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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING

Clark Room
Capitol Holiday Inn
550 C Street S. W.
Washington, D. C.

Friday,
January 25, 1985

8:50 a.m.

PRESENT:

- W. CLARK DURANT, III, Chairman
- DONALD P. BOGARD, President
- HORTENCIA BENVIDEZ
- LeaANNE BERNSTEIN
- PAUL EAGLIN
- PEPE J. MENDEZ
- LORAIN MILLER
- THOMAS F. SMEGAL
- CLAUDE G. SWAFFORD
- BASILE J. UDDO
- ROBERT A. VALOIS
- MICHAEL B. WALLACE

P R O C E E D I N G S

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MR. DURANT: The January 25th meeting of the Legal Service Corporation's Board of Directors Meeting is now in session.

To begin the meeting, I would like to call on Rev. Nathal Tate, recent pastor until December of this past year at the Soul Outreach Baptist Church in Capitol Heights, to offer a moment of prayer.

REV. TATE: Let's bow our heads, please, and let the heart pray. King Solomon said In all thy ways acknowledge Him and He shall direct thy path.

Dear Heavenly Father, as we come this morning, we come in the precious and adorable name of Jesus, the savior of the world.

We want to thank you for this day that the Lord has made, and we thank you for this great opportunity we have today to come and share and to pray with my brothers and sisters in Christ.

Lord, we just thank you for the endeavor, the things that they are trying to do for the poor and others who are in need and we honestly pray that what they do, let it be a success and the only way it can be a success we have to do it to your glory and for your honor.

Give wisdom, Lord, and strength and courage in the name of Jesus, the son of God. Lord, we pray for each

1 one and we pray that each one of us carry out our duties
2 in this world. If we all pitch in and do what we are
3 supposed to do, things will go better.

4 Things always go better with you, Lord. Help us
5 now and bless this endeavor. We ask it in Jesus' name and
6 for Christ's sake we pray. Amen.

7 MR. DURANT: We are on sort of a short string
8 this morning as we all have to leave at 9:30 at the latest.

9 I understand there are a number of people who would
10 like to talk to me or ask questions. I will hang around
11 or stay around to try and do that.

12 The first item is simply the approval of the
13 agenda.

14 MS. SWAFFORD: I move the approval of the agenda.

15 MR. MENDEZ: I second that.

16 MR. DURANT: All in favor?

17 (Chorus of aye.)

18 MR. DURANT: Has everyone had a chance to review
19 the minutes?

20 MR. EAGLIN: Mr. Chairman, I move the approval
21 of the minutes as drafted -- approval of the draft minutes
22 of the meeting of December 20th, 1984, of the Board of
23 Directors.

24 MR. MENDEZ: Second.

25 MR. DURANT: All in favor?

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(Chorus of aye.)

MR. DURANT: At this point, if there is no objection, I would like to as chairman make a few comments.

I have been asked by a number of people to restate some of the remarks that I made on the selections by this Board as chairman and I will do that. I hope the Board will indulge me, as I have looked at this just this morning, and I will pick out only the salient points.

I also received a letter from Senator Rudman yesterday that I also want to share and I think it will help us in addressing some other questions that will be coming up during the course of this meeting.

Let me say simply that the stewardship of Legal Services brings with it the duty to focus the attention of the legal community and the country on the pressing need to assure that persons who are poor have access to our system of justice to resolve disputes in civil cases.

I accept the responsibility as, frankly, I know this entire Board does, with the recognition that government can not and should not solve this problem alone.

The bench and bar must and do recognize the ethical obligation of the legal profession to provide legal assistance to poor persons.

The Legal Services Corporation and bar groups have already initiated a major effort to develop pro bono

1 panels and other forms of private bar involvement in the
2 delivery of legal services for the poor. I commend the bar
3 and other groups for their work. Much still remains to be
4 done.

5 State and local governments must do their share
6 where appropriate. Local municipalities have demonstrated
7 past support of legal aid programs. I hope such continues.

8 Ultimately we all have an individual responsi-
9 bility to assist poor persons who seek access to our system
10 of justice.

11 This said, we at LSC must face up to our own
12 responsibilities. We must endeavor to create a legal aid
13 program that is based on principles of absolute fidelity to
14 client interest, untrammelled by political or ideological
15 consideration.

