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LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS

MEETING OF THE  
OPERATIONS AND REGULATIONS COMMITTEE

Saturday, July 28, 2007

9:38 a.m.

Sheraton Nashville Downtown Hotel  
623 Union Street  
Nashville, Tennessee

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman
- Lillian R. BeVier
- Jonann Chiles
- David Hall
- Michael D. McKay
- Bernice Phillips
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Herbert S. Garten
- Sarah M. Singleton

Diversified Reporting Services, Inc.  
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1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President and ex officio  
3 Patricia Batie, Manager of Board Operations and  
4 FOIA Offer

5 David L. Richardson, Treasurer and Comptroller

6 Victor M. Fortuno, Vice President for Legal Affairs,  
7 General Counsel, and Corporate Secretary

8 Karen Sarjeant, Vice President for Programs and  
9 Compliance

10 Mattie Cohan, Senior Assistant General Counsel

11 Charles Jeffress, Chief Administrative Officer

12 Richard (Kirt) West, Inspector General

13 Laurie Tarantowicz, Assistant Inspector General and  
14 Legal Counsel

15 Thomas Coogan, Assistant Inspector General for

16 Investigations, Office of the Inspector General

17 Ronald (Dutch) Merryman, Assistant Inspector General  
18 for Audits, Office of Inspector General

19 Matthew Glover, Assistant Counsel to the Inspector  
20 General

21 John Constance, Director, Office of Government  
22 Relations and Public Affairs

Kathleen Connors, Executive Assistant, Office of  
Government Relations and Public Affairs

Linda Perle, Center for Law & Social Policy (CLASP)

14 Don Saunders, National Legal Aid and Defenders  
15 Association (NLADA)

16 David R. Yoder, Executive Director, Legal Aid of East  
17 Tennessee

18 Debra L. House, Legal Aid of East Tennessee

19 Marilyn Hudson, member of the Board, Legal Aid of  
20 East Tennessee

21 Neil McBride, General Counsel, Legal Aid Society of  
22 Middle Tennessee

Harrison D. McIver, Memphis Area Legal Services

19 Chuck Greenfield, Legal Aid Society of Hawaii

20 Alejandro Aviles, Community Outreach Coordinator,  
21 Legal Aid of Arkansas

22 Carmen Chong Gum, Outreach Coordinator,

21 Jones Center for Families, Springdale

22

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

2 CHAIRMAN MEITES: First, some general remarks  
3 about Nashville. The walking members of the board, we  
4 walked along the new -- maybe it's not so new -- River  
5 Walk and came back through the capitol grounds.

6 And we came upon a statue in front of the  
7 capital depicting a man named Carmack, C-a-r-m-a-c-k.  
8 And on the plinth of the statue was a portion of a  
9 speech Mr. Carmack gave to the Women's Christian  
10 Temperance Union.

11 The speech was undated, as indeed was  
12 Mr. Carmack. We have asked a local Tennessee person to  
13 inform us about Mr. Carmack, and I won't go into the  
14 personal details, but he was unable to answer the  
15 question directly.

16 He called upon another Tennessean, who has  
17 made a phone call. And I would hope by the end of our  
18 committee's meeting, which is approximately two hours  
19 from now, that we have gotten to the bottom of what I  
20 will call the Carmack mystery.

21 I now have a quorum and I will begin my  
22 committee's meeting. This is the meeting of the

1 Operations and Regulations Committee. I will entertain  
2 a motion for approval of the agenda.

3 M O T I O N

4 MS. PHILLIPS: So moved.

5 MR. HALL: Second.

6 CHAIRMAN MEITES: And it is approved.

7 I will now entertain a motion for approval of  
8 the minutes of our committee's meeting of April 27,  
9 2007.

10 M O T I O N

11 MR. HALL: So moved.

12 CHAIRMAN MEITES: Is there a second?

13 MS. PHILLIPS: Second.

14 CHAIRMAN MEITES: And it is approved.

15 We have a number of items on our agenda today,  
16 and we only have about an hour and 50 minutes left.  
17 And so I think we're going to do some pruning of the  
18 agenda or, really, deferring.

19 The first action item is consider and act on  
20 initiation of rulemaking to adopt lesser sanctions.  
21 Mattie, are you the presenter on this?

22 MS. COHAN: Yes, I am.



1           CHAIRMAN MEITES: Come forward, please. And  
2 why doesn't the OIG person come forward as well so we  
3 can have them both here. And if you'd both introduce  
4 yourselves, or all three of you introduce yourselves.

5           MS. COHAN: For the record, I am Mattie Cohan,  
6 senior assistant general counsel with the Office of  
7 Legal Affairs at LSC.

8           CHAIRMAN MEITES: Will the other people  
9 introduce themselves?

10          MS. TARANTOWICZ: For the record, I'm Laurie  
11 Tarantowicz, OIG counsel.

12          MR. GLOVER: For the record, I'm Matthew  
13 Glover, assistant OIG counsel.

14          MR. FORTUNO: And Vic Fortunato, general  
15 counsel.

16          CHAIRMAN MEITES: We have received -- I'm  
17 sorry. Is anyone on the phone? Now, who is on the  
18 phone? Tom, are you on the phone?

19          MS. SINGLETON: No. The people from Arkansas.

20          CHAIRMAN MEITES: Oh, I see it. Thank you.  
21 Shall we have them identify themselves, the people on  
22 the phone?

1           MR. AVILES: My name is Alejandro Aviles. I  
2 am the community outreach coordinator with Legal Aid of  
3 Arkansas. And here with me is Carmen Chong Gum. She  
4 is the outreach coordinator with the Jones Center for  
5 Families in Springdale.

6           CHAIRMAN MEITES: All right. Anyone else?

7           (No response.)

8           CHAIRMAN MEITES: Good. We will continue.

9           All right. Mattie, why don't you begin?

10          MS. COHAN: All right. I will start, but in  
11 the interest of time, I will try to be very brief about  
12 some of the background information since it was in the  
13 information provided to you.

