

LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS
COMMITTEE MEETING

OPEN SESSION

August 9, 1992

4:35 p.m.

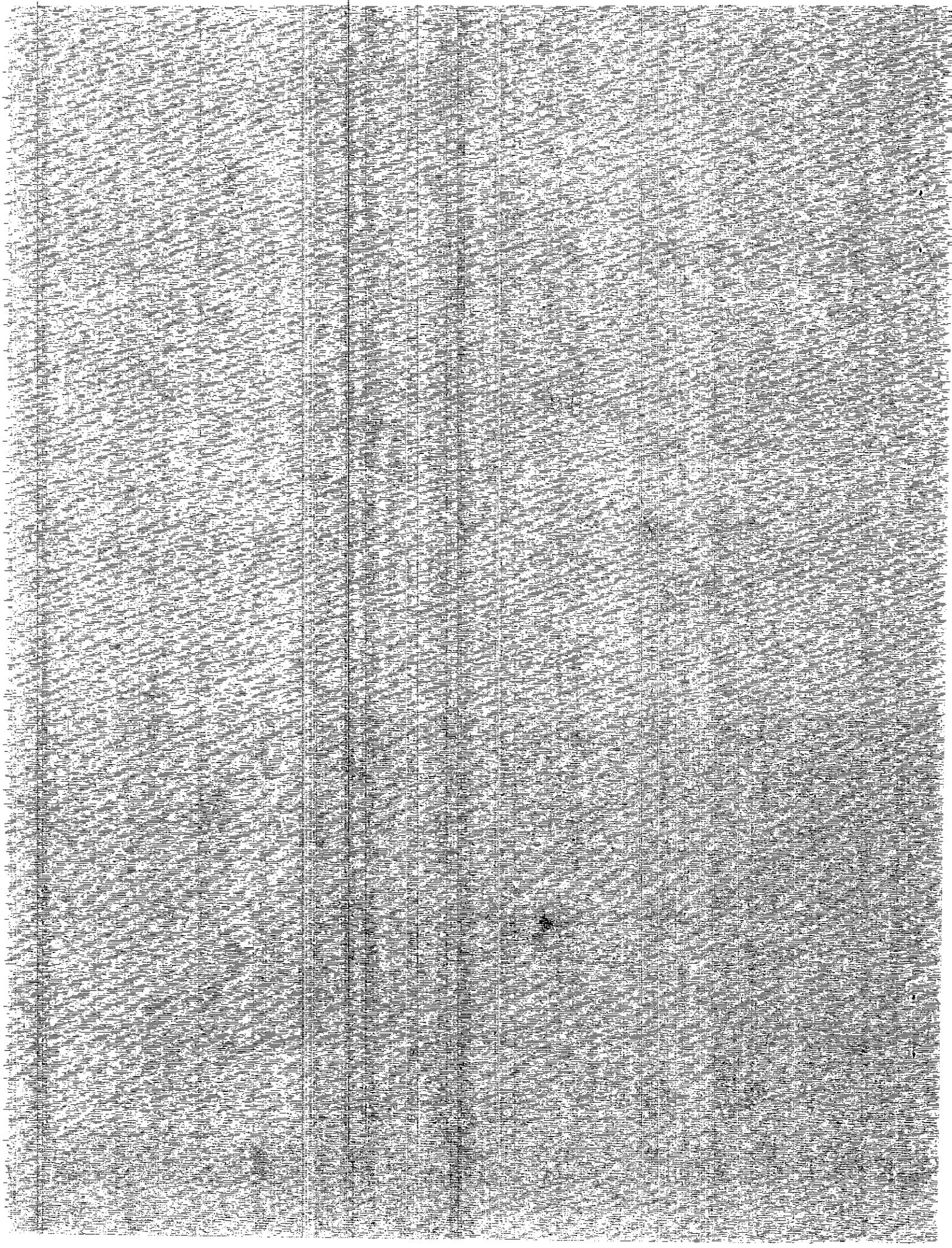
Sir Francis Drake Hotel
450 Powell Street
The Union Square
San Francisco, California 94101

Diversified Reporting Services, Inc.

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WASHINGTON, D.C. 20006

(202) 296-2929



BOARD MEMBERS PRESENT:

Norman D. Shumway, Acting Chairman
Howard H. Dana, Jr.
J. Blakeley Hall
William L. Kirk, Jr.
Jo Betts Love
George W. Wittgraf
Jeanine E. Wolbeck

STAFF PRESENT:

John P. O'Hara, President
Patricia Batie, Secretary
David Richardson, Comptroller and Treasurer
Victor Fortuno, General Counsel
Edouard Quatrevaux, Inspector General
Ellen Smead
Kenneth Boehm

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P R O C E E D I N G S

1
2 CHAIRMAN SHUMWAY: We will call our meeting to
3 order. This is the meeting of the Operations and Regulations
4 Committee. It has been noticed for this time and place. In
5 attendance as members of the committee are: Jo Betts Love;
6 Howard Dana; myself, Norman Shumway, sitting in for Tom Rath
7 who is not with us today. We also have Board members
8 Blakeley Hall and Jeanine Wolbeck with us.