16 We must endeavor to create a legal aid system
17 that obeys its congressional mandate in all respects. We
18 must endeavor to ensure that the legal aid system provides
19 high quality legal aid to all poor persons who seek assis-
20 tance.

21 We must endeavor to ensure a legal aid system
22 that is adequately funded to the task at hand.

23 Our commitment cannot be to an organizational
24 structure per se, but must be to professional end, the
25 creation of the best legal assistance program program possible

1 within the bounds of the authorizing statute.

2 I call on the public, the legal aid groups, the
3 bench and the bar to be creative, imaginative and open to
4 letting many flowers bloom when discussing and developing
5 a diversified delivery system.

6 It is, as we know in so many other things,
7 diversity, experimentation and good faith exploration of
8 alternatives that allows growth and affirmative development
9 to take place.

10 Yesterday I received a letter -- I don't know
11 whether I can really say "yesterday," since I came in at
12 midnight, so somewhere between yesterday and early this
13 morning I received a letter from Senator Rudman who has
14 been a person who has taken the time out of his rather
15 hectic schedule and the demands of that schedule to be
16 interested in what happens to legal services to the poor,
17 and I want to say as chairman that I very much appreciate
18 that interest because when there are so many pressing
19 concerns on the time of a senator, it is nice to know that
20 even though we're not the major agency to come before the
21 Appropriations Committee, that he does take time with us.

22 I guess as Daniel Webster said about Dartmouth
23 College, "We are small, but we love her still."

24 Let me read you the letter:

25 "Dear Clark: As the Legal Services Corporation

1 Board undertakes the difficult and challenging task of
2 managing the Corporation for the next few years, I believe
3 it should attempt to develop stable, long-term sources of
4 funds for legal services which are independent of Congress-
5 sional appropriation.

6 "As you know, the Federal Government is currently
7 facing a budgetary crisis of unprecedented proportion a
8 crisis which under the best of circumstances will take
9 several years to solve.

10 "To give you an idea of the magnitude of the
11 problem, if congress were to completely eliminate every
12 single appropriated discretionary program of the Federal
13 Government, it would still leave a budget deficit in fiscal
14 year 1986 of about \$70 billion.

15 "Another indicator of the current problem is
16 the fact that under a current services budget in fiscal year
17 1986, defense, Social Security, Medicare and net interest
18 on the federal debt, would consume in excess of 88 percent
19 of all federal tax revenues.

20 "Under these circumstances nobody can predict
21 with certainty what kind of funding decisions Congress is
22 going to make regarding the myriad of federal programs,
23 including the Legal Services Corporation, over the next
24 couple of years and advocates of every program need to be
25 concerned about the program's future and its budgetary

1 prospects.

2 "Accordingly, I believe it would be an excellent
3 idea if the Corporation were to look into the possibility
4 of developing outside funding sources, especially sources
5 of income which are renewable, long-term, and not dependent
6 on the annual decision-making process.

7 "The development of such sources of income would
8 not only ensure the program's survival in this time of
9 federal budgetary crisis, but could also serve to help
10 depoliticize the program. This latter is a problem which
11 has unfortunately plagued the Legal Services Corporation
12 since its inception.

13 "I hope the Board gives this proposal favorable
14 consideration and look forward to hearing from you.
15 Sincerely, Warren B. Rudman, United States Senator."

16 As many of you know, I have said on more than
17 one occasion, and it is obvious that a number have heard me
18 because my mail now exceeds anything I get in my private
19 practice, regarding my concern that we need to develop and
20 focus on other funding, additional funding, supplemental
21 funding sources.

22 Reese Smith, the former president of the ABA, in
23 a speech to the Travis County Bar Association two or three
24 years ago, made a very important and telling point, that
25 if in fact there is a need for legal services to the poor,

1 and certainly there clearly is, that if it is going to be
2 sustained there must be a sustained source of funding.

3 The question remains, of course, as to where
4 that sustained source of funding should come from.

5 I think the President -- and while we're an
6 independent corporation established by Congress, the
7 President is still our president, and I think he set a
8 couple of very important themes in his inaugural that we
9 can all take heed by as we deliberate what should be done
10 regarding legal services.

