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Transcript of Proceedings

THE LEGAL SERVICES CORPORATION

Meeting of
The Board of Directors

Washington, D. C.

Tuesday, 5 August 1975

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THE LEGAL SERVICES CORPORATION

Meeting of
The Board of Directors

Conference Room B
Constitution Avenue
Washington, D. C.

Tuesday, 5 August 1975

The meeting was reconvened, pursuant to adjournment,
at 9:50 a.m.

Mr. Roger C. Cramton presiding.

PRESENT:

(As heretofore noted.)

P R O C E E D I N G S

MR. CRAMTON: The meeting will come to order.

I regret that despite my statement yesterday, we are once again late. Some materials needed to be prepared this morning and we did not have typing services in time to get them here. Indeed, they have not arrived yet, but will shortly.

When we adjourned the board entered an executive session in which it continued for a short time a discussion of the first matter which I indicated, that is, to get advice from counsel concerning its obligations, if any toward current Office of Legal Services employees; and second, we then discussed and received advice from counsel on some legal questions relating to the effect of any board action in the interim period on the possible validity of grants or contracts entered into by the Community Services Administration with respect to support centers and back-up centers during the 90-day period. That legal question was discussed, and that brings us to Item 7 on the agenda, which is related to that same subject, entitled "Discussion of Orderly Continuation of Existing Legal Services programs and activities" and I would like to precede that with a brief statement.

The Legal Services Corporation Act of 1974 envisions a 90-day transition period in which all responsibility

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1 for the operation of Legal Services' programs continues
2 in the Community Services Administration while the Corporation
3 is in the process of organizing itself and preparing to
4 operate the program in accordance with the provisions
5 of the Act. The transition period began on July 14, 1975,
6 the date of the first board meeting, and will end on October
7 12, 1975, the 90th day.

8 On the following day, October 13, 1975, the
9 assets, liabilities, obligations, properties, and records
10 of CSA, with respect to Legal Services activities, will
11 be transferred to the Corporation. Section 3 of the Act
12 deals in detail with the transition of operating responsi-
13 bility from CSA to the Corporation. It requires the
14 director of CSA in cooperation with the Corporation to, and
15 I quote, "Take such action as may be necessary, including the
16 provision by grant or otherwise, of financial assistance to
17 recipients to arrange for the orderly continuation by the
18 Corporation of financial assistance to Legal Services
19 programs and activities."

20 At its initial meeting on July 14, 1975, the
21 board became concerned that it would not be in a position,
22 because of great time pressure and the burden of its other
23 responsibilities, to make the difficult factual and legal
24 determination concerning the continuation and forum in
25 which support sensitivities, that is, research, training and

fm3 1 technical assistance, clearinghouse activities, are provided
2 to Legal Service projects.

3 It adopted a resolution which directed me to
4 consult with the director of the Community Services Admin-
5 istration in order to ascertain his plans for these support
6 services and to report back to the board at this meeting,
7 and this indeed constitutes that report.

8 On July 16, 1975, I met with Mr. Burt Gallegos,
9 director of CSA. I stated that the board, which was aware
10 of the fact that with one exception if current grants for
11 back-up centers and other support functions would expire
12 on September 30, 1975, wished to know his plans concerning
13 the re-funding of those programs.

14 He replied that it was his present contention,
15 his then intention, to forward fund them for a period of
16 three months, that is, until the end of the calendar year.

17 I requested that he defer any action until
18 after the next meeting of the board which was to take place
19 on August 4 and 5, 1975, since the board might wish to
20 communicate some views on this subject.

21 A subsequent exchange of correspondence occurred.
22 On July 22, 1975, Mr. Oberdorfer, at my request, sent the
23 following letter to Mr. Gallegos:

24 "Dear Mr. Gallegos: Roger Cramton has asked me
25 in his absence to thank you for the courtesy of our meeting

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1 last Thursday.

2 "As he may have told you at that time the board
3 of directors of the Legal Services Corporation has scheduled
4 this next meeting for August 4 and 5, 1975, here in Washing-
5 ton.

6 "The agenda will include consideration of the board
7 of directors' position with respect to forward funding of the back
8 up centers. The board will decide at that time whether to
9 recommend forward funding and if so for what term.

10 "Accordingly, we would greatly appreciate it if
11 you could defer any action with respect to forward funding
12 until the board has had an opportunity to consider this impor-
13 tant matter and communicate further with you. If you have
14 any questions about this, please do not hesitate to contact
15 me or Dean Cramton directly.

16 "Sincerely yours, Louis F. Oberdorfer."

17 That letter dated July 22 and delivered on July 22.
18 Response directed to me dated and delivered July 23:

19 "Dear Dean Cramton:"

20 This is the letter from Mr. Gallegos to me of
21 July 23.

22 "I thank you for your letter of July 22, 1975, re-
23 garding back-up centers.

24 "For the past year that I have served as director
25 of OEOCSA as head of the Legal Services program, I have

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1 made many hard decisions but specifically the general
2 policy enunciated concerning the entire Legal Services'
3 activities have worked very well during the past year and in
4 this transition period.

5 "We are all well aware of the sensitive and contro-
6 versial nature of many aspects of the program. My maintain-
7 ing impeccable neutrality in the last year has enabled the
8 Legal Services Corporation to come into existence as it did.
9 I will insist on maintaining that neutrality and fairness
10 without injecting my personal opinions directly or indirect-
11 ly.

12 "I know you are aware that I am being constantly
13 bombarded and lobbied by many sides of any given proposition
14 or problem. I would not feel it to be beneficial if I
15 should be forced to spend the next several months giving
16 my opinions to groups or to Congress or to individual law-
17 makers. To preclude such time-consuming activities and to
18 prevent my getting into a partisan role, I will continue
19 the policy began one year ago. I have expressed this modus
20 operandi to you personally on July 16, and I have expressed
21 these same views with the Legal Services board on July
22 13.

23 "On July 21 I reiterated this position to Congress-
24 man Robert W. Kastenmeier and Congressman Lloyd Meeds.
25 Specifically, I informed them that I am continuing my policies.

fm6 1 I informed them and others that I have been timely funding
2 all grantees and back-up centers.

3 "My decision to basically fund through March 31,
4 1976 met with their approval under all circumstances.

5 "These funding policies enabled the Legal Ser-
6 vices Corporation board to make any decision it may desire
7 regarding grantees and also back-up centers with deliber-
8 ations (almost nine months). By not favoring any one
9 grantee or back-up center at this time and by timely funding
10 enables the board to make the tough decisions in an atmos-
11 phere of neutrality.

12 "On other matters dealing with general policies
13 of administration, including personnel, these matters are
14 solely for the board to act upon.

15 "Again I shall continue to formally or informally
16 cooperate with you.

17 "Sincerely, Burt Gallegos, Director."

18 I have been informed subsequently that Mr. Gallegos
19 has taken steps to forward fund all Legal Service programs,
20 including those under consideration here until March 31, 1976.
21 It is apparent from the record that Mr. Gallegos' decision
22 to forward fund all programs through that time, March
23 1976, was based solely on Mr. Gallegos' views of his responsi-
24 bilities under the orderly continuation provisions of the Act,
25 which I quoted earlier, and did not reflect any views or

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1 recommendations of the board since the board has neither
2 considered the question nor transmitted any views or recom-
3 mendations to Mr. Gallegos.

4 The present posture is that all Legal Services'
5 activities under the Office of Legal Services at least
6 will be forward funded at current levels until March 31,
7 1976. The Corporation, when it assumes operating responsi-
8 bilities on October 13, 1975, will have five months and
9 19 days or a total of 171 days, to evaluate these programs
10 individually and collectively, to decipher the meaning and
11 extent of the restriction on its grant-making authority
12 contained in Section 10 BA-3 of the Act and to attempt to
13 formulate workable arrangements by which the essential
14 and desirable functions performed by these support centers
15 can be carried out in a manner which is effective and which
16 conforms with the Act.

17 Representatives of OLSPAC(?), and organization
18 composed of back-up centers and other support programs, have
19 met with me or Mr. Oberdorfer on several occasions to express
20 their deep concern. They have urged that the board
21 direct the director of CSA to forward fund their activities
22 for a 12-month period, an action which if taken would
23 carry them to September 30, 1976.

24 Two principal arguments have been made in support
25 of this position. First, that the Corporation will need a

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1 considerable period of time to make a careful and informed
2 judgment about the most effective way to assure the perform-
3 ance of the research, training, technical assistance and
4 clearinghouse functions.

5 The heavy schedule of responsibilities, which the
6 board must face in its initial six months, that is, organiz-
7 ing itself, selecting a president and other officers, is-
8 suing necessary regulations and the like, will require most
9 of the board's attention and energy. The board in this view
10 needs not to have a substantial period of time after its
11 immediate start-up phase in order to make a sound judgement
12 on the difficult factual and legal questions relating to
13 continuation of necessary support services.

14 The second argument rests on the danger to the
15 continued wellbeing of these support centers if they are
16 re-funded for only six months. Staff and facilities cannot
17 be obtained or continued if there is no assurance that an
18 operation will continue for only one half of a year. An
19 effective program requires a great deal of forward planning
20 and involves research and litigation activities that neces-
21 sarily extend for longer periods. The time and attention of
22 back-up center personnel should be spent on their sub-
23 stantive concerns, their real job, and without the distraction
24 which the present uncertainties necessarily cause. I am,
25 of course, at this point summarizing the views of the OLSPAC(?)

fm9 1 representatives and not expressing either my own views or
2 those of the board. Several issues are thus before the
3 board for such consideration as it desires to give them.

4 First, how much time will the board need in
5 order to make a careful and informed judgment concerning the
6 legal and factual questions relating to the continuation of
7 essential support center activities.

8 Second, how should the board go about making this
9 determination?

10 And third, if the board were to conclude that it
11 needed additional time or that the effectiveness of the
12 support center activities would be impaired if consideration
13 of their future did not occur over a longer period, should
14 it communicate its views to the director of the Community
15 Services Administration and what form should any such com-
16 munication take?

17 I ask the board for its views on these questions.

18 MR. THURMAN: Roger, I suppose there is no rea-
19 son why we couldn't immediately get into a study of this.
20 We could begin it, I suppose, very soon. Is there any
21 reason we have to wait on that?

22 I was wondering if we couldn't immediately begin
23 the study outlined by the chairman. That doesn't answer
24 the question, how long it is going to take us but I was
25 wondering whether there was any reason why we can't enter

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1 upon that. I feel it is very important.

2 MR. STOPHEL: I suppose one of the first places
3 we can begin was to obtain copies of the evaluations that
4 were made in '73.

5 MR. THURMAN: How recent were those evaluations?

6 MR. STOPHEL: I understand it was in '73. I
7 don't want to pick at anything, Mr. Chairman, but you did use
8 the term "essential support activities" and I suppose that is
9 one of our decisions, which are essential and which are not,
10 and it is very difficult to take them all as approved
11 because of the diverse activities engaged in. I think this
12 is one of our most important points, to obtain counsel on just
13 what activities are proscribed for this Corporation to
14 engage in by the contract or grant, which tells us then
15 which ones have to be brought in-house, so to speak, and
16 engaged in directly by the Corporation. This is a first
17 issue facing us, then that might break down the activities
18 in such a way that an evaluation or study could be focused
19 on those which we know can be done by grant because then we
20 know that those will be done by the contract mentioned,
21 whereas certain activities, as I read the Act, must be
22 brought directly under the control and performed by employees
23 of this Corporation.

24 So, I really think that that may be a first step
25 that we have to face.

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1 MR. CRAMTON: In other words, you are suggesting
2 some sort of a study by the transition staff, perhaps as-
3 sisted by the OMB consultant team and management team and
4 outside consultants to at least explore what the parameters
5 of the problem are, what legal questions there are,
6 what steps would have to be taken, what alternatives are
7 available, how long these items would take.

8 MR. STOPHEL: For one, reaching the last issue
9 first, I suppose also as to whether we ought to make any
10 request officially concerning the forward funding of these
11 centers. Having appeared before the Appropriations Com-
12 mittee, I am concerned that if we made such a request, in
13 view of the restrictions in the Act, that we would be
14 promptly subjected to severe criticism for having attempted to
15 do indirectly what we cannot do directly. That is, if we
16 asked CSA to forward fund a center which is performing
17 activities which we cannot by contract engage in, aren't we
18 doing indirectly what we cannot do directly under the Act,
19 and I would like some study made into that aspect of it
20 also, and perhaps an opinion of counsel as to whether an
21 official action of this board requesting action of that nature
22 to CSA might not put us in violation of the law, in effect.

23 MR. CRAMTON: Are we in a position, counsel,
24 to reveal anything about the present state of our knowledge
25 about some of these legal questions?

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1 MR. OBERDORFER: Well, I'd rather not give a cate-
2 gorical answer to that question.

3 MR. STOPHEL: I don't blame you.

4 MR. CRAMTON: In other words, we are in a situ-
5 ation of uncertainty. But it is an area in which further
6 information and enlightenment and opinion might indeed be
7 quite useful and relevant.

8 MR. OBERDORFER: I don't think that a decision
9 on this subject needs to turn on the legal question.
10 There obviously could be an issue raised such as Mr. Stophel
11 raised and anybody's opinion as to how it would be resolved
12 is unlikely to be definitive, but I would hope that the board
13 would not turn its decision on whether to do something or
14 not to do something on the legal risk of action in this
15 connection.

16 MR. STOPHEL: Are you speaking about our proposed
17 request to CSA or the continuation of the programs?

18 MR. OBERDORFER: I do not advise the board to
19 forebear from communicating further with Mr. Gallegos on
20 account of concern as to whether a communication would violate
21 the law. I think that a lawful communication can be develop-
22 ed and transmitted.

23 MR. CRAMTON: Mr. Breger, do you have some views
24 on this?

25 MR. BREGER: Well, it is quite a complex pro-

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1 blem. I think our main concern has to be to learn as soon
2 as possible whether we can practically effectuate the con-
3 straints of the statute by March 31. If we are required to
4 do so by that time, there are in a sense practical con-
5 straints. Some things just can't be done in a short period of
6 time, and I would urge that we begin in some way to try to
7 develop different methods of transition, as it were, to
8 find out exactly if once we decide what we want to do,
9 how much time it will take us to do it, and if we learn that
10 we will not be able to make an effective transition in
11 the time period allowed us, I think we should at that point
12 consider whether we should return to Mr. Gallegos and ask
13 him for more time based on the practical problems of
14 effectuating such a really extensive and complicated change
15 and we just don't have the information now.

16 We are operating, I think, in a vacuum, operating
17 on assumptions which may or may not be true.

18 MR. KUTAK: Mr. Chairman, I have gotten a lot
19 of information, as indeed I trust all of us have, about this
20 subject and with all candor I really haven't had time to
21 study it. I have been working on another assignment that the
22 chairman has given me, and I really think the suggestion
23 that was earlier made would be extraordinarily helpful to
24 those at least who are working on other assignments, and
25 that is to have our staff, perhaps our counsel or perhaps

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1 anybody else whom you would designate, brief us, if you will,
2 at our next board meeting as to concisely and cogently what
3 the issues are, perhaps we could have a time in which we
4 could have a public discussion, invite those who are
5 friends of the cause and indeed foes of the cause, if there
6 are any, to thresh out the issues and permit us who are
7 frankly working on some other tasks at this time and are
8 really quite preoccupied by them to get caught up, if you
9 will, with the issues.

10 So, I would urge, if it may be in order to do so,
11 that some person or some team that you might designate,
12 together with all the friends of the cause and the cause
13 is Legal Services Corporation, to brief in some informal
14 and full manner because I feel that I am operating in a
15 vacuum and somehow I may be one of those fools that may be
16 rushing in where angels fear to tread.

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1 MR. BROUGHTON: Bob, you mentioned the possibility
2 of hearing from others and I was about to suggest to the
3 Chairman of the board, we have a number of people assembled
4 here this morning and I have a feeling that many of them are
5 quite concerned about the issue we're discussing and I wonder
6 if we couldn't obtain unanimous consent and get at least some
7 views within some time frame this morning and we might get part
8 of that process under way.

9 MR. KUTAK: Gee, I had no intimation, if that were
10 the case of foreclosing any discussion.

11 MR. BROUGHTON: I understand that, but I was just
12 wondering if we couldn't hear from some of the people here this
13 morning at this point?

14 MR. CRAMTON: Mr. Smith?

15 MR. SMITH: Mr. Chairman, I have no objection at
16 all to the suggestion just made. In fact, I think it is a very
17 practical suggestion that we hear the ideas and other infor-
18 mation that some of the people might have to present to us this
19 morning. I think that it would be good that we hear it for
20 a while but I think no matter how important the matters might
21 be that they bring to us, that something along the lines that
22 two or three board members have already expressed is that the
23 result will have to follow, I believe, as far as getting a lot
24 more information than that that might be available to us this
25 morning, having some Committee study or staff and a Committee

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1 study it and having a decision made at our next meeting which
2 will still be in plenty of time, as I would understand, from the
3 time frame outlined in your statement and in the letters. One
4 thing that Mr. Gallegos' letter of July 23rd indicates that he
5 has already in fact given us 90 days longer to consider it
6 than he originally intended. I believe his original intent was
7 to forward fund only to the end of the calendar year and now
8 he has in fact done it until March 31st. Now, the real issue
9 apparently turns on whether we think we need time even beyond
10 March 31st or not and that would probably have to have that
11 decision made prior to October 1st, no later than October 12th,
12 probably prior to October 1st, so that Mr. Gallegos would still
13 have the opportunity if he so desired to forward fund beyond
14 March 31st, but with that feeling, in agreement with several
15 statements made by several board members also, I think that the
16 suggestion just made by Melville that we hear people is fine
17 as long as we hear them with the understanding that we aren't
18 going to try to resolve the issue in one hour's time. We are
19 going to get this input and then follow up the procedure that
20 was --

21 MR. CRAMTON: If there is unanimous consent on the
22 board I would like to invite members of the public who are here
23 to express views. I would like to impose some ground rules
24 on that. One is that we have several important items which we
25 do want to complete work on today and so my view is we should

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1 not spend more than I would think a half an hour of public
2 discussion of this and that means individual comments must be
3 brief and I will cut people off if they talk more than two or
4 three minutes so that other people will have a chance to talk.
5 Second, the issue before is not all of the issues connected
6 with Section 1006(b)(3) of the Act. The issue is whether March
7 31st, 1976, gives the board sufficient time to do what it has
8 to do in connection with the implementation of 1006(a)(3), and
9 I hope that your comments will be directed to that and not to
10 all the global issues that may be suggested.

11 With that introduction, are there individuals who
12 wish to inform or direct comments to the board? Sir, would you
13 introduce yourself and make a brief comment?

14 MR. DORSEY: Gentlemen, my name is Charles Dorsey
15 and I am the director of the Legal Aid Bureau in Baltimore City
16 and I would ask that the board in considering whether it needs
17 additional time to consider the depth and breadth of the
18 involvement of Legal Services organizations with the backup
19 centers and the involvement as a very deep and very broad one.
20 In our own program two years ago we had clients come to us
21 who complained about their treatment by labor unions in
22 Baltimore City. As a result of this approach by clients, we
23 did get in touch with the labor law center in New York and as
24 a result of our consultation with them, we did enter into a
25 massive lawsuit against 669 skilled building construction labor

1 unions in Baltimore City. As a result of this litigation, we
2 found ourselves opposed by 26 lawyers from the largest and most
3 prestigious law firms in Baltimore City. During the course of
4 our involvement in this litigation, we have received support
5 from the labor law backup center in every aspect of our handling
6 of the case, not only discovery but also in certain negotiations
7 which took place. The magnitude of this case, I think, is
8 very important because we expect that it will affect a couple
9 of thousand minority people in Baltimore City.

