

LEGAL SERVICES CORPORATION

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MEETING OF THE BOARD OF DIRECTORS

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FRIDAY, JANUARY 6, 1984

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Central Office Buidling
18th & F Streets, N.W.
Washington, D.C.

The Board of Directors meeting convened,
pursuant to notice, at 2:27 p.m.

PRESENT:

DONALD P. BOGARD, President

ROBERT E. McCARTHY, Chairman

RONALD FRANKUM

MILTON M. MASSUM

DONALD E. SANTARELLI

ALSO PRESENT:

ALAN SWENDIMAN, General Counsel

GREGG HARTLEY, Director, OFS

SPEAKERS:

William J. Olson

Terry Roche

Patricia McMahon

Cliff Stromberg

Eleanor Eisenberg

Alice Spodley

Dwight Loines

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P R O C E E D I N G S

1
2 MR. McCARTHY: Good afternoon, ladies and
3 gentlemen. Thank you for your patience. I think we
4 can now say that the Legal Services Corporation Board
5 of Directors is now in session.

6 And on behalf of all of the Board, I wish you
7 all a very happy New Year.

8 You have your Board book, and the first matter
9 is the adoption of the agenda. There has been a revision
10 of the agenda, and I might suggest that if the Board
11 does adopt it, as amended, that probably Item 6 should
12 be heard after Item 8.

13 So with that, the Board would ask for some
14 resolution as to the agenda.

15 MR. FRANKUM: So moved.

16 MR. SANTARELLI: Second.

17 MR. McCARTHY: Thank you. The agenda as
18 amended is so adopted, and Item 6 will be the last item
19 after eight.

20 A portion of this meeting is to be closed,
21 and a motion to conform under 45 C.F.R. 1622.5(a), (e),
22 (f) and (h) is in order.

23 MR. FRANKUM: So moved.

24 MR. SANTARELLI: Second.

25 MR. McCARTHY: Mr. Frankum?

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1 MR. FRANKUM: Yes.

2 MR. McCARTHY: Mr. Massum?

3 MR. MASSUM: Yes.

4 MR. SANTARELLI: Yes.

5 MR. McCARTHY: So moved, and we will have a
6 closed session immediately following the termination
7 of this meeting, and the President will report on it
8 at the next meeting.

9 And also at this time, I think it's in order
10 for the President to report on the closed session of
11 the last meeting held in New York City.

12 MR. BOGARD: May I suggest that perhaps we
13 have a certification by the General Counsel on the clos-
14 ing of this meeting?

15 MR. McCARTHY: Yes, that would be in order.

16 Alan.

17 MR. SWENDIMAN: Fine. I hereby certify that
18 a portion of this meeting is properly closed to the pub-
19 lic for an executive session to discuss personnel,
20 litigation and other matters under provisions of the
21 Government and Sunshine Act (phonetic) and 45 C.F.R.
22 1622.5, Paragraphs A, D, E and H.

23 MR. BOGARD: Alan, may I ask what those sections
24 were again, please?

25 MR. SWENDIMAN: Yes. That is A, D, E and H.

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1 MR. BOGARD: I thought it was A, E, F and H
2 or something.

3 MR. SWENDIMAN: It also ought to include D.

4 MR. BOGARD: All right. So we have five sec-
5 tions then, A, E, D, F, and H?

6 MR. SWENDIMAN: Correct.

7 MR. McCARTHY: Now, did you want to report
8 on the executive session held in New York City?

9 MR. BOGARD: Thank you, Mr. Chairman.

10 The Board met in executive session at the
11 Doral Hotel in New York following the close of the
12 meeting on the 5th of December. All Board members were
13 present.

14 The matters discussed involved litigation and
15 update on the status of the McAlfin (phonetic) lawsuit
16 on the authority of the Board in sitting; an explanation
17 of where we were on the matter involving the union
18 activities and the attempt by the employees to unionize
19 under the NLRB; and an update on the status of the law-
20 suit involving the Salt Lake City meeting, which was
21 enjoined by the local district court.

22 There was also discussion to the Board members
23 regarding the officerships of the Corporation and matters
24 advising them of the effect that cost-of-living increases
25 had been granted to the staff, the classified staff,

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1 of the Corporation, and that the Board was responsible
2 for the salaries of the officers other than mine, which
3 is set by statute, and that they should consider increas-
4 ing the salaries of the Board of Directors -- pardon
5 me -- of the officers of the corporation. That will
6 be undertaken at a later time. It is being considered
7 by the members of the Board. There was no action taken
8 upon that recommendation.

9 There was a report on the investigation being
10 conducted by the General Accounting Office, plus a report
11 regarding possible denial of refunding for some programs
12 for the 1984 grant year.

13 There was also some personal matters discussed
14 relating to FOIA requests and information which had been
15 requested from the Corporation regarding the employees.

16 No actions were taken by the Board. There
17 were no formal votes of any kind on any of those matters.
18 It was simply a status update on the pending matters
19 that I just described. No other activities took place
20 at that time.

21 MR. MCCARTHY: Thank you, Don.

22 Because of the certification by the General
23 Counsel, I believe that it would be in order to adopt
24 the closed session, referring specifically to those items
25 45 C.F.R. 1622.5, the subsections that were added.

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1 So the Board would solicit a motion at this
2 time.

3 MR. FRANKUM: So moved.

4 MR. MASSUM: Second.

5 MR. McCARTHY: All right. Then that would
6 include --

7 MR. FRANKUM: It would include A, E, F and
8 H.

9 MR. McCARTHY: And D.

10 MR. FRANKUM: And D.

11 MR. McCARTHY: Correct. It's been moved and
12 seconded. Mr. Frankum?

13 MR. FRANKUM: Aye.

14 MR. McCARTHY: Mr. Massum?

15 MR. MASSUM: Aye.

16 MR. McCARTHY: Mr. Santarelli?

17 MR. SANTARELLI: Aye.

18 MR. McCARTHY: We now have a closed session
19 which conforms with the General Counsel's certification.

20 Item number two on the agenda, the minutes
21 of the November 7th, 1983 Board meeting were approved.
22 Since that time, some technical deficiencies were noted
23 in them, as set out on page 1 of the Board book, and
24 the Board has had an opportunity to review that, and
25 the staff has requested that be approved, the minutes

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1 of November 7th be approved as set out.