9 The first item of business would be the approval of
10 the agenda for this meeting. The committee members have a
11 copy of that agenda. If so, would someone move its approval?

M O T I O N

12
13 MS. LOVE: So moved.

14 MR. DANA: Second.

15 CHAIRMAN SHUMWAY: Is there any discussion?

16 (No response.)

17 CHAIRMAN SHUMWAY: Those in favor say aye.

18 (A chorus of ayes.)

19 CHAIRMAN SHUMWAY: Opposed?

20 (No response.)

21 CHAIRMAN SHUMWAY: The ayes have it. The agenda is
22 approved.

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1 The next item is to approve the minutes of our
2 meeting held on July 13, 1992. Is there a motion to approve?

3 M O T I O N

4 MS. LOVE: So moved.

5 MR. DANA: Second.

6 CHAIRMAN SHUMWAY: Jo Betts moves and Howard Dana
7 seconds. Is there any discussion on the minutes?

8 (No response.)

9 CHAIRMAN SHUMWAY: There being none, those in favor
10 say aye.

11 (A chorus of ayes.)

12 CHAIRMAN SHUMWAY: No?

13 (No response.)

14 CHAIRMAN SHUMWAY: The ayes have it. The minutes
15 are approved.

16 We're halfway through the agenda and it's 4:35.
17 The third item, however, will take a little bit of time, but
18 I think it should go fairly smoothly. We're going to ask
19 Ellen Smead to report to us on the competition demonstration
20 projects. Ellen?

21 PRESENTATION OF ELLEN SMEAD

22 MS. SMEAD: Good afternoon. My name is Ellen

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1 Smead, and I'm Director of the Office of Field Services. I'm
2 also heading up the staff efforts on the comparative
3 demonstration project.

4 As you recall, at our last meeting, you approved
5 the staff proposal subject to two amendments on peer review.
6 Since that meeting, we made those amendments on peer review
7 and we mailed the solicitation to the field programs on July
8 29th. A copy of that was sent to all Board members with some
9 other materials.

10 As of last Thursday, we received about two dozen
11 telephone calls from programs expressing interest in
12 participating in the project and asking certain questions.
13 One of the concerns that they've expressed is the timing. At
14 the present time, there's a September 1 deadline for
15 submitting an interest in participating in the project.

16 Several executive directors or Board members are
17 going to be out of town during most of August and there won't
18 be an opportunity to consult. Several executive directors
19 would like to consult with at least their Board chairs and
20 possibly their full Board before deciding whether or not to
21 participate in the project.

22 So next week we intend to send out a memo to the

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1 field. Mr. O'Hara will be sending a memo to the field
2 advising the programs that we're going to extend the deadline
3 to September 14th for the programs to tell us whether or not
4 they would like to participate. In that memo we'll also
5 indicate that the peer review visits themselves will begin on
6 November 2nd. That will give us time to train our peer
7 reviewers.

8 On other matters, since the last meeting we also
9 met with two members of the Advisory Group to discuss more
10 specifics about how to measure the performance criteria.

11 So I think that that sums up the progress that
12 we've made in the past few weeks since the last meeting.

13 CHAIRMAN SHUMWAY: Were the meetings held with the
14 advisory group as a whole or just a couple of members?

15 MS. SMEAD: Just a couple of members. These are
16 the two, actually three, members. These are the people who
17 sort of perform the subgroup. I just met with certain
18 members of the staff group, submembers of the staff group.

19 CHAIRMAN SHUMWAY: Ellen, as you receive these
20 calls from potential applicants and they ask you for more
21 time to consider the matter, was the two-week period that
22 you've given them enough in all cases? Did they seem

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1 satisfied with that?

2 MS. SMEAD: We didn't make that decision until
3 Thursday afternoon. But in discussing it with the advisory
4 group, the submembers of the advisory group, they thought
5 that would be enough time, that a couple weeks would be
6 sufficient.

7 That would also give us in house about 10 days to
8 get all the materials together so we can make the
9 solicitation by the end of September -- I'm sorry, make the
10 selection through the lottery by the end of September.

11 CHAIRMAN SHUMWAY: Were there any other concerns
12 that came to you except the timing of the program?

13 MS. SMEAD: There was some questions about what we
14 thought the cost of participation would be. We indicated we
15 did not know. That's why we had just made a general blanket
16 minigrant proposal. I think there was a couple questions on
17 what type of timekeeping system would be envisioned. That's
18 my understanding of what the summary of the questions have
19 been thus far.