10 The fact of the matter is that this case is
11 expected to come to trial in the spring of next year at the
12 time when if the current timetable is followed, for the backup
13 centers, will be expiring. There is some question in my mind
14 of the national labor law center being co-counsel in the case,
15 whether the Federal District Judge in the District of Maryland
16 will permit those lawyers to retire from the case because of
17 the fact that there is no further funding for this organization.

18 So in my judgment this is a very intricate question
19 that the board has facing it and it is not one that should be
20 resolved with undue haste. So this is what I would bring to
21 the board this morning.

22 MR. CRAMTON: Thank you.

23 MR. KUTAK: Mr. Chairman, I was going through a
24 package of information and I think I should disclose to the
25 board, a package presented to us by a misaddressed letter, and

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1 I find in there a letter from my law partner compensating the
2 clearinghouse publications. I really just wanted you to know
3 that I was not aware of the letter and she had not communicated
4 those views to me.

5 MR. CRAMTON: Mr. Oberdorfer has a question. What's
6 the name of the case involving you?

7 MR. DORSEY: The case is entitled Byrd versus the
8 Electrical Union.

9 MR. CRAMTON: The next, Mr. Lanagan, James Lanagan,
10 old associate of mine from the Hill.

11 MR. LANAGAN: Well, presently I am directing
12 attorney of the Washington law office of the National Senior
13 Citizens' Law Center. We have several cases, we have one or
14 two pending now, which involve efforts of the elderly poor and
15 disabled to obtain the rights of hearing, the rights to present
16 evidence, the rights to get proper notice of actions in
17 connection with supplemental security program which is the
18 program which the federal government provides aid to the aged,
19 disabled and blind. These cases are pending, we may have to
20 have more hearings, we may have appeals in connection with
21 them. And we don't; we have to know sometime in advance in
22 order to make our planning. It is critical, I think, to know
23 that when you have a period of uncertainty that ends, say,
24 March 31st, that people attend to -- in the last one or two
25 months, to leave your office.

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1 Last year we had a period of uncertainty with
2 respect to our grant and we had a very important case involving
3 SSI benefits. The attorney who was handling the case and who did
4 all of the work on it finally in the last month or two he had
5 a favorable offer that I am sure that he wouldn't have taken
6 if he had known that we were going to continue in existence but
7 he didn't know that and no one could really blame him for not
8 holding on a little bit longer.

9 Now, if the board, if the Legal Services backup
10 centers and other law offices are faced with an uncertainty as
11 of March 31st, we are going to find of staff beginning to
12 dwindle, people handling those important cases are going to be
13 possibly leaving as this one did last year and everything
14 becomes more difficult as this period approaches. I think that
15 the board is not going to be able to make up its mind as to what
16 the future plans are until pretty close to the March 31st date.
17 There is a big study, you have to get staff, you have to have
18 the consideration yourself.

19 Meantime the backup centers would be deteriorating.
20 On the other hand, if we have a period for 12 months, by the
21 time that the board begins to make up its mind we will have
22 time then to make an orderly transition, but this idea that
23 you are going to make up your mind, you would have to make
24 up your mind pretty close to March 31st and then the backup
25 centers funding would just stop, which is going to lead to a

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1 serious deterioration in the ability of these centers to handle
2 litigation and other matters in the meantime, which I think
3 would be avoided by having a 12-month rather than a 6-month
4 period.

5 MR. CRAMTON: Mr. Lanagan, if nothing were to
6 happen and backup grants were to expire on March 31st and
7 future arrangements would require restructuring and so on, is
8 there any statutory or other notice that would be required to
9 backup centers that would mean that the board would indeed
10 have to make decisions not as you put it in March or February
11 but in November or December of this year.

12 MR. LANAGAN: I am not familiar with all of the
13 statutes but I believe there is provision for a three-month
14 period, termination notice period and if that were effective
15 as far as the board were concerned, that would have to be taken
16 three months before or around the end of December, which is
17 giving the board just very little time to study the question.

18 MR. CRAMTON: I gather the notice requirement that
19 you referred to is the OEO requirement?

20 MR. LANAGAN: I believe that's where it is.

21 MR. CRAMTON: But my question is does that carry
22 over? Mr. Newman and Mr. Gilbert?

23 MR. GILBERT: I assume it is possible but it has
24 been constructed to try to give the most possible notice which
25 in effect has often been that but it's not any requirement.

1 MR. CRAMTON: I don't think people could hear you.
2 Could you share the mike and if people, if members of the board
3 have more questions for Mr. Lanagan, then he can come back.

4 This is Mr. David Gilbert of the Office of Legal
5 Services staff.

6 MR. GILBERT: My understanding of what is in effect
7 now for the refusal to refund requirements of OEO and which I
8 understand of CSA which I understand the board may wish to
9 adopt as temporary regulations, it says in effect that you
10 simply have to give notice to a grantee as soon as possible
11 before termination, before the end of the grant, before it is
12 up for hearing and in effect there is no 90-day requirement.
13 The 90-day requirement, the whole idea I believe came about in
14 the Legal Services Corporation Act where the Senate report
15 refers to such a time but that is not part of the existing
16 CSA regulation.

17 MR. BREGER: Mr. Lanagan, am I correct that in the
18 last number of years you have been operating under 6-month
19 refunding periods?

20 MR. LANAGAN: Well, I have been with the center
21 since January of 1947, and since that time we have operated on
22 a 6-month basis and as I say that results in our losing staff
23 toward the end of the 6-month period. Here in Washington we
24 lost probably our best litigating attorney and one of our
25 best secretaries toward the end of the period last September.

1 MR. BREGER: At what point in that 6-month --
2 my question really is in what point in that 6-month process
3 did you learn that you would be refunded and if it was at the
4 end of that 6-month period did you in that case receive a
5 termination to wind down?

6 MR. LANAGAN: We didn't receive termination notices.
7 We didn't have our refunding, as I recall, become final when
8 we really knew we were getting it until sometime in the final
9 month of the 6-month period, towards September. I believe that
10 was the case.

11 MR. CRAMTON: Unless there are other questions for
12 Mr. Lanagan, I think we would like to hear from somebody else.

13 MR. CRAVEN: I am Thorns Craven. I am the director
14 of legal aid in Forsyth County, Winston-Salem, North Carolina.
15 I am also associated with the North Carolina Bar Association
16 study which is determining how we can best expand legal services
17 available to the poor people in North Carolina. I have been
18 a project director of Winston-Salem since 1970 and I think
19 some of the issues that have been raised by the board already
20 show the complexity of this question and one of the things
21 that struck me in discussions centers in the last five years
22 is that no one has touched something which really defines all
23 the backup centers and describes their functions. The use
24 that the five attorneys in my office make of the backup centers
25 is extremely diverse and I think something that the board is

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1 going to have to look at each center and each office in its
2 region, the large offices, small offices, to see how backup
3 centers and attorney and local programs who represent the
4 clients call upon these services that the backup centers
5 provide to see exactly what is involved in the Act. We have
6 been involved as the Baltimore office has been with national
7 centers in co-counsel. We have been involved in the same way
8 as the Senior Citizens' Law Center by having clients involved
9 with a national scope lawsuit. We have been involved with the
10 Paralegal Institute in development of a full program of
11 establishing paralegals to work in our office, to train them,
12 to integrate them into a representative situation. We have
13 had commissions who have been called upon to analyze the
14 incomes of about 500 senior citizen clients that we had who were
15 concerned about a rate increase of the electric utilities.
16 The list just goes on and on and those are direct requests
17 that we have made. They don't even speak to the ongoing
18 research and informational functions that the backup centers
19 provide. I am sure you have all probably seen or some of
20 you are familiar with the housing guide, the welfare law
21 center stuff, things that come from the employment law center,
22 from the food action center. It is just endless and without
23 that kind of thing five lawyers in Winston-Salem, North
24 Carolina, would be in the dark as to a great deal of the legal
25 subjects which face our clients.

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CR5051 1 MR. CRAMTON: I gather the point of this is that
LS:bwl 2 because the support services are so varied and the activities
S3 3 and functions that they carry on are so numerous and varied
4 that their evaluation by the Board and any attempt at
5 restructuring or reformulation in accordance with the requirement
6 1006(a) (3) would be very difficult or take a long time.

7 MR. CRAVEN: I think it would take an awful long
8 time. You mentioned the nine-months' period, which I think
9 is illusory. You are talking about five months, nineteen
10 days, before March, and I think the point has been made that
11 you have got to make a decision actually before March 31. It
12 is not something you can decide that. But the kinds of things
13 that all these centers do for attorneys, I don't believe are
14 something that you can completely comprehend. It's certainly something
15 that hasn't been comprehended at Legal Services in the five
16 years that I have been active as an attorney.

17 It's been something that we have been able to
18 deal with as project directors, as staff attorneys and as
19 back-up center personnel.

20 As to which things are most helpful and which
21 aren't, it's been a continuing subject that's been discussed
22 in Legal Services; and it certainly hasn't been satisfactorily
23 resolved.

24 MR. CRAMTON: Are there questions?

25 MR. BROUGHTON: Thorns, as I understand it,

1 you are saying for analysis to be made by the Board or evalu-
2 ation to be made by the Board would take a considerable period
3 of time, to say the least, and you are in the same token, of
4 course, suggesting or pointing out that this is one of the
5 Board's responsibilities of this aspect of the Act.

6 MR. CRAVEN: Dealing with myself and dealing
7 with the Committee of the North Carolina Bar Association,
8 my feelings are that the best intentions are stretched into
9 long and untold months, that it takes an awful long time to
10 start these things.

11 I think you have made the point that the transition
12 involved, we saw yesterday the transition is involved with
13 nuts and bolts things, and these are policy decisions,
14 and it seems to me that the policy decisions which affect our
15 clients and affect our attorneys and their professional
16 breadth, which is what the element is that the back-up
17 centers give us, is something that needs as much time in the
18 future for a considered decision and for the determination of
19 what functions are performed now, and how they can be moved,
20 because I don't think, regardless of what happens, that you
21 can do without this.

22 It's going to take some time.

23 MR. CRAMTON: Thank you.

24 Alan Houseman of Detroit. Mr. Houseman?

25 MR. HOUSEMAN: Thank you.

1 We start by saying that we agree, I think, that
2 a staff study of back-up centers should be done. I think
3 most of us who thought about this, we have had a little
4 bit of opportunity to think about it, believe that it would
5 be helpful to design for the Board some kind of an approach
6 to how the method of making decisions should be undertaken,
7 such as suggested by several Board members.

8 But our concern is that if, even if that is done,
9 we believe it's virtually impossible to complete the type
10 of intense and serious staff study of the back-up center
11 question before March 31.

12 We believe that the evidence before you is
13 sufficient to make that decision and, if you will just let
14 me take a second or two to outline why I think that is clear.

15 First, if you get from your transition staff
16 a study of some outlining of what you should do by the
17 next Board meeting in September, which I think you should
18 undertake in any case, that delays the beginning of any
19 substantive study on the centers for a period of time.

20 I think that you are going to want to have your
21 permanent staff and you are going to want to have the
22 president which you select for the Corporation to be deeply
23 involved in this very serious and significant and maybe the
24 most serious and significant policy decision that you are
25 going to have to make within the near future, and you are

1 going to have to wait at least until October or late
2 September, I would guess, before you are going to have any
3 kind of a staff in place at the Legal Services Corporation
4 to begin to undertake this study. If this study is seriously
5 undertaken, there are a number of things that you are going
6 to have to do.

7 One is you are going to have, I think you are
8 going to have to be in contact with field programs, you are
9 going to have to visit centers, the staff is, that is. You
10 are going to have to make a serious study of evaluations, not
11 only of 1973, but other past evaluations.. You are going to
12 have to study the history of the back-up center issue:
13 how the programs were originally set up; why they were set
14 up that way; what the problems have been; what types of
15 concerns existed that brought them to where they are; what
16 kinds of changes have been made.

17 After that study is done, I think, in order to
18 give all the parties concerned, including the field programs
19 and the back-up centers, some opportunity to present their
20 views on the matter, that you would want to give that staff
21 study some public airing, an opportunity for some comment and
22 criticism, some open hearing, if you wish, on it, and I
23 think this Board is going to want to hear, after the staff
24 study is done, from members of not only Legal Services, but
25 its friends and maybe its critics.

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1 That's going to bring you, by my estimate of
2 time, into early January or maybe late January, if this
3 is undertaken in any kind of a comprehensive vein; given the
4 policy decision, I think it's going to have to be.

5 As I outlined at the orientation session, the
6 questions that we are faced with here is not a question
7 of elimination of a certain number of programs. The question
8 is, and I have prepared an outline chart which appears in
9 some materials that NLADA presented, the question is which of
10 the various functions for back-up are going to be kept by
11 grant contract, which have to be kept by grant contract, which
12 have to be kept inhouse and some of these functions are going
13 to result in the Corporation assuming some of the role,
14 some of the functions are going to be resulting in programs
15 already existing, continuing their role.

16 So, once you make a decision on the back-up center
17 question, when you finally resolve what the Act requires and
18 what you think is a properly policy decision, once you make
19 that decision, there is another period of time that's going
20 to exist, and I might add there probably will have to be some
21 publication in the Federal Register of the regulations by
22 which the Corporations is going to operate support centers;
23 some time for comment.

24 But even once you make a decision, there is a
25 final problem, and the final problem is that you are going to

1 have to give time for the transition to occur between those
2 functions that are presently being carried out by the back-up
3 centers and those functions that will be brought inhouse,
4 if any are brought inhouse, and that's not a simple matter.

5 You are going to have to give time to hire staff,
6 to develop officers, to develop resources and undertake those
7 functions, and you are going to have to give time for the
8 present program to wind down.

9 It is not just in the litigation, but that's going
10 to be one of the areas that is going to cause a lot of trouble.
11 You are going to have to give time to wind down other activities
12 of the programs. I think, if you take a careful look at
13 this, if you look at it right now, you can see that it's going
14 to take longer than March 31, in order to make this decision,
15 and so that we agree with all the suggestions that have been
16 made about a transition approach, transition team report to
17 you as how you should proceed and then the need for careful
18 staff study and scrutiny of this matter, the fact is that can't
19 be done now.

20 Secondly, I would like to just comment on two
21 other things that were brought up just because there may be
22 some confusion about it.

23 First, all programs have been funded for six
24 months, but every program understands it's going to get
25 funding at the end of that period of time. The six-month

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1 funding, at least in more recent times has not been solely
2 related to the back-up centers and everybody understood that
3 it was going to continue. What we are talking about now
4 is six-month funding that may come to an end on March 31,
5 so it is not the same situation that the programs have been
6 operating under in the past.

7 Secondly, there is, I think, a question of utility,
8 a question that we are going to have to face regardless of
9 what the present OEO regulations are, the Senate language on
10 Section 1011, particularly the Senate report, suggests that
11 all programs, including back-up centers are covered by the
12 determination provisions under Section 1011 and, in addition,
13 I think if you look at the legislative history, you will
14 find that Congress is aware, as Congressman Perkins said,
15 that back-up centers will be fully protected by all the
16 procedural safeguards of the Act and without getting into
17 administrative argument, we have not thoroughly researched
18 this subject, and I don't want to take any kind of a definitive
19 position on this answer. I am saying that I think there is
20 a serious notice question under the Act. I am not sure how
21 it will resolve, but that is also something that's going
22 to have to be studied, and even if there is some legal

23 possibilities that you don't have to go through these procedures.

24 There is the clear problem of working out a transition
25 between the present operating programs and what functions

bw8 1 they're going to continue and what function they're not going
2 to continue, and the new programs, and I might conclude
3 by saying that the Senate, the House, the legislative
4 history is overwhelmingly clear that the functions of the
5 back-up centers are to continue unabated until the
6 Corporation has the capacity and the capability of fully
7 performing them, and we are talking about an orderly transition
8 which assures the continued functioning of the back-up
9 functions and in order for all of that to go on, you are
10 going to need longer.

11 The conclusion, obviously, is that this Board,
12 in answer to Dean Cramton's questions, the conclusion, at
13 least to me, is obvious: one, the Board is going to take
14 more time than by March 31, in order to make this decision and
15 to give programs the opportunity and give the Board and the
16 Corporation the opportunity of working it out.

17 Secondly, in making this determination, this Board
18 should utilize staff study with comment by the various parties,
19 after the staff study is completed and go through a procedure
20 that allows the airing of all these issues, both publicly
21 and internally and finally, in terms of the immediate problem
22 that the Board is faced with, I would think the Board has the
23 ability to utilize some careful discretion and can use its
24 careful discretion in determining a method of communicating the
25 Board's concern to Mr. Gallegos.

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1 And that's my comments. Thank you.

2 MR. FLUG: Mr. Chairman, Members of the Board,
3 I think I see a consensus here not only on the Board and
4 members of the public that have spoken, but also with
5 Mr. Gallegos. I think that, as usual, he has taken a
6 reasonable position and has laid very carefully a course
7 for himself which protects him and protects the Corporation.
8 As I read his letter, he found and believes that you do
9 need a substantial amount of time for deliberation on
10 this issue, and he has informed you that he is trying to take
11 that into account.

12 The figure he used in his letter, and I think it is
13 a reasonable figure, and it is consistent with the
14 presentations made here today, was nine months for this
15 deliberation, and he specifies that figure in his letter.
16 The problem was that his letter, I guess, assumed that that
17 process had begun or was imminent, and I think what's
18 become obvious, and I think it's the fault of no one in
19 this room and no one at CSA, that because of the various
20 circumstances involving your appointment and the Hill and
21 the appropriations' process, things have had to go in a
22 somewhat different order than they might have had the
23 schedule been different, and I think the fact is you can't
24 start this process until approximately the time of the
25 transition, and at actually the time that you get your president

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1 on board for the reasons suggested. So that taking
2 Mr. Gallegos's nine-month figure and plugging it into, if
3 you like, October 13th or October 1st, you would then come
4 up to the June 30 date, but then you are left with [REDACTED]
5 Mr. Gallegos' allowing you time to make a decision, but
6 it has been suggested not to implement that decision.

7 I'm sure that was an oversight on his part
8 which he would be willing to have pointed out and would be
9 sympathetic to. I think it is obvious that your decisions
10 will involve some difficulty and complex restructuring of
11 these vital operations, and they might well be sympathetic
12 to allowance of additional time, both because of the delayed
13 start-up and because of the need to implement the decisions
14 after you spend the nine months that they considered
15 reasonable in making those decisions.

16 MR. CRAMTON: While I'm sure that Mr. Gallegos
17 will respond to new information, there is a certain tone to
18 the letter which I read which at least carries the implication
19 that he has made up his mind, and he is going to be
20 reluctant, perhaps, to change it.

21 MR. FLUG: Let me just comment on it.

22 MR. CRAMTON: Is there any indication at all
23 that any views expressed by this Board will have any weight
24 whatsoever in altering or changing what Mr. Gallegos has
25 already told us he's decided to do?

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1 MR. FLUG: I would respond to that in this way,
2 Mr. Chairman: I think his letter reflects a desire on his
3 part, and I think this goes for the Board too, not to be --
4 I didn't use these words, I don't think, but taking sides
5 on the substance of this issue, and I think it's clear that
6 neither this Board nor he has to take sides on the substantive
7 issues or come to the decision of the merits on various
8 arguments, as to the scope complications of 1006 (a)(3) before
9 deciding that you do need nine months to deliberate, and you
10 do need three months to implement.