14          CHAIRMAN MEITES: Well, let me just --

15          MS. COHAN: Sure.

16          CHAIRMAN MEITES: As I said, we received a  
17 staff report, a detailed staff report, and a detailed  
18 OIG comment. Have both of these been distributed to  
19 the public?

20          MS. COHAN: The staff report has.

21          CHAIRMAN MEITES: And the OIG'S comment?

22          MS. TARANTOWICZ: We have not.

1           CHAIRMAN MEITES: Has not. Let me tell you  
2 what my thinking is. And I want Mattie to give just a  
3 short introduction.

4           Because both of these reports are detailed and  
5 take differing views on what we should do, if anything,  
6 about adopting a rule regarding lesser sanctions, what  
7 I would like to do is have the OIG comments made public  
8 and defer this item till the next board meeting, and  
9 invite the public to comment in writing before the next  
10 board meeting on not just the two positions advocated  
11 by staff and the OIG, but any views that anyone in the  
12 public might have.

13           I think this would help us in designing any  
14 rulemaking that we would contemplate. And the reason  
15 for this somewhat unusual procedure is because the  
16 staff report and the OIG have very divergent views,  
17 both of which are -- I understood them both, but I will  
18 tell you that I think it would help us if the public  
19 had a chance to digest these opposing views and we got  
20 some feedback before we started our discussion.

21           So Mattie, I think what would make sense is if  
22 you'd just very briefly --

1                   MR. FORTUNO: Before we get started,  
2                   Mr. Chairman, if I may, just one small point. I think  
3                   the OIG can certainly address the issue of their memo.  
4                   If I understand, it was pre-decisional and that's why  
5                   it wasn't distributed.

6                   But I guess the one concern that we would want  
7                   to express on behalf of management is that the OIG's  
8                   memo does refer to an internal staff memo from a couple  
9                   of staff members to the vice president for programs.  
10                  And that's a document that's withholdable under FOIA.

11                  So for the IG to make public their memo means  
12                  that the internal staff memo to the vice president for  
13                  programs would be made public as well. And I think  
14                  that we would prefer that that not be the case.

15                  CHAIRMAN MEITES: Well, but my only interest  
16                  is that the OIG's memo, which I thought obviously had a  
17                  lot of substance to it, also be put on the table  
18                  because it is a different perspective than  
19                  management's. Can we solve your problem, Vic, by --

20                  MR. FORTUNO: Redacting?

21                  CHAIRMAN MEITES: -- some modest changes in  
22                  the issue you raised?

1           MR. FORTUNO: I think it's redaction of a  
2 paragraph or so. That would certainly address our  
3 concern about the internal memo. I don't know if the  
4 IG has any other concerns.

5           MS. TARANTOWICZ: Well, I guess we'd have to  
6 look at the --

7           CHAIRMAN MEITES: Laurie, I don't hear very  
8 well. You have to --

9           MS. TARANTOWICZ: I'm sorry. We'd be happy to  
10 look at the memo and see if we could redact and perhaps  
11 summarize that paragraph in a way that meets Vic's  
12 concerns.

13          CHAIRMAN MEITES: All right. You can rewrite  
14 your memo. Whatever you want to be in the public,  
15 that's fine. It's your memo. You write whatever you  
16 want, keeping in mind that if there's something that  
17 you can avoid disclosing without causing more problems,  
18 that would be for the best.

19          MS. TARANTOWICZ: Right. I don't think we  
20 have any issue with disclosing the rest of our memo.  
21 And it's only management's concerns with regard to --

22          CHAIRMAN MEITES: Why don't you solve that.

1 MS. TARANTOWICZ: And we can work it out.

2 MR. FORTUNO: We will.

3 CHAIRMAN MEITES: I want to know how you all  
4 make things public. What do you do? I'm not talking  
5 about publishing in the Federal Register or anything,  
6 just making it available to the usual suspects.

7 MR. FORTUNO: We can put it on our website.

8 CHAIRMAN MEITES: Why don't we do that. Is  
9 that okay with my committee, that we defer that till  
10 the next management?

11 MS. PHILLIPS: Yes.

12 CHAIRMAN MEITES: Lillian?

13 MS. BeVIER: It is okay. I had some -- a  
14 little bit of difficulty sort of making my way through  
15 the confrontational aspect, frankly, of the IG's memo.  
16 And I did understand the substance, and I think maybe  
17 it's well put.

18 But this isn't -- I mean, this is not an  
19 adversary proceeding. What we're trying to do is  
20 figure out what the right thing to do is here. And so  
21 I think it may well be that although it's substantively  
22 very good that the -- for my part, I guess I would

1 suggest the tone might be a little less kind of  
2 confrontational.

3 I understand there must be a very deep dispute  
4 here about the assumptions and how you proceed. And  
5 that's perfectly acceptable. The board would like to  
6 know them, and the board would like to be able to make  
7 the right choice about which assumption ought to govern  
8 its rulemaking. There's no question about that.

9 But it's just a suggestion for the drafters,  
10 to maybe tone it down a little.

11 MR. MCKAY: And let me just add, before you  
12 comment, I want to echo that comment. I of course read  
13 the memo, and I had to fight through what I thought was  
14 overly contentious language. As an example,  
15 "Management fails to explain." And another example,  
16 "LSC management has provided no plausible  
17 justification."

18 I had to fight to remain objective because I  
19 was put off by that tone. And so I would encourage you  
20 in the future to try to present your case in a more  
21 positive way because I had to, as I say, try to -- I  
22 had to force myself to try to move back to the

1 objective viewing of what you had to say because I was  
2 so put off by the negative tone.

3 CHAIRMAN MEITES: Bernice?

4 MS. PHILLIPS: Is there another memo?

5 CHAIRMAN MEITES: There are two, management  
6 and the OIG's. They're both in our book.

7 MS. PHILLIPS: Oh, they are? Okay.

8 CHAIRMAN MEITES: All right. Anything else?

9 MS. TARANTOWICZ: I was just going to say it  
10 was certainly not our intention. And we'll take  
11 another look at the language.

