

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Saturday, June 5, 2004

9:00 a.m.

The Hilton Omaha
1001 Cass Street
Omaha, Nebraska

COMMITTEE MEMBERS PRESENT:

Thomas R. Meites, Chair
Lillian R. BeVier
Michael D. McKay
Frank B. Strickland (ex officio)

BOARD MEMBERS PRESENT:

Robert J. Dieter
Thomas A. Fuentes
Herbert S. Garten
David Hall
Maria Luisa Mercado
Florentino Subia
Ernestine P. Watlington (by telephone)

STAFF AND PUBLIC PRESENT:

Helaine M. Barnett, President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Randi Youells, Vice President for Programs
John Eidleman, Acting Vice President for Compliance
and Administration
Leonard Koczur, Acting Inspector General
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel
David Maddox, Assistant Inspector General for Resource
Management
Mattie C. Condray, Senior Assistant General Counsel
David Richardson, Treasurer and Comptroller
Reginald Haley, Office of Program Performance
Patricia Batie, Manager of Board Operations
Karen Dozier, Executive Assistant to the LSC President
Linda Perle, Senior Attorney/Legal Services, Center
For Law and Social Policy
Richard Teitelman, Judge, Supreme Court of Missouri
Julie Clark, National Legal Aid and Defenders
Association
Pat McClintock, Iowa Legal Aid
Lillian Moy, Director, Legal Aid Society of
Northeastern New York
Scott Hartsook, Iowa Legal Aid
Bill O. Whitehurst, ABA Standing Committee on Legal
Aid and Indigent Defendants
Lillian Johnson, Community Legal Services

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1 P R O C E E D I N G S

2 CHAIRMAN MEITES: All right. Why don't we get
3 started. Ernestine, can you hear us?

4 MS. WATLINGTON: Yes, I can. Very good.

5 CHAIRMAN MEITES: This is Tom Meites speaking.
6 Good morning.

7 MS. WATLINGTON: Hi.

8 CHAIRMAN MEITES: And I'm about to convene the
9 meeting of the Operations and Regulations Committee.

10 Okay. Let's get started. My name is Tom
11 Meites. I'm the chair of the Operations and Regulations
12 Committee, which I call into session.

13 First, I ask for a motion to approve our
14 agenda.

15 M O T I O N

16 MS. BeVIER: So moved.

17 MR. MCKAY: Second.

18 CHAIRMAN MEITES: It is approved.

19 And second, I'll ask for a motion to approve
20 the minutes of our meeting which were distributed as part
21 of our book for this meeting. This is the meeting of our
22 committee of May 1, 2004.

1 MS. BeVIER: One correction. I was present.

2 CHAIRMAN MEITES: I vouch for that.

3 All right. With the minutes so amended, can I
4 have a motion to have them approved?

5 M O T I O N

6 MS. BeVIER: So moved.

7 MR. McKAY: Second.

8 CHAIRMAN MEITES: And they are approved.

9 All right. Item 3 is to consider and act on
10 retainer agreement and group representation issues
11 relating to the LSC open rulemaking on financial
12 eligibility, which is in our regulations as Part 1611.

13 Those of you who were at our last meeting will
14 recall that we began but did not conclude a discussion
15 with regard to the staff proposal on retainer agreements.

16 We did not reach the group representation issue.

17 What I would like to do this morning is as
18 follows. I don't know if we'll complete the retainer
19 agreement discussion, but I at least would like to start
20 the discussion on group representation. I think that
21 there are issues in the group representation area that
22 are quite complex and difficult, and I would like at

1 least our committee to begin discussing them, although I
2 do not anticipate we will reach any kind of conclusion on
3 the group representation issue.

4 Our meeting this morning is to run from 9:00 to
5 11:00, I believe. However, we have a second substantive
6 item, which is to consider and act on revisions to the
7 standard LSC grant assurances form. There are some
8 changes that have been proposed by the staff, and we are
9 going to devote some of our meeting to that.

10 I wonder, Mike and Lillian, should we do the
11 grant assurances first, get that done, and then whatever
12 time we have left we'll move to the group representation?
13 Because I want to -- we have to do the grant assurances
14 today. Does that make sense?

15 MS. BeVIER: That sounds like a good idea.

16 MR. McKAY: That sure does.

17 CHAIRMAN MEITES: All right. We'll start with
18 the grant assurances. Mattie, are you prepared to --

19 MS. CONDRAY: I'm not doing the grant
20 assurances.

21 CHAIRMAN MEITES: Okay.

22 MR. HALEY: I'm doing the grant assurances.

1 CHAIRMAN MEITES: Good. If you'd identify
2 yourself, please?

3 MR. HALEY: Yes, sir. My name is Reginald
4 Haley. I'm with the Office of Program Performance.

5 CHAIRMAN MEITES: All right. We have received
6 a memorandum from the staff which goes through proposed
7 changes in the grant assurance form. And the memo
8 indicates that there are changes in assurance numbered
9 paragraphs 6, 9, 10, 13, 21, 22, and 24. Those are the
10 new numbers.

11 And if it makes sense to you, I suggest you go
12 through each of the proposed changes, explain to us what
13 is being changed, and the reason for the change.

14 MR. HALEY: That's fine with me. And if I
15 might, before I get into that discussion, in preparing
16 for this presentation I actually created a document that
17 I think might be even more helpful for us to walk through
18 in order to see the changes very clearly. So with your
19 permission --

20 CHAIRMAN MEITES: Please.

21 MR. HALEY: What I've done, if I might, is to
22 simply isolate those grant assurances that we are

1 proposing changes for.

2 CHAIRMAN MEITES: Good.

3 MR. HALEY: And if you turn to the very first
4 page, you'll get a very clear idea of what I'm referring
5 to.

6 As an example, as you noted, on page 53 of the
7 board book there is a summary chart which identifies all
8 of the grant assurances that are proposed for changes.
9 The package that has just been presented to you
10 references that chart exactly.

11 If you turn to page 2, and you see grant
12 assurance No. 6, that is the grant assurance that is
13 proposed for 2005. Just below that you will see the
14 grant assurance from 2004 which was changed. Is everyone
15 following me?

16 CHAIRMAN MEITES: Got it.

17 MS. BeVIER: Uh-huh.

18 MR. MCKAY: Yes.

19 MR. HALEY: Fantastic. This package follows
20 through just like that all the way through, and it only
21 touches on those grant assurances that are being changed.

22 MS. MERCADO: And the lettering in blue is the

1 lettering that are the changes?

2 MR. HALEY: Yes, ma'am. That's exactly right.

3 And the writing in black is the language that was
4 already there from 2004. In those instances where you
5 see strike-throughs, of course that text was deleted.

6 Okay?

7 CHAIRMAN MEITES: All right. Why don't you
8 start with paragraph 6 and tell us what -- the reason for
9 the charge.

10 MR. HALEY: Vw. And as I do this, I would like
11 to give credit to the office that has actually proposed
12 the change. Basically, the Office of Compliance and
13 Enforcement has recommended that we include the language,
14 "ABA Model Code of Professional Responsibility."

15 That additional language was included primarily
16 to remain consistent with the information in the LSC Act.

17 CHAIRMAN MEITES: All right. For those of us
18 who are not ethics buffs, what is the difference between
19 the Model Code of Professional Responsibility and the
20 Model Rules of Professional Conduct?

21 MR. HALEY: I must admit I'm not an attorney
22 also, and I would have to refer --

1 CHAIRMAN MEITES: Do we have a volunteer? Yes,
2 sir.

3 MR. GARTEN: The present rules of the ABA Model
4 Rules of Professional Conduct, my understanding was that
5 they were prior listed as the ABA Model Code. So it's
6 the predecessor to the Rules of Professional Conduct.

7 I don't have a copy of the Rules of
8 Professional Conduct with me, but I would assume there
9 would be some reference that they replace the Model Code.
10 I don't see any harm, though, in this change in that it
11 is going to be referred to the predecessor rules.

12 CHAIRMAN MEITES: Well, the problem might be is
13 if the current version makes some changes which are
14 inconsistent with the prior version. Why don't we --

15 MS. BeVIER: Take them -- let's go through all
16 of them.

17 CHAIRMAN MEITES: Okay. That's a question we
18 have about that. Let's go through all of them, then. If
19 you'd continue, please.

20 MR. HALEY: If you turn to page 3, the next
21 grant assurance is grant assurance No. 9. You may recall
22 that the board requested that LSC take a look at grant

1 assurances 9 and 10 from the 2004 grant assurances to
2 streamline that.

3 We took an additional step. We not only
4 streamlined grant assurance 9 and grant assurance 10, but
5 we found a way to combine those two grant assurances.
6 And the grant assurance that you see now as grant
7 assurance 9 is the result of that. This grant assurance
8 speaks to access of records.

9 MR. MCKAY: Mr. Chairman?

10 CHAIRMAN MEITES: Yes, sir?

11 MR. MCKAY: The only question I had about this
12 change, as the new document certainly looks fine to me,
13 are the grant assurance -- new grant assurance No. 9.
14 The only question I had is, has there been any experience
15 of difficulties concerning withholding documents -- and I
16 know there have been issues. But has there been a
17 question about what has been withheld?

18 Obviously, when you withhold something,
19 normally it's an attorney-client privilege that's being
20 claimed, as I understand the history, some issues
21 relating to this.

22 Has there been a question about distributing

1 with particularity what has been withheld without
2 violating the attorney-client privilege? My thought is,
3 as I read through this -- again, completely free of
4 having had to wrestle with these issues on a case-by-
5 case basis -- in my experience, it might be a good idea
6 to ask that the other side identify it with particularity
7 without violating the privilege they're trying to
8 preserve.

9 But I don't want them to redo the work. I'm
10 just wondering, was there a discussion of that? Was
11 there an issue relating to that?

12 MR. HALEY: Well, there was a collaboration on
13 this particular simplification of this assurance, if you
14 will, between the Office of Legal Affairs and the Office
15 of Compliance -- I'm sorry, and the Office of the
16 Inspector General. And it's my understanding that
17 between them, they felt that this language captured all
18 of the information necessary to make sure that we did
19 have access to all of the information that is needed.

20 With regard to your specific question as to
21 whether or not we should include particular language
22 identifying specific records to make sure that everyone

1 understands the records that are needed, that is
2 something that we were attempting to get away from in
3 streamlining this grant assurance.

4 CHAIRMAN MEITES: I think that his question was
5 a little different. And this is a litigator's mindset,
6 that as written, the No. 9 simply requires that the
7 withholder identify the basis for withholding. It does
8 not require that withholder also to identify what he or
9 she is withholding.

10 So you might consider changing the second
11 sentence of proposed No. 9 as follows: After the "if"
12 clause, when it says, "It will promptly," inserting
13 something to the effect that "identify the withheld
14 information and records," comma. Would that meet your --

15 MR. MCKAY: It certainly would address my
16 concern. And you're much more aggressive in addressing
17 it than I. I didn't want to rework this collaborative
18 effort. But that certainly was my concern as I read it
19 preparing for this meeting. But that would certainly
20 address it. Unless you guys have a concern, I think it
21 would be great to have that.

22 CHAIRMAN MEITES: Vic, do you want to chime in

1 on this at all?

2 MR. FORTUNO: I'd be glad to, although I was
3 out of the room and just stepped in so I'm not sure what
4 you're discussing.

5 CHAIRMAN MEITES: All right. On paragraph 9,
6 the question was raised whether it would also be helpful
7 to require the withholder to identify what is being
8 withheld in addition to the basis for withholding. And
9 that was a question, and I suggested that you consider
10 adding to the proposed No. 9 language to the effect it
11 will promptly add language identifying the withheld
12 information and records.

13 MR. FORTUNO: I frankly think that's a helpful
14 suggestion.

15 CHAIRMAN MEITES: All right.

16 MR. FORTUNO: We'd be happy to do that.

17 CHAIRMAN MEITES: Lillian?

18 MS. BeVIER: I have a little grammatical
19 suggestion, and that would be that instead of saying
20 "provide the written basis for such withholding," you
21 say, "provide in writing the basis for."

22 MR. FORTUNO: That, too, is a very helpful

1 suggestion, and very much welcomed.

2 CHAIRMAN MEITES: Maria?

3 MS. MERCADO: Yes. I guess the problem that I
4 have with the way this is written is that there does not
5 seem to be an acknowledgment of the whole area that we've
6 had problem with with this particular assurance, and in
7 fact had litigation on this particular point, is the
8 whole issue of any kind of professional responsibility or
9 ethics or a particular state.

10 Because the way it reads, if it's subject to
11 federal law, are we to then understand that any state law
12 to which they are bound to because of professional ethics
13 and professional code in this own particular state --
14 that they wouldn't have to?

15 I mean, it seems like there has to be a happy
16 medium between the proposed No. 9 and the prior No. 9
17 because the prior No. 9 at least acknowledges the
18 professional responsibility as well as the Section
19 1006(b)(3) of the LSC Act.

20 CHAIRMAN MEITES: Maria?

21 MS. MERCADO: Yes?

22 CHAIRMAN MEITES: I think that's a very good

1 pt. I've actually just been involved with some
2 litigation where the state law actually had a higher
3 privilege standard than the federal law. And the
4 question was, was the federal law preemptive or was it
5 just a floor?

6 What I would suggest, rather than federal law,
7 maybe use the word "applicable law," and let you and the
8 lawyers for the withholder have a high old time in
9 arguing it out.

10 But I agree with Maria. I don't think we want
11 to announce that we have decided that federal law
12 governs. Because Illinois, for example -- hard to
13 believe -- has some privileges that are broader than, for
14 example, federal law.