11 He's already most of the way to that position.
12 I would think that he could reach that decision or amend
13 his decision to take account of the new starting date, and the
14 need for implementation, without taking sides. And this Board
15 can reflect to him that need without actually requesting him
16 to do so, but just stating the facts as you have heard them.
17 And again yourself, without "taking sides," I put that "taking
18 sides" in quotes, it's really a matter of taking sides, but
19 certainly without coming to any conclusions on the merits of
20 the legal and factual issues involved.

21 MR. KUTAK: Mr. Chairman, two observations from
22 what I hear, and I speak only for myself, but I think
23 there is a consensus here that nobody's arguing about the
24 function. There is a deep universal desire consistent, not
25 only with the spirit of the Act, but the language of the Act,

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1 to provide first class legal services through our Corporation,
2 which every lawyer knows and every lawyer requires a
3 professional research component for. I heard the words
4 and I thought they were significant. We are not arguing
5 function here. We are arguing form, and I think there is
6 a sense of urgency. I really think that we owe it not
7 only to ourselves, but to our constituency, that we move with
8 a sense of urgency.

9 Now, it may be by the time we get into the
10 problem we discover we can't solve it by or before March
11 31, but I think we ought to try. I really think, as many
12 items as we can hammer out, even if they are tentative
13 and maybe need revision later on, ought to be hammered out.
14 And rather than to go back and urge more time for us, in order
15 to see whether we can make a decision, I would respectfully
16 urge that we plunge into it, put as much manpower as our
17 Counsel and his temporary staff can allocate to it, come back
18 with an approach and a remedy for us. Because maybe many of these
19 problems are not as difficult as I might envision them to be,
20 but I think we have to determine for ourselves with a real
21 sense of urgency about it that we can solve these problems
22 within very short deadlines or otherwise, I think during the life
23 of my tenure on this Board we may always be in some sort of
24 interim state, seeking an ultimate solution to problems which
25 need definite answers now.

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1 MR. THURMAN: Mr. Chairman, I go back to my
2 original question, the same thing that Bob just mentioned.
3 Why can't we get started now, make assignment to part of
4 the staff or to somebody to come up with some analysis of
5 this problem? Is there any reason we can't?

6 MR. CRAMTON: No. Indeed, I got the impression
7 from all of the comments that were made that the view was
8 that that was desirable in any event. The suggestion Mel
9 made that something more ought to be done, as well, in the
10 interim while we are starting that staff study investigation,
11 transmit information at least or make a request to

12 Mr. Gallegos to take action before October 12, while he's
13 still in operating responsibility for this program.

14 Our time is about expired. I said a half
15 an hour, and I think we have used it up, but I will have
16 one more comment.

17 MR. COLE: Stephen Cole. I had the pleasure
18 of addressing your orientation session a few weeks ago.
19 The only comment that I wanted to make that we at the support
20 centers want you to get started right away with this
21 evaluation, but I would like to point out that we keep
22 talking about March 31, and can't we get this done by
23 March 31, and one of the serious problems facing the
24 Board, both in terms of its factual analysis and its
25 legal analysis is, if you don't know by October 12 whether

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1 you can get the job done, you may have serious difficulties,
2 because you may not have until March 31, you may find yourself
3 in the beginning of March saying, "Gee, we can't get it
4 done. What do we do. Mr. Gallegos doesn't have any powers
5 any more." So I would just like to urge that you make a
6 decision as soon as possible, as to whether you can be
7 absolutely certain by October 12 that you will finish the
8 job, and if you can't be absolutely certain, you owe it
9 to the program to at least recommend continuation, so that
10 you can be certain in March.

11 Thank you.

12 MR. CRAMTON: Thank you.

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1 MR. BROUGHTON: Mr. Chairman, in connection with the
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2 comment that's been made and the consideration I think we
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3 have tried to give to this matter and in light of what Mr.
4 Kutak has just said, as I understand it, you are suggesting
5 that this staff committee or staff work begin --

6 MR. KUTAK: Forthwith.

7 MR. BROUGHTON: Yesterday.

8 Would you also suggest in connection with that
9 what present standing committee of the board relate to that
10 work in any way?

11 MR. KUTAK: I think Marshall whispered what I
12 dreaded to hear, whispered in my ear, and that is what one
13 of the gentlemen also referred to, I think it was Alan,
14 and that is that I fear, Mr. Chairman, that some input from
15 your committee on regulations in due course is going to
16 be made and that means also some input from the field to
17 your committee.

18 Now, I want to take this one on you but I do
19 pledge you to the degree that the development of the
20 regulations requires our following contemporaneously with
21 its study and development we have to be involved to this degree
22 and I volunteer Marshall.

23 MR. BROUGHTON: Well, it may be, Mr. Chairman, in
24 connection with that, I understand that our friend has
25 other responsibilities that are rather pressing upon him at the

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1 present time of a civic servant to country area and it may
2 be that the Chairman or we would suggest to the Chairman
3 and maybe he would respond for a special committee for
4 this one purpose other than the normal function that might
5 be otherwise envisioned by the committee that you had.

6 In order to get something before the board, I
7 would like to propose a resolution that the staff and which
8 would include the OMB management team, in conjunction with
9 interested parties, study and report, and that would include,
10 I think, Mr. Chairman, the input that we could get from what-
11 ever source and we could come to that later, maybe in
12 special committee, in addition to Bob's present committee
13 and report to the board prior to October 1, 1975, a
14 recommendation as to the position the Corporation should
15 take with respect to the decision announced by the
16 Community Services Administration letter of July 23, 1975, to
17 the Chairman of the board to fund all grantees and back up
18 centers through March 31, 1976.

19 The recommendation should discuss the alternatives
20 available to the board in implementing Section 100-6 (a)(3) of the
21 Act if it becomes necessary to do so on or before March 31,
22 1976.

23 Now it seems to me that this does impose dis-
24 cipline on the board so far as doing what Mr. Kutak and
25 others have suggested that we get underway immediately with

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1 this very, very important and critical task.

2 MR. SMITH: Mr. Chairman.

3 MR. BROUGHTON: And I move the adoption of this
4 resolution.

5 MR. CRAMTON: Is there a second?

6 MR. SMITH: Mr. Chairman, I would like to
7 second the motion and speak briefly to it. It seems to me
8 that that proposed resolution made by Melville gets to the
9 heart of the only thing we can reasonably do this morning.

10 In the first place, we don't have the authority
11 for the proposition, certainly not either one of those, to
12 consider any forward funding beyond March 31 ourselves
13 at this point.

14 See, what we are really talking about as an
15 issue here this morning is whether we have a desire or the
16 ability to ask Mr. Gallegos to forward fund beyond March
17 31, and I think that the time involved in the resolution
18 proposed by Melville is a reasonably short time, would get
19 us a report in plenty of time to make that decision and trans-
20 mit to it to Mr. Gallegos if that is our decision, to ask
21 him to forward fund while he would still have the authority
22 and the funds to do so.

23 Because not only do we not have the authority for
24 the proposition at this time, I think even after our
25 proposition is available and the transition period is

fm4 1 completed there would still be a possible question as to
2 whether we had the authority to fund pending a long study
3 and so I would speak strongly in support of the resolution
4 proposed by Melville.

5 MR. CRAMTON: I might add to that the words
6 prior to October 1 do not preclude the possibility, I suppose
7 of an earlier report by the staff if the staff came to the
8 conclusion that the enactment of the proposed act to the
9 Legal Services Corporation in the immediate future would
10 terminate Mr. Gallagos authority to act as it might, then the
11 staff if they came to this conclusion might want to submit
12 a report to the board at an even earlier date, but all it
13 means is that the latest date on which they can report,
14 the staff can report to the board, is October 1.

15 It doesn't preclude the possibility of an earlier
16 report. Is that correct?

17 MR. SMITH: I think the earlier report is high-
18 ly desirable and the October 1 date in the resolution is
19 just the outside maximum and certainly I would hope we would
20 shoot for a much earlier report, several weeks perhaps.

21 MR. KUTAK: Mr. Chairman, as a part of the legis-
22 lative history, I don't want to make it as a part of an
23 amendment to the motion, but could it be understood that the
24 transitional staff, including the management team lent from
25 OMB coordinate its findings and recommendations with

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1 respect to the bylaws and resolutions committee, insofar
2 as they might relate to any development and drafting of any
3 proposed resolutions in the area of this subject?

4 MR. BROUGHTON: Yes, I think that would be
5 clearly within the purport of this resolution.

6 MR. CRAMTON: I think it ought to be understood
7 that it is true this problem, because it relates to prac-
8 tically everything that the Corporation will be doing, be
9 suggested that it has structural implications as to how
10 the Corporation is structured, the number of employees it
11 has and so on.

12 It is related to matters that the committee on
13 administration is dealing with. That's one reason I tend
14 to think that we ought not to create another special commit-
15 tee for this purpose but partly because, one, the issue is
16 important and it has to be dealt with extremely promptly;
17 two, because it relates to so much of what the Corporation
18 is doing and we ought to have a report from the staff dir-
19 ected to the board so the board can consider it as a whole.

20 MR. STOPHEL: I agree with that, Mr. Chairman.

21 MR. CRAMTON: Ms. Vanaman is attempting to get
22 my attention. Do we have unanimous consent to allow her
23 to speak briefly?

24 MR. SMITH: Yes.

25 MS. VANAMAN: I'm sorry to take more time but now

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1 that we have heard the resolution I have something more
2 to say. I think our basic point is that while we have all
3 due respect for your staff, there is only one fulltime
4 employee on that staff with legal services experience.

5 The concept that the people from the Office of
6 Management and Budget can by October 1 understand the complex-
7 ities of the back-up centers issue, the concept that those
8 people who have been involved all their lives in private
9 litigation can suddenly become aware of the total necessi-
10 ties of Legal Services' programs and support centers, I
11 think, frankly, is naive, because the fact is, as Thorns
12 Craven pointed out to you, we have struggled a lot of
13 years about what are support services.

14 We have never agreed. You can take a vote of the
15 people in this room and they would not agree. You have
16 people that you are talking about by October 1 to do a
17 job that, frankly, doesn't seem possible.

18 We don't indicate to you any disregard for
19 your staff, we haven't had an opportunity to speak with
20 most of your staff, we are not familiar with the Office of
21 Management and Budget people but we do know legal services.
22 We have been in legal services 10 years and we know what happens
23 when people that are unfamiliar with various systems that have
24 been adopted and that are currently in existence are forced to
25 try and analyze.

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1 It is not a question of administratively how
2 do you handle this problem. It is a question of what kinds
3 of services do you give and how are they given. Everyone
4 who spoke here attempted to indicate to you that that
5 question is much more intense, much more severe and a
6 great problem facing this board that how do we best
7 manage this project.

8 It goes far beyond the concept of effective
9 management. It goes to the concept of how indeed do we
10 deliver effectively the services. We would just like to
11 indicate to you that while we agree the study should be
12 done and the study should be carried out, one, we don't
13 believe the present staff is adequate to carry out that
14 study by October 1; and second, by putting it off for that
15 date you, of course, increase the uncertainty.

16 We have tried to suggest to you that we believe
17 Mr. Gallegos is changeable. We believe an action from this
18 board asking for, if you will, another 90 days to June 30
19 gives you the opportunity to try to do the kind of work you
20 are attempting to talk about doing, but you have to
21 understand it relates to what's going on in legal services
22 and the reality is that it is a complex, difficult problem,
23 not susceptible to straight management analysis.

24 MR. CRAMTON: Ms. Vanaman --

25 MS. VANAMAN: I might respond that the resolution,

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1 MS. VANAMAN: I might respond that the resolution,
2 first, it refers to the transition staff, which doesn't
3 necessarily mean the existing transitional staff but we shall
4 indeed acquire some additional resources. There is always
5 the possibility of the use of outside consultants who are
6 highly informed in this area, and it says in conjunction
7 with interested parties, which means in conjunction
8 with the people in this room and other people who are
9 highly knowledgeable in this area.

10 It contemplates a report which is going to be
11 based on the best information that can be obtained and
12 subject to a couple of deadlines. One deadline is to decide
13 whether we have to do something quickly to make a communi-
14 cation to Mr. Gallegos at some very early point and the
15 second is to start thinking about the more long-term
16 situation so that if we are forced to face it we will have
17 some alternatives and some options and some notions of how
18 to go about it.

19 Isn't that all that's contemplated?

20 MR. BROUGHTON: Yes, and as is the suggestion was
21 made earlier that we begin that part of the process by hear-
22 ing from some of you ladies and gentlemen this morning.

23 It is certainly desirable and is to be continued
24 and, as Bob said earlier, we have been handed quite a
25 bit of material to review.

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1 MR. CRAMTON: And indeed many of us read it last
2 night, this large material received from the back-up centers
3 which all board members have.

4 MR. BROUGHTON: I read into the night and began
5 early this morning about areas of controversy and changes,
6 many of the specific cases referred to out of response by
7 you, Mr. Houseman, and these are the things that I think
8 the board is trying seriously to go through just as
9 rapidly as possible.

10 MS. VANAMAN: My only point is because you have
11 all that material and because you have the responsibilities
12 that you have and you frankly don't have a staff experienced
13 in legal services that the job is going to take a long
14 time.

15 MR. THURMAN: Mr. Chairman, we can't get started any
16 early than today. I would like to put this resolution to
17 a vote and I was going to suggest, I won't offer this
18 in the form of an amendment, that hopefully we could get in
19 kind of an interim report by our meeting on September 8 or 9.

20 MR. CRAMTON: Before the board votes on the
21 resolution, I would like to merely state that I have
22 circulated to members of the board a draft letter which
23 I wrote this morning, which purports not to express the
24 views of the board but to express my own personal views on
25 certain familiar matters concerning the time and effort

fm10

1 that it seems to me is going to be required for the board to
2 deal intelligently and carefully with the issues that are
3 involved and that unless the board otherwise instructs,
4 regardless of how the vote goes on this board resolution,
5 I plan to communicate, send this letter to Mr. Gallagos.

6 It does not purport to instruct or direct Mr.
7 Gallegos. I would think that would be presumptuous. It
8 doesn't purport to speak for the board. It merely ex-
9 presses my personal view that the task involved and the
10 implementation and the notice problems and the desirability
11 facing some of these decisions with a permanent staff and a
12 president on board suggest that, as one of the speakers
13 said, that the nine-month period, if that's what's required,
14 should run from, say, from October 1, rather than from,
15 should run from the end of the transition period rather
16 than from the beginning of the transition period.

17 Mr. Breger?

18 MR. BREGER: Yes, Mr. Chairman. I just wanted to
19 reiterate and comment on Ms. Vanaman's remarks that, I think
20 all of us are extraordinarily grateful to the staff and
21 the excellent and first-rate work that they have done so
22 far and their ability and have shown an extraordinary ability
23 to assimilate the very complicated matters very quickly,
24 break them down and analyze them and provide them to us
25 in a form in which we are able to work with them, and I

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1 further think it is worth noting that at least one member of
2 the staff has had a considerable degree of experience in
3 legal services activities, another member of the staff
4 has spent some part of his time working on reorganizing
5 legal services activities, other members of the staff have
6 shown themselves quite conversant with problems and quite
7 sophisticated with the problems of legal services generally
8 and I think it is important for us to reiterate at this
9 point really the extraordinary work which we have received
10 and help which we have received from the staff and also
11 their openness to the views of outside parties and willing-
12 ness to cooperate with outside parties in getting informa-
13 tion from them.

14 MR. CRAMTON: I share your views about the com-
15 petence and quality of our staff. I hope that they have
16 now or if they have not they will develop the thick skins
17 that are going to be necessary in this field, just as the
18 board members will have to, because we are and should be
19 subject to criticism .

20 Is there discussion on the motion that is before
21 us? Are you ready for the question? I might read the
22 resolution once again: "Resolved that the transition
23 staff, including the OMB management team, in conjunction
24 with interested parties, study and report to the board
25 prior to October 1, 1975, a recommendation as to the

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1 position the Corporation should take with respect to the
2 decision announced by the Community Services Administration
3 letter of July 23, 1975, to the Chairman of the board to
4 fund all grantees and back-up centers through March 31, 1976.
5 The recommendation should discuss the alternatives available
6 to the board in implementing Section 1006 (a) (3) of the Act if
7 it becomes necessary to do so on or before March 31, 1976."

8 Are you ready for the question?

9 All those in favor of the resolution please
10 say "aye."

11 (Chorus of "ayes.")

12 MR. CRAMTON: All those opposed, "No".

13 (No response.)

14 MR. CRAMTON: The resolution has been adopted.

15 We are behind schedule. I had planned to allow a
16 brief discussion at this point of the perhaps tangential
17 question involving the legal activities in the Pacific
18 Northwest, funded by the Community Action Agency's Legal
19 Initiative funds. I think that because of the desperate
20 necessity that we consider the bylaws and proposed resolu-
21 tions that carefully, fully, that it is essential that
22 we move directly to that item now and if time permits at
23 the end of the agenda we will return to the capital
24 funding item but we will now take a 10-minute coffee break,
25 only for coffee, there will be no executive session and

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we will be in recess for 10 minutes for a stretch.

(Recess.)

end 4

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1 MR. CRAMTON: The meeting will reconvene. Please
2 come to order.

3 Members of the Board have before them, and a number
4 of copies have been made available to members of the public,
5 a document which is labeled at the top "Committee Draft
6 August 4, 1975" and then entitled "By-Laws" of "Legal
7 Services Corporation" and these I gather are the proposed
8 by-laws which the Committee on By-Laws and Regulations
9 has struggled with building on the very thoughtful and
10 careful prior work of some attorneys in Hogan & Hartson
11 working with the umbrella group which were then filtered
12 through attorneys in Wilmer, Cutler & Pickering which have
13 been considered by a number of members of the Board as
14 advised and which the Committee has struggled with and which
15 it now is prepared to report on.

16 Mr. Kutak, as chairman of the Committee on By-Laws
17 and Regulations, will you take charge?

18 MR. KUTAK: Thank you, Mr. Chairman.

19 MR. CRAMTON: He is flanked, I might add for the
20 record, by Mr. Breger, a member of the Committee, and on the
21 other side by Mr. Marshall Hornblower, who has been assisting
22 us as counsel, a member of the firm of Wilmer, Cutler &
23 Pickering in Washington, D.C.

24 MR. KUTAK: First of all, if any member of the
25 Board cannot hear me during these proceedings, let me know,

1 but if I can keep one less item in front of me, that would be
2 all the better, and that is the microphone.

3 MR. THURMAN: Can they hear you out there?

4 MR. KUTAK: I think they will let me know.

5 I would like to begin for everyone's consideration
6 with just a moment of background legislative history so that
7 my Board can follow with care the process that has been
8 followed up to now.

9 I underscore those words up to now because I
10 believe that we have just begun a journey that is
11 going to take us far in this endeavor.

12 The Board met on July, one weekend of July 13 and
13 14, and had handed to them, as you will recall, a draft set
14 of by-laws and these were circulated in the two bound volumes
15 that had other documents in them for our consideration as
16 well.

17 Prior to the time when the Board -- your
18 committee actually met, that draft document of by-laws had
19 the benefit, as our Chairman has properly observed, of many
20 good inputs.

21 The original draft was prepared by Messrs. Hogan &
22 Hartson, and has the input of representatives of NLADA.

23 That draft was subsequently reviewed and there
24 are inputs from lawyers from the firm of Wilmer, Cutler &
25 Pickering.

1 That draft, indeed, was reviewed by your member,
2 our colleague and my colleague on the committee, Marshall
3 Breger, and several substantive inputs were made in that
4 draft.

