13 minutes, you know, Mrs. Slaughter and I, for the last
14 two weeks, ever since St. Louis, have been discussing
15 with the Chairman this concept of minority bar and parti-
16 cipation, not only in terms of that Congressional mandate
17 but ~~also~~ in terms of the 10% bar participation. And we've
18 discussed ~~that~~ among ourselves several times, both Mrs.
19 Slaughter and Mr. Harvey and myself, and we had not gotten
20 to the point in this discussion that we're still on the
21 class action. The next session was the governing bodies.
22 Wait about ten minutes, we'll probably get to that.

23 CHAIRMAN HARVEY: Clarence, thank you. Further
24 comments?

25 MR. HOLLINGSWORTH: Sir, can I just make one

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1 apology?

2 CHAIRMAN HARVEY: You don't have to.

3 MR. HOLLINGSWORTH: No. There was a motion on
4 the floor to be voted on to publish these four things.
5 And I got the sense you all are ready to vote. I'm sorry.

6 CHAIRMAN HARVEY: That's all right, Don.
7 Clarence, let's go to this now, please.

8 MR. McKEE: I was going to ask Clint that, on
9 page 89, if there weren't any other questions on the
10 class action.

11 CHAIRMAN HARVEY: Page 89. Still discussing
12 the motion, the main motion, which -- Page 89?

13 MR. McKEE: It's the governing board section.
14 Do we have somebody on our -- that handles minority bar
15 liaison? I was wondering, in terms of this division,
16 after -- It's a long first sentence you have, Mary.

17 I was going to ask Clint and Miss Aucker
18 what is the best way, because when we raised this ques-
19 tion -- it was in Indiana and Houston, and Annie and I
20 were asking people about, in the 10% issue but also it
21 applies to this one, including minority bar representatives,
22 the question always came up, it's a great idea but do
23 you know there are some areas where there aren't any
24 black lawyers. So I was going to ask Clint to ask Miss
25 Aucker, what is the best way to phrase or to amend this

1 in terms of right after the word "minority" bar associa-
2 tion, do you say minority attorneys or representatives
3 of minority bar associations. Which would be the better
4 language as an amendment to our language?

5 There are some areas that I have been told that
6 have very few minority lawyers and no minority bar associa-
7 tions. So how would you have language that would include
8 the concept as a directive that there shall be represen-
9 tatives of racial and ethnic minority bar associations
10 or attorneys?

11 ACTING PRESIDENT LYONS: I think in the first
12 instance, it has to be clear that laws relating to equal
13 opportunity participation and nondiscrimination have to
14 be the primary purpose and attend our regulations.

15 Secondly, I think that we can adjust this regu-
16 lation to include provisions that it's clear to the
17 ~~majority~~ bar that, in order for them to comply with those
18 nondiscriminatory affirmative action equal opportunity
19 requirements, that they are encouraged to appoint and
20 invite minority lawyers and minority bar members to
21 participate on local boards of directors.

22 In other words, they retain the appointing
23 power, but it's clear to them that they are encouraged to
24 invite, under their appointing power, members of minority
25 bars and minority lawyers to participate on local boards.

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1 That's just a concept that I have had for a
2 time. I don't know -- I have not discussed it with Mary
3 yet.

4 MR. McKEE: Page 91, Paragraph C. At the end
5 of that sentence, for example. If this were amended --
6 I guess I'll have to read this whole thing.

7 "...Appointment of the attorney members of the
8 governing body shall be conducted so that a majority of
9 the governing body are appointed by the governing bodies
10 of State, county or municipal bar associations, the
11 membership of which represents a majority of attorneys
12 practicing law in the locality in which the recipient
13 is to provide legal assistance." Insert, "... including
14 attorneys which are members of racial or ethnic minorities."

15 That's about the best place to put that, isn't
16 it?

17 ACTING PRESIDENT LYONS: What does that mean?

18 M. PARAS: Clarence, it seems there's a better
19 way to state that more affirmatively.

20 MR. McKEE: We can put "shall", "shall in clude"

21 MR. PARAS: In a separate sentence, rather than
22 as a dependert clause.

23 MR. McKEE: We could probably have Mary to put
24 it together in the right language.

25 MR. PARAS: Yeah. Why don't you. We certainly

1 intend that. In fact, why it was omitted, I don't know,
2 except that I just think the -- Well, there are some of
3 us who take some things as a given; and one is that there
4 will be equal treatment and equal opportunity. And what
5 Don described as happening to a black lawyer down South
6 is absolutely horrible, and it's something that --

7 MR. HOLLINGSWORTH: It happens every day.

8 MR. PARAS: Well, okay, I concede it. But it
9 is -- For you to bring that to our attention, and I'm
10 so delighted that you did, and I would like to see the
11 specific, direct statement that would prohibit any form
12 of discrimination.

13 CHAIRMAN HARVEY: Clarence, you mentioned
14 preliminary comments. We discussed fund set-aside and
15 that ten percent. Do you want to pursue that at this
16 time, or wait?

17 MR. McKEE: I probably -- I think when this --
18 get this out for comment, we'll do it later on.

19 CHAIRMAN HARVEY: Okay.

20 MR. DANA: Is that a motion?

21 MR. McKEE: I was getting ready to have one.
22 I would move that the staff be directed to amend that
23 language as discussed and directed, in terms of minority
24 bar involvement on the governing boards.

25 CHAIRMAN HARVEY: Pardon me. We have a motion

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1 on the floor. Can you make that as an amendment to the
2 motion?

3 MR. McKEE: All right. We move to amend the
4 existing amendment motion to that extent.

5 CHAIRMAN HARVEY: Second?

6 MS. SLAUGHTER: Second.

7 CHAIRMAN HARVEY: And discussion? Those in
8 favor, signify by saying "Aye".

9 (CHORUS OF AYES.)

10 CHAIRMAN HARVEY: Opposed by the same sign.

11 (None opposed.)

12 CHAIRMAN HARVEY: All right. The motion has
13 been amended again. Further discussion now on the main
14 motion as amended twice. Clarence.

15 MR. McKEE: Could you just tell us, everybody,
16 what the motion is. People get kind of confused as to
17 which motion is which.

18 CHAIRMAN HARVEY: I'll do my best.

19 The motion is to adopt, in our agenda, Part 7
20 and superimposed on the little dots, A,B,C and D. And
21 the first amendment which is adopted is referred to as
22 the Harvey/Olson class action. The second amendment is
23 your amendment. And that's the complete motion.

24 MR. McKEE: And the motion is to put it out to
25 comment.

1 CHAIRMAN HARVEY: Yeah. The motion is to put
2 all this out in the Federal Register for comment, for
3 adoption as regulation. That's the motion.

4 Now I hear -- I detect no further discussion
5 of the Board. There's a gentleman standing up there a
6 moment ago. Where --? Yes?

7 MR. SCOTT: I wanted to make a comment on the
8 minority and women participation. I think that there's
9 a very simple way to do it.

10 My name is Dick Scott. I'm an attorney in
11 private practice.

12 CHAIRMAN HARVEY: Dick Scott?

13 MR. SCOTT: Scott.

14 CHAIRMAN HARVEY: All right.

15 MR. SCOTT: Previously spent twelve years work-
16 ing with Legal Services.

17 The whole drift of this proposed regulation is
18 to require the recipients to develop a plan of compliance,
19 and in that plan of compliance the recipient can identify
20 minority and women bar associations in the locality and
21 be required to come up with a plan to include minority
22 and women on their board and set criteria in their by-laws
23 that require local appointing authorities and qualifica-
24 tions for members in the by-laws of the recipient organi-
25 zation, that require appointing authorities to identify

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1 minorities and women and include them in the people that
2 are appointed, and reject appointments if they do not
3 comply with those qualifications. And that would prob-
4 ably be the simplest way to proceed and insure that there
5 is compliance with, I think, what is the intention of
6 this Board and would be the intention of Congress.

7 CHAIRMAN HARVEY: All right. Thanks, Mr. Scott.
8 Another comment, please?

9 MR. WATTS: Rodney Watts, Director of Wayne
10 County Neighborhood Legal Services.

11 CHAIRMAN HARVEY: Mr. Watts. All right.

12 MR. WATTS: I think I would suggest that, as
13 some finality is brought to this issue, probably at your
14 next meeting or whenever these items are published for
15 comment -- What we've always tried to do is to seek a
16 balance; that is to say, Detroit's -- our program is
17 rather unique.

18 We have an urban, a suburban and a rural mix,
19 black, white, Mexican-American, Arab. And what we've
20 sought to do is to -- as to the extent possible, include
21 a racial, ethnic and sexual mix. And I think that's the
22 approach -- That's the approach that has to be taken, so
23 that on a program by program basis, if you're in a situa-
24 tion where you have a large Mexican-American population
25 that the program is serving, then certainly I would think

1 that the inclusion of a significant number of Mexican-
2 American attorneys on the Board of Directors will be
3 desirable.

4 If you have a situation where you have all white,
5 it's an all white, rural area, then I would assume that,
6 if there are no minorities around, then your board would
7 want to reflect that mix.

8 So what I'm saying is that, whenever the rules
9 are promulgated, they have to be promulgated in such a
10 way that the local Board has some very direct and affirma-
11 tive direction coming from you; and at the same time,
12 they can take some affirmative steps to come into compli-
13 ance in a way that meets the requirements of their particu-
14 lar locality.

15 CHAIRMAN HARVEY: Very well said. Thank you
16 very much.

17 MR. DeMOSS: Could I ask Mr. Scott, is it?

18 CHAIRMAN HARVEY: Mr. Watts.

19 MR. DeMOSS: You come from Detroit.

20 MR. WATTS: Yes.

21 MR. DeMOSS: I want to ask some questions,
22 because I think the Detroit metropolitan area -- it sounds
23 very similar to the Houston area that I'm from.

24 Do you have what I call an integrated bar, not
25 in the racial sense but in the requirement that every

1 lawyer be a member of the same bar association?

2 MR. WATTS: Yes, we do.

3 MR. DeMOSS: All right. You then have a Detroit
4 bar association?

5 MR. WATTS: That is correct.

6 MR. DeMOSS: And a variety of other bar associa-
7 tions?

8 MR. WATTS: That is correct.

9 MR. DeMOSS: Which sounds very similar to what
10 we have in Houston. We have, if I'm -- and I'm confident
11 I am -- We have not only a bar association composed
12 principally of black lawyers, but we have another bar
13 association composed principally of black women lawyers.

14 Now how do you sort out all of this -- I mean,
15 how have you all done that? Do you say black women
16 lawyers association gets one seat, black lawyers gets one
17 ~~seat~~ Mexican-American lawyers gets one seat? I mean --

18 MR. WATTS: As our By-Laws presently stand, and
19 as of this week we are in the process of amending the
20 By-Laws to come into compliance, we have approximately
21 eleven bar associations represented on our Board of
22 Directors. The Detroit Bar Association, the Wolverine
23 Bar Association which is the predominantly black bar,
24 and we have lawyers who are representing community groups.
25 Okay?

1 Now what we're anticipating is that, once
2 January hits, we will maintain the same groups; but what
3 those groups will do is, they will nominate their repre-
4 sentatives, send the nominations to the State Bar and
5 ask that the State Bar confirm those nominations. So,
6 in effect, it'll be the State Bar that'll be making the
7 appointment.

8 The other eleven bar associations will have an
9 opportunity for making the input, so that we still keep
10 what we have and have been able to comply with what's
11 required.

12 MR. DeMOSS: What I hear you saying -- Is that
13 a change? Do you not now submit it to the State Bar
14 Association?

15 MR. WATTS: No. Right now each of the various
16 bar associations or community groups -- we have, I guess,
17 a rather unique situation where we have community groups
18 who send lawyers to our Board to represent their group.
19 And what in effect we'll be doing now is picking up on
20 the portion of the regulation which gives us the option
21 of going with the majority bar association in the State,
22 which is the integrated State Bar.

23 MR. DeMOSS: Thank you.

24 CHAIRMAN HARVEY: Mr. Vennie who is well known
25 to us.

1 MR. VENNIE: Thank you, Mr. Chairman.

2 Let me just check the ground rules that we're
3 operating under. If I ask the Board members some ques-
4 tions and they respond, does that come out of my three
5 minutes?

6 (LAUGHTER.)

7 CHAIRMAN HARVEY: I know of nothing in the rules
8 and regs which say Board members have to respond,
9 Mr. Vennie. If you want to make a statement, have at it.
10 Twenty seconds have gone by.

11 MR. VENNIE: Okay.

12 I would like to know if there are members of
13 the Board who think that the portion of the continuing
14 resolution requiring these changes in the boards may be
15 a little unclear or perhaps even unworkable.

16 MR. STUBBS: Mr. Vennie, I have an open mind
17 on that subject.

18 MR. VENNIE: Okay. Anybody think that it
19 might be very, very difficult to implement, particularly
20 in those areas where there is an integrated bar, where
21 the bar, the State bar, might, in fact, claim that it has
22 the appointing authority for everyone? Your staff paper
23 gives an option that allows for a combination of bars, but
24 the State Bar may read the statute somewhat differently.

25 Is that a possibility?

1 MR. OLSON: Mr. Vennie, I get the feeling like
2 I was in court on the witness stand, and a series of
3 questions was being asked, and that's the first of them.
4 And I'd like to know where you're going with the ques-
5 tions or what predicate you want to prove; but I would
6 think that, at least for myself and I think all that I
7 am interested in finding ways to implement the will of
8 the Congress, and that this is what we're trying to do,
9 and that, as with any area, some matters are more clear
10 than others and more express than others; and we're
11 trying to do our very best job.

12 And if you have a position that these things
13 are unclear or unworkable, you can advance that; but to--
14 twenty questions with respect to this thing --

15 MR. VENNIE: Really, only two, Bill. Let me
16 just finish very quickly, because my time is running, and
17 ~~the Chair~~ is -- I'm sorry, Clint.

18 MR. McKEE: I would think that -- and mostly,
19 in administrative law and most times, as Congressmen will
20 agree, Congress is unclear; it's unworkable what they
21 write in many ways -- that people would look to the inter-
22 pretation the Agency gave to Congress's mandate. So, if
23 Mary puts in the -- I was saying earlier, the word "may"
24 or "shall", talking about that. If Mary and the staff,
25 in terms of the language they use, in terms of that

1 provision, use the word "shall" as our interpretation
2 and wish, I would think that that would be how we inter-
3 pret Congress's will also and that's what we're controlling.

4 MR. VENNIE: Thank you, Clarence. I very much
5 appreciate that point. I'll be very brief.

6 The Congress intended that this Corporation be
7 guided by an eleven-person Board of Directors. It did
8 not intend that this Corporation would be guided by the
9 535 members of Congress.

10 The ability to live with Congressional will,
11 I understand that you have to do that because you are
12 required by law to do that, but you have a different
13 requirement as well, a requirement not to try always to
14 perfect by regulation the imperfections of bad legisla-
15 tion, but to say to the Congress from time to time, un-
16 fortunately you did not think of this and that or the
17 ~~other~~ thing, and we in our wisdom, in our deliberations,
18 as the eleven people who know best these programs and best
19 what it's going to take to administer, would like to
20 recommend to you, the Congress, that in fact you not
21 continue to insist on X, Y or Z.

22 I use the governing body regulation as a parti-
23 cular point, because I would hope that, at some point,
24 I would hear -- we would hear you debate your particular
25 feelings, not on the language of a regulation but on the

1 wisdom of that particular Congressional action. And if
2 you find that it is unwise, if you find that it's probably
3 unworkable, if you find that it's not reflective, that
4 you instruct your staff to seek change.

5 I would encourage you again to be advocates in
6 behalf of poor people, in behalf of clients, and in behalf
7 of this program that you're responsible for administering.

8 Thank you, Mr. Chairman.

9 CHAIRMAN HARVEY: Thank you. Mr. Watts?

10 MR. WATTS: I just have a very brief question.
11 I can foresee this issue coming up. It's not very clear
12 who makes the decision as to whether you look to the
13 State or the county or the local bar association. Does
14 the existing Board of Directors do that? Do the bar
15 associations themselves get together and do that?

16 ACTING PRESIDENT LYONS: It would seem to me
17 ~~that~~ this particular provision of the law does not confer
18 any standing and bar associations to do anything but
19 it confers the responsibility on the recipient to make
20 sure that they, the bar associations, understand what
21 the Congress intended and that they have the authority
22 to appoint. But the responsibilities in the local program
23 to carry out the intent of Congress by working with those
24 bar associations so that they can appoint, and it is up
25 to the Corporation to enforce the Act with respect to the

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1 grantees. The Corporation has no standing to enforce it
 2 against bar associations. So it would seem to me what
 3 flows from that is that, if our language is predicatory
 4 as opposed to mandatory in any given situation, then the
 5 local recipient board of directors have the option; but
 6 it must inform the bar association, invite them to parti-
 7 cipate and, if in fact they don't, then they have to
 8 explain to the Corporation what has happened. But the
 9 responsibility in the Act and the provisions are a function
 10 of the relationship between the grantees and the Corpora-
 11 tion.

12 CHAIRMAN HARVEY: Thank you.

13 MS. WIESEMAN: I might say one of the reasons
 14 that we said that this should be implemented by a grant
 15 condition as a plan be forwarded to the Corporation as to
 16 how they're going to come into compliance with this, re-
 17 ~~co~~gnizes that there's different areas of the country,
 18 there's different factual situations, and that the
 19 governing -- that the recipients must come up with a
 20 plan that we approve that complies with this.

21 MR. : I'd be happy to work with
 22 Mary on that before it goes out.

23 CHAIRMAN HARVEY: Is the Board prepared to vote
 24 on this now?

25 MR. SCOTT: Can I ask one question also about

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1 the governing board? There are dates submitted in there.
2 Is that going to be published without dates, or are there
3 going to be suggested dates that persons will be able to
4 respond as to the feasibility of complying within the time
5 limits that might be proposed by this Board?

6 CHAIRMAN HARVEY: May, may I call on you for
7 that?

8 MS. WIESEMAN: We did have dates in the original
9 draft we sent to Mr. Stubbs. He felt that they were too
10 long. We gave the programs six months to come into com-
11 pliance. He felt that it could be done quicker. In con-
12 sultation with our Office of Field Services, I understand
13 that that is -- and with the Regional Offices that the
14 person in my office who drafted the original proposal --
15 that six months is really a reasonable period of time,
16 because you have to do all of the things that we've been
17 ~~talking~~ talking about here, consultation with the bar, coming up
18 with a plan, trying to implement something.

19 We do have provisions for waiver and for exten-
20 sions of time, but only for good cause. So I think if
21 we're going to set a time, it should be a reasonable time.
22 It should not be a time that no one can comply with. And
23 we did have dates in our original draft. We left them
24 out and assumed that the Board would -- because of
25 Mr. Stubbs' objections to the time limit.

1 He had said he would recommend that June 1 be
2 the time when all of them must be in compliance, from
3 January. That didn't give much time for a plan for the --
4 for us to approve a plan for the recomposition; and we
5 had October as the time for compliance as opposed to
6 June 1.

7 CHAIRMAN HARVEY: All right. That gentleman
8 has left the room just a moment. So I think that's the
9 answer.

10 I initially understood this question to mean
11 time for comment on this proposal.

12 MS. WIESEMAN: I think he means a time when
13 they have to come into compliance. He did lead this way.

14 CHAIRMAN HARVEY: Okay.

15 MR. JOHNSON: Mr. Chairman, may I ask a question,
16 please?

17 CHAIRMAN HARVEY: Yes.

18 MR. JOHNSON: How do we face the issue with
19 regard to unexpired terms on our Board of Directors?

20 MS. WIESEMAN: My answer would be, that has to
21 be part of the plan, that they submit to the Corporation,
22 that we look at each individual plan to make sure that
23 they're coming into compliance.

24 CHAIRMAN HARVEY: Okay.

25 MR. : What did Mr. Stubbs say after

1 you recommended-- you told him what the staff said?

2 MS. WIESEMAN: Well, he said that I think we
3 ought to discuss that and -- He suggested, actually -- and
4 he also suggested that we notify directly the Corporation
5 by letter, the bar associations throughout the country,
6 that this is coming and to get them on notice. We don't
7 have to wait until January 1st to notify them, if they
8 don't know it. And he even suggested we might want to
9 write to the Chief Justice of each State and say, this
10 is in effect. In other words, to try to hurry the process.

