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ORIGINAL

RETURN TO CORPORATION
SECRETARY ARCHIVES FILE

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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

DATE : Saturday, May 19, 1984
TIME : 9:30 A.M.
PLACE: Key Bridge Marriott
1401 Lee Highway
Potomac Ballroom
Arlington, Virginia 22209

BOARD MEMBERS:

- ALBERT ANGRISANI, Member
- DONALD P. BOGARD, President
- PETER J. FERRARA, Member
- RONALD FRANKUM, Member
- ROBERT E. MCCARTHY, Chairman
- DONALD E. SANTARELLI, Member

ALSO PRESENT:

- LEANNE BERNSTEIN, Secretary
- JAMES STREETER, Government Relations
- ALAN SWENDIMAN, General Counsel

CAROL J. THOMAS
STENOTYPE REPORTING SERVICES, INC.
3162 MUSKET COURT
FAIRFAX, VIRGINIA 22030
273-9221 --- 273-9222

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C-O-N-T-E-N-T-S

- 1. Approval of Agenda
- 2. Approval of Minutes of April 28, 1984
- 3. Report from the President
- 4. Report from the Operations and Regulations Committee
- 5. Report from the Office of General Counsel of Proposed Final Regulations, 1601 By-laws
- 6. Board Resolution on Board Member Disclosures
- 7. Report from the Office of Government Relations
- 8. Board Resolution on Principles for Reauthorization
- 9. Report from the Office of Program Development

P-R-O-C-E-E-D-I-N-G-S

1
2 CHAIRMAN McCARTHY: Ladies and gentlemen, the
3 board meeting of the Legal Services Corporation is now in
4 session. We have a quorum present which has been duly noted
5 in conformance with regulations of the law.

6 The audience should have a board book in which the
7 agenda is set out. First, I just want to thank you all for
8 attending. It's a beautiful day and difficult on Saturday to
9 come here when you could be doing some other things, but thank
10 you for your attendance.

11 The first item is the approval of the agenda.
12 Does the quorum have any comments or additions to the approval
13 of the agenda as set out? If not -- excuse me, I'm sorry.

14 MR. BOGARD: The Item Number 9, the Report from
15 the Office of Program Development should be included within
16 a report from the present Item Number 3. So, I recommend we
17 make that move.

18 CHAIRMAN McCARTHY: That is so noted, Don. With
19 that one revision, do I hear a motion to adopt the agenda?

20 MR. FERRARA: I so move.

21 MR. FRANKUM: I second.

22 CHAIRMAN McCARTHY: Move to second it, roll call,
please.

1 MR. FERRARA: Aye.

2 MR. FRANKUM: Aye.

3 MR. ANGRISANI: Aye.

4 CHAIRMAN McCARTHY: The agenda as set out in your
5 board book will be now adopted. There will be a -- it's
6 suggested there be a closed portion to this meeting to discuss
7 personnel, personal, criminal, litigation, and investigatory
8 matters under 45 CFR 1622.5, subs A, D, E, F, G, and H. I
9 would so move to entertain a motion to adopt this closed
10 meeting.

11 MR. FERRARA: I so move.

12 MR. FRANKUM: I second.

13 MR. FERRARA: Aye.

14 MR. FRANKUM: Aye.

15 MR. ANGRISANI: Aye.

16 CHAIRMAN McCARTHY: The closed session has been
17 moved and adopted by the Board. I wonder if our General
18 Counsel would certify that move?

19 MR. SWENDIMAN: Yes, Mr. Chairman, I certify that
20 a portion of this meeting will discuss closure, will discuss
21 personnel, personal, criminal, litigation, and investigatory
22 matters assumed in the Sunshine Act under 45 CFR 1622.5 A, D,

1 E, F, G, and H.

2 CHAIRMAN McCARTHY: Thank you, Alan. Agenda Item
3 Number 2 is the approval of the minutes of April 28, 1984.
4 Would the board have any comments as to what it means?

5 MR. FERRARA: Yes, Mr. Chairman. I have an amend-
6 ment on page 10 in the second paragraph of that page and it's
7 13 lines down, where it says "the Act" would be more correct
8 to delete the words "the Act," and put in place of those words
9 "Congress in the terms of the appropriations language," which
10 is a definite act to have those terms put in there.

11 CHAIRMAN McCARTHY: You were present at the meetings?

12 MR. FERRARA: Yes.

13 CHAIRMAN McCARTHY: Thank you, Peter. Are there
14 any other comments as to the draft of the minutes? If not,
15 then I would entertain a motion to adopt those minutes as the
16 minutes of the meeting on April 28, 1984.

17 MR. FERRARA: I so move.

18 MR. FRANKUM: I second.

19 MR. FERRARA: Aye.

20 MR. FRANKUM: Aye.

21 MR. ANGRISANI: Aye.

22 CHAIRMAN McCARTHY: The minutes of April 29, 1984,

1 as set out in the board book has been adopted as the minutes
2 of that meeting. Agenda Item Number 3, which also incorporates
3 Agenda Item Number 9, is a report from our president, Don
4 Bogard.

5 MR. BOGARD: Thank you, Mr. Chairman. We have two
6 executive sessions to report upon. The first was one conducted
7 in Savannah on March 30th. There were not substantive votes
8 taken at that session. The board was updated on pending liti-
9 gations, including the Mass Law Reform Case and the Coalition
10 for Legal Services Case, were advised about the accident case
11 regarding the Western Center Case, which was in court, the
12 application for TRO has been filed.

13 The board was given a status update on the pending
14 denial refunding proceedings. No specific discussion was made
15 regarding the NCC Case since that case was still in here at
16 the time. There were also investigation reports presented to
17 the board regarding a couple of programs and some problems that
18 OCR and Audit -- it's the Officers Compliant and Review Audit.

19 There were some discussions on the internal organi-
20 zation of the corporation, no decisions at all regarding that
21 area, just some reports made to the board. There was authori-
22 zation to the chairman of the board to negotiate an extension

1 of the contract with me and to discuss that with me, and essen-
2 tially, that was all that was taking place in the first execu-
3 tive session for March 30th.

4 In the executive session on April 28th, at Window
5 Rock, the board was advised of the two decisions of denial of
6 refunding and proprietary issue of Western Center. There were
7 additional discussions on the internal reorganization of the
8 corporation, and the -- I believe that's the one that took
9 place at 11:00 o'clock at night, so there wasn't a great deal
10 of items discussed. There is one other item that the chairman
11 will disclose.

12 CHAIRMAN McCARTHY: Thank you, Don. At the execu-
13 tive session on March 28th, I believe that's the day, at
14 Window Rock, the employment agreement with our president, or
15 the extension of it, was thoroughly discussed by the board
16 and unanimously adopted, and was executed by me as chairman
17 and by Don as the president.

18 Essentially, the extension of the contract is
19 merely an extension of the existing contract for another two
20 year period, and contains the same terms and conditions as the
21 original contract. And I also want to say the board is very,
22 very pleased that Don has been willing to undertake this

1 additional period of time. I think he's done an excellent job
2 and has our fullest confidence.

3 At the -- and that contract has been presented to
4 the board and ratified and adopted as the contract of the
5 board.

6 Are you through with your report?

7 MR. BOGARD: I just have the items on program
8 development, which I would also like to do at this time.

9 CHAIRMAN McCARTHY: Yes.

10 MR. BOGARD: We have two major projects in program
11 development which have been consuming --

12 MR. HORSKEY: Don, would you use your microphone?

13 MR. BOGARD: We have two projects in program devel-
14 opment that have been consuming most of the time of that org-
15 anization. One is the Private Legal Clinic matter, and the
16 other one is the Law School Clinic. We have recently announced
17 contracts in the Jacksonville area for the first part on the
18 Demonstration Project on Private Legal Clinics, legally dis-
19 cussed that at a board meeting earlier. That situation in-
20 volved an estimate by the board and -- pardon, by the staff,
21 that we could get a certain number of cases handled in the
22 Jacksonville for approximately \$375,000. It went out on a

1 competitive bidding. We've received, I believe, 12 phone calls
2 back from the firms and individuals in the Jacksonville area.