5 At that time the synthesis of all of those revisions
6 comments and suggestions were reviewed by our Chairman,
7 Dean Cramton, and by our counsel, Mr. Oberdorfer.

8 The resultant product, a draft dated July 23, 1975,
9 was circulated to me for a base point from which our committee
10 began its work.

11 In contemplation of our study and deliberation
12 this weekend, I went through the draft of July 23 and prepared
13 a proposed tentative draft for our committee. That draft was
14 enclosed in a document which I distributed to my colleagues
15 yesterday as a simple effort to begin to consolidate and I
16 hope simplify the work product.

17 We did meet on August the 3rd. We had a first-
18 class meeting. We worked from 3:00 in the afternoon until
19 10:00 at night. We had the inputs not only of counsel and
20 our Chairman, but of many hardworking and conscientious
21 representatives of our community, most of whom I trust are
22 here today.

23 I refer generally to them as amici.

24 That draft went through a process of revision and
25 is the draft that was distributed after typing to you yesterday.

1 That draft then is the proposed committee draft
 2 of all the fort.

3 Just to demonstrate, as I believe the Lord Chief
 4 Justice of England once said, "The printed word is never
 5 the last word," I have for consideration of the Board this
 6 morning as we walk through the sunlight and indeed one or
 7 two places perhaps even substantive comments or proposals
 8 for the Board to consider.

9 I want, however, to underscore what our task
 10 today is. That is to develop as best we can in the time we
 11 have a set of proposed by-laws.

12 It is our intention to publish, with the
 13 approval of the Board and the direction of the Chairman,
 14 to publish the proposed by-laws in the Federal Register
 15 and to allow them to be circulated thereby for public
 16 comment and that your Committee will meet again this month,
 17 yes, this month, hopefully in Omaha, but we will at least
 18 meet this month to assimilate the changes that will have
 19 come from the further reflection of our Board and counsel and
 20 staff for the further consideration of the public and our
 21 amici and indeed probably from the Chairman of your Committee
 22 as well.

23 We will then produce a draft reflecting on all of
 24 the comments that have come through the public notice period
 25 and then propose a set of by-laws for this Board to take up

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1 in its next meeting.

2 So I want to underscore that our consideration
3 today should be with a view toward the development of a
4 proposed set of by-laws, not a final set of by-laws and
5 indeed I give you the news which I trust you would expect
6 anyway, that the by-laws have in them the capacity for
7 amendment anyhow and if in our wisdom we somehow overlook
8 something or we somehow slip somewhere, again, these are not
9 the last words but, of course, our best efforts to produce a
10 workman-like and acceptable standard of by-laws for our
11 Corporation to pursue.

12 Bearing that overall caveat in mind, I would
13 propose that I walk through with the Board the draft of
14 August the 4th pointing out where I would suggest there are
15 points of no controversy as it would appear, points specifically
16 I would like you to focus on because I think they are
17 substantial and need your specific attention, and then even
18 other points where I can conceive there may be welcome some
19 suggestions for amendment and indeed I have those ready to be
20 made for your consideration.

21 I think with the Board's leave that what I would
22 like to do is to go through the by-laws article by article,
23 section by section, but knowing that there are areas of
24 interest in certain specific articles, halt, with the
25 permission of the Board, and invite, with the permission of

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1 the Board, specific comment from amici who are working with
2 us in the spirit of producing a workman-like draft.

3 We can maybe see at that time if you wish.

4 Article I, Section 1.01. Non-controversial,
5 simply descriptive of the origins and character of the
6 Corporation and as proposed and reviewed no comments by any-
7 one.

8 By the way, I think I will proceed also like I do
9 when I work an indenture. I will keep going until my
10 colleagues blow the whistle.

11 Section 1.02, again informational in character.
12 No comments from your Committee or indeed from the public.

13 Article II. We addressed the subject of the
14 offices and agents of the Corporation. Again, this was
15 non-controversial and accepted both as to form and
16 substance, pointing out, of course, and tracking the content
17 of the statute.

18 Article III, the Board of Directors. In Article
19 III I would like your attention focused on -- to be focused
20 on the top of page 3.

21 Your Chairman -- and I now in that context am
22 talking about myself rather than using the first person
23 singular in this discussion -- your Chairman made one
24 suggestion over the drafts that were submitted to him and it
25 is the key words "the direction of."

1 The drafts that had been submitted used the words
2 "be managed by."

3 The Delaware Corporation Act uses happily both
4 phrases, managed by and under the direction of.

5 It seemed to me, however, that philosophically and
6 conceptually and it will appear most particularly as we
7 get into the description of the duties of the president,
8 that we really want to have the property, the affairs, the
9 business of the Corporation under the direction of the Board,
10 but we wanted the emphasis placed with respect to the day
11 by day operation resting on the shoulders of the president
12 and therefore while in good corporation language the terms
13 can be treated synonymously and are used in parallel
14 frequently, I thought it might be more beneficial to talk
15 about directors directing and officers operating.

16 I was aware of your concern, Glenn, and may I do
17 this, pass the point and come back to it when we discuss the
18 office of president where I think your concerns may be allayed.

19 MR. STOPHEL: All right.

20 MR. KUTAK: Section 3.02 is basically intact as
21 drafted with only stylistic changes and basically the
22 content is basically the substance of the Act.

blue 23 Section 3.02(c) is not new. It has been there
24 from the earlier drafts and is merely definitional in
25 character. It helps us save a lot of words later on in the

1 process of considering and in fact drafting the by-laws.

2 Section 3.03 discusses the role of the Chairman
3 of the Board and it again basically tracks the language of
4 the statute.

5 MR. STOPHEL: Bob, I am interested in the
6 necessity of the President of the United States appointing
7 a chairman in the event there is a resignation or vacation.

8 Isn't it true that it thereafter could refer to
9 the appointment by the President and not after the first
10 initial term?

11 MR. KUTAK: Yes, sir, and we struggled over that
12 and I think the statute is susceptible to two interpretations.

13 Let me read you Section 1004(a) and I think you
14 will even see the latent ambiguity.

15 "The Corporation shall have a Board of Directors
16 consisting of eleven voting members appointed by the
17 President by the consent and the advice of the President no
18 more than six of whom shall be of the same" -- excuse me,
19 I am --

20 MR. STOPHEL: You are on Section (g).

21 MR. KUTAK: I mean (b). And I am going to pick up
22 the key language here.

23 MR. STOPHEL: (d).

24 MR. ORTIQUE: It is (d).

25 MR. KUTAK: "The President shall select from among

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1 the voting members of the Board a chairman who shall serve
 2 for a term of three years. And thereafter the Board shall
 3 elect annually a chairman from its voting members."

4 One, I think the stricter of the two interpretations,
 5 would be that the President could for the first three years
 6 of the life of the Board have the privilege of designating
 7 the Chairman and we took the more narrow interpretation, not
 8 because we have any doubt about the life expectancy of our
 9 present chairman, although he is aging rapidly, gentlemen,
 10 but because very frankly it seemed to us to be more reflective
 11 of a more conservative interpretation of the Act.

12 Okay. Other than that, as I say, it really is a,
 13 it tracks the Act.

14 Section 3.04 is a -- simply provides for the
 15 taking of a -- executing a statement when we all were sworn.

16 MR. STOPHEL: When are we going to do it?

17 MR. CRAMTON: We have already done it.

18 MR. THURMAN: Did we execute anything?

19 MR. STOPHEL: I didn't execute anything.

20 MR. ORTIQUE: We haven't executed anything.

21 MR. OBERDORFER: We met before Justice Powell.

22 MR. CRAMTON: I don't know if we executed. We
 23 signified --

24 MR. HORNBLOWER: I would think that signifying
 25 that statement before Mr. Justice Powell was as good as

1 executing a statement but in the future you want to have
2 Mr. Justice Powell around so that this would have future
3 effect.

4 Perhaps a member who wasn't present -- was there
5 one not present -- perhaps when you do prescribe a form --

6 MR. CRAMTON: He will need to sign a statement.

7 It appears on the written record.

8 MR. SMITH: Does this perhaps need to state
9 execute a statement or accept an oath?

10 MR. STOPHEL: Execute or affirm.

11 MR. KUTAK: Well, one of two things could happen.
12 Either we could prepare such a form that could be executed --

13 MR. CRAMTON: That is what we were planning to
14 do in the future.

15 MR. KUTAK: -- or we could do this, Mr. Chairman:
16 I could suggest has executed a statement or made a statement,
17 executed or made.

18 MR. HORNBLLOWER: I would recommend we stick to
19 this and not worry about the fact that you have not yet
20 executed a statement because, as I say, I think what you
21 have done is ample and you don't want to raise any question
22 about your qualifications since you have so certified to
23 Mr. Justice Powell.

24 MR. SMITH: I think if we tried to execute a
25 statement now in writing it would raise a question whether

1 by implication we were saying we weren't qualified until
2 now, but I would think that an amendment wouldn't raise that
3 question if we amended in their executed a statement or
4 affirmed or sworn.

5 MR. CRAMTON: He has affirmed or executed a
6 statement.

7 MR. KUTAK: Will the Board accept that?
8 Remember, these are proposed.

9 MR. SMITH: I believe it is advisable.

10 MR. CRAMTON: Has affirmed or executed. We are
11 talking about an affirmation, not an oath.

12 MR. KUTAK: Yes, I know.

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CR5051 1 MR. CRAMTON: Mr. Chairman, we are somewhat short
LS:bwl 2 of time, and I hope that we will hit the highlights and not
S6 3 all the changes in all the previous drafts. Otherwise,
4 we are never going to make it through and get to the
5 regulations.

6 MR. KUTAK: All right, I will be governed by that,
7 and you can see I was already taking off my coat, so --

8 MR. BROUGHTON: I hope the other lawyers here will
9 be likewise governed by that.

10 MR. CRAMTON: I remind everyone that we are talking
11 about a process in which these these are proposed bylaws put
12 out for notice and public comment and that there will be
13 opportunity for comment, and changes can then be made.

14 MR. KUTAK: And what I will do also for the
15 Board, because I think it is terribly important that it be
16 done as a part of your legislative history and files, I will
17 also send to the Board a redline copy after this proceeding
18 is over, so you can take your August 4th copy that you have
19 in your hands, not worrying about writing in the changes.
20 I will send you a redline copy afterwards, so you will have
21 that as a quick way of identifying where we are.

22 I would like to propose one change in Section
23 3.05, discussing outside interests of directors. We have
24 had a difficult time trying -- and I am talking about 3.05(a)(1)
25 in the whole -- a difficult time trying to define the term

1 "immediate family." And there has been some worry among
2 your Committee members about it, and I would ask Whistle,
3 if he could, to help me and produce some language.

4 MR. HORNBLLOWER: The bylaws of the National
5 Corporation for Housing Partners have this definition,
6 which the Board might want to consider: "a spouse, a child,
7 parent, brother or sister of a member or a spouse or relative
8 of any of the foregoing, who has the same home as such
9 member."

10 MR. CRAMTON: I think that sounds good.

11 MR. KUTAK: Okay. Let's pick that up. And then
12 going on --

13 MR. CRAMTON: Since "immediate family" is used
14 again in another section of the ACT, don't we need to put
15 this definition somewhere where it refers to wherever
16 "immediate family" is used?

17 MR. THURMAN: Do you have a definition section
18 here?

19 MR. KUTAK: No, sir.

20 MR. THURMAN: We could define it here and have
21 a cross-reference.

22 MR. KUTAK: Okay, agreed. And also I have
23 a new sentence I would like to add at the end of Section
24 (a), which I think will clarify a possible ambiguity. I will
25 read it carefully, and follow it closely, if you will:

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1 "If a director, knowingly violates this subsection
2 in connection with any transaction, the validity of the
3 transaction should not be effected by the violations, but if
4 the transaction was unfair to the Corporation at the time
5 that it was entered into, the director may be liable to the
6 Corporation for any damages resulting from such unfairness."

7 I think it closes the circle and doesn't
8 leave in doubt --

9 MR. ORTIQUE: I'm certainly happy that this is
10 proposed, because it just seems to me that every director
11 is going to have to have him a lawyer to give him guidance
12 as to whether he ought to vote or not vote. I would just
13 like you to note that we will look at that very closely.

14 MR. KITAL: The spirit of it, refer us --

15 MR. ORTIQUE: I understand.

16 MR. KUTAK: I must say there are two sections
17 that I would like to focus on, and I have never had any
18 harder work focusing on, and that is this Section 3.05(a)
19 and later Section 10. We have had a very interesting
20 philosophical discussion going back and forth about
21 disclosures, about conflicts, and there are people sitting
22 around this Board that have devoted their life to legal
23 aid and if they haven't devoted their life to legal aid,
24 they have devoted their life to the law, and somehow that is
25 interdependent. And I think what we have tried to do is

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1 come up with something taht literally made us appear like
2 Caesar's wife. Did that come out all right?

3 But in any event, to be very careful, very
4 scrupulous that we were absolutely certain that by
5 inadvertence or otherwise, we didn't stumble into difficulty.

6 MR. STOPHEL: Who determines the fairness or the
7 unfairness?

8 MR. KUTAK: The Board.

9 MR. HORNBLOWER: And ultimately the court.

10 MR. KUTAK: And I suppose on advice of counsel.

11 Okay, moving on then to the section which
12 addresses the subject of removal, and that had the benefit
13 of tremendous input, Section 3.6 is a very straightforward
14 clearcut procedure, but I call your attention to one point
15 specifically, because it was the only point in controversy
16 among those in this dialogue, and that is 3.06(b). The
17 definition of the problem of an absent director. We say
18 that a director may be removed for persistent neglect and
19 that is, of course, an abstract term, but then we thought
20 it would be advisable to spell out in one kind of a situation,
21 where that might occur and logic for that -- by the way
22 the provision is, if one would be absent from three
23 consecutive meetings or from half the meetings in a two--
24 year period, at least it becomes a matter automatically
25 be put on the agenda. The reason for that is principally

bw5 1 that one always finds it extremely difficult to raise that
2 kind of subject with a director, because you always see it
3 in the context of the director and if it is a director as,
4 I'm sure, absent because of health reasons, the Board under-
5 stands and does not have to remove, but if it is for just
6 competing business reasons, the Chairman, I think, indeed,
7 the Board, I think, is entitled to have duly working,
8 regularly attending performers and, if we, one way to assure
9 that is to tell them to be here or to suffer the consequences
10 of that.

11 Other than that, there was nothing that I would
12 want to call your attention to on 3.07, "Resignations."

13 3.08. "Compensation," I would like to focus your
14 attention on that, because I think it is a matter of
15 importance. The language provides the the "Directors should
16 be entitled to receive, at appropriate rates, not in excess
17 of the rates established for consultants to the federal
18 government, prescribed from time to time by the Board, per
19 diem compensation for their services ..."

20 And, also "...reimbursement for travel,
21 subsistence and other expenses necessarily incurred..."

22 Since this time, Gentlemen, I have had some
23 worry about the word "per diem compensation," because I
24 understand, and I am not a very conversant person when it
25 comes to words of art in GSA and what have you, but per diem

1 may really relate to expenses and I wonder if it wouldn't
2 be better --

3 MR. CRAMTON: That was the reason for substituting
4 compensation for allowance, because when you talk about
5 per diem allowance, it's just the travel allowance per diem,
6 but if you talk about terms of per diem compensation, we are
7 talking about income and amounts received for services. I
8 think that it is very clear.

9 MR. KUTAK: It is clear to you?

10 MR. THURMAN: This must be a word of art in
11 federal regulations, and soon, and I think concerns other
12 commissions and so on.

13 MR. KUTAK: I just want to be sure that you people
14 who know more about than I agree that that "per diem"
15 makes sense.

16 MR. CRAMTON: I think it would read better, this
17 is just style, if the clause "not in excess of the rates"
18 and so on followed it -- it now splits a clause. You have
19 a clause "at appropriate rates prescribed from time to time
20 by the Board," which is now split up by this "not in excess
21 of."

22 Wouldn't it be better to say "appropriate rates
23 prescribed from time to time by the Board, not in excess of
24 the rates established for consultants to the federal
25 government, per diem"?

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1 MR. KUTAK: Your chairman will accept the motion.
2 I had in mind, Roger, to use the word "reasonable compensation,"
3 but perhaps "per diem" works okay.

4 Now, I would propose possibly the adding of a
5 new sentence at the end of that section. Notice that
6 a director should not serve the Corporation in any other
7 capacity or receive compensation for any services, except
8 as authorized by the Board. I wonder whether or not we
9 should make very clear that if he does receive compensation
10 it should only be be for expenses and not for
11 services.

12 What is the Board's feeling on this?

13 MR. OBERDORFER: The word "compensation" is to
14 be distinguished from the word "reimbursement." This would
15 not preclude a director from receiving reimbursement for
16 expenses incurred by him.

17 MR. KUTAK: I understand, Mr. Chairman, the point
18 came up in my absence yesterday that I had authorized --
19 the Board had authorized Mr. Cook to be an acting treasurer
20 and I dare say, in that capacity, as he incurs expenses to
21 be reimbursed for them. Did the Board contemplate
22 compensating him for his services, as well as --

23 MR. CRAMTON: The resolution carried an
24 authorization of compensation, but it was on the understanding
25 that there would be no compensation, that he would serve

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1 without compensation during this interim period. The
2 reimbursement for expenses that he incurs in his office
3 for postage, long distance telephone calls and so on, on the
4 business of Acting Treasurer, comes within the prior sentence
5 which talks about reimbursement for travel, subsistence
6 and other expenses necessarily incurred in connection with --

7 MR. KUTAK: So what I really wanted to do is drive
8 this precedent home as a suggested policy of the Board and
9 to say that, one, a director may serve as an officer with
10 the consent of the Board, but if he does serve as an officer
11 while he is entitled to reimbursement for expenses, he should
12 not be paid compensation, reimbursement and so on.

13 MR. CRAMTON: We left that question open in the
14 bylaws as they are now. It does require specific Board action,
15 and what is wrong with that is that if the Corporation, if
16 the Board wants one of its members to perform certain
17 services, whatever they may be, this expresses general
18 policy against it, but if the Board wants that to be done,
19 why can't it authorize it?

20 MR. KUTAK: It may, sir.

21 MR. CRAMTON: It has to do it by specific
22 resolution; isn't that correct?

23 MR. HORNBLLOWER: I would recommend that you
24 leave yourself the flexibility of providing for compensation
25 in an exceptional case.

1 MR. KUTAK: Okay. Then I withdraw the
2 suggestion. I was trying to incorporate the precedent,
3 and I will withdraw that.

4 MR. ORTIQUE: The bylaws, I think, adequately
5 take care of the problem, and we can, as the Chairman has
6 suggested, this Board can specifically authorize compensation
7 and will do it on a one-to-one situation, as it develops,
8 as opposed to try to cover it in the bylaws.

9 MR. KUTAK: Okay. The remaining one in front of
10 you for the interim period is meetings of directors, and
11 the only suggestion I call to the Board, and I would ask
12 Whistle if he could give me some help on this, in reviewing
13 the periods of time, I was a little bit concerned about the
14 provision that notice of regular meetings of the Board which,
15 by the way, would be four times a year, suggest to be those
16 months of March, June, October and December, and we did not
17 make it September, because we discovered that the first of
18 September could be, and probably would be this year, would
19 be on a holiday, that we would have our quarterly meetings.

20 Now, it is a, I really want you to focus on that.
21 It is nothing we need to discuss now, but in the next month,
22 I think it is important for the Board to feed back whether
23 those arbitrary periods make the most sense for the Board.