11 He felt, and I think it's true, you give a lawyer
12 nine months, he's going to take nine months. You give
13 him six months, then he'll take less time; but I think,
14 as a practical matter, that six months is just not long
15 enough. Our experience before, when the governing boards
16 had to be changed, it took -- you know, it just is not a
17 reasonable period of time, the six months, in our view.

18 If no one can comply with the time period, then
19 it doesn't make any sense to make it a requirement.

20 ACTING PRESIDENT LYONS: Let me just elaborate
21 on that a little bit. It seems to me that, and our experi-
22 ence has been, that when a requirement is totally within
23 the control of the grantee, then that's a different situa-
24 tion from when coming into compliance is not totally
25 within the grantee. It requires the cooperation of an

1 outside entity. It requires, in some instances, establish-
2 ing some relationship. And the one thing we don't want
3 to do is put people out of compliance by not recognizing
4 those particular kinds of practice.

5 So that is why we, based on experience, are --
6 you know, erring on the side, if you will, of a little
7 longer period of time.

8 MR. McKEE: Mr. Chairman, of course, after the
9 comments we can review this, but it seems to me -- I agree
10 with Mr. Stubbs that, ever since the statute was out, there
11 have been concerns and problems. For example, the
12 Advisory Councils and -- that are in the statutes haven't
13 been really implemented. And clients are concerned that--
14 for example, in Memphis -- about the governing board issue

15 I think that, if the Board indicates that it
16 considers it very important, it's for them to say we have
17 a time problem; but I think we should make them jump as
18 fast as we can and let them know that we want them to
19 do it as fast as they can. If there's a problem with time,
20 let them then address that to you as opposed to us giving
21 them that option first.

22 I would agree with Mr. Stubbs. Have them do it
23 as fast as they can, but the shortest period as opposed
24 to the longer period.

25 CHAIRMAN HARVEY: Howard.

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1 MR. McKEE: We can do this before they come back
2 as opposed to now.

3 MR. DANA: My understanding, Mary, is that there
4 are blanks in our draft at this time?

5 MS. WIESEMAN: That's right. On the times within
6 which the different -- that the programs must be in
7 compliance.

8 MR. DANA: I think that -- It would seem to me
9 that we are putting this out for comment. If the conse-
10 quences of a six-month period are outrageous and extremely
11 disruptive, we would presumably hear about that. I would
12 move that we adopt Chairman Stubbs' suggestion and put
13 the short dates out, with the understanding that we are,
14 based upon comments, free to change it.

15 I would make that as a motion.

16 MR. : Second.

17 CHAIRMAN HARVEY: Motion -- That's an amendment,
18 Howard. Mr. Dana has offered an amendment, which has
19 been seconded. Discussion on the amendment.

20 Hearing none, those in favor of the amendment,
21 signify by saying "Aye".

22 (CFORUS OF AYES.)

23 CHAIRMAN HARVEY: Opposed, the same sign.

24 (NONE OPPOSED.)

25 CHAIRMAN HARVEY: Are you now prepared, members

1 of the Board, to vote on the original motion as amended
2 once, twice, thrice -- three times, and which is to put
3 this out for comment in regulation form?

4 MR. DANA: Mr. Chairman, just one more question.
5 I'm frank to admit that I have not read or studied these
6 regulations. We've been occupied in other areas. Are
7 there any other blanks of note that ought to be filled in
8 so that people understand, from a comment point of view,
9 what it is that we might do?

10 MS. WIESEMAN: Well, there was only one other
11 blank, and it's in the comment section of the refunding.
12 And that was on our suggestion that the now refunding on
13 the minimum access level at the time this is drafted. It
14 is \$6.00 at this point, \$6.24. That was left blank in
15 here. I had meant to mention that yesterday.

16 It's in the comment section. It's in our
17 ~~refunding~~ proposal on page -- page 50 of your book. That
18 should be currently \$6.23 per poor person.

19 MR. DANA: Let me get this straight. Ten years
20 ago, minimum access was defined as \$7.00 per poor person.
21 Now you're defining minimum access as \$6.23?

22 MS. WIESEMAN: Well, it's not the definition,
23 it's the fact. It's the -- The geographical coverage,
24 the minimum access geographical coverage, has been reached;
25 but with a reduction in funding, the actual per dollar

1 figure has decreased to \$6.23.

2 MR. DANA: Well, what you're saying, I guess,
3 is that the actual expenditure per poor person across the
4 country is at that level.

5 MS. WIESEMAN: That's right. And that's in
6 1970 census figures.

7 MR. DANA: That's not what -- My understanding
8 is, that's not what we have historically regarded as
9 minimum access, that being a term of art defined as --

10 MS. WIESEMAN: Seven dollars.

11 MR. DANA: No, it's defined as the price of
12 two lawyers per 10,000 poor people, which number, I think,
13 is somewhere around \$13.00, at the present time.

14 MS. WIESEMAN: Well, it was -- The funding goal
15 was \$7.00 per poor person. That was the funding goal in
16 reaching minimum access.

17 MR. DANA: Well, whatever is -- If we are going
18 to fill that blank in, I just want to be sure that we
19 fill it in with the right number. And I think it's a fact
20 what minimum access is, and it is also a fact what the
21 average expenditure per poor person using 1970 census
22 data is. It's my judgment that we ought to be careful
23 about making sure we call the right thing by the right
24 name.

25 CHAIRMAN HARVEY: Clint.

1 ACTING PRESIDENT LYONS: Strange as it may seem,
2 I've been here five years and I'm not sure, you know,
3 which definition I use at any given time. I think they're
4 both right.

5 The goal was to have two lawyers per 10,000
6 poor people. That translated out into -- in 19--whatever,
7 whatever the year was -- \$7.00 per poor person. Of course
8 now two lawyers per 10,000 poor persons at today's cost
9 of living are substantially higher than that. So what
10 is happening, when you look at the allocation of funds
11 and you see the number -- and you arrive at the figure
12 on the number of poor people, based on what we are distri-
13 buting in funds, you've got something like \$6.21 per poor
14 person.

15 Where the confusion arises is that the figure
16 keeps shifting. If we've got a cut, we've got \$6.21.
17 ~~If we~~ are in 1982 as opposed to 1970, we don't have
18 \$7.00, you know, in today's figures. So --

19 CHAIRMAN HARVEY: Harold.

20 MR. DeMOSS: Does this -- I'm asking a question.
21 There are some programs which, on an individual basis,
22 would not have this \$6.24 per poor person. Isn't that
23 right?

24 MS. WIESEMAN: That's right.

25 MR. DeMOSS: And are we saying then that the

1 repeat -- If we regranted in '83 exactly what they got
2 in '82, they would still be in compliance?

3 MS. WIESEMAN: This -- In connection with the
4 re-funding hearings, we were defined out of the new
5 section in our proposed regulations, to take into account
6 Congress's concern about not going below minimum access.
7 And that's why, in this section, that if cutting a program
8 reduces it below the current minimum access level, that
9 that would be a denial of re-funding which would kick in
10 the hearing procedures under the new regulation.

11 MR. DeMOSS: All right. But the question I'm
12 asking is, there are some programs which, if you divide
13 the money they get by the number of poor persons in their
14 area, you're going to end up with some of them having
15 less than \$6.24 and some of them having more than \$6.24.

16 MS. WIESEMAN: I'm looking at Buckey and Clint,
17 ~~and~~ they say no, they won't have less than \$6.24.

18 ACTING PRESIDENT LYONS: There are no -- There
19 are no programs which are getting less than \$6.24 per
20 poor person. Okay. So this does not trigger an automatic
21 denial of re-funding, if we simply did what those programs
22 got in '82.

23 MR. DeMOSS: Where did I get the idea that there
24 were some programs that were not getting the minimum
25 access dollars?

1 MR. DANA: I think I have the answer to that
2 question. This is -- We spent two or three hours in --
3 I think it was Houston -- dealing with this problem.

4 I think that my reading of the continuing resolu-
5 tion is that Congress has said that, if there is not to
6 be minimum access, there should be equal access. And
7 minimum access, in my judgment, is defined as the cost of
8 two lawyers per 10,000 poor people across the country,
9 and is a number around \$12.00 or \$13.00. And that means
10 that Congress's -- and that we do not do.

11 I think we are spending something like \$6.00 or
12 the number you gave on an average, I guess, maybe as a
13 minimum. And I think that what is intended by Congress is
14 to spread our resources over the country reasonably
15 equally. And right now it is not reasonably equally,
16 and that is the reason that the Audit and Appropriation
17 ~~Committee~~ has asked the staff to generate quickly numbers
18 and dollars so that we will know what it is that Congress
19 intended at a time, such that we are in a position to go
20 to Congress and say, in December, do you really mean this?

21 I am -- I think that that is what the Audit and
22 Appropriations Committee, based upon a memo from Dennis
23 Dougherty and some discussions with the staff, believe
24 Congress intended. And to define minimum access as the
25 minimum dollars provided any program in the country, if

1 that's what is being done here, and I gather that's what
2 is being done, would totally frustrate the will of
3 Congress, if I hear it.

4 CHAIRMAN HARVEY: I'm going to call on Clint
5 and then Mr. Watts.

6 MR. LYONS: I think what -- With all due respect,
7 Howard, I think that has just happened here, that some-
8 thing that the Congress -- we have been hoping the Con-
9 gress would do, but they've never done. And that is,
10 adjust the \$7.00 -- the two lawyers, the cost of two
11 lawyers per 10,000 upward for inflation over a ten-year
12 period, to make it commensurate with the cost of those
13 services at this time. Congress has never done that.

14 They have held us to our cost of 1970 cost of
15 two lawyers per 10,000 persons which we define -- arrived
16 at as being \$7.00 per poor person. So if that's true,
17 ~~if~~ Congress has never upgraded that \$7.00 to the current
18 inflated cost, real cost of doing business with two
19 lawyers per 10,000 persons, then we still have \$7.00 per
20 poor person as the minimum access standard cut down to
21 \$6.21 per poor person as a minimum access standard, by
22 virtue of the 25% cut we received.

23 Now I guess this Board can decide that its
24 definition of minimum access is the real cost in 1982
25 dollars, and say that two lawyers per 10,000 people is

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1 \$13.00 per poor person and define that as the minimum
2 access standard. But I think you ought to know that
3 Congress has never made that inflation adjustment.

4 CHAIRMAN HARVEY: Mr. Watts.

5 MR. WATTS: Yes. I have a question. Are you --
6 Are you saying that when I get my basic field grant next
7 year, if it should somehow come out that the amount of
8 that grant is less than the current minimum access stand-
9 ard, that the hearing process may kick in at that point,
10 under Part 1625? Because if so, I guess --

11 MR. : You put your finger on my
12 question, which is that right there. It's not the amount,
13 but what happens with that amount.

14 MR. WATTS: If so, when I go to that hearing,
15 are we talking about my continued funding, my continued
16 existence, or are we talking about a situation where
17 ~~perhaps~~ I have an ability to somehow convince the Corpora-
18 tion that ~~my~~ needs are greater than what has been given?

19 What happens at the hearing?

20 CHAIRMAN HARVEY: That's a first-rate question.
21 Mary?

22 MS. WIESEMAN: The definitions of the denial
23 re-funding has been changed to take into account or try
24 to take into account the requirement that the programs
25 not be reduced below the minimum access, so that where a

1 denial of re-funding is not under our proposal 10% or
2 \$40,000, whichever is higher, it would be for a program
3 who would be, by virtue of that reduction, reduced below
4 the current minimum access, which is \$6.23 per poor person.

5 However, the regulations themselves start out
6 with that, if it is a result of a budget cut by Congress
7 that's across the board, that would not be a denial of
8 re-funding. So that this would be singling out -- maybe
9 not. But if a program were cut, it's a definitional --
10 If it's cut below the \$6.23 without -- not as a result of
11 a funding cut by -- across the board by Congress of our
12 budget, then that program would be entitled to a hearing
13 under our proposed regulations as being that that would
14 be, under this definition, a denial of re-funding, as
15 opposed to other programs which are funded above that
16 level may be reduced by \$40,000 or 10% under our proposal
17 without kicking in the hearing requirements.

18 CHAIRMAN HARVEY: He has another question,
19 I think.

20 MR. WATTS: Then under what circumstances would
21 the Corporation want to fund a program under the minimum
22 access standard in a situation where you don't have a
23 Congressional cut? It seems to me that if the Corporation
24 doesn't want a program, it's not going to fund anything.

25 I guess there's something I'm not understanding.

1 MS. WIESEMAN: That may, in fact, be the case;
2 but the reason that this language was put in was to not
3 permit the definition of denial of re-funding, was to
4 have the definition of denial of re-funding take into
5 account the continuing resolution requirement on minimum
6 access, or attempt to recognize that, so that the Corpora-
7 tion -- if -- and I don't know the situation where it
8 might occur. If it did occur that it was a 10% or
9 \$40,000 cut which reduced a program below minimum access,
10 the program would have the right to a hearing. And it
11 would be a denial of re-funding under our proposal.

12 CHAIRMAN HARVEY: Clint, why don't you go ahead.

13 ACTING PRESIDENT LYONS: Rodney, I think the
14 intent, basically, is under the definition of denial of
15 re-funding which increases the Board's flexibility to
16 take money without triggering a hearing process or use
17 ~~money~~ -- move money around without hearing -- That's one
18 part of it. That's one part of the intent of it.

19 The other part of the intent of it is not to
20 allow that flexibility of the Board to cut into a program
21 to the extent that a program is reduced below minimum
22 access, because we have a language in our continuing
23 resolution that says, you know, programs shall -- you know,
24 that the intent is for programs to be at minimum access.
25 So that's why, you know -- That's why we got the language

1 in there that says, you know, that it's not intended to go
2 below minimum access.

3 MR. WATTS: Of course, you understand what my
4 concern is. If I should somehow get a basic field grant
5 next year which takes me below minimum access, I then
6 absolutely must know that, when I ask for this hearing,
7 whether -- Say I'm reduced by an amount of money, let's
8 say, \$100,000 which would take me below minimum access.
9 It's very important for me to know whether or not I'm
10 going to the hearing to fight to get \$100,000 back versus
11 going to the hearing to save my \$1.732 million.

12 CHAIRMAN HARVEY: That's right.

13 MR. WATTS: And to the extent that --

14 MR. DeMOSS: Under our terminology, isn't that
15 taken care of, Mary? I mean, we can't take away -- No,
16 that's not right. We could take away the entire amount.
17 ~~Termination~~, under our terminology, happens during the
18 course of an existing contract or grant. Denial of
19 re-funding happens at the time of expiration of a grant
20 or contract. So we could be taking away the totality.

21 MS. WIESEMAN: I think that's a good point, but
22 in the notice of the -- that the Corporation's required
23 to give as to that the re-funding would be denied, I would
24 think the notice would have to say whether we're intending
25 to take away \$100,000 or whether we're intending to take

1 away the whole grant. They'd be notified, so they'd know
2 when they come to hearing what they're fighting about.

3 MR. DeMOSS: Let me ask another question.

4 Mary, I've got it in my head somewhere that this
5 Congressional change was intended to establish some thought
6 of comparison of the number of dollars that this program
7 is getting out here in rural Texas with the number of
8 dollars that a metropolitan program is getting in New York
9 City. Am I incorrect in that?

10 MS. WIESEMAN: Well, there's two ways of formu-
11 lating the minimum access. One is geographical coverage.
12 We mentioned this in the data we sent out on October 13th.
13 If by minimum access, they mean geographical coverage of
14 the country, that we have achieved that geographical
15 coverage albeit at a reduced rate, so that minimum access--
16 and the continuing resolution says until minimum access
17 ~~is~~ achieved. So that's one definition, geographical
18 coverage.

19 If, however, they mean by that that it is at
20 the level to provide the two lawyers per 10,000 poor
21 people, no, we have not reached that. We're not at that
22 level now. The problem with that is, if we're going to --
23 If, therefore, the continuing resolution requirement of
24 equalization comes in, what figures do we use. We don't
25 have the census figures. The continuing resolution also

1 says that this will take into account special programs
2 and special needs and has to be interpreted in accordance
3 with the other provisions of the statute.

4 So it's our suggestion, either that if Congress
5 means geographical coverage, we have that; and that's
6 why -- And we're taking that into account here. You
7 won't reduce it below our current level. Or if it doesn't
8 mean geographical coverage, if it means dollars, then
9 Congress must have intended that we would be able to get
10 the 1980 census data in order to make a reasonable reallo-
11 cation to equalize or attempt to equalize with special
12 programs the funding level across the country. We just
13 don't have the data yet to make that tremendous alloca-
14 tion that may be required.

15 CHAIRMAN HARVEY: I'd like to ask Dennis if he
16 has anything to add.

17 MR. DOUGHERTY: There is a rider that addresses
18 the Corporation's responsibilities with respect to the
19 allocation of funds that indicates that, unless minimum
20 access is achieved, then the Corporation is responsible
21 for seeing that funds are allocated on the basis that
22 does not discriminate against any area or region of the
23 country.

24 A separate rider that address the issue of --
25 allows us to have more flexible hearing procedures, and

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1 immediately before us is, is there some amount less than
2 10% the Corporation might reduce the grantee that should
3 trigger the hearings.

4 With respect to -- You have, attached to the
5 memo that I sent you October 7th, two pages of debate
6 from the House last year in which there was no attempt
7 made to define the term minimum access. The -- And I'm
8 not aware that Congress ever has. They have -- It's a
9 term the Corporation has used through the years and that
10 Congress has picked up on. In our budgetary, Mr. Smith
11 indicated in the course of the debate, he did not antici-
12 pate under this authorization for \$241 million that it
13 would be possible to achieve minimum access; and so he
14 was offering alternative rules.

15 With respect to implementing this provision,
16 you have a staff recommendation that implementation await
17 ~~new~~ census figures.

18 CHAIRMAN HARVEY: Thanks, Dennis. Howard?

19 MR. DANA: With all due respect, I'm looking at
20 those pages. For the benefit of the audience, let me
21 read the provision which we are going to have to operate
22 under.

23 "Unless minimum access to legal assistance is
24 available or provided in all parts of the country, the
25 Corporation is to allocate basic field grants so as to

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1 ensure that no greater level of access to legal assistance
2 funded by the Corporation is available or provided to any
3 part or area of the country than is available or provided
4 to all parts of the country, consistent with available
5 funding and other provisions of the Legal Services Corpora-
6 tion Act and Regulations."

7 That was offered by Mr. Katzenmeier on behalf
8 of Mr. Smith, the Chairman of the Committee. At a later--
9 On the next page of Dennis' distribution, Mr. Smith was
10 asked to explain this. And he said: "...The gentleman
11 from Wisconsin, Mr. Katzenmeier, will yield, we have
12 that trouble everywhere. I think the highest cost of
13 living in the United States is in a little town in
14 Arkansas. I do not know how you can give them more
15 attorneys in that little town than you do anyplace else.
16 It is impossible, but the minimum access formula is based
17 upon two attorneys for 10,000 eligible recipients. In
18 this case, there will not be two attorneys for 10,000
19 recipients.. " Meaning, at the time this passes.

20 "...There is going to be something less than
21 that. There may be one attorney per 10,000. I do not
22 know what it will turn out to be, but if it is less than
23 the minimum access, then there ought to be a fair distri-
24 bution of that service. It is based on the number of
25 eligible poor people who reside in any particular area

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1 and the number of attorneys it takes to serve them, and
2 the rules and regulations required to provide that service.

3 I do not think that there is any question that
4 Mr. Smith believes that minimum access is the definition
5 this Corporation has historically used, and that we
6 aren't anywhere near it. Therefore, I think the continu-
7 ing resolution means that we must spread these resources,
8 as modest as they are, across this country equally. And
9 we have the Audit and Appropriations Committee in Houston
10 ask for that to be done, based upon 1970 census data
11 adjusted if possible for 1980 State-wide data.