20 CHAIRMAN SHUMWAY: Do committee members have
21 questions? Mr. Dana?

22 MR. DANA: When was the last time that the full

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1 Advisory Committee has met?

2 MS. SMEAD: The last time the full Advisory
3 Committee met would have been in May, I believe.

4 MR. DANA: Is it contemplated that the Advisory
5 Committee will meet again as a full committee?

6 MS. SMEAD: The answer is yes. It is contemplated
7 that they would meet again. At the last meeting of this --
8 I'm not sure if it was the committee or the Board -- Mr.
9 Shumway indicated it might be a good idea if we had the
10 Advisory Committee ongoing to at least monitor the progress
11 on it, I think is the way he described it. We were thinking
12 maybe on a quarterly basis meeting. That has not been
13 formalized yet. We haven't set a date for a meeting.

14 We've also talked about we want to get the full
15 committee's input on some of these measurements. Whether
16 that would be in a specific meeting or by exchange of paper,
17 we're not sure. There might be meeting by mail, so to speak,
18 or meeting in person.

19 MR. DANA: That would have to be done before
20 November?

21 MS. SMEAD: Correct.

22 MR. DANA: And probably before that because you're

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1 going to need to pick the peer reviewers and then train them?

2 MS. SMEAD: Correct.

3 MR. DANA: Several people have come up to me and
4 expressed an interest in being considered as a peer reviewer.
5 What is the process for applying?

6 MS. SMEAD: We are soliciting -- well, we like to
7 receive recommendations. The recommendations should go to
8 the president, Mr. O'Hara.

9 MR. DANA: What should people do? Should they send
10 resumes?

11 MS. SMEAD: They should contact Mr. O'Hara,
12 indicate their interest, or if somebody would like to make a
13 recommendation, they should tell who they are recommending
14 and why they are recommending.

15 MR. DANA: It's a substantial commitment of time
16 over an extended period of time. Is it contemplated that the
17 peer reviewers will be paid?

18 MS. SMEAD: Yes. We contemplated they'd be paid
19 our regular consulting rate, which at this point I understand
20 -- I'm sorry.

21 MR. O'HARA: Mr. Chairman, may I?

22 CHAIRMAN SHUMWAY: Yes.

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1 MR. O'HARA: I'm not sure that we've reached a
2 final decision on that. If executive directors are chosen,
3 there's a question as to whether or not they should be paid a
4 consulting rate because they are already receiving a
5 substantial remuneration from the Corporation through the
6 funding process.

7 MR. DANA: I understand that if somebody is
8 receiving legal services compensation there may be a problem.
9 But if someone were not receiving legal services
10 compensation, it is contemplated that they would be paid, or
11 we don't know yet?

12 MR. O'HARA: In that case, I would say that yes, we
13 would pay them some fee plus pick up their expenses. We
14 couldn't ask them to do it gratis.

15 MR. DANA: Do we know yet or do we have a budget,
16 an overall budget, for the cost of the project?

17 MS. SMEAD: Yes. I don't have those figures in
18 front of me right now. They were about \$1.6 million, as I
19 recall. That includes everything. That includes the
20 preliminary grants, the awards at the end, cost for
21 conducting the peer review site visits before the
22 demonstration period and conducting the peer reviews after

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1 the demonstration period.

2 MR. DANA: That strikes me as high. I would be
3 interested in a breakdown, if you have one, at some point.

4 MS. SMEAD: I can --

5 MR. O'HARA: I think one of the problems -- again,
6 Mr. Chairman, if I might, one of the things we're looking at
7 is the selection of the participants. This will greatly
8 determine how much money will be expended, where they are
9 located, travel costs, things like that, and where our peer
10 reviewers come from.

11 If I may continue, Mr. Chairman?

12 CHAIRMAN SHUMWAY: Yes, Mr. O'Hara.

13 MR. O'HARA: Thank you. Ellen, I'm not sure
14 whether or not the Board was furnished a copy of the
15 memorandum which was sent to all of the basic field program
16 directors on July 29th regarding that.

17 MS. SMEAD: Yes, sir. They were provided a copy of
18 that memo. Attached to it was a copy of the solicitation
19 itself.

20 MR. O'HARA: As it went out?

21 MS. SMEAD: As it went out. I've handed that to
22 the chairman so he can look at it.

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1 CHAIRMAN SHUMWAY: I did receive this and I presume
2 other Board members did as well. Does this look familiar,
3 Howard?

4 MR. DANA: Yes. I got it.

5 CHAIRMAN SHUMWAY: Mr. Dana, did you complete your
6 questions?

7 MR. DANA: Let me come back.

8 CHAIRMAN SHUMWAY: Mr. O'Hara, did you have
9 anything else?

10 MR. O'HARA: No.

11 CHAIRMAN SHUMWAY: Are there other questions? Mr.
12 Kirk? Let the record show that we've been joined by Mr.
13 Kirk.

14 MR. KIRK: Thank you. Ms. Smead, as supporter of
15 peer review from the last meeting, it is not my feeling that
16 the selection of the peer reviewers must be run by or done
17 with the approval of the Advisory Committee, my own personal
18 view. I think that it's a big step that we're making and I'm
19 trusting that you will use your best judgment doing that.