2 Do we have a motion to that effect?

3 MR. SANTARELLI: So moved.

4 MR. FRANKUM: Second.

5 MR. McCARTHY: Mr. Frankum?

6 MR. FRANKUM: Yes.

7 MR. McCARTHY: Mr. Massum?

8 MR. MASSUM: Yes.

9 MR. McCARTHY: And Mr. Santarelli?

10 MR. SANTARELLI: Yes.

11 MR. McCARTHY: So moved, and the amendments
12 of the minutes of November 7th, 1983 are approved or
13 the amendment is approved.

14 The Board book also contains at page 2 there
15 the draft of the minutes of the Board meeting of Decem-
16 ber 5th, 1983, and such draft will require approval at
17 this point.

18 Do you have a motion, Mr. Santarelli?

19 MR. SANTARELLI: Yes.

20 MR. McCARTHY: Okay. Second?

21 MR. MASSUM: Second.

22 MR. McCARTHY: Mr. Massum seconds.

23 The question: Mr. Frankum?

24 MR. FRANKUM: Yes.

25 MR. McCARTHY: Mr. Massum?

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1 MR. MASSUM: Yes.

2 MR. MCCARTHY: Mr. Santarelli?

3 MR. SATARELLI: Yes.

4 MR. MCCARTHY: The draft minutes as contained
5 in the Board book for the meeting of December 5th, 1983
6 are approved.

7 The next item is the 1985 budget mark, which
8 has been the subject of three meetings, a topic of dis-
9 cussion, and I would like to thank the audience and
10 general public for their interest. Since our New York
11 meeting, we have had many letters, some well thought
12 out letters in connection with the suggested funding,
13 and at this time I would like our President to give us
14 a staff report of their determination for approval.

15 MR. BOGARD: Thank you, Mr. Chairman.

16 As you have indicated, this matter has been
17 before the Board on three separate occasions for con-
18 sideration and public comment. I believe it's been
19 noticed for decision and consideration on six separate
20 occasions. Of course, two of those meetings did not
21 take place.

22 Following the first notice of this, we had
23 a presentation at the November 7th Board meeting by
24 Charles Ritter, who is the Vice President of Finance
25 of the Corporation, and his recommendation was presented

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1 at that time.

2 We decided that the recommendation should be
3 similar to the recommendation that was made in 1982.
4 That was that we would take the current appropriation,
5 add the mid-year projection for inflation as recommended
6 by OMB, and come up with a figure. That's what Mr.
7 Lyons had requested for the Board to do in 1982, and
8 we thought that that was probably a prudent and reason-
9 able approach to take this time.

10 Therefore, we took the 275 million, added an
11 adjustment for inflation of 4.4, and we came up at 287.
12 To that we added the \$7.2 million figure for a special
13 fund that would be established to handle needs for the
14 institutionalized elderly and handicapped corps. The
15 recommendation was made at 294.

16 The Board did not take any action at that time,
17 and public comment was received, and the matter was
18 continued.

19 On November 21st, there was a Board meeting.
20 The budget mark was again on the agenda. The recommen-
21 dation that had previously been made was the current
22 recommendation at that point. There were no changes
23 made. The Board received public comment, and again no
24 action was taken.

25 On December 5th, the Board meeting in New

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1 York, there was a motion by the Board to adopt the staff
2 recommendation, which was 294 million. There was then
3 considerable public comment from members of the
4 audience, and at that point the motion to adopt was with-
5 drawn, and it was sent back to staff with instructions
6 to look at the matter again and to make recommendations
7 at a later Board meeting.

8 Even though this had been a matter of con-
9 siderable comment internally by the staff, we revisited
10 the matter again. We requested and instructed several
11 members of the staff to look at special areas of con-
12 sideration, areas where needs were not being met or where
13 monies were not sufficient to handle particular problems.

14 We have had a considerable amount of internal
15 discussion on it, and recommendations were made to me
16 by members of the staff.

17 We also held a meeting, which was set up by
18 Gregg Hartley of the Office of Field Services. At that
19 meeting we had Board Chairman, project directors and
20 client representatives and three representatives from
21 PAG (phonetic). We held that meeting not to handle a
22 discussion between the Corporation and the members of
23 the attending parties regarding specific recommendations
24 that we were making. The meeting was held to get input
25 from those folks, to see if they had anything that

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1 that they could offer. There had been comments made
2 that they had a lot of information that they wanted to
3 supply to us, and so we were open at that time for the
4 reception of information.

5 We did not put out a package of materials or
6 a package of items that were being discussed in specifics
7 and ask them to comment on them and to give us their
8 thoughts on. We made some broad outlines on what we
9 were doing, areas that we were thinking about, but that
10 was the total nature of the meeting.

11 That meeting was held, incidentally, on
12 December 12.

13 We received, as Mr. McCarthy has indicated,
14 a large number of letters and mailgrams from all over
15 the country regarding the budget mark for 1985. Those
16 recommendations were all over the board, as you might
17 imagine. From one end there was a recommendation that
18 there be zero funding requested because it was irrespon-
19 sible for the Board to consider asking for money since
20 they didn't have any authority to make an appropriation
21 or an allocation of those funds. Therefore, they should
22 not request any money. There was, the far end, a request
23 to suggest 500 million as a budget mark.

24 The great majority of those comments related
25 to a request for 470 million. Several of those were

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1 in the nature of a three-step increase, going from the
2 current 275 up to 470 million in a period of three years.

3 Now, one of the letters, I think, is particu-
4 larly interesting, and I'm not reading this as a matter
5 of criticism or saying that this activity was not
6 warranted or illegal, but I think it's just interesting
7 so that you get an idea of why we didn't apply a balanc-
8 ing test to our recommendation.