11 We are facing a budgetary crisis of momentous
12 proportions, as Senator Rudman has pointed out, and we
13 are therefore going to be faced with very hard decisions.

14 The President called on a bipartisan effort,
15 a nonparty effort, to try and resolve some of our almost
16 intractable sorts of social problems in a way that is
17 consistent with the American ideal of opportunity and the
18 free market.

19 I would like to see us follow the suggestions
20 of the President, to open up our whole process, to reach
21 out to sources that we have never gone to before, to try and
22 develop what will be long-term -- as Senator Rudman is
23 talking about -- long-term sources of regular funding for
24 the delivery of legal services to the poor.

25 There are a number of different ways that this

1 can be done. You know I have spent the last few weeks
2 looking for a Lee Iacocca to take us on as he did the
3 Statue of Liberty because in many ways we are the same.

4 The Statue of Liberty represents a call to the
5 poor and the distressed of the world to come to our borders,
6 enjoy our fruits and our opportunities, and I am calling
7 on the leaders in corporate America to try and assist us
8 in what is a really a very fundamental task and fundamental
9 job of the American system and that is to provide equal
10 access to our judicial system.

11 There are a number of different functioning mechanisms
12 and sources that we can develop. I've had a couple of
13 suggestions already -- that those people who use the judicial
14 system in filing complaints and motions share in the cost
15 of providing services to the poor.

16 As you know, one of the items on our agenda
17 this morning is the IOLTA Clearinghouse and the work that
18 they have done and there's no question but that IOLTA has
19 been a new source, a fresh shource, of funding.

20 I have to admit, without getting to the merits
21 of whether their existing grant should be extended, modified,
22 discontinued or whatever, I have to say that both Mr.
23 Mendez and I have been impressed with the tremendous out-
24 pouring of support for this kind of initiative separate
25 from Federal Government sources of funding.

1 I think that with that kind of commitment, that
2 kind of unity of purpose, as there are no limits to economic
3 growth there really are no limits to the efforts that we
4 can put forth to reach that sustained level of funding that
5 is necessary.

6 One of the things that I hear all the time when
7 I talk to different program directors and whatever is that
8 they would like more control over their own programs rather
9 than having them governed from afar.

10 It seems to me it is the nature of our federal
11 system that whoever is paying the money calls the tune. If
12 there was a concerted effort to develop alternative supple-
13 mental sources of funding, whether it be state or national
14 support centers or the local programs, a whole series of
15 different methods, that might be a way of trying to develop
16 that kind of local control, if you will, because then it
17 seems to me conceptually one is in the position to argue
18 more strongly that control then belongs where the money
19 is being developed.

20 However, I don't think I could go to people in
21 business and whatever if I also felt that we at the
22 Corporation and the programs that we are serving were not
23 carrying out their purposes in strict accordance with the
24 Congressional rules, the regulations that we try to develop
25 with input from the field.

1 I've already received, and I appreciate this -- In
2 response to something that Mr. Wallace said at our last
3 meeting, a number of people have already started to try and
4 devise constructive suggestions regarding regulations and
5 I know that Mr. Wallace is already in the process of trying
6 to analyze those rather than just throwing torpedoes and
7 darts, but to try and engage in a dialogue that permits the
8 development of regulations consistent with our statutory
9 purposes.

10 It has also, as I say, been pointed out to me
11 that if there are abuses or excesses in terms of how Legal
12 Service's money is now being used or has been used, it makes
13 it a lot harder to sell the program and therefore there will
14 be an effort, both internally and as we try and develop
15 appropriate monitoring means, to make sure that the money
16 that we do pass out is spent accordingly and is spent in
17 the delivery of legal services to poor persons.

18 I think ultimately when it comes down to it, the
19 President and these circumstances have given us an oppor-
20 tunity to be open, to start with almost, if you will, in some
21 ways almost a clean sheet of paper, to try and look at our-
22 selves, do the kind of job that I know everyone in this
23 room who is involved with the programs wants to do.

24 I, quite frankly, while it has completely made
25 it impossible for me to carry on the private practice of

1 law -- my wife has great problems with this -- I have very
2 much appreciated all of the comment that I have received
3 in writing and on the phone, and I would appreciate it if
4 most of it could be in writing because I carry pink slips
5 around everywhere and it is very hard for me to sometimes
6 get calls back, but I very much have appreciated all of the
7 comment that has come in in terms of the direction that
8 this Board is going in, and I am very much impressed with
9 the commitment that this Board has made despite the time
10 commitments that clearly are a burden in many, many ways.