20 MS. SMEAD: If I may, Mr. Kirk, the president will
21 be making that decision. I will not be involved in the
22 selection.

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1 CHAIRMAN SHUMWAY: Are there other questions for
2 Ms. Smead?

3 MR. DANA: You indicated that you received a couple
4 of questions on timekeeping as to what was contemplated. Do
5 we yet have a response to that? What was the response to the
6 question?

7 MS. SMEAD: The response was that we were looking
8 for timekeeping being kept by advocates, that meaning to
9 include both attorneys and paralegals. Our concern was that
10 it was kept by function so that we could determine if -- that
11 the people were working on cases or administrative matters.
12 That's my understanding of what the question was.

13 MR. DANA: And how was that information going to be
14 fit into the various criteria that are proposed to be used
15 for evaluating programs?

16 MS. SMEAD: That's what we're reviewing at this
17 time.

18 MR. DANA: But there's no current plan or no
19 meeting of the Advisory Committee has been scheduled?

20 MS. SMEAD: It has not been scheduled but was
21 contemplated either that we would meet or that we would
22 exchange paper to get input that way, one or the other. In

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1 other words, we want to insure that there is Advisory
2 Committee input.

3 CHAIRMAN SHUMWAY: Mr. Dana, you're finished?

4 MR. DANA: Yes.

5 CHAIRMAN SHUMWAY: Okay, are there any other
6 questions from committee members? Board members?

7 (No response.)

8 CHAIRMAN SHUMWAY: If not, thank you, Ms. Smead.
9 We appreciate that report.

10 We'll move then to Item No. 4 on the agenda.
11 That's consideration of notices submitted to the Federal
12 Register regarding proposed amendments to certain of the
13 Corporation's regulations. This regard we'll ask Mr. Victor
14 Fortuno, the Corporation's counsel, to bring us up to date.

15 Victor?

16 PRESENTATION OF VICTOR FORTUNO

17 MR. FORTUNO: Good afternoon, Mr. Shumway and
18 members of the committee. Pursuant to Section 1008E of the
19 Legal Services Corporation Act on Thursday, July 30, 1992,
20 the Corporation published five notices in the Federal
21 Register. Those five notices announced the proposed
22 withdrawal of several of LSC's regulatory provisions and

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1 invited public comment on the proposed withdrawals.

2 The deadline for receipt of comments is Monday,
3 August 31, 1992. I believe that copies of what actually
4 appeared in the Federal Register have been made available to
5 all members of the committee. Comments received will be
6 reviewed by the staff. We'll prepare an analysis and a
7 summary of the comments.

8 A copy of all comments received, a staff analysis
9 and the staff summary will then be furnished to every member
10 of the Board of Directors. It's anticipated that the
11 committee, this committee, will hold public hearing, at least
12 one public hearing, before the next scheduled meeting of the
13 Board of Directors, which I believe is scheduled to occur on
14 September the 24th in Minneapolis, Minnesota.

15 At the public hearing, interested parties may
16 provide all comments to the proposals and may be questioned
17 by the committee, of course, as may staff members at that
18 time. Once the committee is satisfied that has thoroughly
19 reviewed the proposed action and carefully considered the
20 proposed withdrawals, the committee would ordinarily vote on
21 what recommendations to make to the full Board.

22 The full Board could then, in its discretion,

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1 either have additional hearings or proceed directly with
2 action on the recommendation of the committee. If the Board
3 takes formal action to draft a final, a rule will be
4 forwarded to the Congressional Oversight Committee along with
5 a reprogramming letter giving those committees notice of
6 LSC's intent to publish the final rule as adopted by the
7 Board.

8 Once the reprogramming process has run its course,
9 the final rule may be published and it would ordinarily
10 become effective no sooner than 30 days from the date of
11 publication. At this point we've not started to receive any
12 comments. We anticipate that we'll get some.

13 Whatever is received, as I indicated, will be
14 reviewed and analyzed and summarized. We'll have a detailed
15 report available for this committee to consider at its next
16 scheduled meeting. We'll be available to comment and answer
17 any questions the Board may have when and if the committee
18 makes a recommendation to the full Board.

19 CHAIRMAN SHUMWAY: So, as I understand it, Mr.
20 Fortuno, we are now in the midst of the public comment
21 period?

22 MR. FORTUNO: Yes.

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1 CHAIRMAN SHUMWAY: And that runs until August 31st?

2 MR. FORTUNO: Yes.

3 CHAIRMAN SHUMWAY: And after that deadline and
4 sometime before our next regularly scheduled Board meeting,
5 are you suggesting then another meeting of this committee for
6 the purpose of having discussion with people who have made
7 comments?