12 I hope that is being done. I believe that is
13 the intent of Congress. I think that it is the intent
14 of Congress, and that this Committee, -- and if it is not
15 the intent of Congress, we ought to find out what it is
16 going to do before Congress comes back, so they can
17 tell us that isn't what they meant.

18 CHAIRMAN HARVEY: Clint?

19 ACTING PRESIDENT LYONS: We are looking at the
20 data, and we are following the instructions of the Commit-
21 tee given to us in Houston. But again, I do want to
22 relate to you the history of the minimum access formula.

23 Congress did not stop with two lawyers per
24 10,000 persons. What happened was, the Corporation went
25 to Congress with a funding concept that was based on two

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1 lawyers per 10,000 persons; translated that into a per
2 capita dollar figure, which was \$7.00 per poor person.
3 Again, Congress has never adjusted that figure. And in
4 my judgment, when Congress talks about minimum access in
5 terms of a numerical dollar translation, it's been talking
6 about \$7.00 per poor person.

7 It's clear to me that there are programs in this
8 country, given a 25% cut, under \$7.00 per poor person.
9 There are a lot of programs -- I mean, if we use 1980
10 dollars, '82 dollars, there are a lot of programs below,
11 you know, \$13.00 per poor person. So if we're -- We
12 ought to know. If we're going to define minimum access
13 as two lawyers per 10,000 persons in 1982 dollars, then
14 we may be going back to the Congress and saying, give us
15 \$400 million, \$500 million.

16 MR. DANA: The statute says that if we are under
17 ~~minimum~~ access, we must spread the dollars evenly. By
18 defining ~~minimum~~ access as the lowest dollars we are giving
19 any program, you completely frustrate the intention of
20 Congress, because there will be no allocation between the
21 rich programs and the poor programs, by defining minimum
22 access as a number, six dollars and change, which is,
23 if Bucky is correct, a number lower than what we are
24 giving to every program.

25 ACTING PRESIDENT LYONS: That's what we historically

1 defined it as, Howard.

2 MR. DANA: Well, am I right that there will be
3 no impact by this continuing resolution if we define
4 minimum access as the lowest dollars we give to any pro-
5 gram per poor person?

6 ACTING PRESIDENT LYONS: No, you're -- I mean,
7 you're not right. There are programs below the \$7.00 per
8 poor person.

9 MR. : Are there any below \$6.24?

10 ACTING PRESIDENT LYONS: No, there are not.

11 MR. DANA: And haven't we -- And doesn't the
12 staff redefine minimum access as \$6.24?

13 ACTING PRESIDENT LYONS: We talk in those terms.
14 What I'm saying, Howard, is that when Congress spoke, it
15 always spoke in terms of what the original dollar figure
16 was, \$7.00 per poor person. When they cut by 25%, they
17 ~~realized~~ that that \$7.00 per poor person was no longer
18 there.

19 MR. DANA: Mr. Smith made this -- It was his
20 motion. Congress passed it. He defined minimum access as
21 two lawyers per 10,000; and he said that we don't have
22 that. He made it very clear that we are not funding at
23 that level and, therefore, he said, -- and the resolution--
24 Frankly, I think that it is beyond dispute the continuing
25 resolution says that if you're under -- if you're not

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1 providing two lawyers per 10,000 poor people, you've got
2 to spread the dollars equally. If you are over two lawyers
3 per 10,000, then we'll let you have some flexibility and
4 you can give -- but we're not anywhere near that. Most
5 of our programs are under two lawyers, and we do have
6 some programs that are getting pretty close to that in
7 terms of dollars and we have some programs that are getting
8 half of that. And I think what Congress is saying -- if
9 it's once explained to them, they may change their mind,
10 but what they seem to be saying is, if we are under mini-
11 mum access as Mr. Smith defines it and as we have histori-
12 cally defined it -- If we are under minimum access, we
13 are instructed to spread the money evenly on the basic
14 field grants.

15 If that is not what Congress intends, they're
16 coming back in December and they can tell us. But if
17 we sit here quietly and don't get prepared to implement
18 that because we'd like to wait around for the 1980 census
19 data, and this Board wakes up -- or this Board takes the
20 position that Congress meant what it seems to have meant,
21 we're going to have one major league problem when we
22 start issuing contracts.

23 MR. OLSON: Mr. Chairman, I just woke up when
24 Howard said that, and I just wanted to ask one quick
25 question of Howard. Are you saying that, under your

1 interpretation of the continuing resolution, that we --
2 that even if all programs had \$6.24 a piece, that we
3 could not take one program and give it 10% more and one
4 program and give it 12% more, but that there would have to
5 be a precise numerical equality among every program?

6 MR. DANA: Mr. Smith was asked that precise
7 question by Barney Frank, and he said, not exactly.

8 (LAUGHTER.)

9 MR. DANA: And what, in effect, he is -- There
10 is not absolute precision required, but substantial
11 equality seems to be required. It's fairly clear, with
12 all due respect; it is, to me, just as a reader of the
13 Congressional Record, it seems to be reasonably clear
14 what the man who offered this meant.

15 Dennis, do you disagree with me?

16 MR. DOUGHERTY: No, sir, I do not.

17 MR. OLSON: I don't understand yours, so it's
18 hard for me to disagree. I understand -- This rigid per--
19 Do you require a rigid per capita distribution? Mr. Frank
20 says. And Mr. Smith says, "It would not be based on the
21 population area at all..." And I think the earlier
22 language that you read was very helpful. The only thing
23 I can't understand -- I can't believe that the Congress
24 would have wanted an absolute -- like, you know, rigid
25 per dollar per capita distribution. I had thought that

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1 you were describing, Howard, and that's what I wanted to
2 get.

3 MR. DANA : It's pretty clear that
4 rigidity is not required, but it is -- but what -- and I
5 think that we are free, frankly, to take into considera-
6 tion and maybe even be required to take into consideration
7 the relative costs of doing business in different parts
8 of the country. And I think that we should -- And I think
9 that we might well have some discretion. I'm hoping that
10 we have some discretion in phasing in this provision, so
11 that the impact would not be too great.

12 It may be, and I'm hoping, that the staff will
13 be moving quickly and so that we have the requisite
14 census data that -- so that we can evaluate the various
15 alternatives at our next December meeting.

16 MR. SATTERFIELD: I think one of the problems
17 ~~of this~~ whole debate is that we're not taking into consid-
18 eration all the things known by Neal Smith and others
19 when this debate took place.

20 Counsel had just alluded to a few moments ago
21 about the fact that we have achieved geographic equality.
22 Isn't that the answer to the problem?

23 MS. WIESEMAN: It does speak in terms of parts
24 of the country, this continuing resolution. And the
25 geographical coverage of the country was the primary aim

1 of minimum access. That was to cover the country. And
2 that, in terms of providing coverage -- and in looking at
3 the continuing resolution, it says, one part of the country
4 shall not have more access than another -- not a program
5 but a part of a country.

6 I think with that kind of language, we can view
7 it as geographical coverage.

8 MR. SATTERFIELD: May I ask a question? Are
9 we not dealing then in different geographical locations
10 that each person in a poor community will have access to
11 the same proportional part of an attorney that someone in
12 another geographical area has? And you have to adjust
13 the cost to fit the need.

14 MS. WIESEMAN: That is the problem.

15 MR. SATTERFIELD: Well, it seems to me that we
16 ought to recognize that Neal Smith, in what he said off
17 ~~the~~ the floor of Congress, was said with the
18 knowledge of this understanding that the Ways and Means
19 Committee has had and the Appropriations Committee has
20 had all along. And I think the question is that \$6.23
21 or whatever it is does achieve right now that geographic
22 equality and, therefore, it is an absolute minimum.

23 If you go below it, then you're in the category
24 of denail of re-funding. And that's what we're talking
25 about.

1 So I think we're talking about two different
2 things, apples and oranges.

3 CHAIRMAN HARVEY: Bill?

4 MR. OLSON: I would just suggest, we proceed
5 to a vote on what it is we did. I think we aired this
6 well for today.

7 CHAIRMAN HARVEY: Took the words right out of
8 my mouth. Appreciate this discussion very much, and it's
9 very helpful.

10 Are you prepared to vote on the motion as
11 amended three times?

12 Those in favor of the motion as amended, signify
13 by saying "Aye".

14 (CHORUS OF AYES.)

15 CHAIRMAN HARVEY: Opposed by the same sign.

16 (NONE OPPOSED.)

17 CHAIRMAN HARVEY: It is carried.

18 MR. DANA: Mr. Chairman.

19 CHAIRMAN HARVEY: Yes, Howard?

20 MR. DANA: For the record, I would like to vote
21 in favor of this, to get it out for comment. I've got
22 some real problems and if you could vote against the
23 redefinition of minimum access that is plugged into that
24 blank, I would do so.

25 CHAIRMAN HARVEY: Next, Clarence.

1 MR. MCKEE: This brings up a point, and I've
2 been thinking about it on and off, in terms of -- and
3 direct this to the staff -- I think it would be helpful
4 when we put together the staff briefing books supplied
5 to the Board meetings or committee meetings, since they
6 are so voluminous, the information, that -- I know you
7 have a Table of Contents in these books, but go through
8 the analysis that you write; then somewhere in the beginning
9 of the book, indicate key areas of discussion or something
10 of this sort so that when there's something important like
11 this minimum access issue or governing boards, something
12 like that, that even if nobody asks a question about it,
13 the staff will raise it that we should discuss this.
14 So that we don't miss anything at different times, for
15 committee meetings and --

16 We could direct them to do that. Is that a
17 ~~problem?~~ Well, kind of an asterisk hot items or something.

18 (LAUGHTER.)

19 CHAIRMAN HARVEY: Clint, I know you have plenty
20 to do, but I would appreciate it, too.

21 ACTING PRESIDENT LYONS: Okay. All right.

22 CHAIRMAN HARVEY: Do the best you can.

23 Clarence really wants a minimum access to
24 these Board --

25 Our next item, members of the Board, is the item

1 just before No. 8 on your agenda, which is Board action
2 on recommendation on S. 2393.

3 MR. McKEE: Mr. Chairman, at our meeting, we
4 went over all these regulations, this 23 is a bill, of
5 course, by Senator Simms, McClure, Haiakawa, Denton,
6 Humphrey, Eastman, Thurmond, regarding the bringing of
7 law suits against the Corporation. Key language was:
8 "...Any person may bring a civil cause of action against
9 the Legal Services Corporation or any direct or indirect
10 recipient, grantee or contractor if they are in violation
11 of any provision of the Act." That's just the foundation.
12 If Mary could elaborate --

13 MS. WIESEMAN: The question of this 2393 was
14 debated at the meeting in Minneapolis before the Operations
15 and Regulations Committee, and it was the sense of the
16 Committee that the bill has not been passed, that the
17 ~~staff~~ convey to the Congress that it did not support --
18 the Board did not support S. 2393, but that we would
19 comply with the letter and the spirit of the law. The
20 idea behind S.2393 was that the Corporation could not
21 be controlled from within. We believe, it was our analysis
22 of it, that it was necessary to have persons from outside
23 the Corporation have standing to sue and open the standing
24 as wide as -- open it to any person, not even an agreed
25 person, to sue the Corporation. We felt that the -- that

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1 it was -- First, it was not necessary that this Board would
2 have the control of the Corporation, and that Congress
3 should be assured of that; and that the other matter was
4 that the cost of defending the law suits which could be
5 on all spectrums and from all spectrums of society, could
6 deplete the Corporation's funds to such an extent that
7 we couldn't perform the function that we're supposed to
8 perform, that is, provide legal assistance to eligible
9 clients. And therefore, that we should -- that the Board
10 should take the action, notifying Congress, that the
11 Board does not support the open standing to sue the
12 Corporation, and that the Congress, in terms of the
13 resolution on page 26 of your book, that the Congress also
14 be assured that the Board intended to operate the Corpora-
15 tion in strict conformity with the laws of Congress.

16 CHAIRMAN HARVEY: Thank you, Mary. Are there
17 ~~questions~~ questions or comments about this? There's nothing pending
18 now before the Board. Do you want further discussion on
19 it, or what do you want to do with this? Dave, or George?

20 MR. PARAS: I think, Mary, that some of us --
21 at least I expressed some concern that I did want to see
22 some degree of accountability to someone by this Corpora-
23 tion; and I didn't want it to be such a totally indepen-
24 dent entity as to be an autocracy and it could just do
25 whatever it wanted and have nobody to account to, and

1 nobody to bring it to account.

2 Facetiously, one of my Board members indicated,
3 well, that's your court background, your judicial back-
4 ground that tells you always want courts to be able to
5 supervise everything. Believe me, that is not so; but
6 I don't like to see anybody so independent that it can
7 autocratically disregard the law. And if we are disregard-
8 ing it, there should be some way that the court -- a court
9 remedy should be available.

10 I thought I made that clear at the time. I
11 didn't quite get it in your explanation of our comments,
12 but at least I want to be on the record as recommending
13 to Congress that we do -- that some sort of legal action
14 be authorized against us in appropriate circumstances.

15 CHAIRMAN HARVEY: Dave?

16 MR. SATTERFIELD: Mr. Chairman, I don't have
17 the benefit of all the discussions that went on before,
18 and I apologize for that. But there are a couple of
19 things about this particular resolution that strike me,
20 that bother me. First of all, we're referring to S. 2393
21 in opposition, and we're not stating in this resolution
22 at all what it is we're opposing.

23 The reason that I make that statement is that
24 this is really without date. S. 2393 is a different bill
25 in every Congress, the number being given in the order in

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1 which they're introduced.

2 Secondly, it would seem to me that this could
3 move forward, if it gets to the point of hearings or
4 mark-up consideration, and that's the time, really, to
5 make your views known if they're to be effective, that
6 it could be considered under an entirely different number.
7 So that the resolution itself could -- The whole general
8 purpose is to be rendered useless.

9 Seems to me if we're going to take a position,
10 we ought to set forth the position in the resolution and
11 not allude to it by some obscure number that, in final
12 analysis, is basically meaningless.

13 I have a second question that bothers me with
14 respect to it, and that is whether or not getting involved
15 in legislation at the time it's introduced rather than
16 the time it's moving forward might establish a precedent
17 ~~that~~ we would find very troublesome down the road. Does
18 this mean that we're going to look at every item put in
19 and screen it for the purpose of whether or not this
20 Board is going to take a position in Congress on it?

21 And if we were to do that, we're talking about
22 a tremendous task. If we were to do it, then we create
23 a precedent that, by failing to comment on other legisla-
24 tion that might affect us, we're tacitly saying that we
25 approve it.

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1 I just wonder whether we ought to be engaged in
2 this kind of resolution referring to a specific bill,
3 rather than passing a resolution stating what it is pre-
4 cisely that we support, or what it is precisely that we
5 oppose and let it fit whatever bill may or may not be
6 introduced.

7 CHAIRMAN HARVEY: Thank you, Dave. Bill Olson?

8 MR. OLSON: I think both comments are extremely
9 well taken. I don't see -- I'm not on the committee.
10 I've had an opportunity to review the bill, and we've had
11 some discussions in Indianapolis. I have a question or
12 two about the way in which standing is established in
13 the bill and such. I think that the bill may be even
14 undergoing revision as the end of the session occurs, but
15 I for one would not want to take a position opposed to
16 this bill which is a simple effort to obtain some kind of
17 accountability, as George has stated. And it's one
18 vehicle. I don't know what the best vehicle is, and I'd
19 be unprepared to support that kind of resolution at this
20 time.

21 MR. PARAS: Well, Bill, it was far too broad,
22 believe me, as proposed. It was a disaster -- 2393.
23 I don't want to see it. It required absolutely no stand-
24 ing, as Mary indicates. Anybody could come along and sue
25 us at any time. It was just insane.

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1 MR. OLSON: Well, we come to a point here where
2 the Congress, through the legislative process, introduces
3 bills, have comments, have revisions, have hearings.
4 I am not opposed to the concept of accountability. I'm
5 not opposed to the concept of giving people a right to
6 access in courts. And I think it would be sort of strange
7 for Legal Services Corporation to be on record with that
8 position.

9 I do believe that this bill could use some
10 tightening up and such, but that's -- those are not the
11 kinds of things that I think we ought to vote to attack
12 and oppose it in this way.

13 CHAIRMAN HARVEY: Howard.

14 MR. DANA: Question of Dennis Dougherty.

15 First of all, with respect to the -- I am cor-
16 rect, am I not, that this is a proposal dealing with not
17 just any law before Congress but the law under which this
18 Corporation is operating?

19 MR. DOUGHERTY: This was a proposal to authorize
20 private rights of action against the Corporation or
21 recipients for violations of the Act or regulations.

22 MR. DANA: But it is an amendment to the Legal
23 Services Corporation Act?

24 MR. DOUGHERTY: No, sir. It was a -- I'm sorry,
25 I don't have a copy. I'm referring to my recollection.

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1 The bill was referred to the Senate Judiciary
2 Committee. It's a --

3 MR. DANA: I think it's -- If it's this bill
4 in front of me, S. 2393, it's a bill to amend the Legal
5 Services Corporation Act, to provide for a cause of
6 action for violation of the Act. I think that's the bill.
7 And I think that -- Am I also correct that we have been --
8 that there have been inquiries from the Hill as to what
9 this Corporation's position is with respect to that?

10 MR. DOUGHERTY: We were notified prior to the
11 meeting in Minneapolis in which this was taken up, that
12 the authors of the bill had anticipation of hearings in
13 the Senate Judiciary Committee. And we were asked to
14 have a spokesman for the Corporation testify before the
15 Committee.

16 Those hearings have not yet been held, and as
17 ~~of this date~~, there's not scheduled. I think it's still
18 Senator Sims' hope that a bill can be scheduled.

19 We've also been contacted following the adop-
20 tion of this resolution by the Committee by the author
21 of the bill, asking if we couldn't suggest some revisions
22 to the bill that would make it more acceptable to us,
23 rather than just taking a position on it as drafted.

24 MR. DANA: It seems to me that that, comically,
25 may take this case out of the general case; and I would

1 agree with David that we ought not to be meddling in every
2 bill before Congress. It might even be illegal to do so,
3 but here we have a proposal that has been advanced to
4 amend the Act under which we operate; and we have been
5 asked for our views, asked for a witness, and we have
6 held -- We've had a hearing on it, and I think the Commit-
7 tee -- I was at Committee meeting -- I think it was
8 Minneapolis? And we could not find much to recommend in
9 this bill.

10 I think that it would -- maybe, another bill that
11 is proposed, we could support, but I would hope that this
12 Committee would support the subcommittee's recommendation
13 that we oppose the bill as drafted.

14 MR. SATTERFIELD: A very practical aspect and
15 one that I maybe didn't make very well when I was speaking
16 and I wonder whether we've really considered it, is that,
17 ~~for all~~ intents and purposes, Congress has got about
18 seventeen more days to meet. If they don't take action
19 on this particular bill in this Congress and it's intro-
20 duced in the next Congress, it's liable to be S. 1563;
21 and we're looking at a number here in this resolution
22 that isn't going to be valid more than seventeen days.
23 I question whether that's the way we ought to go about it.

24 MR. DANA: That point has such obvious appeal
25 that I think we ought to make sure that our -- whatever we

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1 do do is clear in that regard; and I would set it out or
2 make it very clear that that is exactly what we are
3 talking about.

4 CHAIRMAN HARVEY: I think the validity of what
5 Dave has stated is recorded in the fact that this subject
6 has been a part of the Legal Services Corporation area of
7 legislative activity since 1974 when the basic or the
8 organic statute was introduced. That statute did contain
9 a provision which was eventually struck, probably very
10 unfortunately, because that would have remedied the
11 continuing dilemma in the last eight years felt by a
12 number of persons who feel aggrieved because either the
13 Corporation grantee programs have failed to comply with
14 prohibitions placed in the statute and this Corporation
15 is unable to grant them a remedy, and courts have held
16 that there is not a litigable issue between aggrieved
17 ~~persons~~ and either the grantee or the Corporation insofar
18 as enforcement of prohibitions are concerned.