9 As you know, there were a large number of
10 requests for 470 million. I think that that's probably
11 explained by this letter. This letter is addressed
12 personally to me. It starts out -- I will read excerpts
13 from the letter. This is not the full letter -- "Bob
14 Britty (phonetic) of the Coalition for Legal Services
15 called today to activate our telephone tree." It goes
16 on then to discuss our request for 294 million and says,
17 "Terry Roache of the Funding Criteria Committee of PAG
18 was present for the meeting in New York and, with others,
19 was able to convince Chairman McCarthy to wait for
20 comments from the field before finally reacting to the
21 staff proposal mentioned earlier in this letter. Mr.
22 McCarthy indicated that he had not heard from the field
23 regarding the need for such a sizable increase. Hence,
24 PAG and the Coalition have urged the field to write to
25 Mr. Bogard, as well as to Mr. McCarthy, outlining the

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1 "need for a minimum 25 percent request for 1985. I am,
2 therefore, asking each of you to write such a letter" --
3 I haven't written mine yet -- "and justify the 25 percent
4 increase by indicating that we have at least 14 percent
5 more clients and 30 percent less staff since 1981.

6 "After commenting on these increased demands
7 and decreased resources, it was felt that each of us
8 should talk about local conditions. I'm sure each of
9 you have individual stories of unmet client needs that
10 could and should be forwarded to the Corporation. A
11 client could also be asked to send a similar letter.

12 "I urge each of you to be in touch with Mr.
13 McCarthy before the next Board meeting scheduled for
14 January 6th. Your letter should go to Donald Bogard,
15 with a copy to Mr. McCarthy, with blind copies to Bob
16 Britty and Patricia McMahon."

17 We didn't apply a balancing test, therefore,
18 as to what we were going to recommend. Obviously you
19 folks have a right to write us and tell us what you'd
20 like to do, but we tried to make a recommendation based
21 upon a number of considerations, a number of staff
22 discussions about what we think would be a reasonable
23 and prudent method to make a request for 1985.

24 Therefore, we have done so, and what we are
25 recommending is that there be funding requested from

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1 the Congress that would provide \$8.23 on an equalized
2 basis for all of the programs. We would request a ten
3 percent increase for the funding for Native Americans,
4 and we would hold all corporate expenditures and other
5 expenditures at their current levels.

6 This, I believe, comes to in the neighborhood
7 of \$295 million. On top of that, we are requesting a
8 package of \$30,200,000. This would be broken down into
9 four categories. The first would be the previously
10 mentioned 7.2 million for the elderly and handicapped
11 institutionalized persons. We are also suggesting that
12 we request a \$2 million pot for special emergency meet-
13 ings that come up during the year so that we can allocate
14 it from the Corporation wherever those needs might exist.

15 We are also requesting a \$1 million for
16 technological improvements. We feel that it's absolute-
17 ly necessary that programs at least have a minimum
18 amount of word processing capabilities instead of relying
19 upon manual typewriters and electric typewriters, and
20 so we want to make sure that we have a pot of money
21 available that will at least get each program with some
22 sort of word processing capability.

23 We are also requesting a package of money,
24 of \$20 million, to go to the private Bar for the
25 handling of cases. That figure is an arbitrary figure

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1 in that we thought we could probably come up with grants
2 to law clinics in existing cities, clinics in universities
3 and provide for a substantial increase in the amount
4 of cases being handled. We are attempting this year
5 to issue a number of grants to clinics around the
6 country on a pilot basis to see what kind of response
7 and what kind of return we can get from our money.

8 We believe that based upon that year's exper-
9 ience, we'll be able to effectively manage a pot of
10 \$20 million which will be purely targeted for private
11 Bar involvement. This could go to the elderly area.
12 It could go to rural areas. It could go to large city
13 areas that are not able to handle divorce cases and things
14 like that.

15 When you add all of that together, you come
16 up with a figure of \$325,253,256. We think that's a
17 reasonable request. It allows the Congress to make a
18 determination on what it wishes to do. It provides
19 equalized funding at the 1981 level, and it is one that
20 I would submit to this Board in place of the 294
21 recommendation that was made back in November.

22 And, incidentally, we had a number of proposals
23 made to us by staff regarding these four categories and
24 other categories, and we've examined those. We accepted
25 a number of them. We modified some of them. We rejected

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1 some of them. But it was a long process, and a consider-
2 able amount of time by staff involved, and I appreciate
3 the work by the staff in helping me come up with this
4 recommendation.

5 I'll be glad to respond to any questions any
6 member of the Board would have.

7 MR. MCCARTHY: Would the Board like to ask
8 Don any questions?

9 Don, in your \$20 million in 2(D), private
10 attorney cases, \$20 million, did the staff come up with
11 any idea of what number of cases that that would handle?
12 We've had a great deal of input that staff is overworked.
13 They are not able to adequately handle the number of
14 cases that come in. Do we have some idea of how this
15 might help the situation, this 20 million?

16 MR. BOGARD: That figure was arrived at by
17 assuming that with large-scale contracting authority,
18 we could negotiate some favorable rates with clinics.
19 We have seen posted rates of \$50 for a simple will, 250
20 or 275 for a divorce, 300 to 375 for a bankruptcy. We
21 thought under a large-scale effort we could probably
22 make an average cost per case at around \$200.

23 If so, 20 million would give us 100,000 cases
24 being handled, which would be slightly less than ten
25 percent of the current case volume being handled by

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1 the recipients around the country. That could be adjust-
2 ed any way. Twenty-five million would get you 125,000
3 cases, which would be ten percent. Ten million would
4 get you 50,000 cases.

5 That's the reason I said it was arbitrary.
6 We thought that would be a nearly ten percent, that would
7 be a good way to go, and would make a significant
8 increase in the number of cases being closed by our
9 recipients.