12 CHAIRMAN MEITES: Well, just take a look at  
13 it. It was written internally.

14 MS. TARANTOWICZ: Right.

15 CHAIRMAN MEITES: It's not going to be public.  
16 So if you want to look at it again.

17 All right. If that's acceptable to the  
18 committee, we'll defer action on item No. 3 to the next  
19 meeting, which takes us to item No. 4, which is a  
20 fascinating item, I will tell you. I have mastered it.

21 MS. BeVIER: Does that mean we can postpone  
22 it?



1                   CHAIRMAN MEITES: So I am prepared to take on  
2 all comers on this one. Is the gentleman from Hawaii  
3 here? If he is, I'd ask him to come forward, introduce  
4 yourself.

5                   MR. GREENFIELD: Good morning. I'm Chuck  
6 Greenfield, Executive Director of the Legal Aid Society  
7 of Hawaii.

8                   CHAIRMAN MEITES: Good. And I understand,  
9 Mr. Greenfield, you have come to this meeting in  
10 Nashville to address this particular issue. Is that  
11 correct?

12                   MR. GREENFIELD: Yes, I have.

13                   CHAIRMAN MEITES: Okay. Why don't we start  
14 with -- Mattie, would you like to start the  
15 presentation?

16                   MS. COHAN: Sure. A detailed history of the  
17 eligibility of the what I'll call FAS, Freely  
18 Associated States -- a detailed history of FAS  
19 eligibility for legal services was provided orally at  
20 the last meeting and is set forth both in the  
21 rulemaking options paper and the draft Federal Register  
22 notice you have in front of you. Unless someone has

1 any questions or wants me to repeat that background,  
2 I'm not going to do that.

3 CHAIRMAN MEITES: Well, I think it would be  
4 helpful if you did two things. One is read aloud the  
5 words of the treaty at issue, or the act at issue; and  
6 then review what our predecessors did in 1996. So the  
7 pre-'96 interpretation of the act and our present  
8 interpretation, which I believe flows from a regulation  
9 adopted by our predecessors in 1996.

10 MS. COHAN: Right. The language of the  
11 Compact of Free Association Act, which implements the  
12 Compact, the Compact extends certain benefits that have  
13 been made available -- I'll back up a little bit.

14 Prior to the adoption of the Compact, the FAS  
15 nations were United States territories, part of what  
16 was known as the Trust Territories of the Pacific  
17 Islands, stemming from World War II. With the adoption  
18 of the Compact, the Republic of the Marshall Islands,  
19 the Republic of Palau, and the Federated States of  
20 Micronesia became independent nations with a special  
21 relationship with the United States through the  
22 Compact, which is the Compact of Free Association,

1 hence the phrase Freely Associated States.

2           The Compact extends benefits of a number of  
3 federal programs, including the legal services program.

4 And the operative language of the act states that:

5 "The programs of the following agencies shall be  
6 extended to the Freely Associated States." And that  
7 includes -- there's a list of programs, one of which is  
8 the Legal Services Corporation.

9           CHAIRMAN MEITES: I believe, Mattie, that  
10 language is found on page 66 of the board materials.  
11 Is that correct?

12           MS. COHAN: Yes. "Pursuant to section 224 of  
13 the Compact, the programs and services of" -- and then  
14 there's a list; in the actual act there's a list and we  
15 just excerpted out Legal Services Corporation -- "shall  
16 be made available to the Federated States of Micronesia  
17 and to the Marshall Islands." There was a separate  
18 Compact covering Palau and extending the benefits of  
19 the operative language of the Compact Act with respect  
20 to Micronesia and the Marshall Islands also to Palau,  
21 which is why you don't see Palau in that language. But  
22 it's also.

1           So after the signing of the Compact and the  
2 Compact Act, in 1989 the Corporation did some  
3 rulemaking to provide that under 1626, special  
4 eligibility, that the alien restriction stated in  
5 appropriations act, which stemmed from 1983; there were  
6 appropriations acts that were the first limitation on  
7 service to aliens, which under that -- a strict reading  
8 of that regulation would have seemed to all of a sudden  
9 made all of these people ineligible, which --

10           CHAIRMAN MEITES: Let me stop you. The step  
11 that I want to make sure my committee understands is by  
12 virtue of the change in relationship between the United  
13 States and these three entities, the citizens of these  
14 three entities no longer were citizens of the United  
15 States.

16           MS. COHAN: That's correct.

17           CHAIRMAN MEITES: They became citizens of  
18 these three new independent republics.

19           MS. COHAN: That's right. And they were  
20 permitted under the Compact and the Act to freely  
21 travel to, live in, and work in the United States. But  
22 they are not citizens of the United States. They are

1 not green card holders. They have a different status.

2 CHAIRMAN MEITES: And the question is: When  
3 they are in the United States, are they subject to the  
4 alien restrictions since they are not citizens of the  
5 United States? And if you look at the text on page 66,  
6 the text says, to paraphrase, Legal Services  
7 Corporation services shall be available not to the  
8 citizens of the states but to the states themselves.

9 And the ambiguity that we have to wrestle with  
10 is: Is the intent of the Compact to make it available  
11 to the states, that is, to fund legal services in the  
12 territory of these three independent entities, or to  
13 make the services available to the citizens of these  
14 three entities, wherever they may be, whether in the  
15 territories or in the United States?

16 How's that for stating the issue? So far so  
17 good? Go ahead.

18 MS. COHAN: So far so good. Absolutely. I'm  
19 sorry, I had diverged back to regulations because I  
20 thought that's --

21 CHAIRMAN MEITES: Now let's hit where the  
22 staff says we went off the track.

1 MS. COHAN: Back to what you wanted me to say.  
2 So as you pointed out, since 1996, the current  
3 regulation, which was adopted in 1996, has reflected an  
4 interpretation of that language of the act that we  
5 talked about that limits authority for LSC-funded  
6 services to the states, those particular FAS states.  
7 And citizens of those nations are eligible in the  
8 United States only if they are otherwise eligible under  
9 Part 1626.

