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Transcript of Proceedings

LEGAL SERVICES CORPORATION

Meeting of the
BOARD OF DIRECTORS

Washington, D. C.

Tuesday, 9 September 1975

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LEGAL SERVICES CORPORATION

Meeting of the
BOARD OF DIRECTORS

Marvin Center
George Washington University
800 21st Street, N. W.
Washington, D. C.

Tuesday, 9 September 1975

The meeting was reconvened, pursuant to adjournment,
at 9:40 a.m.

Mr. Roger C. Cramton, Chairman, presiding.

PRESENT:

(As heretofore noted.)

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P R O C E E D I N G S

1 MR. CRAMTON: The meeting will come to order.

2 Members of the Board, you were expected to be
3 here or in attendance, except for Mr. Cook, who is expected
4 to arrive shortly, but we will not wait.
5

6 As you were informed when we recessed last evening,
7 the Board planned to meet in executive session to discuss
8 individuals who have been nominated for the office of
9 president of the corporation.

10 After a very pleasant dinner, we did spend several
11 hours considering the very large number of individuals and
12 discussing their qualifications.

13 The Board instructed the Committee on Presidential
14 Search to obtain more information about a large number of
15 individuals and to report back to the Board at its meeting
16 on October 2nd and 3rd.

17 One item that we put over for this morning deals
18 with the Presidential Search, and that was the draft statement
19 circulated yesterday dealing with the qualifications of the
20 president.

21 I call on Mr. Thurman, the chairman of the
22 Presidential Search Committee, for the discussion of that
23 item.

24 MR. THURMAN: The members of the Board on Tab 1,
25 Resolution D, the proposed statement, copies of which were

bw2 1 circulated, and at this point I'd be happy to have any
2 suggestions that anybody here cares to make.

3 I don't think there is anything very surprising
4 in this statement. You may have some difficulty getting a
5 person who gets an "A" on all of those criteria.

6 MR. CRAMTON: Do members of the Board have
7 suggestions for addition to the list, deletion of qualifications?

8 MR. THURMAN: The way we cleared this list was
9 to go around and see the characteristics each member of the
10 Board had.

11 MR. CRAMTON: I think you were also aided in
12 putting this list together by half a dozen letters which
13 we received, some from members of the public, who are here
14 today, which dealt in some detail with what those individuals
15 or groups thought the qualifications should be of persons
16 selected for this highly important position.

17 Is that correct?

18 MR. THURMAN: Some of you will recognize
19 your language, I am sure.

20 I move the adoption of this unless we have some
21 further discussion.

22 MR. SMITH: I second.

23 MR. CRAMTON: I heard the motion. Is there any
24 desire on the part of members of the public to express views
25 on the subject?

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(No response.)

MR. CRAMTON: The Board have any further comments?

Are you ready for the question?

(No response.)

MR. CRAMTON: All those in favor of the adoption of Resolution D, please say "Aye."

(Chorus of Ayes.)

MR. CRAMTON: Those opposed say "No."

(No response.)

MR. THURMAN: Perhaps the Senator best exemplifies all the criteria we have on this list.

(Laughter.)

MR. CRAMTON: The next item on the agenda is Item 7, "Report of the Committee on Bylaws and Regulations."

In the absence of Mr. Kutak, Mr. Breger is Acting Chairman.

MR. BREGER: Thank you.

MR. CRAMTON: If I might add before Mr. Breger makes his report, that in accordance with the authority vested in me by the Board by early resolution, I appointed Rudolfo Montejano as temporary member of the Committee Bylaws and Regulations so that Committee would have a quorum for its meeting yesterday.

Mr. Breger?

MR. BREGER: Thank you. Mr. Chairman, your

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1 Committee has labored vitally to produce what we feel to
2 be an acceptable set of bylaws, acceptable set of permanent
3 regulations, what we are calling 90-day regulations, those
4 required to be issued under the statute under 90 days
5 and the proposed Freedom of Information Regulations.

6 I should report to you the work which your
7 Committee has engaged in since the last Board meeting.

8 Let me preface my remarks by saying that little
9 of this could have been accomplished without the really
10 yeoman efforts of Bob Kutak and his law firm in Omaha,
11 which went far beyond the call of duty in this regard to help-
12 ing us in producing the best documents that we could, and
13 I think that we really owe a vote of thanks to Bob Kutak
14 for that really extraordinary matter of labor.

15 Your Committee met on August 25th for an entire
16 day to consider comments received up until then and to further
17 revise the drafts which we had provided you on August 4th.

18 The Committee further met by conference call
19 on August 28th to discuss the proposed Freedom of Information
20 Regulations.

21 Your Committee met yesterday in the morning,
22 in the afternoon, and well into, as you well know,
23 Mr. Chairman, late evening, to further receive comments up
24 until today.

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The results are before you now in the main.

1 Your notebook should contain a copy of the Freedom of
2 Information Regulations, Tab 17; the proposed bylaws,
3 Tab 16, dated August 25, and the 90-day regulations required
4 by the statute, labeled Tab 15.

5 Yesterday we made some further emendations
6 to these documents and have produced for your use a redline
7 copy of the changes in our bylaws. That draft you should have
8 before you dated September 8, 1975.

9 It is my intention shortly to begin with what
10 I conceive to be the least controversial subjects, work through
11 the 90-day regulations, the Freedom of Information Act, and
12 then finally the bylaws.

13 Before I do so, I really want to say that we would
14 again not have succeeded at all in this venture without the
15 aid of the members of the public and interested parties
16 who provided us with a large number of written comments,
17 as well as a good deal of help in drafting, and
18 in discussion and conversations as to policies.

19 I particularly want to thank Alan Houseman,
20 Jim Flug, Bari Schwartz, Bernard Veney, Steve Harris,
21 Paul Newman, Dave Gilbert. I am sure there are many others
22 whose names I have neglected to put on this list and should
23 have done so.

24 I also want to point out that we again could not
25 have satisfactorily resolved these problems without the aid

1 of the Committee's counsel, Marshall Hornblower, and
2 Allan Weitz who, I trust, is here to correct me if I make
3 any errors.

4 I further want to point out your Committee had
5 hoped to provide you today with a plan of attack for the
6 rest of the duties for which it is assigned, the permanent
7 regulations of this corporation.

8 We recognize after the amount of labor that we
9 engaged in in producing this small segment of the
10 whole, that we pretty much were unable to do, ourselves,
11 this monumental job. At least we were unable to do it and
12 still have any fond memories of our tenure on this Board.

13 So we concluded that it was necessary for us to
14 ask for staff aid in continuing this job and concluded that
15 the most desirable approach towards dealing with the
16 regulations as a whole was to secure one or two staff members
17 who would work part or full-time on the regulations' process,
18 who would produce drafts for your Committee to review
19 carefully, scrutinize carefully, for your Committee to hear
20 public comments on, and then to send on to the Board as
21 a whole .

22 We felt that this method would, for better or worse,
23 relieve your Committee of the responsibility of spending
24 inordinate hours on the placement of staff and other
25 sundries, although I think Bob Kutak actually enjoys that

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1 activity.

2 As a result, I can report to you that David Tatel
3 has informed me that the staff is presently seeking
4 additions to the staff for the purpose of serving part or
5 full-time as draftsman for your Committee.

6 We hope at the next board meeting, in conjunction
7 with the staff members assigned to this task, to produce
8 a comprehensive schedule of both priority and chronology
9 for you as to when we will be reporting back on the
10 resolution.

11 We recognize that we will likely be unable to
12 adhere to this schedule literally, but we hope at least
13 it will serve as a guideline for our activities.

14 Without further ado, I think I will return to
15 the 90-day regulations which you have in your black book at
16 Tab 15.

17 Mr. Montejano, who has been seconded to this
18 Committee and has proved invaluable in its work, just pointed
19 out to me that the Board members have revised the copy of
20 the 90-day Regulations which are now Title 45, Part 6.02.
21 The temporary regulations are still in Tab 15. I will describe
22 the changes before providing to you the resolution.

23 These regulations, as you know, were put forward
24 in the Federal Register, August 7, as proposed temporary
25 regulations. There have been a few technical changes in them,

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1 and one substantive change. I am only going to address your
2 attention to the substantive change, unless you would like
3 me to point out the minor stylistic changes as well.

4 The substantive change can be found at Section
5 Section 1600.5(a)(b) which is on page 7. We have added
6 paragraph (b). We have done so for the following reason:

7 We felt that the Act required us to develop
8 enforcement mechanisms to enforce the regulations which we
9 are now promulgating. We also felt that the Act required
10 us to in turn require our recipients to develop similar
11 such enforcement mechanisms.

12 We didn't feel it possible, let alone seemly,
13 for us to mandate a uniform set of enforcement procedures
14 on every recipient at this juncture and felt, therefore, that
15 we would simply require recipients to establish and utilize
16 procedures consistent with the notice requirements
17 contained in Section 1011 of the Act for suspension or
18 termination of the employment or application of the other
19 appropriate remedies to any employee who violates these
20 particular regulations.

21 In substance, then, what we have done is to
22 require the recipients to establish enforcement procedures
23 to enforce the Act. We have not required them to track
24 our own procedures. We felt that at this early juncture
25 where each recipient has their own format, approach, their

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1 own established modus operandi for dealing with enforcement
2 of regulations that we are better at this stage to require
3 each local grantee and recipient to create their own
4 regulations.

5 At a later juncture, when we have had a chance
6 to explore more fully the problems involved, and we come to
7 you with permanent regulations, we may take a different
8 view.

9 At this juncture, where we have attempted to be
10 sparing in our positive activity, we thought it best merely
11 to make clear that not only the Board, but all recipients
12 should have enforcement procedures to enforce our regulations,
13 but not specifically set down a uniform enforcement procedure.
14 That is the only substantive change in these regulations
15 from the August 7 published regulations.

16 Mr. Chairman, are there any questions or discussion
17 from the Board on these regulations?

18 MR. CRAMTON: Gentlemen, the proposed temporary
19 regulations are before you for your consideration. Should
20 we have a formal motion at this point to move their adoption?

21 MR. MONTEJANO: So moved.

22 MR. CRAMTON: Is there a second?

23 MR. ORTIGUE: Second.

24 MR. BREGER: We'll move proposed Regulation J.

25 Is there any comment from the public?

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MR. CRAMTON: Let's wait and see if any members of the Board have any comments.

Resolution J: "RESOLVED, that pursuant to sections 1006(b)(5) and 1008(e) of the Legal Services Corporation Act of 1975 (Public Law 93-55), the Board of Directors hereby adopts and issues the attached temporary regulations relating to 'Picketing, Boycotts, Strikes, Illegal Activities; Legislative and Administration Representation,' and authorizes the publication of said regulations in the Federal Register, to become effective as temporary regulations of the Corporation on October 14, 1975."

Is there discussion?

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1 MR. BREGER: We are required by the statute to
2 promulgate regulations in regard to the statutory duties which
3 Sections 1006(b)(5), 1007(a)(5) and Section 1011 place upon
4 us.

5 MR. THURMAN: Have we included all that we are
6 required to do by the statute?

7 MR. BREGER: These temporary regulations encompass
8 all regulations which we are required by the statute to pro-
9 mulgate 90 days after our first meeting.

10 I might add there is a question as to whether or
11 not the Freedom of Information Regulations are required not
12 by our statute but by the Freedom of Information statute to
13 which we are subject by our statute within a 90-day period.
14 We are in any case presenting to you today a proposed Freedom
15 of Information regulation consistent with our duties under
16 the Freedom of Information Act.

17 Let me further add that we have in the main
18 merely tracked the statute as much as possible. We have not
19 presented it to solve all, or in fact we have hoped, many of
20 the policy issues that are inherent in these regulations. We
21 have deferred that until we have the time, and energy, and the
22 wisdom of experience to deal with the policy issues in a more
23 considered way. We have in the main tracked the language
24 of the statute and are relying on sensible interpretation by
25 ourselves and by the recipients in this interim period to

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1 ensure that the Act is adhered to in all respects.

2 I might further add that we have received some
3 comments on these regulations. The bulk of the comments,
4 which was critical, was critical of those aspects of the
5 regulations which did track the statute, that is to say the
6 criticism was in effect of the statute.

7 We have received one critical comment which
8 requested us to specify at this time our definition of eligi-
9 bility. We felt that we could not at this time address that
10 complex problem, and are leaving in a sense the status quo
11 on different and various local definitions of eligibility
12 until we reach that issue, if we do so, in our permanent
13 regulations.

14 MR. BROUGHTON: You are saying, Mr. Breger, what
15 is proposed is a tracking of the statute in respect to what
16 we are required to incorporate in the regulations and those
17 that are part of the statute, which are not subject to varying
18 interpretations.

19 MR. BREGER: I think I may have been to some
20 extent unclear. Some of the language in the statute, as you
21 well know, may be subject to varying interpretations. We
22 felt unable at this early juncture to plunge down in favor
23 of a particular interpretation, and we felt the safest course
24 at this point was to track the statute so that any ambiguity,
25 if they do exist, which existed in our regulations, are those

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1 ambiguities which we take with us from our statutory enable-
2 ment.

3 MR. CRAMTON: Are there further comments?

4 (No response.)

5 MR. CRAMTON: Do I have unanimous consent to call
6 for brief comments from the public?

7 MR. ORTIGUE: Yes. Any comment?

8 MR. CRAMTON: Mr. Houseman, Michigan Legal Services,
9 representing the advisory group.

10 MR. HOUSEMAN: I'd like to say we think the regu-
11 lations are safe. We had some differences which have been
12 worked out, and although we are in total agreement with every-
13 thing in them, we believe they are an excellent beginning,
14 and they are consistent with the statute and legislative
15 attempt. I want to make clear our position on that.

16 MR. CRAMTON: Any further comments?

17 (No response.)

18 MR. CRAMTON: None. Are you ready for the
19 question? The question is on the adoption of the regulations,
20 temporary regulations which were published in the Federal
21 Register on August 7, which you have before you, and discussed
22 by Mr. Breger. All those in favor of the adoption of the
23 regulations say "aye."

24 (Chorus of "ayes.")

25 MR. CRAMTON: Those opposed, "no."

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1 (No response.)

2 MR. CRAMTON: The regulation is adopted, and the
3 staff will publish them as promptly as possible in the Federal
4 Register.

5 MR. BREGER: Thank you.

6 MR. CRAMTON: Your second item, Mr. Breger.

7 MR. BREGER: I intend to move now to the proposed
8 Freedom of Information Act. You have in your book a draft
9 dated 9-5-75, and you have before you a draft dated 9-5-75
10 revised. I hope to work from the 9-5-75 revised draft, which
11 has been handed out today, and which is in front of you.

12 Let me say first that these are proposed regula-
13 tion. The Committee asks the Board to approve them as proposed
14 regulations for purposes of publishing them in the Federal
15 Register for notice and comment. They will come back. Your
16 Committee will review those comments and will return to the
17 Board at a later date with suggested emendations, if any, and
18 with a request that these regulations be made final regulations.

19 Second, let me say that it is a view of your
20 committee that it is a high priority that we produce the
21 Freedom of Information Act regulations.

22 The 1970 amendment to the Act requires existing
23 agencies to produce regulations within 90 days with the 1974
24 amendment. We, of course, did not exist at that time, but we
25 take the view that that language would apply as well to newly

1 created government bodies. Whereas we are not a government
2 body, we are subject to the Freedom of Information Act by
3 our statutory language.

4 In any case, leaving aside what you might call
5 our legal duty to have these done quickly, we need them as
6 a matter of prudence and a matter of policy in that we expect
7 that there will be Freedom of Information Act requests shortly
8 after this Board takes over the operation of the legal services
9 program, and it is essential that we have guidelines for our
10 staff to adhere to.