19 Twenty-three ninety-three is too broad insofar
20 as defining standing is concerned. On the other hand,
21 so also is this resolution, because it says that -- from
22 our Committee -- It says that we will aggressively enforce
23 the spirit of the enactments. This is true. We always
24 do this. But that does not address the question. And
25 the question really is, which the Congress is attempting

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1 to grapple with -- The question is, what about those
2 persons, those individuals, indeed for whom this Corpora-
3 tion exists, who have been aggrieved by the failure to
4 comply with prohibitions? We cannot grant them a remedy.
5 We don't have the power of equity, you see.

6 So if the language is too broad, insofar as
7 defining people who come within the ambit of litigable
8 standing, so also is this resolution insofar as rejecting
9 the idea that individuals do not have a right of action
10 when they have been aggrieved by failure to comply with
11 law. At the present time, they don't.

12 So as I am concerned about the breadth of
13 2393, I'm also very concerned about this resolution.
14 I'd be willing to table it or modify it or do something,
15 but I don't think it should be adopted as recommended.

16 MR. PARAS: Bill, I call your attention --

17 CHAIRMAN HARVEY: Furthermore, this deponent
18 saith not. Let's go on. George.

19 MR. PARAS: Bill, I call your attention to
20 the last paragraph, though, of the resolution -- Well,
21 that's not part of the resolution there, Mary, is it?
22 But it's the Committee refers the Board to the transcript
23 of the August 6th Operations and Regs Committee meeting
24 which reflect the concerns expressed by the individual
25 Committee members. That goes a little way to soften the

1 impact of an otherwise very, very cold and meaningless
2 resolution. If indeed those minutes do accompany this
3 resolution and are incorporated into it, then there will
4 be an adequate reflection. Now whether that's the right
5 way for us to address Congress or not is a problem that
6 I have no expertise on, and maybe I'm wrong; but I point
7 that out to you.

8 CHAIRMAN HARVEY: I understand. My suggestion
9 would be that the Board should inform the Congress, or
10 recommend to the Congress, or whatever status or structure
11 of communication that it is concerned about violations
12 of prohibitions in this Act, and it will work with the
13 Congress to develop a remedy to grant individuals a right
14 of relief who have been aggrieved by violations of prohi-
15 tion of the Act. That, I think, is what we should do in
16 a positive sense, myself; but do what you want to do.

17 Clarence.

18 MR. McKEE: Two things. Mr. Stubbs isn't here.
19 We had a rather heated discussion on this.

20 CHAIRMAN HARVEY: I've begun to understand why
21 Bob left. Go ahead. Call him and tell him I said that,
22 will you.

23 MR. McKEE: Two points. First, which I'll report
24 later, when the Grants and Contracts Committee meets
25 again, part of its recommendations and discussions will

1 be recommendations that we think the Board might want to
2 make to Congress generally on a variety of issues.

3 Also, which this kind of thing would be part of,
4 I would think, too, in consultation with the other commit-
5 tees. Second point is, I think that I would always yield
6 to the wisdom of the Congressman since he has been there
7 and knows how this process is, and the Congressman will
8 be back by the time we do make our recommendations. I don't
9 think that Mr. Stubbs would have any problem with us just
10 tabling this until a later time and having the benefit of
11 further discussions as to where this is in terms of the
12 numbers, etc. And I would so move that.

13 MR. OLSON: Mr. Chairman, I would submit that
14 there's really nothing on the floor. If Howard would
15 like to make a motion at this time to accept the Committee
16 report by the Board, I think that would be in order and
17 ~~that we ought to get on with that.~~ If not, I think we
18 ought to get on with the next item on the agenda. But if
19 Howard wants to raise that, I think this is the time.

20 MR. DeMOSS: Mr. Chairman, I move that the
21 resolution contained in the Committee report be returned
22 to the Committee for redrafting in light of the discussion
23 that was had here today and presented again at such
24 later Board meeting as that Committee deems appropriate.

25 CHAIRMAN HARVEY: Motion made and second to

1 return it to the Committee. Is the sense of your motion,
2 Hal, that it might also go to Paras' committee as well?
3 This comes from --

4 MR. : Operations and Regulations.

5 CHAIRMAN HARVEY: And you want this within
6 the jurisdiction of --

7 MR. DeMOSS: No. No. Don't go back to Opera-
8 tions and Regulations. We're just saying all these
9 various committees -- the Grants and Contracts Committee
10 will make recommendations in addition to the regular
11 recommendations -- ones to Congress, to be a part of
12 that in consultation with Mr. Stubbs.

13 CHAIRMAN HARVEY: Discussion on the motion.
14 Clint.

15 ACTING PRESIDENT LYONS: A point of information.
16 Dennis, what was the status of that piece of legislation
17 ~~when~~ Congress adjourned?

18 MR. DOUGHERTY: It has been introduced. It has
19 not yet been heard. The Senate Judiciary Committee has
20 not yet scheduled hearings, but the Congress may hold
21 hearings when the Congress is not, as a whole, is not in
22 session. I'm sure we can -- As of this date, we've
23 received no notice of the hearing.

24 MR. : Mr. Chairman, if that circum-
25 stance came up, that the hearing was called of Senate 2393.

1 I would certainly hope that our new president or our
2 Acting President, whichever one is in office at that time,
3 would, with the help of our staff, would be able to
4 respond that -- that, basically, as I hear what's saying,
5 that there is some room for some thought of private right
6 of actions, but what was in 2393 is too broad, as being
7 the reaction of this Board. And I think we can leave that
8 with them to --

9 CHAIRMAN HARVEY: Further discussion of the
10 motion? Hearing none requested, those in favor, signify
11 by saying "Aye".

12 (CHORUS OF AYES.)

13 CHAIRMAN HARVEY: Opposed, the same sign. The
14 motion is passed.

15 The next item on the agenda, as I remember, 8,
16 members of the Board, which is referred to on page 126
17 of the Board book. Approval of Proposed Revision of
18 By-Laws to Change October Board Meeting to September.
19 The Chair will be happy to entertain a motion on this
20 amendment to the By-Laws.

21 MR. : So move.

22 CHAIRMAN HARVEY: The motion is made. Is there
23 a second? Discussion?

24 MR. : Was there any public
25 response?

1 MS. WIESEMAN: No, there was no response.

2 CHAIRMAN HARVEY: What is your question, George?

3 MR. PARAS: Calling for the question.

4 MR. OLSON: Before we do that, George. I just
5 suggest that there was an awful lot of uncertainty when
6 we discussed this, and I almost couldn't believe we
7 couldn't figure out when to have Board meetings. There
8 was an awful lot of uncertainty with respect to the dates
9 that we were selecting and the proper schedule for the
10 budget of this Corporation and the other responsibilities
11 that we have as a Board. And frankly, the best I can
12 recall, that as we left the last Board meeting, we left
13 some of this in the hands of staff to clarify.

14 Can you describe for us, Mary, how this comports
15 with the schedule of the Corporation's necessary responsi-
16 bilities?

17 MS. WIESEMAN: Well, the reason for having the --
18 changing the Board meeting from October to September was
19 to consider the budget and the -- in the September Board
20 meeting, where there was time to make the decisions. That
21 had historically, in fact, even as the By-Laws provided,
22 as I understand, that the Board meeting would be in
23 October. Historically, they've been held in September,
24 for that reason. And the -- that the Operations and
25 Regulations Committee wanted to make part of the By-Laws

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1 what, in fact, was the operating procedure of the Corpora-
2 tion. It still, of course, leaves room for the Board to
3 change the dates at any time they want to; but since his-
4 torically, the meetings have been held in September and
5 not in October, that the By-Laws should reflect that.

6 MR. OLSON: What is the current regulation?

7 MS. WIESEMAN: It's 1601.15. It has March,
8 June and October and December being the regular Board
9 meetings.

10 MR. OLSON: Well, the only -- So the only thing
11 that's changed in here is September -- October to Septem-
12 ber?

13 MS. WIESEMAN: That's right. That's the only
14 change, and it's just to reflect what, in fact, occurs,
15 except for this year. Again, there's all the flexibility
16 to change any date that the Board wants continued in
17 the revision.

18 CHAIRMAN HARVEY: Further questions?

19 MR : I move the question.

20 CHAIRMAN HARVEY: The question has been called
21 for. Those in favor, signify by saying "Aye".

22 (CHORUS OF AYES.)

23 CHAIRMAN HARVEY: Those opposed, same sign.

24 Voting on the motion, those in favor of the motion,
25 signify by saying "Aye".

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(CHORUS OF AYES.)

CHAIRMAN HARVEY: Opposed with the same sign.

The motion is carried.

Harold, we come to you, which is -- members of the public -- is Item 9 on our Agenda, Report of Audit and Appropriations Committee, listed four items under this Agenda discussion.

Buckey, will you and Charles introduce yourselves, please, to the record and the audience.

MR. ASKEW: My name is Buckey Askew. I'm the Acting Director of the Office of Field Services.

MS. HARVEY: I'm Alfreda Harvey, Budget Director of the Corporation.

MR. RITTER: Charles Ritter, Comptroller.

CHAIRMAN HARVEY: Thank you. Harold, would you like to proceed.

MR. DeMOSS: With the approval of the Board, we may --

MR. : Could we take a three-minute break?

CHAIRMAN HARVEY: The Chair is happy to accept that request. The request is for a three-minute break, five minutes; and we'll be back.

(WHEREUPON, a brief recess was held.)

1 CHAIRMAN HARVEY: Obviously, there are several
2 items to be considered. However, George Paras must leave
3 in about forty-five minutes, so also Dave Satterfield.
4 There's a luncheon break at 12:30. My suggestion is, to
5 the Chairman of the Committee, that the matter be con-
6 sidered as a whole, that the members of the Board go
7 immediately to those things which are foremost on their
8 minds, get them out whether consistent with the structural
9 arrangements of Item 9 or not; state them, get them on
10 the floor, address them; and then possibly, Harold, con-
11 sider these items as a whole with that interpretation
12 and consideration. That's my suggestion, in order to
13 have as many Board members here for these considerations
14 as possible.

15 If it's agreeable, we can proceed that way,
16 if it's agreeable to you, Mr. Chairman.

17 MR. DeMOSS: All right. In the interest of
18 time, let me just knock out some quick reports, and
19 that's about all they are.

20 On the single auditor issue, the Committee has
21 reached no conclusion. We are still gathering information.
22 At the earliest, it could not be implemented before 1984,
23 and I guess there is some sense on the Committee as to
24 whether the Board wants us to explore further. If the
25 Board feels like we should continue making some inquiries

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1 about costs and about prospective contractors among the
2 Big Eight accounting firms, we can. And we will be happy
3 to do so. But if the Board now feels that, for some
4 reason or another, this ought not to be gone further, why
5 we'd be happy to get an instruction from the Board to
6 that effect. Otherwise, we will continue to explore this
7 on a low-level, nonpriority basis.

8 CHAIRMAN HARVEY: Let me ask the Board now, is
9 there a consensus, and silence is admission -- Is there
10 a consensus on the Board to go this way? If not, speak
11 up.

12 MR. PARAS: I thought we asked our staff to do
13 something. Clint?

14 ACTING PRESIDENT LYONS: Yes, you did, several
15 things. One was to survey the Big Eight firms as to their
16 interest in bidding the contract. That has been done.
17 ~~We have~~ gotten responses from four of the Big Eight firms.
18 The second task was to do some cost comparisons.
19 The third task was to talk to some local Board members
20 about their response as a result of that. What we've got
21 to do in the cost comparison -- Before we can do the
22 cost comparison, have to really, you know, get the sense
23 that we ought to go ahead, because you've got to get the
24 firms to bid on the thing. You've got to get data from
25 the local programs, all of those audit -- cost of those

1 audits, then interact with the Big Eight firms that are
2 interested, to let them have the information on what
3 the costs are on all of the local programs; and then let
4 them do their comparison and their bid. They'll want
5 information from us. We'll want information from them.

6 We will proceed on those other tasks if, what
7 Hal was saying, it's the sense of this Board.

8 MR. PARAS: Well, all right. But I thought we
9 had assigned to you some tasks which would aid us in that
10 decision. I think I came away with the impression, the
11 personal impression, that the single audit procedure was
12 not appropriate. In fact, I thought that we left some
13 tasks to you to do and report to us at this meeting that
14 would aid us in furthering that resolve or ---

15 ACTING PRESIDENT LYONS: In Houston -- In
16 Houston, what we reported to you was that we had written
17 to all of the Big Eight firms, asked them about their
18 interest in bidding on such a contract. All of that has
19 been done. In Houston, we discussed some of the problems
20 involved and the pros and cons are still going forward;
21 and as I understood the instructions, it was to continue
22 to go forward, but at this meeting we would get the sense
23 of the Board as to whether or not this was still a
24 priority item with them.

25 CHAIRMAN HARVEY: Is that -- Go ahead, George.

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1 MR. PARAS: Except I will ask, have you had
2 answers from the Big Eight?

3 ACTING PRESIDENT LYONS: Four responded, and
4 they were interested in bidding on such a contract.

5 MR. RITTER: Excuse me, Clint. I want to give
6 an update. At this point, all eight have responded, and
7 all of them are interested.

8 CHAIRMAN HARVEY: Dave, just before you came in,
9 the Board has agreed to approach all items in Category 9,
10 get out in the open the members' concerns, state them as
11 a whole and perhaps resolve back into this. So this is
12 going to occur before you and George have to leave.

13 I believe at this point, we're speaking about a
14 consensus. Harold, do you have a feeling in view of what
15 Charles just said?

16 MR. DeMOSS: Well, I think it is -- As I said,
17 ~~it is~~ the Committee's feeling to move forward on a low
18 priority basis with this exploration, unless the Board
19 says forget it. And so we will do that.

20 CHAIRMAN HARVEY: Is the consensus to accept the
21 Committee's position on this? Is that --?

22 MS. SLAUGHTER: I so move. That we accept it.

23 CHAIRMAN HARVEY: Moved. And there was a second.

24 MR. DANA: Second.

25 CHAIRMAN HARVEY: Discussion? Hearing none,

1 those in favor of the motion, signify by saying "Aye".

2 (CHORUS OF AYES.)

3 CHAIRMAN HARVEY: Opposed, the same sign.

4 (NONE OPPOSED.)

5 MR. DeMOSS: All right. The 1984 budget mark.

6 At some earlier time there was a concern that we were
7 obligated to make a budget mark to OMB by October the 15th,
8 which has now passed. Examination of the issue by the
9 General Counsel's office and by the Treasurer's office
10 came to the conclusion that, under the organic statute
11 that we operate under, we are not obligated to give a
12 budget mark to OMB by any date.

13 We file our budget direct with the Congress.
14 We do give OMB a copy of that budget at the time of filing
15 for its comment. Accordingly, Clint has responded to an
16 inquiry from OMB as to our budget mark, and said we'll
17 ~~get you~~ a figure as soon as the Board is in a position to
18 give a figure.

19 ACTING PRESIDENT LYONS: We affirmatively con-
20 tacted them and notified them.

21 MR. DeMOSS: Okay. This will be a matter that
22 I think we're going to have to put on the Agenda for the
23 next Board meeting as an action item. Timewise, we are
24 getting to the point where we need to address this ques-
25 tion.

1 The budget mark is simply an estimate of what
2 the total budgetary requests of this Corporation to the
3 Congress will be for 1984. We may eliminate the need for
4 a budget mark by getting to the 1984 budget, but my guess
5 is that we are probably not going to get that far, but
6 we will be working toward that end.

7 There are some standards -- There are some
8 guidelines that your Audit and Appropriations Committee
9 need to hear from this Board as to what we're thinking
10 about for 1984. There are a variety of criteria under
11 which we could approach and rationalize an increase in
12 our 241 figure, if that's the sense of the Board.

13 There is an inflation factor which could, obvi-
14 ously be applied to the 241, which we think we're going
15 to get for '83. There has been no inflation adjustment
16 of that figure for two years now. If that figure holds
17 ~~up for~~ 1983, I think some inflation adjustment would cer-
18 tainly be reasonable and appropriate.

19 There is probably going to be an increase statis-
20 tically in the total number of poor person population
21 in the United States over what has traditionally been
22 used as the 1970 census data of poor persons population.
23 That seems to me, could also justify some increase of
24 budget requests and budget, recognizing the fact that,
25 if we're going to do what the Congress has asked us to do

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1 in the continuing resolution about melding in this minimum
2 access on a geographical basis with something else, we
3 may want to take that into consideration.

4 The Audit and Appropriations Committee will
5 hold a meeting before the next meeting of the Board. We
6 can certainly give everybody a notice of it, and at that
7 time I would hope that we would be prepared to come to a
8 recommendation to make to the Board about the 1984 budget
9 mark and/or 1984 budget request details. And basically,
10 you'll be hearing this thing sort of dialogue in discussion.

11 There is an action item that we need to take
12 in terms of final adoption of the recommendation on fund
13 balance policy. This --

14 CHAIRMAN HARVEY: Before we pass 1984, does the
15 Chair understand that you are suggesting that we put this
16 over to the December meeting? This budget mark?

17 MR. DeMOSS: Eight-four budget mark will be on
18 the Agenda for the December meeting.

19 CHAIRMAN HARVEY: And also, you're meeting in
20 the interim period?

21 MR. DeMOSS: And the Audit Committee meeting.

22 CHAIRMAN HARVEY: Is it the consensus of the
23 Board to accept this suggestion from the Chairman of the
24 Committee? Hearing not to the contrary, it is done.

25 All right.

1 MR. DeMOSS: The recommendation on fund balance
2 policy is one that we need final approval of the Board on
3 a policy adopted by the Audit and Appropriations Committee
4 at its last meeting here in Washington, giving preliminary
5 approval to the plan which the staff has worked out to
6 address the problem of excess fund balances.

7 Clint, do you want Buckey or you to sort of give
8 us where we are now on that, and then there is a final
9 resolution that needs to be adopted by this Board to
10 finally implement the staff's recommendations on this
11 and put it in the posture where there is a firm, fixed
12 policy of the Board which will go forward with the imple-
13 mentation by the staff.

14 CHAIRMAN HARVEY: I myself have a statement or
15 a concern I want to express about this, but I'd like to
16 ask these gentlemen first. Clint, at your discretion.

17 MR. OLSON: Mr. Chairman, before we get to the
18 substance, Wal, could I just ask a question about the
19 posture this is in?

20 I remember the Appropriations and Audit meeting
21 in Washington where this came forth, and perhaps I'm
22 confusing this with another matter that came before that
23 committee at the time. But wasn't this a matter that we
24 said there was no action needed on, but that --

25 MR. DeMOSS: Part of it was, and the staff has

1 gone ahead; but part of it does require final Board action,
2 and there is a resolution in your Board book on page 95
3 which is the necessary action by this Board. And Mr. Chair-
4 man, I would move the adoption of the resolutions on
5 pages 95 and 96 in the Board book, to give us an issue on
6 the floor.

7 CHAIRMAN HARVEY: All right. Thank you. Is
8 there a second to the motion?

9 MR. DONATELLI: Second.

10 CHAIRMAN HARVEY: Made and seconded. Discussion,
11 please. Go ahead.

12 MR. OLSON: I'm glad we did that. Now my
13 basic question is -- as to what this is in the context
14 that we discussed earlier today and yesterday. It's not
15 a regulation. Is it a policy, basically, that can be
16 implemented in this fashion? Clint? Hal?

17 ACTING PRESIDENT LYONS: I would proceed to
18 implement the policy as adopted by the Board by their
19 instruction. I consulted with the General Counsel, and
20 we talked about this is the best possible way to go, and
21 we will so proceed.

22 MR. OLSON: An instruction from your office to
23 the recipients? And the instruction need not be by way
24 of notice and comment and regulations and such?

25 ACTING PRESIDENT LYONS: That's correct, is it

1 not, Mary?

2 MS. WIESEMAN: It doesn't have to have a comment
3 period.

4 MR. OLSON: Ah, that's the difference between
5 an instruction and a regulation then. After ten months,
6 I've finally got it. Thank you.

7 CHAIRMAN HARVEY: Clarence.

8 MR. McKEE: I have a question for Clint. In
9 terms of all these twenty-five or twenty-six programs,
10 what has been the status of -- what is the situation?
11 Have all of them just cooperated very well and no problems
12 and concerns? Is there any recalcitrant or potential
13 challenges by any of those programs or grantees about
14 what you recommended?