3 Contracts have been assigned, and the same number
4 of cases are going to be handled for approximately \$139,000.
5 This represents about a third of the original estimate and
6 was surprising to us and to the members of the Jacksonville
7 bar and to the local program. The Jacksonville bar has been
8 very supportive of this provision and this project. It has
9 worked very closely with the local program and with the Office
10 of Program Development, and it was also instrumental in estab-
11 lishing some of the initial estimates on what it would cost
12 to have these 1300 people serviced.

13 We have also proceeded in the Des Moines area. We
14 are finding the same sort of return in Des Moines as in the
15 Jacksonville area. The results are that we will -- even after
16 revising downward, the estimate of the cost for having a
17 thousand divorces delivered in that area and 250 wills, and
18 250 adoption cases, I believe that those 1500 people are going
19 to be served for a little over \$122,000, a significant savings
20 under what we estimated was in the neighborhood of \$250,000,
21 I believe.

22 It turns out that the first two projects showed

1 that we're going to have divorces handled for under a hundred
2 dollars each, social security cases for a hundred dollars a
3 piece, and bankruptcies for under a hundred dollars, very sig-
4 nificant cost, I believe.

5 We are in the process of reviewing recommendations
6 for the Laredo area, and some recommendations have been made
7 to me on that, and hopefully we'll have the decision very soon.
8 Based upon the success of these two initial Demonstration
9 Projects here in the Jackson and Des Moines, we believe we're
10 going to be able to extend this program much further than we
11 estimated originally. We had talked about doing this in eight
12 or nine cities. It looks like we might be able to go on to
13 15 or 20.

14 We continue to evaluate additional areas and ad-
15 ditional proposals. Again, the Des Moines area, the bar has
16 been very supportive of this program, and I believe it's going
17 to be a good program for the corporation.

18 The second one involves the Law School Clinic.
19 We've had a deadline for the applications for the funding of
20 April 28th. We have received, I believe, 57 proposals from law
21 schools around the country wishing to get some of our money to
22 set up a clinic to serve our clients. We have a committee

1 that has been established to evaluate all those proposals. The
2 committee was headed by Willima Pinkus of the Clepper Founda-
3 tion, and Dick Taylor from North Carolina was involved also to
4 evaluate those proposals, and two members of the PPD staff,
5 Public Program Development staff, they have made recommendations
6 Mr. Alpoletti, who is the Director of Program Development. He
7 has reviewed those recommendations, passed those recommenda-
8 tions to me, I in the process have reviewed it all, and hope-
9 fully, we will still make the May 31st deadline to announce
10 the grants in the law school clinical area.

11 Mr. Pinkus was extremely impressed with the quality
12 of the proposals that we received, and said it was much higher
13 than those that he had seen when he was actively involved in
14 the clinical education and the committee, and had a very dif-
15 ficult time evaluating all the proposals. So, we'll be moved
16 on that, and we'll make a decision on our recommendation and
17 appointment or announcement to the board at our next meeting.
18 Thank you.

19 CHAIRMAN McCARTHY: Thank you, Don. That's very
20 encouraging, and I think that your staff is to be congratulated
21 on your initial reaction to this, but, in turn reflects the
22 work for the corporation that this staff has done. We're most

1 interested in seeing what comes from the balance of the re-
2 visions.

3 Agenda Item Number 4 is the report from the Oper-
4 ations and Regulations Committee.

5 MR. FERRARA: Mr. Chairman, I chaired the meeting
6 of the Operations and Regulations Committee, which took place
7 on May 11, 1984. At that meeting we considered appropriating
8 the Legal Services By-laws. The public wasn't intended for
9 that meeting, and, also, we had -- the committee had considered
10 the extension to proceed as of the date of that meeting.

11 Except for certain clarifications in wording which
12 are reflected in the draft that you have in the board book,
13 the draft we have before us today is as proposed and published
14 for comment in the Federal Register.

15 The committee considered the proposed changes and
16 voted at that meeting to recommend to the full board of
17 directors that they adopt the by-laws as amended in the draft.

18 That concludes the report.

19 CHAIRMAN McCARTHY: Thank you, Peter. I was pre-
20 sent at that meeting also, and that was approximately a week
21 ago, at which time we had two written comments as to the pro-
22 posed by-laws. At the time of the meeting, there was no public

1 participation. The public was sparsely represented, and those
2 there did not care to make any comments.

3 Since that time, Alan has a total that the addi-
4 tional comments come in for a total of 27 comments, which we
5 have had the opportunity of reviewing. They're, essentially,
6 much the same. There were some comments -- there was one com-
7 ment that was adopted in the by-laws and accordingly conformed
8 to this one comment.

9 And what I would propose at this time, would be to
10 entertain a motion to adopt or not to entertain a motion, and
11 then, prior to a vote, ask if there is any public comments.

12 MR. FERRARA: Mr. Chairman, I think General Counsel
13 would make a report on the proposed final by-laws before we
14 have the --

15 CHAIRMAN McCARTHY: Yes.

16 MR. FERRARA: Do you want the motion now and then
17 have him --

18 CHAIRMAN McCARTHY: No, I think I'd like to hear
19 from Alan before we -- before the board is presented with it
20 in its entirety. I would like a public comment prior to voting.

21 MR. SWENDIMAN: Good morning, Mr. Chairman and
22 members of the board. I have with me, on my left, Larisa

1 Dobriansky, who is Assistant General Counsel, who has worked
2 with me in connection with the by-laws.

3 The proposed amendments to the by-laws were pub-
4 lished in the Federal Register on April 19th. The public com-
5 ments period closed on May 18th. We received 26 comments. You
6 have been provided a representative sample of those comments,
7 including those for the Coalition for Legal Services, and the
8 National Senior Citizens' Law Center.

9 There are several additions proposed in connection
10 with the by-laws since the report of Mr. Ferrara and the com-
11 mittee. The changes are incorporated in a separate submission,
12 separate reprint of the by-laws, which you have been provided
13 and which has been provided to the public here this morning.

14 Starting with Section 1601.8, which appears on
15 page 8 of the separate reprint of the changes, there has been
16 inserted the provision that a majority of the directors shall
17 be members of the bar of the highest court of a state, and
18 none shall be a full-time employee of the United States. This
19 tracks, specifically, the language in Section 1004A of the
20 act.

21 This was -- we incorporated, in the by-laws, there
22 was no attempt, obviously, to get around the requirement since

1 the act requires it. But to reemphasize that fact, it has been
2 reincorporated into the by-laws of that section.

3 I might make reference to 1601.12. Several of the
4 board books are carrying a language concerning removal as to
5 a majority plus one. That is an error. The report that was
6 made to the committee was that a number of two thirds would be
7 required. That is what appears in most of the board books and
8 in the separate reprint of the changes, proposed changes to the
9 by-laws, but I thought I would just call that to your attention
10 as a matter of clarification.

11 In 1601.13, which appears on page 12 of the reprint,
12 the phrase "with a copy being sent," has been inserted, this
13 going to whom the resignation is to be -- resignation of a
14 board member is to be directed.

15 Moving to 1601.16, this is simply the language
16 which I spoke of at the committee meeting, and which I indi-
17 cated that it was necessary to elaborate on the fact that any
18 telephonic board meeting was to provide that the persons par-
19 ticipating were able to hear one another, and the members of
20 the public were able to hear and identify the persons parti-
21 cipating. And this tracks the language of the D.C. Nonprofit
22 Corporation Statute and was -- is the language to which

1 Mr. Ferrara referred to and was to be incorporated at the com-
2 mittee meeting.

3 The next provision is 1601.24, "Emergency Proceed-
4 ings." We have recommended an addition to elaborate upon the
5 openness of the meeting. We have made a provision that -- as
6 before -- that any such meeting be electronically recorded, but
7 in addition, provided that the entire transcript of the meeting
8 will be made available upon request to any person for the
9 actual cost of duplication and transcription, again, this being
10 a continuation of the public open meeting.

11 Turning to 1601.27, which is page 24 of the re-
12 print, there has just been a clarification made in the first
13 sentence to indicate that the Audit and Appropriations Com-
14 mittee, and the Operations and Regulations Committee, and the
15 Provision for the Delivery of Legal Services Committee are
16 permanent committees of the board, and that has been so noted.

17 In 1601.29, concerning officers, which appears on
18 page 26, this was simply an oversight on my part. The corpor-
19 ation has had the office of vice president, and currently is
20 being filled by Dennis Daugherty. In the past it's been served
21 by, among others, Jerry Simpson. The board has established the
22 office by resolution on any number of occasions as simply for

1 lack of better terms memorialized in the by-laws, so the word
2 "vice president" has been inserted there, and in connection
3 with that, we have -- are proposing that a new Section 1601.34,
4 which appears on page 29, simply defines the office of vice
5 president. Again, this was an oversight on my part.