11 In the main these proposed regulations take the
12 approach at the most possible junctures opting for openness.
13 In the main these regulations take the approach of opting for
14 reducing staff discretion as much as possible in favor of
15 allowing information as to be provided as much as possible.

16 The Department of Justice, which reviewed an
17 earlier and not substantially different draft of these regu-
18 lations, as a matter of courtesy to our Committee, pointed out
19 that in their view and in their knowledge of regulations these
20 were, as they put it, a model of openness. So that is the
21 general approach which we have taken.

22 I intend to move quickly through the proposed
23 regulations pointing out to you substantive points which I
24 think you ought to know about and leaving aside particular
25 language at this juncture. When you have had a chance to

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1 review this, and review it in the Federal Register, you may
2 have problems about specific language. What I hope to put
3 before you now are substantive policy determinations we have
4 made that you ought to be aware of before, should you choose
5 to do so, you approve these proposed regulations.

6 Let me further point out that much of the language
7 in here, and all of the language of the exemptions, track the
8 statute. So that wherever we have a specific exemption to
9 the Freedom of Information, that is a statutory exemption in
10 the Freedom of Information Act.

11 In many other cases the language here has tracked
12 the statute very often, it has been taken from three sources:
13 the HEW regulations, Department of Justice regulations, or
14 Consumer Product Safety Commission regulations.

15 We have, I might add, surveyed a much larger
16 number of regulations from different regulatory agencies before
17 proposing these regulations to you. The definitions in the
18 main are, I think, noncontroversial. 1602.3 puts forward the
19 policy of the corporation which is to maximize the extent to
20 which records concerning its operation, activities, and
21 business, will be available to the public. We point out the
22 records will be withheld from the public only in accordance
23 with the Freedom of Information Act, and that's implementing
24 information. All records not exempted will be made available.
25 Of course, that is our statutory duty to make them available.

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1 We further point out we'll interpret exemptions
2 so as to resolve doubts in favor of disclosure. Again, this
3 is our posture, one of openness, one of allowing information
4 about corporation affairs to be circulated throughout our
5 constituency. We will require an index to be made. This is
6 a statutory requirement.

7 MR. STOPHEL: The last sentence of the first
8 paragraph, Tag No. 1602.3, don't you mean "does not appear"
9 instead of "does appear" in the last line?

10 MR. BREGER: Thank you. I had noted that typo-
11 graphical error in my master copy. It should be: "It does
12 not appear adverse to legitimate public or personal interests."
13 line 11 on page 3. As I say, 1602.4 is a statutory require-
14 ment of keeping an index, but we do so. We'll keep a central
15 records room in Washington, D. C. That's a statutory require-
16 ment, and we'll have a record officer who will deal with
17 providing information to the public.

18 We will also in this, you should be aware of,
19 keep a regional records room in every regional office and
20 assign a regional records officer. He may have other duties
21 as well. I trust in fact in the region he will, to facilitate
22 requests in the regions.

23 We felt it was necessary to detail a particular
24 person for that task in order to maximize the efficiency of
25 the Administration and to ensure the regulations are in fact

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1 complied with.

2 1602.6 points out the regional records room that
3 will be kept.

4 1602.7 refers to the use that can be made of the
5 records room. Basically they are open 9:00 to 5:00. You
6 can come in and request records. You don't need an advance
7 appointment, although if you have a complicated task, we
8 point out that you should be cognizant of our limitations
9 in handling your request, and it would be more sensible to
10 phone ahead or write ahead if you do have a complicated
11 request.

12 1602.8 refers to the availability of records on
13 request. To a great extent here it does track the statute.
14 I think the only point I should alert you to is on page 10,
15 where we request that at Section (4), where we ask that all
16 request for records be marked "Freedom of Information re-
17 quest."

18 The purpose of that is simple. Once a request
19 is received the corporation has 10 days to make a decision
20 on whether or not to grant it or deny it, and we want that
21 time period to start running subpoenas, and therefore if
22 people state that is a Freedom of Information request, that
23 time period will start running immediately on receipt. In
24 most cases the definition of "receipt" also includes a
25 proviso that if there are financial arrangements to be agreed

1 upon in cases where there may be a charge for money, that
2 we do not deem the request to be received for purposes of
3 this response time until the financial arrangements are
4 cleared with the requester as well. The reason why we place
5 a requirement or request that you put Freedom of Information
6 Act Request on the envelope, is really to enable us to
7 respond far more quickly to public requests in this regard.

8 Section 1602.9 discusses exemptions. They are
9 tracked from the statute. There was a change, actually, for
10 our purposes. There was a change from the earlier draft on
11 page 15, where we move certain material up from subsection
12 (b). That was a typist's error in an earlier draft which
13 we are now correcting. I am alerting you to insert (A) that
14 moves up material from subsection (c) to subsection (b),
15 and it is repairing a typographical error.

16 1602.10, officials authorized to deny or grant
17 request for records.

18 Our position here is if there is a question about
19 denying a request, advice should be sought from corporation
20 counsel, and we point out that the general counsel, the
21 records officer, regional directors and regional records
22 officer are authorized to grant or deny any requests under
23 this part. You notice we initially gave the present authori-
24 ty to grant or deny requests. We do that out on the prin-
25 ciple of separation of powers; one principle that has been

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1 weak these days in Washington because the President also will
2 have the responsibility of deciding appeals from a denial,
3 and we felt it would be unseemly for him to have the denial
4 authority to grant and also the denial authority to adjudicate
5 appeals.

6 1602.11 refers us to denials. It is fairly
7 straightforward. If a request is denied, the corporation
8 must explain why. If the corporation fails it can't segre-
9 gate it except portions and give you the rest of it, it
10 has to explain why. All denials should be treated as opinions
11 and maintained and indexed accordingly. That is to prevent
12 ad hoc and arbitrary decisions about denial.

13 We have an appeal process where you can appeal
14 within 90 days to the president of the corporation. He will
15 delegate the investigation of that appeal to his agent and
16 that, I think, is fairly straightforward.

17 The only section which may cause some discussion,
18 I am not sure it in fact will, is 1602.13, the section
19 dealing with fees. Let me, before I discuss the fee part in
20 detail, provide you with a general philosophy. Our general
21 philosophy was that, A, fees should not be charged for routine
22 information. If someone were to go to our offices this
23 morning and ask for a copy of our agenda, of which we have
24 Xeroxed umpteen copies, it would be frivolous to charge fees
25 for that purpose.

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B, fees should not be charged if information is being requested for public interest purposes. I think the reasons for that are obvious, and the experience of administrative agencies over, at least the last decade, have shown clearly that public interest citizens groups can be of great aid to agencies and private organizations in helping them ascertain the best policies they should take, and for that purpose we have a provision to waive fees for special circumstances, among them the benefit of the general public.

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MR. ORTIGUE: I don't see that in here.

1 MR. BREGER: That would be subsection B. I will
2 go through these in detail if you wish.

3 MR. ORTIGUE: No. I want to make sure that -- I
4 guess that sufficiently protects. I may want to have some
5 additional things to say later about that. Not this morning.

6 MR. BREGER: We view this as not the final copy
7 on these issues.

8 Thirdly, we recognize the specialization of
9 our corporation in that it is not the case, or it is
10 unlikely, that General Motors will be coming to our door with
11 freedom of information requests for their personal use. The
12 bulk of people who will be requesting information from us will
13 be clients, will be legal services lawyers, will be public
14 interest groups, will be public-spirited citizens. We are,
15 therefore, in a somewhat different posture, and we thought
16 it necessary to recognize that a goodly number of our re-
17 quests will come from indigents and make a particular account
18 of the fact.

19 We therefore have a provision that requests
20 from indigents up to \$25, there will be a waiver of fees.
21 If requests from indigents are over \$25, those fees can
22 either be waived or reduced to \$25, if the corporation feels
23 that special circumstance would warrant it, and there is an
24 appeal process possible for purposes of appealing denials
25 of requests to waive fees as well. We did not define

1 indigent. I will speak to that in a moment.

2 We further took the view that there should
3 be no fee charged for requests up to \$6.50. Basically the
4 first \$6.50 of your request, if you are not applying as an
5 indigent, and if you are not applying as a public interest
6 requester, it is a freebee. The reason for that is as much
7 administrative as anything else. It is going to cost us
8 more than \$6 to bill a guy.

9 MR. THURMAN: How do you arrive at that round
10 figure of \$6.50?

11 MR. BREGER: That was a process which was in the
12 noble American spirit of political compromise. We had
13 originally had a figure of \$5, which I might add was liberal
14 in terms of the figures which agencies generally provide.
15 HEW has a \$3 limit. Justice has a \$1 limit. Consumer
16 Product Safety has a \$20 limit. This \$5 includes all fees,
17 not merely reproduction and postage fees, but also search
18 fees. We are charging a somewhat nominal \$1.50 per hour
19 search fee to recompense the corporation for the time spent
20 in finding these records.

21 We felt it was somewhat foolish and unfair to
22 charge one for the first 15 minutes of search time. Every
23 time you make a request, and the person would go to search
24 the records, it would take him five minutes. You would be
25 our a \$1.50 right there if all you want would be a one-page

1 xerox which you pay ten cents for. Just as a matter of
2 ease we add \$1.50 to that \$5 figure. Rather than putting
3 in a quarter hour free search time to make it more admini-
4 stratively simple for the records of service, so he would not
5 have to keep account how much of what number of his quarter
6 hours are free, and what number of his quarter hours have
7 to be paid. We chose that odd figure of \$6.50 purely as a
8 matter of administrative convenience tacking onto your \$5
9 figure what would be, we felt, a quarter hour search time
10 to get any document that was easily gettable. So that
11 is why that odd figure was chosen.

12 In the main, we have taken the view, and I don't
13 know if our liberality in this matter needs justification,
14 I don't think it does. I think we have to recognize that
15 we are in a special situation here given that the bulk of our
16 constituency, the bulk of persons who are going to request
17 information from us, are not likely to be requesting that
18 information for reasons of private profit. But in the main,
19 we have taken the view that restricting, that charging, or
20 making situations in which an administrator has to balance
21 between charging and not charging, is going to be a good
22 deal of trouble to the corporation, and it is best to give
23 people substantial amounts of information free rather than
24 get the corporation into the complex problem, administrative
25 problem, of making enumerable decisions as to who should

1 get material free and who should not.

2 In answer to your question whether there is
3 a definition of indigency, we have not put in a definition
4 here. We are taking the view, at least in these proposed
5 regulations, that persons who make a declaration of
6 indigency --

7 MR. ORTIGUE: I don't think that is necessary
8 at all, to make a declaration of indigency put on the
9 record. It appears to me that this corporation, because of
10 the nature of the corporation, ought to have as its basic
11 philosophy that people would come to us to get information,
12 and they, in the main, will receive that information free,
13 freely with dignity and without having to sign a bunch of
14 papers saying a poor person, I can't afford to pay for it.

15 MR. BREGER: I am sorry. You may have mis-
16 construed. I didn't mean a notarized document to that effect.
17 I mean when you request information so as to fall into
18 indigency exception you would have to, at some point in the
19 process, point out that your claiming the indigency
20 exemption.

21 MR. ORTIGUE: An oral statement.

22 MR. BREGER: In most cases, practically, these
23 communications will be written, not oral.

24 MR. ORTIGUE: Signs it; the request for the
25 information will be written?

1 MR. BREGER: Yes.

2 MR. ORTIGUE: I just hate to see us, as an
3 organization, put an additional badge on poor people that
4 we don't put on people who have got money.

5 MR. BREGER: My only problem with this would be
6 unless we were to take the view that -- which is certainly
7 a legitimate --

8 MR. ORTIGUE: We presume that rich people tell
9 the truth, and educated people, and people with status in the
10 community are not going to lie. I say let's presume that
11 poor people are going to tell the truth, and then let's see
12 how that works.

13 MR. BREGER: I accept that view completely. I
14 suggest that our proposed regulation make no test of
15 indigency. That is implicitly why our proposed regulations
16 do not set out any schedule or requirements for claim of
17 indigency.

18 I am only pointing out to you, as a practical
19 matter, for someone to encompass himself within the
20 indigency exemption he is going to have to make the claim
21 that he falls within that exemption. I would feel it would
22 be unseemly for the administrator of the corporation to
23 go behind the claim and test it and require affidavits,
24 et cetera.

25 But as a matter of practical effect, there will

1 have to be a statement that someone falls within that
2 exemption, if that exemption is going to be utilized.

3 MR. THURMAN: How would you handle it?

4 MR. ORTIGUE: I would let the person come in and
5 say, "I am an indigent. I represent a public interest
6 group." I would assume they are telling the truth. For
7 the clerk's bookkeeping purposes, if someone is concerned
8 about them, they put a stamp on and say that's that.
9 Lawyers do this all the time in terms of affidavits that
10 people need, photocopies that they might need, whatever.

11 MR. BREGER: We accept that view completely.
12 I think there may be a misapprehension of our intent here.
13 We do not feel that there should be examination of the claim
14 of indigency. In most cases these requests will come in
15 writing. Persons in Arkansas and Louisiana will write to
16 Washington, D.C. They will simply be saying in writing what
17 you suggest they should be saying orally.

18 MR. ORTIGUE: I am saying I don't want to have
19 poor people to have some hassle with some clerk whether they
20 are poor or not.

21 MR. MONTEJANO: That is not the intent at all.
22 On the contrary. The declaration of the person will be
23 accepted at face value. That is why we rejected any notion
24 of having standards. When a person comes in and claims
25 exemption, it will be granted automatically without question.

1 The only question we had was how do we best do it so that
2 it is a minimal burden on the corporation and the individuals.
3 Our response was the best way to do it was just to have him
4 claim the exemption in writing. That is all.

5 MR. CRAMTON: Proceed, Mr. Breger.

6 MR. BREGER: Thank you.

7 There are a few other points in connection with
8 our fee structure which I should point out to you.
9 Ordinarily, and we do in almost all cases here -- we under-
10 stand "ordinarily" to mean that no fee will be levied where
11 requested records are not requested, that is to say, if the
12 search there is made and the material is exempted, and the
13 material cannot be found, there is no record.

14 We recognize in some cases a substantial amount
15 of time has to be expended. Again, I stress substantial
16 in searching. In most cases, if the requester has been
17 notified of cost, and if he has been advised we cannot tell
18 him in advance that records will be available, fees will
19 be charged. This subsection is governed by the indigency
20 exemption and the public interest exemption as well.

21 So that although fees may be charged in some
22 cases, they may also be waived if the circumstances warrant.
23 Among those circumstances are the public interest and
24 indigency.

MR. BROUGHTON: What kind of records do you

1 anticipate are going to be requested? Who would be
2 requesting these records to the extent that is laid out here?

3 MR. BREGER: The records that we will be keeping
4 are noted in 1602.4, I believe.

5 MR. MONTEJANO: Someone may question the
6 validity of a grant. They want to have a copy of the grant
7 processing.

8 MR. BROUGHTON: You mean some individual or some
9 group might be interested in a financial grant and they may
10 want a copy of the grant application?

11 MR. MONTEJANO: And all documentation relating
12 to it.

13 MR. BREGER: Persons might wish to get our minutes.
14 Persons might wish to secure, to the extent they are not
15 exempt, for reasons of personal privacy, or other statutory
16 exemptions, our administrative manuals. Persons might wish
17 to learn our internal policies if there are internal written
18 statements of policies concerning grant applications.