15 And I certainly think that the legal assistance
16 in Illinois, as attorneys licensed in Illinois, should
17 have the opportunity to argue that the Illinois law
18 governs their standard.

19 So does "applicable law" make sense to --
20 Lillian, does that make sense to you as well?

21 MS. BeVIER: Yes. Would we change both
22 federals there?

1 CHAIRMAN MEITES: Yes. I think it would be
2 both of them.

3 MR. GARTEN: I might say that the prior
4 language was, "or any rule of professional
5 responsibility."

6 CHAIRMAN MEITES: So you would suggest that it
7 be law or rule?

8 MR. GARTEN: No. The prior language to me
9 makes sense.

10 CHAIRMAN MEITES: I think that's better.
11 "Applicable law or rule of professional responsibility."

12 MR. GARTEN: "Any." The word "any."

13 MS. BeVIER: "Any"? "Any applicable"?

14 CHAIRMAN MEITES: "Any applicable law or rule
15 of professional responsibility."

16 MR. GARTEN: That's fine.

17 CHAIRMAN MEITES: In both places. You can't
18 give lawyers an open season to draft like this and not
19 expect this to happen.

20 MR. McKAY: We just can't help it. It's
21 chromosomal.

22 CHAIRMAN MEITES: Compulsive behavior.

1 Is that okay with 9 now? All right. We're
2 temporarily satisfied. Let's go on to the next one.

3 MR. HALEY: I'm on page 5 -- sorry, I'm on
4 page --

5 CHAIRMAN MEITES: Four?

6 MR. HALEY: -- 4. This was part of the
7 streamlining and clarification to these grant assurances.
8 Nine, 10, and 11 were each connected. And we took an
9 additional step to make a modification to grant assurance
10 11, which you see here. It would be the revised No. 10
11 because grant assurance 9 and 10 were combined.

12 Basically, you see the change here. I ask you
13 if you have questions or comments or amendments to that
14 language as well.

15 MS. BeVIER: Why did you take out "appropriate"
16 from "any cooperation"?

17 MR. HALEY: To be honest about it, I did not
18 take it out. And I --

19 MS. BeVIER: Well, why did the group?

20 MR. HALEY: Yes. I can't answer the question.

21 CHAIRMAN MEITES: Vic, can you help us with
22 that?

1 MR. FORTUNO: I'm not sure who was responsible
2 for removal of that term, either. This was,
3 unfortunately, a project by committee.

4 I understand it was a change by the inspector
5 general's office. And since they're here present, maybe
6 they can address that pt.

7 MS. TARANTOWICZ: Laurie Tarantowicz, counsel
8 to the IG. I'm sorry. I didn't hear the question.

9 MS. BeVIER: The question is why the word
10 "appropriate cooperation" -- why the modifier
11 "appropriate" was taken out with respect to cooperation.
12 It used to be "because of any appropriate cooperation
13 with." Now it's "because of any cooperation with."

14 And I take it that -- I mean, it would seem to
15 me that what you were worried about was -- initially, as
16 it previously read, I think the idea was that you don't
17 want employees punished for doing -- for disclosing
18 information that they should have disclosed to LSC.

19 But you wanted to leave some room for them to
20 be punished by the grantee if they were releasing
21 documents that they shouldn't have released, that were in
22 fact privileged and so forth. Taking out the

1 "appropriate" takes away that defense from the grantee.

2 MS. TARANTOWICZ: I agree. I don't recall that
3 we took out the word "appropriate," so --

4 MS. BeVIER: Somebody did.

5 MS. TARANTOWICZ: I know.

6 CHAIRMAN MEITES: Since there's no defenders,
7 let's put it -- let's restore it until --

8 MR. FORTUNO: It frankly sounds like everyone
9 is perfectly happy reinserting it.

10 MS. BeVIER: Restore it? Okay.

11 CHAIRMAN MEITES: We'll put it back in.

12 MR. MCKAY: A little too much streamlining, as
13 it turns out.

14 CHAIRMAN MEITES: At the end of this 11, or new
15 10, is the phrase "federal law." Should that not also be
16 the same phrase we had in No. 9? So let's change that to
17 the formulation of applicable or rule.

18 Okay. That takes care of new 10.

19 MR. HALEY: Go on to page 5.

20 MR. GARTEN: And you're adding that to 10?

21 CHAIRMAN MEITES: Yes, we are.

22 Do you want to walk through No. 13, please?

1 MR. HALEY: Sure. Grant assurance 13 includes
2 the addition of the Office of Information Management.
3 Basically, the Office of Information Management is the
4 office at LSC that collects and maintains information
5 received from grantees, and we wanted to make it
6 perfectly clear to grantees that that is the office that
7 should receive the information at LSC.

8 CHAIRMAN MEITES: All right.

9 MR. HALEY: On to page 6. This is a change
10 that was recommended by the Office of Program
11 Performance. It's simply a change requesting our
12 grantees to make sure that they have up-to-date
13 technology capacities.

14 Each year this grant assurance is updated. You
15 see the change is very minor. Each year technological
16 capacities are increased and improved, and the cost of
17 that often is reduced. And we want to make sure that our
18 grantees are purchasing the most up- to-date equipment
19 that they can.

20 CHAIRMAN MEITES: All right. Thank you.

21 MS. MERCADO: So that means we'll be asking for
22 more funding to provide up-to-date computers to do the

1 systems. Right?

2 CHAIRMAN MEITES: I suppose that is the logic.

3 MR. HALEY: Actually, the cost of technology is
4 going down.

5 MS. BeVIER: It goes. The equipment goes down.
6 It's paper we have to worry about.

7 CHAIRMAN MEITES: All right. No. -- new
8 paragraph 22.

9 MR. HALEY: Yes. This grant assurance was
10 revised and streamlined. It is the combination of grant
11 assurance 25 and 23. And I call those numbers in that
12 order for a particular reason.

13 Grant assurance 25 is actually the beginning of
14 the new grant assurance 22 now. The two grant assurances
15 combined were referred to our intent to have our grantees
16 do those -- take those steps necessary to promote
17 effective and efficient statewide delivery systems. And
18 this grant assurance goes to that.

19 CHAIRMAN MEITES: Give us a minute to look
20 through this, if you would.

21 MR. HALEY: Sure.

22 (Pause)

1 CHAIRMAN MEITES: A very quick read -- and it
2 was quick -- makes it appear to me that this is mostly
3 just stylistic, without substantive change.

4 Maria?

5 MS. MERCADO: No. I disagree with that.

6 CHAIRMAN MEITES: Speak up a little bit.

7 MS. MERCADO: I guess one of the cornerstones
8 that grant assurance 25 had was in ensuring that the
9 grantees are doing an effective delivery system to make
10 sure that all eligible clients are represented.

11 But they have revised this to where two-thirds
12 of the new No. 22 is primarily website, as if that's the
13 only way that we're going to do effective delivery of
14 legal services to poor people; whereas No. 25 prior to
15 talked about different kinds of strategic planning and
16 maximizing different ways of providing civil legal
17 services, as opposed to just solely a website, because
18 solely a website is not legal advocacy or representation
19 of poor people alone.

20 And you also talk about expending and making
21 diverse your leadership and stronger access to client
22 representation in there, and that's out of the picture in

1 No. 22.

2 You know, we just had a presentation yesterday
3 by Lillian Johnson in incorporating that, and in fact,
4 one of the grant assurances that we had was the whole
5 issue of developing diverse leadership within our LSC
6 grantees. And it seems like that point is being kicked
7 out of the bases. And I certainly have strong objections
8 to that.

9 And the whole issue of having broad-based and
10 inclusive state planning to make sure that we have as
11 many players that represent poor people, from the
12 judicial system, the bar, other organizations that
13 represent poor folks as well as legal services community,
14 all of it is an integrated system of state planning to
15 make sure that we have statewide access to jcs goal, if
16 you will, by the whole state to represent poor people.
17 Because it's not just legal services alone, stand-alone,
18 that is doing it.

19 And I think that this encourages that to do
20 them. And it's not -- by taking that out, it isn't
21 encouraging them to do that under the new reg.

22 MS. BeVIER: Well, doesn't it seem as though --

1 I mean, this may not answer the objection. But it does
2 have the sentence about, "The parameters of the
3 comprehensive integrated statewide civil legal services
4 delivery system are defined and explained in the LSC
5 state planning evaluation instrument, which is available
6 on the LSC website."

7 Now, you know, that sort of incorporated that
8 by reference. And maybe you're -- I mean, at least
9 that --

10 MS. MERCADO: But then you spend two-thirds on
11 a website, which in the whole scheme of things --

12 CHAIRMAN MEITES: Randi, what is --

13 MS. YOUELLS: The state planning evaluation
14 instrument is a comprehensive evaluation instrument that
15 very clearly sets out what LSC looks at when we are
16 looking at coordinated, integrated, comprehensive
17 statewide delivery systems.

18 And all of those issues that you identify --
19 commitment to diversity, commitment to collaboration --
20 are part of this 80-page document that was formulated
21 over the course of several years by a wide number of
22 people in the community.

1 So this paragraph was rewritten to say that
2 that now becomes our definitive document that explains
3 what we look at. And so we no longer need to go into as
4 much detail in the grant assurances to look at because in
5 reality, this grant assurance is more limited than that
6 long document that is very specific about LSC's goals in
7 setting up comprehensive statewide delivery systems.

8 And that document has been shared with all of
9 our grantees, was two years in the making, and is posted
10 on the website. And everybody, I believe, is very clear
11 that we are not at all backing away from our obligations.

12 We in fact are heightening them through adoption of that
13 instrument.

14 MS. MERCADO: Well, where does it refer to --

15 CHAIRMAN MEITES: Maria, hold it. What we
16 might do is when we have public comment, which we're
17 going to have in a couple minutes, perhaps the field can
18 respond to Maria's point.

19 If they believe that this incorporation by
20 reference saves all the substance of 23 and 25, and
21 whether a -- none of us likes referencing another
22 document, but whether given the length and detail of the

1 referenced document, this is an effective way of doing
2 it. So let's see if the field thinks this is
3 satisfactory. I share --

4 MS. MERCADO: Well, no. And if Randi says that
5 that's what it's going, that's great. But it doesn't
6 refer to that instrument in this No. 22.

7 CHAIRMAN MEITES: Well, it says the LSC state
8 planning evaluation instrument.

9 MS. MERCADO: And that's the instrument that
10 you're talking about? Okay.

11 CHAIRMAN MEITES: Well, okay. If that is even
12 broader than what was there before, we're just approving
13 it. So if that's satisfactory, we'll proceed on that
14 basis.

15 Okay. We are up to the last one, which is 24.

16 MR. HALEY: Yes. This grant assurance was
17 modified --

18 MS. BeVIER: No. Wait. We skipped one.

19 MR. HALEY: I'm sorry. I skipped a page.

20 CHAIRMAN MEITES: Now, 23 and 25 were all
21 incorporated in 22. Is that correct?

22 MR. HALEY: That's exactly right. Yes.

1 MS. BeVIER: Oh, okay. Sorry. Yes.

2 CHAIRMAN MEITES: All right. So then we are on
3 the last page, which is page 8, No. 23. Please continue.

4 MR. HALEY: Thank you. This grant assurance
5 was modified to include new language specifically stating
6 that multi-year grants must be renewed each year, and
7 that if they're not renewed, it does not reflect a
8 termination or a suspension under LSC regulations. It's
9 basically a clarification to the grant assurance.

10 CHAIRMAN MEITES: You're going to have to
11 explain that. You're responding to some technical
12 problem, but I'm not sure we have any idea what the
13 problem is. So why did you believe this change is
14 necessary? What are you clarifying?

15 MR. FORTUNO: The LSC grants were traditionally
16 one-year grants. We now have what's referred to as
17 multi-year funding or multi-year grants.

18 That creates a measure of confusion because
19 under 45 CFR Part 1606, the Corporation's termination of
20 funding reg, if funding is reduced in whole or in part
21 during the term of a grant or contract, then it kicks in
22 some fairly elaborate, complex, lengthy, expensive

1 procedures.

2 The ambiguity here is that if you have a
3 multi-year grant, does that mean that at the end of the
4 first year if the Corporation determines that a grantee
5 has done something that is substantial enough to justify
6 the most extreme action, which is termination of funding,
7 does it have to go through that process?

8 Or since the first year is coming to an end and
9 now the decision is being made as to the second year, is
10 it simply sufficient to factor that misconduct into the
11 decision as to whether or not to make the second year of
12 that grant?

13 And you could argue both sides. That is, you
14 might be able to argue, although the practice was, and I
15 think most if not all understood that no, that grant is
16 renewable, but you have to show that you're in good
17 standing at the end of the first year in order to get the
18 second. And if you're not in good standing, that misdeed
19 can be factored into determining whether or not to get
20 the second year of the grant.

21 That's what was intended. But to clarify that,
22 to make sure that it's not misleading and that no one may

1 believe that, no, I'm entitled to three years of funding
2 and the only way you can discontinue funding is to go
3 through the complex procedures of 1606.

4 I think that this change was intended to -- or
5 this paragraph was intended to clarify that, so that
6 there would be no confusion about that.

7 CHAIRMAN MEITES: Has it been the practice that
8 multi-year grants must be renewed each year?

9 MR. FORTUNO: Yes.

10 CHAIRMAN MEITES: So the first new sentence is
11 not a change at all. Is that correct? The first added
12 sentence, "Multi-year grants must be renewed each year,"
13 merely states the current practice. Is that correct?