15 ACTING PRESIDENT LYONS: The current status is
16 that, of the twenty-six programs, we proceeded to inquire
17 ~~into~~ -- that were above the 50% of their annual grant,
18 as that being the 1981. We, I believe, voluntarily
19 received monies back from four. We suspended funds on
20 three, four.

21 MR. : On four?

22 ACTING PRESIDENT LYONS: On four. And of the
23 remaining eighteen, we found, after investigation and
24 consultator, that they have spent down those fund
25 balances in accordance with plan, to a level sufficient to

1 overcome the presumption that something needed to be done
2 about it; and we believe now that they're within the
3 range of coming within this policy, if adopted by the
4 Board by the end of the year.

5 MR. McKEE: Could I ask, how did they spend it
6 down? You said they spent it down. You mean, between
7 the time the notice went out and --

8 MR. : It had already --

9 MR. McKEE: Good. Had already spent it.

10 ACTING PRESIDENT LYONS: Right.

11 MR. McKEE: Could you tell me the four you
12 suspended? Does anybody know?

13 ACTING PRESIDENT LYONS: Do you know, Buckey?

14 MR. ASKEW: Excuse me. The question?

15 MR. McKEE: The four suspensions?

16 MR. ASKEW: Was the fund spent down before
17 suspension?

18 MR. McKEE: No, no. The four suspended programs
19 Which four, yes.

20 MR. ASKEW: Yes. We did know. Would you like
21 the names?

22 MR. McKEE: Yes.

23 CHAIRMAN HARVEY: That's what he's asking,
24 Buckey.

25 MR. ASKEW: Merrimac Area Legal Services which

1 is a program in Missouri; Mid-Missouri Legal Services;
2 Legal Services of Fourth Judicial Circuit, which is a
3 program in South Carolina; and Oklahoma Indian Legal
4 Services.

5 CHAIRMAN HARVEY: Clarence, are you finished?

6 MR. McKEE: Yes.

7 CHAIRMAN HARVEY: There's a motion before us,
8 members of the Board. I have a comment I want to make
9 about this, and a concern I want to state.

10 Since the very beginning of our appointment,
11 the Board has been very concerned about grantee programs
12 actually expending the monies allocated to them for the
13 delivery of legal services to poor persons. And it has
14 distressed all of us to learn about the surplus which
15 accumulated over the years.

16 At the same time, I feel great dissatisfaction
17 ~~with~~ the way in which this has been handled so far. It is
18 my judgment based upon some evidence -- it's not a con-
19 clusive judgment; or I should say, an opinion -- that the
20 Corporation in the past has said, in effect, the grantee
21 programs that those funds could be retained. Whether it's
22 wise or not to have said this, I think that was communi-
23 cated to them.

24 I have an aversion to ex post facto decisions.
25 My feeling is that the resolution should apply to FY 1983

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1 money. My feeling also is that it should not apply to
2 money preceding 1983; although I do not approve of the
3 surpluses which have developed, neither do I approve of
4 recalling it in this way.

5 Now that's my concern, and I've stated it to
6 you. As I say, I have some evidence on it, not as much
7 as I usually have for offering such sage opinions as
8 these; but in any event, that's a gloss of interpretation
9 I would suggest to the President and to the Board -- talk-
10 ing about Clint -- and to the Board on this resolution.

11 That's what I wanted to say to you. That's
12 what I meant by getting this stuff out, Harold.

13 ACTING PRESIDENT LYONS: If I may, Mr. Chairman,
14 it may be helpful to you to understand a little bit of
15 the history and context of this issue. And I'll be brief.

16 First of all, we have never indicated to
17 ~~grantees~~ that monies that were not expended effectively
18 for the delivery of legal services, you know -- if they
19 were unexpended, they would not be recaptured. We never
20 really addressed the issue on point.

21 What we did do -- and this goes to your point
22 of ex post facto application of a policy -- What we did
23 do more than two years ago, put programs on actual notice
24 that this was a problem that the Corporation was concerned
25 about; that it had to address by starting a dialogue with

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1 programs through the Regional office, asking them -- and
2 this was the policy adopted from my office -- asking them
3 to submit plans to us for how they were going to spend
4 down fund balances. And what we were simply doing over
5 that period of time was relying on the local management
6 of the program to make the decisions that needed to be
7 made in order to effectively use that money. And when it
8 got to a point, given the cuts we were suffering, and
9 perhaps the fact that that money could be used elsewhere,
10 and we found that some programs had not either complied
11 with the plans they submitted to us or had not been
12 effectively expending that money, we responded by this
13 procedure that we've outlined for you. And we're asking
14 for an adoption of this policy.

15 There has been notice, more than two years,
16 that the Corporation was concerned about this matter
17 ~~and that~~ the Corporation felt that it was within its
18 scope of authority and responsibility to monitor this
19 situation and finally resolve it.

20 CHAIRMAN HARVEY: I didn't know that. I stand
21 corrected, and thank you.

22 Okay. Bill?

23 MR. OLSON: Could we -- We had a very good
24 discussion on the practical effects of this kind of a
25 resolution has, at the Committee meeting.

1 One of the things that we discussed was the
2 problem of dumping of funds, buying lots of Selectric
3 typewriters and expensive furniture and doing things that
4 in an effort to get rid of cash by building whatever, that
5 may not be the best thing for the program to do to effec-
6 tively, efficiently deliver legal services to the poor.

7 If we wind up with a policy, and perhaps -- maybe
8 I forgot what your answer was before, but if we wind up
9 with a policy like this, it would take a program today
10 that might have a fund balance of 25% of the amount of
11 their grant and put into effect this policy today, does
12 that mean that between now and December 31st there would
13 be an incentive to make hasty expenditure decisions which
14 might not be in the best interest of the program?

15 ACTING PRESIDENT LYONS: There's always that
16 risk.

17 MR. DeMOSS: The trade-off there is the incen-
18 tive to get them to come in and do something, and comply.
19 And yes, if we didn't do anything, we wouldn't give them
20 an incentive to spend down their monies; but if we don't
21 do anything, we don't give them any incentive to address
22 the problem of telling us whether they really have a
23 reasonable expectation of spending them intelligently and
24 wisely, or whether they ought to be talking to us about
25 sending some money back in.

1 ACTING PRESIDENT LYONS: There are some controls
2 in our administrative procedures that support, you know,
3 our efforts to see that what you suggested does not
4 happen, in spite of the risks.

5 We have audit guide procedures that require
6 a program to notify and get approval on expenditures over
7 a certain amount. We monitor the quarterly expenditures
8 of programs they submit to us -- quarterly estimates of
9 their spending; and they have to get approval for the
10 purchase of certain capital items. So --

11 And finally, you know, with respect to this
12 particular fund balances, the ones we know that have
13 them, we are continuing to monitor their plan and compare
14 their performance against the plan they submitted.

15 So given the fact that we are in nine Regional
16 offices in Washington and dividing the responsibility
17 ~~between us~~ and those local boards of directors and the
18 program managers out there, I think we -- the application
19 of this policy will maximize our ability to respond to
20 a problem, and I just don't really see how much further
21 we can go in responding to the problem.

22 MR. OLSON: With respect to that, Clint, with--
23 Right now, the only programs that are in effect regarding
24 fund balances, if I'm not mistaken, are for those that
25 had over 50% or over 25%. In other words, all programs

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1 with fund balances between zero and 24% have no program
2 to submit to the Corporation, I don't think, to provide
3 a program as to how they would expend those funds. Is
4 that the case?

5 ACTING PRESIDENT LYONS: No, I don't think
6 that's correct.

7 MR. ASKEW: Excuse me. Any program, since
8 December of 1980, any program with a fund balance in
9 excess of 10% has been required to submit a plan to the
10 Regional office for the expenditure of those funds, to
11 have that plan approved. So in reality, it's any program
12 with a balance over 10% does have a plan on file with
13 the Regional office.

14 MR. OLSON: I'd like to hear other comments from
15 other Board members, because -- just as -- You know, on
16 the one hand, I can't think of many things that I would
17 ~~want to do less than~~ have monies accumulate that are not
18 being put to use in the program. The only thing I could
19 think of that I'd want to do less is to force an unfortu-
20 nate, hasty expenditure of those funds in a way that
21 doesn't do any good either. Perhaps we could get other
22 comment on that one issue.

23 MR. PARAS: Bill, I have some comment. I think
24 your better trade-off lies in the integrity of the
25 individual grantees. As I have observed, where I have

1 gone, I have no reason to believe that any of them have
2 in mind a desire to harm another program; precisely the
3 contrary, they are willing and desirous of helping one
4 another. So that if a program has excess money, as I
5 view it, -- as I view them, as I've understood them and
6 this is universal -- It will desire to make that money
7 available to the Corporation for allocation to other
8 persons.

9 Greg Hartley just turned in voluntarily a very
10 substantial sum of money that his organization did not
11 need, obviously motivated by the fact that it was going
12 to be put to good use. Now I trust the programs to do
13 that, and we have to trust them. If there are going to
14 be some mavericks who are going to go out and buy ridicu-
15 lous unnecessary things, there are some of those in any-
16 thing you do, and there's not much we can do about it.

17 ~~But~~ I really, basically trust the integrity of the local
18 programs.

19 However, to sort of push them in that direction,
20 may I recommend a Paragraph 7 to the proposed resolution
21 when we get around to somebody actually proposing it for
22 adoption. And I will ask one of you, please, to write it
23 down. I just drafted this language now. It's probably--

24 CHAIRMAN HARVEY: George, before you do that,
25 I'd like to make a comment or an interpretation on what

1 you said.

2 MR. PARAS: Yes.

3 CHAIRMAN HARVEY: Because I have the same kind
4 of suggestion I want to make in just a moment.

5 It is because I do have confidence in the inte-
6 grity of the local project directors that I'm very con-
7 cerned about this. I don't hesitate to share with you
8 and with all of you my belief that the grantee programs
9 are legal delivery to poor persons. It is not this
10 Corporation. It is the grantee programs.

11 But in that perspective it's also my judgment
12 that Judicare type programs will accumulate funds, because
13 the nature of the program will accumulate surplus funds
14 more rapidly and in greater amounts and percentages than
15 staff attorney programs where you know the kind of commit-
16 ment expenditure you have, or you should know.

17 I'm very concerned about this and about the --
18 So far in this resolution the failure to distinguish
19 between the staff attorney and Judicare programs.

20 You mentioned Greg Hartley who, I think, is in
21 Harry Truman in my home state of -- and Annie Slaughter,
22 Southwest Missouri. My concern there is whether the
23 programs were in compliance, which I would presume until
24 shown otherwise, even though they returned the funds. If
25 they were, then I'm concerned about whether those funds

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1 should have been returned, or whether we should send them
2 back. I really mean this.

3 Also I'm concerned with the language of this
4 resolution, which says 25%. I would say, 25% except in
5 the case of a Judicare program. It may go above 25% of
6 its annualized ISC allocation and accumulate the funds.

7 So I think there's some things here we need to--
8 As I said earlier, I want to get all this out on the
9 table and say it, and then do with it what the Board wants

10 MR. PARAS: Well, okay. I frankly was not
11 cognizant of the Judicare aspect, but it's certainly a
12 legitimate one and a legitimate region to perhaps consi-
13 der a further modification of the resolution as proposed.

14 CHAIRMAN HARVEY: Clint's hand is up first.

15 ACTING PRESIDENT LYONS: I think that we have
16 discussed this issue, as Dean Harvey stated it, as to
17 ~~the distinction~~ between Judicare programs and staff
18 attorney programs.

19 The issue on which the distinction was -- is
20 the one of liability. Judicare programs assert -- have
21 asserted in the past, and I think we've worked it out,
22 and because there are a panel of attorneys who would
23 accept cases and not be paid for those cases until --
24 entirely until they have completed those cases, then
25 they have to encumber a certain number of dollars in order

1 to insure that the completion of those cases. In other
2 words, the private attorney's harmless against the possi-
3 bility of a liability of a cut-off in the grantee funds.
4 The liability is the same with respect to the staff
5 attorney program, but it's generically different in that
6 the liability is for salaries, for ongoing obligations
7 so that in either case, if the funds are cut off, some-
8 body bears the liability.

9 In the case of the Judicare program, it would
10 be the private attorneys. In the case of the staff attor-
11 ney program, it would be the employees and their contrac-
12 tors or whoever they use. And so in my judgment, there
13 is no real distinction here, and that is why we have --
14 you know, I mean I would not make an exception for the
15 Judicare program; because the liability should be the
16 same.

17 MR. PARAS: You're saying that Greg would not
18 have turned over that money if he really had need for
19 it and if it was actually pegged for Judicare use.

20 ACTING PRESIDENT LYONS: No, he would not have.
21 What I'm saying is that I think, in Greg's case, as he
22 progressed down the line developing his program, he --
23 you know, we refine these things as we go along. Greg
24 set out and encumbered some funds for liability for poten-
25 tial cases, and found that, perhaps, his program was not

1 taking in these cases as quickly with a panel, and he
2 accumulated a certain number of dollars. And when he
3 found that it got at a certain level, he was willing to
4 give it back, because -- you know, of the policy we were
5 developing. We've talked about it, and we've worked it
6 out.

7 MR. PARAS: Then you're saying that a Judicare
8 program will do that just as readily as a regular staff
9 program?

10 ACTING PRESIDENT LYONS: Sure. And I'm saying
11 we should make no special provisions and turn no distinc-
12 tions in terms of this policy.

13 We should leave it to the local program to
14 consider how they're going to encumber their funds and
15 how much liability they are going to try to insulate
16 their private attorneys or their staff attorney from;
17 ~~but~~ the real issue is, you really can't protect yourself
18 from a cut-off of funds. And that's the bottom line
19 issue here.

20 CHAIRMAN HARVEY: Okay. I accept that.

21 I'm sorry. Anne.

22 MS. SLAUGHTER: When the programs submit a
23 plan of how they are going to spend this fund balance,
24 who approves their plan?

25 ACTING PRESIDENT LYONS: The Regional office.

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MS. SLAUGHTER: It does not come through you at all?

ACTING PRESIDENT LYONS: No.

CHAIRMAN HARVEY: Do you think it should?

ACTING PRESIDENT LYONS: No. I don't -- I mean, I can't -- The reason we have the Regionalized structure we have is so that, you know, that things don't pile up here in Washington.

MR. PARAS: Well, Bill, may I dictate to Alfreda the language that I would like to propose for Paragraph 7?

CHAIRMAN HARVEY: Yes, of course.

We have some public comments to make, so I want you gentlemen to assimilate this into your comments.

MR. PARAS: Why don't you let me do it, please. And I just drafted this now as I read this. I read the six paragraphs --

CHAIRMAN HARVEY: We're all very tolerant. Please go ahead.

(LAUGHTER.)

MR. PARAS: All right. I apologize. Alfreda, please, take this down.

"The foregoing shall not be understood to urge the indiscriminant expenditure of surplus funds, specifically in order to avoid set-off in a succeeding Fiscal Year. Indeed, economy is encouraged, and if a grantee

1 can from time to time return surplus monies to the Corpora-
2 tion, it will be with the knowledge that the Corporation
3 will put it to proper use by allocation to other programs
4 whose full needs are not fulfilled."

5 I hope I'm not naive in making that suggestion,
6 but I make it --

7 CHAIRMAN HARVEY: Alfreda, did you receive all
8 of that?

9 MS. HARVEY: I am confident that there is some-
10 body here who is taking these notes who's much more
11 qualified to do this than I.

12 MR. PARAS: That the foregoing shall not be --
13 may I go quickly, or do you want another slow one?

14 MS. HARVEY: Well, as slowly as you were reading
15 it before.

16 MR. PARAS: That the foregoing shall not be
17 understood to urge the indiscriminant expenditure of
18 surplus funds, specifically, in order to avoid set-off
19 in a succeeding Fiscal Year. Indeed, economy is encour-
20 aged, and if a grantee can from time to time return monies
21 to the -- I think I interpolated with surplus in there --
22 surplus monies to the Corporation, it will be with the
23 knowledge that the Corporation will put it to good use--
24 to proper use by allocation to other programs whose full
25 needs are not fulfilled.

1 CHAIRMAN HARVEY: All right. Further consensus,
2 discussion, comments?

3 MR. : What is that? Is that an
4 amendment?

5 MR. : That's something, I think,
6 that would be sort of a statement of policy by the
7 Board. It's a solicitation --

8 CHAIRMAN HARVEY: You have a motion, don't
9 you, Harold?

10 MR. DeMOSS: Mr. Chairman, I have a motion on
11 95 and 96, the resolution be adopted by the Board.

12 CHAIRMAN HARVEY: Now is this offered, George,
13 as -- I thought you already had that.

14 MR. PARAS: I had forgotten that. I'm sorry.

15 CHAIRMAN HARVEY: All right. This is an
16 amendment?

17 MR. PARAS: I will offer it as an amendment.
18 But I'm a little troubled with that language in the sense
19 that I only worked it out now. I think it states to my
20 satisfaction the policy declaration and the invitation
21 to the various programs to continue the integrity which
22 I expect them to exercise.

23 CHAIRMAN HARVEY: There's a second to your
24 amendment, George. It is seconded.

25 MR. PARAS: It is seconded?

1 CHAIRMAN HARVEY: Yes, sir.

2 MR. PARAS: All right.

3 CHAIRMAN HARVEY: Board members, we have four
4 speakers here. Bill.

5 MR. OLSON: I have a question. Since -- Prior
6 to the time the fund balance policy was adopted, how
7 many checks were sent back?

8 MR. RITTER: None that I'm aware of.

9 MR. OLSON: Thank you.

10 ACTING PRESIDENT LYONS: And the policy prior
11 did not encourage the return of money. The prior policy
12 said spend it effectively, and spend it according to a
13 plan.

14 MR. OLSON: I understand. I raise the issue
15 because George said that he thought that the programs
16 currently would exhibit the desire to share their funds
17 ~~with~~ other programs that have the need, and I think that
18 that hasn't been encouraged; and I think we're dealing
19 with a system of incentives or disincentives. It's not
20 a question of trust or lack of trust or anything else.

21 We're structuring a program that we're trying
22 to have work, and I think we ought to take into considera-
23 tion whether we're providing proper incentives to act in
24 a manner which is in the best interest of the Corporation.

25 CHAIRMAN HARVEY: All right. We're going to

1 have to have a break at 12:30. I want to give these
2 gentlemen an opportunity to speak. You were from
3 northern Arkansas?

4 MR. SIZEMORE: No. Eastern Arkansas. John
5 Sizemore.

6 CHAIRMAN HARVEY: Three minutes worth, please.

7 MR. SIZEMORE: An explanation of how this
8 carry-over mounted up for my program, for example. Now
9 I'm speaking primarily from my examination of the records,
10 because I became Director of this program just last May,
11 so most of this happened before my arrival although I'm
12 satisfied it's accurate.

13 My program started in 1978. We were given a
14 grant for three counties in East Arkansas of \$191,000.
15 That grant was given to the local board of directors in
16 May of 1978. However, it was retroactive to January
17 ~~of 1978.~~ An Executive Director, my predecessor was not
18 hired until September of 1978. We were establishing
19 legal services in the most hostile area you can imagine.
20 I mean, really hostile. Prudence was dictated.

21 As a result, that first year we had \$130,000
22 carry-over. The next year, 1979, because of the addition
23 of two additional counties and an increase in funding,
24 our annual funding increased to \$288,000. However, we
25 didn't get a check for that until July of 1979. It was

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1 retroactive to January of 1978, so at the end of 1978,
2 again trying to expand in a very hostile area, we wound
3 up with a carry-over of \$276,000, \$15,000 of which was
4 interest, based on the money that my predecessor invested.

5 In 1980 we were again expanded, two additional
6 counties. We got additional funding. We applied for
7 the two additional funding. We applied in the Fall of
8 1979. A competing grant application was filed by some
9 lawyers in Northeast Arkansas. That held up action on
10 our application. When action on our application was
11 finally taken, it was not until the middle of 1980. We
12 again were re-funded retroactive to January, so at the
13 end of that year we had a carry-over of \$497,000, \$41,000
14 of which was interest.