10 The practical issue is, because of the  
11 considerable restrictions on alien eligibility in Part  
12 1626, almost none of them are because they have no need  
13 to have one of those alien statuses. They don't have  
14 to have a green card to live in the United States.  
15 They are not refugees, you know. So most of those  
16 people are not going to otherwise qualify.

17 CHAIRMAN MEITES: Hold it right there.  
18 Although they are allowed under the Compact to live in  
19 the United States if they choose to?

20 MS. COHAN: That's correct.

21 CHAIRMAN MEITES: Now, you said the alien  
22 restrictions were adopted starting in 1983. This

1 Compact dates from -- is it '89?

2 MS. COHAN: I believe it's -- is it '86?

3 CHAIRMAN MEITES: Yes, it is. What was the  
4 status between '86 and 1996 when the Compact was in  
5 effect and there were alien restrictions?

6 MS. COHAN: During that time -- well, for the  
7 first couple of years, the regulation did not catch up  
8 with the legal status. In 1989, the Corporation  
9 amended its regulation to specifically say, citizens of  
10 these entities are eligible to receive legal assistance  
11 provided they are otherwise eligible under the LSC Act,  
12 financially eligible.

13 The Corporation made that change in 1989 to  
14 clarify its understanding at the time that Congress had  
15 not intended to essentially take away the eligibility  
16 that these folks had prior to the Compact. And that  
17 language was incorporated in 1989, and that's what  
18 governed through 1996.

19 In 1996, as a result of those new statutory  
20 restrictions, even though the issue of service to the  
21 FAS states or FAS citizens was not at issue in the '96  
22 restrictions, because the Corporation was doing

1 rulemaking at the time on that, that issue came up  
2 through a comment and a request of the Office of  
3 Inspector General. And I'll just quickly quote.

4 "The OIG suggested that both the prior rule  
5 and the interim rule dealt with the question of special  
6 eligibility incorrectly and urged that the final rule  
7 refer only to the legal services programs serving  
8 people who were citizens of those jurisdictions."

9 And those comments were based upon the  
10 language of the act that we referred to yesterday,  
11 extending that the programs and services shall be made  
12 available to the Federated States of Micronesia and to  
13 the Marshall Islands rather than to the citizens of the  
14 Federated States of Micronesia and the Marshall  
15 Islands.

16 The board, at the time, considered the matter,  
17 agreed with the OIG's interpretation, and revised  
18 1626.10(a) accordingly. And so since that time, the  
19 services are only available in those countries, and  
20 citizens of those countries who happen to be outside  
21 are only eligible if they otherwise are eligible under  
22 Part 1626.



1           CHAIRMAN MEITES:  So the net effect of the  
2   1996 restrictions, if I understand it, is that since  
3   1996, citizens of these three entities receive -- have  
4   less access to legal services than they did either  
5   before 1996, and indeed even before they became  
6   republics.

7           MS. COHAN:  That's correct, with respect to  
8   those citizens who are not living at home, who are  
9   living in the United States.

10          CHAIRMAN MEITES:  So they've had a net loss by  
11   the effect of the combination of their independence,  
12   the Compact, and the 1996 regulations.

13          MS. COHAN:  That's correct.

14          CHAIRMAN MEITES:  Okay.  What has happened  
15   since then that caused you to bring this to our  
16   attention?

17          MS. COHAN:  Well, this has been an issue on  
18   the radar of certainly Chuck and some other folks for a  
19   while.  Most recently, we had some correspondence from  
20   the Department of the Interior, the Office of Insular  
21   Affairs, which is the office within Interior that has  
22   administrative responsibilities over the Compact, the

1 Compact, the Compact Act, and that special relationship  
2 between the United States and those former Trust  
3 Territories who are now Freely Associated States.

4 They sent some correspondence indicating that  
5 they believed it was fully consistent with their  
6 understanding and implementation of the Compact and the  
7 Compact Act that citizens of the FAS would be allowed  
8 to access legal services from LSC programs wherever  
9 they happened to be.

10 CHAIRMAN MEITES: And that's the letter that's  
11 quoted in your memo on page 70, is it not?

12 MS. COHAN: I believe it is. Yes.

13 CHAIRMAN MEITES: Now, do you know if the  
14 Department of the Interior had submitted any views in  
15 1996 when our predecessors were considering changing  
16 the regulations?

17 MS. COHAN: As far as I know, they did not.  
18 And during the course of the -- after the 2001  
19 rulemaking that was opened up on 1626 generally, the  
20 Corporation attempted to get some both kind of informal  
21 and formal guidance at different points from the  
22 Department of the Interior and from the Department of

1 State asking this question directly, such guidance  
2 which as of that time was not forthcoming.

3 CHAIRMAN MEITES: So we now have the benefit  
4 of the Department of the Interior's guidance, which our  
5 predecessors did not have when they addressed this  
6 issue. Is that right?

7 MS. COHAN: That's correct. And subsequent to  
8 that letter, representatives of LSC staff met with  
9 representatives from that office as well as an attorney  
10 from the Department of State who works closely with the  
11 Department of the Interior on the Compact and Compact  
12 issues, and all of them, both State and Interior,  
13 reiterated that position.

14 They noted that the Compact, from both the  
15 U.S. and the FAS perspective, is conceived of as  
16 essentially an aid package, and that benefits extended  
17 to FAS citizens, even if those citizens are living in  
18 the United States, is in fact considered aid to the  
19 countries; that the concept of aid to the citizens is  
20 incorporated in the notion of the phrase "aid to the  
21 countries."