6 With the insertion of new 1601.34, the remaining
7 sections have been renumbered, and that completes the proposed
8 additions.

9 CHAIRMAN McCARTHY: Thank you, Alan.

10 Does the board have any questions of the General
11 Counsel?

12 MR. FERRARA: Mr. Chairman, would you like the
13 motion at this time and then the committee hear public comment?

14 CHAIRMAN McCARTHY: Yes, make a motion if there is
15 no questions of the board.

16 MR. FERRARA: Mr. Chairman, then I move that the
17 board of directors adopt the proposed by-laws as amended.

18 MR. FRANKUM: I second.

19 CHAIRMAN McCARTHY: There has been a motion
20 seconded. We will delay vote on that, and at this time we will
21 entertain any public comments by those who have constructive
22 criticisms and have not had the opportunity of providing this

1 board with the written comments.

2 MR. FERRARA: Or those who may have constructive
3 praise.

4 CHAIRMAN MCCARTHY: Would you kindly identify your-
5 self and your organization, please, for the record.

6 MR. HORSKY: I am Charles Horsky from the American
7 Bar Association, and I am concerned that the announcement that
8 was designated as the time for comment expired on the 18th,
9 which was yesterday. The American Bar Association filed com-
10 ments yesterday.

11 I'm sure your distinguished board member from New
12 York has never even seen them, and I do not see the reason for
13 the haste in getting these adopted the day after the comments
14 were supposed to be due. I cannot believe that our letter has
15 been given consideration by the board or by the staff, and it
16 seems to me utterly inappropriate to have a meeting adopting
17 these regulations the date or within 12 hours of the time that
18 the comments were probably to be submitted to you. And I
19 think that this ought to be postponed until you really consider
20 the comments that have been coming in, the later comments that
21 have been coming in since the meeting of the committee that
22 considered the first two, I think it was that you said you had

1 at the time. The rest have not been considered, I'm sure. I
2 would like to suggest to you that this be postponed until the
3 next meeting.

4 CHAIRMAN McCARTHY: Thank you, Charles. Your
5 comments are always well taken. We appreciate those.

6 MR. RHUDY: Mr. McCarthy, I'm Bob Rhudy for the
7 Coalition for Legal Services.

8 CHAIRMAN McCARTHY: Good morning, Bob.

9 MR. RHUDY: I share Mr. Horsky's concern. I know
10 that as of Thursday 12 comments had been received. I was told
11 by the Legal Services Corporation that at least 14 additional
12 comments came in yesterday. There was a minimal time, appar-
13 ently, since, of course, coming down today to consider comments
14 received.

15 I don't see how the board would have had an op-
16 portunity to review and consider the comments -- or the
17 staff -- prior to action this morning. I do have -- I won't --
18 my comments were submitted yesterday. I won't restate what
19 I have said in those comments, but I've got a couple of ques-
20 tions and a couple of concerns, including one that was not
21 raised in the comments.

22 I don't understand the provision on special meetings

1 to 1601.16, and it would be helpful if I could get some clari-
2 fication on that. Is the intent, as you understand it, of this
3 provision to create a special class of meetings only for the
4 purposes of permitting phone participation by board members?
5 Otherwise, are you talking about a regular public meeting with
6 advance notice in the Federal Register, or is there a second
7 provision, as well? Is there a second purpose of the special
8 meeting provision?

9 CHAIRMAN McCARTHY: Alan, could you answer that
10 question?

11 MR. SWENDIMAN: There is no -- I think it's rather
12 clear that with the proposed change that it's not a different
13 type of meeting. It reflects what the board has done in the
14 past, several boards have done in the past, in terms of having
15 a board member participate via a telephone conference call.
16 First of all, such meetings are public and certainly would be
17 subject to the notice in the Federal Register. They are typical
18 in terms of corporate by-laws, in terms of providing for a
19 telephonic conference. They conform with the D.C. Nonprofit
20 Corporation Statute, and, certainly in my opinion, conform with
21 the Sunshine Act in terms of insuring that the public is able
22 to hear each board member, able to identify them as board members.

1 members, able to hear or enable the people to hear other board
2 members and the public.

3 CHAIRMAN McCARTHY: Thank you, Alan.

4 MR. RHUDY: In that case, would a board member who
5 is participating in the meeting by telephone, through the
6 speaker phone, be considered to be present for purposes of
7 constituting a quorum? That -- in that quorum section that's
8 not clear to me, and I don't know what the intent is on that.

9 MR. SWENDIMAN: Yes, it would constitute a quorum.
10 He would be present at the meeting.

11 MR. RHUDY: If that is the intent, I object to this
12 because this opens up the possibility of future board meetings
13 being held by, perhaps, one director present and ten people
14 across the country who are removed from public observation or
15 removed from being actually present when the public -- when
16 they make decisions. As with the number of these provisions,
17 I think they're subject to being used in a very abusive way.

18 I understand the value to the committee for some
19 phone participation when persons can't be present, but I would
20 think that there should be at least a quorum physically present
21 when the meeting takes place. I'm looking at other practices
22 for the public participation, but that seems to be something to

1 be abused substantially.

2 The emergency provision, Section 1601.24, that
3 would allow the board to recess the meeting and move to another
4 location, inviting certain of the public requesting to be pre-
5 sent. I feel that there needs to be some criteria added to
6 that language that would indicate. I would recommend that this
7 provision would only be used if the board finds that there is
8 an inability to proceed with its business and persons disrupting
9 the meeting that will not desist at the warning, that the
10 meeting would be recessed.

11 With no criteria at all, once again, this provision
12 could be abused substantially by practice in the future, and
13 I think that some stage of criteria would be of assistance to
14 the board, the committee board and to the public, and that
15 there would be warning clearly given before any such drastic
16 action should take place. And that warning should be given
17 only if persons are found to be disrupting the meeting from
18 possibly proceeding, and would be excluded.

19 The provision that requires a written request in
20 advance of meetings to persons of the public that wish to par-
21 ticipate, if future board meetings are scheduled with minimal
22 notice permitted under the Sunshine Act, the seven-days' notice,

1 that's going to place a substantial impediment, if this were
2 strictly enforced, on members of the public from being able to
3 communicate with the chairman, have that conversation included
4 and clearly receive an answer back, that if they come from
5 wherever to come to the meeting, that they will be permitted
6 to speak. I think this places a substantial impediment on the
7 public participation in a way that I don't think the public
8 would appreciate in this nature and should intend.

9 In the past year that I've been to these meetings,
10 I've seen on at least three occasions, perhaps more, when
11 people came before the board in oral presentations, that were
12 considered by you, changed actions from staff recommendations
13 at the last minute, making presentations that, up until that
14 point, apparently, had not been considered and of course the
15 board had not had an opportunity to really understand the
16 nuance of the problem that was being suggested. The technical
17 problems raised by the regulation requests that the partici-
18 pants do this under participation compliance.

19 If this is strictly maintained, I think you're
20 going to lose some of that information that could be helpful
21 to you, that will preclude continuing controversy, litigation,
22 disruption of services. I think that it could be corrected

1 person would not, at least for two years, be able to make de-
2 cisions with respect to -- well, that particular program from
3 which that person came for or the entire class of programs re-
4 presented by that particular program?

5 In other words, a field program, if the person
6 comes from a field program, does this regulation make it im-
7 possible for that person to participate in decisions with re-
8 spect to legal services?

9 CHAIRMAN MCCARTHY: Alan, can you answer Dwight's
10 question?

11 MR. SWENDIMAN: Yes, something was referred to in
12 the instructions on that, and my response is that, yes, that
13 would be the case. My response would be: Yes, that is the
14 case.