14 MR. FORTUNO: Yes.

15 MR. HALEY: Correct.

16 CHAIRMAN MEITES: And then the other two
17 sentences just say, if I understood what you said, that
18 if it is not renewed for the second or third year, that's
19 just the way the world turns; that's not a termination or
20 suspension?

21 MR. HALEY: That's correct.

22 MS. MERCADO: No.

1 CHAIRMAN MEITES: All right. Well, if that's
2 the current practice, then this is not a substantive
3 change. Is that right?

4 MS. MERCADO: Well, that's not exactly right,
5 though.

6 CHAIRMAN MEITES: Okay. Speak up.

7 MS. MERCADO: I mean, the whole purpose of
8 multi-year grants is that a grantee doesn't have to go
9 through all the hoops of reapplying and resending an
10 application for a grant.

11 Obviously, it's a grantee that has met a lot of
12 the requirements, or pretty much all the requirements.
13 They have had no problems with it. They're having a
14 successful program. They don't want to have to go
15 through the whole process of gathering all the data,
16 information, documentation, to reapply again every year.

17 And so those programs that are doing very well
18 may get two- or three-year grants, and probably those
19 that are still questionable and then you have to work
20 with them or they're barely getting merged or whatever
21 other facts might be may get a one-year grant.

22 But you always have the power to come in, and

1 if a grantee is doing something that merits some
2 defunding or whatever else, you can always do that. But
3 that's a different procedure that is different and apart
4 from this one --

5 CHAIRMAN MEITES: I understand.

6 MS. MERCADO: -- that grants the grant. And I
7 think they're trying to come through the back door and do
8 something they wouldn't be allowed to do under the
9 regular statute.

10 CHAIRMAN MEITES: Well, that's the question,
11 whether the practice has been that the grantee has always
12 understood in a multi-year that you're at risk that there
13 won't be a second or third year despite the title
14 multi-year on the first year grant.

15 Randi, do you --

16 MS. YOUELLS: Each grantee understands and it
17 has been the practice since I have been there -- and I
18 came in 2001 -- that the grantee gets a three-year grant
19 or a two-year grant period with the understanding that
20 they must file for a renewal. And so at the end of the
21 year, they file for a renewal.

22 The advantage towards -- for a renewal is it is

1 not a lengthy grant application document. It does not
2 require them to go through the competitive grant process
3 because it's understood that they have a window of, for
4 example, three years. But there is an annual renewal.

5 CHAIRMAN MEITES: Why don't we save that and
6 see if the field has any comments, whether they see this
7 as a substantive change or just tidying up a loose end.

8 All right. If that takes us through this, I
9 very much would like to hear public comments on this.

10 MR. GARTEN: Can I ask a question?

11 CHAIRMAN MEITES: Please, Herb.

12 MR. GARTEN: Going back to 22, you require the
13 statewide website be fully functional by December 30,
14 2005. Does that present any problems for any of the
15 programs around the country?

16 MS. MERCADO: Yes.

17 MR. HALEY: I would suggest that it would not.
18 Practically all of our grantees have a website in place
19 already. We simply ask that they maintain that website,
20 keep information on it that's current and responsive to
21 both the needs of attorneys or advocates in that
22 community as well as clients.

1 MR. MCKAY: Mr. Chairman, I guess when I saw
2 that I'm wondering why it was so far out. So many --
3 we've seen so many wonderful websites up and running, if
4 we're going to have -- again, this is not one of the
5 sections that we were discussing. But I'm just wondering
6 why it's so far out. If there are those few grantees
7 that have not, why isn't it 2004 or the middle of 2005
8 rather than the end of 2005?

9 CHAIRMAN MEITES: John, what is the status of
10 the websites and the statewide compliance with this? Do
11 you know?

12 MR. EIDLEMAN: I'm actually not up here to
13 respond to that question.

14 CHAIRMAN MEITES: Well, this is to whoever can
15 respond to this. Randi, are you more knowledgeable about
16 that?

17 MS. YOUELLS: Yes. I'm going to respond to
18 this. At this point we actually have just a few states
19 that do not have a statewide website operational. Mr.
20 McKay is right. It seems almost like a no-brainer. But
21 as some of you heard yesterday, some of our states need
22 more significant technical assistance and help.

1 We have given each statewide website a TIG
2 grant in the amount of \$50,000 to maintain it, and those
3 states that don't have one up and running we're working
4 with very closely right now and ensuring that they will
5 get TIG funding to get it operational.

6 So it seems a little far out, but it's just
7 taking some time.

8 CHAIRMAN MEITES: So at least for this
9 iteration, we'll leave the date. But we would expect
10 when we have this conversation next year that the answer
11 will be all the states will be in compliance?

12 MS. YOUELLS: That would be my hope.

13 CHAIRMAN MEITES: All right.

14 MR. EIDLEMAN: And actually, Mr. Chairman, I
15 did come up to try to give a little bit more information
16 about grant assurance No. 6, to try to clarify that for
17 you, why the ABA Model Code of Professional
18 Responsibility is in there.

19 CHAIRMAN MEITES: Yes.

20 MR. EIDLEMAN: It's my understanding that the
21 Model Code of Professional Responsibility is what is in
22 the LSC statute. So we therefore thought it needed to be

1 in the grant assurance. And also, some states, even
2 though Mr. Garten is correct in saying that the Model
3 Rules of Professional Conduct supersede them, some states
4 don't follow -- they still follow the Model Code of
5 Professional Responsibility. And I think that's why we
6 have that addition.

7 MR. DIETER: Tom, are you --

8 CHAIRMAN MEITES: Yes, Rob?

9 MR. DIETER: I just finished teaching a course
10 in professional responsibility. It's my first time
11 through, so --

12 CHAIRMAN MEITES: We will deem you the board's
13 expert. Go ahead.

14 MS. BeVIER: Well, somebody has to be ethical.

15 MR. DIETER: And you all are right. The
16 language "as measured by" is problematic and the
17 formulation is -- California, for example, has its own
18 code that's completely, as I understand it, different in
19 all respects.

20 The ABA Model Rules have specific rules
21 regarding pro bono work, and then they've added multi-
22 jurisdictional rules. And there's differences in the

1 crime/fraud exception and that sort of thing. And I
2 think that -- I think I understand the intent.

3 But if we move this -- if we just said "as
4 measured by" and then started the LSC performance
5 criteria, not language, and then at the end maybe added,
6 "as is consistent with applicable code or rules of
7 professional conduct," I think that --

8 CHAIRMAN MEITES: Yes. Did you follow that?
9 Do that again. It went a little bit fast for me.

10 MR. DIETER: Yes. Something -- because some
11 don't follow either of these, and Colorado follows the
12 Model Rules but we have our own variations. And I think
13 the intent is that you follow the applicable ethical and
14 professional standards.

15 But the measurement standards would really be
16 all these other, you know, documents and publications
17 that are in here that have sort of specific things, like
18 you've got to do -- you know, I know the ABA standards,
19 you know, have sort of specific guidelines of detail,
20 what you need to do. But --

21 MS. BeVIER: So what is the change that you
22 would propose again?

1 MR. DIETER: I would just move this -- where it
2 starts, "by the ABA Model Code, ABA Rules of Professional
3 Conduct, and amendments thereto," and strike that from
4 that -- where it's located, and then add it either in a
5 separate sentence or something at the end after where it
6 says, "rule or regulations regarding this issue by LSC,"
7 you know, "as is consistent with applicable codes or
8 rules of professional conduct" at the end of the
9 paragraph.

10 Because these are measurement standards here --

11 MS. MERCADO: Well, the problem is that it's
12 statutory under the LSC Act.

13 MR. DIETER: Well, we can -- well, then we're
14 going to have to go, you know, to each state and tell
15 them they got to redo their model code. So --

16 MS. MERCADO: Right. But that language still
17 has to be in there because it's under the statute. It
18 has to be --

19 CHAIRMAN MEITES: The statute specifically
20 mentions the ABA Model Rules of Professional Conduct and
21 amendments. Is that correct?

22 MS. MERCADO: Code of Professional

1 Responsibility is what it states.

2 CHAIRMAN MEITES: Code of Professional
3 Responsibility.

4 MS. MERCADO: General Counsel?

5 MR. GARTEN: Why couldn't we add, "or
6 applicable state rules of professional conduct"?

7 CHAIRMAN MEITES: As measured by --

8 MR. DIETER: No. I think you'd leave out the
9 "as measured by," is the problem.

10 CHAIRMAN MEITES: Just at the end, you'd say,
11 "as consistent with applicable state rules of
12 professional" --

13 MR. GARTEN: "State rules of professional
14 conduct."

15 MS. BeVIER: But it has to be the ABA Model
16 Code, doesn't it?

17 CHAIRMAN MEITES: Right. If the statute says
18 that, we're --

19 MR. GARTEN: Well, I was going to add it right
20 after ABA Model Rules of Professional Conduct and
21 amendments thereof, "or applicable state rules of
22 professional conduct."

1 MS. BeVIER: Or?

2 MR. GARTEN: The ABA rules are aspiration
3 rules, and each state, as pointed out by Robert, has
4 variations of it. Maryland has the ABA Rules of
5 Professional Conduct with certain changes, certain
6 amendments, very minor ones. And most of the states are
7 in the same category, as I understand it.

8 CHAIRMAN MEITES: Have you found it --

9 MR. FORTUNO: However the language of the LSC
10 Act, under the "Powers, Duties, and Limitations" section
11 of the LSC Act, it actually appears that Section
12 1006(b)(2) or (3) -- (3), the language is, "The
13 Corporation shall not under any provision of this Title,"
14 meaning the LSC Act, "interfere with any attorney in
15 carrying out his professional responsibilities to his
16 client as established under canons and ethics and the
17 Code of Professional Responsibility of the American Bar
18 Association (referred to collectively in this title as
19 'professional responsibilities'), or abrogate as to
20 attorneys in programs assisted under this title the
21 authority of a state or other jurisdiction to enforce the
22 standards of professional responsibility generally

1 applicable to attorneys in such jurisdictions."

2 MR. GARTEN: So there is a reference to the
3 state.

4 CHAIRMAN MEITES: Yes. Given that the -- just
5 hearing you say it, Congress used an "or," which suggests
6 that whichever is applicable. And Herb points out that
7 many states have departed.

8 I think we can draft around this. I'm not sure
9 that I can come up -- we've come up with a formulation.

10 MS. MERCADO: Maybe we could just refer it to
11 staff and whatever else -- and whatever other comments we
12 get it from the public, and just rewrite it for the next
13 meeting or --

14 MS. BeVIER: But you need to have it now.

15 MS. MERCADO: Oh, you need to have that one
16 now?

17 CHAIRMAN MEITES: Let me make this suggestion.
18 Why don't we have public comments. Vic, why don't you
19 retire to your drafting table with your fellows and see
20 if you can do something with 6 that will satisfy our
21 comments.

22 And meanwhile, we will at least -- we'll invite

1 you back, but we'll open this part of our meeting to
2 public comment at this time.

3 MR. FORTUNO: If the committee is ready to move
4 on to public comment, we can step back at this point and
5 maybe try some wordsmithing to see if we can come up with
6 a ready solution.

7 CHAIRMAN MEITES: That would be fine.

8 All right. Is there any public comment on the
9 proposed changes to the grant assurances? Okay. Please
10 identify yourself.

11 MR. WHITEHURST: Yes. My name is Bill
12 Whitehurst, chairman of the ABA's SCLAID committee. And
13 I would like to address my comments to grant assurance
14 No. 6 in accordance with the discussion you all have just
15 had because I had raised some -- I had some concerns
16 about this before the discussion. It was along the lines
17 that you've raised, Bob.

18 I think you have it right, is that the Code --
19 first of all, the ABA Model Code of Professional
20 Responsibility is a predecessor code, and then the ABA
21 Model Rules clearly not adopted by all states, adopted in
22 part in some. Others have their own, incorporate

1 different parts of it.

2 So I think your suggestion is appropriate the
3 way you did it. I would ask, though, that you also take
4 out the language "other generally accepted professional
5 standards." That seems to me to have no meaning. It's
6 just a trap.

7 But so that if you use your language -- and I
8 think it is permissible, by the way, under the statute
9 for this reason: If you look at the statute that was
10 just cited under subparagraph (3), (b) (3), that is
11 addressed to what the Corporation shall do. The
12 assurances are addressed to what the grantees must do.
13 That's a little different.

14 "The Corporation shall not, under any provision
15 of this title, interfere with any attorney in carrying
16 out his professional responsibility to his client, as
17 established by the canons of ethics," and so forth.

18 And yes, the Corporation cannot do that, but
19 when they're saying -- drafting an assurance that must be
20 signed by the grantee, I think it would be very
21 appropriate to do it in the manner which you've
22 described. And I think that conflicts with the statute

1 at all.

2 CHAIRMAN MEITES: What you're saying is that
3 1006 is a restriction on us --

4 MR. WHITEHURST: Exactly.

5 CHAIRMAN MEITES: -- but it is not a
6 restriction on the people we give money to.

7 MR. WHITEHURST: Exactly.

8 CHAIRMAN MEITES: And so that we, in our
9 assurances, are not -- we obviously can't ask someone to
10 do something that's inconsistent with our
11 responsibilities, but on the other hand we can't -- we're
12 not compelled to use a particular form of words that
13 applies only to us.

14 MR. WHITEHURST: Right. And by doing -- by
15 wording 6 as we've discussed, you're not in noncompliance
16 with subparagraph (3).