22 And so their position is that LSC is well

1 within its authority to permit the extension of  
2 eligibility for service from LSC grantees to FAS  
3 citizens legally residing in the United States. They  
4 gave us an example from a project that is also  
5 administered, which is Pell grants, educational subsidy  
6 grants.

7           The language of the act extending that program  
8 to the FAS is similar to the language extending the LSC  
9 program. It talks of extending the benefits of the  
10 Pell grant program to the states, but that is also  
11 administered in a way that the citizens are able to  
12 access those benefits regardless of where they are.

13           So they don't have to go to college in the  
14 FAS. They can be going to college anywhere else. They  
15 can be FAS citizens living in the United States and  
16 applying for the Pell grant, going to college wherever  
17 they're going to college. They don't have to have been  
18 in the FAS at the time that they received the Pell  
19 grant to be able to get it. And I think that's a  
20 pretty close, analogous situation.

21           CHAIRMAN MEITES: And as I understand it, the  
22 staff recommendation is we begin a new rulemaking for

1 1626.10. And in that new rulemaking, essentially we go  
2 back to the pre-1996 rule. Is that correct?

3 MS. COHAN: Essentially, yes.

4 CHAIRMAN MEITES: If there's questions for  
5 Mattie? Otherwise I'd like to hear from the gentleman  
6 from Hawaii.

7 (No response.)

8 CHAIRMAN MEITES: The reason I would like to  
9 hear from you is these are far-away places. And is the  
10 issue of access to services from our grantees of  
11 citizens of these three distant places a serious  
12 problem?

13 MR. GREENFIELD: Thank you, Mr. Chairman and  
14 members of the board. It is indeed. As the director  
15 of the Legal Aid Society of Hawaii, we have in Hawaii  
16 alone -- it's hard to determine, actually, how many  
17 Marshallese, Palauans, and Micronesians there are in  
18 Hawaii. But from Human Services statistics and other  
19 statistics, we know there are probably in excess of  
20 15,000 in Hawaii. Many of them are in need of legal  
21 assistance on the very same issues that we represent  
22 others. And it is a huge problem for us as an

1 organization trying to be responsive to community  
2 needs.

3 I have a couple of prepared comments, if I  
4 could, to go into. I stand here this  
5 morning -- actually, sit here this morning -- with the  
6 strong conviction that this board needs to change its  
7 regulation immediately.

8 And I think the regulation should be changed  
9 for a variety of reasons, but only because, as Mattie  
10 said, the Interior Department Insular Affairs believes  
11 it is an appropriate approach under the Compact, and  
12 they're the administrating authority over the Compact  
13 of Free Association between Palau and Marshalls and  
14 Micronesia; and not only because the State Department  
15 attorney is of the similar opinion that it is  
16 appropriate for Micronesians living in the United  
17 States to receive the benefits of Legal Services  
18 Corporation funding.

19 And not only because the chairs and the  
20 ranking members of both the House and Senate committees  
21 that oversee the Compact believe this interpretation,  
22 the current interpretation, is contrary to

1 congressional intent, and urge that Legal Services  
2 Corporation change this immediately; and not only  
3 because the Compacts themselves provide that legal  
4 services is available to Micronesians.

5 Certainly LSC has never granted their grants  
6 to the governments of Micronesia. In fact, the grants  
7 have gone to Micronesian Legal Services Corporation, my  
8 former employer. I was there for nine years. And LSC  
9 has never approached it that way except for this  
10 particular regulation.

11 And not only because LSC management is  
12 recommended that this change be made, and I do  
13 appreciate that change that Vic and Mattie and Helaine  
14 and Karen have helped make, and a significant change,  
15 and I do appreciate that.

16 Not only because other federal agencies think  
17 we're nuts. Let me give you an example. HUD gives us  
18 fair housing money, and they think we ought to enforce  
19 fair housing laws with Micronesians. And they can't  
20 understand why we're not bringing lawsuits on behalf of  
21 Micronesians. And so we do this dance with them to try  
22 to say, well, we can't do it because of the other

1 sources of federal money. Well, we are federal money.

2 We're HUD.

3 And so not only because of that reason, but  
4 because legal aid really stands for something else.  
5 Legal aid stands for the elimination of barriers, not  
6 the creation of barriers. This regulation, the current  
7 regulation, not the proposed -- the current regulation  
8 creates a barrier. It says, if you're a Micronesian  
9 living in the United States, we can't represent you.

10 And legal aid stands for the enforcement of  
11 equal rights, not the enforcement of an unequal right  
12 or that we deny you on the basis of where you're from,  
13 and that legal aid stands for hope and possibilities  
14 for our clients and our client community, not for a new  
15 rung created by the regulation, and that legal aid  
16 really stands for committed advocates that are willing  
17 to fight for our rights and the rights of our client  
18 community, not stand indifferently by while a  
19 regulation denies them access to justice.

20 And as a public interest law firm, the Legal  
21 Aid Society of Hawaii and other legal aids throughout  
22 the country that are dealing with this issue I think



1 cannot simply stand by indifferently to the needs of a  
2 significant segment of our client community that can be  
3 and is abused because many people know that they cannot  
4 get legal aid.

5           We've seen this in the employment sector. In  
6 Hawaii, we've seen it with fishing vessels and owners  
7 that have hired Micronesians that know that they can't  
8 go to legal aid, and they have in fact underpaid them  
9 or not paid them correctly under the contract. We see  
10 it in other contexts.

11           As mentioned, there are in excess of 15,000  
12 Micronesians living in Hawaii. There are estimated at  
13 least 40,000 Micronesians living in the mainland. The  
14 board knows from the Little Rock meeting that in  
15 Arkansas, there are 6- to 10,000 Marshallese living in  
16 Arkansas. There's a thriving Marshallese community.

17           We know in Hawaii that 20 percent of  
18 those -- we have a huge homeless population, over 5,000  
19 people living on the beach that are homeless. We know  
20 that 20 percent of those that are in homeless shelters,  
21 which are inadequate in terms of servicing the  
22 population, over 20 percent are Micronesians.