19 Our duty here is a statutory duty under the
20 Freedom of Information Act which Congress had already
21 opted for maximum openness.

22 MR. BROUGHTON: I am not taking exception to that
23 at all. My comment is how much a factor is this? How much
24 a factor has it been? Is this a big thing we are talking
25 about so far as money is concerned? I don't know.

1 MR. ORTIGUE: It gets to be big when you are
2 talking about grant application and all of the attendant
3 papers. Client groups in a city may want to know why
4 Washington is doing thus and so with his grant, and in order
5 to properly prepare a case to urge that their grants not be
6 slashed, for example, they have got to have a copy of it.
7 That can get to be a thick operation, and I just don't want
8 people cut off because they don't have the money to pay for it.

9 MR. BREGER: That is not our intention, and that is
10 why we produced one of the most liberal, if not the most
11 liberal, regulations. That is why we have a mandated
12 waiver of up to \$25, which is about 2,500 pages of xerox.
13 Two-hundred-and-fifty pages at ten cents a page for
14 indigents with the recognition that we can waive it if it
15 is above \$25, or with the recognition we can waive it on
16 the basis of public interest generally.

17 MR. ORTIGUE: I raise the question because I
18 want to make sure, philosophically, we are on the right
19 track. I can't say at this juncture whether this is going
20 to cause a hardship or not until we see it operating for a
21 little while and the first round of applications, for
22 example.

23 MR. CRAMTON: And a rule of reason has to be
24 applied. These requests can get to be extraordinarily
25 offensive. It is one thing to write in and say they need

1 one copy of some document, but if they say they hear
2 somebody in North Carolina, for example, has a grant, and
3 if they want copies of 152 grant applications filed in the
4 last year, and so on, and you are talking 5,565 pages of
5 material, then the problem is a very different one, and maybe
6 responses at a more selective request may be in order.

7 MR. BREGER: There was a gentleman, Mr. Ortigue,
8 not in the case of our corporation, who requested patent
9 bureau for all published patent requests from 1856. That
10 would be a substantial burden on the patent agency.

11 MR. CRAMPTON: It is also very frequent with
12 organizations who want mailing lists, and we are going to
13 have mailing lists, that want to sell law books or invite
14 people to conferences, or do all these things to get a free
15 computer list, so they can use it for commercial purposes. If
16 your rates are cheaper, you are going to get a lot of
17 requests for that kind. You may want to encourage them,
18 and maybe you don't.

19 MR. MONTEJANO: Are we going to require proof of
20 indigency? I don't think that is at issue at all. We merely
21 want to have knowledge of the claim of that exemption. We
22 are not interested in proof of the exemption as such. I
23 think there is a distinction there. We would take the
24 statement of the individual claiming the exemption without
25 any need of proof or any burden to the individual.

1 MR. OBERDORFER: May I suggest this kind of
2 question, of how much something is going to cost, availa-
3 bility of funds probably ought to be examined further with
4 data. This is a temporary proposed regulation, not an effec-
5 tive one. I think this conversation reflects, in a sense,
6 focus on that before it becomes final.

7 MR. BREGER: Thank you, Mr. Oberdorfer. I thak
8 that your commentary would undertake to provide the Board
9 at the time these proposed regulations will be discussed,
10 for final adoption, with as much data as we can secure
11 concerning the costs of the Freedom of Information Act for
12 OEO, legal services, and costs for the Freedom of Information
13 Act requests in other analogous agencies. So we have some
14 data to work on.

15 I hope that will help, at a later date, solve
16 this problem in a more expeditious manner.

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1 MR. CRAMTON: Because of the urgency of the
2 issuance of the Freedom of Information regulation to
3 get some, in effect, members of the Board have not had the same
4 opportunity to review and analyze these regulations in advance
5 of their consideration today as has been the case with some
6 of the other proposed regulations.

7 That means, I think, we are going to want comments
8 from the Board during the notice and comments period, as
9 well as comments from the public.

10 The Committee would very much like stylistic
11 comments, details, views from members of the Board during
12 specification periods and we take them into consideration when
13 it meets some time before our meeting on October 16 and 17.

14 MR. BREGER: If I can just rapidly complete my
15 description of the substantive point of these regulations,
16 then possibly Committee members and members of the public
17 might have the entire terrain to comment upon.

18 Briefly, we have produced a schedule of charges
19 here. The relevant charges are the ten-cents per page for
20 Xeroxing, \$1.50 for quarter hour of search for records, and
21 charges on computer time which we hve secured after discussions
22 with the other agencies.

23 To head off any commentary, I point out that we had
24 considered leaving the specific charges out of the regulations
25 themselves and having them as an appended schedule of

1 schedule of charges, so that they might change as computer
2 costs go up, but we felt this was not the intention of the
3 Act. We would refrain from giving specific charges in the
4 regulations.

5 Further, we have Section F on page 20 which points
6 out that in those cases in which we are making charges, those
7 cases in which we are not waiving charges because of special
8 circumstances, including indigency and public interest
9 concerns, if those charges will amount to more than \$25 and
10 the requestor has not indicated that he will pay whatever
11 the cost might be, we will notify him of the amount of anti-
12 cipated fee to determine if he actually wants to pay that
13 much money, and if he and the Board staff cannot sit down and
14 develop a method of reform relating the request to meet his
15 needs at at a reduced cost.

16 The purpose of this regulation is as much to pro-
17 tect memgers of the public as it is to protect the Board.
18 That is to say, persons often make a draft request not cogni-
19 zant of the massive material already, or may soon be, in our
20 file rooms, and rather than reproducing \$500 worth of a file
21 and then presenting the requestor with a bill for \$500 and
22 materials, which he really is not interested in, if we tell
23 him the cost, he may well say, let's sit down and try to
24 reformulate this request so as to really zero in on what I am
25 after, and bring the cost for me and the time for the

1 corporation down.

2 We further point out that where the fee is over \$25
3 we may -- we need not necessarily -- we may require an advance
4 deposit and where a requestor has previously failed to pay a
5 previous fee, we may require a desposit.

6 Finally, we reserve the right to limit the number
7 of copies we will provide to requestors. The purpose for
8 that, our function is to provide information, not to serve as
9 a Xeroxing service.

10 We assume that your staff will not be mean about
11 this and not necessarily limit persons to single copies, but
12 if people want a good number of copies, they should, we feel,
13 take the copies that we will provide them, and then secure
14 further copies from private or commercial sources.

15 I think this concludes my description of the sub-
16 stantive material in the proposed regulations, and I would
17 ask, on behalf of your Committee, that the Board adopt these
18 as proposed regulations, for purposes of notice and comment.

19 MR. CRAMTON: Resolution L deals with that subject,
20 and perhaps you should turn directly to it.

21 If I might read it:

22 "Resolved, pursuant to sections 1005(g) and
23 1008(e) of the Legal Services Corporation Act of
24 1974 (Pub. L. 93-355), that the attached proposed
25 regulations regarding availability of information

1 to the public be published in their entirety
2 in the Federal Register for the purpose of
3 receiving public comment within thirty days
4 from the date of publication."

5 Did the Committee give thought to the addition to
6 that of an additional sentence that would merely state that
7 during this interim period in which we cannot have effective
8 regulations, because we can't go through the notice and com-
9 ments procedure, that these proposed regulations would serve
10 as a guideline and make the freedom of information determina-
11 tion?

12 Just as a policy statement?

13 MR. BREGER: We discussed that issue with the staff
14 We felt it was not -- that that duty on the staff was not with-
15 in the purview of your committee. But we had, I believe, an
16 understanding with the staff that the working guidelines for
17 freedom of information requests would be the working guidelines
18 of proposed regulations.

19 The reason that we did not create, attempt to
20 create these as interim regulations, or temporary regulations,
21 was that we felt there was no statutory duty to have these
22 by October 12, and therefore, rather than enter into the prob-
23 lems of notice and comments and additional notice and comments,
24 if we were to make revisions, we might use these -- as it was
25 our understanding of staff, and correct me if I am wrong, this

1 would be their working guideline until we have received notice
2 and comments and then could put them forward as final regula-
3 tions.

4 Is that correct?

5 MR. CRAMTON: Mr. David Tatel of the corporation
6 staff?

7 MR. TATEL: We also thought that informal guidelines
8 to the staff might better be made at the next Board meeting
9 when it incorporates the public comments.

10 MR. BREGER: Yes, that is correct.

11 The decision was made so fast and furious at that
12 late date, I omitted to take note of that. We do not need
13 these until October 12. That is to say, until October 12, all
14 Freedom of Information Act requests will be undertaken by
15 CSA.

16 MR. CRAMTON: That is not true.

17 The corporation records right now, and the
18 Freedom of Information Act requires that we have regulations
19 dealing with it. Most agencies are not under a statutory
20 requirement that the procedural regulations be issued with
21 notice and comments within 30 days. We are in a hiatus date.

22 One statutory regulation requires us to have regu-
23 lations on the subject, but our own statute contains pro-
24 cedural provisions about notice and comment rulemaking with
25 respect to regulations of is kind, and 30-day effective date

1 which we cannot meet as of right now.

2 Why not a policy statement that during this
3 interim period we will be guided in general by the provisions
4 of the proposed regulations?

5 MR. COOK: Might I suggest that this, being a
6 public meeting of the Board, that we incorporate these that
7 have been suggested as public statements in the minutes of
8 our Board, that we have discussed it and you suggest it as a
9 policy.

10 If it is accepted as the policy, then it will be in
11 the record of the minutes of this meeting which will be sub-
12 ject to the approval of our next meeting.

13 MR. ORTIGUE: For the interim.

14 MR. CRAMTON: If that is an understanding, it ought
15 to be included in the resolution and a single sentence:

16 "During the period prior to the adoption
17 and effectiveness of regulations on the subject,
18 the Legal Services Corporation would utilize the
19 proposed regulations as an interim guideline."

20 MR. COOK: I have no objection to that.

21 MR. BREGER: We will accept that to amend the
22 resolution.

23 MR. CRAMTON: Then the resolution is before us in
24 its minute form.

25 Was there a second to the motion of Mr. Breger?

1 MR. MONTEJANO: Second.

2 MR. CRAMTON: The resolution, as amended by the
3 Committee, is now before the Board for discussion.

4 Are there any comments from the members?

5 MR. COOK: I said the fact we have discussed it,
6 and he recommended it as being the policy of the corporation,
7 and it is in the minutes, that we really accomplish the same
8 thing although the Chairman has made it much clearer so one
9 does not have to look at the whole Board meeting, but only
10 look at the resolution.

11 MR. CRAMTON: Does the Committee think it is
12 desirable to receive comments from the public, if there are
13 any at this time?

14 MR. BREGER: We should note --

15 MR. CRAMTON: There is opportunity for notice and
16 comments, but I ask for unanimous consent to hear public
17 comments for a brief period on the proposed Freedom of
18 Information Act regulation.

19 MR. FLUG: I think only because you have adopted
20 these as the interim regulation guidelines.

21 MR. CRAMTON: Guidelines, policy statement.

22 MR. FLUG: It gives me the necessity to comment.

23 I think, despite the Acting Chairman allowing us
24 discussion, these were extremely liberal regulations. I think
25 that there are some problems in them, mostly problems of

1 inconsistency with the parts that do reflect the attitude that
2 he mentioned as the governing attitude, and principally they
3 go along the lines of general controversy over whether the
4 exemptions in the Freedom of Information Act are all exemp-
5 tions or the exemptions, so-called exemption categories in
6 the Freedom of Information Act, are to be considered as areas
7 eligible for denial.

8 But then a determination of a need or denial has
9 to be made.

10 I think in some places these regulations reflect
11 recognition of that, but then in other places they sort of
12 slip away from it.

13 So I think that it is within range, and with some
14 work it can be brought into a consistent pattern reflecting
15 what I deem the Committee's desire in that regard.

16 I think it is unfortunate you feel compelled to
17 adopt them. It would be nice to have the first thing you
18 adopt fully consistently reflecting that theme expressed by
19 the Committee.

20 MR. CRAMTON: Not adopting them in haec verba.
21 They are guidelines for this temporary period.

22 MR. BREGER: I would point out to Mr. Flug the
23 policy he enunciated in 1602.3 states:

24 "It shall be the policy of the Corporation
25 to maximize the extent to which records concerning

1 its operations, activities and business will
2 be available to the public. Records will be
3 withheld from the public only in accordance
4 with the FOIA and these implementing regulations.
5 All records not exempt from disclosure will be
6 made available. The Corporation will interpret
7 exemptions restrictively, resolving doubts
8 concerning the applicability of meaning of an
9 exemption in favor of disclosure. Records which
10 may be exempted from disclosure will generally be
11 made available as a matter of discretion when
12 disclosure is not prohibited by law and it does
13 not appear adverse to legitimte public or personal
14 interests."

15 That is to say, we recognize the statutory
16 exemptions do not end the matter in terms of disclosure.

17 We also recognize, and I should point out since it
18 was raised to the Board members, that many of the statutory
19 exemptions speak, not to cloaking the operation in secrecy,
20 but to protecting the privacy of third party individuals,
21 and the extent to which we are hesitant about making the
22 broadest claim of disclosure at every single possible
23 opportunity has been largely because of our recognition that
24 we may have some responsibility for the privacy rights of
25 third party individuals whos personnel records we may have

1 within our possession.

2 So it has been that recognition, that concern
3 and not the concern of cloaking our actions in secrecy,
4 which has guided us to the small extent to which we have
5 refrained from saying that we will disclose everything which
6 the law does not prevent us from disclosing.

7 MR. CRAMTON: Are there further public comments?

8 MR. FLUG: A brief response.

9 Mr. Breger cited one of the sections which gives me
10 great confidence that is the intention.

11 I would refer you to Section 1602.11 on denials
12 which does not reflect in the denial the kinds of expression --

13 MR. CRAMTON: You are going to include these
14 matters in the detailment that would be submitted. I thought
15 the interim guideline would be desirable only in the event
16 the corporation gets tomorrow or the next day, some Freedom
17 of Information Act requests that it is going to have to handle
18 in accordance with some procedure, and it is the only guide
19 we have.

20 Is there no further discussion?

21 (No response.)

22 Are Board members prepared to vote?

23 The resolution is before you for this notice and
24 comments for Freedom of Information Regulations, and in the
25 meantime they serve as interim guidelines in handling such

1 requests as we may get.

2 All those in favor of the motion, please
3 say aye.

4 (Chorus of ayes.)

5 Those opposed, say no.

6 (No response.)

7 I think we should take a stretch, a break of
8 five minutes recess.

9 (Recess.)

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1 MR. CRAMTON: The next item on the agenda is
2 the proposed bylaws which were published in the Federal
3 Register on August 11, 1975.

4 I understand the committee met yesterday and
5 considered a substantial number of comments. The period
6 for notice and comment indicated in our public procedure
7 which we established has not run out, and I think it is
8 until tomorrow, and any action taken today will be contingent
9 upon no additional comments being filed between now and the
10 end of the comments period.

11 If additional comments are filed, the bylaws
12 will need to be reconsidered and finally acted upon at the
13 next meeting.

14 Mr. Breger.

15 MR. BREGER: Let me make a number of preliminary
16 observations and points before entering into section by
17 section discussion of the bylaws with you.

18 MR. CRAMTON: Just changes in the bylaws, not the
19 ones that are the same.

20 MR. BREGER: No.

21 I am conscious, even more than that, even desirous
22 of the need and desire for brevity.

23 First, for purposes of Board members who have
24 before them the redline text dated 9/8/75, the committee has
25 in the interim --

1 MR. THURMAN: You use that term "redline" quite
2 loosely.

3 MR. BREGER: Yes, because of the failure of Xerox
4 technology to give us proper redlining.

5 In its continuing attempt to improve the text
6 before you, the committee is determined to make some further
7 changes at Section 3.06.