10 MR. McCARTHY: Is the Board ready to make a
11 proposal on this?

12 MR. SANTARELLI: I propose the adoption of
13 the -- well, I guess we don't need adoption -- propose
14 authorizing the staff to make this request on behalf
15 of the Corporation to the Congress. I would move that
16 we adopt the staff report and authorize it be sent to
17 the Congress.

18 MR. FRANKUM: Second.

19 MR. McCARTHY: Mr. Frankum?

20 MR. FRANKUM: Yes.

21 MR. McCARTHY: Mr. Massum?

22 MR. MASSUM: Yes.

23 MR. McCARTHY: Mr. Santarelli?

24 MR. SANTARELLI: Yes.

25 Mr. McCarthy, may I make a comment?

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1 MR. McCARTHY: Yes.

2 MR. SANTARELLI: This action, I think, should
3 not be misunderstood by our constituents as well as the
4 public. There has been a great deal said about the
5 hostility of this Board to its own programs. I want
6 to reassert for the record that this represents our
7 responsibility under our fiduciary duty to administer
8 this statute and to take action that we deem appropriate.

9 The increases here reflect our desire, this
10 Board's desire, to support the program and move it for-
11 ward as efficiently, as rapidly as we can.

12 MR. McCARTHY: Thank you, Don.

13 Agenda Item No. 5 is a report from the
14 General Counsel.

15 MR. SWENDIMAN: We have two matters before
16 the Board this afternoon. The first is a matter of a
17 want of information. It's with regard to the extension
18 of Regulation 1626, relating to provision of legal ser-
19 vices to certain alien groups.

20 As you know, the Congress in the second continu-
21 ing resolution passed in December of 1982 imposed
22 certain restrictions on the expenditure of funds for
23 certain alien groups. As a result of that, the Board
24 promulgated regulations in the form of 1626, and those
25 regulations became effective in July of 1983.

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1 This past November, the Congress enacted an
2 appropriations bill for the Legal Services Corporation.
3 As part of that appropriations bill, it adopted the
4 restrictions on those alien groups which appeared in
5 the continuing resolution.

6 Consequently, it becomes necessary to extend
7 Regulations 45 C.F.R. 1626 for 1984, and the modification
8 which is before you simply represents the technical
9 changes in the regulation so that the regulation refers
10 to Public Law 98-166, which is the appropriations bill.

11 The second item also relates to the appropria-
12 tions bill and pertains to Regulation 1625 and the denial
13 of refunding. In the appropriations bill, the Congress
14 set out certain parameters for denying or permitting
15 the Corporation to deny refunding. Several of the pro-
16 visions are currently reflected in the regulation, that
17 being the appointment of an independent hearing officer
18 to hear any administrative proceeding, but in addition,
19 the Congress basically put the proceedings on a "fast
20 track" basis such that the entire proceeding must be
21 completed within 90 days. Basically Congress set out
22 a three-stage, 30-day provision.

23 The first was that a request for a hearing
24 in terms of the action to deny, that request must be
25 made within 30 days after receipt of the notice to

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1 terminate.

2 Second, the Corporation must make its final
3 decision within 30 days -- well, let me back up a minute.
4 The second 30-day provision is that the hearing be held
5 within the next 30 days, and third, that the Corporation
6 must make a final decision within 30 days after comple-
7 tion of the hearing.

8 The appropriations bill, thus, the Corporation
9 needed to conform or needs to conform its present
10 regulations on the denial of refunding, and the proposed
11 changes which the staff is making seek to comport with
12 the mandate of Congress.

13 I would briefly review the changes. In
14 essence, they adopt or track the language of the appro-
15 priations bill. The term "notice of denial" is used
16 rather than the term "preliminary determination."
17 Several of the time periods are changed so that the pro-
18 ceeding will fall within the three-stage, 30-day each
19 requirement.

20 The Section 1625.9 has been changed to reflect
21 that the Congress has placed the burden on the recipient
22 to show cause why the Corporation's proposed action to
23 deny refunding should not be taken. That particular
24 section tracks the language of the appropriations bill.

25 And as I mentioned, the time periods have

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1 been changed in order to conform with the 30 days, 60
2 days and 90-day schedule which Congress has required.
3 Therefore, the staff would submit the proposed changes
4 to Regulation 1625.

5 I'll be glad to entertain any questions that
6 you might have.

7 MR. McCARTHY: Does the Board have any ques-
8 tions?

9 Milton?

10 MR. MASSUM: And, Alan, these proposed regu-
11 lations should be published then for the first --

12 MR. SWENDIMAN: That is correct.

13 MR. McCARTHY: Do I hear a motion from the
14 Board for publication of these regulations?

15 MR. SANTARELLI: So moved.

16 MR. MASSUM: Second.

17 MR. McCARTHY: Mr. Frankum?

18 MR. FRANKUM: Yes.

19 MR. McCARTHY: Mr. Massum?

20 MR. MASSUM: Yes.

21 MR. McCARTHY: Mr. Santarelli?

22 MR. SANTARELLI: Yes.

23 MR. McCARTHY: So moved. The proposed regula-
24 tions will be published.

25 MR. SWENDIMAN: And that would complete the

1 report of the Office of General Counsel.

2 MR. McCARTHY: Thank you very much, Alan.

3 Again, Item No. 7 is report from the Office
4 of Field Services.

5 Gregg.

6 MR. HARTLEY: Mr. Chairman, Mr. Bogard, members
7 of the Board, the Office of Field Services is composed
8 of nine regional offices and three Washington units,
9 the Grants and Budget Unit, Monitoring and Evaluation,
10 and the Substantive Research and Support Unit. In the
11 member regional office, there is a component which repre-
12 sents the Native American Desk. At this time it is a
13 one-person office. It is responsible for all of the
14 liaison between the Corporation and recipients of Native
15 American funding.

16 Earlier this year, President Bogard was con-
17 tacted by recipients, representatives of several of the
18 recipients of Native Americans, about the opportunity
19 to create a separate and independent Native American
20 Desk, which would basically be a separate unit of the
21 Office of Field Services.