17 CHAIRMAN MEITES: All right. We understand
18 that.

19 MR. WHITEHURST: The other question I had, I'd
20 like to raise, is on 9. In this, I'm probably --

21 CHAIRMAN MEITES: Is this page 9 or No. 9?

22 MR. WHITEHURST: Grant assurance No. 9. I'm

1 sorry. And again, I'm probably playing lawyer here, but
2 I just don't understand it, to be honest with you. It
3 seems to me the first sentence, where it says, "Upon
4 request, it will provide LSC and other authorized
5 entities access to copies of all information and records
6 available to them under federal law," that the better
7 wording would be to strike "available to them" and insert
8 "to which they are entitled."

9 CHAIRMAN MEITES: Okay. "Available to them."

10 MS. BeVIER: Uh-huh. It makes sense.

11 MR. WHITEHURST: "To which they are entitled."
12 And just as a matter of personal preference, and I think
13 proper wording, a way to do this would be I would add
14 back in the first sentence -- the first part of the
15 sentence deleted, a general cooperation clause.

16 In other words, the first -- it would read,
17 under -- yes, we're taking 10 but we're combining 10.

18 CHAIRMAN MEITES: So you're talking about the
19 first sentence of 10?

20 MR. WHITEHURST: Yes. The first sentence of
21 10, but not the entire -- "It will cooperate with all
22 reasonable and necessary information collection." And so

1 then 9 would read, "It will cooperate with all reasonable
2 and necessary information collection." Then, "Upon
3 request, it will provide LSC and other authorized" -- I
4 just think that's a more complete statement.

5 CHAIRMAN MEITES: Well, the issue there is, it
6 seems to me, are we putting another hoop into the
7 equation with the words "reasonable and necessary"? And
8 certainly there is never an obligation to provide
9 unreasonable or unnecessary information. So I don't know
10 if putting "reasonable and necessary" --

11 MR. WHITEHURST: Well, that's the reason I
12 would put that in front, is that you always -- reasonable
13 and necessary is a good standard we're absolutely used to
14 in the law. But then you follow it with "upon request,"
15 the particular information that --

16 CHAIRMAN MEITES: Well, there are some
17 information requests, and the former U.S. Attorney to my
18 left here will -- some agencies don't have to make any
19 showing of reasonable and necessary.

20 MR. MCKAY: That's right.

21 MR. WHITEHURST: Well, I would hope this board
22 would --

1 CHAIRMAN MEITES: I'm not saying which way we
2 come out. But reasonable and necessary is a standard
3 which some entities don't have to meet. And it may be
4 that we want to, but I want to -- at least I believe that
5 is adding a substantive element, which maybe we should
6 add, but it's not nothing.

7 MR. WHITEHURST: Well, I'm sure --

8 MR. MCKAY: What do you hope -- Bill, what do
9 you hope to achieve by adding this clause?

10 MR. WHITEHURST: It just seemed to me a more
11 complete clause to me.

12 MR. MCKAY: Well, what will we gain by that
13 addition to the regulation? Who will benefit from this?

14 MR. WHITEHURST: The programs will benefit from
15 it.

16 MR. MCKAY: Because -- and how so? Does that
17 mean if a program believes that a request by LSC is not
18 reasonable and necessary, they can say, jeez, we don't
19 think it's reasonable and necessary? Then you get back
20 to the hoop problem that the chairman just referenced.

21 MR. WHITEHURST: Well, but then I think that's
22 where the second sentence comes in. In other words, I

1 think there can be levels of things, of cooperation
2 requests, that aren't required under federal law. But if
3 there's a disagreement --

4 MR. MCKAY: Yes.

5 MR. WHITEHURST: -- then it's federal law that
6 determines it.

7 MR. MCKAY: So if the program believes it's not
8 reasonable and necessary, but LSC is still entitled to it
9 under applicable law --

10 MR. WHITEHURST: Then No. 2 --

11 MR. MCKAY: -- so then that first sentence
12 doesn't really give us anything.

13 MR. WHITEHURST: No. but I guess it sets a --
14 it introduces a reasonable and necessary standard which I
15 think is a good thing.

16 MR. MCKAY: Is there a belief that the LSC has
17 asked for stuff that was not reasonable and necessary?

18 MR. WHITEHURST: Absolutely. It's absolutely a
19 problem.

20 MR. MCKAY: Okay. So I think it is a hoop. I
21 think it's just going to be -- it's another issue.

22 MR. WHITEHURST: And I think it sends a message

1 that reasonable and necessary is a standard, but clearly
2 federal law trumps. And that's my only point.

3 MS. PERLE: Just on that point, you know, there
4 have been lots of situations where the Corporation or the
5 IG has asked for information that has not been required
6 as part of monitoring for compliance, for example, where
7 they want to do a survey; they want to collect
8 information.

9 And most oftentimes, programs have complied
10 without a problem. But sometimes the requests have been
11 overwhelming, particularly when they're asked to a
12 particular program. And there is actually -- you know,
13 there have been some disputes.

14 And I think without the standard, the programs
15 are somewhat defenseless in that kind of situation.

16 CHAIRMAN MEITES: Well, we've seen in some of
17 the correspondence that we receive, occasionally receive,
18 responses from grantees to requests from the inspector
19 general where the grantee says -- this is the usual
20 lawyer -- this is over-broad, you don't need it, and so
21 on.

22 MS. PERLE: But going back for ten years asking

1 for information.

2 MR. MCKAY: No. I understand that. Reasonable
3 and necessary was -- has been in 10 until now. That has
4 been the standard. And you've now clarified that for us.

5 And I suppose that if we're being asked to make
6 a change, which until you commented I don't think we
7 realized we were, I suppose we should hear from staff as
8 to why -- whether they think -- whether they agree with
9 you this is a change, and why they think a change is
10 necessary.

11 So why don't we leave it there. We understand
12 your views. Is that okay?

13 CHAIRMAN MEITES: Yes.

14 MR. WHITEHURST: Those were my suggestions.
15 Thank you very much.

16 MS. PERLE: I'm sorry. My name is Linda Perle.
17 I'm with the Center for Law and Social Policy. I
18 neglected to do that before.

19 I agree with the points that Bill Whitehurst
20 made and I'm not going to reiterate them. I was going to
21 raise the issue in 10, and I think that that's been fully
22 aired. I think that many of the points that I was going

1 to make were taken up by the board and discussed fully
2 and I'm not going to go through them all again.

3 I do think that -- I have some concern about
4 the change that was made in 24. I think that there -- I
5 don't know that it's been tested, but I think there has
6 been an expectation that if a program receives a two-year
7 or three-year grant, that that money -- yes, they do have
8 to go through a process of renewal, and we understand --
9 or signing a renewal application, which is simpler than
10 the application when you go through the full-blown
11 re-application at the end of the two- or three-year
12 grant.

13 But I think there has been an expectation that
14 their grants could not then be taken away from them
15 without any of the due process protections that are in
16 the statute -- that are in the regulations now.

17 And so I think that this is a substantial
18 change, at least in the understanding of programs. And
19 as I said, I don't think it's actually happened that a
20 program that's gotten a two- or three-year grant has had
21 the money taken away from them at the end of the period.

22 There have been some situations where there have been

1 suspensions or month-to-month funding, put on
2 month-to-month funding because of some outstanding
3 issues.

4 But there hasn't been actually a situation
5 where -- now, don't forget, I think what this means is
6 that at the end of a year, they can have their money
7 taken away without having the Corporation to go through
8 any process. There doesn't have to be any kind of a
9 hearing or anything. I think that's what this language
10 means, and I think that's trouble.

11 CHAIRMAN MEITES: Well, the objection or the
12 problem that Dick raised is that an invocation of the
13 termination or suspension provisions is overkill. It is
14 really designed for the situation where a program has a
15 basic sustaining grant removed; it's being kind of
16 stopped in its tracks.

17 The notion of a multi-year grant is there is a
18 periodic element. There is a renewal required. So there
19 is not -- at least the sense I got from Vic -- there's
20 not the expectation that during the term, the money will
21 certainly be there, in contract to the grant, the basic
22 grant, which would be suspended under 1006, when in the

1 middle of the basic grant period, it's being stopped.

2 I can see a difference in kind of expectations.

3 What I think the problem is is that the procedure for
4 termination or suspension is quite cumbersome and
5 lengthy. And by the time you finish that, the multi-year
6 grant is long over, and blah.

7 MS. PERLE: I understand that. But the problem
8 is when this says, "A non-renewable multi-year grant does
9 not constitute a termination or suspension under the LSC
10 regulations," to me that means that if they don't renew
11 it, that's the end. There's no process.

12 CHAIRMAN MEITES: Well, what you'd like or I
13 suppose what would be ideal is if there was a -- some
14 kind of an expedited short form procedure for non-renewal
15 of multi-year grants, which is more than this would give
16 but which is less than the formal termination or
17 suspension. But we don't have that.

18 MS. PERLE: Well, but the Corporation does, you
19 know, have -- and frequently puts programs on
20 month-to-month funding until they've corrected the
21 program. And I think that's something that's used quite
22 frequently, which is what --

1 CHAIRMAN MEITES: Well, but in a multi-year
2 grant, if in the year one the program demonstrates that
3 it simply doesn't have the capacity to do what it was
4 going to undertake to do with the grant, and the staff
5 determines that you're throwing good money after bad to
6 continue this bad idea --

7 MS. PERLE: I think that the Corporation should
8 have to prove that in some way. I think that the
9 Corporation should have some obligation to prove that in
10 some way before it removes funding from a community which
11 has had the funding for some time and --

12 CHAIRMAN MEITES: No. I understand. But there
13 is nothing now between the proposal here, which is
14 basically, too bad, you're not getting more money, or the
15 formal termination or suspension provision.

16 MS. PERLE: And I also think that if they're
17 going to make a change like this, this should go through
18 a formal regulatory process because this is really a very
19 significant -- I think a very significant change.

20 CHAIRMAN MEITES: As far as you know, has there
21 been any instances to date under the multi-year grant
22 process where a grant has not been renewed?

1 MS. PERLE: Not that I'm aware of, no. But
2 that's not to say it wouldn't be --

3 CHAIRMAN MEITES: No. I understand. But to
4 invoke the regulation process for something that has
5 never happened is kind of --

6 MS. MERCADO: Well, no. I mean --

7 CHAIRMAN MEITES: It may happen. I'm not
8 saying we shouldn't do it. What I would prefer, I think,
9 and subject to hearing from you all, is if the staff and
10 the field could figure out something less than a
11 regulation but more than nothing that would solve your
12 problem.

13 Maybe what you could agree upon is add to the
14 grant assurance something to the effect that in case of a
15 multi-year grant, if it's not going to be renewed, and
16 just write contractually what you would like to be the
17 process --

18 MS. WATLINGTON: This is Ernestine. Who's
19 speaking?

20 CHAIRMAN MEITES: -- that is to be followed
21 less than the formal termination or suspension, but more
22 than just a letter, too bad. We could write that into

1 the grant assurance.

2 MS. PERLE: We could put that into the grant
3 assurance. But this -- you know, what I'm saying is that
4 there hasn't been any process to -- and then this is
5 contractual, but it's pretty much of a one-sided
6 contract. The Corporation says, this is what in the
7 grant assurance, and it's take it or leave it for the
8 program.

9 CHAIRMAN MEITES: Lillian?

10 MS. BeVIER: What's troubling about what you're
11 suggesting is, at least the way I understand the practice
12 has been, is that if you take away this possibility that
13 renewal or non-renewal does not mean termination, this
14 middle ground that the Corporation has, it seems to me
15 that the Corporation would be much less inclined to give
16 three-year grants.

17 Because basically there's no due process
18 entitlement to more than a one-year grant. Right?

19 MS. PERLE: That's true.

20 MS. BeVIER: So in order to have the stability
21 that's provided by the three-year grant, the exchange is
22 the flexibility that's provided to the Corporation to do

1 it other than termination.

2 Because you don't have to give a one-year -- I
3 mean, there's no guarantee -- you have to go through the
4 competitive grant process if all you have is a one- year
5 grant. It's much more cumbersome for the grantee. So
6 all I'm suggesting is there's just kind of an exchange
7 here in terms of the --

8 MS. PERLE: I understand that. I just think
9 it's not exactly an even exchange. Lillian Moy wanted to
10 address this issue as well.

11 CHAIRMAN MEITES: Well, before Lillian,
12 Ernestine, this is Tom Meites again. Is there a comment
13 you'd like to make?

14 MS. WATLINGTON: No. I just wanted to make
15 sure -- I don't recognize everybody's voices any more,
16 and I was trying to recognize who was --

17 CHAIRMAN MEITES: All right. Well, we'll
18 introduce ourselves. This is Tom Meites speaking again,
19 and we will all try to introduce ourselves by name before
20 we speak.

21 MS. WATLINGTON: Right. It would help a person
22 on the telephone a lot.

1 CHAIRMAN MEITES: Well, we'll do that,
2 Ernestine. Thank you for calling that to our attention.

3 MS. WATLINGTON: Thank you.

4 CHAIRMAN MEITES: Lillian?

5 MS. MOY: My name is Lillian Moy. I'm the
6 director of the Legal Aid Society of Northeastern New
7 York. And I just want to say from the grantee
8 perspective, I think that non-renewal would feel very
9 much like suspension or termination.

10 And I understand what you're saying, Lillian,
11 about maybe trying to achieve some middle ground. But I
12 have to agree with Linda that there should be some
13 process for much more comment than just from the folks
14 who happen to be in this room today on this issue.

15 CHAIRMAN MEITES: Let me make -- this is Tom
16 Meites. Let me make a suggestion, that we keep this
17 regulation, this grant assurance, in its present form for
18 at least this year, and we urge both the staff and the
19 field to try to write into the grant assurance which we
20 will get to next year something more than, too bad, no
21 more money, but less than formal termination or
22 suspension.