15 MR. LOINS: I have one other question. In the
16 absence of clear language, in your section dealing with, I
17 believe it's the reference to the provision proposing for
18 closing the meeting, my question, I suppose, is: If, for in-
19 stance, a person from the public raised a question about what
20 has taken place or what this body is contemplating with respect
21 to their executive sessions, would that be something that would
22 require, based on your interpretation, that this meeting be

1 CHAIRMAN McCARTHY: Yes, Don?

2 MR. SANTARELLI: Mr. Chairman, it's appropriate at
3 this time, since I see no further requests for comments, may I
4 make a motion for --

5 CHAIRMAN McCARTHY: There is another comment. Do
6 you want to vote at this time?

7 MR. SANTARELLI: Perhaps it may be beneficial,
8 seeing that we have a speaker, to hear what you have in mind.

9 MR. LOINS: Thank you very much, Mr. Santarelli.
10 I'm very pleased to finally get a chance to actually address
11 the board. I'm going to be very brief.

12 CHAIRMAN McCARTHY: Can you identify yourself?

13 MR. LOINS: I'm sorry. I'm Dwight Loins of the
14 National Organization of Legal Services to Workers, District
15 65, UAW. I have just one question about the outside interest
16 section. I'd like to get a response to the following question
17 if possible. If we have, in the future, and I hope this does
18 happen, someone with past legal services careering, such as a
19 person from the bar association that perhaps has served on the
20 board for local legal services program, do I understand this
21 section to mean that that person somehow gets selected by the
22 president to serve on the whole legal services board, that that

1 My last point is: It seems, as I count, that only
2 29 days were permitted for comment on this proposed rule for
3 regulations. It's my understand that a minimum of 30 days to
4 file a public comment is required. This was published on
5 April 19th. The comment period was over May 18th. I want to
6 start counting the next day and this is contrary to normal
7 practice, but not only have you scheduled this meeting the day
8 after the public comment period, but it seems to me that you've
9 only put 29 days for public comment.

10 CHAIRMAN McCARTHY: Thank you, Bob. Your comments
11 are appreciated and well taken.

12 Alan, do you have a comment as to the 30-day
13 period?

14 MR. SWENDIMAN: The -- well, first of all, the 30th
15 day would have been today. Effectively, the comment period was
16 presented to the corporation on a Saturday since the offices of
17 the corporation are closed. Second, the present by-laws state
18 that they're to be published 30 days or when feasible. So,
19 that the by-laws speak of 30 days, but not as a mandatory pre-
20 scription with respect to amending the by-laws.

21 MR. SANTARELLI: (Thereupon, he motioned to the
22 chairman.)

1 if you also at minimum indicate that persons who had not had
2 an opportunity because of failure to get notice in adequate
3 time in advance, people sometimes won't know of the meeting
4 until three to four days in advance even if it is published in
5 the Federal Register seven days in advance, that persons can
6 still come to the board meeting and be permitted to participate
7 in the meeting after other persons already scheduled had made
8 their presentations if there was adequate time during the
9 meeting to do so, to present their presentations.

10 At least communicate some message to the public
11 that they are not excluded if they don't get advance permis-
12 sion.

13 I notice where the language in previous by-laws
14 indicating that written and oral communications from the public
15 to the board are welcomed has been struck. I think that sends
16 out a very strong message if that language is deleted that this
17 board is not receptive to hearing from the public. I don't --
18 I wouldn't want to send out that kind of message to the rep-
19 resentatives. I think it's a weighty message that reenforces
20 the perception that the public's meaning at the meeting is
21 discarded. And I think it's offensive language and -- it's
22 offensive language to take the public aside.

1 closed to the public?

2 MR. SWENDIMAN: Well, first of all, the emergency
3 proceeding is not a closing of the meeting. The Sunshine Act
4 specifically speaks as to the closing of the meeting, and it
5 speaks of an executive session, and it speaks as to the pro-
6 visions or the extensions that are necessary to close a meeting.
7 So, it's not a closure of a meeting at all --

8 MR. LOINS: You do -- I'm sorry.

9 MR. SWENDIMAN: The provision is to cover that
10 situation which hopefully, I would hope, that the board would
11 not find itself in, to find an inability to conduct its busi-
12 ness. If that should ever arise, then the board has the
13 authority to move the meeting. But, certainly, it's not a
14 closure because there will be representatives of the public
15 there, representatives of the media, and the meeting will be
16 transcribed, a summary will be provided and -- as well as a
17 transcription of the entire meeting, at cost, would very easily
18 be prepared.

19 MR. LOINS: Okay, I have one further question.
20 On -- based on President Bogard's statement earlier about the
21 last two executive sessions of the board, and specifically his
22 comments with respect to the reorganization of the corporation,

1 I'd like to know if and when this board will be considering
2 that, relating to internal reorganization?

3 MR. BOGARD: There is nothing scheduled at this
4 point.

5 MR. LOINS: Thank you.

6 CHAIRMAN McCARTHY: Thank you, Dwight

7 MS. EISENBERG: Good morning, Mr. Chairman. I'm
8 Eleanor Eisenberg of Region 8, Project Directors Association.
9 I would share the care of Mr. Rhudy and the gentleman from the
10 ABA concerning the haste by which the by-laws are being re-
11 vised.

12 I would wonder why they're being done today.
13 Mr. Swendiman acknowledged that Section 23 hasn't been honored,
14 and point out that that only has to be done if feasible. I
15 wonder why it's not feasible. There's been no justification
16 and certainly no statements of any emergency nature that re-
17 quired that these by-laws be adopted.

18 As one of your consistent public participants,
19 public participation is one of my primary concerns and I wonder
20 if I could get some clarification on why, at 1601.19, there is
21 a deletion of the requirement of notice to recipients?

22 Mr. Rhudy characterized the difficulties that would

1 be presented to this meeting as impediments. I would suggest
2 they might rise from impossibilities. We will have a situation
3 where a program will not get notice, and nonetheless, without
4 notice of where the meeting is, when the meeting is, and what
5 the agenda is, would be required to get prior authorization in
6 writing to speak before the board. I suggest that that's an
7 impossibility and that's my point. I wonder why the deletion
8 of notice?

9 CHAIRMAN MCCARTHY: Could you respond, Alan?

10 MR. SWENDIMAN: I apologize, I didn't -- I didn't
11 hear all the question.

12 MR. FERRARA: Let me respond, unless you want to
13 make a comment, Alan?

14 MR. SWENDIMAN: No.

15 MR. FERRARA: Well, first of all, there is a mis-
16 understanding, as you found, about what the written request
17 theme is. That 1601.23 does not say that you can only speak
18 if you were given a written request to the chairman in advance.
19 That's not meant to be a requirement. So, two of the com-
20 mentators misinterpreted that.

21 Secondly, as I understand in the other provision,
22 in effect, the recipient's fully notified with notification

1 by the governing board, as I understand it. So, the notice is
2 still to be given.

3 MS. EISENBERG: I might say that notice to the
4 governing board is not always notice to the programs. The
5 governing boards don't necessarily meet immediately upon re-
6 ceiving notice of the board meeting.

7 I don't understand why programs cannot receive
8 direct notice as we have been in the past. Currently, when
9 we've received them, they would be even late, sometimes even
10 as late as after the meeting, but I can't understand there
11 would be any move towards or away from, from notice and op-
12 portunity to be heard from the programs.

13 MR. FERRARA: Well, there's no move away from at
14 all, the notice and opportunity to be heard. And this move
15 would be equaled to a receptive governing board, so I don't
16 see why this is a problem.

17 MR. SWENDIMAN: The governing board or the governing
18 body is the -- just that. It has the fiduciary responsibilities
19 with regards to the operation of the program and of the cor-
20 poration's intent to keep the board's governing body apprised
21 of meetings concerning the corporation.

22 I certainly assume that the governing body, at

1 least the chair of the program, is in contact with his or her
2 program, with his or her executive director.

3 MS. EISENBERG: That may be true. I would request
4 that -- with all due respect, that the by-laws be amended to
5 receive direct notice to -- to the recipients.

6 I also have a question about 1601.39 along the
7 same lines that Mr. Loins had. Does that provision mean that
8 if the program hired a staff attorney, director, or other
9 staff person, or person who had previously been employed with
10 LSC that there would be a chance that that recipient could no
11 longer receive funding entered into a contract with the cor-
12 poration?

13 MR. SWENDIMAN: I don't believe that it would
14 be -- let me see if I understand your question first. Is your
15 question that a person who has an affiliation with a program
16 who is on the board of directors, does that mean the the pro-
17 gram would be prevented from receiving funding.

18 My interpretation would be that it would not, but
19 it would be expected that that board member is going to abstain
20 and refuse him- or herself from participation with respect to
21 that program. That's if I've understood your question
22 correctly.