22 This summer the President asked me to investi-
23 gate the possibility and feasibility of setting up such
24 a unit. Since that time, I have had contact with most
25 of the recipients of Native American funding. I have

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1 discussed that possibility with the Denver Regional
2 Office or with Britt Clapham, who is in charge of the
3 Native American Desk.

4 I have met with several representatives, and
5 have had written input from a number of them. Approxi-
6 mately a month ago I met with a small group of those
7 representatives who had taken the opportunity and some
8 suggestions I had about a tentative proposal to estab-
9 lish such a desk. They met in Dallas, and they came
10 with this small group to meet with me.

11 As a result of that meeting, I think there
12 are several positive things that could be established
13 by setting up such an independent unit, and I will be
14 making a formal recommendation to President Bogard for
15 his action next week.

16 During the course of those deliberations on
17 the establishment of a separate Native American Desk,
18 and given the opportunities that I and the President
19 have had during this past year to visit with recipients
20 who serve the Native American population, we have become
21 aware of the extreme dedication that these people and
22 their staffs have to serving Native Americans often in
23 some of the most difficult circumstances.

24 I have some to learn, to a great appreciation
25 for the difficult circumstances under which they must

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1 operate, a sparcely set of population in many circum-
2 stances, and in areas of the country in which almost
3 everything becomes a barrier to access to legal services.

4 I have presented a memorandum to President
5 Bogard and to members of the Board, giving a little bit
6 of background on the Native American funding and those
7 recipients, and the history the Corporation has had with
8 those recipients.

9 I think because of the special relationship
10 that has existed between the Corporation that we need
11 to take special notice. Recently when I met with repre-
12 sentatives of the Native American programs, they brought
13 several special concerns to my attention, and I think
14 that one way to allow them to know our commitment, our
15 continuing commitment, to them and to the special
16 problems that they face in delivery of services to this
17 category of poor persons should be recognized.

18 And, therefore, I recommend that the Board
19 adopt the resolution that has been presented to you.

20 MR. McCARTHY: Thank you, Gregg. For the re-
21 cord, would you be good enough to read your proposed
22 resolution?

23 MR. HARTLEY: Yes, sir.

24 "WHEREAS the Legal Services Corporation recog-
25 nizes the unique status of Native American persons and

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1 the unique legal needs of this population; and

2 "WHEREAS the Legal Services Corporation funds
3 those programs and components best able to provide
4 quality representation to Native American persons who
5 have a unique legal status with the United States
6 government because of membership in a recognized, un-
7 recognized, or terminated tribe; because of residence
8 on or near reservations or within the special Indian
9 service areas of Oklahoma and Alaska; and including
10 Alaskan natives and native Hawaiians who have a similar
11 unique status; and

12 "WHEREAS the Legal Services Corporation con-
13 tinues its commitment to meeting the special legal and
14 access needs of Native Americans as mandated by Section
15 1007(h) of the Legal Services Corporation Act; and

16 "WHEREAS the Legal Services Corporation staff
17 and Board recognize the dedication and commitment of
18 staff attorneys, paralegals, tribal advocates, support
19 staff, and private attorneys of Native American programs
20 and components who work to assure access to justice;

21 "THEREFORE BE IT RESOLVED that the Legal
22 Services Corporation formally pledge its resources to
23 assist in meeting the unique legal needs of the Native
24 American population."

25 MR. MCCARTHY: Does the Board have any

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1 questions?

2 MR. BOGARD: If I may make one comment, as
3 I have stated on a number of occasions, I believe, when
4 I came here in December of '82, shortly thereafter --
5 I believe it was in early January -- one of the first
6 groups that visited me were some Native Americans from
7 Arizona, and we opened a dialogue at that time, and they
8 expressed their interest in having a separate desk and
9 of establishing a good relationship with us to see if
10 we could assist them with some of the unique problems.

11 We have had the opportunity, as Gregg indicated,
12 to visit the area on a couple of occasions, and I have
13 publicly stated how much I admire the work being done
14 by the people in those programs, traveling incredibly
15 long distances, living in conditions I'm sure a lot of
16 us would not agree to do, and doing it for years and
17 years and loving every minute of it, and I think these
18 folks have done an outstanding job, and I fully support
19 the commitment of the Corporation to increased service
20 and cooperation with those people.

21 MR. McCARTHY: Do we have a motion to adopt
22 the regulation read by Gregg?

23 MR. SANTARELLI: So moved.

24 MR. FRANKUM: Seconded.

25 MR. McCARTHY: It's been moved and seconded.

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1 Mr. Frankum?

2 MR. FRANKUM: Yes.

3 MR. MCCARTHY: Mr. Massum?

4 MR. MASSUM: Yes.

5 MR. MCCARTHY: Mr. Santarelli?

6 MR. SANTARELLI: Yes.

7 MR. MCCARTHY: So moved. The resolution was
8 set out in the memorandum and has been put into the record
9 by Gregg.

10 MR. HARTLEY: Thank you, sir.

11 MR. MCCARTHY: Agenda Item No. 8 is a proposed
12 Board resolution reaffirming staff authority.

13 Mr. Frankum, do you want to comment on that?

14 MR. FRANKUM: One particular concern that I've
15 always had about a corporation and its management is
16 its corporate relationship between its Board of Directors
17 and its officers and employees. I feel very strongly
18 that that should be affirmed throughout the bases.