8 We are withdrawing the change: "after the date of
9 adoption of these bylaws." So if you could cross that out
10 of your text.

11 MR. THURMAN: On page 6?

12 MR. BREGER: Section 3.06 on page 7.

13 MR. ORTIGUE: What about the one ahead?

14 MR. CRAMTON: These are amending the committee's
15 submissions.

16 MR. BREGER: Section 5.02.

17 MR. THURMAN: You strike the language, "after the
18 date of the adoption of the bylaws." You are not including
19 that.

20 MR. BREGER: Right. We are striking that.

21 MR. CRAMTON: Going back to the original language.

22 MR. BREGER: Section 5.02(c), which is an insert
23 on page 19, we are changing the language, "two-thirds of
24 committee present and eligible to vote," to the language,
25 "a majority of voting members of the committee, or one-half

1 of such members if their number is even."

2 We are changing our submission of the language,
3 "two-thirds of the committee present and eligible to vote,"
4 to "majority of voting members of the committee, or one-half
5 of such members if their number is even."

6 I recognize there was a point at which there was
7 considerable public discussion last evening, and I am hopeful
8 that the Board will allow some public discussion on that
9 change because we will attempt to show they were good and
10 important reasons for our change to the majority language,
11 and we feel that it is unfortunate that we had to make this
12 change overnight without opportunity to have further robust
13 discussion on this point in committee with participation
14 by members of the public.

15 MR. BROUGHTON: Will you reread?

16 MR. BREGER: 5.02(c) should read, "All committee
17 meetings should be open to the public unless a majority of
18 voting members, or one-half of such numbers, if their numbers
19 are even, determine part or all of the meeting."

20 Let me state that it will be my intention to go
21 throughout each section, except Section 4.08, and the return
22 to that section, which is the Executive section, at the
23 conclusion of discussion of other sections.

24 I should also bring to your attention that the
25 State Bar of California in a letter to this committee through

1 its President, Mr. Abel, requested extra time, that we extend
2 our period for comments for 30 days further to enable them
3 at that time to make more extensive comments.

4 They did, I should point out, make two pages of
5 very useful and informative comments.

6 Your committee concluded that it would not
7 recommend to the Board that such an extension be made.

8 Let me further point out that we intend that certain
9 changes in the text before you, and as amended, still need
10 to be made in connection with insuring stylistic changes and
11 insuring neutrality of gender where applicable in the text.

12 We propose that such changes be left to a committee
13 on style, composed of Mr. Hornblower and myself, and we may
14 well require to add a definitional section for purposes
15 of consistency. These definitions will track material in
16 the text solely so they will be in no way substantive, and
17 we would hope that the Board will allow this detail to be
18 left as well to the Committee on Style.

19 I just want to point out we received a large number
20 of comments in regard to the bylaws. They have been very
21 useful. They helped us in many points to improve our text.
22 In some cases we have disagreed with the views expressed in
23 written form and in oral form, but we found them in the main
24 to be serious expressions of views, and even in that regard
25 helpful to us in understanding attitudes and concerns of many

1 members of our constituency.

2 The bulk of the comments, both oral and written,
3 were directed to Section 4.08. Most of them supported the
4 alternative materials which were published in the August 11
5 Federal Register.

6 A number of the comments supported the main
7 proposal.

8 We received comments from two Board members,
9 Mr. Stophel and Mr. Thurman. I do not have with me a copy
10 of Mr. Thurman's comments at hand. I would be grateful
11 if he will take it upon himself to advert to instances in
12 which we have not had the wisdom to heed his views so they
13 can be brought forth for the Board's consideration.

14 I will attempt to direct the Board's attention to
15 comments by Mr. Stophel.

16 Section 1.01, which is fairly noncontroversial --
17 at least at this juncture it tells us what the nature of the
18 corporation is.

19 MR. CRAMTON: Since we have done this before,
20 can we only deal with the sections in which changes have been
21 made?

22 MR. BREGER: It will be about the same.

23 MR. CRAMTON: You immediately jump to page 6. Some
24 changes are noncontroversial from the very beginning.

25 MR. BREGER: Yes and no, Roger. This changed copy

1 is a changed copy from August 25. It is not a changed
2 copy from August 4. There may be some changes which were,
3 in fact, changes. If you let me run through it, it will
4 probably be the same.

5 Section 1.02 discusses our powers and duties.

6 Article 2, Offices and Acts.

7 Article 3, the general powers of the Board of
8 Directors.

9 Let me add if members of the public have comments
10 on any of these sections, I think it will be useful if they
11 raise their hands before we go on, and they will be noticed.

12 MR. CRAMTON: You are going to hold all public
13 comments till the end.

14 MR. BREGER: Okay.

15 Section 3.03 discusses the Chairman of the Board.
16 It points up that if the person initially designated as
17 Chairman should resign or otherwise vacate his office, the
18 member subsequently so designated would be designated by
19 the President of the United States.

20 MR. ORTIGUE: Mr. Breger, you do intend that a
21 stylistic change be made in 3.02 where it says, "The Board
22 shall consist of 11 voting members and the President of the
23 Corporation ex officio." Unless we add wrong -- we have 11
24 members of this Board, I thought, 11 and -- I thought there
25 were 11 all together.

1 MR. CRAMTON: We have not had a President yet.
2 The statute makes him a nonvoting member.

3 MR. THURMAN: That is not the Chairman we are
4 talking about. It is the President.

5 MR. BREGER: 3.05 discusses the outside interests
6 of directors. We made some minor changes.

7 The changes have been two parts: one, we have
8 added categories in which we considered there may be conflict
9 of interest, categories such as -- and I direct your
10 attention to this because they are not noted as being changes
11 in the copy which you have before you -- we have added
12 "attorney," "partner," and, I believe, "consultant."

13 We felt that this would expand the areas where we
14 feel possible conflict may exist, and basically place the
15 members of the Board at a very high level of public trust.

16 Further, we have emended the term "member of the
17 immediate family" to include spouse, child, parent, brother,
18 or sister, rather than to mean spouse, child, brother or
19 sister, so as to allow for the possibility of changes in
20 definition if the Board should so determine if the change is
21 necessary.

22 Finally, we have determined to drop the final
23 sentence on page 6 which reads, "If a Director violates this
24 subsection in connection with any transaction, the validity
25 of the transaction shall not be affected by the violation,

1 but if the violation was unfair to the Corporation at the
2 time it was entered into, the Director may be liable to the
3 Corporation for any damages resulting from such unfairness."

4 Let me point out first that our purpose in
5 making this emandation was not to reduce possible exposure
6 of Board members for clear improprieties. We recognize,
7 through your counsel, Mr. Hornblower, that there is an
8 extensive common law on the subject of corporate liability of
9 Directors.

10 That common law allows for -- there are precedents
11 in that common law that allows for a variety of remedies
12 including possibility of voidability of contracts improperly
13 entered into under the conditions which this regulation is
14 designed to reach.

15 We felt that it would be imprudent for us to
16 attempt to write our own law in a limited way in this
17 regulation, but which may, we feared, reduce the possible
18 remedy which the corporation might have to use to take
19 care of such improper contracts.

20 We felt it would be better to rely on the common
21 law principles in this area, principles which I point out
22 are in some respects stronger than the principles which we
23 had previously enunciated in our prior draft.

24 MR. CRAMTON: Could I ask the question: The reason
25 I thought we got into this was because we are concerned

1 Mr. Hornblower felt unless we add something we might
2 present a question about the legality of the vote or a
3 transaction in which an inadvertent or intentional violation
4 of this section had occurred, the filing of statements --
5 I suspect none of us have filed statements as yet -- or that
6 the Director might overlook the interests involved and
7 participants in the matters, and we wanted to obviate that.

8 In other words, the important language behind
9 it is, "The validity of the transaction shall not be
10 affected by the violation."

11 Then we got into a redefinition.

12 Are we running into problems?

13 MR. BREGER: I ask Mr. Hornblower to respond.

14 MR. HORNBLOWER: The purpose of the first half of
15 that sentence was to protect the corporation, from the
16 corporation's point of view.

17 The trouble with it is that it could be read to
18 mean the corporation was waiving the right to ask for the
19 voiding of the contract because of the interest the Director
20 had.

21 Yesterday afternoon, I looked into this and thought
22 I couldn't in any time frame rewrite it so it didn't have that
23 implication, and I recommended to the committee it be dropped
24 and let us work on something later to see if we could handle
25 it. There is a danger we would be kissing away some of the

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MR. CRAMTON: I don't think there is a serious

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question to the challenge of the validity, that the section

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is violated.

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MR. HORNBLOWER: I think there might be, but a

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cure in this way is worse than the disease.

6

The Committee and the Board would like to continue

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to work on something we could come up with, something that

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would accomplish what we had in mind.

9

MR. STOPHEL: I do suggest the word "violation"

10

referring to the point I was making, was it takes whatever

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the quorum is. It takes a majority to vote on any act to say

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a director, who participated in discussion or decision, or

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otherwise, should not affect the validity of the transaction.

14

I think it would be a strange interpretation to

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say the corporation by that language is waiving any right to

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avoid a contract.

17

MR. CRAMTON: You could eliminate the intermediate

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language: "If the violation was done knowingly and the

19

transaction was unfair to the Corporation at the time it was

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entered into," but include the rest: "If a director violates

21

this subsection in connection with any transaction, the

22

validity of the transaction should not be affected, but the

23

director may be liable to the Corporation for any damages."

24

MR. OBERDORFER: These bylaws are susceptible.

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I strongly recommend if somebody has a serious question they

bw2 1 shouldn't try to resolve it here in this committee. It
2 will take some time.

3 MR. THURMAN: I think we ought to take time on
4 this.

5 MR. ORTIGUE: I think so too.

6 MR. CRAMTON: Fine. Let's proceed.

7 MR. BREGER: Our general plan approaching all
8 these bylaws, and this will become clear later on, where we
9 have been unable to fix upon the most desirable language,
10 we have chosen the least undesirable language, recognizing
11 fully we have the possibility of an amendment.

12 Section 3.06, withdrawing the proposal
13 previously made, I think it stands as it did before.

14 One change we should point out to you, 3.06(B)
15 states "When a director shall fail to appear at three
16 consecutive meetings . . ." The original language in the
17 August 11 draft read "When a director has been absent from
18 three consecutive meetings . . ." The change in language
19 was designed to make it clear and applies in cases where
20 a director does not appear at any part of a meeting. So
21 if a director appears at some part and has to leave, he
22 would be deemed to have been at the meeting.

23 We put that in to solve the problem of those
24 members who have the need for many temporary absences.

25 Section 3.07, Resignations.

bw3

1 I was pleased to note there was no suggestions
2 that we make the resignation process for the board easier.
3 So at least people are satisfied with our present mode
4 of resigning.

5 3.08, Compensation.

6 We made one change in the last sentence. We
7 pointed out that in no event shall a director receive
8 compensation due in such dual capacities. That is to say,
9 if a director serves as an officer of the corporation, he
10 would not receive both compensation for being an officer
11 and the hundred-dollar a day compensation for serving as a
12 board member at any one time. He would, of course, receive
13 all out-of-pocket expenses as opposed to compensation that
14 he would be entitled to.

15 MR. THURMAN: Isn't that a little ambiguous
16 there, that last sentence? That sounds like he doesn't get
17 paid for either role.

18 MR. CRAMTON: Would it be better if you said
19 "more than one capacity"?

20 MR. COOK: Does that mean I waive my compensation
21 from the Treasury also?

22 MR. THURMAN: Yes.

23 MR. BREGER: "In more than one capacity." Fine.

24 Section 4.01, Regular Meetings.

25 I don't think it raises problems.

bw4

1 4.02, Special Meetings.

2 4.03, Notice and Waiver of Notice.

3 4.04, Agenda.

4 4.05, General Notice.

5 I alert you to the following changes: For one,
6 we recognize or felt that there should be notice to the
7 Chariman of each state advisory council. That was already
8 changed in our August 11 draft, and every recipient, as
9 applied by Section 1026 of the Act.

10 We also felt there should be notice given of
11 rescheduling or postponement of board meetings. Although
12 we realize that tht notice could not always be given to
13 every recipient and every chairman of each state advisory
14 council, they should be posted at the office of the
15 corporation so that interested parties would know there was
16 a rescheduling, and know that there was a postponement.
17 We wouldn't want the audience to show up and find out they
18 were not the actors in a play for the day's meeting.

19 4.06, Organization of Directors Meetings, is
20 noncontroversial, I believe.

21 4.07, Quorum.

22 We determined that the quorum should be the
23 presence of six directors, or if the number of directors
24 is seven or fewer, two-thirds of such directors should
25 constitute a quorum for transaction of business.

bwm 1

1 We recognize it is undesirable for major policy
2 decisions to be done with only four directors present. But
3 we also recognize that the Corporation has to do business, and
4 if there is a quorum, we should have the opportunity and the
5 need to do such business.

6 So we in a sense were forced by the practical need
7 of giving ourselves flexibility to do business, to have a
8 quorum that was less than six.

9 And we felt that if such occurrences were to happen,
10 and we hope it would not happen, we felt sure that the most
11 substantial policy decisions would probably be put off until
12 there was a large number of Board members.

13 But the Corporation has to be able to meet in order
14 to engage in necessary activities during the time when the Board
15 is depleted.

16 4.08 we will put off for discussion. Actually, if
17 we are going right through, I suppose I can avert to 4.08, if
18 that is all right, Mr. Chairman.

19 MR. CRAMTON: I thought you were tapering off.

20 MR. BREGER: Since we are having comments at the
21 end, we might go right through.

22 MR. CRAMTON: All right, go ahead. Let's go straight
23 through, and we receive comments on any or all provisions.

24 MR. BREGER: 4.08 refers to executive sessions.

25 The Board has determined to produce the following

bwm 2

1 test for executive sessions: "All meetings of the Board shall
2 be open to the public unless two-thirds of the directors
3 eligible to vote determine that compelling interests of the
4 public, the Corporation, or any person require that consideration
5 of a specific matter should be closed to the public. That
6 part of a meeting closed to the public should be known as an
7 executive session. Agenda and nonagenda items may be consi-
8 dered in an executive session. An executive session should
9 consider only matters for which the required determination has
10 has been made.

11 "The chairman of the meeting should announce the
12 subject of the executive session prior thereto."

13 Let me point out that this, as you can well imagine,
14 has been the subject of an immense amount of discussion,
15 thought, working and reworking by members of your committee,
16 and we have had a great deal of aid in that entire process by
17 members of the public.

18 We do not purport to come to you with the suggestion
19 that this is the paradigm of resolutions in regard to executive
20 sessions. We don't suggest it is a model regulation. It is not
21 the best of all possible regulations, but it is better than
22 every alternative that we have sweated -- and I use that term
23 advisedly -- that we have sweated through.

24 Each alternative we have worked through has caused
25 difficulties that were apparent on their face, either to us or

bwm 3

1 to members of the public, difficulties we were cognizant of, or
2 they possessed latent or potential difficulties, which we
3 worked through, did exist or feared might exist.

4 Because we found that our attempts and our desire
5 to produce a laundry list, a comprehensive laundry list of ex-
6 amples of cases we would engage in executive session, always
7 brought us a shore on a difficult and treacherous rock, we
8 decided to retreat, in a sense, to simpler language.

9 We determined that we would not, in fact we should
10 not, retreat to the language of the statute which, as you well
11 know, allows us to enter into executive session solely on a
12 determination by two-thirds of the Board members, should they
13 choose to do so.