1 MS. PERLE: Can I just clarify? When you say,
2 in this present form, you mean the 2004 form or the
3 proposed --

4 CHAIRMAN MEITES: Yes. The 2004 form.

5 MS. BeVIER: In other words, we don't change
6 it.

7 CHAIRMAN MEITES: Right. We don't change this
8 one, and we'll give you a year to see if you can work
9 something out.

10 MS. MOY: That's great. That would be great.

11 MS. PERLE: I think that's appropriate.

12 MS. MOY: And on the issue that Maria raised, I
13 think that the LSC state planning evaluation instrument
14 is very comprehensive on the issues of diversity and
15 developing diversity and the importance of having a
16 diverse staff to meet client needs.

17 And I hope my comments are not taken as an
18 admission that your proposed language absolutely
19 incorporates the state planning evaluation instrument
20 into the grant assurance. But I think it does
21 comprehensively address the issues of diversity.

22 MS. MERCADO: I had just one question for you

1 all, since you all are here. Grant assurance No. 9, the
2 whole issue of the grantees either using applicable
3 professional codes of ethics or whether or not the ABA's
4 under Section 1006(b) (3) of the LSC Act should or should
5 not be used, the former grant assurance No. 9 and grant
6 assurance No. 10 was very detailed and specific so that
7 grantees were not confused about what reasonable or
8 standard was.

9 You know, you don't give us XYZ, then you're
10 not complying, as opposed to the paragraph No. 9 which is
11 open to all kinds of, in my view, litigation
12 disagreements about what is or isn't reasonable or what
13 is or isn't applicable under the statutes.

14 I mean, what reasoning or basis would the field
15 or the grantees think that -- or if they think that
16 provision No. 9 is a better substitute for the former
17 provisions 9 and 10 of the grant assurance.

18 MS. PERLE: I'm very sympathetic to the notion
19 of simplifying. But I am troubled by the fact that under
20 the previous No. 9 and 10, it made it clear that there
21 were basically three types of information: One that
22 might be sought by the Corporation, one where those

1 issues -- one where those kinds of documents and
2 information that are covered by Section 509(h) of the
3 appropriations bill, which is the language which is in
4 here which says basically that the Corporation is
5 entitled to financial records, time records, retainer
6 agreements, client trust fund and eligibility records,
7 and client names except for those records or reports
8 subject to the attorney-client privilege. And we
9 understand that in most situations that will trump the
10 Rules of Professional Responsibility is with respect to
11 only those very specific items.

12 And then the second kind of level were those
13 other documents that weren't covered by those particular
14 things, that programs could withhold if the Rules of
15 Professional Responsibility required that they withhold
16 them.

17 And then the third level were those things, the
18 kind of cooperation with questionnaires, monitoring,
19 surveys, the kinds of things that I talked about before
20 which could be very burdensome but might not be covered
21 by the Rules of Professional Responsibility or the
22 attorney-client privilege.

1 And I would certainly prefer that there were
2 some more detail included in the grant assurances so that
3 there wouldn't be any sense that the Corporation, by
4 contract, was being given the right to have more --
5 access to more information than they would have otherwise
6 under the statute or the Rules of Professional
7 Responsibility. So I am concerned about that.

8 CHAIRMAN MEITES: So you re-pose No. 9 as
9 potentially changing the existing balance?

10 MS. PERLE: I think that we could simplify it.
11 I think we could reference 509(h) rather than, you know,
12 spending all this verbiage kind of reiterating all of the
13 details of it. But I would be more comfortable if we did
14 that.

15 And I actually had -- I apologize. I had some
16 language that I had sort of developed which I can show to
17 Victor when we get back. I thought I had brought copies
18 with me, but I neglected to do so.

19 CHAIRMAN MEITES: Well, my preference, and
20 subject to what Mike and Lillian say, is I don't think
21 any of us understood that any substantive steps were
22 being taken, or major substantive steps were being taken,

1 by this reservation. We actually just received it about
2 a week ago and we've not studied it.

3 I at least don't feel comfortable making
4 changes that may have brought ramifications that we
5 haven't considered in such a quick meeting. My
6 inclination would be to stay with the current language
7 for another year, and if in fact the field believes that
8 this may substantively affect the balance between the
9 field and the staff, they should confer with the staff
10 and see if they can agree or disagree and present
11 competing versions.

12 But I at least personally feel uncomfortable
13 about making major changes, you know, sitting here
14 talking off the top of my head. Lillian? Mike? What do
15 you -- if No. 9 is a substantive change?

16 MS. BeVIER: Well, actually, I think I'm in
17 agreement with your hesitation because what I'm not sure
18 that I understand is what the history of conflict is
19 between LSC and its grantees with respect to the
20 provision of information.

21 And I also think that Linda makes an
22 interesting point when she says, well, it's one thing to

1 require information for purposes of oversight and
2 compliance, and that is sort of unequivocal. I mean,
3 that's not something about which there really -- I mean,
4 I just don't see much of a legitimate claim on the part
5 of grantees, oh, it's too burdensome. Privilege is one
6 thing, but too burdensome is not.

7 But this other kind of information I think
8 could possibly be intrusive or overly burdensome and make
9 use of grantee resources that should be going to the
10 provision of legal services rather than the provision of
11 information to LSC.

12 So I'm a little bit at sea. But this has been
13 an ongoing, I mean, concern. I mean, it was raised last
14 year. And I would really like to see a thorough working
15 of this by the staff, sort of what has happened before,
16 you know, what obligations are reasonable, and so forth,
17 so that -- I mean, I don't know whether 9 and 10 have
18 created problems, but I think -- I guess I do think that
19 the suggested change to 9, although it looks good to me,
20 it may be -- it may not be the right way to go.

21 MR. MCKAY: I feel comfortable -- and I did
22 study this material ahead of time but was not aware of

1 the complexity. And I must echo what Lillian just said.

2 I think we ought to discuss this at a subsequent
3 meeting. I think the chairman's recommendation is a good
4 one.

5 But I don't want this to just go away for the
6 board. I think we ought to take a harder look at this.
7 I am conflicted because I do not -- I had the pleasure
8 just at the end of our last meeting of going down to
9 Washington and lobbying the Washington state delegation
10 on funding for LSC. And I was reminded once again how
11 important it is that we fulfill our responsibilities to
12 make sure we're in compliance.

13 And obviously, we do not want to burden the
14 grantees with requests for -- unreasonable requests for
15 unnecessary information. Nobody wants to do that. But
16 all of this is going to be academic if we don't get
17 funding from Congress.

18 And so I'm conflicted here. We don't want to
19 overburden the grantees, but we certainly want to get
20 funding from Congress. So I really want to echo what
21 Lillian said. Let's take a harder look at this. Let's
22 make sure we're fulfilling our responsibilities without

1 overburdening the grantees.

2 So I guess I'm with you, Mr. Chairman. Let's
3 keep it the way it is. Let's not walk away from what I
4 think is a very, very important issue, with several very
5 good perspectives.

6 CHAIRMAN MEITES: And I want to be sure that
7 the Office of Inspector General is included in these
8 discussions because they have substantial independent
9 responsibilities to have access to records.

10 All right. So I think that our consensus is
11 that we will keep 9 and 10 the same for this iteration,
12 but between now and when we come up again next year, we
13 will have considered this on a committee level.

14 MR. DIETER: I just want to add something on 9
15 and 10. In looking at it in the old formulation, when we
16 did the survey regarding the LRAP programs and the
17 retirement programs, I was a little disappointed,
18 frankly, in the response that we got from the field in
19 terms of the number of responders.

20 And so looking at this, I understand what 9 is
21 about. But in reality, requiring them, you know,
22 grantees to respond to surveys or questionnaires that are

1 reasonable and appropriate for us to gather information
2 so that we can come up with policy positions is
3 important. And I don't know that 9 really covers -- you
4 know, covers that.

5 MS. PERLE: Ten covers -- the old 10 covers
6 that.

7 CHAIRMAN MEITES: The existing 10. But new 9
8 does not.

9 MR. DIETER: Yes. So that, you know, maybe
10 what we need is something separate or whatever. But I
11 think it's important to communicate somehow to the field
12 that the collection of this data is not intended to be,
13 you know, burdensome on them. But if we don't get
14 complete responses to things, it's hard for us to be
15 confident that we're, you know, formulating correct
16 responses.

17 And then with 25, the only comment was is it a
18 problem to leave in there that multi-year grants must be
19 renewed each year, and that upon renewal new terms and
20 conditions may apply, and not include the third sentence?

21 MS. PERLE: From the field's perspective, I
22 think that would be fine because I think we acknowledge

1 that the first two sentences are correct.

2 CHAIRMAN MEITES: All right. So the first
3 sentence, we would -- Rob's proposal is that on 25, there
4 are three sentences added. We in fact add the first and
5 second sentence. We, however, at least for this -- at
6 this point in time we say nothing about the third
7 sentence, and we expect between now and next year the
8 field and the staff to talk about whether they want to
9 write something into this grant assurance to essentially
10 establish a mini-procedure for this eventuality.

11 Is that where we're at, Lillian? Mike?

12 MR. MCKAY: Yes.

13 CHAIRMAN MEITES: Okay. If that completes the
14 comments from the field --

15 MS. PERLE: I think that Mr. McClintock wants
16 to say something.

17 MR. McCLINTOCK: Yes. I just a very quick
18 comment regarding --

19 CHAIRMAN MEITES: Identify yourself by name
20 first, please.

21 MR. McCLINTOCK: Oh, my name is Pat McClintock.

22 I'm with the Iowa Legal Aid.

1 I just had a very brief comment regarding grant
2 condition 21(a).

3 CHAIRMAN MEITES: Wait one second.

4 MR. McCLINTOCK: This is the one on technology.

5 CHAIRMAN MEITES: Hang on.

6 MR. McCLINTOCK: At the very end of that part
7 (a), it reads, "and further certifies that any new
8 computer purchase will perform the above functions and be
9 at least a Pentium 4," and so on and so forth.

10 What I would do is suggest that the word "will"
11 be changed to "to," so it will read, "any computer
12 purchased to perform the above functions," and then
13 change "and" to "will," "will be at least a Pentium 4,"
14 and so on, the distinction being that programs such as
15 our purchase computers for purposes other tha -- case
16 handlers, for example: We've been purchasing file
17 servers which are used -- that we purchase from large
18 banks and corporations, which are used essentially for
19 file storage only. And they are perfectly capable of
20 performing that function.

21 And so I think recipients would be able to
22 benefit from making those sorts of purchases,

1 understanding that the intent here in ensuring that case
2 handlers have good quality equipment is a sound one, and
3 we would agree with that.

4 CHAIRMAN MEITES: So you would revise the last
5 four lines of proposed 21(a) to read, "that any new
6 computer purchased to perform the above functions will be
7 at least"?

8 MR. McCLINTOCK: Correct.

9 CHAIRMAN MEITES: Okay. I think -- the staff
10 can respond to that, but I think that that would be fine.

11 Okay. With that, let me recall the staff. We
12 had asked them to try and redraft No. 6. If you've
13 succeeded, we'd be glad to hear --

14 MR. FORTUNO: Well, actually, we were listening
15 to the comments, and it sounded like the distinguished
16 representative from the ABA, Mr. Whitehurst, came up with
17 a proposed solution.

18 I think that the only thing to maybe discuss
19 there is -- no. Yes, I think he came up with what sounds
20 like a sound solution.

21 MS. BeVIER: Could you read it?

22 CHAIRMAN MEITES: Could you read it to us?

1 MR. HALEY: Sure. The entire grant assurance
2 6?

3 CHAIRMAN MEITES: Please.

4 MR. HALEY: "It will provide legal services in
5 accordance with the plan set out in the grant
6 application, as modified in further negotiations with
7 LSC, and agrees to provide high quality, economical, and
8 effective legal assistance as measured by LSC performance
9 criteria, ABA standards for the providers of civil legal
10 services to the poor, ABA standards for programs
11 providing civil pro bono legal services to persons of
12 limited means, and the ABA Model Code of Professional
13 Responsibility and the ABA Model Rules of Professional
14 Conduct and amendments."

15 MR. FORTUNO: If I may, if Mr. Whitehurst could
16 join us since it's his language that we were tinkering
17 with here. I noticed he gestured his head "No," so I
18 thought it might be --

19 MR. WHITEHURST: It's actually Bob Dieter's
20 language that I think we ought to --

21 MR. DIETER: Well, you could clarify it because
22 I didn't do a very good job. But you left out the LSC

1 Act, rules and regulations, or guidance issued by LSC,
2 which was in the original. That should stay in after
3 "limited means." Bill's suggestion was to strike "other
4 generally accepted professional standards," which I think
5 is appropriate.

6 MR. WHITEHURST: Well, I'm -- yes. Strike
7 "ABA Model Code of Professional Responsibility," as he
8 did. Strike "ABA Model Rules of Professional Conduct and
9 amendments thereto," and strike the language, "other
10 generally accepted professional standards."

11 And then following the word "ABA standards" --
12 or the phrase "ABA standards for programs providing civil
13 pro bono legal services," add, "and" -- I've written, and
14 my language may be a little different than yours, Bob --
15 "any applicable rules of professional conduct or ethics."

16 CHAIRMAN MEITES: And then "the provisions of
17 the LSC Act and" --

18 MR. WHITEHURST: Yes. Then "the provisions of
19 the LSC Act or a rule, regulation, or guidance issued by
20 LSC."

21 MS. BeVIER: "Any applicable rule" --

22 MR. WHITEHURST: "Any applicable rules of

1 professional conduct or ethics."