1           We have a homeless project. Lawyers go out  
2 to the homeless shelters. And we can't help the  
3 Micronesians. We can help the others, but we have to  
4 say, Micronesians, we can't help you.

5           The human toll of denying people service on  
6 the basis of where you're from when you otherwise have  
7 a right to be in the United States, otherwise, as  
8 Mattie said, freely travel and freely work in the  
9 United States, freely join the U.S. military, freely  
10 fight and die in Iraq and Afghanistan, yet can't get  
11 free legal aid in the United States -- the human toll  
12 of our workers having to tell people to their face that  
13 we can't represent them because they're from  
14 Micronesia -- let me just read a couple of e-mails that  
15 I got from my staff.

16           This is from Robert, who's a lawyer in our  
17 intake unit. "I've handled thousands of initial  
18 requests for advice and service. I dread telling those  
19 from the Compact states that they cannot access legal  
20 aid services. You can hear in their voices and see in  
21 their faces hurt, confusion, and anger because they  
22 don't understand why the policy exists. I feel

1       helpless because I am unable to justify the policy to  
2       them. After each call, I think of the opportunity  
3       legal aid has missed to help a community member and his  
4       family from losing essentials such as housing or public  
5       benefits. Please change the present policy."

6                 This comes from John, who's a paralegal and  
7       does a lot of outreach, homeless outreach. "I have had  
8       many come up to me for assistance, for advice and  
9       services, and had to break the news to them that Legal  
10      Aid Society is unable to help them due to policies that  
11      we have. I always get a response of why can't we help?  
12      And I would just say, due to our policies. Sometimes  
13      you can hear it in their voices and see it in their  
14      reactions. They cry for help when they are turned down  
15      for services."

16                This comes from Tajana, who's a paralegal in  
17      our intake unit, client self-help. "I hate, hate, hate  
18      having to tell the Micronesians that come to our office  
19      that legal aid cannot help because they're  
20      Micronesians. Every time I say those words, it hurts  
21      and makes me feel that it's wrong, that it's plain  
22      wrong."

1           And finally, Janet is one of our attorneys who  
2 goes into homeless shelters. And Janet says,  
3 "Unfortunately, turning Micronesians away is an all too  
4 common and frustrating experience for me. It seems  
5 downright discriminatory to me, to be able to help one  
6 family with the exact same problem and not another but  
7 for the fact that one is from Micronesia and both  
8 families are legally allowed in the United States, are  
9 low income and cannot afford other services, and  
10 deserve equal justice just as much as anyone else."

11           She concludes, "There would be nothing that  
12 would make me happier in my work than to be able to  
13 walk into the homeless shelter on a day after your  
14 meeting" -- she may be there today, by the way; she  
15 comes on Saturdays and weekends -- "and tell a  
16 struggling Micronesian person, yes, legal aid can help  
17 you. Let's get started."

18           Finally, I think we should not and cannot say  
19 to Micronesians that we can help you in Micronesia, but  
20 if you live in the United States, we can't help you.  
21 We cannot and should not say to Ben Turad, a  
22 Micronesian, that you can work for us, and we pay you

1 with LSC funding, and you're valued employee, but by  
2 the way, if you live in the United States, we cannot  
3 represent you because you're Micronesian. Ben is the  
4 director of the Micronesian Legal Services Corporation.  
5 He's been active, and their board has passed a  
6 resolution encouraging a change. Ben has written  
7 closing the resolution to the presidents of the  
8 Marshalls, Palau, and Micronesia.

9           We cannot and should not say to Andon  
10 Amiraich, an FSM citizen of Micronesia, that you can  
11 volunteer for many, many years on the Micronesian Legal  
12 Services board of directors, but if you're in the  
13 United States and you're in need of legal aid, we can't  
14 represent you. Judge Amiraich is the chief justice of  
15 the Federated States of Micronesia.

16           We cannot and should not say to Camillo Noket,  
17 you can work for us as many years in the managing  
18 attorney in our Chuuk office of Micronesian Legal  
19 Services, but if you're in the United States, we can't  
20 represent you. Camillo is my former mentor, village  
21 chief, and is now the chief justice of the state court  
22 in Chuuk state.

1           I urge that this committee of the board and  
2           the board make the regulation change as quickly as  
3           possible so that we can say to my friend Lee Richardson  
4           in Arkansas, who has a couple files waiting on his desk  
5           to see whether we can represent the Marshallese, that  
6           Lee, we can go ahead. Let's go ahead. Let's take  
7           these cases. Let's see what we can do. Then I can say  
8           to my staff, let's quit saying no. I can say to the  
9           number of staff that I've just represented their  
10          comments to you that we can help Micronesians.

11           So I think the evidence is overwhelming. I  
12          would request that the board make the change as quickly  
13          as possible, and if it's possible, to have some sort of  
14          a telephonic meeting immediately after the 30-day  
15          comment period so that the board can approve in final  
16          form this regulation.

17           CHAIRMAN MEITES: Thank you very much. Is  
18          there any other public comment?

19           MR. AVILES: Yes. My name is Alejandro  
20          Aviles. I'm the community outreach coordinator with  
21          Legal Aid of Arkansas. And I'm in charge of reaching  
22          out to the limited English proficient communities in

1 northwest Arkansas and throughout our program service  
2 area.

3 Our offices recognizes the vulnerability of  
4 clients with limited English proficiency, and we work  
5 hard to prevent and resolve the consumer fraud issues.  
6 We try to protect victims of domestic violence, and of  
7 course along with many other civil legal problems, like  
8 other LSC-funded organizations throughout the country.

9 When reaching out in northwest Arkansas, I  
10 have found out that many of the Marshallese population  
11 experience a barrier greater than language when  
12 attempting to receive essential services from our  
13 office.

14 CHAIRMAN MEITES: We're having trouble  
15 hearing. Can you tell him to pick up the phone? I  
16 think he's speaking into a speakerphone.