8 MR. FORTUNO: Yes. We would advise a public
9 hearing which would be another committee meeting. It could
10 be the day before or even the same day of the Board meeting,
11 if time allowed. The committee would receive them. We
12 anticipate the committee will have in its possession
13 somewhere on or about September 14th the documents that I
14 spoke of moments ago; that is, the complete set, copies of
15 all the comments that are received, the analysis prepared by
16 the staff, and the summary of the comments.

17 This committee should have and all members of the
18 Board, for that matter, should have in their possession on or
19 about September the 14th those documents. If there's a
20 hearing scheduled, a public hearing/committee meeting
21 scheduled for sometime thereafter, I assume it would be held
22 sometime very close to the vicinity of the Board meeting,

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1 probably the day before in Minneapolis, Minnesota.

2 This Board could then consider the comments, could
3 hear all the comments that are offered at that time, and
4 could consult with staff. They'd be available, ready,
5 willing, and able to assist in any way they could. The
6 committee, once it carefully considers the proposed actions,
7 would then be in a position to vote on what it recommends the
8 Board do.

9 The Board could then, at it's next scheduled
10 meeting, which in all likelihood would be the day after,
11 could go ahead, take the recommendation of the committee
12 under consideration. Whatever action the Board chose to
13 take, assuming that the Board chose to withdraw the
14 provisions relating to six regulations currently in place,
15 that process would be commenced at that time.

16 If the Board adopted an action, the Corporation
17 would then notify the appropriate oversight committees up on
18 the Hill. That would start the programming process. Once
19 that had runs its course -- I should add that the
20 reprogramming process --

21 I know the Corporation has long held the view that
22 it's a notice requirement not an approval requirement. That

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1 is that the committees don't have to approve the proposed
2 action. That's a legal question. The political question of
3 whether or not to proceed with something once the appropriate
4 oversight committees has expressed dissatisfaction is
5 something for the Board to determine.

6 In any event, assuming that there was no
7 disapproval or dissatisfaction expressed by the oversight
8 committees, and that whatever action was proposed by the
9 Board of Directors could then be proceeded with, we would go
10 ahead and publish in the Federal Register.

11 Once a rule is adopted and published in the Federal
12 Register it couldn't become effective any sooner than 30 days
13 from the date of publication. In this case, it wouldn't be
14 any sooner than October 2nd in any event because the
15 Appropriations Act tells us that -- and there wouldn't be
16 time for that to occur in any event.

17 But it would happen sometime after October 2nd.
18 That is the effective date of the changes.

19 CHAIRMAN SHUMWAY: Is there any time limit in the
20 law for the Board to take action after the public hearing is
21 held that you expect would precede our next meeting?

22 MR. FORTUNO: No.

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1 CHAIRMAN SHUMWAY: I mean, if we wanted to take
2 action then or even the following meeting, is that within our
3 ability?

4 MR. FORTUNO: It is. There are no time
5 constraints. Certainly, in a case where no action was taken
6 for a prolonged period of time, no action was taken for a
7 number of years, it may be that the comments and the
8 information available to the committee has grown stale. It
9 would be appropriate at that point to republish for comment,
10 to receive additional comments and hear additional oral
11 comments at a public hearing.

12 In any event, there is no time constraints. So the
13 Board could, if the committee made a recommendation to the
14 Board at its next scheduled meeting, choose not to act on it
15 and put it off indefinitely or it could act on it at that
16 very meeting.

17 CHAIRMAN SHUMWAY: Well, actually, after the Board
18 takes action, circulating that to the oversight committees on
19 the Hill and then getting some word back is going to probably
20 consume some months, don't you expect, or would that happen
21 very quickly?

22 MR. FORTUNO: It could. We would certainly get a

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1 draft of whatever the Board approved together and out to the
2 Board appropriate committees within a week or so of the
3 Board's action. That draft of the proposed rulemaking or
4 what the Board adopts is final and the reprogramming letter
5 could be gotten together very quickly and gotten out very
6 quickly. In the past, we've heard fairly promptly from the
7 Hill. So I wouldn't anticipate that it would be an undue
8 delay.

9 CHAIRMAN SHUMWAY: Do committee members have
10 questions for Mr. Fortuno? Mr. Kirk?

11 MR. KIRK: Thank you, Mr. Chairman. There are two
12 things I'd like to come out of this committee meeting. One
13 is I'd like to hear Mr. Dana's comments. I think he's got
14 some perhaps persuasive arguments on why we should do this.

15 The other is I'd like to go over just what these
16 regulations say, make sure that I understand the effect of
17 what we're doing and if we can get some comment from anyone
18 that knows what Congress' problem is. I don't think I'm
19 going to be at the next meeting and I believe I can get this
20 information now.