1 MS. EISENBERG: I'm also addressing the question
2 of if somebody is on staff of a recipient as opposed to as
3 being a former employee of the Legal Services Corporation who
4 becomes a staff member of the recipient.

5 MR. SWENDIMAN: The conflict of interest provides
6 with respect -- let me, if I may, let me make reference to
7 that, if I may.

8 I'm sorry, which section are you referring to? I
9 think you originally said 1601.11.

10 MS. EISENBERG: No, 1601.39.

11 MR. SWENDIMAN: Okay.

12 MR. BOGARD: Also called 39 and then 40.

13 MS. EISENBERG: Correct, I'm sorry. It was
14 1601.39 and was deleted, which has no parliament in the present
15 by-laws.

16 MR. SWENDIMAN: Well, I should point out at the
17 very beginning that the provision states that the board may
18 talk from time to time about the rules and regulations and
19 then states what the rules and regulations may forbid an
20 officer or employee.

21 I think it's premature at this juncture for me
22 to -- it would presumptuous of me to indicate what a board will

1 or will not do. It simply provides -- provides the parameters
2 and gives the board authority if it deems that it's necessary
3 to so exercise.

4 MS. EISENBERG: Well, I would suggest that those
5 parameters are too wide and be open to review, and I understand
6 that condition, given the change in the conflicts of interest,
7 such as the membership on the board for the Legal Services
8 Corporation, the new by-laws accepting the Legal Services Cor-
9 poration itself, is one of the organizations with whom a person
10 could not be affiliated.

11 MR. SWENDIMAN: Well, they're quite different pro-
12 visions. One, you're talking about a board member going from
13 the board, leaving the board to a program and incorporating its
14 interaction with this incorporation. On the other hand, the
15 conflict of interest in a situation of going from an employee
16 to the board is simply, frankly, no comparison. There is no
17 analogy whatsoever. Moreover, as I have referenced in my pre-
18 sentation to the committee, it has been observed that experi-
19 ence with the Legal Services Corporation would be of value to
20 serving as a board member during the most recent hearings on
21 the current nominations to the board.

22 MS. EISENBERG: I would suggest that the same would

1 be true from the public to the programs, and I think that the
2 two are inconsistent. And, again, I would ask that you recon-
3 sider any action this morning since the comment period -- even
4 assuming that it was a valid comment period, unless someone
5 stayed up all night and took a speed-reading course, I don't
6 see how you could possibly have considered all the comments
7 that have been received. Thank you.

8 CHAIRMAN McCARTHY: Thank you, Eleanor.

9 MR. DOBIAS: My name, Mr. Chairman, is Burton
10 Dobias from the National Senior Citizens' Law Center. The
11 board was very kind to receive our written comments, and I
12 won't repeat them, but just one clarification, if I may, and
13 which is addressed to Mr. Ferrara.

14 With respect to the section on public participa-
15 tion at Section 1601.23, may I ask: Is it the intention of
16 the board to empower the chair or the board to exclude public
17 participation by way of comment in this section under circum-
18 stances resting in the discretion of the chair?

19 MR. FERRARA: It's not the intent in the section
20 to do that. The chairman already has the authority to do that
21 any time he pleases.

22 MR. DOBIAS: My problem, then, Mr. Ferrara, is that

1 I see in the section that creates any specific right in the
2 public to comment at board meetings.

3 MR. FERRARA: They have no specific right to com-
4 ment at the meetings, at all.

5 MR. DOBIAS: And, indeed, the first sentence in
6 the current is being deleted in the proposal. That sentence
7 reads, "The board welcomes written and other communication from
8 members of the public."

9 MR. FERRARA: That grants no right either. That
10 sentence doesn't grant anybody any rights either.

11 MR. DOBIAS: Then it gives the intention to empower
12 the chair to exclude --

13 MR. FERRARA: No --

14 MR. DOBIAS: -- public hearings --

15 MR. FERRARA: -- it's not the chair -- he has that
16 power. The chair -- this section has no intent to affect that
17 one way or another. The chair already has the power to exclude
18 at his discretion and it will be.

19 MR. DOBIAS: And the purpose of the section as re-
20 vised is to make explicit that power to exclude --

21 MR. FERRARA: No.

22 MR. DOBIAS: -- is that correct?

1 MR. FERRARA: No, no. It has nothing to do with
2 that at all.

3 MR. DOBIAS: I respectfully submit that,
4 Mr. Chairman, that it's not at all clear just what the inten-
5 tion of the board in entertaining the present motion is with
6 respect to this section and the right of the public to parti-
7 cipate at board meetings.

8 I would respectfully urge the board to provide
9 further consideration on this point rather than to leave it
10 murky at best or exclusive of public participation at worst.

11 CHAIRMAN McCARTHY: Thank you.

12 MR. FERRARA: Yes, well, Mr. Chairman, the purpose
13 of the section is merely to create some order and opportunity
14 for order, if people know they're going to comment, to create
15 a procedure whereby they would give a written request to chair-
16 man in advance, so he could plan for comment that the structure
17 of the meeting could be structured around and plan comments.

18 So, in fact, by making the provision and putting in
19 a procedure by that, in fact, gives a little more formal struc-
20 ture to the opportunity for public comment rather than re-
21 stricting the opportunity for public comment.

22 CHAIRMAN McCARTHY: Excuse me, Charles, may I just

1 make one concluding comment.

2 You used the term "excluding public" as the ex-
3 pression usec by the board. I believe that's incorrect. The
4 board has the discretion to invite the public to comment, not
5 to exclude them. The public hs no right to comment as to the
6 board proceeding here, except at the discretion of the chairman
7 to invite them to do so.

8 And I believe, by this procedure, it will allow
9 the public to know that they will be included if they -- if
10 the written comments or written requests are submitted prior
11 so that the board can review them and schedule them. This
12 chairman has noted over the past 15 months that sometimes
13 public discussion is not conducted in the most sufficient
14 manner to advise the board. So, I think this is merely a
15 procedure to enable this board to have more comments from the
16 public in a more orderly and businesslike fashion.

17 Would that help you at all, sir?

18 MR. DOBIAS: (Thereupon, he nodded his head.)

19 MR. HORSKY: May I -- at this time I just want to
20 ask two questions of Mr. Ferrara.

21 CHAIRMAN MCCARTHY: Charlie, I just wanted to --

22 MR. HORSKY: It's the same questions.

1 CHAIRMAN McCARTHY: Oh, all right.

2 MR. HORSKY: The first question, does the board
3 continue to welcome comments from the public; second, does a
4 man who does not submit a written request, or a woman who does
5 not submit a written request, have any possibility of carrying
6 and making a statement to the board? Two questions.

7 CHAIRMAN McCARTHY: As to the first question,
8 Charles, I think that answers itself.

9 MR. HORSKY: I don't think it does.

10 CHAIRMAN McCARTHY: Well, you are --

11 MR. HORSKY: You're talking it out.

12 CHAIRMAN McCARTHY: -- this board, under this chair,
13 welcomes public discussion.

14 MR. HORSKY: Then why is it stricken -- stricken?

15 CHAIRMAN McCARTHY: It is not stricken.

16 MR. HORSKY: Yes, it is. It says, "The board
17 welcomes written and other communication from members of the
18 public." That's omitted in the new by-laws. That's specifi-
19 cally stricken.

20 CHAIRMAN McCARTHY: Which has no affect on the law.

21 MR. BOGARD: That's right.

22 MR. HORSKY: I didn't ask that.

1 MR. FERRARA: It's not --

2 MR. HORSKY: I didn't ask that. I didn't ask:

3 Does the board continue vote on comments from the public.

4 MR. BOGARD: -- it's not a by-law, per se, pro-
5 vision for the operation of the corporation. It's a statement
6 of --

7 MR. HORSKY: That's right.

8 MR. BOGARD: -- policy.

9 MR. HORSKY: That's right.

10 MR. BOGARD: There's no change in policy, they're
11 simply making by-laws conform with normal corporate by-laws
12 given what they're supposed to do.

13 MR. SANTARELLI: Minus the hortatory words.

14 MR. BOGARD: There is really nothing to it other
15 than making these by-laws as opposed to statements of policy
16 purposely suggestful, which is not what a governing instrument
17 for a corporation should be.