17 MR. AVILES: I'm sorry about that.

18 CHAIRMAN MEITES: That's better. Go ahead.

19 MR. AVILES: Okay. Sorry about that. Should  
20 I start over?

21 CHAIRMAN MEITES: No. Go ahead.

22 MR. AVILES: When reaching out in northwest

1 Arkansas, I found out many of the Marshallese  
2 population experience --

3 CHAIRMAN MEITES: Talk a little slower. That  
4 would help.

5 MR. AVILES: When reaching out in northwest  
6 Arkansas, many in the Marshallese community experience  
7 a barrier far greater than language when attempting to  
8 receive essential services from our office. And here  
9 to speak about this issue is our friend in the  
10 community, Carmen Chong Gum, who is the Marshallese  
11 outreach coordinator with the Jones Center for Families  
12 in Springdale.

13 MS. CHONG GUM: Thank you, Alejandro. My name  
14 is Carmen Chong Gum. I'm the Marshallese outreach  
15 coordinator for Jones Center for Families in  
16 Springdale, Arkansas. Good morning. And as  
17 Marshallese say (speaks Marshallese), which means love  
18 to you. You are a rainbow.

19 And I'm very appreciative for the opportunity  
20 to be with you this morning over the phone to share  
21 with you a little of our experiences in northwest  
22 Arkansas, which is similar to others living in other



1 states, including Hawaii.

2 Many Marshallese have been living in Arkansas  
3 for many years, and northwest Arkansas has the largest  
4 number of Marshallese outside of the Marshall Islands  
5 living in the continental United States.

6 As the Marshallese outreach coordinator for  
7 the Jones Center for Families in Springdale, I have  
8 been working with government and community leaders to  
9 address health, legal, and education issues, among  
10 other needs faced by the Marshallese community in  
11 northwest Arkansas.

12 And working full-time now as an outreach  
13 coordinator, I do a lot of information referral  
14 services. And some of the issues people come in for  
15 include legal issues. Some of these legal issues dealt  
16 with collection agencies trying to collect for large  
17 medical bills; problems with landlords evicting  
18 tenants, and tenants not knowing their rights; clients  
19 signing contracts, and many other problems.

20 Many of these clients have low-paying jobs and  
21 cannot afford private lawyers. Legal Aid of Arkansas  
22 is the natural choice to help our low income population

1 when they are not able to afford an attorney.

2 I hope the LSC board will make a decision in  
3 favor of giving eligibility for legal aid services to  
4 our Marshallese community living in the United States,  
5 including people of the Federated States of Micronesia  
6 and the Republic of Palau living in the United States  
7 as well.

8 And before I end, I would like to really give  
9 my appreciation, or we say (speaks Marshallese), first  
10 of all to our Legal Aid of Arkansas for listening to  
11 us, for listening to our challenges that we are facing.  
12 To Executive Director Lee Richardson, Jennifer Langley,  
13 Alejandro Aviles, the one that is right here with me  
14 and helping to get us be heard this morning.

15 And I hear that Charles Greenfield -- good  
16 morning, Charles, and thank you for being there to help  
17 in explaining more about our situation in the United  
18 States and Hawaii.

19 To NLADA staff. To Mr. Victor Fortuno in  
20 Washington, the LSC vice president and general counsel  
21 for writing the paper, the rulemaking options paper to  
22 better explain our situation. And to the staff of

1 Legal Aid of Arkansas for their valuable support in  
2 getting this issue on the rule in to be in your agenda  
3 this morning.

4 And especially to you, Legal Services  
5 Corporation, officers and members, for looking into  
6 this matter. And thank you again, and may the good  
7 Lord bless you all. (Speaks Marshallese.) Thank you  
8 from northwest Arkansas.

9 CHAIRMAN MEITES: Well, thank you very much  
10 for your comments. We were recently in Arkansas, and  
11 when we were there we had a briefing on this problem,  
12 which your comments have reminded us. Thank you very  
13 much.

14 MS. CHONG GUM: Thank you.

15 CHAIRMAN MEITES: Is there any other public  
16 comment?

17 MS. PERLE: I'm Linda Perle from the Center  
18 for Law and Social Policy on behalf of the National  
19 Legal Aid and Defenders Association.

20 Very briefly, we supported the 1989  
21 interpretation. We opposed the 1996 change that was  
22 done in '96. We raised the issue in the negotiated

1 rulemaking process in I think it was 2001 that was  
2 addressing potential changes in 1626 that Mattie  
3 mentioned before. We've numerous conversations with  
4 Mr. Greenfield over the past year on this issue, and we  
5 support the change now.

6 CHAIRMAN MEITES: Thank you very much. Are  
7 the people from Arkansas still on the line?

8 MR. AVILES: Yes, we are.

9 CHAIRMAN MEITES: Yes. Could you fax us your  
10 comments? We had some trouble hearing them. The fax  
11 number is (202) 337-6519. Let me give you that again.  
12 (202) 337-6519. If you could do that, it would help  
13 the reporter make sure he gets the transcription  
14 correctly.

15 All right. Comments from the committee?  
16 David?

17 M O T I O N

18 MR. HALL: My comment is we need to move on  
19 this, and to move on it immediately. In Arkansas, I  
20 think all of us were convinced that we needed to adopt  
21 a change. The staff's report and the testimony we've  
22 had here today just confirms that even more.

1           So I would like to put forth a resolution that  
2 management's recommendation of an expedited rulemaking  
3 be adopted. And I think even the suggestion that when  
4 the time period elapses, that we have a phone  
5 conference call to go ahead and adopt it, if that is  
6 something that we can do, that we do so.

7           I think this is a very clear issue. It makes  
8 a lot of sense that we change the rule. And I fully  
9 support it.