14 We felt that language of the statute was too spare.
15 It did not reflect the clear intention of the committee, and I
16 am sure the clear intention of this Board, that we would not use
17 executive sessions willy-nilly, and therefore we felt it
18 imperative, within the context of using simple language and
19 noncomplex regulations, to provide an indication of what
20 the obvious intent of the Board is in this matter, and I say
21 "obvious" based not only on the articulated views of the
22 Board members, but on the experience of our use of executive
23 sessions to date.

24 We felt it was necessary for us to include an indi-
25 cation of limiting conditions, an indication of our attitude

bwm 4

1 toward executive sessions, and therefore we put in the text,
2 "compelling interest of the public, the Corporation, or any
3 person require that consideration of specific matters should
4 be closed to the public."

5 We further require that a finding of that deter-
6 mination, that such a compelling interests exists, be made so
7 that all Board members would have to consider that matter and
8 consider whether the interests at hand were, in fact, compel-
9 ling.

10 And further, that the subject of that executive
11 session should be announced in general terms to the public
12 so that they should be aware of the specific matter, and, in
13 fact, the Board members themselves should be aware of the
14 limiting constraints upon the Board, that we would be going
15 into executive session solely to discuss and consider certain
16 specified matters.

17 Further, although it is not in this language, from
18 the rest of the bylaws that decision will not be made in the
19 executive session, that discussions will be had, that there
20 will be a consideration of the matter. Decisions will be made
21 in public in our public session.

22 So, in summary, we attempted to provide this Board
23 with an exhaustive laundry list of examples of where we would
24 want executive sessions. We were unable to produce a list
25 which saved ourselves, that it did not raise greater problems

bwm 5

1 that it cured.

2 We felt unable to go along with the statutory
3 language which only requires us to have a two-thirds finding
4 before going into executive session.

5 We felt that this was insufficient, did not point
6 up clearly our intent and our practice in this matter, and
7 therefore added a compelling interest, and requiring further
8 that a determination of that compelling interest be made by the
9 Board, meaning that every member of the Board must consider
10 that question and make such a determination.

11 And futher, that the subject of executive session
12 would be announced to the public, which would, in terms of
13 limit, restrain the subjects that will be dealt with, and
14 discussed at any such executive session.

15 We felt further that in the early days of this
16 Board it would be impossible, and in fact it proved impossible,
17 for your committee to distinguish every type of case in which
18 an executive session was necessary. It was because we felt
19 the lack of experience very acutely, and we found ourselves
20 contemplating potential cases, uncertain whether those
21 potential cases would actually instantiate themselves in actual
22 practice that we use the language that we did.

23 We feel that after this Board has had a substantial
24 body of experience with the problem of executive sessions, it
25 may well, and we feel in fact that it ought to, consider at a

bwm 6

1 point whether a list of examples at some later date might not
2 be a feasible approach for this Board to take, but we felt un-
3 able at this early juncture in the Board's experience to pro-
4 vide you with such a list in which we felt secure that we were
5 not creating more problems.

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1 MR. CRAMTON: Let's proceed.

2 MR. BREGER: I will continue with points I want
3 to bring to the attention of the Board in other sections of
4 the bylaws.

5 4.09 is a new section of the bylaws. It points
6 out clearly that the Board welcomes communications from
7 members of the public.

8 It further points out that members of the public
9 may address a meeting of the Board upon invitation of the
10 Chairman of the meeting unless the Board otherwise directs.
11 I should point out for the knowledge of Board members that
12 this language may be susceptible, and I think should be viewed
13 as some different of our present custom. Our present custom
14 being to allow members of the public to speak with unanimous
15 consent of the Board. This practice, which we are proposing
16 to institutionalize in our bylaws, would allow the Chairman
17 to invite members of the public to speak unless the Board
18 otherwise directs, and that direction would probably be on
19 a majority rather than a unanimous vote. So this is some
20 different in our custom. We felt this was the best method.
21 We felt it should be institutionalized so that it would be
22 clear that this was an opportunity for members of the public
23 to address the Board and to participate fully in our proceed-
24 ings, and we wanted to make that clear in our bylaws.

1 Section 4.10, the minutes. Minor changes. Not
2 relevant for us here.

3 4.11, action by directors without a meeting.

4 We accept the view of the August 11 draft. We
5 reject the alternative proposal in the August 11 draft that
6 action taken in the meeting of the Board may be taken without
7 a meeting if a consent in writing, setting forth the action
8 so taken, is signed by all of the directors.

9 In simple language, if we take the unusual route,
10 having taken actions without a meeting, we would have to
11 have a unanimous approval of that action by everyone signing
12 off, and we felt that that stringent rule was required because
13 we would not have an opportunity for the Board for debate and
14 discussion which we have so fruitfully at our Board meetings.

15 Section 501, Establishment and Appointment of
16 Committees. Minor changes going to the fact that we are going
17 to allow nonvoting members to be appointed: "Persons who are
18 not Directors may be appointed to the Committee of the Board
19 to serve as nonvoting members of a committee, if the Board so
20 authorizes or directs. Such a person would serve as a
21 member of a committee only at the pleasure of the Board." We
22 wanted to maintain flexibility in case the Board felt that this
23 was useful in aid of its functions.

24 MR. SMITH: You said "such a person." By your use
25 of "such a person," are you talking about a nonvoting member?"

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MR. BREGER: Persons who are not directors.

MR. SMITH: The last sentence, you read "such a person," and it does not read that way.

MR. BREGER: The "such" was a mistake.

MR. SMITH: That last sentence was to include board members as well.

MR. BREGER: Correct.

Section 5.02, Committee Procedures. I don't think there is anything controversial here except for section (C).

MR. COOK: Which you have gone over.

MR. BREGER: Yes.

Let me add, for the information of the Board here, that the reason why we made our shift in section (C) was a purely practical one.

MR. ORTIGUE: We understood your reasoning.

MR. BREGER: Section 6, no change.

Section 7, no change.

Eight, 9 and 10, no change except for a technical change in 10.01 (b) where we change the word "contemplated" to completed" in line three.

MR. CRAMTON: Third line of page 29. "Completed" rather than "contemplated."

MR. BREGER: Section 11, the section regarding amendments. We allow amendments by a vote of the majority

1 by the directors in office.

2 I think that concludes this committee's
3 discussion of the proposed by-laws. The committee would
4 present to the Board the following resolution:

5 Resolution K in your materials, with one minor
6 emanation, which is a typographical error. May I read that?

7 Resolution K: Resolved, that the Board of
8 Directors, after consideration of public comment received
9 to date, hereby approves the attached draft by-laws of the
10 Legal Services Corporation, and that pursuant to section
11 1008 (e) of the Legal Services Corporation Act of 1974
12 (Pub. L. 93-355), if no further public comment is received
13 on or before September 10, 1975, said attached by-laws are
14 ordered to be issued and printed in their entirety in the
15 Federal Register, to become effective as the permanent by-laws
16 of the Legal Services Corporation thirty days after their
17 publication, thereby superceding the temporary by-laws of
18 the Corporation, as adopted by the Board of Directors on
19 August 5, 1975."

20 MR. CRAMTON: The change from September 12 to
21 September 10 substitutes a correct date for an incorrect
22 date.

23 MR. BREGER: Yes.

24 MR. CRAMTON: That is thirty days from the prior
25 publication in the Federal Register.

1 MR. BREGER: Yes. The publication took place
2 on August 11th. The thirtieth day would be the conclusion.
3 It would either be the conclusion of business or midnight
4 September 10, 1975. I am not sure which.

5 MR. CRAMTON: It should be prior to September 11.

6 MR. BREGER: On or before September 10.

7 I might add that your committee has reviewed
8 all comments received through and including today's mail.

9 MR. CRAMTON: Is this the superceding spelled
10 with an "s" rather than a "c"?

11 MR. HORNBLLOWER: Just a technical point:

12 In section 1008 (e) of the Legal Services
13 Corporation Act and not the act.

14 MR. CRAMTON: The resolution is proposed by the
15 committee with the amendments stated.

16 "Act of 1974" deleted. "Received on or before
17 September 10, 1975", and "superceding" spelled with an "s"
18 rather than a "c".

19 Do you move the adoption of that resolution,
20 Mr. Breger?

21 MR. BREGER: I do, sir.

22 MR. CRAMTON: Is there a second?

23 MR. MONTEJANO: Second.

24 MR. CRAMTON: The proposed by-laws are before the
25 Board for discussion. Is there discussion?

1 MR. SMITH: I have a question on section 4.09,
2 page 16. I understand, Marshall, that you said the change
3 there was the majority of the Board authorized members of the
4 public to speak. In fact, it goes further than that if it
5 takes a member of the Board to prevent --

6 MR. BREGER: You changed it from "unanimous" to
7 "majority."

8 MR. COOK: It leaves it to the discretion of the
9 chairman.

10 MR. BREGER: In effect, that is what it does.

11 MR. CRAMTON: Subject to it being overruled by
12 the body.

13 MR. SMITH: I understood his comments to be
14 different than what I read.

15 MR. ORTIGUE: My willingness to adopt these is
16 contingent on an immediate study to determine whether the
17 chairman should not become a voting member of the various
18 committees which we discussed, and it gets to be real
19 important when you get small numbers of persons attending
20 a committee discussion.

21 MR. STOPHEL: I had suggested language to
22 accomplish that.

23 MR. BREGER: We would be pleased to hear that
24 language.

25 MR. CRAMTON: Why don't you move an amendment?

1 MR. STOPHEL: I am thinking about the situation
2 where you have a three member committee, for example, and
3 that at a specific meeting two are present, as happened to
4 us yesterday, and one has to go into another committee
5 meeting, and you have less than a quorum. The chairman,
6 we designate him as a member of the committee. I think
7 committees are appointed by the Board.

8 MR. CRAMTON: If the initial authorization
9 delegates power to the chairman to appoint members, yes. If
10 it doesn't, no.

11 MR. STOPHEL: Mr. Montejano and I worked on some
12 language here on page 19 to accomplish the objective.

13 In subsection A, the first full sentence on that
14 page says: "Meetings of each committee shall be called
15 by the chairman of the committee or any two members of
16 the committee, with notice thereof provided to each
17 committee member and to the chairman of the Board."

18 We suggest adding the following language to that
19 sentence: "-- who may be designated as an ex-officio voting
20 member of the committee by the chairman of that committee."

21 This would permit the chairman of the Board to
22 become a voting member for quorum and other purposes if the
23 chairman of that committee so requests.

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1 MR. COOK: May I ask why you don't add a sentence
2 making the Chairman an ex officio member of all committees?

3 MR. STOPHEL: If you have a four-member committee
4 and you make him a voting member, you have got to have three
5 instead of just two at each meeting. I was thinking of appoint-
6 ing him for a specific meeting for a quorum or otherwise.

7 MR. CRAMTON: How about this substitute language:
8 "The Chairman of the Board should be an ex officio member of
9 all committess and may be counted as a member of a committee
10 for quorum purposes."

11 I don't think a Chariman ought to be a voting mem-
12 ber. This is a danger and the fear of stacking a close vote.
13 I think the Chairman should only be an ex officio nonvoting
14 member, but his presence can be included for meeting quorum
15 requirements seems to me a practical and sensible rule.

16 I would propose this more limited proposal.

17 MR. SMITH: Where would you put it?

18 MR. CRAMTON: "The Chairman of the Board should be
19 an ex officio member of all committees and may be counted as
20 a member of the committees for the purpose of meeting quorum
21 requirements," or something like that.

22 What do you think, Mr. Horblower?

23 MR. HORNBLOWER: I think it's fine. We would put
24 it in 5.01.

25 MR. BREGER: The committee would accept that

bwm 8-2

1 amendment. We would hope that part of the function of the
2 Committee on Style might be to shift its position in the text
3 to a more suitable place.

4 MR. CRAMTON: Do you wish to move that as an amend-
5 ment, Mr. Stophel?

6 MR. STOPHEL: Is there any problem with that langu-
7 age with four members? With you being a fifth member, does
8 that mean a quorum becomes three instead of two?

9 MR. COOK: I think that's why you put in the word,
10 "may."

11 MR. OBERDORFER: May I inquire whether the Chairman
12 would be an ex officio member for quorum purposes only when he
13 is present?

14 MR. STOPHEL: Okay, that's fine.

15 MR. COOK: You could work on the language on that.

16 MR. CRAMTON: Only for the purposes of making a
17 quorum if the Chairman were present. Otherwise, not included
18 in the quorum.

19 MR. STOPHEL: That solves it.

20 MR. BREGER: The committee accepts that admendment.

21 MR. CRAMTON: The committee accepts it.

22 MR. SMITH: I have a question relating to 5.01. I
23 really don't see the necessity for the next to last sentence:
24 "Persons who are not directors may be appointed nonvoting mem-
25 bers of the committee."

bwm 3

1 Why create members? The committee might want to
2 invite members of the public to appear. They might want to ask
3 their advice. They might want to seek their help in lots of
4 ways. I don't see the need or desirability of calling them
5 nonvoting members of the committee.

6 MR. BREGER: This language was added at the request
7 of the Chairman. I will ask him to speak.

8 MR. CRAMTON: Without admendment of the bylaws it
9 would allow the Board, if it so desires, in a particular situa-
10 tion -- I think there might be a situation where the Board had
11 to make a report, or wanted to make a study, wanted to make
12 an ad hoc committee, where it would think there were indi-
13 viduals because of special competence, knowledge, and back-
14 ground would be useful to join as members of the committee,
15 but they should not have a vote because they are not Board
16 members.

17 It doesn't say the Board ought to do that or will
18 do it. It says it may do it.

19 MR. SMITH: I, in fact, think they should not do
20 that. I see using members of the public for all the purposes
21 you suggested. I don't see any desirability for calling the
22 members of the public.

23 MR. THURMAN: In what sense are they members if they
24 don't vote?

25 MR. CRAMTON: Are you making a move to strike the

bwm 4

1 sentence?

2 MR. SMITH: I was trying to find a justification
3 for it because I don't like it.

4 MR. CRAMTON: I think you should move to strike.

5 MR. THURMAN: In what sense are they members if
6 they don't vote?

7 MR. CRAMTON: The same way the President is not a
8 nonvoting member of the Board, as someone free to participate
9 as a member in discussion, who receives notices of meetings,
10 who receives material that goes to other members of the com-
11 mittee, and the like.

12 MR. THURMAN: Does it have any financial implica-
13 tions here?

14 MR. CRAMTON: I assume in time we could contemplate
15 payment of expenses of people who were asked to serve on com-
16 mittees.

17 MR. SMITH: I can see all the need for the input.
18 I agree with the need for the input, but I don't agree with
19 the need for calling them nonvoting members.

20 MR. THURMAN: It seems to me there can be no harm
21 here.

22 MR. CRAMTON: Is there further discussion on the
23 motion to strike?

24 MR. STOPHEL: This requires a majority vote of the
25 Board to take such action.

bwm 5

1 MR. BREGER: And the Board could take such action
2 at any point with the assistance of the meeting.

3 MR. CRAMTON: Is there further discussion on the
4 motion to strike?

5 (No response.)

6 MR. CRAMTON: The question is on the motion to
7 strike the next to last sentence.

8 All those in favor say Aye.

9 VOICES: Aye.

10 MR. CRAMTON: All those opposed say No.

11 VOICES: No.

12 MR. CRAMTON: The motion is defeated.

13 There will be public discussion as soon as we have
14 a text that the Board --

15 MR. BREGER: I would only want to point out that
16 we have had, over the length of your committee's deliberations,
17 extensive interaction with the public in regard to this.