2 CHAIRMAN MEITES: Okay. Vic, can you have that
3 typed up for when the board meets formally?

4 MR. FORTUNO: Yes.

5 MR. WHITEHURST: Bob, is that basically what
6 you said?

7 MR. DIETER: Yes. I would just add, "code or
8 rules." It's kind of a technical point, but some call
9 them codes and some call them rules. And so I think that
10 would cover the spectrum.

11 MR. WHITEHURST: So you'd say "professional
12 rules or codes of conduct or ethics"?

13 MR. DIETER: Yes.

14 MR. WHITEHURST: Okay.

15 MR. GARTEN: You had "or any applicable."

16 MR. WHITEHURST: Yes. "Any applicable rules of
17 professional" -- "any applicable" --

18 MR. DIETER: "Code or rules."

19 MR. WHITEHURST: -- "code or rules of
20 professional conduct or ethics."

21 MR. DIETER: Right.

22 CHAIRMAN MEITES: Bob? That's --

1 MR. DIETER: Yes.

2 MR. FORTUNO: See what I mean about drafting by
3 committee?

4 CHAIRMAN MEITES: Lillian and I are somewhat
5 baffled, but we look forward to a clean version of that.

6 MS. BeVIER: That's right. I'm not sure what's
7 being dropped, but I'm sure it's the right thing.

8 CHAIRMAN MEITES: What we would like, before
9 the board meeting this afternoon, is to have our changes
10 incorporated into a clean version. And I think with
11 that, we are prepared to close this discussion? Okay.

12 MS. MERCADO: Well, so that I get clarity,
13 where they're drafting the clean version, they're also
14 drafting the clean version so that the document that
15 you're actually submitting for the record is also --

16 CHAIRMAN MEITES: Right. So we'll have a
17 complete version. And we'll look at it and make sure
18 that it incorporates our discussion.

19 And I think that what our recommendation should
20 be is that subject to the clean version being what we
21 discussed, that we recommend that to the board for
22 approval. Is that --

1 MR. MCKAY: Yes.

2 CHAIRMAN MEITES: All right. That concludes
3 this part of our meeting. We --

4 MR. HALEY: I'm sorry. I think there was one
5 item remaining on the renewal applications with respect
6 to multiple applicant -- sorry, multi-year grants.

7 CHAIRMAN MEITES: Yes. What we propose to do
8 on that is take the first two sentences that have been
9 added to 24 but do not include the third sentence. Do
10 not include the sentence being non-renewal of a multi-
11 year grant.

12 MS. MERCADO: Delete the third sentence.

13 MR. HALEY: Yes.

14 CHAIRMAN MEITES: Okay. Let's take a one-
15 minute break and then let's go back to the next item on
16 the agenda.

17 (A brief recess was taken.)

18 CHAIRMAN MEITES: All right. If we could
19 resume. Ernestine, this is Tom Meites again. We're
20 going to recall the committee into session.

21 MS. WATLINGTON: Okay.

22 CHAIRMAN MEITES: And we are now going to talk

1 about -- pick up a discussion we had last time about
2 proposed changes in Rule 1611. There are two categories
3 of changes, one which we discussed in our last meeting
4 dealing with changes in the provision dealing with
5 retainer agreements, and another part is changes with
6 regard to definition of eligibility of group clients.

7 I've asked Mattie to start with the group
8 client issue so that at least, given time constraints,
9 we're sure that we at least have some discussion on the
10 eligibility issue, which we did not reach last time.

11 So Mattie, if you'd start, give us some
12 background on the history of this provision, its present
13 status, and the staff's recommendations.

14 MS. CONDRAV: Sure. For the record, my name is
15 Mattie Condray, and I'm with the Office of Legal Affairs
16 at LSC. I'll start with what the current rule is, and
17 I'll move back and forth a little bit from there.

18 The current rule requires -- allows the
19 eligibility of groups, financial eligibility of groups,
20 if the group is primarily composed of eligible
21 individuals and the group demonstrates that it lacks the
22 means to obtain private counsel. Those are the two basic

1 elements of the current standard.

2 I will say that -- and those are the two
3 elements that have been in the standard since 1983. And
4 LSC hasn't had enforcement or compliance problems with
5 this aspect of the rule.

6 The other issue within this is prior to 1983,
7 as you alluded to, there were -- the regulation also
8 permitted the representation of primary function groups.

9 CHAIRMAN MEITES: You have to -- we didn't hear
10 that. Repeat what you said?

11 MS. CONDRAV: Prior to 1983 -- wow, I usually
12 don't have volume problems; I'm sorry -- prior to 1983,
13 the regulation permitted the representation of what I
14 will call by shorthand a primary function group, which is
15 a group where the group itself was not necessarily
16 composed of eligible individuals, but which had as its
17 primary function or purpose the representation of the
18 interests of eligible individuals for the provision of
19 services to the low income community. That was taken out
20 in 1983 and has not been in the rule since then.

21 Because I want to kind of get a little opening
22 statement out, as it were, before we go into the details

1 of the discussion, I will say that the management
2 recommendation is to try to retain as much of the current
3 rule as possible with a couple of minor written changes,
4 but we don't see them as substantive changes.

5 Currently the regulation does not speak to
6 verification and documentation of group eligibility. The
7 practice that has developed over the years, however, is
8 one that we are comfortable is adequate, and we would
9 like to see that put into rule because we believe
10 actually putting those standards into the rule will
11 clarify the standards and expectations and will benefit
12 both the field and the corporation that way, and we could
13 use the preamble to the regulation to discuss what that
14 practice has been.

15 With respect to primary function groups,
16 management believes that the corporation does have the
17 legal authority to permit the representation of such
18 groups. However, there are valid policy arguments on
19 both sides, and management is not at this point coming to
20 the table with a specific recommendation on that issue.

21 MS. WATLINGTON: This is Ernestine. Excuse me.

22 Wasn't it the rule all the time that the client

1 involvement and things must be eligible clients, income
2 eligible?

3 MS. CONDRA Y: Under the current rule, if a
4 program wants to represent a group client, that group
5 must be primarily composed of financially eligible
6 individuals.

7 The practice, the interpretation and practice
8 for many years is that "primarily composed" means 51
9 percent. And management is comfortable that that has
10 been an adequate standard and is not recommending any
11 change to that standard.

12 CHAIRMAN MEITES: Now, in the documents you
13 provide us, the language that apparently covers that
14 would be "at least a majority of the group's members are
15 financially eligible." Is that correct?

16 MS. CONDRA Y: That's old. That was -- that
17 particular language was in the notice of proposed
18 rulemaking that was published.

19 CHAIRMAN MEITES: So what -- do you have
20 language that you are proposing to us now, or just keep
21 the existing regulation?

22 MS. CONDRA Y: Actually, we are not proposing to

1 add any language to the regulation that would provide a
2 definition of the term "primarily composed."

3 CHAIRMAN MEITES: So that you would just leave
4 the status quo as far as this goes?

5 MS. CONDRAV: That's correct.

6 MS. WATLINGTON: Well, then, how can you ensure
7 that you actually are involving clients that are
8 eligible, you know?

9 MS. CONDRAV: Well, the documentation and
10 verification standard that's been in practice for the
11 last, you know, actually more than 21 years, because this
12 particular aspect of the rule goes back to the original
13 adoption of the rule in 1976, is that the group is
14 required to have -- sorry. I will back up.

15 The program is required to obtain such
16 information as it believes demonstrates that the group is
17 in fact primarily composed of eligible individuals. We
18 have not required a specific -- they don't -- it's not
19 specified in the rule exactly what has to be done, but
20 rather just that the individual has to be in the file to
21 support that determination when our OCE folks go out and
22 look at it. And we have not had a compliance -- a

1 significant compliance problem with this aspect of the
2 rule.

3 MS. WATLINGTON: I'm not clear on the changes,
4 really.

5 MS. CONDRA Y: I'm sorry. I did not understand
6 that.

7 MS. WATLINGTON: The changes, I mean, has
8 always been that for clients to have -- that clients,
9 true clients, be really involved and they're the ones
10 that was eligible for the service. And I really don't
11 understand the new changes, that all of that is no longer
12 there. It's just anyone.

13 CHAIRMAN MEITES: Ernestine, I think that what
14 we're being told is that they are not going to --
15 recommending any change in what the practice has been.

16 MS. CONDRA Y: That's correct.

17 CHAIRMAN MEITES: That they're going to keep
18 doing what they have been doing. Is that correct?

19 MS. CONDRA Y: That's correct.

20 MS. WATLINGTON: Oh, yes. Okay.

21 CHAIRMAN MEITES: So that what has been going
22 on and apparently has been working satisfactorily will be

1 continued.

2 MS. WATLINGTON: Oh, okay.

3 CHAIRMAN MEITES: All right? That takes care
4 of the eligibility and verification portion. Move on to
5 the group portion.

6 MS. CONDRAY: The primary function groups?

7 CHAIRMAN MEITES: Primary function.

8 MS. CONDRAY: Okay. Prior to -- as I said,
9 prior to 1983, from 1976 to 1983, those sorts of groups,
10 what I will call primary function groups for lack of a
11 better shorthand term, were permitted to be represented.

12 In 1983, the Corporation changed the regulation
13 to preclude the use of LSC funds for the representation
14 of groups unless they were composed primarily of
15 financially eligible individuals.

16 In the preamble to the notice of proposed
17 rulemaking discussing the change, LSC justified the
18 proposed amendment on two bases. First, the Corporation
19 determined that the furtherance of the interests of
20 eligible clients, which was one of the specific wording
21 in the regulation, was nebulous; and second, the board at
22 the time was concerned that the core purpose of the

1 corporation was the representation of individuals, and
2 found that allowing the representation of groups not
3 primarily composed of eligible individuals was
4 incompatible with that purpose. If you go back through
5 the regulatory history, that's what you will find
6 about --

7 CHAIRMAN MEITES: That's the '83 change?

8 MS. CONDRAV: Right -- why those changes took
9 place in 1983.

10 CHAIRMAN MEITES: And our predecessor board
11 took some action with regard to that. Could you fill us
12 in on that?

13 MS. CONDRAV: That's correct. When the working
14 group, the negotiated rulemaking working group, picked up
15 this issue, the field requested that basically the prior
16 eligibility be returned. We had different language, but
17 it was basically the same core concept.

18 CHAIRMAN MEITES: So to go back the primary
19 function -- the representation of the primary function
20 groups?

21 MS. CONDRAV: That's correct. In its
22 deliberations on the draft on that issue, management at

1 the time disagreed with the field position and opposed
2 changing the regulation to once again permit the
3 representation of primary function groups.

4 The management position that was taken at the
5 time, and appears in the discussion in the notice of
6 proposed rulemaking that was published, was that while
7 there were -- we were sympathetic -- I would say
8 management was sympathetic to the arguments made by the
9 field, but was concerned that there would be -- that
10 there would be a necessarily subjective standard when you
11 introduce a primary function group, arguing, well, what
12 is the primary purpose? What is the primary function?
13 What is the furtherance of the interests of the low
14 income community? And I think it's -- you know, you can
15 pretty clearly determine whether you're --

16 MS. WATLINGTON: And you're saying that by the
17 change of a name? We always felt that low income persons
18 sounded a lot better than ineligible clients.

19 CHAIRMAN MEITES: I think that Ernestine is
20 referring to the phrase we use in the regulations to
21 describe eligible -- persons eligible for services. That
22 has not been changed in the proposed regulation, has it?

1 MS. CONDRA Y: No. I mean, the basic
2 eligibility standard, you know, the 125 percent of
3 income, that's not proposed to be changed.

4 CHAIRMAN MEITES: So the individual -- the
5 definition of individuals is not changed.

6 MS. CONDRA Y: No.

7 CHAIRMAN MEITES: What this deals with is
8 changing or expanding the groups that we can represent?

9 MS. CONDRA Y: Yes. That's correct. So
10 management was concerned that even though it might be
11 clear which organizations provide services to people who
12 would be eligible clients, those programs which might
13 provide services that are in the furtherance of interests
14 of eligible clients, that that was a necessarily
15 subjective standard and could invite criticism or
16 concern.

17 And in addition, management at the time
18 believed it was basically most appropriate to use the
19 Corporation's resources for groups that were composed
20 primarily of eligible individuals, that that was a better
21 targeting of the Corporation resources.

22 The board -- then-committee and then-board

1 disagreed with management on that proposal, and so when
2 the committee and the board picked up the draft NPRM
3 which was in front of them, you know, during the public
4 comment section, obviously the field came up and
5 commented that they would still like to see the
6 regulation changed in this respect.

7 And the committee and the board agreed with
8 them. The rationale that the committee and board
9 followed at the time was that they acknowledged the
10 legitimacy of the concerns of management on this issue,
11 but considered the value of permitting the representation
12 of groups having a primary function of providing services
13 to or furthering the interests of those who would be
14 financially eligible as outweighing any risks attendant
15 upon such representation.

16 And the committee directed the Corporation --
17 directed staff to amend the language that was going to be
18 proposed. And so therefore, the November 2002 notice of
19 proposed rulemaking which was published did propose to
20 once again permit the representation of primary function
21 groups.

22 CHAIRMAN MEITES: And what happened to that

1 rulemaking?

2 MS. CONDRA Y: That rulemaking has -- nothing
3 has happened to the rulemaking. In January of 2003, when
4 the then-committee was slated to take up a draft final
5 rule, we received a letter from Chairman Sensenbrenner of
6 the House Judiciary Committee requesting that the
7 committee hold off on taking any action.

8 In part he expressed the concern about taking
9 action during the expected appointment of a new board;
10 but in addition, he also expressed a variety of
11 substantive concerns, one of which was a concern about
12 the potential expansion of the group representation.