21 So if I could, Mr. Chairman, I'd like Mr. Fortuno
22 at this point to maybe go over each of the regulations so

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1 we'll know just really in everyday language what we're aiming
2 at.

3 CHAIRMAN SHUMWAY: Mr. Fortuno?

4 MR. FORTUNO: I'm not sure just how well prepared I
5 am to go over those in detail. I can certainly give you a
6 general outline. There are five notices that have been
7 published. The five notices relate to provisions and six
8 different regulations. The six regulations are 1607, which
9 concerns recipient governing bodies. 1609 concerns
10 fee-generating cases.

11 MR. KIRK: Wait. Let's stop at 1607.

12 MR. FORTUNO: Frankly, offhand, I'm not sure of all
13 the -- there are a great many details that I'm not familiar
14 with to the extent that I should be in order to get into that
15 kind of question and answer. That's exactly what we'd be
16 prepared to do, in fact give you a written submission prior
17 to the next meeting, and the next meeting be prepared to go
18 through that kind of detail. I'm not sure at this point I
19 wouldn't be mispeaking or missing one.

20 MR. KIRK: Is there anybody in the audience that
21 could do that for us?

22 MR. FORTUNO: I doubt that.

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1 CHAIRMAN SHUMWAY: Mr. O'Hara?

2 MR. O'HARA: Question, Mr. Kirk: Would it suffice
3 for you to have Mr. Fortuno address the summary portion of
4 the document as printed in the Federal Register?

5 MR. KIRK: No.

6 MR. O'HARA: Or do you want him to go into great
7 detail?

8 MR. KIRK: That really doesn't tell you. I want to
9 tell you, I spent a lot of time on these before the last
10 meeting thinking it was going to come up and struggled to
11 understand. I think that maybe Ken and the people that work
12 with it from day one are probably in a better position to
13 kind of tell me logically what it is. I think I understand
14 some of them but not all of them.

15 MR. BOEHM: Let me just throw in one thing if I
16 can.

17 CHAIRMAN SHUMWAY: Mr. Boehm?

18 MR. BOEHM: On the question mentioned, we were
19 talking a little bit before about the impact of the
20 reauthorization legislation in our regs. Well, on governing
21 bodies, Section 11, I believe it is, of both reauthorization
22 bills made quite a lot of change in 1607. In fact, probably

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1 not getting nullified, in effect.

2 Also in fee-generating cases, there's sections of
3 both reauthorization bills that we made changes in the way
4 our reg would act there as well. I'm not sure what the other
5 four are. But I'd be happy, since I'm putting together some
6 preliminary drafts that were done in house on the impact of
7 legislation on the regs, work with Vic and do a memo that
8 would explain what effect it might have depending on what
9 happens in the appropriations or reauthorization.

10 MR. KIRK: I think Susan Glasow has a memo.

11 MR. BOEHM: She worked on one and also -- Susan
12 Glasow worked on one and also John Meyers who is counsel to
13 the Director, Office of Field Services, because he had been
14 involved back years ago in a drafting of some of these. Of
15 course, Susan is the person in Vic's shop who works on
16 regulations. So they are the two most knowledgeable.

17 CHAIRMAN SHUMWAY: Could I ask you, Mr. Fortuno,
18 the summary that you're going to prepare as of the 14th of
19 September, will that include the kind of analysis that Mr.
20 Kirk is seeking to have for each of the --

21 MR. FORTUNO: There is no document currently in
22 existence that will answer the questions that I think you

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1 have. Some are fairly simple. 1611, for example, on
2 eligibility, is the proposed change, and a fairly minor
3 change. It talks about whether you can represent individuals
4 with non-LSC funds.

5 Others, if you look at 1612, that's a little more
6 sophisticated. What you're going to find is that it's
7 probably going to be easier to have us prepare something that
8 walks you through it than to have a presentation now that
9 frankly I wasn't prepared to make. I'm not sure that I
10 wouldn't be doing you a disservice by missing something.

11 It's probably best if we could just sit down and
12 prepare something that's very detailed that will answer you
13 questions. Certainly that would accompany -- we would have
14 the analysis. We would have a summary of the comments and
15 we'd have the comments. What you're looking for is the
16 analysis that would be prepared.

17 The analysis would do more than just discuss what
18 the regulation was, what the Board at one point, whether it
19 was 1988 or 1989, depending on what provision we're talking
20 about, what the Board sought to do in that provision and why
21 that revision has gone into effect.

22 In some cases, what happened was that in four of

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1 the regulations, the Board adopted a final rule, that is
2 revisions to a rule. But before it was published the brakes
3 were put on, for one reason or another. The Board adopted
4 something as final but it never published it as final.

5 In a couple of cases they have published it as
6 final. What we will do is go through very carefully what
7 those revisions intended to do, the rationale for the
8 revisions. In addition, what we'll do is discuss what the
9 comments have had to offer, what the comments have said, not
10 just a number and what they focused on, but consider the
11 issues that they raised and address those issues.