19 I know the Corporation has stated this overall
20 policy in the past, but I would like to reaffirm that
21 policy at this time and offer the following resolution:

22 "WHEREAS the Legal Services Corporation was
23 established by Congress in 1974 and reauthorized in 1977
24 as an independent private coproration for the purpose
25 of providing financial support for legal assistance

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1 in noncriminal proceedings or matters to persons
2 financially unable to afford legal assistance; and

3 "WHEREAS the Board of Directors of the Corpora-
4 tion was created as the governing body of the Coproration
5 and

6 "WHEREAS the Board of Directors sets broad
7 policy for the Corporation; and

8 "WHEREAS the President of the Corporation is
9 charged under the Act and by the LSC Regulations with
10 the authority to make grants and enter into contracts
11 for the purposes allowed under the Act; and

12 "WHEREAS it has been the consistent position
13 of the Board of Directors since the creation of the
14 Corporation and the promulgation of the LSC Regulations
15 that the President has the responsibility and authority
16 for, among others, the day-to-day administration of the
17 affairs of the Corporation, the making of grants and
18 the entering into of contracts including, but not limited
19 to, grant conditions and restrictions, including guide-
20 lines and instructions at the staff's discretion, and
21 such other powers incident to the Office of the Presi-
22 dent of the Corporation and the performance of such other
23 duties as the Board may from time to time prescribe;
24 and

25 "WHEREAS the President of the Corporation

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1 is authorized to employ and direct staff to carry out
2 responsibilities under the Act and the Regulations with
3 respect to grants and contracts;

4 "THEREFORE, BE IT RESOLVED that the Board of
5 Directors of the Corporation reaffirms the authority
6 of the President and the Corporation staff to insure
7 that grants and contracts issued by the Corporation fully
8 comply with the provisions of the Act and the Regula-
9 tions and do not otherwise violate the letter or the
10 spirit of the law."

11 I would like to move the adoption of this
12 resolution.

13 MR. McCARTHY: Thank you.

14 Do I hear a second?

15 MR. SANTARELLI: Second.

16 MR. McCARTHY: Mr. Santarelli seconds.

17 Mr. Frankum?

18 MR. FRANKUM: Yes.

19 MR. McCARTHY: Mr. Massum?

20 MR. MASSUM: Yes.

21 MR. McCARTHY: Mr. Santarelli?

22 MR. SANTARELLI: Yes.

23 MR. McCARTHY: The Board has adopted the reso-
24 lution made concerning staff authority.

25 At this time at the discretion of this Board,

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1 I would entertain and appreciate any constructive comments
2 which this public has that might be of value to this
3 Board. So if anyone would like to comment, we would
4 appreciate it.

5 Mr. Olson, would you please state your name
6 and any affiliation which you might have which would
7 give the Board some indication of who you are and your
8 purpose.

9 MR. OLSON: Thank you, Mr. Chairman.

10 My name is William Olson, Smiley, Olson, Gill-
11 man and Panza. I formerly sat in your chair for a little
12 while. I am now counsel to the Fairness Committee.

13 I'd like to say that I am deeply disappointed
14 in the actions taken today by this Board with regard
15 to the funding requests from the United States Congress.
16 I think that at least one of the letters which requested
17 that this Board not take action in view of the fact that
18 both the, in my opinion, unconstitutional and the
19 President's opinion unconstitutional Weicker Amendment
20 that restricts the authority of this Board to effectively
21 administer the funds which it is entrusted with by the
22 Congress. In view of the fact that the Weicker Amendment
23 is present on the books and as of now has not been
24 challenged in the court, it is my opinion that to make
25 a request of the Congress for any amount of funds that

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1 you folks make an implicit assurance that you give to
2 the Congress that if you get the funds that you can
3 properly administer.

4 In my opinion, with the Weicker Amendment in
5 effect, you cannot properly administer them. In fact,
6 I would go further than that. At least for purposes
7 of this discussion, I would say with the Weicker Amend-
8 ment in effect, you folks have implicitly at this point
9 made a statement to the Congress that is untrue.

10 I would request, respectfully, therefore, that
11 each of you individually or collectively reaffirm your
12 opposition to the Weicker Amendment, and I state that
13 the Weicker Amendment precludes you from effectively
14 and properly administering the funds of this Corporation,
15 and in fact, if you like you can join me in my view and
16 the President's view that this is an unconstitutional
17 restriction on the Corporation. I think you should not
18 be abiding by it, frankly, and ought to seek a test of
19 that in court as early as possible.

20 But I think to seek particularly a \$15 million
21 increase in funding, which I think is about 18 percent,
22 for a Corporation that has shown the type of flagrant
23 disregard of the law that this Corporation has -- and
24 I'm not talking about the Board, not talking about the
25 people out in the field, but I am talking about some

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1 of your predecessors and some of the people in the
2 national office who are now being investigated by
3 Senator Hatch's Committee and by other committees on
4 the Hill and by the General Accounting Office, and the
5 type of people engaged in the Proposition 9 activity
6 that is now causing this Corporation to be held a defend-
7 ant in court, to be held accountable for illegal acts,
8 and the United New York situation and the Wadley, Georgia
9 situation and the survival campaign that was waged across
10 this country, and the vast aversion of funds that the
11 Congress thought they were giving you for purposes of
12 helping the poor, but that in fact the Board I was on,
13 the Board before me did not effectively run or were un-
14 able at any time to effectively insure to the Congress
15 that those funds were well used.

16 And I say that with the restrictions that are
17 on you from the Congress that you cannot make those
18 assurances to the Congress, but that implicitly in this
19 request for funding, and especially now that you've asked
20 for additional funding, you assume a fact that is un-
21 true, and I would like the record to correct this by
22 some action that the Board would take to show the
23 Congress that you are not oblivious to the fact that
24 you have the responsibility to administer the funds and
25 that you do not believe that you can properly administer

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1 those funds under the current legal situation.

2 Thank you.

3 MR. MCCARTHY: Thank you.

4 Would anyone else like to comment?

5 MR. ROCHE: Thank you, Mr. McCarthy.

6 I'm Terry Roche, representing the Funding
7 Criteria Committee.

8 I basically had a couple of questions, if I
9 might, about the mark, no comments. I'm just trying
10 to get us back into the reality of this business that
11 Mr. Santarelli, I think, very appropriately said this
12 Board was about, which was supporting the programs and
13 helping poor people.

14 And I do have two questions, if I may, possibly
15 of President Bogard, about the recommendation. One has
16 to do with the \$20 million that I think has a certain
17 notion of efficiency and cost-effectiveness to it.