13 I will say his letter did not go into
14 significant detail about what his objection was based in.

15 But it was fairly clear from what he wrote that he was
16 concerned that by expanding the group representation
17 field, that we would be making a bad policy choice.

18 CHAIRMAN MEITES: And at that point, the new
19 "we," that is, the current board, became -- assumed our
20 responsibilities, and we deferred discussion until first
21 we had a president, which we now have, and then other
22 things came. But I don't think we can put this off any

1 longer, and it is time for us at least to deal with it.

2 All right. To start -- and I want to hear from
3 the field on this because this is just our
4 introduction -- can you give me an idea of the kinds of
5 groups that would be represented if we adopted -- we
6 expanded to allow representation of primary function
7 groups?

8 MS. MERCADO: Mr. Chairman, before we go
9 further into this discussion, though, a very important
10 element that I think counsel failed to mention is that in
11 looking at this provision, we looked at the provision
12 with the thought that -- under the four categories that
13 are listed in the memorandum that the primary thought was
14 that this primary function group was a group that did
15 represent poor people who were financially eligible, but
16 that in addition to, they lacked and had no practical
17 means of getting counsel to assist them on the issues.

18 So we're not going to be representing
19 organizations that have the ability to have counsel
20 provided to them by some other ways and just open to
21 everyone. And it's a very key factor to it that she did
22 not mention.

1 MS. CONDRA Y: I'm sorry. If I gave that
2 impression, I did not mean to. I was working -- you
3 know, familiarity. The backdrop in my mind was always
4 that the group -- under any circumstance, the group would
5 have to provide evidence that it lacked the ability to
6 obtain private counsel. That was my assumption and
7 you're correct that I shouldn't assume that everybody
8 else makes the same assumptions that I do. I'm sorry.

9 CHAIRMAN MEITES: With that as a background, if
10 you could give us some examples of some of the kinds of
11 groups that could be represented if the expanded
12 definition were adopted.

13 MS. CONDRA Y: Sure. A food bank. A day care
14 center. A community development organization. Those are
15 a couple of examples. I'm sure there may be folks from
16 the field who have encountered these.

17 And because this is a limitation on
18 representation with LSC funds, so there may be some folks
19 out in the field who have provided representation to
20 these sorts of groups with non-LSC funds over the years.

21 CHAIRMAN MEITES: And so if you --

22 MS. CONDRA Y: And probably could do a more

1 compelling job of telling you the sorts of work they're
2 doing.

3 CHAIRMAN MEITES: These would be non-
4 membership groups that are service providers?

5 MS. CONDRAY: That's generally correct.

6 CHAIRMAN MEITES: And typically would have a
7 board composed of non-service recipients?

8 MS. CONDRAY: Correct.

9 CHAIRMAN MEITES: And would provide services to
10 eligible persons, but because of their structure would
11 not have members?

12 MS. CONDRAY: Correct.

13 CHAIRMAN MEITES: That was pretty Chinese, but
14 that was -- in English what that means is that they are
15 groups that serve the eligible people, but because of the
16 way they are structured are not membership groups and do
17 not have boards that are primarily -- are principally
18 composed of eligible --

19 MS. CONDRAY: That's correct. You know, to
20 take the example that I've used, a community food bank, a
21 group of people wish to -- who aren't necessarily the
22 eligible community wish to pool their resources and

1 create a food bank, and need legal assistance even though
2 the individuals organizing the food bank may or may not
3 themselves be financially eligible for LSC- funded legal
4 assistance.

5 CHAIRMAN MEITES: Now, in the last iteration,
6 management opposed this expansion.

7 MS. CONDRAV: That's correct.

8 CHAIRMAN MEITES: What is the staff's present
9 position at this time?

10 MS. CONDRAV: The staff's present position at
11 this time is that we do not have a recommendation. We
12 are neither opposing or promoting such an expansion.
13 There was a lot of discussion about it. There are valid
14 policy arguments, I think, on either side. And in
15 weighing those arguments, management did not come down
16 heavily on one side or the other.

17 MR. MCKAY: Have we gone back to Chairman
18 Sensenbrenner to get a better read of what his or his
19 staff's concerns might be about this expansion? The
20 letter -- I mean, I remember the letter. It was not
21 detailed. You're correct. But have we followed up with
22 him or his staff to find out?

1 MS. CONDRAY: I don't believe so specifically,
2 and I don't know what if anything came up during the
3 oversight hearing.

4 MR. FORTUNO: If I remember --

5 MS. MERCADO: Nothing came up with that.

6 MS. CONDRAY: I don't think it did.

7 MR. FORTUNO: If I remember correctly, there
8 was an attempt to meet with the chairman. That did not
9 actually occur. But I believe that our government
10 relations folks did meet with the cosigner of the letter,
11 chairman of the subcommittee, Chairman Cannon, Chris
12 Cannon, and in fact there was at least one and maybe
13 several meetings with the chairman of the subcommittee.

14 The issue did not arise at the oversight
15 hearing, the recent oversight hearing. So it seemed to
16 be more Chairman Sensenbrenner's issue than Chairman
17 Cannon's, and there's been no follow-up with Chairman
18 Sensenbrenner other than attempts to set up a meeting but
19 no actual meeting occurring.

20 MS. CONDRAY: And as far as I know, his office
21 did not further -- each time we've responded to one of
22 his letters, there hasn't been a, well, that was an

1 inadequate response, let's talk some more, one way or the
2 other.

3 CHAIRMAN MEITES: You know, the reality is that
4 we were barred from funding grantees that brought class
5 actions nine years ago. And we're obviously concerned
6 that nothing we do be seen as a back door attempt to
7 evade that restriction. And representation of this kind
8 of group can be seen as an erosion of that prohibition.

9 Now, I also know it can be seen as the
10 opposite, as an effective way of providing services to
11 the clients that we are supposed to represent. And I
12 think that Mike's comment is if we had some indication
13 from Congress that this was not seen as an erosion but as
14 an effective way of furthering our mission, it might help
15 us in determining which way we should go on this. Is
16 that a fair statement, Mike?

17 MR. MCKAY: Indeed. We recognize our own
18 responsibility. But as I've indicated previously, we
19 have to keep our eye on this other ball. And we have our
20 own responsibility, but the chairman put it exactly the
21 way I feel. I'd feel much better -- instead of saying,
22 we haven't heard a complaint, I'd like to get a nice,

1 clean statement: Your subsequent communications have
2 satisfactorily addressed my concerns and they're no
3 longer there.

4 MS. BeVIER: This isn't to the major policy
5 issue. But I do have some concerns kind of of a
6 technical legal nature with respect to the conclusion
7 that the statute does not prohibit this.

8 I think it's rather facilely dismissive of the
9 argument of the OIG. As I understand it, the language
10 says, "Financial assistance to programs furnishing legal
11 assistance to eligible clients" -- this is on page 106 --
12 "not to programs furnishing legal assistance to those who
13 serve eligible clients."

14 And that argument is rejected first of all
15 because the Corporation did permit such groups from 1976
16 to 1983, which doesn't necessarily mean that was
17 appropriate under the statute.

18 Secondly, it says the preamble to the rule does
19 not discuss the matter in great detail. It does state
20 that the legislative history of the Act makes clear that
21 Congress intended to permit recipients to aid such
22 organizations, as they have in the past.

1 Well, I mean, the legislative history of the
2 Act is not the Act. All right? Congress does not enact
3 legislative history. It may -- I mean, I don't want to
4 get into the whole debate about how far you can go into
5 legislative history and when. But the fact is that the
6 statutory language is what matters to me.

7 So I'm concerned about what the Act actually
8 permits, and I'm -- I mean, I'm not saying we shouldn't
9 consult with Sensenbrenner. But I'm concerned about that
10 legal argument.

11 I'm also concerned about when we talk about
12 this fourth, the principal function, right, we've been
13 talking about giving legal assistance to groups that
14 serve eligible clients.

15 That has a very different and much more
16 constraining meaning to me than groups whose principal
17 function is the furtherance of the interests of those
18 persons because the furtherance of the interests of those
19 persons is really -- as Tom suggests, could be open to be
20 seen as and could in fact be used as a kind of back door.
21 It just carries a kind of possibility for interpretation
22 that I think is -- we ought to be troubled by.

1 CHAIRMAN MEITES: Lillian's point is well
2 taken. The examples you gave were direct services. I
3 can understand a food bank. In Chicago, we have groups
4 that are coalitions for public housing, which are board
5 of directors of well-meaning citizens who are not
6 eligible clients who take positions that they believe are
7 in furtherance of people who would be eligible clients.

8 But it's their idea of what would further them.
9 It might be my idea; I may disagree with them. But it's
10 kind of a self-proclaimed furtherance, and it's not --
11 there's no verification like a food bank has a
12 verification. You go out there and you look at who is
13 actually picking up the food.

14 MS. MERCADO: But in housing, you're saying
15 that poor people should have shelter instead of being out
16 on the streets. I mean, what --

17 CHAIRMAN MEITES: Yes. But -- no, but let me
18 explain. In Chicago, the public housing authority is
19 tearing down virtually all the public housing. The
20 housing authority thinks that's good because they will
21 find substitute housing that is better. Certain
22 advocates say it's not good because you're not going to

1 be able to find the appropriate substitute housing.

2 The advocacy groups believes it's furthering
3 the interest. So does the housing authority. Under
4 this, the legal assistance in Chicago could represent the
5 advocacy groups because it believes it is furthering the
6 interest, even though it is suing someone who also claims
7 to be furthering the interest.

8 That's the problem I think that Lillian is
9 getting at.

10 MS. BeVIER: Yes. There's dispute about how
11 you --

12 MS. CONDRAY: Yes. I hear that, and that's --

13 MS. BeVIER: -- how you act to further the
14 interest of low-income people.

15 MS. WATLINGTON: Well, the problem we've had --

16 MS. CONDRAY: Right. And that was the
17 concern --

18 MS. WATLINGTON: The problem we've had with
19 Pennsylvania is that Philadelphia thinks it's
20 Pennsylvania and would like to operate without the rest
21 of the part of the client community and they're part of
22 the client community because they represent Pennsylvania.

1 That's the problem that the clients have always
2 had in Pennsylvania, but we've been able to work through
3 it through the years. But that has always been a
4 problem.

5 CHAIRMAN MEITES: Well, with that as
6 background, I think what we'd like to do is we have some
7 people from the field who'd like to speak to this issue.
8 We're not going to get much farther today.

9 MS. WATLINGTON: No.

10 CHAIRMAN MEITES: Does that make sense for us
11 to --

12 MS. BeVIER: Five minutes.

13 CHAIRMAN MEITES: We are, as usual, time
14 constrained. What I suggest we do is we'll continue this
15 discussion at our next meeting. Mike, do you think it's
16 worthwhile to make an inquiry of --

17 MR. McKAY: I would feel -- you're talking
18 about Chairman Sensenbrenner? I would feel much better.

19 MS. WATLINGTON: Yes.

20 MR. McKAY: And I think staff has handled it
21 very well in responding to the chairman's information and
22 dealing with the subcommittee chair as well. But I would

1 feel much better -- again, I want to make it clear, we
2 have our own independent responsibilities. And I think
3 we fully embrace that.

4 MS. WATLINGTON: Right.

5 MR. MCKAY: But it would be good to know where
6 Chairman Sensenbrenner -- and, frankly, confirming with
7 Subcommittee Chair Cannon -- how they feel now that
8 they've been more informed with our subsequent
9 communications that they feel comfortable with the
10 changes, assuming we want to proceed in that way.

11 CHAIRMAN MEITES: Maria?

12 MS. MERCADO: Yes. A couple of points. One,
13 there have been times in the past when the Ops and Regs
14 Committee has been a full day meeting because we just had
15 too much work to do.

16 CHAIRMAN MEITES: Well, we may have to go to
17 that.

18 MS. MERCADO: Okay? And so sort of keep that
19 in mind. And that may mean you either have to meet a day
20 early or whatever, or meet conjunctively at the same
21 time. But nevertheless, that's a possibility.

22 Secondly, throughout the years, Legal Services

1 will have, you know, one or two or more very vocal
2 opponents of what we're doing, just in general, just as
3 in principle that they don't like Legal Services. And it
4 may be a particular point.

5 But when we're looking at what the chairman has
6 to say or anybody else has to say, we have to take it in
7 whole perspective of what the full Congress will look
8 like, you know, I mean, because we may have 80 percent
9 approval for what we're doing, and we may have one or two
10 detractors, and it's still not going to override them.
11 Not that we don't take it all in balance and review.

12 CHAIRMAN MEITES: Understood.

13 MS. MERCADO: Understandably, because he is the
14 chairman. But nevertheless, we need to look at what our
15 other supporters are as well.

16 CHAIRMAN MEITES: I think that's right. But
17 since he has indicated interest, I think it's appropriate
18 to follow up.

19 MS. MERCADO: Sure. We have to respond to him.

20 CHAIRMAN MEITES: All right. Let's --

21 MR. GARTEN: Tom, could I make a comment?

22 CHAIRMAN MEITES: Please, Herb.

1 MR. GARTEN: Would it be possible for staff to
2 attempt a definition of primary function group that would
3 limit it to organizations that Congress shouldn't be
4 concerned with, such as food banks or day care centers?

5 CHAIRMAN MEITES: Direct service groups?

6 MS. BeVIER: Yes. Serve the interests rather
7 than further the interests.

8 MS. CONDRAY: Yes. Sure. So we can attempt to
9 do that. Sure.

10 MR. GARTEN: And I think politically that might
11 be very acceptable, if we define it and limit it.

12 CHAIRMAN MEITES: Why don't you try that. At
13 this point let me ask for public comment just on the
14 general questions we've raised so far, with the
15 understanding that our committee will revisit this at its
16 next meeting.