24 The thing I do want to focus on is whether or not
25 the notice period seems adequate to you. As you see in there,

1 the notice should be ten days in advance, and I wondered
2 if perhaps we should elongate that to a period of 21 days.
3 It is ministerial, but may give us more lead time, and since
4 they are regular meetings, it may be more appropriate.

5 MR. HORNBLOWER: I would think just a matter of
6 the place, that everybody is alerted to the date, that the
7 place -- it is not really necessary to give a long lead time
8 on that, but I don't think it is important.

9 MR. CRAMTON: And the rescheduling, particularly
10 if it is moved up, requires 21 days notice.

11 MR. KUTAK: Let's flag that and look at it
12 later.

13 Okay. Now, special meetings, and I dare say,
14 of course, we will be operating under that rule quite
15 substantially in this gear-up period. I wonder whether or
16 not we want to add in that section on special meetings a
17 provision, and I will read it -- something to the effect that
18 requesting five members of the Board, including nonvoting
19 members and, of course, the only nonvoting member would be
20 the President, whether you want to limit yourself to only
21 the voting members. What would you think on that?

22 In other words, if it were requested, the
23 President and four Board members, you could call a Board
24 meeting. It might be helpful.

25 MR. THURMAN: I would think so.

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1 MR. KUTAK: I would recommend we insert that because
2 I think you need the most flexibility on that. And (c),
3 "Waiver of Notice," these provisions are quite conventional,
4 waiver of notice provisions and so forth.

5 Section 4.04 talks about the agenda and the only
6 point I would like to bring to my Board on that, the
7 only attention I would like to bring to my Board is that we
8 do have agendas, we do post them in the office of the
9 Corporation, and they are in areas that will have public
10 access. Of course, the agenda will be not controlling. Matters
11 not appearing on the agenda today can be considered.

12 MR. STOPHEL: On page 11, top line, I would suggest
13 that after "discussed," we might add "and acted upon."

14 MR. KUTAK: I think the word is "acted upon." I
15 like that.

16 MR. CRAMTON: Where?

17 MR. KUTAK: Page 11, top line, after the word
18 "discussed" insert "and acted upon."

19 Okay. Then the general notice is merely to be put
20 in the Federal Register.

21 I have an amendment to Section 4.05, which I would
22 like to bring out and discuss a little bit here. Focus on
23 the second sentence "Reasonable effort should be made to
24 communicate such notice, at least three days before the
25 meeting, to every grantee, contractor and person receiving

1 financial assistance under the Act."

2 As I reflected further on that, Mr. Chairman, I
3 wondered if that technically might mean any single individual
4 who may be singularly blessed with, as a subgrantee, some
5 financial assistance.

6 MR. STOPHEL: I had the same question, Bob, and
7 underscored it.

8 MR. KUTAK: And I wonder if we should not use the
9 word of the Act and take comfort in that and use the word
10 "recipient."

11 MR. HORNBLLOWER: That would be recipient as defined?

12 MR. KUTAK: I think that would be helpful.

13 MR. CRAMTON: Grantee and contractor also comes
14 out?

15 MR. KUTAK: Yes, sir.

16 MR. CRAMTON: So it is to every recipient receiving
17 assistance under the Act, to every recipient as defined?

18 MR. KUTAK: Now, what I would also like to add, and
19 I thought it might make, it might be good policy and good
20 practice to add also, too, the members of the Advisory
21 Council for each state appointed pursuant to Section 1000 F
22 under the Act, the theory being there that if we are giving
23 notice to these recipients, giving it to the Advisory
24 Council. --

25 MR. STOPHEL: What about the Chairmen? Are there

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1 nine on each of those committees, fifty of those?

2 MR. KUTAK: It would be pursuant to Section 1004 F,
3 and there is a chairman appointed, I'm sure.

4 MR. HORNBLOWER: You mean to the chairmen in lieu
5 of all the members?

6 MR. KUTAK: To the chairmen, good point. Organization
7 of directors' meetings is not --

8 MR. CRAMTON: Would you just, in other words,
9 reasonable effort should be made to communicate such notice
10 at least three days before the meeting to every recipient
11 as defined in Section Blah, Blah, Blah, of the Act and to
12 the Chairman of each advisory council established under the
13 Act, state advisory council.

14 MR. KUTAK: Yes, sir. I think it is just called
15 "advisory council for each state appointed."

16 Maybe in terms of protocol, those ought to be
17 reversed. I don't know. Since the governor appoints the
18 advisory council and the recipients are beneficiaries, maybe
19 we ought to reverse them protocol-wise.

20 Okay. Organization of directors meetings,
21 conventional, conform, manner of acting. I don't think
22 I want to call anything to your attention, because it is
23 quite conventional, and I think, noncontroversial.

24 The same with (b), (c). When we move to the next
25 section, Mr. Chairman, Section 4.08, I sense some interest.

1 And I would like to really ask your indulgence on this
2 point for a moment and explain to you why it is so brief.
3 It is so brief because, frankly, it is, I believe, our
4 policy to use executive sessions in the complete spirit
5 of the Act and that is emergency reasons or politic.

6 MR. CRAMTON: Sparingly.

7 MR. KUTAK: Sparingly for very politic reasons,
8 and I use that with a small "p," and we should not encumber
9 ourselves with a lot of guidelines or even constraints that
10 might tie us up. We want to operate as the Act intends for
11 us to operate in the sunshine, but there are, but to, in fact,
12 effectuate some of the purposes of the Act and some of the
13 causes of our clients or at least our constituents, it may
14 be in their best interest and ours to work in executive
15 session. This has met with resistance from some here con-
16 cerned about it, some who have focused on it. And I had
17 struggled with the language and the deeper I got into it
18 the more frustrating it became to me, so I invited consultants
19 ad hoc on Sunday night to come up with some language, and
20 if I may take the liberty, Mr. Flug went to work pursuant
21 to my charge to come up with some language and that language,
22 I believe, Jim, has been circulated to the Board; correct?

23 MR. FLUG: Yes. I would point out that it was
24 a large group of people that worked on that drafting, as
25 a result of much discussion by the Committee.

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1 MR. CRAMTON: Do all Board members have these
2 two pages in front of them, which is essentially an alternative
3 Section 408 and also, if adopted, would require several other
4 small changes in other sections, merely of a coordinating
5 character? What is your pleasure as to how we should proceed?

6 MR. KUTAK: What I would like to do is say what
7 has been recommended by your Committee is what you have
8 before you. What it is, however, the fact is that there
9 has been some concern about, and the rationale of the concern
10 is that even though they understand the intendment of our
11 Board and the intendment of the Act, they are concerned
12 that these models will set precedents with other bodies and
13 make it very difficult for them to work under and, Jim, if
14 you would like Alan, if you would like to address the Board,
15 I would like to have you hear the rationale for their
16 ultimate language.

17 MR. CRAMTON: First, I would like the Board, if it
18 wants, to address itself to this consideration first, so that
19 perhaps any responses made by members of the public would
20 be responsive to views of the Board rather than us acting --

21 MR. KUTAK: I thought the Board just agreed with
22 me.

23 MR. CRAMTON: Also I think the discussion on the
24 floor ought to be by unanimous consent of the Board, which
25 you have not requested, and also should be, because the time

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1 is getting late, very brief. Are their members of the
2 Board who wish to speak on this section?

3 MR. SMITH: Mr. Chairman, I have only one
4 comment about the proposed alternatives proposed to it
5 and that is subsection (c), if we adopted this should be
6 broadened. It is now limited on discussions with independent
7 counsel to matters concerning litigation of which the
8 Corporation is a party, and I would think if we considered
9 that that ought to be broadened to discussions with
10 independent counsel concerning advice to the Board and
11 litigation, some words to that effect, but not limited
12 merely to litigation.

13 MR. THURMAN: Mr. Chairman, I started out
14 with a preference for the Committee's proposal here, the
15 brief one, and I guess I would like to hear from the
16 proponents of this particular substitute provision.

17 MR. ORTIQUE: It appears to me that the concerns
18 of individuals these past two days about the executive
19 session is justified not in terms of the spirit of the
20 Board, but rather in terms of this very succinct language
21 which gives to us a position that I am sure none of us
22 intend to take, and that is that when two-thirds of the
23 directors present determine that part or all of the
24 meetings should be in executive session, closed to the
25 public, it just seems to me that we ought to indicate in our

1 bylaw the spirit that all of us have agreed we want to operate
2 under and indicate that by spelling out some standard by which
3 we shall operate. I recognize that it is virtually impossible
4 to write every standard into it, but if we want to maintain
5 our credibility, if we want to make sure that everybody
6 understands that these executive sessions are not anything
7 that we, as Board members, desire, except to improve our
8 capability as Board members and to function in the best
9 interests of our clients, then if that assurance is necessary
10 by putting the words in a regulation, I think we ought to
11 give it to them. One of the things that I have found is that
12 people do not want their constituencies to know what they're
13 about, and I think that this Board wants our constituency
14 to know as much as possible about what we are doing. If
15 we are to serve a constituency as the Act requires of us, I
16 think that we ought to reassure that constituency with
17 appropriate language.

18 I am not ready to hand out -- certainly, I haven't
19 had an opportunity to really study it -- but I don't believe,
20 and I have not believed that we have indicated the seriousness
21 of our convictions about executive sessions in the manner that
22 we have gone into executive sessions, although I know that
23 seriousness has been there.

24 MR. STOPHEL: I have just had the opportunity also to
25 review this and basically, I suppose, do not disagree, except

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1 that I have made suggested revisions.

2 However, in view of the shortness of time, I
3 really think that perhaps we ought to be more deliberate
4 in considering the alternative proposal. Each of us should
5 consider it and the intent behind it which is not to limit
6 necessarily those matters about which the Board may decide
7 it wants to consider them in executive session, but gives
8 examples of the kinds of things that would be anticipated
9 to be held in such discussions.

10 So I think that I would suggest that, if possible,
11 we move to the balance of the bylaws, coming back to this
12 as the last item and, if time permits, give those present
13 an opportunity to speak to it because, personally, I have an
14 airplane to catch at five minutes to two and going the way
15 we are and leaving time for the public discussion on this
16 particular point in this temporary and proposed form, we will
17 have 30 days here for comments on this, as well as those
18 comments received today.

19 What I am saying is that the spirit of the
20 proposal is, I think, in line with what we have exercised
21 in the past in going into executive session, and I don't have
22 a basic conceptual problem with it, but I would prefer that we
23 move on, if we could.

24 MR. KUTAK: Glenn, I would also for the the help
25 of the Board like to propose, and it almost sounds like a

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1 half a loaf, rather than none, but really isn't, type of
2 approach here, I find no difficulty in the first half of the
3 proposed language that was submitted to us.

4 In other words, if you have this draft language
5 in front of you --

6 MR. BROUGHTON: He was suggesting that we go through
7 now * and come back with this rather than discussing it now,
8 as I understood it.

9 MR. STOPHEL: Yes, I think this is one of the
10 most important sections of it --

11 MR. BROUGHTON: In other words, let's go through
12 and clean up this and then come back for discussion on this.

13 MR. STOPHEL: That was my suggestion.

14 MR. KUTAK: Committees is a conventional
15 provision. I don't think there is anything that I would
16 like to call your attention to.

17 MR. STOPHEL: You did not discuss 4.09, Minutes.

18 MR. KUTAK: Did I skip that? Oh, yes, indeed.
19 Looking at my master, there is nothing that I think is of
20 any complexity or of a strange character that I should call to
21 your attention. The minutes simply reflect that there would
22 be on any division on a vote, the minutes would record the
23 votes of each director. It does say, and I really have to
24 read the minutes in the context of Section 4.08 to notice
25 that it does say -- the minutes provision does say that
"Minutes shall reflect discussions held in executive

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1 session... ."

2 MR. STOPHEL: One point, and this is a very brief
3 point, and it may not bother anyone, we say that the minutes
4 for each matter that is voted upon shall record the name
5 of the directors, of those present, and the result of the
6 vote. Our minutes to date have not done that, and it is
7 not usual in minutes to do that before each vote taken to
8 record if anyone has stepped out of the room.

9 Frankly I think this is probably, I don't want
10 to nitpick your bylaws, but I think this is something that
11 really will become cumbersome in the minutes, the first
12 sentence.

13 MR. KUTAK: I think we meant there, again, in
14 the nature of a roll call vote, in the nature of a voice
15 vote. I think the idea of the recordization was for it --
16 if we actually had a formal --

17 MR. STOPHEL: Well, the second sentence covers
18 that, if there is a division that we will have a roll call
19 and the names will be recorded.

20 But I think the sentence really doesn't say what
21 we intended for it to say there. We intended to say
22 each set of minutes shall record who was present, which I
23 think they should do, but not for each vote taken.

24 MR. CRAMTON: I would suggest the following
25 change to read, "The minutes of each meeting of the Board,

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1 including the holding an executive session, shall record the
2 names of the directors present, the actions taken, and the
3 result of the vote."

4 MR. STOPHEL: I think that's an improvement.

5 MR. SMITH: Right, a great improvement.

6 MR. KUTAK: Can we have that again, Roger?

7 MR. CRAMTON: "The minutes of each meeting of the
8 Board, including the holding of an executive session, shall
9 record the names of the directors present, the actions taken,
10 and the result of the vote."

11 I guess it has to be the "result of any vote,"
12 because we have now not referred to vote before. I was asking
13 specially for Mr. Hornblowers's views on it in terms of the
14 point that Mr. Stophel has made which does seem to me to have
15 some force in situations where occasionally people will step
16 out of a room to make phone calls or to go visit a rest room,
17 so on.

18 MR. HORNBLOWER: I think the authors, I guess, of
19 this language were particularly interested in seeing the vote
20 on holding of an executive session, but I think that would
21 be self-evident from 4.08. There would have to be a vote
22 on that.

23 MR. KUTAK: Yes. Okay. Thanks, Glenn, that's
24 a good improvement.

25 Section 4.10 is in there, and I would like to call

1 your attention, not that you bring me back on track, and that
2 is the dispermanent holding of a meeting, the provisions of
3 taking of an action without the holding of a meeting, but
4 such action so taken would have to be on the next meeting's
5 agenda for discussion, ratification or other appropriate
6 action, and the reason for that is to give our Chairman the
7 kind of flexibility and the kind of capability to respond
8 to any situation that might arise in the interim between
9 our regulation meetings.

10 MR. THURMAN: Do you have to get the signatures
11 of all directors?

12 MR. KUTAK: Yes, it has to be unanimous.

13 MR. THURMAN: I think this is a rather --

14 MR. KUTAK: Extraordinary action.

15 MR. CRAMTON: Well, if there is something in
16 which there is likely to be agreement, such as the President
17 wants to appoint a particular officer, the Board has
18 confidence in him, they don't want to wait three months
19 for the next regular meeting. He circulates the information
20 about the person, and the public given notice, as prescribed, and
21 within a ten-day period or fifteen-day period, each director
22 signs a written consent approving it, and sends it back.
23 And then it's ratified at the next meeting.

24 MR. ORTIQUE: I would urge that we would look
25 at that. I can contemplate, Mr. Chairman, matters involving very important

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1 and serious matters involving some project. One that comes
2 to my mind readily and has occurred previously is the
3 matter of financing, that it is necessary to do something
4 about the financial need of a particular project, either
5 because of court action or because something has happened in
6 the Washington Office or some other problem, And I would
7 worry about the necessity for all of the members to sign
8 orders.

9 I think something less than unanimous must be
10 available to you or you are going to find that you will have
11 difficulty.

12 Members of this Board will be out of the country
13 at some point, one in particular is going to be in Geneva,
14 I understand.

15 I just do not want us to be saddled with that, and
16 I would urge that you reconsider that at this time.

17 MR. KUTAK: Let's flag that.

18 MR. CRAMTON: Would you suggest two-thirds?

19 MR. ORTIQUE: Two-thirds, I think, would be
20 much better.

21 MR. STOPHEL: Does corporate law permit that?

22 MR. KITAK: It normally doesn't. Normally, it is
23 unanimous. Let me suggest this, we have got your note
24 on it. Let's leave it the way it is now,
25 flagging it and come back to it, focus on it when we have

1 comments on the subject.

2 MR. ORTIQUE: I think that Al Corbett, some of
3 the people from the field will want to cite you specific
4 chapter and verse where something had to happen overnight
5 almost.

6 MR. KUTAK: Very good, very good. Article
7 5, that is Committees. The Committees are not -- I really
8 don't think they have anything that is controversial. I
9 would like to add for your attention, Mr. Chairman, perhaps,
10 the amendment, second line from the bottom where we do permit,
11 we do contemplate the appointment of nonvoting members to a
12 committee that we may want to limit those to other than
13 executive committees.

14 It may be something that we can look at later on,
15 I mean that --

16 MR. CRAMTON: Did you figure that it wouldn't
17 be done?

18 MR. KUTAK: I think it is clear it might be
19 helpful to have it.

20 MR. CRAMTON: We are probably talking about
21 temporary committees that perform a very particular function,
22 and this Board thinks that outsiders may be of particular
23 use to it and, therefore, there --

24 MR. KUTAK: I wanted to flag it, and I think it is
25 maybe something we can work on in the interim, but maybe that

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1 we want to consider the use of nonvoting members on a standing
2 executive committee that require votes by definition.

3 MR. HORNBLOWER: You would want the President to be a
4 nonvoting member of the executive committee, so you want to be careful.

5 MR. KUTAK: Let's move on. I am trying to focus,
6 I do not see any controversy in my working papers, any
7 controversy in Section 5.02. So I would recommend going on
8 to Article 6, which relates to officers. I would suggest
9 one clarification on line 4, Section 6.01. We may want to
10 say the President will be appointed by the majority of the
11 Board. The idea of the President being such a key officer,
12 the way it reads now it could be a majority of those present,
13 otherwise, and we can operate with seven, and we can operate
14 with six, and, therefore, you can actually elect him,
15 technically, with four. And I think maybe you would want
16 for the office of President at least a firm vote of six.

17 MR. CRAMTON: I think that is a desirable change.

18 MR. KUTAK: On the other hand, that I would recommend
19 let's see, election -- there is no discussion on that really,
20 resignation, and I think I have no, I have nothing to really
21 cause you to focus on -- yes, I do, Glenn, your concern about
22 whether or not Section 6.06 (a) (3) in the whole is appropriate
23 and actually where we track that --

24 MR. STOPHEL: Well, it probably is, but I think
25 what I would suggest is that the word "general" in the fourth

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1 line be deleted, "subject to the direction of the policies
2 established by the Board."

3 I foresee occasions when there may be more than
4 general policies established, there may be specific policies
5 established, and I think that we need to delineate the Board.
6 After all, we are the ones responsible.

7 MR. CRAMTON: And that is consistent with the
8 direction language that is used in the other section.

9 MR. KUTAK: Let's take out the word "general,"
10 and it does track better.

11 All right, Secretary is straightforward,
12 conventional. Treasurer is straightforward and conventional.

13 Oh, yes, my colleague has raised something that
14 I would like to raise for the Board, because I think it is
15 a splendid idea. We put a very tight rein on our treasurer
16 with respect to all funds, and I wonder whether or not after
17 (a) in whole, we should not want to have some language to the
18 effect that he may maintain a petty cash fund without having
19 to run it through a bank.

20 Now, I don't know, Whistle, if you have some
21 guidance for me on that, but all we have now is that he
22 can't even -- he has to deposit all funds in a bank and that
23 would mean, I guess, for every little matter and, in fact,
24 I suppose, even a coffee fund would have to run through the
25 bank.