18 MR. CRAMTON: Mr. Broughton.

19 MR. BROUGHTON: You gave a rather lengthy reason
20 for the change as opposed to that which went into the result
21 of the committee's first recommendation.

22 MR. THURMAN: They were alternatives.

23 MR. BREGER: The committee in August, I might add,
24 did, in fact, view its recommendations as the main ones. We
25 included what at that time was the NLADA proposals as an

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1 alternative for discussion purposes, but we at that time had
2 proposed to you the main 4.08, which was then published in the
3 Federal Register.

4 MR. CRAMTON: You have a change to propose in 4.08?

5 MR. BROUGHTON: No.

6 MR. BREGER: I should point out to you, Mel, there
7 were numerous drafts between the published document you have,
8 dated August 11th, in the Federal Register and the document
9 that we put before you today, so that there were four different
10 texts, different changes, metamorphoses, et cetera.

11 So it may be difficult to follow the full history
12 unless I put before you every single text, which I do not desire
13 to do.

14 MR. CRAMTON: Are there further motions, amendments,
15 from members of the Board?

16 If not, we will entertain for, I hope, a brief
17 period comments from members of the public on any provision of
18 the proposed bylaws. I would suggest to you that the Board
19 has discussed it at very considerable length, and the committee
20 in fair length, the pros and cons in Section 4.08, and I think
21 the Board would prefer to hear new comments and arguments, if
22 there are such, rather than repetitions of arguments that we
23 have heard again, again, and again.

24 Is there discussion?

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25 MR. HOUSEMAN: We appreciate very much the careful

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1 consideration your committee and this Board has given to this.
2 We have some concerns, however.

3 In the last draft which appears in your publication,
4 prior to the changes, we believe the committee, the Chairman,
5 had made and taken steps which sought to recognize the interest
6 which had been suggested by the public comments.

7 Yesterday afternoon, late in the afternoon, and
8 early evening, the proposed change that appears here was made.
9 Frankly, in looking at this briefly, it appears to us there
10 has been a considerable backsliding from the draft that appear-
11 ed and, as you see, crossed out.

12 I have not had a chance to consult with members of
13 the drafting group about this proposed change, but my initial
14 reaction is it is a considerable backsliding. It, in fact,
15 substantially weakens the executive session from that proposed
16 and agreed upon by this committee at its late August meeting
17 by the Chairman of this committee.

18 I should also point out that in Section 5.02, the
19 proposed (c) was also added yesterday afternoon after
20 some discussion had gone on that morning where this proposed
21 change was passed by the committee. Not the proposed change,
22 but the original document was passed by the committee.

23 I would like to point out that when we undertook
24 examination of this, it was our understanding from the agenda
25 of today's meeting, which talked about consideration of proposed

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1 bylaws, and not adoption of the proposed bylaws, that these
2 bylaws would not be adopted today.

3 It was also our understanding from the information
4 provided in the Federal Register that the Board would not
5 adopt bylaws until "it had reviewed and considered public com-
6 ments received pursuant to this notice."

7 The public comments date ends on or before September
8 10th, which is tomorrow. It would seem to us that is a wise
9 course because I believe there is considerable change both in
10 Section 4.08 and 5.02(c).

11 The wisest course would be for this committee to
12 take at least those sections under advisement and consider
13 them at the next Board meeting after the time for public com-
14 ment has run, and after the Chairman of the Committee on Bylaws
15 has returned and can review what I believe to be extensive
16 changes in the draft which he last saw. I would urge that
17 this committee do so, giving us a chance to further respond to
18 him and analyze the proposed changes and giving the Board and
19 the Chairman of the committee an opportunity to understand
20 exactly the extent of the proposed changes.

21 MR. CRAMTON: As I understand it, the resolution
22 that is before the Board, you have that power in your hip
23 pocket just by filing a public comment tomorrow. Tomorrow is
24 September 10th. If on or before September 10th a public com-
25 ment is filed, as I read the resolution, unless I read it

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1 incorrectly, these bylaws cannot be issued or printed and are
2 not adopted, and would therefore go over --

3 MR. BREGER: That is the case.

4 MR. CRAMTON: -- and would go over to the October
5 2nd and 3rd meeting.

6 MR. BREGER: That is the case.

7 I also point out members of your committee engaged
8 in an extensive discussion with Mr. Kutak before he left for
9 Geneva, and explored with him alternatives we might undertake
10 in the event a whole range of problems arise, and Mr. Kutak
11 was kind enough to make clear he was willing and indeed happy
12 to endorse the proposed resolutions of those alternatives by
13 your committee.

14 MR. ORTIGUE: The larger question is that this
15 Board is not going to be stifled by the absence of any Board
16 member. Your position is well taken that we need to wait. I
17 do not think we need to wait until Mr. Kutak is here, or any
18 other chairman of any committee.

19 I think the important thing is the protection to
20 you, that if you or your group, or any other group, or any mem-
21 ber of the public, files with the Corporation a comment contrary
22 to the statement or spirit of these documents, that these will
23 lay over. It is as simple as that as far as I am concerned.

24 MR. BROUGHTON: Could I ask Mr. Houseman -- at some
25 point it seems to me we ought to get this resolved once and for

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1 all. I would like, if the Board has no objection to extending
2 his time further, for him to elaborate specifically as to the
3 concerns, for the purpose of clarity, regarding the Kutak pro-
4 posal along with the committee's, and compare that with what is
5 now before the Board.

6 MR. COOK: Rather than the aspect of whether
7 Mr. Kutak is here now, let's get to the substance of the
8 language.

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1 MR. CRAMTON: I think Mr. Houseman, in all
2 fairness, may have been floored by my remarks in which I
3 discouraged repetition. I think he viewed the merits as
4 being repetitious.

5 Mr. Houseman.

6 MR. HOUSEMAN: Let me attempt to respond.

7 We viewed the Kutak draft, as appears here, and
8 attempted to take into account our concerns that only in
9 extraordinary circumstances, and only limited circumstances,
10 will executive sessions be entered into.

11 The difficulty with the proposal is that, one,
12 it drops the following language from B: "The Board shall
13 be governed by the principle that the public is entitled
14 to the fullest information possible." That is a very poor
15 policy statement. That is dropped and deleted entirely. I
16 have not had a chance to consult with other members of the
17 Drafting Committee, which I am bound to do. This is
18 initial reading.

19 The second difficulty with this proposal is that
20 in 4.08, the Kutak proposal said that the compelling interests
21 of the corporation and the public -- this proposal says,
22 "The compelling interests of the corporation, the public,
23 and any other person."

24 We believe the proposal suggested by the
25 chairman of this committee was attempting to take into

1 account the interests which we expressed, and though we
2 were not totally satisfied, we believe that there was a
3 substantial movement and a compromise acceptably reached
4 on those interests.

5 We believe eliminating the strong policy statement
6 and eliminating the dual requirements of having both the
7 interests of the corporation and the public protected,
8 considerably moves away from the kind of concerns and
9 interests which we expressed and which the public comments
10 expressed.

11 In addition, 5.02 was also a compromise that was
12 reached and drafted by the chairman of the committee, and
13 this thing which we saw came in late yesterday afternoon,
14 after in the morning we had gone through the section com-
15 pletely. It came in yesterday afternoon by Mr. Hornblower,
16 and we have not had a chance, and we did not have a chance
17 to fully look at this. We tried to point out some problems.
18 We still have not had a chance to look at it.

19 We think it goes away from where the committee
20 was in the August meeting without full discussion of all the
21 members that were present. The merits are we believe our
22 interests are not as protected as they were, and as the
23 public comments indicated, they should have been in this
24 proposal by the way it is written, by the changes that
25 have been made.

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1 MR. CRAMTON: I think the committee appreciates
2 the reference to one draft as a Kutak draft. All these
3 drafts were committee drafts. Some of them were committee
4 drafts considered by the Board. What we have are half a
5 dozen drafts in which some people changed their positions,
6 and you think we have gone downhill and not uphill.

7 MR. RAY: I am Benson Ray from North Carolina.

8 Thank you for the opportunity to address you,
9 and I also would like to speak to the executive session
10 provision on page 15.

11 Frankly, not having been privy to all the dis-
12 cussion which the committee or the Board had on the subject,
13 what I say may be repetitious. It is, nevertheless, an
14 important concern particularly in view of the language that
15 has been struck on the following page, to which Mr. Houseman
16 has already alluded.

17 It seems to me there is very distinct irony,
18 perhaps an inadvertent irony, in establishing a test under
19 4.08 wherein at least two-thirds of the Board determines
20 that an issue is in the compelling interest of the public,
21 that for that reason the public will be excluded from the
22 discussion. And particularly in light of the fact that you
23 have now the intention of eliminating the language that
24 Mr. Houseman has already read about the public being entitled
25 to the fullest information practicable, I personally have

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1 a great deal of difficulty reconciling how, if there is a
2 matter of compelling interest to the public, that the
3 public should then be precluded from at least observing the
4 discussions of it.

5 I would hope that rather than having to rely
6 upon the necessity of filing tomorrow a written statement
7 on this point, that the Board itself would consider that
8 matter and change its opinion on 4.08 as presently drafted.

9 Thank you.

10 MS. ROISMAN: This is the most important issue
11 that the by-laws or regulations have presented to this
12 Board to date; the question of secret sessions of the Board
13 and of committees. The proposal that comes from yesterday
14 afternoon's session in committee, is a proposal that
15 speaks for secrecy. It is a proposal that contradicts the
16 spirit of that same committee's recommendations with respect
17 to the Freedom of Information Act.

18 It contradicts the spirit in which, so far as I
19 am advised, this Board and its committees have operated to
20 this day.

21 I have heard in the past day and a half, at least
22 a dozen references by Board members to the fact that they
23 have found the input from members of the public to be very
24 helpful. I assume that that was not said lightly. I assume
25 it was not said falsely.

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1 My own experience in meetings with the Board,
2 in committees of the Board, has been that the contributions
3 of the public have been of great value, which is as it should
4 be, and is not surprising because the Board is composed of
5 people who have had, with the exception of Mr. Ortigue, to
6 my knowledge, a limited experience with the Legal Services
7 program, while there are many people in this room and else-
8 where who have been involved on a full time professional
9 basis with the Legal Services program for ten years, and it
10 is not surprising that ten people with ten years of commit-
11 ment to that program, will have something useful to say to
12 members of the Board.

13 I think it is important for the Board to look
14 at what is at issue when we speak with great concern about
15 these two great sections of your proposed by-laws. There
16 is no dispute about the proposition that the Board should
17 have the ability to go into executive session. No one
18 questions that. There is, at this point I think, no dispute
19 that there should be in the by-laws a general catch-all
20 provision. Although the suggestion was made originally, no
21 one is suggesting now that you must make a list of the
22 circumstances in which you will go into executive session

23 You have the power to do it; you have the
24 discretion to do it; and there ought to be a catch-all in
25 the by-laws that allows you leeway so that you don't have

1 to define now under what circumstance you will ever go
2 into executive session.

3 But the question is within those two extremes,
4 what kind of standards are you going to establish? The
5 standard, or what has been referred to as a standard in
6 this proposal, is no standard.

7 The compelling interest of the corporations, of
8 the public, or any person, is so broad as to be meaningless.
9 The suggestion in the immediately prior draft was, I
10 thought, not satisfactory, but it was certainly better.
11 That is the suggestion, the language that would be struck
12 in what has been the statement:

13 "In determining whether an executive session
14 is required, the Board shall be governed by the principle
15 that the public is entitled to the fullest information
16 practicable regarding the decision-making process of the
17 corporation --"

18 I suggest that is a minimum decision for you to
19 make. I don't think that is satisfactory. What I would
20 suggest; what I urge, is that you restore that sentence
21 of B and add to it a sentence that is based upon the
22 alternate proposal as it was published in the Federal
23 Register, so that B would read, after that statement of
24 general principle:

25 "Executive sessions may be appropriate with

1 respect to matters involving --". And then you would have
2 the Federal Register print its attachment to the separate
3 version of the by-laws. At page 33753 of the Register,
4 in the upper righthand corner, is a listing
5 for specific areas in which one may foresee how the Board
6 may wish to go into executive session.

7 I suggest that you have a subsection B which has
8 the statement of principle, and then this sentence:

9 "Executive session may be appropriate with
10 respect to --", and list those four items and add a fifth
11 item, other issues involving similar compelling interest
12 or other compelling interests.

13 You have the catch-all; you have the freedom
14 to executive session. You have set standards that tell
15 people in what kinds of circumstances you are likely to
16 go into executive session.

17 First of all, there is a clear Congressional
18 statement of preference for open meetings. The language
19 of the statute itself talking about open meetings, is
20 important, but the legislative history and the committee
21 report is even more important.

22 The Senate bill talks about executive session
23 only where extraordinary circumstances justify close
24 sessions; and even in the House report, the House report
25 says the matters of public interest, which are not personally

1 sensitive, are expected to be open to the public.

2 Secondly, I want to point out there is an
3 important practical interest that all of us here have.
4 Many people travel, some at personal expense, to come to
5 these meetings, and it is useful for them, and I think also
6 for you, and to the people who are contemplating traveling
7 to come to these meetings to understand that executive
8 sessions will be sparingly used and will be used only in
9 particular circumstances, to understand that there will
10 be standards.

11 Finally, I want to add a personal note. I have
12 served, and do serve, on two quasi-public boards. For
13 three years I have been a member of the Board of Governors
14 of the Unified Bar of the District of Columbia, and
15 for a year I have been a member of the Rent Control Commis-
16 sion in the District. Both of those boards have had occasion
17 to deal with very sensitive issues.

18 The Rent Commission serves an adjudicatory as
19 well as administrative function. Both of those boards have
20 held virtually all of their meetings in open session. I
21 think only in personal matters has either board gone into
22 executive session.

23 In the case of the Rent Commission, we have
24 decided cases in public. After we have heard a case we have
25 then conducted the discussion before the people who were

1 involved. It has been a very, very good experience for
2 everybody. It gives people confidence in the process,
3 which is exactly the reason Congress wrote this into the
4 section.

5 My experience has been that when a board looks
6 at this issue in advance, it thinks it is going to be
7 very troublesome, and in practice it is not troublesome.
8 The question is, what kind of signals you are going to be
9 sending out.

10 I strongly urge you not to send out a signal that
11 commits this Board to secrecy.

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1 MR. CRAMTON: Mr. Tasker from Alexandria, Virginia.

2 MR. TASKER: For a long time I have had concern
3 about the Legal Aid. When I heard about the Legal Services
4 Corporation, I examined into it, read the statute, did
5 quite a bit of study, and determined that the Corporation
6 was the proper vehicle to provide legal aid to the poor.

7 However, I also determined that the Corporation
8 and the board of directors would have to be strong in
9 order to be successful.

10 In order to be strong, the Corporation must be
11 independent, must be independent of political and organizational
12 influence. In order to be strong, it must take advantage
13 of all of the rights, options, and privileges that Congress
14 has given it. One of these rights or privileges is the
15 right to have an executive session.

16 I would like you to refer to Section 1004 (g),
17 if you have it, of the statute, if you don't know it by
18 heart already, that provides that you can have executive
19 sessions when just two-thirds of the members vote that you
20 can have it. No criteria is set forth other than that.