18 Did you envision at all making it possible
19 for local programs that can deliver legal services, the
20 certain things you're talking about, bankruptcies,
21 divorces and the like, at a lower rate than, say, \$200
22 per case, as you mentioned? For example, ours delivers
23 at about \$100 for a divorce. Did you envision making
24 some sort of competitive process that would enable pro-
25 grams who have the same sort of efficiency to compete

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1 for that money?

2 MR. BOGARD: Sure. We haven't precluded any
3 people or any groups from applying for those funds. This
4 is simply an allocation of a particular amount of funds
5 to be used directly for the purposes of delivering
6 services, and it will be on a competitive basis.

7 MR. ROCHE: Okay, and on the emergency funds,
8 the \$2 million, do you have some particular category
9 or notion of categories that that might be necessary
10 for?

11 MR. BOGARD: We had a number of categories
12 suggested to us as examples. We do not have any that
13 we will consider as only these categories will be
14 considered.

15 MR. ROCHE: It's sort of like what we used
16 to call in the old days "rainy day" money?

17 MR. BOGARD: Yes. If there's a problem that
18 arises because of weather conditions or something that
19 causes farmers to lose a crop or funding is devalued
20 in Mexico or Canada and that puts a lot of people out
21 of work or out of business in the border town, and
22 various things like that.

23 MR. ROCHE: I see.

24 MR. BOGARD: It's wide open.

25 MR. ROCHE: I just want to commend the Board

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1 and the staff for taking the time to think through
2 again the earlier recommendation that you made.

3 Thank you.

4 MR. McCARTHY: Thank you, Terry.

5 Do we have any further comments?

6 MS. McMAHON: Patricia McMahon from the
7 Funding Criteria Committee of the Project Advisory
8 Group.

9 And I'd like to follow up on a conversation
10 we had in St. Louis. At that point I asked what the
11 amount was of carryover funds from 1983, and it's my
12 understanding that the audit is done. Could you tell
13 me how much the carryover funds are from 1983?

14 MR. BOGARD: It's 5.7 million, I believe.

15 MS. McMAHON: And could you tell me when those
16 funds will be allocated?

17 MR. BOGARD: Soon, we hope.

18 MS. McMAHON: Because I'm concerned that it's
19 now into January. It's almost four months later. That's
20 money that could be used to serve clients and cannot
21 be spent until there is action taken by this Board. I
22 don't understand that, that none of that money can be
23 spent until those allocations are made.

24 MR. BOGARD: We are reviewing it now. We've
25 had several recommendations. We've probably got \$15

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1 million worth of requests for that five million, and
2 we're attempting to make the best possible allocations
3 of those funds possible, and we will do so very quickly.

4 MS. McMAHON: And will you expect that at the
5 next Board meeting perhaps?

6 MR. BOGARD: I would think without a doubt.

7 MS. McMAHON: I would urge that it not be allo-
8 cated to private attorney involvement. My analysis of
9 the papers from 1983 indicates that a significant, if
10 not a major, portion of the \$5.7 million is from the
11 New Directions line and from other private attorneys
12 lines. That means in 1983 you were not able to spend
13 that money. You're budgeting an equal, if not an
14 increased, amount in 1984 to that line. To then add
15 the one-time money to that, in addition to raising some
16 ten percent to 12 and a half percent, which means a \$7
17 million increase to private attorney involvement, I would
18 urge you to consider that the funds go to help the pro-
19 grams that are currently in need because of their
20 inadequate level of funding. Five million dollars,
21 \$5.7 million give to the field programs could greatly
22 increase the level of services provided.

23 Thank you.

24 MR. STROMBERG: My name is Cliff Stromberg.

25 I'm here representing the American Bar Association

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1 Standing Committee on Legal Aid to Indigent Defendants.

2 I just want to say for the record to the members
3 of the Board and the President know that we received
4 yesterday a letter from ABA President Wallace Riley,
5 recommending that you endorse the motion of moving over
6 a phased three-year period from the current appropriation
7 of 275 million to 470 million.

8 This was based on a reaffirmation of the
9 philosophical commitment all along to minimum access
10 of two attorneys for 10,000 poor persons, which at
11 current levels would convert to roughly \$13. We came
12 out recommending that in light of the realistic need
13 to phase in in order to achieve real efficacy in the
14 delivery of services over three years, that next year's
15 level be 340 million. You've endorsed the idea of 325
16 million.

17 There is an enormous amount of difference
18 there, but we do have a couple of comments that I would
19 like to add to it.

20 If I may say, in light of President Bogard's
21 comments about the number of letters he received, you
22 may have been skeptical about the number of letters.
23 Maybe you will be gratified that we tried to adhere to
24 the idea of parsimony, and although the ABA represents
25 some 300,000 lawyers, we sent you one letter. It was

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1 two pages, but it was just one letter.

2 I think the important thing is not the number
3 of letters you received on any side, but the merits.
4 In our view, it is important to reaffirm the notion of
5 minimum access, and for that reason I want to first
6 comment that I certainly hope that the reference to
7 \$8.23 here, whatever it may or may not have to recommend
8 it in terms of the coming fiscal year, does not become
9 ensconced as an alternative measure of minimum access,
10 which at least in our view it certainly could not serve
11 as.

12 Secondly, I just had a question which I would
13 like at some future point the Board to consider, and
14 that is the memorandum from President Bogard refers to
15 that level of funding on an equalized basis. We would
16 simply hope that equalization being perhaps an ideal
17 concept and a worthy one, that nevertheless you allow
18 some degree of flexibility in light of the different
19 costs of doing business in different regions, efficacy,
20 the particular need and differential numbers of poor
21 persons and so forth, so that we hope that doesn't
22 become an absolute principle.

23 And lastly, analogously, we support, the ABA
24 has long supported the notion of adequate legal services
25 to institutionalized persons and elderly and so forth.

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1 In breaking out the special projects categories, again
2 we hope that that will not be effectuated in a way which
3 deprives local programs of their opportunity even within
4 those categories to apply their own criteria and
5 priorities which they best know.