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MR. CRAMTON: You need a little clause before it and before the deposit where it says, "with the exception of a petty cash fund, deposit all such funds and securities."

He still has charge of them under the first part of it, so (a) should be "charge and custody of, and be responsible for all funds and securities of the Corporation and, with the exception of petty cash... ."

MR. KUTAK: Yes.

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1 MR. CRAMTON: Deposit all such functions, -
2 wouldn't that be right?

3 MR. KUTAK: Yes, that would be good. It would
4 give us a little flexibility for chewing gum.

5 MR. HORNBLOWER: Could I suggest a couple of
6 other boilerplate responsibilities for the treasurer?

7 Keep full and accurate records of receipts and
8 disbursements, keep all records of meetings.

9 MR. KUTAK: Your chairman will accept them, and
10 I hope the board will follow.

11 Very good.

12 6.10 is out of state, and it certainly is consis-
13 tent with our policy.

14 Likewise, on 8.11 what we would like to do is pick
15 up the change Whistle made with respect to immediate families.

16 MR. HORNBLOWER: As defined in the previous section

17 MR. KUTAK: As defined in the previous section.

18 In fact -- yes, that is right, and otherwise those
19 are very workable guidelines, I think -- and you will find
20 them for the employees, and then we move to Article 7, which
21 is just deposits, quite conventional.

22 Article 8, we had a splendid model for a seal, -
23 but I got no support so we just left it conventionally
24 established by act of Congress, July 25, 1974.

25 Fiscal year is consistent with the new budget

1 procedures of the Congress, and we move to Article 10, which
2 is indemnification.

3 My board will find that we tracked the Delaware
4 Corporation Act provisions for indemnification and we think --

5 MR. CRAMTON: Except we improved on them.

6 MR. KUTAK: We have improved on them slightly
7 but yet I think positively tightened them up.

8 What we have done, of course, Section 10.103 A
9 relates to the fact when the plaintiff is other than the
10 corporation, and what we did was we deleted the test which the
11 Delaware Corporation Act normally has, which reads that
12 he acts in good faith and in the manner which you reasonably
13 believe to be in and not opposed to the best interests of the
14 corporation. And we simply took out the alternative test,
15 not opposed to. He has to have acted in good faith and
16 believe to be in the best interests of the corporation.

17 We thought that was more welcome change consistent
18 with the fact that this is a public corporation and we are
19 public officers in that sense.

20 And that tracks to B. Of course, the difference
21 between A and B is, B is where the corporation is suing
22 rather than some other party. Other than that they track
23 pretty well, and I think work quite well.

24 I urge, however, that these provisions begin here
25 because I contemplate that they give you and Gus the kind

1 of comfort which I believe my colleagues and I are entitled
2 to in the duties that they have assumed.

3 MR. CRAMTON: It is contemplated, isn't it,
4 Mr. Kutak, that if litigation were brought against
5 an officer of the corporation, a director of the corporation,
6 which certainly is against the corporation itself, that the
7 president, as the chief executive officer, would be respon-
8 sible for its day-by-day administration, would be in a
9 position to instruct the general counsel of the corporation
10 to intervene in that litigation, and defend the litigation
11 on behalf of the corporation and its interests, and indeed,
12 if the interests of the director and officer was exactly the
13 same as the corporation, represent that director or officer
14 if he so wanted to be represented, rather than by independent
15 counsel.

16 MR. KUTAK: Of course.

17 MR. CRAMTON: I just wanted to make sure that was
18 clear.

19 MR. KUTAK: May I go back then to Glen's concern
20 and the board's concern, because otherwise we would have
21 completed our review of the proposed bylaws, and suggest a
22 compromise between the language that had been proposed to
23 you by your committee, (director and officer) and the
24 concerns expressed by our colleague, Ortique, and expressed
25 by Amici and that would be to use the first half of the

1 language proposed of a substitute section.

2 In other words, I would urge upon the board the
3 flexibility that is contained herein, without the --
4 the flexibility and yet standard -- without the constraints
5 that are achieved by the enumeration, read as follows:

6 All meetings of the board should be open to the
7 public, unless two-thirds of the board determine in accordance
8 with procedures described in this section, that a specific
9 part of the meeting regarding a specific matter or matters
10 shall be closed to the public, that part of the meeting closed
11 to the public shall be known as executive session.

12 An executive session may be held only when two-
13 thirds of the membership of the board -- I really think --

14 MR. CRAMTON: There are so many changes in here.
15 Who is voting? Instead of members present, it requires --
16 Could I suggest an alternative change, an alternative way
17 of handling this?

18 MR. KUTAK: I will suspend mid-sentence.

19 MR. CRAMTON: What I would like to suggest is that
20 if it is thought that a very general criterion could be
21 included, I would suggest that merely the public interest cri-
22 terion because we are not in a position now to have experienced
23 too much more and that could be done very easily in the third
24 line on executive section that you have now have on 408 in
25 the committee draft.

1 Let me read it:

2 "All meetings of the board shall be open to
3 the public unless two-thirds of the directors present
4 determine that the public interest would be served by holding
5 part or all of the meeting in executive session closed to
6 the public," period.

7 And then the rest of it as follows:

8 And then we publish this as the preferred position
9 of the board. But then, after it, in brackets, we publish
10 this executive session language saying this has been
11 proposed as an alternative and at least one member of the
12 board supports it, and --

13 MR. KUTAK: Your chairman accepts that.

14 MR. CRAMTON: -- and in terms of going out in the
15 Federal Register, both versions are presented, but with a
16 clear indication that our tentative thinking is in favor of
17 the more general and less restrictive.

18 MR. KUTAK: Your chairman accepts it, and that
19 is agreeable with you, Revisus?

20 MR. ORTIQUE: Yes, it is agreeable with me.

21 I think that the note -- I have not had an
22 opportunity to study this carefully, and so I don't want to
23 say that I support this just the way it is written, but I
24 support the principle and the key provision to establish a
25 standard in the regulation.

1 MR. KUTAK: And what I would like to do --

2 MR. CRAMTON: We could change that language; and
3 some members of the board requested that the alternative be
4 made available to the public, or something like that.

5 MR. KUTAK: I would really like to ask not only
6 my colleague -- excuse me?

7 MR. SMITH: I said the final result then might
8 well be a compromise between the two alternatives.

9 MR. KUTAK: And I was anticipating that, sir,
10 by saying I would not only advise my colleagues, but my
11 Amici to really give me good model language and perhaps even
12 references that we can look at from other statutes as well,
13 that are statutes of corporations comparable to ours at least
14 in spirit, if not in purpose, and see if we can't find a
15 formula that will express the concerns that you articulated,
16 Revius, and yet at the same time do not tie up the corporation
17 and gives it the flexibility it needs; not suggesting
18 that we need both.

19 Mr. Chairman, with that I would move on behalf of
20 your committee, that it first be given the authority as a
21 Committee on Style, to publish any lapses that we may have
22 had, either in grammar or in punctuation or in spelling,
23 before we put it in the Federal Register, but capturing
24 the text that has been presented to you with one caveat,
25 that my colleague wants --

1 MR. CRAMTON: That is appropriate if you do it
2 by tomorrow, because those regulations have got to be included
3 in the Federal Register, have got to go to the Federal
4 Register tomorrow.

5 MR. KUTAK: It was not a dilatory motion, sir,
6 but first of all that we have your permission as a Committee
7 on Style, to pick up any --

8 MR. CRAMTON: You do, without objection.

9 MR. KUTAK: Second of all, that I would like to
10 point out -- and Marshall has called my attention to something
11 we had discussed, and I had not brought to the board's
12 attention, and that is in that same section 4.08, this is
13 the executive section paragraph; that we have this language:

14 "The board shall provide an opportunity for
15 members of the public to address the board at one meeting
16 specifically so designated, and at all other meetings of the
17 board as may provide" -- no, I guess it is -- "such
18 other meetings as the board may provide. Members of the
19 public may otherwise address the board during meetings of the
20 board only upon unanimous consent of the board."

21 You have been seeking this sort of authority each
22 time that we have had public addresses, and we wondered whether
23 or not there should be a bylaw that simply states that it
24 would require unanimous consent.

25 MR. CRAMTON: I think we are getting into something

1 that may have complications we haven't thought through,
2 and the language had not been ventilated or circulated and
3 we haven't had a chance to think about it. And I would suggest
4 that this proposal be circulated to the board for possible
5 consideration in connection with when we consider the bylaws
6 in that final form.

7 I think that may be well taken, and Marshall has
8 pointed out that when we discussed this yesterday I should
9 have gotten it written up and gotten it to you, and I failed
10 to do that. But I think your advice is good, Mr. Chairman,
11 and I will --

12 MR. CRAMTON: See, it has been operating in a
13 different direction. We have a congenial and responsive
14 board, but if you look ahead in the future, if it requires
15 unanimous consent before members of the public could ever
16 participate and the chairman and majority do not indeed seek
17 advice from outside on a particular matter, without unanimous
18 consent, I just think that goes too far.

19 I think -- in other words, I am sufficiently
20 unhappy with the language you propose so I think we need to
21 reconsider it, and think about it further.

22 MR. KUTAK: For my board's consideration then, I
23 move that the proposed bylaws be accepted for publication,
24 public and further board comment, and with the purpose thereby
25 being that your committee will consider all public, all

1 comments received pursuant to such publication, and will
2 return to you at your next -- at our next board meeting,
3 a proposed, a tentative final set of bylaws for your
4 consideration.

5 MR. SMITH: Does that motion include the timetable?

6 MR. THURMAN: Yes.

7 MR. SMITH: I'll second the motion.

8 MR. ORTIQUE: Does it also include these two sheets?

9 MR. KUTAK: Yes, sir, because it was accepted as
10 the alternate language for Section 408 to be printed in the
11 Register.

12 MR. CRAMTON: Before we act on this matter, you
13 talked about an opportunity for members of the public to
14 express briefly, views on executive session. But, do you
15 wish to do that, members of the board, at this time, or
16 should we move on and leave that to the comments and other
17 process that is going to take place?

18 MR. BROUGHTON: Mr. Chairman, I realize Glen in
19 particular may have a deadline, but there are some people here
20 who want to be heard.

21 MR. THURMAN: And I would like to hear them.

22 MR. BROUGHTON: I would suggest without objection,
23 we hear from that -- on that right now.

24 MR. CRAMTON: Why don't we restrict it to 15
25 minutes. It is now 14 minutes of one.

1 Let's try to have comments directed to either the
2 executive session provision, or to the general manner and
3 process by which we are proceeding in getting proposed bylaws,
4 and have that done, hopefully, in 15 minutes.

5 Are there persons who wish to comment?

6 Mr. Flug?

7 MR. FLUG: There are a number of people I think
8 who wish to speak, and we will try to keep it as short as
9 possible, since there is almost nothing to discuss on the
10 proposed rules and regulations except one small procedural
11 issue, in terms of publication. I think there will not be
12 much time taken as far as I know on that other issue by the
13 public.

14 As most of you have realized by now, the issue of
15 executive session, which is not really an issue of executive
16 session, it is the issue of the openness with which this body
17 is going to act, is one of the most important issues that
18 has been faced so far.

19 I think by some counts it could be argued that
20 this board has had more executive sessions already than it
21 has had meetings, and that has given rise to some concern.

22 I think the statute is clear, as you have recog-
23 nized, that there is to be a clear presumption in favor of
24 the openness of the operation of this board.

25 I think the Senate and House Reports both make a

1 very substantial gloss on the statutes and make clear that
2 this is a rule, a firm rule of openness which is only to be
3 breached in extraordinary circumstances. And the House report
4 makes reference to such matters as personnel matters, and
5 talks about something akin to an intrusion of privacy
6 and the Senate report emphasizes extraordinary nature of
7 an executive session.

8 The committee's draft, and I should stop and thank
9 the chairman and the committee for the openness with which
10 it proceeded, we did have a full opportunity to participate
11 in its deliberations. This matter was cut short somewhat
12 because of the expectation that it would be continued at this
13 time.

14 So, we are especially pleased to have this
15 opportunity. But I think it is important that the first
16 time the corporation publishes something which has to do with
17 the question of openness, that it be something that the
18 board and the corporation and the entire community can be
19 proud of.

20 This is an important issue in operational terms,
21 because the board needs the inputs that it gets from an
22 open session. The people who are interested in the activities
23 of the board need to know to the greatest extent possible,
24 what the dynamics of the board are, what the reasoning is,
25 what the positions are. And we realize that sometimes

1 openness may operate to the detriment in the short run, -of
2 some particular position that some or all of us may have.
3 But we think that the principle of openness is so important
4 that it ought to govern.

5 I think, -therefore, -that the solution suggested
6 by the chairman is not an adequate one, -even for these
7 temporary purposes. I think that at a bare minimum, -the
8 first publication by this board should see some recognition
9 of the extraordinary nature, -some standard better than just
10 a public interest standard.

11 I think that there is a subject of good faith here.
12 Obviously, -any stanard that is placed in these bylaws can be
13 evaded. We don't want to drive you underground, -but we are
14 presuming good faith, -and this is not an approach. We have
15 no suspicion that this board is going to do anything evil in
16 closed session. We do think that it is important that we know
17 what is going on, -that you know how we all feel about what
18 is going on, -and I think we are all grown men and women.

19 When we see you come out of an executive session
20 that has theoretically been for the purpose of receiving
21 advice of counsel, -we know that additional things go on.

22 We want you to have a very strong internal mandate
23 not to have that happen. We want you all to rise up in unison
24 in these executive sessions and say, -this is where the
25 executive session has to stop because our justification, -our

1 requirement to have an executive session has now ceased,
2 and we must go into open session.

3 Thank you.

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1 MR. CRAMTON: Mr. Veney of the National Clients
2 Council.

3 MR. VENEY: Gentlemen, I guess I am going to echo
4 Jim's remarks, but first of all I would like to say I wish I
5 could approach this in a lawyerly and scholarly way but I don't
6 think that this is a subject amenable to that. First of all,
7 I clearly hope that you have no right to hold executive
8 sessions as given to you by the statute and I guess by any
9 principle of operation where tasks are in fact to be completed
10 in a time period. I am, however, very, very much concerned
11 that you not exemplify to the Welfare Department and the housing
12 authorities and the Board of Education that attorneys are busy
13 suing in order to open up the kind of behavior that they are
14 taking to court. I would hope that you would not exemplify to
15 the local boards of directors the kind of conduct that client
16 groups and directors and staff attorneys have worked so long
17 against and that is taking matters into executive session.

18 I think, gentlemen, you should realize that we would
19 enjoy seeing you with your jackets off and your ties askew.
20 We would enjoy your thought processes, we would like to learn
21 from your thought processes. We would like to have the advice
22 of your counsel and hear that advice to the extent that that is
23 possible, of course. We would like to see you doing that which
24 is possible, your most difficult task, and that is taking 11
25 people with varied backgrounds from varied parts of this country

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1 and coming together and reaching a consensus. I cannot believe,
2 gentlemen, that each issue that has been presented in all of
3 your meetings has the unanimous consent as your vote would imply.
4 There must have been some quibbling back and forth, there must
5 have been some discussion, and I think we would have learned and
6 have benefited from being privy to that.

7 I think that certainly your counssl gives you good
8 sound advice and no one here would say that they can give you
9 better advice, but I think the entire community might learn
10 from it, I encourage you both for your constituency here and
11 elsewhere and for your image and later that you adopt a positive
12 standard, a positive statement, if not the one before you, then
13 certainly a statement that says the board will do all in its
14 power to avoid executive sessions, that's the philosophy and it
15 is the philosophy that I am talking about, it is the philosophy
16 of this body that the action it takes will be taken in the full
17 light of public scrutiny.

18 Thank you.

19 MR. CRAMTON: Miss Vanaman.

20 MISS VANAMAN: Wew feel that a word is necessary
21 about why this is a passionate issue because it is a passionate
22 issue. And without trying to reconstruct history, a minute
23 might be worthwhile on why we come to this opinion. We began
24 in 1966, we saw client after client after client all over the

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1 country who came to us with problems relating to the inability
2 to get into public housing, who came to us with problems about
3 the inability to even get an application for welfare, who came
4 to us with problems of no street light in their particular part
5 of town because it was a barrio or a ghetto or a slum, who came
6 to us and said, "I have rats and I have mice and I have roaches
7 and nobody does anything about it and I can't get the public
8 health department to do anything about it."

9 The frustrations of those years of trying to handle
10 those cases time after time, day after day as individual matters
11 is ingrained in every legal services attorney who works in this
12 country, it is ingrained in those who are still here, it is
13 ingrained in those who have gone on, it is the fundamental thing
14 that we learned and that is that individually without access to
15 those bodies that make decisions, there was little that our
16 clients could do.

17 More importantly, we learned and we learned the hard
18 way because we made mistake after mistake after mistake that
19 having access through your attorney was not enough, that people
20 did not participate in the system, that people could not produce
21 change in their own, that people would be totally dependent upon
22 attorneys and you have their lives if they as individuals didn't
23 have an opportunity to to to the housing authorities, to the
24 Welfare Department advisory council, to the City Council and to
25 other organizations.

1 We believe that more probably than we believe
2 anything else about the work we have done and that is that we
3 attempted to open up and make public the decision-making
4 processes of this country. To the extent we were social acti-
5 vists we only led the charge in lots of places because we are
6 certainly not unique in that belief any longer.

7 State after state has adoped sunshine laws, agency
8 after agency has been sued and sued and sued until those
9 meetings are public and open meetings. The Board of Education
10 of New York City, the Board of Education of Boston, Massachu-
11 setts, it decides its public sessions before an organization
12 called ROAR that they are going to appeal or not appeal another
13 Judge Garritty's orders. Those wouldn't go behind executive
14 session because the public wouldn't stand for it.

15 The fact of the matter is that if you count the
16 number of hours you spend in public meetings as opposed to the
17 number of hours you spend in executive sessions your current
18 record is more time open than in closed but we want a board
19 that is dedicated to the principle that that always be the
20 situation.

21 It is not enough that there is counsel of NLADA
22 or there is an executive director or that the staff community
23 or the community committee on individual rights and responsi-
24 bilities or the staff people from the ABA or from the ABA
25 standing committee can come and talk to you. The principle

1 that we fought for over and over and over again was that our
2 clients, every project director in this country, has a right to
3 sit in this room and hear what you decide and how you decided
4 it and we misuse our clients and we misuse the trust that's
5 been put into us if we don't say that to you because that's what
6 it's been about for the last 10 years, and I think Jim is right
7 when he says you have to be careful what you publish the first
8 time because, frankly, publishing the alternative language
9 doesn't seem enough.

10 If you look at the statute that says open meetings,
11 if you look at the House report, the Congress report and the
12 Senate report, but more importantly if you look at the trend in
13 this country in 1975, which is to say I am looking to take this
14 job and be accountable and responsible to the constituency I
15 concern and I talk not about us as project attorneys but about
16 the thousands upon thousands of clients who are in the end the
17 beneficiaries of this program we have got to know what goes on.

18 That history you have to know to understand why for
19 us this is probably the most passionate issue that you will have
20 in the next 30 days.

21 MR. CRAMTON: Mr. Michael Lefkon from Chicago.

22 MR. LEFKON: Thank you, Mr. Chairman. My name is
23 Michael Lefkon and I am with the Legal Services program in
24 Chicago. I would like as a lawyer to recommend to this board
25 that it carefully consider the wording of this provision to

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1 relieve the legitimate fears of the poor that they have towards
2 lawyers and the American legal profession. In my nearly nine
3 years of practice with the poor in Chicago, I have found that
4 lawyers are probably the most distrusted individuals in these
5 communities and I think it is particularly important for this
6 board which has at this time no consumer representation or no,
7 in other words, no representation from the client community who
8 could go into the executive sessions with you.