15 And finally, all this time they told us, ex-
16 pand, expand, expand. We expanded when we could expand.
17 ~~Then~~ came the election, and the message was changed.
18 Retrench. My predecessor closed down an office and put
19 together a retrenchment plan, and continued to spend the
20 money pursuant to approved carry-over plans. We had
21 approval, advance approval, for the manner in which we
22 tried to spend this money, but by January of this year
23 we had something like \$556,000 in carry-over, \$100,00 of
24 which was interest.

25 My predecessor filed a carry-over plan for the

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1 expenditure of this money. It was approved by the Regional
2 office. Then came the word -- the Corporation changes
3 its policy and says to all of us who have been doing what
4 we were told to do, you have been irresponsible because
5 you haven't spent all of the money you've been given.
6 You are irresponsible. They subjected a number of us to
7 a suspension proceeding, including my program.

8 Frankly, I welcomed it, because we were clean
9 as a hound's tooth. We had done nothing wrong.

10 CHAIRMAN HARVEY: John, please stop on the
11 word tooth. Time was expired.

12 MR. SIZEMORE: I'd like to have just a couple
13 of sentences, if I could, Mr. Chairman.

14 CHAIRMAN HARVEY: That's all right.

15 MR. SIZEMORE: I'm asking you --

16 CHAIRMAN HARVEY: Ten seconds' worth. Go.

17 MR. SIZEMORE: I'm asking you not to put a
18 cap on the amount that can be carried over, if as in my
19 program's case, there is an approved carry-over plan
20 where we have been exonerated from any suspension pro-
21 ceeding so far. It may be that there ought to be some
22 cap, but look at us, program by program, and don't convict
23 us all because of what might have been an unwise policy
24 in the past.

25 Thank you.

1 CHAIRMAN HARVEY: Thank you.

2 MR. OLSON: Mr. Chairman, I just want to inter-
3 rupt to say that I think that point is extremely well
4 taken. It addresses a very great concern, if there's to
5 be -- If we -- If there was a mistake on the policy in
6 the past, we really should not act by way of making --
7 stigmatizing those programs in any way. And I think that
8 point is well taken. It probably is a position in which
9 other recipients are, and I'm just glad we heard that
10 comment.

11 MR. DeMOSS: Let me make a couple of quick
12 comments, Mr. Chairman. I don't think it's an efficient
13 use of this Board's time to go over all of the testimony
14 that we heard at the Audit and Appropriations Committee.
15 And we heard from Mr. Sizemore on this, and what we told
16 him there was, we're not attaching any stigma to you,
17 ~~you know~~. If you've got an effective plan to use your
18 money, tell us about it. The President and the staff
19 have the flexibility to work it out; and if you don't
20 have the plan, we think the money ought to be put some-
21 where else.

22 You will remember all of the flak that came out
23 in the newspaper about the \$41 million of excess funds.
24 We were in the process of trying to get some sort of an
25 initial reaction out of Congress about funds for Fiscal '82

1 at that very -- excuse me, Fiscal '83, at that very time.

2 Now, you know, it seems to me that what this
3 Board has to do is either say, you know, the recommenda-
4 tion of the Committee is a good one and let's get on with
5 it. And I would encourage the Board, because of economy
6 of time, to give some weight to the fact that the Committee
7 has already wrestled with all of this stuff.

8 Otherwise, we will find ourselves in all Board
9 hearings going back and hearing all of the testimony,
10 all of the debate, all of the arguments, that led up to
11 the Committee recommendation for the Board.

12 CHAIRMAN HARVEY: Your position is my position,
13 Harold. And I agree with you. I do want to give an
14 opportunity -- Bill, did you speak before the Appropriations
15 and Audit Committee?

16 MR. KNOX: No, I did not.

17 CHAIRMAN HARVEY: Howard tells me he has to
18 leave also very quickly. Can you give me a two-minute
19 summary of what you want to say?

20 MR. KNOX: I can give you a two-minute summary
21 of what I want to say. Bill Knox, Chairman of the Board,
22 Mid-Missouri Legal Services Corporation. We're one that's
23 been suspended.

24 I have basically two points. One, I think this
25 is a major change in policy of the Corporation; and as

1 such, it ought to be open for public comment. I don't
2 believe "public comment" on this proposed regulation or
3 rule or whater it's called has been invited. And I can't--
4 I can give you a parade of horribles, but I won't try to
5 here in two minutes.

6 I think it ought to be open for public comment,
7 give us 30 days to submit our written objections to this
8 proposal. There are a lot of problems.

9 One of the problems is the 25% limitation.
10 It's a problem. It's going to be a problem for some
11 programs. Let us respond to it in writing. Give us a
12 little bit of time to do something with it.

13 Secondly, the suggestion -- We have been, by
14 the way, told our fund balance came about the same way
15 as the last fellow's did, and we were told by people in
16 the Chicago Regional Office and by members of the Board
17 of Legal Services Corporation that that was our money.
18 We had discussions on that. We were told basically, it's
19 yours. You've got it.

20 Third point is, I think we have been stigmatized
21 in the manner in which this whole process has been handled.
22 I recommend that all of you take a look at the letters
23 directed to Legal Services Corporation people such as
24 myself that say that, because we fail to spend this money,
25 that indicates that my program has substantially failed to

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1 comply with the terms and conditions of the grant, and has
2 substantially failed to provide high quality -- and I don't
3 know why this has got anything to do with high quality --
4 economical -- and I don't know why it's got anything to
5 do with economical; seems to me we saved money. I got a
6 tight Board, they won't spend it. They're very economi-
7 cal -- and effective legal assistance support.

8 I think there's no evidence of it. I object
9 to any of this kind of stuff being released to the public,
10 to the press, and to bringing it down under my program.

11 And that's it. I'd be happy to give this to
12 anyone who wants it.

13 Thank you.

14 CHAIRMAN HARVEY: Thank you, Bill.

15 MR. CHAPMAN: Could I -- Excuse me. My name's
16 Randy Chapman. I'm from Pennsylvania Legal Services.

17 If I could simply ask one question on the amend-
18 ment number seven. Is it the intention of the Board of
19 Directors that the money that would be, say, recaptured
20 through that provision then would be reallocated by
21 Corporation staff within the Region or the State in which
22 the fund balance arose?

23 MR. DeMOSS: I don't know that we have any inten-
24 tion on that. Our concern is -- and one of the reasons
25 I would speak against George's motion is -- that it says

1 we will reallocate those programs. And we have discussed
2 it in the Audit and Appropriations Committee, that it
3 might not be very -- These are one-time funds, and it
4 might not be very wise to put them into a program where
5 that program would think it was going to be getting them
6 all the time.

7 We have made no decision. We would certainly
8 welcome any thoughts that you have. I would like to see
9 these one-time funds left in a discretionary category
10 for this Board to decide what is the best utilization we
11 can make of them, knowing that they are one-time funds.
12 They're not annual funds.

13 We can't plan on these in any budget, in any
14 year, because you're not going to know who had an excessive
15 fund balance until after the fact. So my personal feeling
16 would be that these funds ought to be uncommitted, but
17 ~~certainly~~ we will tell you this Board will use them as
18 wisely as we can to help the whole concept of getting
19 legal services to the poor. But I personally would be
20 reluctant to say that we were going to put them with
21 other programs who were in need, then have to get into
22 the question of defining where, how close, all that sort
23 of stuff.

24 MR. CHAPMAN: If I could just comment. We have,
25 from the list, one program with a substantial identified

1 fund balance, and then we have other programs within the
2 Commonwealth, one in particular in Pittsburgh, that has
3 just sent out thirteen layoff notices and is -- a number
4 of programs that are operating in deficit or near-deficit
5 situations.

6 It would seem appropriate to allow Corporation
7 staff under those circumstances to make such adjustments,
8 if in fact the amendment is -- as proposed, is adopted.
9 And therefore, I would ask Mr. Paras to offer or add as
10 an amendment to his amendment a simple statement that,
11 if adopted, funds would be reallocated within the geographic
12 region in which there were --

13 MR. PARAS: That's not a bad idea.

14 MR. DeMOSS: Let me speak right off the top here.
15 You know, we've got this whole burden of geographical
16 minimum access, and I am not going to tell you ahead of
17 ~~time~~ that I think the funds that are excess in a given
18 area ought to stay in that area; because you may well
19 find that there's more excess funds in that general
20 region than anywhere else. And it's other parts of this
21 program that I am under the impression are getting by
22 on less dollars per person, less dollars, less number of
23 attorneys per person, however you want to rationalize
24 this minimum access; and I think this Board ought to be
25 free to take these excess funds somewhere else, if we

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1 conclude that that's the best place to put them.

2 MR. PARAS: Well, it was my thought that they
3 would just go into a reserve. The Corporation does main-
4 tain a reserve. And then ultimately they would get out
5 there somewhere to help poor people. I had no specific --
6 When I recommended this, I had nothing specific in mind.
7 I'm just trying -- That's not a bad idea.

8 MR. CHAPMAN: The reason I mention it is because
9 of the desire expressed, I believe, by Mr. Olson that, if
10 we are going to have rational decision making within the
11 local programs, then we -- then the local programs would
12 make much better use of the funds if they had some feeling
13 of certainty that the funds were not going to go to some
14 unknown account back in Washington, but were going to be
15 spent for providing service to poor people, especially
16 in the immediate area such as the situation I mentioned
17 in Pittsburgh.

18 Thank you.

19 CHAIRMAN HARVEY: Clint.

20 ACTING PRESIDENT LYONS: Mr. Chairman, I think
21 the two issues are severable, and at the time that the
22 Board makes its allocation decisions, it can take up that
23 particular issue as to what factors it wants to consider,
24 in allocating those monies. So I don't think it would be
25 appropriate to make that particular suggestion as far as

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1 this goes.

2 CHAIRMAN HARVEY: A minute's worth of comment,
3 and we've got to move.

4 MR. JOHNSON: We're going to take thirty seconds.

5 CHAIRMAN HARVEY: All right.

6 MR. JOHNSON: First of all I want to point out,
7 I'm not affected by this; so it's no prejudice attached
8 to it. However, Mr. DeMoss, I think your comment to
9 Mr. Sizemore was correct. It should be examined, whether
10 or not you have an intelligent, workable plan, in order
11 to determine how these monies should be expended. And
12 however, Paragraph No. 4 takes away the discretion from
13 the Regional offices to have the ability to exercise their
14 judgment in what may be a special circumstance where in
15 excess of 25%, it may make sense to leave that money
16 within that program, if they have an intelligent plan.

17 I see no reason why you should take that discre-
18 tion away from your Regional offices. Examine whether
19 or not they are exercising that discretion properly.
20 Hold them accountable. But I do not see why you want to
21 hamstring yourself to that extent.

22 CHAIRMAN HARVEY: Howard, comment? And I'm
23 sorry, no more.

24 MR. DANA: I am -- I think we have a fundamental
25 problem of Board/staff morale at stake here. We made a

1 lot of headlines as a Board. Went out and said this is
2 awful, and we asked the staff to do something about the
3 fund balances and come up with a recommendation. And
4 the staff came up with a recommendation. Took a whole
5 lot of heat for it. And the question is whether we -- and
6 we considered it at great length in Committee -- And the
7 question is whether or not we support in the last analysis
8 our staff, which we encouraged and which we debated. And
9 I am concerned by, frankly, the precedent that would be
10 established if we go out and make a lot of headlines --
11 and Lord knows, I was just as responsible for those head-
12 lines as anybody.

13 CHAIRMAN HARVEY: Did you call the question,
14 Howard?

15 MR. DANA: And I would call the question.

16 CHAIRMAN HARVEY: The question's called. Those
17 ~~in favor~~ -- We're speaking about the amendment. Those
18 in favor of the question which means cutting off, say
19 "Aye".

20 MR. PARAS: Pardon me. Before you cut it, --
21 I oppose cutting it off, because first of all on the
22 written part that was circulated, one word was misprinted.
23 Starting with the second sentence, it said "...Instead,
24 "the" economy is encouraged." Strike the word "the".
25 The word "the" was not intended to be in there. Economy

1 alone is what it would be.

2 First of all, it would be in that form. Second,
3 -- All right. That's all I have.

4 CHAIRMAN HARVEY: We're voting now on the
5 amendment. Those in favor of the amendment, signify by
6 saying "Aye".

7 (ONE "AYE" VOTE.)

8 CHAIRMAN HARVEY: Opposed, the same sign.

9 (CHORUS OF "NO".)

10 CHAIRMAN HARVEY: The amendment failed.

11 MR. DANA: I move the question on the proposed
12 policy.

13 CHAIRMAN HARVEY: Those in favor of calling
14 the question on the proposed policy, signify by saying
15 "Aye".

16 (CHORUS OF AYES.)

17 CHAIRMAN HARVEY: Opposed, the same sign.
18 We're now voting on the policy as proposed pursuant to
19 Harold's motion.

20 Those in favor signify by saying "AYE")

21 (CHORUS OF AYES.)

22 CHAIRMAN HARVEY: Opposed, the same sign.

23 (ONE "NAY".)

24 CHAIRMAN HARVEY: The motion carried.

25 MR. DeMOSS: We have got to move on, and I just

1 would encourage the audience to maybe just hold -- give us
2 a written note.

3 There is one action item that we need to tend
4 to, and that is -- and I now move that the Acting President
5 be authorized to secure the issuance of a Letter of Credit
6 to the Corporation representing the portion of 1953 funds
7 appropriated -- 1983 funds appropriated by the continuing
8 resolution, and that the Acting President be authorized
9 to withdraw from those funds only such funds as are
10 necessary for the current operation of the National office
11 and the Regional staffs, including all subsidiaries that
12 come under those two main headings. I'm not trying to draw
13 any distinctions. And will not -- I'll say it, and none
14 of those funds will be used on commitments or contracts
15 or grants for 1983 until further approval of this Board.

16 MR. DANA: Second.

17 CHAIRMAN HARVEY: Discussion.

18 MR. OLSON: Just as long as it's clear. From
19 what Hal said, it was to me that we're saying that the
20 monies can be used internally and for the things that are
21 necessary to run the Corporation; but that the commitments
22 would be -- of funds would be prohibited and the expendi-
23 ture of those funds to the grantees and contractors deliver-
24 ing services in the field.

25 CHAIRMAN HARVEY: Until authorized by the Board.

1 MR. OLSON: Until authorized by the Board.

2 MR. LYONS : It's superfluous, anyway, because
3 you can't do it until the Board passes a budget.

4 CHAIRMAN HARVEY: Okay. He said it's superflu-
5 ous anyway, because it cannot be done until the Board
6 passes a budget.

7 MR. DANA: Call the question.

8 CHAIRMAN HARVEY: The question's called for.
9 Those in favor, signify by saying "Aye".

10 (CHORUS OF AYES.)

11 CHAIRMAN HARVEY: Those opposed, by the same
12 sign. Passed.

13 MR. DeMOSS: All right. Lastly --

14 CHAIRMAN HARVEY: I'm sorry. Charles.

15 MR. RITTER: I just have a quick comment. I
16 wanted to correct an earlier statement. I was reminded
17 that, on one occasion over the last years, a program did
18 send back some money that it couldn't use.

19 (APPLAUSE.)

20 CHAIRMAN HARVEY: Thank you.

21 MR. DeMOSS: All right. We are now to 1983
22 budget allocation issues. It's probably the worst time
23 of all to get to this point. And let me just bring every-
24 body up to date on what we're going to try to do.

25 By the time of the next Board meeting in December,

1 we are going to do our best to have the staff work done
2 to come up with preliminary 1983 budget to present to
3 this Board. Now this Board has got to make some overall
4 decisions for us to be able to draft a budget.

5 There has been a variety of things that this
6 Board has talked about doing, viz a viz 1983 grants,
7 which if it does it's going to have impact on the 1983
8 budget. For instance, there have been discussion that
9 there would be some increase in the amount of set-aside
10 for private bar involvement, from 10% to "X" percent,
11 let's assume 15. That is a policy decision which this
12 Board can certainly make, but it has budgetary consequences
13 in that you need to understand that, if you're going to
14 require the local programs to take 5% out of their budgets,
15 that's 5% of their budgets, an aggregate of \$211 million
16 that they can't use for local operating purposes.

17 Now maybe that's where this Board wants the
18 impact to fall. On the other hand, if you want to get the
19 5% by way of shortening other items in the budget, where
20 this Board has the discretion to do so without the neces-
21 sity of getting into a protracted hearing, then obviously
22 you could take 5% or roughly \$10 or \$11 million away from
23 this area of the program, move it up and add it into the
24 field programs, and say this is your additional 5%, and
25 you will use this 5% for private bar involvement.

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1 That is just an example, and please don't any-
2 body in the audience treat it as anything except an
3 example. But I am simply saying that there are a variety
4 of budgetary consequences. There has been discussion
5 from time to time about the efficacy and efficiency of
6 the support centers at State, National, all the range of
7 special areas of law that they all get into. There has
8 been discussion about other areas of activities of the
9 Corporation in which some sort of a budgetary change
10 could be made.

11 Overlaying this whole thing, everybody needs to
12 understand that we don't have anything except appropriations
13 for two months and seventeen days. We expect to get,
14 most likely, another continuing resolution before Congress
15 adjourns in late December; and we would expect that it
16 will be at the same level, but nobody knows that. And
17 ~~we would expect that it would have the same set of restric-~~
18 ~~tions on it,~~ some of which have budgetary implications to
19 them. But we don't know that either.

20 So --

21 CHAIRMAN HARVEY: Harold, before you break, I
22 want to interrupt you at just that point. I want the
23 public to be advised that several members of the Board,
24 indeed all of them including myself, have been working
25 very hard to make certain that, after December 17th, the

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1 Corporation does have an appropriation for funding legal
2 services for poor persons, contrary, I think, to contem-
3 porary mythology.

4 MR. DeMOSS: Well -- I have to go?

5 (LAUGHTER.)

6 MR. DeMOSS: Those of you who are interested in
7 wrestling with the intimacies of the areas in which this
8 Board has freedom to make some changes without the neces-
9 sity for a hearing, I encourage you to remain and talk
10 with Clint and Charles Ritter and our legal counsel, and
11 begin to get a feel for all of the areas where there is
12 some discretion in this Board.

13 I think that what we may be looking at is the
14 need to do a variety of things, get decisions made, and
15 then try to get back here and perhaps have, for the next
16 Board meeting in December, budget A -- and let me just
17 ask, would the Board be willing -- interested in seeing
18 Budget A, which would essentially be a roll-over of
19 1982 budget eliminating all changes that were made in that
20 budget that relate to items that were increased in the
21 budget request for '83, and simply trying to carry forward
22 substantially the same budget that we had in '82 as
23 Option A. And then Option B, being a variety of changes
24 in that budget. And if so, what options -- what changes--
25 do you want the staff and the Audit Committee to work

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1 in terms of alternative budgets?

2 MR. DANA: Mr. Chairman.

3 CHAIRMAN HARVEY: Yes, Howard?

4 MR. DANA: I would hope that the -- among the
5 options that the Audit and Appropriations Committee comes
6 back with is a two-month extension of the current contracts
7 at current levels; and that, since we do not have money
8 from Congress for more than two months and seventeen days,
9 we can change our regulations as we are doing deliberately
10 and carefully and with the benefit of comment; we can --
11 whatever contracts we issue, we can issue them for two
12 months; and then this Board or the next Board can deal
13 with these questions in a -- either a confirmed mode or
14 a unconfirmed mode, as the case may be.

15 My apprehension is that -- but if we are going
16 to debate your option B,C,D and E, I would hope that we
17 ~~could do~~ so in the context of two month contracts as
18 opposed to annual contracts, because: (a) we won't have
19 the money by then; and (b) I think that most of the options
20 that may be considered should not be taken until we have
21 regulations which are approved and in effect which will
22 permit us to do it expeditiously without extended hearings.

23 Thank you, Mr. Chairman.

24 CHAIRMAN HARVEY: Howard. Harold? The Board
25 members? Yes, sir. One minute.

1 MR. HOLLINGSWORTH: I'm Don Hollingsworth.

2 I want to speak as Vice-Chair of the Project Advisor
3 Group briefly.

4 First, it is my opinion and a lot of people's
5 opinion legally, that you can draw down that money any
6 time you want to.