18 MR. HORSKY: Well, it conveys a very significant
19 message to the public. It seems to me that it's stricken.

20 The second question is: If you do not have an
21 opportunity or do not get around to asking in writing permis-
22 sion, will you be permitted to speak?

1 CHAIRMAN McCARTHY: In answer to that question, it
2 makes no change. It would still be at the discretion of the
3 chair.

4 MR. HORSKY: Thank you, sir.

5 MS. FOGERTY: My name is Gail Fogerty. I'm a
6 counsel with the Subcommittee on Court Supervision and for the
7 Administration of Justice. Mr. Kastenmeier is the chairman of
8 that subcommittee. He is very concerned about the actions of
9 this board in promulgating the by-laws' regulations.

10 As both Mr. Ferrara and Mr. Bogard know, at the
11 February 29th hearing before the subcommittee, there was grave
12 concern expressed by the members about the lack of capacity of
13 this board to listen to public input and to permit the public
14 input. That was specifically raised in context of the private
15 bar instructions, which was later promulgated as a regulation.

16 But I think that this board has to be sensitive to
17 the fact that you are sending messages by promulgating this
18 regulation and you've sent messages through the past years in
19 the ways that you've conducted your meetings, and the ways in
20 which you've so precipitously acted without adequate concern
21 about the input of the public.

22 And in this regard, Mr. Kastenmeier is particularly

1 concerned about a couple of issues, one of which is the tele-
2 phonic meeting issue, whether that is going to be a practice
3 rather than a rare exception, whether it's going to be an ade-
4 quate opportunity for the board members to view, for example,
5 the demeanor of the presenters of the comments.

6 Another concern that he's very -- that he's quite
7 concerned about is what notice you are going to be giving to
8 the client community, to the recipients. For example, in --
9 on page 14 of your regulations, as you've promulgated today,
10 you note that you can, in some cases, telegraph at least five
11 days before the meeting, to the directors, the notice of the
12 meeting. And I would like to ask: What sort of notice will
13 you be giving to the recipient and to the client community
14 when the notice will be so short, even to the directors, let
15 alone, to the recipients?

16 Will you be telegraphing to them as well or --

17 MR. FERRARA: Let me -- let me answer the first
18 question. You've asked to tell -- to tell how is the tele-
19 phonic meeting. It's my understanding that's going to be a
20 highly unusual situation where there may be some extraordinary
21 circumstances. It is not intended to be a regular practice of
22 the board. So --

1 MR. SANTARELLI: It might even improve the communi-
2 cation, considering some of the demeanor of some of the wit-
3 nesses attraction of persuasiveness of their presentations.

4 MR. FERRARA: Yes, but in any event, that's meant
5 to be only a rare occurrence and not -- it's not going to be a
6 regular practice of the board.

7 As to the notice, maybe somebody else can answer
8 that actual procedure.

9 MS. FOGERTY: What would that notice be when, say,
10 for example, in sight of page 14 that you could have five days
11 before the meeting, the telegraphing should be the directors
12 get notice, what form of notice is going to be given to the
13 recipients?

14 MR. SWENDIMAN: Well, that, first of all, ~~the Sunshine Act~~
15 requires -- the Sunshine Act does make a provision that a
16 meeting can be called in less than seven days if the board so
17 determines, and there are standards that are set out in that.
18 So, that provision, with regard to five-days' notice, refers
19 to the terms of that situation. In terms of using telegraph
20 in any -- it can be used in terms of any type of meeting, but
21 if the meeting is going to be regularly noted, then I would
22 anticipate that I would expect the corporation is going to give

1 the general notice which it has always given.

2 MS. FOGERTY: Well, are you saying that you would
3 be telegraphing to the recipients, as well as publishing it in
4 the register?

5 MR. BOGARD: As I understand it, the current by-law
6 allows a meeting to be held in less than seven days and that
7 notice to the board members who are entitled to attend that
8 board meeting may be mailed to them. This is simply a mechan-
9 ism to increase their notice, instead of posting it in the mail
10 when the meeting is going to be held.

11 MS. FOGERTY: Well, I can understand that you're
12 going to make it speedy to get it to the directors. The ques-
13 tion is: How will you also insure that the recipients have
14 that notice? I mean, obviously, some of them do read the
15 register maybe everyday, but some of them do not, and if
16 you're going to be having a meeting on such short notice, how
17 are you going to show that they, in fact, received actual
18 notice?

19 MR. SWENDIMAN: Well, this -- as I said, 1601.2
20 of the regulations pertain to the Sunshine Act, and the regu-
21 lations themselves provide for a meeting on lesser -- on lesser
22 notice.

1 Specifically, 1622.4B, which has -- I don't know
2 how long it's been existence, but it's been around since I've
3 been around -- states that the notice shall be made at least
4 seven days, calendar days, before the meeting, unless the ma-
5 jority of the members determines by a recorded vote that cor-
6 poration business requires a meeting on fewer days notice. In
7 the event that such a determination is made, the public an-
8 nouncement will be made at the earliest practical time.

9 MS. FOGERTY: Well, I think --

10 MR. SWENDIMAN: I think that the terms of -- in
11 terms of what actual form the notice is going to take, I think
12 that, frankly, would be a better -- a question better directed
13 to the secretary than to myself, since I do not send out the
14 notices. But, in any event, there is a provision in the
15 Sunshine Regulations for a meeting in less than seven days,
16 the proposed change permits the telegraphing of that notice to
17 be filed within five days, and permits telegraphing as opposed
18 to mailing.

19 MS. FOGERTY: Well, I'll just close by saying that
20 I hope that you will consider trying to give as much actual
21 notice as possible to the client community and to the recipi-
22 ents so that they can have an input that is necessary, and that

1 also when you decide, at the discretion of the chair, what
2 input to allow at meetings, that you decide allowing mostly,
3 if possible, if the committee is going to decide on anything,
4 not to cut off debate in a precipitous manner as has occurred
5 in the past. Thank you.

6 MR. FERRARA: It seems, Mr. Chairman, that in my
7 experience in the past on this board, I have never seen a
8 debate cut off in a precipitous manner. I have never seen any-
9 body, who wanted to speak, excluded from speaking, except in
10 circumstances where their demeanor was -- lost all decorum.

11 I also want to note that the hearing in February
12 in which Done and I appeared before Congressman Kastenmeier's
13 committee, there was also an awful lot of concern expressed by
14 members about the continuing abuse of taxpayer funds by reci-
15 pients of the corporation for political involving activities.

16 CHAIRMAN McCARTHY: Thank you very much. I do want
17 to correct, I have never considered this to be a forum for
18 debate. I have always considered this to be a public input to
19 the board for its consideration.

20 So, with that one observation, I do appreciate your
21 comments and thank you for them.

22 MR. SANTARELLI: Mr. Chairman, I will observe that

1 even the congressman holds a hearing establishing the limits
2 of timetables for individuals, and rarely permits people to
3 be heard at the hearing unless they have complied with the
4 committee rules to expect prior notice and submission.

5 MR. BOGARD: Or responded to an invitation.

6 May I have comment from general counsel as to the
7 procedure that was adopted in reviewing comments? There was
8 some comment made that there was not adequate time to consider
9 it unless speed reading was involved. I believe the staff was
10 reviewing comments until as late as 10:30 last evening, and I
11 also believe that the comments that we received were simply
12 reflective of the same type of comments that have been received
13 previously.

14 My understanding, from what the staff tells me, is
15 that the same provisions were discussed and no new information
16 was provided, is that correct?

17 MR. SWENDIMAN: That is correct. I have read most
18 of the comments. The ones that came in yesterday were no
19 different than the ones that were previously sent. They
20 touched on the same sections, the same areas. The ones from
21 the American Bar Association were reflected in the Coalition's
22 comments and in the National Senior Citizens' case.

1 Again, we provide a representative sample. I think
2 that it's not necessarily, frankly, for the -- but it's up to
3 the board as to whether they want to read every comment. But,
4 we generally take the ones that are most representative, the
5 ones that are the most thorough, and by providing a sample,
6 cover every section that has been addressed by the entire com-
7 ments that have come in.

8 In terms of comments that were received as to the
9 by-laws, they were all examined and they are -- as I said,
10 again, were reflective of the representative sample which has
11 been provided to the board. I might indicate the the board
12 members were provided with the two comments which we have re-
13 ceived at the committee, during -- at the committee meeting.
14 I have had those for a period of time.