9 Thank you.

10 MR. CRAMTON: Is there further comment on this
11 particular matter? Mr. Flug?

12 MR. FLUG: Just one comment on the drafting of the
13 alternative provision you have before you. We were encouraged
14 to come up with alternative language, we tried to take into
15 account each one of the exceptions that were proposed to us as
16 needing coverage by any rule. If the board can come up with
17 additional ones or wants to discuss the drafting of these, I
18 think that can be done quickly and right here and now. Enough
19 other needs that are not reflected here that you have not
20 expressed to us before, we would like to hear them. We tried
21 in the best way we could to reflect the needs that you had
22 expressed to us, Mr. Chairman, the members of the committee,
23 counsel, and yet to maintain the presumption and the basic rule
24 that the statute requires the mission of this corporation
25 absolutely mandates.

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1 MR. KUTAK: Mr. Chairman, we have heard many
2 excellent comments and I am sure I am going to hear them again
3 in the next 30 days and I solicit elaboration on those argu-
4 ments and briefs that were expressed. Obviously, if nothing
5 else, I have been duly sensitized to come up in classical
6 American law institute form I hope that will reflect the
7 sentiments and the ideas that were expressed here. I will
8 continue to roll up my sleeve and try to find that language
9 but I do urge the board to help me in that regard and my
10 committee and my counsel and I will say again express not only
11 the extension of that vision by public right through the
12 Register to the public but also in a rather early form I would
13 like to get as much feedback on this as soon as possible because
14 I would not like to wait until the 11th hour in order to work
15 out and circulate alternative or substitute language that
16 captures the best thinking of all of us but to do at the
17 earliest possible time.

18 MR. CRAMTON: Mr. Kutak, to the extent that the
19 language that the committee has suggested and apparently the board
20 at least initially proposes, its language contains a tone of
21 overreliance on executive session that might be dispelled by
22 the addition of an additional sentence which is just attempting to
23 change the tone of it as a whole and let me suggest something
24 and see whether the members of the board would accept it.

25 We now have changed the first sentence, as I under-

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1 it, so that it reads, "All meetings of the board shall be open
2 to the public unless two-thirds of the directors present determine
3 that the public interest would be served by holding part or all
4 of the meeting in executive session closed to the public."

5 I now wonder whether it wouldn't be desirable to
6 insert an additional sentence at that point which states,
7 "Executive sessions shall be used sparingly and for good reason"?
8 And then go on with the agenda and non-agenda items.

9 MR. HORNBLOWER: I think that's fine. I have more
10 hesitation about the public interest problem because I find it
11 hard, for example, if you are going to go into executive session,
12 for example, to interview an applicant, isn't it a little hard
13 to see the public interest there?

14 MR. CRAMTON: A significant and substantial
15 interest of the public.

16 MR. HORNBLOWER: Something a little broader to
17 cover even the specific changes of the alternative draft.

18 MR. CRAMTON: It might have gone back to the
19 initial language and not attempt any criteria at all and just
20 refer to sparing use and for good reason.

21 MR. THURMAN: I think we had better leave this for
22 later drafting, Mr. Chairman.

23 MR. CRAMTON: I am concerned about the question
24 that's raised that what we send out in the Federal Register
25 promulgated carried a tone and emphasis that I think reflects

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1 the correct view of the board and that is we don't plan to
2 reply extensively on executive sessions with you to use them only
3 for good reason and you have now persuaded me that public
4 interest -- What I now suggest is we go back to the original
5 first sentence just as it was, which merely tracks the statutory
6 language without attempting to state any criteria, and then add
7 a second sentence which says, "Executive sessions shall be
8 used sparingly and for good reason." Contains the tone which
9 I think we have adopted that we are not going to have an
10 executive session unless we have a good reason for doing so,
11 our experience is not large enough at this point so we are
12 prepared to spell out all of the situations in which we will or
13 will not have an executive session.

14 It may be that after a year or two when we have some
15 more experience that we would be prepared to list detailed
16 criteria but until we get in that position, we want flexibility
17 but yet we want to not raise fires.

18 MR. KUTAK: Mr. Chairman, your committee as it is
19 represented moreover accepts that and I would propose that to
20 the board and include that in the proposed regulations.

21 MR. ORTIQUE: Now, when you say, Mr. Chairman,
22 that you are going to include that in the proposed bylaws,
23 do you mean that you are not going to include in your Register --

24 MR. KUTAK: No, sir, we are still going to --
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MR. CRAMTON: The alternative there is suggested in total, a bracketed case that the members of the Board desire the alternative proposal to be submitted and would be interested in comments on that as well.

MR. SMITH: As seconder of the motion, I accept the change.

MR. CRAMTON: Are we prepared to vote on the adopted of the motion which, as I understand it, entails not only a process by which these proposed bylaws would be published and subsequently considered and, when and as revised by the Board, adopted.

MR. ORTIQUE: I'm prepared to go through the process and that is all that I'm prepared to do at this juncture.

MR. CRAMTON: That is all we are doing. We are promulgating these as proposed bylaws for notice and comment, in accordance with the schedule outlined by the Chairman of the Committee.

MR. BROUGHTON: And that, as I understand it, this is what you were saying --

MR. ORTIQUE: I just want to make --

MR. BROUGHTON: It is absolutely without any commitment on the part of any of the Board.

MR. CRAMTON: Although I think there clearly is an implication that this is the best judgment of the

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1 Board at this moment in time.

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2 MR. ORTIQUE: That is the point that I don't want
3 to imply, Mr. Chairman. I don't to imply that -- I think
4 this Committee has done a marvelous job, they presented to
5 us what they think would be good bylaws for the Corporation,
6 and now I am going to receive and which I say I, I mean
7 every member of this Board, is going to receive comment from
8 the public or that portion of the public that reacts to the
9 Federal Register, which is fine, and then this Board will
10 decide whether this is the best language or not the best
11 language and I don't want to imply that it is, until such
12 time as I're ready to take the position.

13 MR. BROUGHTON: In the process of receiving
14 public comments, I take it that you, as individual members
15 of the Board, want to give further personal reflection to
16 various sections.

17 MR. ORTIQUE: That's right.

18 MR. BREGER: I think that the Committee would
19 agree with that view, that in such a time span for discussion
20 and consideration for receipt of views and information that
21 we really put this forward as a document for discussion
22 purposes, recognizing as what we had come up with under the
23 severe time constraints and looking forward to the 30-day
24 notice and comment, appeared to provide us with further
25 information from others, as well as the opportunity for further

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1 reflection ourselves, and reflection by other board members.

2 MR. CRAMTON: Well, I guess the point I was getting
3 to is perhaps suggested by a very pragmatic question: does
4 the transition staff operate and does the Board operate by
5 these proposed bylaws or do we have nothing, no framework until
6 and unless these are adopted? The resolution which was placed
7 before you and which, indeed, I thought was the Committee's
8 resolution, let me read it:

9 "RESOLVED, that the attached Bylaws are adopted
10 as the temporary Bylaws of the Legal Services Corporation to
11 remain in effect until further action by the Board of Directors:

12 "RESOLVED FURTHER, pursuant to Section 1008(e)
13 of the Legal Services Corporation Act of 1974, that said Bylaws
14 be published in the Federal Register for the purpose of receiving
15 public comment within 30 days."

16 MR. ORTIQUE: Mr. Chairman, I prefer to submit
17 that. I would suggest to the Board that the process be
18 enunciated under one motion and then we direct our interim
19 staff to take action on this temporary basis in another
20 motion.

21 MR. BROUGHTON: Well, we adopted Mr. Chairman,
22 yesterday some temporary personnel policies which were considered
23 to be necessary, as I understood it, during the transitional
24 period.

25 Now, are we saying that what we propose here

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1 for consideration and comment is considered to be at least
2 a framework of staff, temporary staff, to operate under, or
3 do we have to have that authority at this point?

4 MR. CRAMTON: Well, if questions arise about the
5 vote that is required for particular action, about quorum
6 questions, at the next meeting.

7 MR. SMITH: Special meetings.

8 MR. CRAMTON: About the notice that you're entitled
9 to for a special meeting that is called, about whether or not
10 we publish the agenda of a Committee meeting or put a notice
11 of the committee meeting in the Federal Register, we are in the
12 situation of having to have some rules to guide us during
13 the period until we we adopt these; right?

14 MR. BREGER: Well, it is my understanding that
15 we have operated for these last two meetings reasonably
16 successfully on an ad hoc basis, and it is further my
17 understanding from Mr. Hornblower at least in the short term,
18 one can survive without having bylaws in place, and it would
19 seem to me, if we schedule this matter as the first matter for
20 our next meeting, this would mean that we would hopefully,
21 at the beginning of the next meeting or shortly there into it,
22 have a set of bylaws that we are going to propose as our final
23 bylaws, but would not give the impression, although I'm drafter
24 of it, that we are putting these bylaws forward with the
25 intention of making them final, except for extraordinary

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1 circumstances, that instead we are putting them forward as
2 a document for discussion and we hope to air and have
3 discussion and have time for further reflection on them.

4 MR. CRAMTON: Let me try something else. What if
5 the resolution that I read were revised to read that:

6 "RESOLVED, that the attached Bylaws, with the exception
7 of Section 4.08, are adopted as the temporary bylaws of the
8 Legal Services Corporation to remain in effect until further
9 action by the Board of Directors;

10 "RESOLVED FURTHER, pursuant to Section 1008(e)
11 of the Legal Services Corporation Act of 1974, that said
12 Bylaws be published in the Federal Register for purposes of
13 receiving public comment in 30 days."

14 MR. BREGER: Well, it seems to me there may be
15 other areas where there would be discussion, as well. I am not
16 exactly sure what the course would be of operating one more month
17 without bylaws having this as the first item on the agenda
18 at our September meeting, and that the point putting forward
19 proposed final bylaws rather than fixing ourselves in concrete,
20 as it were, through placing these into temporary legitimacy
21 already.

22 MR. CRAMTON: Mr. Oberdorfer would like to speak to
23 that.

24 MR. OBERDORFER: Mr. Breger, we are having problems
25 in initiating our financial operation. I mentioned yesterday,

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1 I think in dealing with depositories and accountants and
2 the other paraphernalia to go into a financial operation,
3 and what will be a fairly busy organization in the next 30
4 days, we would be well-served to have at least the essentials
5 of bylaws temporarily in place.

6 MR. CRAMTON: I would add to that that we have
7 gotten along without bylaws thus far, and we have been lucky,
8 and everything has gone very fortunate, but our luck can
9 break in any moment, and we may be involved in litigation and
10 questions may arise about the validity of action taken at
11 Board meetings. And I just think we ought to have a framework
12 which we could point to as being at least temporarily in place,
13 and I don't understand the reason why not.

14 It seems to me the controversy surrounds Section
15 4.08 and the revised motion, except Section 4.08.

16 MR. SMITH: Well, Mr. Chairman, also I interpret
17 our proposed revised language of that motion not to foreclose
18 the fact that on the ninth we could change any or all of the
19 sections in the Article, so they are simply temporary, as you
20 suggest, and I would think that that language would be
21 acceptable, except, maybe, you need to add to it, in addition
22 to excluding 4.08, you need to add to it then the provision
23 that 4.08 be excluded in the publication in the alternative,
24 because I'm not sure, but what your motion leaves that out
25 entirely, and maybe --

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1 MR. CRAMTON: No, I don't think so, because it refers
2 to the attached bylaws, but we could clear it up.

3 MR. SMITH: I think you should clear that point
4 up, so that point of the original motion be --

5 MR. CRAMTON: -- be published in its entirety.

6 MR. SMITH: And then we that change, if the mover
7 agrees to it, I, as seconder, certainly would agree to the
8 substitution of the motion.

9 MR. KUTAK: Mr. Chairman, I very reluctantly
10 find myself departing from colleagues, but I would urge my
11 Board, my colleagues on the Board to provide these temporary
12 bylaws. They are only temporary, they are, indeed, proposed,
13 but I think that for your security and at least for your guidance
14 and the guidance of your staff and the guidance of your
15 colleagues, we ought to have some temporary interim bylaws,
16 inadequate as they may have been drafted up to now.

17 But I would, therefore, urge the adoption of the
18 motion, understanding that these are temporary bylaws, that
19 your Committee is going to be at work this next thirty days,
20 it intends to come back to you, subject to the response of the
21 public, and yourselves, to perfect the bylaws and that at our
22 next meetings, you will be able to adopt permanent bylaws for
23 the operation of the Corporation.

24 MR. BREGER: I would be pleased to agree with that,
25 with the understanding as articulated that this present set

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1 which we will be operating under for the next month or so
2 are viewed as temporary and that they will possibly be
3 amended after further reflection.

4 MR. CRAMTON: The Resolution describes them as
5 being temporary bylaws.

6 MR. BREGER: Well, I wanted to fix that --

7 MR. KUTAK: I assure you the Chairman of your
8 Bylaws Committee considers them that way.

9 MR. STOPHEL: I agree, adopting them as temporary
10 bylaws, we are not locking ourselves into the amendment
11 process are we, of having to give notice of any amendment that
12 may be adopted at that meeting which the amendment section
13 states that it is --

14 MR. CRAMTON: Let's delete this amendements
15 section as well, so that with the exception of Sections 4.08
16 and 11.01, so it makes it very clear that we don't have to,
17 we are not amending when we come up with permanent bylaws.

18 Is that --

19 MR. OBERDORFER: And I would assume that if there
20 is any lag time required before the effective date of the
21 permanent bylaws that the temporary bylaws will remain in
22 force until the permanent ones become effective.

23 MR. CRAMTON: I think it is clear it says to
24 remain in effect until further action by the Board of
25 Directors and further action until permanent bylaws become

1 effective.

2 MR. ORTIQUE: Mr. Chairman, my only concern is
3 that we just spell these things out, so that everyone is
4 assured that the publication in the Federal Register is not
5 perfunctory, that we are really sincerely inviting comment
6 and really giving to our Committee an area for change, so
7 that we ought to just state that these will remain in effect
8 until permanent bylaws are adopted.

9 MR. KUTAK: I also would understand from these
10 discussions that we don't have to publish the proposed changes
11 we are going to make to the permanent bylaws. As your
12 Committee works and comes up with a proposed final set of
13 bylaws based on the public comment and the comment of the
14 members of this Board, and we so mark that up and submit it
15 to you, of course, in a redline version, so you can readily
16 see the changes, we would not go through a publication and
17 notification process for that.

18 Is that your understanding, Mr. Chairman?
19 That would be mine.

20 MR. CRAMTON: We would not be required to do so,
21 and the question of whether it is desirable to do so, would
22 be a question for the Board at that time.

23 MR. KUTAK: I would accept that.

24 MR. BROUGHTON: Well, there is a schedule laid
25 out, isn't there?

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MR. CRAMTON: That's right.

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MR. KUTAK: Okay.

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MR. CRAMTON: As I understand it, let me read the motion, and I assume [REDACTED] that Mr. Ortique's amendment has been accepted, and there is no objection to it.

The resolution in the form in which I believe it is now before the board is as follows: "Resolved, that the attached bylaws, with the exception of Sections 408 and 11.01 are adopted as the temporary bylaws of the Legal Services Corporation to remain in effect until permanent bylaws are adopted.

"Resolved further, pursuant to Section 1108 (e) of the Legal Services Corporation Act of 1974, that said bylaws be published in their entirety in the Federal Register for the purpose of receiving public comment within 30 days."

MR. ORTIQUE: And that entirety means that the alternatives be there.

MR. CRAMTON: That's understood.

MR. SMITH: That's Mr. Kutak's motion.

MR. HORNBLOWER: In effect until permanent bylaws or as they may be modified by the board, you might be freezing yourself in there.

MR. CRAMTON: Well, I like it further, by the board of directors which is a very broad phrase but Mr. Ortique was concerned about that language.

MR. HORNBLOWER: At the meeting in September I may want to modify the temporary regulation during that 30-day

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1 period before your final --

2 MR. CRAMTON: Until further by the board or
3 permanent bylaws are adopted, are effective. Well, we still
4 seem to be struggling for the language of the resolution
5 and I am not quite sure what we are arguing about, but --

6 MR. BROUGHTON: Could you put in there in con-
7 nection with the temporary part that on the advise of counsel
8 that temporary bylaws are necessary during this interim
9 period? That seems to me is what we are resolving for because
10 I will accept that but, otherwise, I would prefer what you
11 suggested a minute ago, we simply state that this is up for
12 consideration only and not even the framework at least
13 between now and the September meeting, but, as I understand it,
14 that counsel does feel that we need something in there.

15 MR. SMITH: I think that's right.

16 MR. HORNBLOWER: I wouldn't advise the board that
17 any of their actions would be invalid for failure to have by-
18 laws but I think it is very convenient to have them, desir-
19 able in the interest of all concerned, and practically
20 necessary for such problems as dealing with banks, which
21 always demand this kind of documentation.

22 MR. SMITH: We have to deal with them pretty soon
23 in order to pay some bills.

24 MR. KUTAK: Yes.

25 MR. CRAMTON: Mr. Oberdorfer now has the draft of

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1 the resolution. Have we agreed on the text of the resolu-
2 tion?

3 MR. KUTAK: Would you read it once more for
4 us?

5 MR. CRAMTON: "Resolved that the attached bylaws
6 with the exception of Sections 408 and 11.01 are adopted
7 as the temporary bylaws of the Legal Services Corporation
8 to remain in effect until permanent bylaws become effective.

9 "Resolved further ..." and the next one is
10 just the same about publication.

11 MR. KUTAK: I think it's been moved, seconded,
12 call the question, sir.

13 MR. CRAMTON: Mr. Veney is attempting to get
14 our attention.

15 Do we have unanimous consent?

16 Mr. Veney?

17 MR. VENEY: May I just point out to the board that
18 the issue that is raised in 408 seems to be also raised
19 in 502 (c).

20 MR. CRAMTON: Well, but that merely contains the
21 requirement of 409 actually about which I don't gather there
22 is any quarrel, that the minutes should reflect the --

23 MR. FLUG: (c), (c).

24 MR. SMITH: Page 16, the top of the page.

25 MS. VANAMAN: The alternative proposal that you have

fm4 1 before you from the umbrella group has two pages, one which
2 also amends Section (c).

3 MR. CRAMTON: Should we add that sub-subsection?
4 What is it, Section 408?

5 MR. KUTAK: 502 (c).

6 MR. CRAMTON: And --

7 MR THURMAN: I have got a question on that, Mr.
8 Chairman. I anticipate that the presidential search com-
9 mittee will be meeting with considerable regularity for
10 the next two months, and I would hope this doesn't fore-
11 close our having some executive sessions wherein we discuss o
12 only personnel.

13 MR. CRAMTON: The statute is clearly in effect
14 and authorizes executive sessions. It says nothing about
15 openness of committee meetings other than executive
16 meetings, executive committee meetings which we don't
17 have and I take it that you can continue to follow the prac-
18 tice that you think is desirable until and unless a more
19 restrictive bylaw is proposed.

20 MR. SMITH: In fact in the interim I think it
21 leaves you freer than if you had adopted this.

22 MR. THURMAN: Well, with that understanding
23 I have no objection to it.

24 MR. BROUGHTON: It was your concern that published
25 that in the alternative that leaves you without a definite

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1 guideline?