17 MR. MCKAY: And while they're coming up, if I
18 could just quickly -- I know we're time-sensitive --
19 Maria Luisa, I want to make sure you know I agree exactly
20 with what you're saying. We're not where you are yet,
21 what you're anticipating.

22 Right now it's just a question of

1 communication, making sure that both sides understand
2 each other. I'm not sure if we have the problem yet. If
3 we do, we'll fulfill our responsibilities. But right now
4 I just think it's important that we have a healthy
5 sharing of information.

6 It sounds like we've been very informative. I
7 don't think we've received the appropriate feedback yet.
8 And that's the point I'm trying to make right now.

9 CHAIRMAN MEITES: All right. Ernestine, we're
10 now going to have public comment, at least on the general
11 question of group representation.

12 Please.

13 MR. GERMAN: Thank you, Mr. Chairman. Doug
14 German, executive director of Nebraska Legal Services.
15 And a good morning to you.

16 I have prepared for you in the booklet that I
17 gave you yesterday under tab 4 some material on this very
18 point, and I would ask you to refer to that in your own
19 time. I think my argument is simply and obviously stated
20 there. It's the tab entitled, "Leveraging Tax Dollars
21 Providing Access."

22 I'm a Nebraskan, and that means some certain

1 things, among which it means that I want my tax dollars
2 used wisely. I want a common sense approach to things.
3 I like things done locally. I want as little government
4 intervention and regulation as possible. I help my
5 neighbor, and my neighbor helps me.

6 And with that perspective, I come to you and
7 ask that you allow me as an executive director to use the
8 broader definition of group representation. It is going
9 to be vital in terms of me being able to do a good job as
10 an executive director here in Nebraska to address in
11 particular the issues that you've been exposed to as far
12 as rural legal service delivery.

13 I must be able to go out there and, with this
14 broad definition, help move people to self-sufficiency,
15 get to the place where they can get and hold a job, and
16 become a part of our communities out in rural Nebraska.

17 I have to be able to use this broad definition
18 in order to do the community economic development that
19 rural Nebraska is in desperate need of. I've got to have
20 this capacity. Please consider it seriously. I have
21 seen the need. I've been to the mountaintop and I've
22 seen the need.

1 First of all, NLS did a needs assessment
2 several years ago. One of the strongest things that came
3 out of that is these very kinds of groups needing legal
4 representation. And they're failing because they don't
5 have it. They're not able to advance their mission
6 because they don't have it. And they do not have the
7 dollars to go hire somebody.

8 We do have a newly developed community economic
9 development project which presently we have the luxury of
10 funding with non-LSC dollars. We may not have that
11 luxury someday, and I know other programs don't. And so
12 you've got to provide this expanded definition.

13 And my point in bringing that up is that the
14 demand for that assistance has been overwhelming. I did
15 not anticipate that this one attorney we have and brought
16 aboard to do this would just be inundated.

17 CHAIRMAN MEITES: Could you tell us more about
18 this, what this group is, what it does, who it serves,
19 what its membership is, who its board is? Give us some
20 more details about this particular group.

21 MR. GERMAN: Yes. The project actually is not
22 a group. It is a project within Nebraska Legal Services.

1 It consists of one attorney at this point, but we market
2 it to the world as our community economic development
3 project. And this attorney goes out and provides
4 assistance to these very groups that we're talking about.

5 CHAIRMAN MEITES: What kind of groups?

6 MR. GERMAN: It's transactional legal
7 assistance. This attorney worked with Kutak Rock, was a
8 transactional attorney, has a lot of experience in tax
9 matters, organizational matters, corporate matters,
10 banking matters, bonds and such.

11 And the typical attorney working for a legal
12 aid project does not have that kind of background. And
13 this was a real gem, to have somebody come into our
14 program and then be able to take that kind of expertise
15 and go out and work with these nonprofit organizations
16 that are working with the same client group that we are,
17 trying to move them to self-sufficiency. What that
18 person does is go out and does capacity-building with
19 those nonprofits.

20 Now, to go on in other ways I've seen the need,
21 I've gone to a recent HUD conference. The purpose of
22 that conference was to bring in all of the new entities

1 that are being encouraged to get involved under the
2 faith-based initiative.

3 And there was a wail and a cry from the folks
4 there, from these little nonprofit organizations, that
5 they needed legal assistance to be able to even get the
6 kind of capacity they needed to make the application to
7 HUD to get the money to provide the service.

8 There's a big emphasis on collaboration and
9 partnerships. And so we want to do that. And as we go
10 out and work with these nonprofits in that manner,
11 they've got to have the capacity to be a good partner.
12 And they've got to have this transactional capacity, the
13 legal assistance to be able to make this happen.

14 CHAIRMAN MEITES: Well, if you'd just hold it.
15 These not-for-profits, do they directly provide services
16 to people who otherwise would be eligible?

17 MR. GERMAN: They may or may not.

18 CHAIRMAN MEITES: Give us examples, if you
19 could, of some that do and some that don't.

20 MR. GERMAN: Sure. Indian tribes: There may
21 be an Indian tribe that the people in their tribe are to
22 such an extent low income that the likelihood of them

1 being all eligible is quite high. There are other Indian
2 tribes where there would be a mix.

3 But this is what I would call incidental
4 representation. There's going to definitely be some
5 folks there who they may be a minority, but they're going
6 to be our clients. And as we work with that group,
7 they're going to impact and advance the interests of
8 those people. There may be incidental spinoffs that
9 benefit other people that would not qualify. But we're
10 still representing our group, our client, as we do that.

11 There are CHOTAs, which is a HUD acronym for an
12 organization that goes out and does rural housing
13 development. Throughout Nebraska, there are small
14 nonprofit groups made up of local citizens who are
15 themselves probably from the working poor, middle class,
16 who are trying to bring adequate housing to small rural
17 villages in Nebraska.

18 Many of the people in that village are low
19 income, but they may not have the time, the capacity, the
20 experience, to be on one of these fledgling boards. But
21 that fledgling board is going to fail if they don't have
22 this kind of assistance. And therefore, our clients are

1 going to fail.

2 There are village self-help groups that come up
3 all the time. South of here in Nebraska, a little
4 village like you saw yesterday, flattened by a tornado.
5 There are federal and state funds available, if they get
6 organized and if they have the capacity to respond.

7 Many of the people in that community I'm sure
8 came from trailer houses and poor housing. They're
9 coming together and trying to respond to this aid that is
10 being made available to them. They are not going to be
11 able to respond adequately if they do not have
12 corporate -- or counsel to assist them in this.

13 Drug and alcohol centers. Job training
14 centers. Last year we tried to work with a very
15 interesting group in northern Kansas, the Black Farmers
16 Association of Kansas.

17 A group of slaves came after the Civil War and
18 settled in northern Kansas. Why they would come from
19 there to Kansas is anybody's wonder. But they settled in
20 a small village and thrived. But they are having a
21 difficult time surviving as farmers, like we heard
22 yesterday. We wanted to assist them, and we could only

1 do so in the manner that I'm describing.

2 CHAIRMAN MEITES: So these groups function to
3 serve people in the community who would be egb?

4 MR. GERMAN: Yes.

5 CHAIRMAN MEITES: They may also serve other
6 people, but they -- we could see that their service,
7 their function, is to serve people who otherwise would be
8 eligible?

9 MR. GERMAN: Yes. And I think the key
10 distinction here is principal activity versus principal
11 purpose. I think the principal activity, if you use that
12 language, it's more accurate and more defining because
13 the purpose could be quite broad, but when you examine
14 what the activity is --

15 CHAIRMAN MEITES: That they actually do?

16 MR. GERMAN: Yes -- then you're down to where
17 the rubber hits the road. And it's discernible.

18 CHAIRMAN MEITES: And we could keep track of
19 it?

20 MR. GERMAN: You can measure it.

21 CHAIRMAN MEITES: Right. So if someone
22 questioned whether they're eligible, we can ask them,

1 what do you actually do?

2 MR. GERMAN: Right.

3 CHAIRMAN MEITES: And they can tell us. It's
4 not what their purpose is, but what they actually do.

5 MR. GERMAN: Exactly. Principal action. It's
6 advancing the interests of our clients. And I think it's
7 key language here.

8 Let me just say a bit about the difficulty in
9 doing this work in rural Nebraska. I mean, I've got to
10 have this capacity because low income people are so
11 isolated and so dispersed and so uninclined to come
12 together as simply low income folks to form the kinds of
13 organizations and groups to be effective.

14 I mean, the American way is to get together to
15 do something. Voluntary association is one of our
16 greatest values. We can't deny this to low income
17 people.

18 But in Nebraska, you're not going to find
19 enough qualified people to come together to make that
20 group. They're going to have to join in with other
21 people and be able to gain -- I mean, fledgling
22 businesses join the Chamber in order to be successful.

1 They do that because they've got to associate
2 with these successful people with resources. Our low
3 income people have got to be given the capacity and the
4 freedom to do the same.

5 Just to try to address some of the issues that
6 were brought up in here in the recent presentation, I
7 think a subjective standard that is very useful is the
8 one we just touched upon where you talk about the
9 activity as opposed to the purpose. That is something we
10 can get our hands around.

11 The issue of better use of funds: I can better
12 leverage the dollars you give me in going out and doing
13 the work that I described than if I have to work with
14 everybody on an individual basis. So if you want
15 effective use of your dollars, allow me to do this.

16 The Congressman's concerns about expansion and
17 representation: My concern there is that he has confused
18 the question of class action with providing counsel to a
19 group.

20 That's a very important distinction, and I hope
21 we're able to clarify that his concern is probably that
22 we're not doing class action, which nobody has the intent

1 of doing here. That's a very different piece than
2 providing counsel to an organization or a group.

3 Secondly, he may be concerned about the old
4 issue of providing direct -- doing direct organization.
5 That's a '70s issue. I was a legal aid attorney in those
6 times. I did a lot of direct organizing, believe you me,
7 and I now understand that we can't do it.

8 We don't do it. And that is something very
9 different than providing counsel to a group, which is the
10 common way we do things in our society. We can't deny
11 this to our own client group.

12 With that, I guess I would just field any
13 questions here.

14 CHAIRMAN MEITES: Excuse me. The fact is, you
15 won the battle of the '70s.

16 MR. GERMAN: Pardon me?

17 CHAIRMAN MEITES: The country has now realized
18 that by organizing itself into not-for-profits and many
19 other units, it can effectively achieve -- function more
20 effectively. You don't need legal aid attorneys any more
21 to tell people in the small town that they should have a
22 meeting. They know that themselves.

1 MR. GERMAN: Exactly. There's been a whole new
2 culture develop as a result of that work, quite frankly.

3 But they are able to -- but now they need our legal
4 counsel as they do that.

5 MS. PERLE: I know that you're pressed for time
6 and I'm not --

7 CHAIRMAN MEITES: We have seven minutes left.

8 MS. PERLE: I know. And I'm not going to
9 really add anything to what Doug said. I think he really
10 covered it.

11 Just a note that there is a restriction on
12 organizing that was added in 1977, and that's still in
13 the Act. But at that time, the legislative history
14 talked about that there was a difference between
15 organizing groups, which was prohibited, and representing
16 groups, which was encouraged.

17 CHAIRMAN MEITES: Which is what you're speaking
18 about here.

19 MS. PERLE: And I have some language.

20 MS. BeVIER: So that's what this is referring
21 to.

22 MS. PERLE: Yes. Right. That's in the context

1 of that organizing restriction.

2 CHAIRMAN MEITES: All right. We are going to
3 have to -- Lillian is correct. We have actually run out
4 of time. We were supposed to recess at 11:10.

5 What I propose we do is we just recess now and
6 we will continue this discussion at our next meeting. Is
7 that satisfactory?

8 Does the staff have anything else they'd like
9 to add at this point?

10 MS. CONDRAY: No. This is Mattie Condray. No,
11 I don't think we do. We will go back and work on the
12 issues that we've talked about here and come back with
13 additional information and ready for more discussion at
14 the next meeting.

15 CHAIRMAN MEITES: Right. And I think --

16 MS. PERLE: I'd like to just say one thing,
17 that I would -- before the next meeting, I would really
18 appreciate it if we could get some -- whatever writing
19 is --

20 CHAIRMAN MEITES: Oh, yes. We did not --
21 because of technical problems, we did not get a draft of
22 either the proposed retainer agreement or the current

1 version of the group representation.

2 We would very much like that to be circulated,
3 at least something in writing, both to us and to the
4 public before the next meeting so we will have a document
5 to work from.

6 Now, I'm not saying that this any kind of
7 proposed rulemaking.

8 MS. CONDRAY: We're not there quite yet.

9 CHAIRMAN MEITES: We just need some language --
10 I think it would help our committee if we had some
11 language that we could see and the public could see
12 before the meeting.

13 MS. PERLE: It's just difficult to react.

14 CHAIRMAN MEITES: Sure. We've had the same
15 problem.

16 All right. Any other business to come before
17 our committee?

18 (No response.)

19 CHAIRMAN MEITES: And if not, I'll take a
20 motion to adjourn.

21 M O T I O N

22 MR. MCKAY: So move.

1 CHAIRMAN MEITES: Lillian?

2 MS. BeVIER: Second.

3 CHAIRMAN MEITES: And we are adjourned. Thank
4 you very much.

5 (Whereupon, at 11:15 a.m., the meeting was
6 adjourned.)

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