12 So it will discuss not only what the changes were
13 intended to be and what we would be removing if in fact we
14 withdrew those earlier revisions which never went into
15 effect, we'd also discuss whatever issues were raised by the
16 comments that were received and the proposed withdrawals.

17 But that hasn't been prepared yet. There is, to my
18 knowledge, no document in existence that's going to give you
19 the kind of information that I think you want or are entitled
20 to and will have very shortly.

21 CHAIRMAN SHUMWAY: Mr. Kirk?

22 MR. KIRK: The history and the effective

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1 reprogramming and all that, I mean I think you've got that in
2 various memos that have been published. I mean, there's one
3 that has a brief synopsis of the regulations, but I want a
4 summary. I mean, I want something that tells you what's in
5 there.

6 MR. FORTUNO: Okay.

7 MR. KIRK: I'm almost concerned that I'm going to
8 get more than I really want. I want something that's
9 understandable. The other request I have is that this can be
10 done before Labor Day, which is two weeks. I don't know that
11 that's possible. I know it's tough deal. I know you're
12 going to have to do columns and what have you.

13 MR. FORTUNO: It can be done.

14 MR. KIRK: If you can do that, I'm probably going
15 to be going into trial mode after that and I may not be able
16 to devote the time to it.

17 CHAIRMAN SHUMWAY: Could you do that possibly in
18 two stages, then, Mr. Fortuno, so that you could at least
19 break down what it is the regulations consist of now?

20 MR. FORTUNO: Yes.

21 CHAIRMAN SHUMWAY: And then react to the comments
22 after the comment period closes?

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1 MR. FORTUNO: Certainly, yes. That's easily done.
2 We can have the first part of that done before Labor Day.
3 Then, of course, we have to wait for the comment period to
4 run, and then we can do the second part of it, that is
5 analyze the comments, address any issues that are raised on
6 the comments, and provide that analysis with a summary to the
7 Board by the 14th. Certainly the first part of it we can
8 have done by Labor Day.

9 CHAIRMAN SHUMWAY: In any case, I think that would
10 be very helpful to us all. I think it's a very good request.
11 I'd enjoy that same information.

12 Any further questions by any members?

13 (No response.)

14 MR. KIRK: Not of Mr. Fortuno. When he's finished,
15 I'd like Mr. Dana to express his views.

16 CHAIRMAN SHUMWAY: All right, Mr. Kirk. Mr. Dana?

17 MR. DANA: Mr. Chairman, I'm happy to do that but
18 let me just ask you one question first. If the committee
19 were to vote one way or another on this, and the Board were
20 to adopt our recommendation, and it had the effect of
21 repealing or undoing what a prior Board had done, and we did
22 it in September to take effect after reprogramming notice, et

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1 cetera, et cetera, would the Board have to do anything else
2 after September or would that be the end of it for purposes
3 of that change?

4 The reason for my asking the question is that I'm
5 concerned that if one of the scenarios comes to pass and we
6 basically get the same rider that we have now with the date
7 advanced another year, we will have missed the opportunity
8 again to remove the need for a bunch of riders that Congress
9 has put in there.

10 What I'd like to do is accomplish that or take
11 whatever action, assuming the Board agrees, take whatever
12 action is necessary.

13 MR. FORTUNO: I think not. I think you can provide
14 for that by - if, for example, there's a committee meeting on
15 the 23rd and then on the 24th of September the Board meets.
16 The chairman of the committee communicates to the Board the
17 committee's recommendations with a reasonable analysis. The
18 Board deliberates some and chooses to, let's say, adopt the
19 committee's recommendations in their entirety.

20 The Board then -- it's adopted and could give the
21 president guidance at that point that the reprogramming
22 notice be prepared and sent out along with a draft of the

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1 rules as adopted by the Board and instructions that if
2 there's no objection by any of the four committees, that the
3 president is then to promptly proceed with publication of the
4 regulation in the Federal Register and that it's to be made
5 effective 30 days from date of publication.

6 If that guidance is furnished to the president --
7 in fact, we get no objection from the committees, then the
8 president would proceed with publication of that. If, on the
9 other hand, you're concerned that there may be some
10 objection, that some oversight committee may express
11 disapproval, then you may want to say that in the event that
12 one of the four committees expresses disapproval, that no
13 action will be taken until the Board gets to review the
14 matter.

15 That, it seems to me, is a decision for the Board
16 to make, but if you act in that fashion, it seems to me that
17 you've provided for circumstances where there's no objection
18 expressed on the Hill and you've opened the door to the
19 proceeding with once there's no objection expressed go ahead
20 and proceed with publication or instruct the staff to proceed
21 with publication note. Whatever the Board adopts is final.