2 MR. THURMAN: Now that we bring into that this
3 pertains also to the committee meetings. --

4 MR. BROUGHTON: Yes, that's what I meant.

5 MR. CRAMTON: We don't interpret it that way. As
6 I take it that because we haven't adopted anything even
7 temporarily with respect to executive sessions, the only
8 language we are bound by is the precise language of the
9 statute that says executive sessions on two-thirds meetings
10 for committee meetings and for executive committee meet-
11 ings, Board meetings and executive committee meetings and
12 that's the only requirement that's in effect until we do
13 something further.

14 MR. ORTIQUE: It seems to me clear that the spirit
15 with which all of this discussion has gone on is to develop a
16 document that reassures our constituency that this board
17 intends to continue its efforts in the spirit that it has
18 in the past and that we don't want to be locked into any
19 language that doesn't give that reassurance. At the same
20 time, I don't think that any of this discussion refers to a
21 suspension of the Act or a suspension of our functions.

22 And so I don't see where that really causes any
23 problems, Sam, at all. We will go ahead with our business,
24 we are going to function, we are going to do the things
25 that we know we have got to do.

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1 MR. CRAMTON: Are you ready for the question on the
2 adoption of the proposed resolution?

3 MR. SMITH: Yes.

4 MR. CRAMTON: All those in favor say "aye."

5 (Chorus of "ayes.")

6 MR. CRAMTON: All those opposed say "no."

7 (No response.)

8 MR. CRAMTON: The resolution is adopted. We
9 now come to the portion of the report of the committee on
10 bylaws and regulations that deals with bylaws, but first
11 let me pose an alternative to members of the board. We
12 have been notified that if the board members are going to
13 go downstairs we have to do so at this time.

14 Alternatively we can rush ahead and try to eat
15 wherever and whenever we can after the sessions ends.

16 MR. ORTIQUE: I'm not going to eat with you anyhow
17 because I have to check out of the hotel.

18 MR. CRAMTON: What are your views? Would you
19 prefer to press on?

20 MR. SMITH: How long would you anticipate we
21 have left?

22 MR. CRAMTON: Well, I anticipated we would be
23 through at 12:30 this morning.

24 MR. THURMAN: You are not going to make that.

25 MR. CRAMTON: And we still have one item and --

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1 MR. BROUGHTON: I wonder if you could poll the
2 members of the board individually as to plane schedules.

3 MR. CRAMTON: Why don't we press ahead and the
4 rest of us --

5 MR. THURMAN: When do we have lunch?

6 MR. CRAMTON: I think the public cafeteria may
7 be open and may be able to get a quick sandwich before you
8 reconvene or, if you can't, we can have somebody come out
9 and bring sandwiches in at the start of your committee
10 meeting.

11 Le'ts press ahead with the --

12 MR. KUTAK: I can be very brief with my col-
13 leagues on the board and there is nothing controversial
14 about it, I hope. Let me explain with respect to the
15 proposed regulations that again these are what we would
16 call 90-day rule regulations and the only
17 regulations contained in the proposed regulations would be
18 those wthat we have deemed by law must be promulgated within
19 the first 90 days after the board has met.

20 Second of all, and therefore the language of
21 these regulations literally tracks the language of the
22 Act.

23 So you find nothing technically creative and you find
24 nothing technically innovative about these regulations.

25 They are the regulations that are necessary to comply with

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1 Act and the regulations are drafted in the form of the
2 language of the Act.

3 But we did, in order to give our public notice
4 as to how else we are going to act, we added one sentence
5 in Section 1, which I would like to call your attention
6 to ant that section -- By the way, there is a draft of
7 August 6, not the draft of the board. They are otherwise
8 the same with some style changes. We have advised the
9 public that nothing contained in these regulations which
10 are the regulations to be promulgated within 90 days,
11 should affect the application of the other provisions
12 of the Act, including the rights, duties and restrictions
13 contained therein in the corporation, its directors, officers
14 and employees and I wonder if we didn't want to add
15 counsel --

16 MR. OBERDORFER: Staff attorneys.

17 MR. KUTAK: Yes, we wanted to add staff attorneys,
18 and the recipients and employees of recipients as of the
19 date we go into effect.

20 So, what I am suggesting is that these regulations
21 track the regulations of the language of the law only are
22 being promulgated for the purposes of compliances with the
23 law. They are truly stop-gap regulations and we give
24 them public notice that with respect to all of the con-
25 straints imposed upon us and of the date we really take

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1 possession of the assets and assume the obligations under
2 the Act, we will, of course be governed by the other pro-
3 visions of the Act. I have only one other technical
4 amendment that I would like to point out and I suggest that
5 it might be possibly an improvement.

6 Page 2, line 4. I think we could put "appeared"
7 after the word " practicable." So, it would say "Final
8 rules and regulations will be proposed by notice and publi-
9 cation of the Corporation as soon as practicable appeared."

10 We don't need to say after the president is in
11 office. Other than that, gentlemen, I would like to
12 follow the timetable with the proposed interim -- continu-
13 ing word of art is proposed temporary regulations to follow
14 the timetable of the proposed bylaws and that we publish
15 these for circulation and comment and that we would consider
16 these in the next 30 days.

17 MR. CRAMTON: Indeed, at the same committee meeting
18 to consider comments on the bylaws, we will consider comment
19 on these proposed regulations.

20 MR. KUTAK: And that we would be able to move
21 our board with respect to final temporary regulations at
22 the next board meeting along with final bylaws.

23 MR. THURMAN: Bob, is this just the beginning?
24 Do you contemplate many more regulations?

25 MR. KUTAK: Let me address that because I do and

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1 by all means I do. And I am really going to need the cooper-
2 ation and assistance of the board in that regard. I would
3 hope by the next board meeting to come to the board and if
4 possible to get out to our friends as well a contemplated
5 timetable in which I identify the areas which we are going to
6 fix on for regulations some timetable by which we would
7 try to develop them, some allocation for addressing them
8 because the chairman has appointed a board of three and
9 I don't see us all tracking the load, but I would like to
10 have a working paper by the next board meeting, spelling out
11 over the next six months what I really think it will be,
12 what will be our work schedule for the development of the
13 final regulations of the board and we would draw very
14 heavily on the work product that was circulated in our first
15 board meeting, those two volumes, we would draw very heavily
16 on the alternativethat was submitted to us and indeed there
17 may be others in it within; I don't know.

18 But we will build from them and build on them
19 because we have an awful lot of work to do and I would
20 like to come to my board with a proposed work schedule,
21 assignment of responsibilities, timetable and with a
22 critical path so that at some point in the future we can
23 not only schedule working drafts but comments, hearings,
24 further committee work and then finally the assimilation
25 but it is a gigantic task and it is going to need the

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1 support as well as the assistance of my board and I hope
2 to have that working paper for you, Mr. Chairman, at the
3 next board meeting.

4 MR. CRAMTON: Are the proposed regulations, tem-
5 porary regulations now before us for discussion as a unit?

6 MR. KUTAK: Yes.

7 MR. CRAMTON: I have three kinds of niggling
8 stylistic matters. On page 1, six lines from the bottom, I
9 wonder whether the word "business " isn't better than
10 "working,", "business hours."

11 MR. KUTAK: "During working hours," all right.

12 MR. CRAMTON: On page 2 you inserted "appeared"
13 after the word practicable and deleted the rest of the sen-
14 tence.

15 MR. KUTAK: Yes, sir. Also on page 2, Mr.
16 Chairman, two lines up from the words "Section 2" after the
17 word "employees" we should say and "staff attorney" and
18 then take out the "an".

19 MR. CRAMTON: Which "employees"?

20 MR. KUTAK: "...its directors, officers and
21 employees."

22 MR. CRAMTON: Which line are you on?

23 MR. KUTAK: Two lines up after "Section 2." See
24 the word "employees"?

25 MR. CRAMTON: Yes. Attorneys are always going to

fm12 1 be employees but they are not subject to the Act, outside
2 counsel.

3 MR. KUTAK: What I had in mind, -- can somebody
4 help me?

5 MR. CRAMTON: It was never included --

6 MR. KUTAK: I think I had that in mind and I
7 will retract that.

end 11 8 Thank you for telling me what I had in mind.

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MR. CRAMTON: Please come to order.

Are there further changes?

MR. KUTAK: Yes, there is one on Page 1, 22 lines from the bottom. I think it is a technical amendment, but it is a good one. Tracking, "Consideration of such comments --"

MR. CRAMTON: Where are you?

Jim, give me the language.

MR. FLUG: I need unanimous consent.

I want to apologize because I went over and spoke "in camera" to the Chairman of the committee. I should not have. The suggestion is that after consideration that comments be added and published in the Federal Register in final form prior to September 13th.

This reflects, I believe, the intention of the committee and the Chariman has expressed at the committee meeting.

MR. KUTAK: You bet.

Mr. Chairman, the other amendment would be on Page 2. After some consultation I had the right words but the wrong music. It would be in that same line. It would now read: "Employees, the recipients, their employees, and staff attorneys."

MR. CRAMTON: Why not just "Employees and staff attorneys of recipients"?

MR. KUTAK: Okay, okay. "The employees and staff

1 attorneys of recipients," okay. We are going to a meeting of
2 the committee on style.

3 MR. CRAMTON: Page 5, Section 5, Paragraph D. The
4 waiver or any provision of the law is stuck on the end without
5 a "by" in front of it, and it reads --

6 MR. SMITH: Plus, I think the prescriptions of the
7 act would take precedence to the prescriptions of our rules,
8 so I would change the order to prescribe by any provision of
9 the act or by Sections 3 and 5 here -- no assistance, it
10 merely reads better.

11 MR. KUTAK: Accepted, okay.

12 MR. CRAMTON: The very bottom line. I don't think
13 the words, "of the Corporation," need to follow "Chairman of
14 the Board." I mean it is very clear because the President of
15 the Corporation, the Chairman have been defined.

16 MR. KUTAK: You have it. No discussion. Very good.

17 Again, I would move that on behalf of our committee
18 the Board approve for circulation and comment the proposed
19 temporary regulations, the view again being in mind that we
20 will follow the track with the bylaws, accept public comment,
21 review the same, come back to the next Board meeting for their
22 adoption as permanent temporary regulations.

23 Do I have a second?

24 MR. BREGER: Yes.

25 MR. KUTAK: And I hope you would give me the leave

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1 as the committee on style to correct it.

2 MR. CRAMTON: You have heard the motion. Is there
3 discussion?

4 (No response.)

5 MR. CRAMTON: All those in favor of the motion
6 please say Aye.

7 (A chorus of Ayes.)

8 MR. CRAMTON: All those opposed say No.

9 (No response.)

10 MR. CRAMTON: The motion is adopted.

11 MR. OBERDORFER: One clarifying observation. These
12 bylaws are not now temporarily effective. I mean these
13 regulations are not temporarily effective in contrast to the
14 temporary bylaws, which are.

15 MR. KUTAK: If I could just have a word of personal
16 privilege. I really want to express for the record my
17 gratitude to my colleague, specifically Marshall, and to my
18 counsel, David and Marshall, and to all those who have chipped
19 in. It has been hard work even thus far and I know it is
20 going to be harder work from here on out, but it could not
21 have been done without the tremendous help from Amici, from
22 our counsel, from our special counsel, and from our committees,
23 and I want to thank them for the job thus far so well done.

24 This brings us, I think, to the possible item on
25 this agenda -- back to Item 7, orderly continuation of

bwm 12-4

1 existing legal services programs and activities, and which we
2 have been requested to receive a report from legal services
3 programs which are presently largely or totally funded from
4 monies made available by community action agencies on their
5 local initiative.

6 I have had some private conversations with members
7 of the Board and of the staff, have had private conversations
8 with two gentlemen who are here to state the concern of
9 those groups concerning their continued funding.

10 In the meantime I have received a communication
11 which I would like to read, and I hope that it will make it
12 unnecessary for us to discuss this question further or to
13 hear this item at this Board meeting, and I would like to read
14 the following statement for the record.

15 "Mr. Gallegos, the director of the community
16 services administration, has assured me that in keeping with
17 his policy of assisting the Corporation to make a smooth
18 transition, he will make sure that local initiative or CAA-
19 sponsored legal services programs receive funds for a period
20 long enough" -- and he mentions March 31, 1976 -- "to allow
21 the Corporation to study these programs and to make funding
22 decisions."

23 [REDACTED] Since that was certainly the gist of the concern
24 that has been expressed by those groups, it seems to me that
25 it moots any question of considering it at this meeting

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1 The next item on the agenda is 9, future meeting
2 schedule.

3 I propose that the next meeting of the board,
4 consistent with the timetable expressed in the handling of
5 the proposed bylaws and of the proposed temporary regula-
6 tions, be on Tuesday, September 9, 1975.

7 I would suggest that the board members also hold
8 open on their schedule, on their callendars, Monday, September
9 8, if it becomes necessary to have a two-day meeting. But
10 we will meet, in any event, if you accept this recommendation,
11 on Tuesday, September 9, and maybe possible meet also on
12 Monday, September 8.

13 Is that appropriate?

14 MR. THURMAN: So moved, if a motion is
15 necessary.

16 MR. CRAMTON: Well, I think we can take it as
17 settled, without objection. Meet at the call of the chair,
18 and if you don't object, I so call, tentatively. More tenta-
19 tively I would like to mention several other dates so that
20 people can put them on their callendars, and so reserve them.

21 It is a little hard to predict precisely what is
22 going to come up and when we have to meet, but at least you
23 should reserve Thursday and Friday, October 2nd and 3rd, on
24 your callendars as possible meeting dates for the board.

25 You also should reserve on your callendars, Thursday

1 and Friday, October 16th and 17th, for possible meeting
2 dates, and you should also hold Thursday and Friday,
3 November 6th and 7th. I doubt if it will be necessary to
4 meet on all of those dates, and occasions, but I think it is
5 desirable that you make a tentative hold on them.

6 We will meet perhaps on September 9th, and perhaps
7 on September 8th, but I think we need to meet on some of the
8 other dates, but hopefully not all of them.

9 And another date that I would mention, one more
10 date, and that is December 11th and 12th, as a tentative
11 hold in terms of a possible board meeting on Thursday and
12 Friday, December 11 and 12.

13 Mr. Flug is seeking attention.

14 Do we have unanimous consent for him to speak?

15 MR. THURMAN: I want to make an announcement on
16 the committee meeting.

17 MR. FLUG: Just briefly, Mr. Chairman, I would
18 like to suggest the possibility and then if it meets with the
19 approval of the board, follow it with a formal suggestion
20 that the board might want to meet, have its November meeting
21 during the annual meeting of the NLADA in Seattle, Washington
22 from November the 12th to the 15th, at a place where you
23 would have the opportunity meet most of the people, most of
24 the directors of the programs, and some of the staff attorneys,
25 we hope as many as possible who are working on these programs.

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1 If it does turn out that that is a good
2 place to have a meeting, you will also be personally and
3 cordially invited to be there, so I hope in any event you
4 would hold those dates so you could plan on being with us in
5 Seattle that week.

6 Thank you.

7 MRE. ORTIQUE: I would certainly like to underscore
8 that, Mr. Chairman, on behalf of the board of NLADA, that
9 this would be a tremendous opportunity for the board to become
10 acquainted with people who will actually be our employees, and
11 who will be there.

12 We look forward to 1000 persons who are active in
13 legal services, being present at our convention; at least
14 1000.

15 MR. CRAMTON: Mr. Thurman has an announcement that
16 he would like to make.

17 MR. THURMAN: Gentlemen, what time shall we set
18 this for now? It is almost 2.

19 MR. SMITH: 2:30.

20 MR. ORTIQUE: And we make a special request of the
21 chairman that he propose and make provision --

22 MR. THURMAN: We will go downstairs.

23 As announced yesterday, there will be a meeting of
24 the Presidential Search Committee set at 2:30 in this room.

25 I mentioned three subjects yesterday, and we will

1 take up two of them today.

2 The first one will be that of procedures, -comment
3 upon those already being put into effect and any others you
4 might want to suggest.

5 And number two will be criterion for the selection
6 of president.

7 And as to number three, -the applications of the
8 nominations, -we will not go into those at this time.

9 That meeting will be set for 2:30 in this room.

10 MR. CRAMTON: Is there any further business?

11 MR. BROUGHTON: Mr. Chairman, -I have one comment
12 to make and that relates to this question of the advisory, -
13 states advisory groups which will be appointed by the governor
14 of the respective states.

15 It is not clear to me if --

16 VOICE: We can't hear you.

17 MR. BROUGHTON: -- whether the board has taken any
18 action, -or should take any action as far as the notification.

19 I have had a call from the president of the North
20 Carolina State Bar, -as well as the president of the State
21 Bar Association, -concerning that.

22 VOICE: We can't hear you.

23 MR. THURMAN: They can't hear you.

24 MR. BROUGHT: The comment I was making related to
25 the State Advisory Counsels, which are provided by the Act to

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1 be appointed by the governor, and as to whether the board
2 should take any steps to communicate this to the respective
3 governors and also a reminder to support groups of bar
4 associations, legal service groups and so forth as to sub-
5 mission of names to the governor.

6 It has been called to my attention, North
7 Carolina and I understand other groups are now getting
8 together a list to submit to our governor for his considera-
9 tion. And this is something that governors, being busy
10 people could overlook.

11 And I just bring to the board's attention as to
12 whether we should officially communicate, if we have not
13 already done so, to the governors and to people who will
14 be in groups that would make suggestions to him.

15 MR. CRAMTON: Mr. Broughton, we have not communi-
16 cated any such notice as yet. I think for several reasons:

17 One, as I understand it, the staff should provide
18 six months for this notification to be made, and there were
19 some other problems that were deemed to be somewhat more
20 urgent.

21 MR. BROUGHTON: I realize that.

22 MR. CRAMTON: Second, it was suggested at the
23 briefing conference, as you will recall, that there may be
24 some serious questions about whether or not, in addition to
25 making notice, that the board should deal with the issue,

1 what functions, et cetera, State Advisory Councils should
2 follow. And that gets you right into this regulation-
3 writing process which Mr. Kutak's committee is struggling
4 with. And it seems to me I would like to take your comment
5 as a direction or suggest to his committee that they give
6 appropriate and early consideration to that question, appro-
7 priate and early in the sense that they have got to come back
8 with something in nine months so we can act by December 17,
9 1975. But that we do that intelligently and carefully and
10 the like, and it is not going to be forgotten.

11 The staff is instructed to bear that in mind.

12 MR. SMITH: We have until January 14, 1976, six
13 months after July.

14 MR. CRAMTON: Six months, after, right.

15 Do I have anybody's consent to recognize Mr. Tracey?

16 MR. TRACEY: Just a brief comment, Mr. Chairman.

17 Mr. Broughton, there is a communication that came
18 across my desk that goes to a number of state bars. It is
19 not an ABA publication. But in that publication it erroneously
20 indicated that this had to be accomplished within 90 days.
21 So you might anticipate receiving more contacts from state bars
22 asking why they haven't heard from you.

23 I just thought you might like to be aware of that.

24 MR. CRAMTON: You wouldn't think of sending them a
25 communication which would straighten that out?

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1 MR. TRACEY: In our current Washington letter,
2 it is put correctly. But this was a non-ABA publication
3 this was put in, but our --

4 MR. CRAMTON: Could you ask for a correction to
5 be included in whatever that other publication was?

6 MR. TRACEY: We have no control or influence over
7 that.

8 MR. CRAMTON: Yes, but you could ask them.

9 MR. TRACEY: Well, we could, but they would
10 probably not honor it, coming from the ABA.

11 MR. CRAMTON: Is there further business?

12 If not, we stand adjourned until either September
13 8th or September 9th.

14 (Whereupon, at 2:00 p.m., the meeting was
15 adjourned.)

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