21 I am convinced that you should take full advantage
22 of this option, and I have three reasons for saying this. The
23 first one is that Congress, if they had not wanted you to have
24 executive sessions, would have so provided it. If they
25 had wanted you to have less than what they have provided for,

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1 They would have limited you further. Congress was not
2 speaking just for recipients of funds. Congress was speaking
3 for every one in the United States. Everybody. So if you
4 box yourselves in by preparing a bylaw which will restrict
5 you further than Congress has done, you will be violating
6 the Congressional intent. Despite what was said, the Act is
7 predominant. You do not go behind the Act unless it is
8 confusing, or for some reason you cannot understand the
9 meaning of the words, in the particular act. I think that
10 Section 100e (g) is clear as to what it says, what it in-
11 tends. Therefore, the legislative history should have no
12 bearing on your interpretation.

13 The second point I have to make is if you pass
14 a bylaw that boxes you in, you are going to have to comply
15 with it. Not only are you going to have to comply with
16 it. Next year's board of directors, and the board of directors
17 five years and ten years from now have to do it. Do you
18 want to do this to the boards in the future? You don't
19 know what problems they are going to be facing or what
20 type sessions they want to have.

21 The third point has to do with education.
22 We have already heard the many comments concerning the vague-
23 ness of the proposed Section 4.08, compelling interest.
24 I agree that this is perhaps vague. However, what will a court
25 say? Will they say it is vague? As soon as you gentlemen

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1 take some action in an executive session, that some or-
2 ganization or some individual does not like, they can bring you
3 into court and have you prove you have a compelling inter-
4 est, or that there was some compelling interest that gave
5 you the right to have that executive session and go on to take
6 some action as a result thereof.

7 In conclusion, I urge you to not adopt the
8 particular one that has been offered, but to take the statute
9 itself and put that in Section 4.08 (a) and work from
10 that. If you adopt anything less than what Congress has
11 authorized, the result will be a self-inflicted wound from
12 which recovery will be very doubtful and perhaps very pain-
13 ful.

14 MR. CRAMTON: Mr. Ray, you have something new to
15 offer?

16 MR. RAY: I would submit to you in contrast to
17 his views that the real test of the strength and independ-
18 ence of an organization is to operate as fully as possible
19 in the open, demonstrating as you do that, that issues are being
20 acted on upon the merits. When you go into a secret session
21 in a locked room, it becomes suspect.

22 MR. CRAMTON: Is there further public dis-
23 cussion?

24 (No response.)

25 MR. CRAMTON: If not, gentlemen, you have a

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1 resolution before you. Is there discussion on the resolution?

2 MR. ORTIGUE: Yes. I move to amend the resolution
3 so that Section (b) is returned to its former status.

4 MR. BREGER: I don't think you really want
5 that. You have to read all of (b).

6 MR. CRAMTON: I think he has read it.

7 MR. BREGER: I am sorry. I meant it raises all
8 of the problems we'll get into.

9 MR. ORTIGUE: It is no question it raises questions
10 for some problem.

11 MR. CRAMTON: Mr. Ortigue has moved to amend
12 4.08 by, I suppose, including (a) in the whole in the front of
13 the first paragraph (b) in the whole, and the second para-
14 graph as it was in the former draft on page 16.

15 Is there a second?

16 MR. THURMAN: I will second it for the purpose
17 of discussion. Is the crossed out version on page 16?

18 MR. CRAMTON: That is what I understood.

19 MR. THURMAN: May we ask Mr. Breger the reason
20 for eliminating (b)?

21 MR. BREGER: The difficulty was on two levels.
22 (b) has two sentences. The committee draft of August 25, is
23 one long sentence. It was entered into after a great deal
24 of discussion. The committee draft read:" In determining
25 whether an Executive Session is required, the Board shall

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1 shall be governed by the principle that the public is
2 entitled to the fullest information practicable regarding
3 the decision-making process of the Corporation consistent
4 with the prompt and efficient operation of the Corporation
5 and the protection of personal privacy."

6 Strong concerns were expressed to us yesterday
7 that the language "prompt and efficient operation of the
8 Corporation..." has a limiting condition, and might be
9 construed symbolically to suggest that we were going to
10 use efficiency criteria to determine whether or not we
11 would have an executive session. We felt that that was a
12 very strongpoint.

13 We further felt that if we took that clause out
14 we would have similar problems with the term "practicable,"
15 "fullest information practicable..." It was unclear to us
16 what the reach of that term was. In fact, we felt, to
17 some extent, that "practicable" again raised efficiency
18 issues and that the thrust of our concern was not efficiency
19 issues, not the prompt and efficient operation of the
20 Corporation, but whether there were compelling interests
21 that overrode our natural posture and natural desire towards
22 openness.

23 So, difficulties which arose concerning possible
24 construction of Section (b) as suggested, our concern was with
25 the efficiency issues, rather than with the principle

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1 issues, and were the main reasons which led us to drop
2 (b) in the whole. When suggestions were made that we drop
3 part of (b), our difficulty there -- I might add, we had
4 strong representations at various stages of the discussion
5 yesterday to drop (b) in the whole. Representations were
6 made by persons who have association with NALDA, PAG, etc.

7 MR. CRAMTON: They wanted to substitute something
8 else.

9 MR. BREGER: At one time they wanted to sub-
10 stitute someting else, and at another point to drop (b)
11 in the whole and stop at "practicable." It seems to us
12 that the term "practicable," although this came at a
13 late --

14 MR. CRAMTON: We are not concerned with the
15 positions that people have taken and the details of the
16 committee's considerations, but with the merits of in-
17 cluding this language in or not.

18 MR. BREGER: I am trying to explain to Dean Thur-
19 man why we took that language out, as I think was his
20 question.

21 MR. THURMAN: Are you saying that your concern
22 was that this made executive sessions easier?

23 MR. BREGER: Yes.

24 MR. MONTEJANO: If (b) is included in the
25 resolution, in our opinion it would be easier to have

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1 executive sessions and would give us a much more flexible,
2 efficient and prompt --

3 MR. ORTIGUE: That merely puts a limitation on
4 the previous language, and it seems to me that the previous,
5 language is the language. I, as a Board member, would like
6 to see the principle enunciated that the public is entitled
7 to the fullest information practicable regarding the de-
8 cision-making process of the Corporation. I have no problem
9 with "consistent with the prompt and efficient operation."

10 What I am concerned about is the principle that
11 the public is entitled to the fullest information practicable.
12 That, to me, is the test. And I can't see any Board member
13 arguing that this is not practicable.

14 If there is a matter that deserves the fullest
15 information of the public, I think it ought to be in the
16 public --

17 MR. THURMAN: They are saying this merely expands the
18 power to create executive sessions.

19 MR. BROUGHTON: It seems obvious we are going to
20 be here this afternoon. I suggest we recess for lunch.

21 MR. CRAMTON: I would hope we could conclude this
22 matter. We are close to it. Is there further discussion
23 on Mr. Ortigue's motion?

24 (No response.)

25 MR. CRAMTON: Those in favor say "aye."

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(Chorus of ayes.)

MR. CRAMTON: Those opposed say no.

(One response of no.)

MR. CRAMTPN: The motion is defeated.

MR. BROUGHTON: I would like to ask counsel one question relative to language, as contrasted with the Act itself, and whether that would create a problem along the line he suggested there may be a problem, that is, if you attempt to get the refining of this, whether you create any problems later on. I am sure it was considered in the committee, but I don't know it has come out.

MR. OBERDORFER: The Board's actions will be governed by the statute and by advice of counsel as it takes them.

The problem which has caused a great deal of difficulty, has been the problem of anticipating all of the circumstances in which the language of the statute, subject, of course to interpretation, in light of the legislative history, will apply. It is a task that maybe the public has had a great deal of experience in certain respects, but this Board has had a lot of experience in circumstances under which it will need to act, or at least have an opportunity to pull itself together and share thoughts in executive session.

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1 I do believe that the language proposed here is
2 consistent both with the statute and with the legislative
3 history but I think that the language of this bylaw is not
4 nearly so important as the actual decisions taken with
5 respect to going into executive session on particular
6 occasions.

7 MR. CRAMTON: Does that answer your question?

8 MR. BROUGHTON: Yes.

9 MR. CRAMTON: Are you ready for the question
10 on the resolution?

11 All those in favor of the resolution say "aye."

12 (Chorus of ayes.)

13 MR. CRAMTON: Those opposed say no.

14 (No response.)

15 MR. CRAMTON: I suggest we recess for lunch.

16 The Board does not plan to have executive session during
17 lunch.

18 We will reconvene at 2:00 o'clock.

19 (Whereupon, at 1:00 p.m., the hearing was

20 adjourned, to reconvene at 2:00 p.m., this same day.)

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lb 1

AFTERNOON SESSION

1
2 MR. CRAMTON: The Board is now reconvening. The
3 audience has thinned out perhaps in part because we're now
4 reaching a non-controversial issue. The report by the tran-
5 sition staff on the Orderly Continuation of Support Center
6 Activities.

7 MR. OBERDORFER: Yesterday we made a presentation
8 on the subject of continuation of the back-up centers, the task
9 that the staff confronts in coping with its responsibilities
10 in this respect. We recommended to the Board that it allow
11 the matter to lay on the table in order to give the public the
12 opportunity to comment on our report. The staff is prepared
13 and I would invite the Chairman and the Members' attention to
14 our resolution I.

15 MR. CRAMTON: "Resolution Regarding Forward-
16 Funding of Legal Services Programs by Community Services
17 Administration.

18 "WHEREAS, it is impossible to determine with
19 confidence whether the Corporation can complete in time for
20 Board action by March 31, 1976, the studies and consideration
21 necessary to decide about possible alternatives for implementing
22 Section 1006(a)(3) of the Legal Services Corporation Act of
23 1974 (Pub. L. 93-355),

24 "RESOLVED, THAT THE Board of Directors hereby author-
25 izes the Chairman (1) to inform the Director of the Community

lb 2

1 Services Administration of this conclusion and (2) to take the
2 steps necessary to complete the requisite studies and considera-
3 tion as rapidly as possible and to make appropriate lawful plans
4 to continue those relevant programs in operation until those
5 studies and consideration are available for a decision by the
6 Board."

7 Mr. Oberdorfer has submitted this resolution for
8 consideration of the Board. Is there a discussion?

9 The text of the Resolution, as you have it, we'll
10 confine to the time Mr. Hornblower suggested. Delete "of 1974"
11 after the word, "Act" and we ceratinly will spell corporation
12 as it is supposed to be spelled.

13 MR. STOPHEL: In view of the occurrence on the
14 subject of extending the time of these, are we taking an empty
15 act and asking again that you reconsider this March 31st date?

16 MR. OBERDORFER: I don't think we have requested
17 him -- we're not here to address ourselves to the CSA on the
18 subject for the reason that we, on prior occasions, didn't feel
19 we had enough information to make a demonstration that would
20 be meaningful. We think we now have data which has persuaded us,
21 and anyone else who has the responsibility for this matter, and
22 we think we share the responsibility with the corporation to
23 see to it that there be some additional opportunity to go through
24 this decision-making process. We have not made any request of
25 him before.

lb 3

1 MR. STOPHEL: This has to do with the possible
2 alternatives, not back-up centers.

3 MR. OBERDORFER: This is back-up centers.

4 MR. CRAMTON: All the support center activities that
5 are affected by 1006(a)(3). I would phrase it, not in terms of
6 requesting him to take any action. There is no request that he
7 take or not take any action. It merely brings to his attention
8 certain information and facts which he may believe are rele-
9 vant to the exercise of his statutory responsibility which he has
10 until this body takes over on October 14. Is that correct?

11 MR. OBERDORFER: Yes.

12 MR. COOK: I will move its adoption.

13 MR. CRAMTON: Is there a second?

14 MR. BREGER: Second.

15 MR. CRAMTON: Moved and seconded.

16 It is now open for discussion.

17 MR. COOK: Regardless of how any individual on the
18 Board may personally feel, or what is the furtherance of his
19 own attitude toward a revision, alterations, or continuation
20 of these programs, it seems to me with the tenuous position
21 that we're in now, relative to our own budget matter, relative
22 to our own problems of formation we face between now and the
23 14th of October, I feel we have no alternative other than to
24 adopt this resolution.

25 For those who may feel that somehow or

lb 4

1 other they're tied in, or they're bound into a particular
2 attitude or aspect toward ultimate evaluation of these, I
3 think there is none.

4 I think what in effect we're saying, we're just
5 pleading a case for our own anguish of transition, and in
6 effect we're saying you have seriously got to consider this
7 so that leeway and the options are ours, whatever those ulti-
8 mate decisions are, but we have got to look to you for the
9 solution to this problem at this juncture in relation to all
10 of the improbables that we really face ourselves.

11 MR. STOPHEL: What are we asking the staff to do
12 in this resolution? Is it to complete the requisite studies
13 and considerations as rapidly as possible?

14 MR. OBERDORFER: What we said in those papers,
15 and what we think is required, no matter what happens, either
16 before March 31st, or before June 30th, whichever is the
17 deadline, the staff or the corporation has a duty, in my
18 judgment, to learn about the nature of the activities of the
19 so-called back-up centers, to particularly learn about the
20 extent to which the functions of the back-up centers serve
21 the Legal Services Programs in the field; the extent to which
22 those aspects which are not directly related to Legal Services
23 Programs in the field are nevertheless responsibilities of the
24 Corporation to carry on itself, and having studied those
25 activities identified the elements of them and made a proposal

lb 5

1 to the Board for action by the Board about what to do about
2 it, which ones to continue, and in what form.

3 That is whether under the direct agencies, if you
4 will within the corporation or by granted ontract, or discon-
5 tinue, which is an option, that probably can be discounted, and
6 replaced.

7 MR. COOK: Absolutely.

8 MR. OBERDORFER: We have the impression that you
9 can't make a decision until we give you information. And this
10 study is to give you the information that will be required of
11 you either on March 31st, or if this is successful, June 30.

12 I guess the point of my presentation yesterday was,
13 and the documents we've given you in the filing here, we think
14 we will have a hard time doing the right kind of job for you
15 by March 31. We think we can do the job that is required
16 for you to make decisions either through CSA or some other
17 process, we're given more time than is now available.

18 MR. STOPHEL: There are 2 elements involved. Our
19 interpretation of what we must do, not by grant, but directly,
20 and what we can do.

21 Second, the point I was raising is a qualitative
22 review of what is being done to determine which will be con-
23 tinued, which will be reduced or increased, and which will be
24 increased, if any. That is encompassed in yours.

lb 6

1 MR. OBERDORFER: Yes.

2 MR. CRAMTON: If you look at resolution H, all the
3 things included there are included in I.

4 "Such study to include among other areas of inquiry,
5 and will consist of the quality of work." And so on.

6 MR. OBERDORFER: If I may interpolate there, Mr.
7 Stophel.

8 One reason we have got this staff, the minimum staff
9 requirements, that we identified in that paper yesterday, was
10 in anticipation of responsibilities like this which are going to put
11 a very heavy load on somebody.

12 MR. BROUGHTON: Mr. Chairman, we at some point have
13 got to come to grips with what our philosophy is. Let's
14 say the Green Amendment.

15 MR. OBERDORFER: We've given you our opinion.

16 MR. BROUGHTON: I say we have not had the oppor-
17 tunity to look at this material. I'm wondering if we have not
18 got an obligation to move quickly. Is this not in effect laying
19 a decision we're going to have to make?

20 I'm concerned if we shouldn't reach a point at the
21 October meeting to determine what our obligations are with re-
22 spect to the Act and make this decision at that time.

23 MR. OBERDORFER: I can testify between now
24 and the October meeting that the tasks that confront your
25 staff are of a dimension that would preclude anything

lb 7 1 resembling the kinds of factual, not just legal, but factual
2 investigation, and report that in my judgment is a necessary
3 predicate to the Board's decision on the Board's amendment
4 as it applies to the facts in this case. We can write all
5 kinds or articles.