11 Each and every member of this Board has demon-
12 strated a commitment to the purposes of this statute and
13 to the delivery of legal services to the poor, and I am very
14 proud to serve with each and every one of them.

15 Really, without -- I guess when you say why is it
16 worth it to try and focus our energies on trying to
17 develop these other sources of funding, I think again this
18 whole question of control and purpose and direction is
19 very much with us.

20 In my various trips to the Hill, one of the
21 questions was made that one of the sections that was very
22 controversial in the original authorizing act was the whole
23 provision or requirement that other moneys raised would be
24 still ruled by the regulations passed by this corporation.

25 Well, when this corporation is spending such

1 substantial portions on each of the individual programs, it
2 seems to me that is a reasonable -- as did congress --
3 restriction, but as there could be the development of more
4 local or even national that would be distributed sources of
5 funding, maybe the control aspects could shift as well.

6 I thank you for your indulgence. As I say, I
7 do believe and I do make a call that there is a great oppor-
8 tunity to take what has been a very difficult problem over
9 the last number of years and try and give some sense of
10 direction and purpose --

11 Allen Houseman, in his history that he's doing
12 on the Legal Services, makes the distinction between two
13 different kinds of needs -- one, the more traditional notion
14 of needs to the poor and the other a more expanded notion.

15 I have to tell you, Allen, I favor the first
16 notion because I think with our limited sources of funds
17 and availability that's what we should be concentrating our
18 efforts on.

19 On the other hand, if we can develop these other
20 sources of funding in major ways, perhaps there is then a
21 way to deal with the other definition of need.

22 I will be establishing very shortly as a part of
23 our needs study an advisory panel to look very hard at what
24 in fact is legal need so that we can understand better the
25 problem that we are obviously trying to solve.

1 One of the items later on in the agenda is that
2 we will be going into executive sessions to discuss per-
3 sonnel, personal and criminal and litigation investigatory
4 matters.

5 LeaAnne, since you're the one that usually gives
6 the motion -- Bobby, are you going to do it?

7 MR. VALOIS: Mr. Chairman, I move that a portion
8 of the meeting be closed pursuant to the notice that was
9 published in the Federal Register under 45 CFR 1622.5(a)(d)
10 (e)(f)(g) and (h), to discuss personnel, personal, criminal
11 litigation and investigatory matters.

12 I would further suggest that we consider doing
13 this during our lunch hour because of the rather hectic
14 schedule that we've got.

15 This motion needs a second and a rollcall vote.

16 VOICE: I'll second.

17 MR. DURANT: Any discussion? Let's do a rollcall.

18 (All present individually replied "yes.")

19 MR. DURANT: It's unanimous. The motion carried.

20 We need certification from the general counsel.

21 GENERAL COUNSEL: I certify that all the members
22 of the Board of Directors have approved the closing of a
23 portion of this noticed meeting being held this 25th day of
24 January 1985. The closing is approved in order to discuss
25 personnel, personal, criminal, investigatory and litigation

1 matters. The closing is approved by all eleven of the Board
2 members by a rollcall vote taken during the public portion
3 of the meeting.

4 I further certify that in my opinion the closing
5 is authorized by the government in the Sunshine Act, Title
6 5, USC 552(b)(c), and the Legal Services Corporation
7 regulation 45 CFR 1622.5(a)(d)(e)(f)(g) and (h).

8 MR. DURANT: I want to say one other thing and
9 I promise one member of the Board it will be brief.

10 I can't emphasize enough how much I have appre-
11 ciated the material that I've received from people in the
12 field, whether they're part of the program or not, who have
13 an interest in the work that we do and I look forward to
14 working with everyone so whether we're here one year or
15 three years it will be a very productive time and most
16 beneficial to those whom we serve.

17 With that, we are going to adjourn because --
18 recess because all members of the Board have a session or
19 a command performance, I guess, with presidential appointees
20 to hear the President and others at a function.

21 We will reconvene immediately after our closed
22 session at 12:30, but hopefully that should be 1:00 or 1:15.

23 (Adjournment.)
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25