22 What you want to do, I assume, is build in a

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1 safeguard so that if there is some objection from the Hill, I
2 think as a legal matter the Corporation can proceed with
3 publication. What you want to do is give the president some
4 guidance. If they disapprove of something, do you want them
5 to proceed with it or not?

6 My assumption is if there's no disapproval, you
7 want them to proceed with it. If there is some disapproval,
8 I assume you want to revisit the question.

9 MR. DANA: To put it another way, basically what
10 you're saying is that if Congress is concerned about the
11 existing regulations, they ought to continue to keep those
12 riders in place for another year because we can't act in time
13 to obviate the necessity of the riders.

14 MR. FORTUNO: If on the 24th you vote to withdraw
15 the provisions in question, and within a couple of days of
16 that we have hand delivered to the appropriate committees the
17 reprogramming letter along with drafts of the adopted rules,
18 it could be.

19 I don't know how politically -- how likely it is to
20 have it politically. But it seems to me that it's
21 conceivable, although I don't know how likely it is, that
22 they could respond that they approve of the proposed action.

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1 You get those four in hand and the president could proceed
2 swiftly.

3 Whether you will get that kind of response, I don't
4 know. As a practical matter, probably not, and if you don't
5 and you're waiting for that to clear Congress, then it may
6 take longer. You're right, it may be that the restrictions
7 would have to remain in order to keep those provisions from
8 going into effect.

9 MR. DANA: It's also probable that Congress will be
10 -- have other things on its mind.

11 MR. FORTUNO: I think so.

12 MR. DANA: The rationale, Bud, for this is just to
13 -- as the notice has indicated, over the last four or five
14 years, the Corporation has taken certain steps, and Congress
15 has moved in and blocked it and has kept us from enforcing
16 regulations that we have passed and has --

17 In order to prevent us from any more, what in their
18 view is mischief, has prevented us from passing any
19 regulations at all except ones that take effect at the
20 beginning of the year after we adopt them. It was my hope
21 that we could undue the offending regulations, remove the
22 riders, and acquire again the right to regulate.

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1 It seems to me that an initial first step in that
2 was to say to the Congress we hear you, Congress, and we're
3 going to undue that which got you so upset in the first
4 place. I have literally -- I couldn't answer your question
5 of Vic either. I don't really know the precise details of
6 those regulations or why they were offensive.

7 It just occurs to me that after three or four years
8 of being in the regulatory dog house, we ought to try to dig
9 ourselves out somehow.

10 CHAIRMAN SHUMWAY: Mr. Kirk?

11 MR. KIRK: I basically appreciate what you're
12 saying. I, however, would like to look and see what the
13 substance of each of them is. I would like to be able to
14 express to Congress hey, we've looked at them. We agree with
15 you. They are mischief and we're doing it. If there's one
16 or two that we think are in good faith, Congress, I think you
17 misread that.

18 I mean, we really do. There was good basis for
19 this and you've been getting the wrong information. We may
20 want to tell them that. That may be the place that I fall by
21 the wayside with you, although I may end up agreeing with you
22 in total when we actually look at them. I do want to look at

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1 the substance of them and that's my view of it rather than
2 just abandoning them without review.

3 CHAIRMAN SHUMWAY: Well, to carry that thought one
4 step further, I think it would be helpful to all of us on the
5 committee if indeed these are regulations that Congress has
6 looked at or knowing the reasons why Congress has been
7 offended at these particular regulations. From a public
8 policy point of view, I'd like to know that.

9 We're talking in generalities here. I take it we
10 don't even know actually that the regulations now subject to
11 this notice are the ones that Congress may be critical of, or
12 is there something more specific, Howard, that we know?
13 Nothing has come to light in this discussion. We're just
14 talking in very general terms.

15 My point is if indeed they are regulations that
16 Congress has been critical of, I'd like to know why. That
17 perhaps would satisfy Mr. Kirk's concern that he just
18 expressed.

19 MR. FORTUNO: We can cover that in the memo we'll
20 have available for Labor Day. Thank you very much.

21 CHAIRMAN SHUMWAY: Thank you. I neglected to
22 notice the arrival of Mr. Wittgraf about a half an hour ago.

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1 He's been part of our committee and we appreciate having him
2 here.

3 We've run through our agenda. Is there anything
4 further that should come before the committee this afternoon?

5 M O T I O N

6 MR. DANA: I move we adjourn.

7 CHAIRMAN SHUMWAY: Is there a second to the motion?

8 MS. LOVE: Second.

9 CHAIRMAN SHUMWAY: It's moved and seconded we
10 adjourn. All in favor say aye.

11 (A chorus of ayes.)

12 CHAIRMAN SHUMWAY: Opposed no.

13 (No response.)

14 CHAIRMAN SHUMWAY: The ayes have it. The meeting
15 is adjourned.

16 (Whereupon, at 5:19 p.m., the meeting was
17 adjourned.)

18 * * * * *

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