6 MR. BROUGHTON: I'm concerned if we go now to CSA
7 and we request for time beyond --

8 MR. CRAMTON: We can request Mr. Diego give con-
9 sideration to the fact it may take us some time to do.

10 I prefer to phrase it that way. We don't have author-
11 ity to request him to do anything. We could bring certain information
12 to his attention. That's all.

13 MR. OBERDORFER: I think there is another aspect
14 to this resolution. I hope that is understood that the
15 recital is in answer to Mr. Broughton's question. The recital
16 is a determination by the Board in response to a staff prayer,
17 really, to give us more time to get this job done.

18 And so your ruling, up or down, on whether we have
19 to get it done by March 31st, or June 30, we suggest in here
20 other ways that is may be possible by other means to get it
21 done, to keep what is necessary going by the June 30, if CSA
22 shouldn't take action on the basis of the information.

23 The thing that I'm asking the Board is for more time
24 for the staff, after it gets its feet on it, to turn its at-
25 tention to this very difficult problem.

lb 8

1 MR. COOK: May I add to that. Even if the CSA agreed
2 to extend to June 30, that does not bind this Board to a June
3 30 deadline at all. The expeditious handling of this matter
4 is still the responsibility of this Board. I'm not at all hope-
5 ful with the results that we're going to accomplish in these
6 discussions in trying to extend it.

7 I'm afraid we may find ourselves burdened with it
8 whether we like it or not. I think this is an option in
9 regard to preparing a new budget, preparing a supplemental
10 budget, and all of the things that are absolutely essential,
11 that some of these things we have just got to hope and pray that
12 we have got a friend out there someplace.

13 MR. BROUGHTON: June 30, I don't see any reference
14 to that in this resolution.

15 MR. OBERDORFER: I said in my report to the Board
16 that I can have this done by June 30, and they change the
17 "whereas." That is a good point. "But believes it can
18 complete it by June 30."

19 MR. SMITH: Instead of "As rapidly as possible,"
20 put "but no later than June 30."

21 MR. BROUGHTON: couldn't we in effect inform them
22 of the status of the matters but not fix the date in the hope
23 that some decision will be made sooner than that? I'm not
24 unmindful of the burden the staff has already had in many
25 areas.

lb 9

1 MR. STOPHEL: There is a recommendation in the staff
2 memo under Tab 10 that refers to the recommendation of the
3 transition of staff, and we actually ask for forward funding
4 to June 30, 1976. On Page 4 of that memorandum, it was referred
5 to briefly yesterday.

6 MR. COOK: May I also add to this discussion
7 that the staff, suppose we get a date of June 30. The staff
8 has got to have this work done and ready for this Board well
9 in advance of June 30, because affirmative action one way or
10 the other has got to be taken after long discussion, after
11 a thorough analysis and not only philosophically, but fin-
12 ancially, of the responsibility we either take or do not
13 take on, come July the first.

14 So that, really, as far as staff is concerned, I
15 would say to you I hope they understand and realize that June
16 30 is really a fictitious date to them because they have got
17 to be well in advance of that date.

18 MR. BREGER: I think Marlow's point is really
19 critical, that if we stop with a March 30th deadline, that
20 really means we have got to make our decisions by the end of
21 November which really gives little time for us to
22 think about these issues, and even less time when we
23 contemplate all the other issues that we have to carry us for-
24 ward through mid-October, the end of October.

25 So we will be forced to act without the necessary

lb 10 1 data. So in a sense, if we direct ourselves to the March 30
2 deadline that imposes on s the internal deadline of mid-
3 November to the beginning of December. That really leaves
4 us with very little flexibility that is needed to carry out
5 intelligible decisions that may well convince us to require
6 further funding to the June 30 period.

7 MR. COOK: May I say that there are some people here
8 today that felt the discussion over bylaw 4.08 was of extreme
9 importance to them, and I might say that the discussion and
10 importance to them, and I might say that the discussion and
11 the comments in the debate that would go on when this study
12 is presented to the Board, and when the recommendations of this
13 Board have to be made relative to this issue, it is going to
14 make the apprehension of people in this room over 4.08 seem so
15 insignificant as to have been forgotten a long, long, time ago.

16 I just feel very affirmatively, very frankly, that
17 all of the information that is going to be required to prepare
18 ourselves for a thorough ongoing discussion of the matter has
19 got to be before us before the 30th day of March anyway. I
20 affirmatively feel that.

21 I think everything we have done up to now, very
22 frankly, has been perfunctory. Now, we're getting to the
23 real issues of the functioning and operation of the Board.

24 MR. BROUGHTON: I agree; that is one reason
25 I raise the question whether we shouldn't move into this at

1b 11 1 least as far as philosophy is concerned. I realize that
2 dips into the question of what the Board may decide in that
3 area, and then all that is involved. I realize fully the
4 depth of that.

5 It seems to me the question of getting to that
6 point is something we should move along. We're getting
7 materials sent us by different people as to, for example,
8 what the Green Amendment, including Miss Green's herself,
9 which we have now gotten. I think it is an area we may well
10 get at and get on with it.

11 MR. COOK: I think that is true. It seems to
12 me, Mr. Chairman, if we -- and I emphasize fully my appre-
13 ciation for the burden the staff has, and the burden we
14 continue to place on them -- but I think there is an area of
15 uncertainty in this particular area; people are concerned
16 regardless of their philosophy, they would like to get this
17 resolved.

18 I'm not suggesting that anything other than,
19 perhaps, instead of this resolution, pin a date on it. We may
20 at this point advise the director of the problem and some
21 concerns about whether the resolution can be had by the end
22 of March 1976, and then if we should move on and get this
23 decided, the sooner we get this decided, there is going to be
24 a greater continuity and a greater understanding between this
25 Board and the community it is trying to serve.

As I get it from the mail I get on both sides, what

1b 12 1 are you going to do about this?

2 MR. STOPHEL: Are you talking about philosophical
3 differences or in-house?

4 MR. BROUGHTON: I'm sure other members of the
5 Board have different viewpcints of what the Green Amendment
6 means.

7 MR. CRAMTON: I think the suggestion or the
8 implication of the resolution, is that the Board would not
9 consider this to pick or do anything further on it until a
10 kind of a massive study has been done including a lot of
11 factual information.

12 Whereas Mr. Broughton suggests there ought to be
13 a back and forth process with the Board focusing on what does
14 the statute mean, what does it require, giving some advice
15 to the staff, helping in its evaluation of the facts, and
16 maybe a back and forth relationship which adheres to this
17 resolution language that refers to all to be done, "As
18 rapidly as possible."

19 MR. BROUGHTON: And I say that includes hearing from
20 the public.

21 MR. OBERDORFER: I would suggest this, that a
22 good technique is to give you reports at each meeting about its
23 progress on this matter.

24 MR. THURMAN: That would be helpful.

25 MR. BROUGHTON: Maybe at our next meeting we set a

lb 13 1 time for people who would like to speak on their interpreta-
2 tions of what the Green amendment means.

3 MR. STOPHEL: With the importance of this particular
4 issue, I would like to have the copy of staff memoranda.
5 I feel it is something, as Senator Cook has said, and
6 Mr. Broughton is indicating, I know what we have that is
7 what we started. I certainly understand and totally agree
8 with it. I appreciate it. As they are putting them out in
9 the office, let's get them out to us Board members to reflect
10 upon them, come back with thoughts of better focusing our
11 efforts in an evaluation.

12 MR. CRAMTON: Mr. Oberdorfer has suggested several
13 changes of language. If I might read them, the mover and
14 seconder might consider whether they accept the changes.

15 "WHEREAS, it is impossible to determine with con-
16 fidence whether the Corporation can complete in time for
17 Board action by March 31, 1976, the studies and consideration
18 necessary to decide about possible alternatives for imple-
19 menting Section 1006(a)(3) of the Legal Services Corporation
20 Act of 1974 (pub. L. 93-355), but believes it can do so by
21 June 30, 1976,

22 "RESOLVED, that the Board of Directors hereby
23 authorizes the Chairman (1) to inform the Director of
24 Community Services Administration of this conclusion and (2)
25 to take the steps necessary to complete the requisite studies

lb 14 1 and take the steps necessary to complete the requisite studies
2 and consideration as rapidly as possible and to make appropriate
3 lawful plans to continue those relevant programs in operation
4 until those studies and consideration are available for a
5 decision by the Board."

6 MR. BROUGHTON: That is as it is.

7 MR. CRAMPTON: The words "an implementation" were
8 added.

9 MR. COOK: "But believes it can do so by June 30,
10 1976," was added. And in front of "make" fourth line from
11 the bottom: "and to make appropriate lawful plans."

12 I would also like for the record, but not for a
13 resolution, I would like to suggest that the subject matter
14 be a matter for agenda consideration for all of the Board
15 meetings from now until June 30, 1976. I don't care March 31,
16 June 30. I don't really care. I think to further what Mel
17 has said: that not only the input from staff, but our necessity
18 to discuss this at every Board meeting from here on out is
19 going to help us immeasurably to more capably understand and
20 comprehend this problem altering the debates, and discussions
21 and studies so we would be prepared to make a good and sound
22 and objective decision.

23 MR. OBERDORFER: I think that would be a great
24 help for the staff.

25 MR. CRAMPTON: If you approve, add a comma at the

lb 15 1 end. Change the period and add "(3), to report to the Board
2 at each meeting concerning progress on this matter."

3 MR. COOK: I have no objection. I think when it
4 is in the minutes it is sufficient.

5 MR. CRAMTON: We will have this read out in front
6 of ---

7 MR. STOPHEL: I want to complement the staff for
8 the memoranda that are here. I found them to be a grade
9 of help in solidifying my thinking on some of the provisions
10 which could be ambiguous in view of the legislative history.

11 MR. OBERDORFER: Thank you.

12 MR. COOK: I have no objection to the substitution,
13 Mr. Chairman.

14 Do you have?

15 MR. ORTIGUE: No.

16 MR. COOK: Do you have any objection?

17 MR. BREGER: No.

18 MR. CRAMTON: It changes the period at the end to a comma
19 after the word "Board" and "(3) to report to the Board at
20 each meeting concerning progress in this area or on this
21 subject," whichever you prefer.

22 MR. THURMAN: What happens to the "(2)"?

23 I think you added something in there: "to make."

24 MR. CRAMTON: To complete and to make.

25 MR. THURMAN: "To complete the requisite studies

lb 16 1 and to make appropriate --"

2 MR. SMITH: He added the word "to."

3 MR. CRAMTON: After Public Law 93-355, "But
4 believes it can do so by June 30, 1976."

5 MR. THURMAN: You are talking about two different
6 things.

7 Number (1), to inform the director of the CSA of
8 this conclusion, and (2) to take the steps necessary as rapidly
9 as possible, and (3) "to make appropriate lawful plans to
10 continue those relevant programs."

11 Then (4), "to report to the Board."

12 Aren't we talking about four things?

13 MR. COOK: Oh, sure. Every one of those things is
14 correct, and no way we can get around it.

15 MR. CRAMTON: Do we wish to hear from members of
16 the public on this item.

17 MR. SMITH: I have no objection to it.

18 MR. COOK: I have no objection.

19 MR. BREGER: We request them to be brief.

20 MR. CRAMTON: Are there brief comments from the
21 members of the public.

22 MS. ROISMAN: I think on behalf of the organization
23 and back-up centers, and 16 centers, we welcome this resolu-
24 tion as a sign of the Board's commitment to make a factual

lb 17 1 study of what the 16 centers do as well as the legislative
2 history, and that we're delighted to be as helpful as we
3 can to the Board and its staff; and that I'm authorized to
4 state that this is made on behalf of PAG and NALDA as well.

5 MR. CRAMTON: Are there further comments?

6 (No response.)

7 MR. CRAMTON: If not, Board members, have further
8 comments?

9 (No response.)

10 Are you ready for the question? All those in favor
11 of the amended version, please say "Aye."

12 (Chorus of "Ayes.")

13 MR. CRAMTON: Those opposed?

14 (No response.)

15 MR. ORTIGUE: Permit the record to reflect because
16 of the date of March 31st, I did not participate in the dis-
17 cussion.

18 MR. CRAMTON: The record shall so state.

19 MR. COOK: Subject to any criticism that any Board
20 members may make, may I be excused?

21 (Laughter.)

22 MR. CRAMTON: Mr. Cook has another engagement.

23 (Mr. Cook leaves.)

24 MR. CRAMTON: The next item on the agenda is staff
25 report on other activities.

1 MR. OBERDORFER: I would like to state that the
2 letter we sent to directors -- we have sent a letter to the
3 project director saying in detail what we have been doing,
4 and we incorporated that by reference not in haec verba.

5 MR. CRAMTON: Without objection it shall be
6 incorporated in the record by reference.

7 Item 9 is discussion of future meeting schedules.

8 At our last meeting we planned to hold the next
9 meeting on Thursday, October 2, and Friday October 3. As
10 a result of some informal discussion about dates at lunch,
11 the discussion was make it Friday, October 3, and Saturday,
12 October 4. Is that agreeable to members of the Board?

13 We have tentatively scheduled also a meeting
14 on October 16 and 17, which are a Thursday and Friday.
15 Board members have been asked to save on their schedules,
16 Thursday and Friday, November 6 and 7, and Thursday and
17 Friday, December 11 and 12. Those final two dates are
18 tentative and depends upon developments of the corporation
19 business in the intervening period.

20 One item that I would like to record, for
21 purposes of the record, has to do with a request I made to
22 members of the Board that each of them be willing to serve,
23 to be assigned to one of the ten Federal regions, and we
24 made a tentative geographical indication. I heard from
25 several Board members that that is thought to be an

1 excellent idea. No objections to it. I have heard some
2 some indication that it might be desirable to change the
3 geographical indication. Particularly, I gather, that
4 Mr. Breger desires to --

5 MR. BROUGHTON: Mr. Breger and I discussed
6 this, and we have arranged, subject to your approval, and
7 formal action by the Board, that we will swap. I have
8 been in touch with some gentlemen here from Boston
9 concerning a visit to that region very soon.

10 MR. BREGER: I promised Mel if there is any visit-
11 ing in Puerto Rico he can take that over from me.

12 MR. CRAMTON: The purpose of the regional
13 indication is very obvious. It is the desire of members
14 of the Board to meet with regional officers and their staffs,
15 to meet with project directors and their staffs, and to learn
16 as much about the existing programs and the clients they
17 serve as possible, and to start more of a face-to-face
18 conversation and exchange of information with the people
19 and clients who are part of a large organization.

20 The intent is to the extent their schedules
21 permit, Board members will attempt to meet and visit with
22 regional staffs, and project directors and their staffs in
23 their areas. I assume other organizations in your areas
24 as well.

25 MR. STOPHEL: It would be helpful to put them

1 into the minutes, these tentative appointments.

2 MR. CRAMTON: Region 1 is Mr. Broughton.
3 Region 2 is Mr. Breger. Region 3 is Mr. Cook. Region 4 is
4 Mr. Stophel. Region 5 is Mr. Ortigue.

5 MR. BREGER: Region 5 is Mr. Kutak. Region 6
6 is Mr. Ortigue. Region 7, that is Mr. Smith. Region 8 is
7 Mr. Janklow. Region 9 is Mr. Montejano. Region 10 is
8 Mr. Thurman.

9 MR. CRAMTON: Is there any other business?
10 If not, I would entertain a motion to adjourn.

e-tb 11 (Whereupon, at 2:55 p.m. the meeting adjourned.)

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