6 Thank you.

7 MR. MCCARTHY: Thank you.

8 MS. EISENBERG: I'm Eleanor Eisenberg, Region
9 VIII Project Directors Association, and I too would like
10 to thank the Corporation and Board and staff for recon-
11 sidering the mark and bringing the figure up.

12 But I also would very briefly like to address
13 the question of equalization, and just comment that I
14 am one of the poorer programs that have been under-
15 funded, one of the truly needy, if you will. However,
16 even given that, I would be in opposition, and I think
17 Region VIII generally is in opposition, to equalization
18 which would have the effect of destroying programs which
19 are currently or would be considered over-funded.

20 It would have a devastating effect on several
21 programs, and I think that ought to be avoided.

22 MR. BOGARD: If I may, there's no trick meaning
23 to the term "equalized." We're just identifying a level
24 of funding for the entire population. We have the formula
25 that has been presented and is being considered, and

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1 we'll work on that issue later. This is simply to
2 identify a source or an amount of money and to come to
3 a level.

4 MR. SANTARELLI: It's a data base, as a matter
5 of fact, rather than a programmatic structure.

6 MR. MCCARTHY: Are there any further comments?

7 MS. SPODLEY: Mr. Chairman, members of the
8 Board, my name is Alice Spodley, and I am the Director
9 of the Office of Public Service Activities of the
10 District of Columbia Bar, and in that position I have
11 been able to observe the effectiveness of the private
12 Bar involvement program, particularly of the Unified
13 Bar of the District of Columbia.

14 I want to report to you on the results of our
15 work. I think that we have done an excellent job, but
16 the bottom line is that even with over 700 volunteers
17 coming forward in the past year, we have not been able
18 to find enough lawyers to take over where the Neighbor-
19 hood Legal Services Programs in the District of Columbia
20 have not been able to go forward with representation
21 of indigent clients.

22 With the funding cutbacks that have occurred
23 and the result in the reduction of staff, the closing
24 of offices here in the District of Columbia, we have
25 found that the Neighborhood Legal Services Program

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1 locally has not been able to serve 3,000 clients, approxi-
2 mately, that it was able to serve per year before the
3 funding cutbacks.

4 The Bar has done what it could to try to fill
5 that gap. We have had a series of training courses.
6 We have advertised the need far and wide, and we have
7 gotten many, many volunteers to come forward. But 700
8 lawyers who have other jobs that they must do are not
9 able to pick up anywhere near 3,000 cases during the
10 course of a year.

11 If we had 700 lawyers who were available, at
12 most I think we can expect to find 1,000 cases being
13 handled by those lawyers in any given year, and I am
14 aware of the connection between the number that we have
15 on our panel who are available to take cases with the
16 actual placement of cases because the Lawyer Referral
17 and Information Service of the District of Columbia Bar
18 also has a program in which we place pro bono cases.
19 We draw to a large extent upon the volunteers that come
20 to our office and have responded to our training courses
21 and our pleas for assistance.

22 I know that it is very difficult to place cases
23 that require a quick turnaround time, emergencies that
24 might require a TRO or cases where a client comes in
25 with a hearing scheduled for the next day. We will

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1 take whatever efforts we can to find a private lawyer
2 to take that case, but there are times I know when we
3 have to turn to the Neighborhood Legal Services Program
4 attorneys and ask them and plead with them and say, "Please
5 take the case," even though we know that they're burdened
6 terribly and that their intake may be closed for some
7 sort period of time because they can't take any more.

8 So I'm aware of the fact that even though the
9 numbers might sound good in terms of private Bar involve-
10 ment and that we are doing the best job that we can,
11 that the work that we are doing is not replacing a
12 fully funded Legal Services Program here in the District
13 of Columbia.

14 I might also point out that the \$20 million
15 private Bar involvement allocation may not achieve what
16 we need here in the District of Columbia. If, in fact,
17 that might result in ten percent of our population, our
18 indigent client population, receiving services who
19 otherwise would not achieve it or receive it without
20 the \$20 million allocation, that still would not fill
21 that gap of the 1,000 cases that the private Bar is doing
22 through our program and another \$1,000 through the \$20
23 million allocation. There are still people who will
24 go unrepresented.

25 I just bring that to the Board's attention.

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1 Thank you.

2 MR. McCARTHY: Thank you.

3 Yes, sir.

4 MR. LOINES: My name is Dwight Loines. I'm
5 with the National Organization of Legal Services, Workers
6 District 65, UAW.

7 I, frankly, had not intended to say anything
8 here today, but one of your previous speakers promptly
9 changed my mind, and when I saw Olson here and heard
10 him speak, I was somewhat surprised initially, but
11 frankly, not fooled by what his presence seems to
12 suggest.

13 First of all, I, frankly, don't see much
14 difference between the Olson, the prior Board that Olson
15 served on, and the discredit that that Board brought
16 to the program and the current Board, and if his presence
17 here today was to suggest that there's some separation,
18 I'm the first to stand up and point out that I don't
19 believe that that's the case.

20 I'm reminded of all of the regulations, et
21 cetera, that have been passed by this current Board.
22 They seem quite consistent with Olson and his cohorts,
23 and I was, frankly, somewhat surprised that he didn't
24 take the opportunity here to congratulate you on continu-
25 ing that particular effort.

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1 (Applause.)

2 MR. McCARTHY: Do we have any further comments
3 from the audience?

4 (No response.)

5 MR. McCARTHY: There being no further comments,
6 I would entertain a motion to adjourn this meeting.

7 MR. SANTARELLI: So moved.

8 MR. FRANKUM: Second.

9 MR. McCARTHY: By general consensus, this
10 meeting is now adjourned.

11 (Whereupon, at 3:25 p.m., the Board of
12 Directors meeting was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Meeting of the Board of Directors

Before: Legal Services Corp.

Date: January 6, 1984

Place: Central Office Bldg.
18th and F Streets, N.W.
Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

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