7 Secondly, and I'm talking about the \$241 million,
8 Secondly, Congress is not going to reduce the \$241 million,
9 in my opinion; but to take care of that eventuality,
10 you could pass a budget in December that was contingent
11 upon the amount. Previous Boards have done that. And
12 what I'm getting to is, we have been through almost two
13 years of pure hell locally, and people were talking about
14 layoffs. I just did two more last month. I've got a
15 \$76,000 deficit staring me in the face, with good experi-
16 enced poverty lawyers.

17 I have an expanding pro bono program. I need
18 some certainty, because I have had none for two years.
19 And if anything, don't give us a two month contract. My
20 Board, which is working to try to make up the \$76,000,
21 needs some certainty for 12 months for a change. And
22 you're the first Board that can really give that to us.
23 And if you want to give a message of positive support
24 and trust of local grantees, I encourage you to give us
25 a year's grant with some certainty in it, because otherwise

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1 it just prolongs this distasteful and discouraging thing.
2 And you know, I'm tired of turning away more clients,
3 and other programs are. We've been turning them away for
4 years, but it's even worse.

5 I implore you, please, to give us some certainty
6 for 1983.

7 CHAIRMAN HARVEY: Don, thank you.

8 Howard has to go. Dave has to go. Harold has
9 to go. Before we break for lunch with a depleted Board
10 returning afterward, there are a couple of things I'd like
11 to say in their presence, and perhaps picking up Don's
12 thought a moment ago.

13 We all share the anxiety of the uncertainty.
14 This Board does. This Board was reported out for confirma-
15 tion on July the 15th, and no vote was taken. So I under-
16 stand the uncertainty about which you speak, but it seems
17 to be beyond our ken and scope of competency.

18 These are short declaratory statements for the
19 benefit of everyone. Secondly, in my judgment the Presi-
20 dential Search Committee did a splendid job with Howard
21 as its Chairman and Lee Ann Bernstein as the Executive
22 Secretary. The Committee's work is concluded and over as
23 of this time I mean that, and I say it very sincerely.
24 I think that the Committee functioned very well.

25 Thirdly, I think that the Appropriations and

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1 Audit Committee has done very, very well in extraordinarily
2 difficult conditions, such as Don Hollingsworth has just
3 alluded to in his own personal sense.

4 Fourth, I'm delighted that Clint Lyons will be
5 the Acting President, and that the Board has approved the
6 appropriation draw-down which did not occur at any time
7 prior to today. And now that it has, we can go forward,
8 contrary, I think to some of the disinformation some of
9 you may have assimilated.

10 Fifth, I know of no person on the Board, members
11 of the public, who is not dedicated to legal services for
12 the poor, who is not diligently working to effectuate the
13 purpose of the Corporation and of providing legal services
14 to the poor. At the same time, I know of no member of
15 the Board who would grant to anyone a monopoly on concern
16 about legal services to poor persons.

17 Finally, before we break for lunch, I think that
18 I should make a comment, at least, upon a phenomenon which
19 I've experienced several times. The phenomenon is coming
20 generally from the midwest to the East Coast, and in
21 attending Board meetings. It's remarkable. I find myself
22 as the Chairman of the Board averaging four hours a day
23 on the telephone, talking to clients who, whenever they
24 call, to staff and Judicare attorneys whenever they call,
25 to project directors. I never turned one of those calls

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1 down. I do spend, on the average, four hours a day.

2 Just on that.

3 Other Board members have a similar experience.

4 I think I can generally state that, in the heartland of
5 American from whence I come, -- and that includes from
6 Canada to Mexico, Harold -- the heartland of American,
7 there is, if not contentment, at least there is substan-
8 tial support and great affection for the program and
9 hope for the program.

10 Each time I drive East, which I do in order to
11 avoid the telephone calls that I allocate to myself, which
12 I have recently learned is commented upon in some news-
13 paper -- drive East, there seem to be a crescendo of
14 anxiety which builds along the Eastern Seaboard.

15 I would hope, in the future, that persons who
16 are sincerely concerned as a number of persons here yes-
17 ~~terday~~, would try and get to us as Board members in a
18 personal communicative way; and perhaps extend invitations
19 for us to speak directly to you, which is what I strongly
20 prefer to do. Although I do observe that I have received
21 exactly six invitations, all coming from Midland programs,
22 to do that. And I think that this Corporation spends
23 enormous sums on training and education and communication,
24 and probably the most underexposed persons in the Corpora-
25 tion are the members of the Board of Directors.

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I hope that, in the future, that is corrected.
Members who have to go, it's nice to have you here.
We'll return after lunch, and we are -- We conclude to
that point.

Bill.

MR. OLSON: Mr. Chairman, we've just been talk-
ing on this side of the table, pardon us, while you were
speaking.

CHAIRMAN HARVEY: I know you didn't hear a word
I said. It's all right.

MR. OLSON: I'm sure it was well thought out,
though.

About the problem of the timing of this and
Clint's earlier memo about the time it would take to get
the regulations that we've now discussed into the Federal
Register, I seem to remember that our dates are Thursdays
~~or~~ Tuesdays and Thursdays or something, and it takes a
lay-over time to get it in. In other words, what I don't
want to have happen is have us leave here today without --
with a December 3rd Board meeting in the regs to come up
and then have the thirty day period expire for notice
for comments on the 4th of December. We need a little bit
of time for the staff to assimilate that and report it
back, because you don't ask for comments without assimila-
tion and input and receiving it and considering it.

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1 So I'd like to make a motion that would say
2 that the December meeting shall be on the call of the
3 Chair, consistent with all these concerns that I think --
4 plus the fact that Hal's committee with Appropriations
5 and Audit has to meet; and matter of fact, maybe even more
6 than once.

7 So I would just say that I'd make a motion that
8 the date of the December Board meeting would be upon the
9 call of the Chair.

10 MR. MCKEE: Second.

11 CHAIRMAN HARVEY: Okay. Those in favor, say
12 "Aye".

13 (CHORUS OF AYES.)

14 CHAIRMAN HARVEY: Opposed, the same sign.
15 Passed.

16 MR. FRETZ : Mr. Chairman.

17 CHAIRMAN HARVEY: Yes.

18 MR. FRETZ : I have a quick question
19 which relates to the Committees chaired by Mr. DeMoss
20 and Mr. Dana; because they are leaving, I'd like permission
21 to ask it now.

22 MR. DEMOSS: I've been discharged.

23 (LAUGHTER.)

24 CHAIRMAN HARVEY: Harold, do you want to see
25 the question?

1 MR. DeMOSS: Yeah. Fine. Go ahead.

2 MR. FRETZ: Thank you, Mr. DeMoss. Burton
3 Fretz, Senior Citizens Law Center. It relates to the
4 discretion of the Corporation to enter into financial
5 negotiations with Mr. Bogard or, for that matter, any
6 other candidate.

7 As we all know, the tenure of anyone coming in
8 as President of the Corporation is precarious, by virtue
9 of future confirmation or a future change in appointments
10 or by litigation pending. And I trust all of this will
11 be called to any candidate's attention.

12 It would seem very unlikely that most any serious
13 candidate would move to Washington, D.C. to accept a
14 position of such precarious tenure, absent some sort of
15 financial security that could be provided. If this were
16 a corporation for profit, of course, it would have almost
17 a free hand to do that. I submit that, because it is the
18 Legal Services Corporation, it's under some rather severe
19 constraints.

20 First, the constraint in the Act which puts a
21 cap on salary and provides that the President serves at
22 will, directors. Second, by virtue of the Corporation's
23 charter here in the District of Columbia, and any conse-
24 quences that would have on the limitation on the Board to
25 offer an officer salary only for work actually performed.

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1 My question then is, are these considerations
2 which will be taken up, if necessary, referred to General
3 Counsel for an opinion; and if so, factored into the
4 negotiations with Mr. Bogard?

5 MR. DeMOSS: I got on the line here, and I don't
6 know that that is a matter that is peculiarly the responsi-
7 bility of the Audit and Appropriations Committee.

8 MR. DANA: With all due respect, it may be that
9 my Committee was discharged prematurely.

10 (LAUGHTER.)

11 MR. DANA: It does seem to me that the Presi-
12 dential Search Committee might well be the appropriate
13 committee. We are a committee of the whole, and I think
14 that we can -- I think that the suggestions are sound
15 ones and, if I can be reinvigorated, I would ask that
16 that be done and that the Committee be authorized to
17 ~~continue~~ to conduct those -- and implement those negotia-
18 tions with Mr. Bogard over the ensuing weeks.

19 CHAIRMAN HARVEY: My answer to your questions
20 are, yes. My suggestion would be that -- the Board can do
21 whatever it wants to do. It's fine with me. My suggestion
22 would be that I begin to speak to Mr. Bogard with Clint
23 Lyons attending, and report this to all of you, that is
24 this being the nature of negotiations and what his status
25 is. So far I've not even had an opportunity to even call

1 him. So giving a person fairness, a lot of conversations
2 have occurred and comments have been made, and no communi-
3 cation with him yet, except he and the news media. That's
4 an alternative that might be easier to proceed that way,
5 and I would make that suggestion to the Board. But the
6 Board can do whatever it wants.

7 MS. SLAUGHTER: I think Mr. Dana's idea is a
8 very sound one.

9 MR. OLSON: I think both of you have responsi-
10 bility, and I think Clint has responsibility. I think
11 that Mary does. We don't sign contracts around here
12 without the General Counsel saying all right. We don't
13 even put regulations out without the General Counsel
14 saying all right, so -- I think we just -- the way in
15 which we would proceed, I think, is that the three of
16 you would take responsibility in this area. And I think
17 ~~that's~~ what you should do.

18 CHAIRMAN HARVEY: Okay. Consensus on that?

19 MR. DANA: If that's acceptable, we can come
20 back as -- come back to the Presidential Search Committee
21 which doesn't require a full Board meeting, to seek
22 approval of terms and conditions. Play it by ear.

23 MR. DONATELLI: Since the Presidential -- certain
24 membership of the Presidential Search Committee and the
25 membership of the Board are the same, and since the

1 Presidential Search Committee has already recommended a
2 candidate and has been accepted by the Board, it seems
3 to me the logical way to proceed here is for the Chairman
4 of the Board and the Acting President to get together
5 with the candidate that we selected and to make sure that
6 all the legal bases have been touched, and offer him a
7 contract. I don't see that there's any need for the
8 Presidential Search Committee to get together again for
9 another meeting.

10 MS. SLAUGHTER: I would think the Chairman of
11 the Presidential Search Committee should be present at
12 that meeting. I would so recommend.

13 MR. DONATELLI: I think it should be at the
14 discretion of the Chairman.

15 MR. OLSON: We're all usually welcome to every-
16 thing. So what's the problem. I think we just ought
17 to go ahead and have lunch and, by the time we come back,
18 we'll be happy and healthy and this decision, I hope,
19 will be resolved by the people who are responsible for it.

20 MR. DANA: I would move that the Chairman of
21 the Presidential Search Committee, the Chairman of the
22 Board and the President serve as the -- the Acting Presi-
23 dent and our President, serve as a committee of all of us
24 to negotiate with Mr. Bogard and report back to the Board.

25 MS. SLAUGHTER: I second that motion.

1 CHAIRMAN HARVEY: And those reports can be made
2 by telephonic communication. That's fine.

3 Anyone not in favor of this? Comment? Dis-
4 cussion? Those in favor, signify by saying "Aye".

5 (CHORUS OF AYES.)

6 CHAIRMAN HARVEY: Opposed, by the same sign.

7 (NONE OPPOSED.)

8 CHAIRMAN HARVEY: One more comment, Mary Ellen
9 Hamilton.

10 MS. HAMILTON: I think this Board needs some --
11 not just the new members, all the members including the
12 Chairperson. And I wish you would accept some of the
13 invitations that you do receive from clients to make sure
14 you come out to what they are doing. Find out what they
15 are doing.

16 CHAIRMAN HARVEY: I think that's a splendid
17 suggestion. Thanks very much.

18 We'll recess until after lunch, and we'll be
19 back. One hour.

20 (WHEREUPON, the Board recessed for lunch at
21 1:00 o'clock p.m.

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

2:10 p.m.

WHEREUPON,

the Board reconvened with the following members present:

WILLIAM HARVEY, Chairman
CLINT LYONS, Acting President
CLARENCE V. McKEE, ESQ.
WILLIAM T. OLSON, ESQ.
ANNE SLAUGHTER
FRANK DONATELLI, ESQ.
DAN RATHBUN

CHAIRMAN HARVEY: Well, let's get started, please.

Next item. The Board meeting is reconvened, and the next item on the agenda is No. 10, which is Report of Special Committee on Grant and Contract Procedures. The Chairman of this Committee is Clarence McKee.

MR. McKEE: Thank you, Mr. Chairman. This will just be an oral report, and no items for action.

The Committee met in a joint meeting with the Subcommittee on State and Local Activities of the Operations and Regulations Committee in August, in Mississippi for a two-day hearing on the subject of national support centers. We invited pretty much -- We invited ten support centers. Eight showed up of the ones we invited. Two centers, the Women and Family Law and the Veterans Center were unable to attend; but also in attendance was the

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1 Education and Law Center, the Elderly Center and Health
2 Center.

3 What we did is to receive an overview of the
4 support center activities and the concepts surrounding
5 support centers, and hear the support centers' responses
6 to questions and their viewpoints.

7 On the second day, the allocation of funds was
8 the subject of the meeting. We had several excellent
9 lawyers from Mississippi and the Mississippi program
10 testify that day, and approximately 200 people.

11 The staff was given two directives. One was
12 on national support centers, to -- with a view towards
13 recommending and reviewing all aspects of support centers
14 towards overlap, duplication of services, etc., and to
15 provide recommendations in those areas, if necessary, to
16 the Committee.

17 The second directive to the staff was the
18 revision of the basic contract of grantees and contractors,
19 with an eye towards incorporating into those contracts
20 appropriate language of Congressional restrictions and
21 policies of the Board.

22 We had another meeting in consultation, and you
23 might want to report on this as well, a meeting -- joint
24 meeting, two weeks ago, three weeks ago, in Indiana,
25 Indianapolis, Indiana. The Joint Committee of the

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1 Committee on Provisions -- Provision of Legal Services,
2 heard from groups such as the Reggie Program, the
3 Client/Counsel PAG Coalition for Legal Services, a
4 general overview and discussion as well Regional directors.

5 Now we will have another meeting, uncertain
6 when, but it'll be in December prior to the Board meeting;
7 and this will dovetail pretty much with what Hal was saying
8 this morning, to kind of put together everything that we
9 have been hearing as we've traveled around the country
10 and built a record of different problems and concerns.

11 We'd like also at that meeting to hear the staff
12 recommendations on the support centers that we were talk-
13 ing about. The contract revisions is another matter;
14 get recommendations on directives, contract directives.

15 Second point, we will probably get into is to
16 put together an agenda or an action for the December Board
17 ~~meeting~~ for action by the Board. That would be in consulta-
18 tion with the appropriate Committee Chairmen, Mr. DeMoss
19 on Appropriations has to be dealt with, and your committee
20 pretty carefully.

21 I would -- That is pretty much it. I'm not
22 sure of the date or timing. We're not going to Micronesia,
23 as Clint suggested; but that's pretty much what we did
24 and are going to do. To tie all of these things together,
25 I'll ask Clint how that's going in terms of the contract

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1 revisions and support centers.

2 Can you hear me? The status of the contract
3 revisions as well as the support center review.

4 ACTING PRESIDENT LYONS: What we've done so
5 far is, we have put together a paper on the support
6 centers. The background paper on it is complete. We
7 don't have any recommendations on it yet.

8 In terms of the contract revisions, we were
9 waiting for the Board to take the action that it took
10 today in terms of ordering the publication of the riders
11 attached to the continuing resolution, and to flush out
12 the option based on the assumption that some of those --
13 Some of the things that we're looking at are contained
14 in some of the options laid out in your Audit and Appro-
15 priations materials that was sent to the Committee in
16 Houston, and to all of the Board members.

17 It's my hope that I can get with the Chairmen
18 and talk about how we can communicate with the appropriate
19 Chairmen of the Committees so that we can schedule and
20 structure the Committee meetings to appropriately feed
21 into and coordinate the meetings. For example, it seems
22 to me that some of the substantive work that's going on
23 in some of the committees must inform and direct the
24 work of the Audit and Appropriations Committee; and it's
25 my hope that the Chairmen and I can get together and

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1 talk to these other Committee Chairmen and make sure that
2 those meetings are scheduled in such a way that they do
3 feed in, so that the recommendations come into the Board
4 out of Audit and Appropriations and out of the other
5 committees at least will be consistent so that the Board
6 can address the issues head on when we make decisions in
7 December. Of course, we have to anticipate that the --
8 you know, that the new President is on early, that we
9 will have to have much of this work ready for him to
10 review. So there's quite a bit to be done.

11 MR. McKEE: One more point, Mr. Chairman.

12 Since Mr. Donatelli and Mr. Rathbun are new to
13 the Board, I would request Board approval for them to be
14 assigned to a grant and contracts committee. There's a
15 lot of material, and we've done a lot of work. It would
16 be very helpful, I think, to the Committee and to them.
17 ~~If they would so consent.~~

18 CHAIRMAN HARVEY: Fine. We've had the tradition
19 of allowing Board members to request committees they want
20 to be on, Clarence, and I also think the Chairman assigns
21 those. Seems like I remember reading that someplace.
22 But that's fine. I can assign Dan and Frank to the
23 Committee and also the option is open to you gentlemen
24 to let me know whatever committee you want to be on, if
25 you had a few minutes to look at it, a few days to look

1 at it. And we can be in touch about that later.

2 Bill?

3 MR. OLSON: We did pass resolutions giving you
4 that power. I think that -- just, you know, consult
5 and then go do it.

6 Let me say that, with respect to one or two
7 things that just occurred to me, and I don't know if
8 this is an appropriate time. But I had asked at an
9 earlier meeting for a copy of the application for re-
10 funding that we sent out to the field to be disseminated
11 to the Board. Can that be made available to us? I'd
12 sure like to see what, at least, the conditions were in
13 the areas, even though I know that additional conditions
14 can be imposed at any time, based on what we learned in
15 the meeting in -- somewhere. But that we ought to have
16 a copy of that so we know what went out.

17 The second thing is, would it be your plan to
18 disseminate at least to the Grants and Contracts Committee
19 this report that you say is now finalized on support
20 centers?

21 ACTING PRESIDENT LYONS: Yes. I'll submit it
22 to the Grants Committee. Generally, when we've submitted
23 materials to the Committees, we'll send it to all the
24 Board members.

25 MR. OLSON: One other thing. There was a --

1 Jerry had told us at a couple of early Board meetings that
2 he had in the works a paper on a couple of other programs,
3 and I don't frankly recall exactly what they were --

4 MR. LYONS : Client/Counsel was one.
5 National Client/Counsel; Reggis Program; National Support
6 Center.

7 MR. OLSON: Did those ever get done, or can
8 we get those if they are done or whatever stage of
9 development they're at?

10 ACTING PRESIDENT LYONS: And we submitted
11 summaries of those for the joint committee meeting in
12 Indianapolis. We are going to finalize them. I think
13 that Jerry had promised the organizations involved that
14 they would have an opportunity to comment on them before
15 finalizing. I think that that has been done; in the
16 case of the Clients Council and in the case of the Reggie
17 ~~Program~~, I'm not sure. I'll have to check, but I will
18 get them out. They are substantially done.

19 MR. OLSON: Did you say that Jerry committed
20 the organizations to give the groups that were being
21 analyzed an opportunity to comment on the analysis of
22 that organization?

23 ACTING PRESIDENT LYONS: The papers. The
24 papers were intended and designed to be background pieces
25 for the Board's information. And in compiling those

1 background pieces and put them together, Jerry committed
2 to those organizations that he would circulate it to
3 them for the purpose of accuracy and that kind of thing.
4 And that has been done, in at least one case; but he did
5 make that commitment.

6 MR. OLSON: I don't know if they still exist
7 but I, for one, would be fascinated to see the copies
8 before and after submission so we can see all versions.