15 Again, the National Senior Citizens' was reflective
16 of many of the comments that were received. I might also indi-
17 cate, just as a -- again, a clarification, that our meeting
18 is -- our meetings are subject to the notice provisions of the
19 Sunshine Act. As to what is required in terms of the Federal
20 Register, to my knowledge, in the 18 months there has only been
21 one instance where there has been -- we can say that there is
22 a question, not a question, but in which the provision with

1 respect to the meeting on less than seven days' notice was
2 involved, the position of the corporation is that even in that
3 one instance, that the corporation comply with the public
4 announcement requirements. And that was -- in that particular
5 instance, that was met, as well.

6 CHAIRMAN MCCARTHY: Thank you, Alan.

7 For Charles and Bobs' reassurance, I understand
8 your concerns, but I want to tell you my personal position,
9 and I believe the position of the board is, that each and every
10 written communication has been thoroughly considered. The
11 board has been so advised, and the board has had the opportu-
12 nity to consider it.

13 I do not believe that any additional time would
14 prove to any value, and I feel very, very comfortable, and I
15 want to assure you that I, as chairman of this board, feel
16 that due consideration was given to every written comment, and
17 the board has had the advantage of this.

18 MR. SWENDIMAN: I would also like to add,
19 Mr. Chairman -- excuse me -- that the comments have been con-
20 sidered, there have been changes made in response to those
21 comments. I should advise you that the posture or position
22 of previous boards, specifically in 1980, was to the effect

1 that the by-laws were the internal rules of the corporation
2 and the corporation was under no obligation to consider the
3 comments. That was the opinion rendered by the then general
4 counsel.

5 MR. SANTARELLI: Mr. Chairman, it has been my
6 intention to ask the board to delay voting on the resolution
7 that is now pending with respect in light of Mr. Horsky's plea
8 that we should consider the comments made by the American Bar
9 Association. Having heard, however, the report made by the
10 staff and having counseled here at the table with my fellow
11 board members, I am now satisfied that to do so, have a report
12 made on each point made by the ABA, would not be productive
13 and has been accomplished by the staff's report.

14 I think it's important, Mr. Horsky, to whom I have
15 great deference and whom I have, hopefully, shown great respect
16 in light of your long contribution in this town and the public
17 policy of which I've admired, that it is the manner in which
18 this board and this corporation are run under this management
19 that efficiency, prudence, and intelligent use of time dictate
20 that delegations be made to the staff of the corporation to
21 perform the functions of analysis and synthesis. And it is
22 not the best and highest use of the board of this diversity to

1 to undertake to do those things itself.

2 The competence by the staff, according to this
3 board, is sufficient to discharge as public policy, and I am
4 satisfied with that also. It would be counterproductive for
5 those of us to review every single written comment that they
6 gave in discussion, either publicly or privately, with respect
7 to ever point.

8 The staff was more consistently attentive to these
9 matters as to the ability to put them into a continuous con-
10 text that we board members that come from congressional offices
11 outside, cannot do. That's a rather long, winded way of saying
12 I am satisfied, Mr. Charles Horsky, that I've discharged my
13 responsibility in receiving this report. And I thank you very
14 much for your point.

15 Having served a long time myself on counsel for
16 the ABA, I sometimes find a perverse delight from the ABA in
17 the refinements of thoughts and dislender filaments that even
18 John Milton would have trouble expressing. Thank you very
19 much for your efforts.

20 CHAIRMAN McCARTHY: Are there anymore public com-
21 ments? If not, the board will call the question.

22 MR. FERRARA: I call the question.

1 MR. SANTARELLI: I second it.

2 MR. FERRARA: I vote aye.

3 MR. FRANKUM: Aye.

4 MR. ANGRISANI: Aye.

5 MR. SANTARELLI: Aye.

6 CHAIRMAN McCARTHY: It's unanimous at this board
7 that the regulations as presented are adopted as the regula-
8 tions of this corporation -- excuse me, the by-laws of this
9 corporation, for clarity.

10 MR. BOGARD: If I may have one more statement by
11 general counsel, my understanding is that, contrary to normal
12 regulations of the board, these are effective on adoption, as
13 opposed to requiring a provision period, a publication period,
14 and then becoming effective, is that correct?

15 MR. SWENDIMAN: That's correct. The original act
16 has included the terms -- specific provisions for the by-laws
17 in terms of publication. With the 1977 amendments, the by-laws
18 were removed from that so that they do become effective upon
19 your adoption.

20 CHAIRMAN McCARTHY: Thank you.

21 At this time the board will call a 15-minute
22 recess. We will reconvene at 11:00 o'clock.

1 (Thereupon, a 15-minute recess was
2 taken, and then the hearing continued
3 at 11:00 o'clock, a.m., as follows:)

4 CHAIRMAN McCARTHY: The Board of Directors Meeting
5 of the Legal Services Corporation is now resumed at -- it's
6 almost 11:00 a.m., but it's pretty close.

7 The next agenda item was Agenda Item Number 6,
8 Board Resolution, and I believe that Peter is going to present
9 that.

10 MR. FERRARA: Mr. Chairman, I'd like to make a
11 resolution at this time relating to conflicts of interest in
12 board members' disclosures.

13 The resolution reads, "Whereas, the members of the
14 board of directors of the Legal Services Corporation are re-
15 quired by Section 1601.11 of the corporation by-laws to make
16 certain disclosures of outside interests; and,

17 Whereas, the board is desirous of avoiding con-
18 flicts of interest, impropriety, and even the appearance of
19 impropriety; and,

20 Whereas, the board owes a fiduciary duty to the
21 corporation to manage the corporation's business in a proper
22 manner; and,

1 Whereas, the board recognizes that the provision of
2 financial assistance to qualified programs which furnish legal
3 assistance must be kept free from personal or emotional pre-
4 ferences or prejudices,

5 Now, therefore, be it resolved that the board of
6 directors of the Legal Services Corporation hereby adopts the
7 following policies respecting disclosure of outside interests
8 and representation of adverse parties by a member of the cor-
9 poration's board of directors and a legal services lawyer:

10 One, pursuant to Section 1601.11 of the corpora-
11 tion's by-laws, each director upon qualifying as a member of
12 the board of directors and annually thereafter shall file with
13 the corporation secretary on a form supplied by the corpora-
14 tion a complete list of organizations with which the director
15 or member of the director's immediate family is or has been,
16 within the past two years, associated.

17 Two, whenever the board considers any matter or
18 policy specifically affecting a recipient, and said recipient,
19 during the term of any board member, represented a party
20 adverse to that board member or a client of that board member,
21 said board member shall disclose the fact of such adverse re-
22 presentation promptly to the corporation secretary in writing

1 and publicly at the board or committee meeting at which such
2 matter is to be discussed, and if appropriate, shall not par-
3 ticipate in the discussion, recommendation, or vote.

4 Three, whenever a board member and an employee of a
5 recipient represent adverse parties, full disclosure of the
6 director's membership and of the other lawyer's employment by
7 a recipient shall be made to each client, to the opposing
8 party, and to the court, in addition to notifying the corpora-
9 tion secretary in writing.

10 Four, whenever a board member know that a lawyer
11 with whom the member is associated is representing a party
12 adverse to a client of a recipient, the member shall make every
13 reasonable effort to avoid discussing the case or matter with
14 the lawyer for either side.

15 Five, whenever the board considers any matter or
16 policy specifically affecting a recipient or class of reci-
17 pients with which a board member has been associated as de-
18 fined by Section 1601.11A of the corporation by-laws, the mem-
19 ber shall disclose publicly at the board meeting at which such
20 matter is considered the fact of the association, and shall not
21 participate in the discussion, recommendation, or vote.

22 Six, malfeasance in office, as used in Section

1 1601.12 of the corporation by-laws, shall include but not be
2 limited to a board member's knowing and willful making of
3 false, incorrect -- false, inaccurate, incomplete, or mislead-
4 ing disclosures required under Section 1601.11 of the by-laws,
5 or a board member's knowing any willful participation in or
6 encouragement of any activity which is in contravention of any
7 of the provisions of the Legal Services Corporation Act,
8 regulations, or any law of the United States."

9 Mr. Chairman, I believe that this resolution spells
10 a policy that the board of directors ought to adopt as a simple
11 matter of standards of -- accepted standards of conduct re-
12 garding matters of conduct of interests. Basically, it's
13 apple pie and motherhood stuff, and therefore, I move the
14 corporation adopt regulation -- this resolution.