9 ACTING PRESIDENT LYONS: Okay.

10 MR. OLSON: Thank you.

11 MR. McKEE: I don't know. I was just thinking
12 about that. It seems to me that, if it's an informational
13 report, you might ask people to look at it; but if it's
14 something that's being prepared for the Board generally,
15 I had thought those were rather objective Board studies or
16 studies for the Board. Seems to me inappropriate for
17 ~~the groups~~ you're looking at to comment on what you're
18 saying about them, because unless there's some gross
19 inaccuracies.--

20 ACTING PRESIDENT LYONS: Understand. These
21 are background pieces, and in all probability much of
22 what we learned in the information we gathered as to the
23 current operations of these organizations and grantees
24 will at least form part of the basis of our staff recom-
25 mendations to the Board and the relevant committees, again

1 based in part on the work that we've done, the direction
2 we've gotten from the committees, and from the Board.

3 These papers are not the recommendation that
4 the staff is making to the Board. I mean, I don't see
5 any harm in having you get full benefit of what everybody--
6 how everybody sees the organizations, and I think it's
7 cured by the fact that we'll let you see before and after.

8 MR. OLSON: And I would just echo Clarence's
9 comments that, if it comes to a point of a decisional
10 memorandum, a staff recommendation and such for the
11 Board -- I mean, those matters, I'd be very concerned if
12 all those were previewed with free right to edit before
13 they went to the Board. Otherwise, we're going to estab-
14 lish a system which will, for all time, perpetuate the
15 status quo if the Board is not allowed to see materials
16 which the groups might not like. And I'm not speaking
17 about anybody specific. But it's just sort of a bad
18 policy, I would think. So when it comes to these other
19 further memos, you won't anticipate submitting those
20 for a review, I would think.

21 ACTING PRESIDENT LYONS: I have followed the
22 practice of -- in terms of policy recommendation -- to
23 have the Board see them first. I have talked to people
24 on the phone, occasionally, about some of the issues we
25 were considering, but the Board has been the first to read

1 any recommendation or to be talked about, about any
2 specific recommendation.

3 MR. McKEE: In terms of what Harold was talking
4 about this morning, and Harold and Howard about one year
5 versus two months and three months -- As part of the
6 recommendation that we'll try to come up with, will be
7 the recommendations through Harold on how that process
8 should work, and recommendations to the Congress, etc.
9 I guess it's like taking everything that we've been trying
10 to do for a year, 9 months, and putting it in some
11 organized form of consistent recommendations.

12 That's all.

13 CHAIRMAN HARVEY: All right. Thank you,
14 Clarence. That's Item No. 10. Move on to Item No. 11.
15 Give a brief report on the meeting of the meeting of
16 the Provisions of Legal Services which Clarence has
17 ~~covered~~ in large part. It was a joint meeting, members
18 of the Board, of this committee in Indianapolis three
19 weeks ago today. The joint meeting with the Committee
20 on Grant and Contract Procedures. We invited several
21 organizations and groups to appear before the Provisions
22 Committee. Among those were, in addition to those named
23 by Clarence, Class Counsel, Coalition of Legal Services
24 which appeared, and all those which he named.

25 The purpose of that meeting is to establish

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1 information with which to begin to deal with the two
2 reports which are now pending before the Provisions Commit-
3 tee. One of those reports is a D.S.S. report, at least
4 re-examination of it. The second one was a document
5 called "A Study of the Future", sometimes alluded to
6 as the Sachs Report which the Board returned to this
7 Committee. And the Committee will be holding meetings
8 for this purpose in the future.

9 I think it would be helpful myself, Clarence,
10 if we'd have the joint meetings again, and to make inquiry
11 outside the scope of Legal Services Corporation about
12 the delivery of legal services.

13 This is a committee -- To refresh your recollec-
14 tion, members of the Board -- which is charged normally
15 with inquiring into the overall design, nature of the
16 delivery program which we have. And I think that very
17 relevant information in that regard is -- well, we've
18 already had testimony from Howard Eisenberg in L.D.A.

19 Similar organizations or related organizations,
20 such as Public Defender Programs -- there are in the United
21 States today several sort of mass delivery systems of
22 legal services. I recall one, the Hyatt Legal Services
23 or the Hyatt Law Firm, as in Hyatt Regency but it's a
24 different organization. I think it would be informative
25 to ask those groups to appear, if they choose to do so, to

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1 describe the nature of their delivery system, how ambi-
2 tious they are and what their objectives are, so that we
3 can have a better understanding of the delivery of legal
4 services.

5 I have no other comment to make concerning the
6 report of the Provision of Legal Services Committee. Are
7 there any questions from members of the Board?

8 Clarence, we're reporting really on 10 and 11.
9 Clarence has finished, and the subject is Item No. 11.
10 These are reports from these committees, referring to
11 the meetings which we've conducted in the past month in
12 the areas generally assigned to them.

13 All right.

14 MR. McKEE: We've had seven resolutions.

15 CHAIRMAN HARVEY: Any questions about the report
16 of the Provision of Legal Services Committee? Hearing
17 none, ~~we're~~ at Item 12, which is President's Report and
18 staff report. Clint, do you have any comments to make
19 or report?

20 ACTING PRESIDENT LYONS: I'll be very, very
21 brief. I think that all of you are tired. You've
22 certainly been at it for a long time. I appreciate how
23 much energy you expended in your efforts over the last
24 two days.

25 I think the first order of business for me is to

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1 indicate my appreciation for the confidence that this
2 Board has shown in me by selecting me as the Acting Presi-
3 dent of the Corporation. I accept that appointment and
4 I reaffirm my commitment to do everything that I can do
5 to bring this Board, this community, and clients in this
6 community together, to try to decide how we can best
7 assist this Board in the shaping of a vision for the
8 future for legal services.

9 In that context, I also commit myself to pre-
10 paring this organization and turning an organization that
11 is a quality one over to the new President when he comes
12 on board. I have a great deal of confidence in the
13 staff. It is a quality one. We work very hard. We've
14 always had good relations with the constituency groups
15 and clients in the community. I will continue to try to
16 build upon and improve those relationships, and improve
17 the communication between this community and this Board
18 which is still learning about this program and still,
19 I'm sure, having a great deal of frustration in that
20 effort.

21 I do thank you again for your confidence, and
22 I'll work hard.

23 CHAIRMAN HARVEY: Thank you, Clint. Those are
24 very gracious remarks. On behalf of the Board, we appre-
25 ciate receiving them.

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1 We're at Item 13, which is other business.

2 Bill?

3 MR. OLSON: I have a -- If anyone would bear
4 with me, I've got a couple of very brief things that I've
5 just jotted down, one of which is to refer to something
6 I forgot to ask Hal.

7 I wasn't able to go to the Houston Appropriations
8 and Audit Committee meeting inasmuch as I was at a meeting
9 of the Administrative Conference Committee on Regulations
10 and had another commitment in Washington. But there was
11 a item that was still up in the air, so far as I recall,
12 with regard to Price Waterhouse on its management audit.

13 Last time I heard, the price had been negotiated
14 downward as to some kind of a pro bono rate and such,
15 but I don't know that the thing had ever been entered
16 into. And I wonder if you can give us the status of that.

17 ~~ACTING PRESIDENT LYONS:~~ ACTING PRESIDENT LYONS: I met sometime ago
18 with representatives of Price Waterhouse, and we agreed
19 and subsequently the Comptroller confirmed it in writing
20 to Price Waterhouse, that Price Waterhouse, as part of
21 its audit procedure currently underway, would begin to
22 review our management operations in three basic areas,
23 with a view toward assisting us and putting together infor-
24 mation for this Board as to how it can best do systematic
25 procedures and controls to carry out its responsibility.

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1 The three areas in which they will begin their
2 work, under the understanding we have as part of the
3 audit, are financial management and accounting, our
4 grant making procedures, and our information management
5 procedures and system. And looking at all of those to
6 see how they interrelate, how they are currently operat-
7 ing and comment on those from a management perspective,
8 and relate them to the responsibilities that we have to
9 carry out the requirements of the Act, providing and
10 facilitating the delivery of legal services, support
11 the programs and accountability to the Act and the regu-
12 lations.

13 MR. OLSON: So has a contract been signed then?

14 ACTING PRESIDENT LYONS: If you call a letter
15 a contract, it's an agreement, yes. We have an agreement.

16 MR. OLSON: Do they have a delivery date?

17 ACTING PRESIDENT LYONS: It will be part of
18 their audit report around the time -- Is Charles Ritter
19 here?

20 MR. RITTER: They should be finished -- shortly
21 after they receive -- for FY '82. So by your December
22 Board meeting, you should have a report.

23 MR. OLSON: That would be excellent, if that
24 could get out just as soon as it becomes available,
25 because I, for one, have been looking forward to that

1 since it was my idea. I want to make sure we get it
2 around to the Board. I really do look forward to seeing
3 what Price Waterhouse has to say with respect to these
4 management issues, since they've been doing the technical
5 audit with us for so many years. I look forward to their
6 other advice.

7 With respect -- I have one other thing I forgot
8 to say before when we were working on these proposed
9 regulations, and it's not -- This is just by way of a
10 comment.

11 We put out a regulation, proposed regulation,
12 on lobbying which, according to my understanding of what
13 the continuing resolution did, had one inaccurate state-
14 ment in it. All of these things, of course, are drafts
15 and they're proposed; and I don't -- And I think we're
16 going to look for comments on all of these, but I would
17 ~~just~~ note for the record that, at least with respect to
18 myself, on page 36 of the Board book, it has a sentence --

19 CHAIRMAN HARVEY: Go ahead, Bill.

20 MR. OLSON: I'm sorry. Has a sentence in it
21 which struck me as being not consistent with the continu-
22 ing resolution. And the sentence says that "... further
23 consistent with the legislative history of H.R. 3480, the
24 proposed regulation would authorize a recipient to
25 respond to an official request from an elected official on

1 any authorization, appropriation or oversight measure
2 concerning a substantive issue in which the recipient
3 was involved, on which the recipient or an employee of
4 the recipient has expertise."

5 My understanding is based on the continuing
6 resolution, which contains a phrase that we could only
7 comment on those matters directly affecting the operation
8 of the programs, that that is much broader than what the
9 Congress wanted.

10 In other words, the legislative history -- or
11 the statutory language is inconsistent with that inter-
12 pretation of it. I don't want to do anything about it.
13 I just want to note it for the record, that that's my
14 view, that what we're sending out for notice and comment
15 has in it that error, in my opinion; but again that's
16 just based on my reading of these documents.

17 I look forward -- I would hope, Clint that one
18 of the things we can do is get a comprehensive memo from
19 our General Counsel looking over what we've now put out
20 for notice and comment, and a comprehensive memo from
21 our Director of Congressional Relations as to what we've
22 put out for notice and comment, so that we can be sensi-
23 tive to the legal issues involved and sensitive to the
24 Congressional desires. And if Danny and Mary can come up
25 with those kinds of memos, I think that, plus all the

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1 comments, will help us a great deal in avoiding mistakes
2 if, indeed, this is a mistake.

3 ACTING PRESIDENT LYONS: We will review what we
4 do in light of your comments and other comments that
5 the Board members have.

6 It may be helpful to you to know, though, our
7 process is that where a particular effort is impacted by
8 our legislative work, our work in the General Counsel's
9 area, and in the programmatic area viz a viz field pro-
10 grams, they absolutely require the interaction of those
11 division directors and components of our operation in
12 order to arrive at something that is then formed into
13 directive by all of those areas and all the constituencies
14 providing it. We will, in light of your comment, take
15 another look at it.

16 MR. OLSON: What you're saying then is that
17 ~~Bucky~~ and Denny and Mary would all participate in the
18 staff work?

19 ACTING PRESIDENT LYONS: Yes.

20 MR. OLSON: Good.

21 The last thing -- That is the last thing.

22 Oh, I mentioned this to you before in private.
23 I'll just mention it again quickly. With respect to the
24 staff work, the drafts of the Fiscal '83 consolidated
25 operating budget, whatever could be done on a -- I think

1 Hal was talking about a current policy basis which is
2 sort of a base line where you begin -- Whatever could be
3 done with respect to that kind of a current policy COB
4 for Fiscal '83, I think, would be informative; and if
5 that's what Hal was suggesting before, I would echo his
6 request that kind of thing be prepared. I think that
7 is what he was saying.

8 ACTING PRESIDENT LYONS: I'm not sure I under-
9 stand.

10 MR. OLSON: Well, we were talking -- Well, we
11 have a Fiscal '83 consolidated operating budget that
12 we'll have to adopt sometime in the future. I think what
13 Hal said -- he was trying to rush through that part, so
14 that we could get through with that part of the Agenda.
15 But I think what he was saying is that there would be
16 wisdom in providing a current policy consolidating operat-
17 ~~ing~~ budget.

18 In other words, if you fund everybody the same
19 way, a base line --

20 MR. DONATELLI: Sort of the Current Services
21 budget that the President must submit?

22 MR. OLSON: Like the Current Services budget of
23 OMB.

24 ACTING PRESIDENT LYONS: What we have here, and
25 the way we began our budget process for the deliberations

1 of the Audit and Appropriations Committee and by the
2 Board in subsequent decisions to it, we began with what
3 we call the base budget, and what that is -- That is the
4 consolidated operating budget for the current operating
5 year, with the policy description that directed money
6 into basic areas of the components of the budget.

7 And we -- I mean, we can, you know, flesh that
8 out a little better, if that's what you're suggesting.

9 MR. OLSON: If you already have a baseline
10 budget, I don't want to ask you to do anything else.

11 ACTING PRESIDENT LYONS: We do.

12 MR. OLSON: If that's -- Would that be for
13 Fiscal '83? Or '82?

14 ACTING PRESIDENT LYONS: What we have is, for
15 1983, you are going to have to make the decisions about
16 how that is constructed and what policy directions are
17 set out in that budget. What we give you -- We give you
18 two things. We give you what we call the base, the
19 1983 base. That is the budget in its various component
20 parts that form the '82 operation, on a more or less
21 annualized basis, and the policy descriptions and deci-
22 sions that went into that.

23 And then we try to structure that in a way, in
24 terms of our recommendations, for you to set out the
25 1983 budget in a way that compares to what we did last

1 year with whatever options you may have for 1983, based
2 on the directions we get from you, based on issues that
3 we know about. So it is operating from a base to options
4 and issues that you may want to consider, telling you
5 what is -- where you have flexibility to move money,
6 where you don't, and those kinds of things.

7 It may -- I think what I may need to do is come
8 back here or send you something pointing to the Audit
9 and Appropriations Committee work that we sent to Houston,
10 and maybe flesh that out a little bit. And I think you'll
11 understand better.

12 MR. OLSON: Was the Board book that was distri-
13 buted at Houston different than the one that was sent out
14 in advance? Was it -- Had more material?

15 ACTING PRESIDENT LYONS: No. It was the same
16 book.

17 MR. OLSON: Okay. I reviewed that, but this
18 budget base document that you're describing, I think,
19 would be of great help to us.

20 ACTING PRESIDENT LYONS: It's in the book.

21 MR. OLSON: If it is, I'm surprised, because I
22 went over that briefly.

23 ACTING PRESIDENT LYONS: If you are equating
24 the term "budget base" with something that looks like a
25 budget for 1983, that does not exist. Okay? What the

1 base is, as we described it, is where your starting point,
2 a variation of, say, a zero based budgeting process. And
3 what that is, is our current 1982 operation -- each
4 component of the budget, support for the provision of
5 legal services, provision of legal services training,
6 with a description of the policy considerations that went
7 into that. And we give you that and say, we are committed
8 for two years in this area; we are uncommitted at all in
9 this area for the next year; and here are some options
10 that you may want to consider.

11 For example, you may want to consider putting
12 the same \$2 million in training, that is a part of the
13 1982 base. Or since you have flexibility in that area
14 and we aren't committed to anything, you may want to put
15 that \$2 million some place else. And those are the kind
16 of options. And that's how your 1983 budget is constructed,
17 which becomes the base for 1984, request you make to
18 Congress for 1984.

19 MR. OLSON: It's perfectly clear.

20 ACTING PRESIDENT LYONS: Maybe Alfreda and --
21 It took me two years to understand it.

22 MR. McKEE: I have one last question.

23 CHAIRMAN HARVEY: Clarence?

24 MR. McKEE: Clint, unless it's already policy,
25 I was thinking that the matters we brought for comment

1 today, class action, lobbying, the whole package, as well
2 as the continuing resolution, it would be a good idea to
3 send those specifically to all Project Directors and local
4 board Chairmen for their specific comments, unless you
5 already do that. About five cents postage on each.

6 CHAIRMAN HARVEY: How much?

7 MR. McKEE: Five cents.

8 ACTING PRESIDENT LYONS: If you want to do that,
9 we can. I don't know. That --

10 MR. McKEE: Project Directors, it seems, would
11 be -- On everything that's in those resolutions, Project
12 Directors are most concerned about.

13 ACTING PRESIDENT LYONS: I have sent out at
14 Bill's suggestion a copy of the continuing resolution and
15 the initial staff report on that continuing resolution,
16 at Bill's suggestion. Now we are going to publish in
17 the Federal Register the proposed regulations as directed
18 by the Board today. Now I could send out an additional
19 mailing of those.

20 MR. McKEE: Do you usually find in these comments
21 that Project -- No, I wasn't thinking of the Register
22 itself; I know that's going to be in the Federal Register.
23 But do you find on comments of this nature that Project
24 Directors, a large percentage of Project Directors, file
25 comments on these matters?

1 ACTING PRESIDENT LYONS: Depending on what the
2 issue is.

3 MR. McKEE: Well, it's open for discussion.
4 I don't know if any Project Director is here who has any
5 comments on it, but seems like a good idea.

6 MR. OLSON: You know, I hate to undertake to
7 photocopy or print tens of thousands of pages that that
8 would require. What we might do is just say -- I mean,
9 everyone has access to the Federal Register, and we could
10 just put out program notes or whatever they're termed
11 and reference them.

12 ACTING PRESIDENT LYONS: We'll see that it's
13 communicated.

14 MR. OLSON: Leave it up to the staff. You got
15 a good President.

16 MR. OLSON: Well, I for one, don't want to
17 ~~use~~ the role.

18 MR. McKEE: I would think that when all the
19 comments are done, if we only had comments -- On certain
20 issues, if at the end of the period of process there were
21 comments from 321 Project Directors on a particular issue,
22 it's one thing. If there were comments of 10 Project
23 Directors, it'd be another. That's my whole point.

24 CHAIRMAN HARVEY: Any other business before
25 the house?

1 MR. DONATELLI: Motion to adjourn.

2 CHAIRMAN HARVEY: Motion is to adjourn. In
3 receiving that motion, there's a couple of comments I'd
4 like to make.

5 This last thirty days has been extraordinarily
6 difficult for the staff, and I think that words of praise
7 are certainly in order. I do not mean to exclude anyone
8 on the staff in identifying Dennis Dougherty, Charles Ritter,
9 and Buckey Askew, Mary Wieseman and, certainly today, the
10 two new officers we have who are Clint Lyons and Lee Ann
11 Bernstein. Splendid work. Very hard work, which you've
12 all done in staffing the committee meetings which have
13 been held in Indianapolis and in Houston. And perhaps
14 there's another city, all within the last thirty days.

15 Coming also as it has after the continuing
16 resolution and anticipating, hopefully, the continuation
17 after December 17th, I think you've done a splendid job.
18 And I've always thought that. Clint, I congratulate you
19 again, and tell you it's my judgment, very good to have
20 you formally designated by the Board as the Acting Presi-
21 dent of the Corporation and function in that capacity in
22 that position.

23 ACTING PRESIDENT LYONS: Thank you very much.

24 CHAIRMAN HARVEY: I would ask for a round of
25 applause for these people, not only by the Board but the

1 audience as well.

2 (APPLAUSE.)

3 CHAIRMAN HARVEY: Now, ladies and gentlemen,
4 thank you for coming. That concludes the meeting of
5 the Board as of this date and time.

6 WHEREUPON,

7 the meeting of the Board concluded at 2:50 p.m.

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C E R T I F I C A T E

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

Before: Legal Services Corporation

Date: October 30, 1982

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

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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