15 CHAIRMAN McCARTHY: Thank you, Albert. Do I hear
16 a second?

17 MR. FRANKUM: I second.

18 CHAIRMAN McCARTHY: Thank you, Mr. Frankum.

19 MR. SANTARELLI: Mr. Frankum is the apple-pie man.

20 CHAIRMAN McCARTHY: Does the board have any com-
21 ments or any discussions? If not, I'll call the vote.

22 MR. FERRARA: Aye.

1 MR. FRANKUM: Aye.

2 MR. ANGRISANI: Aye.

3 MR. SANTARELLI: Aye.

4 CHAIRMAN McCARTHY: Unanimously by a vote, we adopt
5 the resolution.

6 Agenda Item Number 7 -- no, wait. I beg your
7 pardon. Where are we here?

8 MR. SANTARELLI: Yes, it is 7.

9 CHAIRMAN McCARTHY: This is a report from the
10 office of government relations.

11 MR. STREETER: Thank you, Mr. Chairman. The 11
12 nominees for the board have been purported out by the Senate
13 Labor Committee. Ten were purported out with the recommenda-
14 tion that they be confirmed, one was purported out without a
15 recommendation. No time has yet been set aside on the Senate
16 schedule for consideration of the nominees, and we don't have
17 any information as to when that vote will come.

18 The House Appropriations Subcommittee has marked
19 up our appropriations for the upcoming year. They granted the
20 full amount in our budget request, however, retained the re-
21 strictions on the authority of the board to change funding for
22 this. The full House Appropriations Committee will be meeting,

1 probably, next week and no date was yet set, that I'm aware of,
2 for the senate -- senate committee -- full senate committee
3 meeting on our appropriations.

4 We have concluded the committee hearings for the
5 year. All four committees with jurisdiction to the reauthori-
6 zation of appropriations have had their hearings. No reau-
7 thorization bill is expected this year. The house has indi-
8 cated that unless they have some sign that the senate is likely
9 to consider a reauthorization bill, then they're not likely to
10 take a reauthorization bill to the house and on the senate
11 side. There is little likelihood of a bill being purported
12 out.

13 There is a remote possibility that there will be
14 an additional hearing on the Senate Labor Committee because the
15 chairman has expressed great concern of the possibility that
16 Legal Services funds haven't been used in connection with the
17 district issues. Contrary to my great concern for him, he's
18 currently looking into that to see what this funding is used
19 for.

20 CHAIRMAN McCARTHY: Who is that?

21 MR. STREETER: Chairman Hatch.

22 CHAIRMAN McCARTHY: Does the board have any

1 questions on this?

2 Thank you very much.

3 Agenda Item 8, another board resolution. Don, are
4 you going to --

5 MR. SANTARELLI: May I move the adoption of the
6 resolution, principles guiding governance and reauthorization.

7 "Whereas the concept of equal access to justice
8 distinguished and augments a free society; and..." --

9 MR. HORSKY: Can you use the mike, Don? Could you
10 use the microphone.

11 MR. SANTARELLI: This is the first time in my life
12 I've ever used a mike. Charles, only for you.

13 MR. HORSKY: Thank you.

14 MR. SANTARELLI: -- "Whereas, the Legal Services
15 Corporation was created in 1974 to help achieve such access
16 for poor individuals; and

17 Whereas, the Legal Services Corporation's goal is
18 to provide financial assistance to entities delivering high
19 quality, professional legal services on an efficient, economical
20 and effective basis;

21 Now, therefore be it resolved that the following
22 principles guiding governance of the Legal Services Corporation

1 and its reauthorization by congress are adopted:

2 One, that the corporation shall be kept free from
3 the influence or use by it of political pressures.

4 That the corporation shall ensure compliance by its
5 recipients and their employees with the Legal Services Corpor-
6 ation Act, regulations, guidelines, instructions, policies and
7 other directives issued thereunder.

8 Three, that the corporation shall not interfere
9 with any attorney in carrying out his professional responsi-
10 bilities but shall ensure that the attorney activities provided
11 pursuant to the Act are carried out in a manner consistent with
12 attorney professional responsibility.

13 That the independence of individual clients shall
14 be preserved. In delivering legal services to eligible clients,
15 an attorney's professional responsibility shall be to the in-
16 dividual client who has sought his representation.

17 Five, that priorities for the types of legal ser-
18 vices offered shall be articulated within the guidelines
19 established by congress and must be set at the local level
20 through an appraisal of the needs of individual eligible
21 clients.

22 Six, that LSC-funded programs serving eligible

1 clients shall treat each such client with dignity. Program
2 attorneys serving eligible clients shall render professional
3 advice based on the merits of any proposed legal action. The
4 fact that the client will not personally bear the cost shall
5 not be used to justify the persistent incitement of litigation.

6 Seven, that in order to ensure that legal services
7 recipients are responsive to the needs of individual eligible
8 clients, clients shall be included in the decision-making pro-
9 cess of local legal services programs and of the corporation.

10 Eight, that the corporation shall have maximum
11 flexibility to carry out the basic purpose of the Legal Services
12 Services Corporation Act to provide financial support for
13 legal assistance in non-criminal matters to persons financially
14 unable to afford that assistance. In allocating the funds
15 available for legal assistance, the corporation shall ensure
16 that its resources are distributed so that each eligible client
17 will have reasonably equal access.

18 Nine, that the board of directors of the corpora-
19 tion believe that it is in the best interest of all citizens
20 that the corporation, the authorization for which expired in
21 1980 and which has existed on year-to-year funding since that
22 time, be reauthorized by congress to continue its role in

1 ensuring access to legal assistance to those unable to afford
2 such assistance.

3 Ten, that such regulation should provide adequate
4 safeguards and protections to preserve the independence and
5 integrity of the corporation, while allowing the corporation to
6 determine financial allocations based on an open, competitive
7 bidding process designed to insure economical and effective
8 delivery of legal services.

9 That to the fullest extent possible, efforts should
10 be made to secure additional resources by utilizing a variety
11 of delivery structures and incorporating within those struc-
12 tures the services of private attorneys, paralegals, and law
13 students in delivering legal assistance to aggrieved eligible
14 clients.

15 CHAIRMAN McCARTHY: You have made your motion. Do
16 I hear a second?

17 MR. FRANKUM: One moment.

18 CHAIRMAN McCARTHY: Okay.

19 MR. SANTARELLI: Yes, sir.

20 MR. FRANKUM: On Number 10, in your reading, Don,
21 you said "that such regulations." I think you meant "such
22 reauthorization."

1 MR. SANTARELLI: Excuse me. The eye is faster than
2 the tongue.

3 CHAIRMAN McCARTHY: It was very well read anyway,
4 Don. Do I hear a second?

5 MR. FERRARA: I second.

6 MR. SANTARELLI: I'm the Don Wilson of the board.

7 CHAIRMAN McCARTHY: Are there any comments from
8 the board before a vote? If not, we will vote for adoption
9 of that.

10 MR. FERRARA: Aye.

11 MR. ANGRISANI: Aye.

12 MR. FRANKUM: Aye.

13 CHAIRMAN McCARTHY: The resolution has been
14 unanimously adopted by this board.

15 The final Agenda Item Number 9 is a report from
16 the office of program development.

17 MR. BOGARD: We did that.

18 CHAIRMAN McCARTHY: Oh, we had that? Therefore,
19 if there is no further business, the board will entertain a
20 motion to adjourn.

21 MR. FERRARA: I move this meeting be adjourned.

22 MR. FRANKUM: I second.

1 CHAIRMAN McCARTHY: For a general consensus, this
2 meeting is adjourned, and thank you all for your attention and
3 your very valuable time.

4 (Thereupon, at approximately 11:15
5 o'clock, a.m., the above proceedings
6 were adjourned sine die.)

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CERTIFICATE OF REPORTER

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I, PEGGY L. DINGLE, a Court Reporter, before whom the foregoing hearing was taken, do hereby certify that the proceedings were taken by me in Shorthand at the time and place mentioned in the caption hereof and thereafter reduced to typewriting under my supervision; that said proceeding is a true record; that I am neither counsel for, related to, nor employed by any of the parties as to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Peggy L. Dingle

PEGGY L. DINGLE
Court Reporter