10           MS. PHILLIPS: I agree, David.

11           MR. MCKAY: Second.

12           CHAIRMAN MEITES: All right.

13           MS. SINGLETON: Mr. Chairman?

14           CHAIRMAN MEITES: Please.

15           MS. SINGLETON: Can we confirm that that is in  
16 fact the quickest way to get the rule changed, publish  
17 it, have the 30 days, and then a telephone meeting?  
18 There's no way to do it today?

19           MS. COHAN: No. Not with respect -- not in  
20 conformance with the requirements for publication and  
21 notice that are on the Corporation from the LSC Act.

22           CHAIRMAN MEITES: All right. I think that we

1 have the benefit of information, that is, the  
2 Department of the Interior and Department of State's  
3 views, which our predecessors didn't. And in light of  
4 those views, I support the motion. And I take it it's  
5 unanimous? Is that correct?

6 MS. CHILES: Yes.

7 MS. SINGLETON: One more question.

8 CHAIRMAN MEITES: Please.

9 MS. SINGLETON: Mr. Garten suggested, could  
10 the board vote today to approve it on the condition  
11 that there are no objections?

12 MS. COHAN: No.

13 CHAIRMAN MEITES: Then we will recommend to  
14 the board, as per David's motion, that it be published  
15 as soon as possible; that Vic advise the chair when the  
16 30-day period is expired, and will urge the board to  
17 schedule a special board meeting to consider the  
18 adoption of the regulation. That's the sense of our  
19 committee? Good.

20 All right. Thank you very much. And you and  
21 I are both first-time visitors to Nashville, and I hope  
22 you had as good a time as we have.

1 MS. CHILES: Tom, I have one question.

2 CHAIRMAN MEITES: Please, Jonann.

3 MS. CHILES: Could the legal aid folks in  
4 Arkansas and Hawaii, or any other state that services  
5 these populations, go ahead and open files in  
6 anticipation, and then --

7 CHAIRMAN MEITES: I don't think they can  
8 expend any funds until we change the regulation.

9 MS. CHILES: It's not possible?

10 MS. COHAN: No. I wouldn't think so, no.

11 CHAIRMAN MEITES: All right. Well, thank you  
12 very much, and we will hope the board follows our  
13 recommendations.

14 MR. GREENFIELD: Thank you very much.

15 CHAIRMAN MEITES: The next item on our agenda  
16 is consider and act on the adoption of 2008 grant  
17 assurances. My fellow committee members will recall  
18 that when we last considered grant assurances, we asked  
19 staff to look at this from a bottoms-up perspective.

20 I gather from the materials that they have  
21 done that. And we are now looking at what the staff  
22 believes is a new and improved version of the grant

1       assurances.  Is that correct?

2               MS. SARJEANT:  That is correct.

3               CHAIRMAN MEITES:  Why don't the people at the  
4       table introduce themselves.  And Karen, go ahead.

5               MS. SARJEANT:  I'm Karen Sarjeant, vice  
6       president for programs and compliance at the Legal  
7       Services Corporation.

8               MS. TARANTOWICZ:  Laurie Tarantowicz, OIG  
9       counsel.

10              MR. FORTUNO:  Vic Fortuno, general counsel.

11              CHAIRMAN MEITES:  Go ahead.

12              MS. SARJEANT:  The grant assurances, as you  
13       are aware, are used any time LSC makes grants for the  
14       delivery of legal services to establish the appropriate  
15       guidance for recipient programs.  Each year we bring  
16       the revised grant assurances to this committee and to  
17       the full board for review and approval.

18              As Chairman Meites mentioned, last year we  
19       indicated to you that we were going to do a bottoms-up  
20       review.  And we have now done that, and the process was  
21       explained in the president's report to the board.

22              This was a very comprehensive, thoughtful, and



1 inclusive process. I do want to take the opportunity  
2 to thank Reggie Haley of the Office of Program  
3 Performance for the work that he put in in leading this  
4 process and keeping us on time so that we could deliver  
5 these to you today.

6 We undertook a comprehensive review of our  
7 guidance and legal requirements. We did an assessment  
8 of what similarly situated grant-making agencies  
9 include in their grant assurances and certifications.  
10 And we received input in the process and comments and  
11 ideas from both the Office of Inspector General, and we  
12 received comments and ideas from the Center for Law and  
13 Social Policy.

14 As part of our process, we developed a  
15 statement of purpose which you have, I believe, on  
16 page 79. And this guided our development of the grant  
17 assurances. What we wanted to do was to put in place a  
18 guidance document for ourselves so that unlike what had  
19 happened over the years, the grant assurances had just  
20 kind of -- we've just added on and added on. We wanted  
21 to set some parameters for ourselves in terms of what  
22 should be included, when, and for what purpose.

1           You will see there are no new grant  
2     assurances. What we have done is reword some,  
3     streamline them, and we combined some of the grant  
4     assurances. We think we have a much tighter document  
5     now, and we think it provides the appropriate guidance  
6     and statements of rights and responsibilities for both  
7     LSC and grantees.

8           The revised grant assurances are now grouped  
9     by subject matter. Grant assurances 1 through 6  
10    address applicable legal requirements; 7 through 9  
11    address programmatic requirements; 10 through 19  
12    address access to records and information,  
13    recordkeeping, and notification requirements; and grant  
14    assurances 20 and 21 address the responsibility to  
15    assist in resolving outstanding auditor compliance  
16    issues and the use of the LSC logo.

17           I would like to point to just a couple of  
18    grant assurances. You will note that in No. 8, we did  
19    expand and add to our grant assurance on technology and  
20    the capacity that programs should have. We thought  
21    this was very important, as we help our programs  
22    develop and continue to develop quality systems, that

1 we make sure that they are in fact taking note of the  
2 technology requirements that are required to run a  
3 quality program.

4 And in grant assurance 9, we added some  
5 language to clarify our expectations on support of the  
6 statewide websites, which LSC has put substantial  
7 dollars into through the TIG, funding the technology  
8 initiatives grants program. We wanted to make sure  
9 that that was going to be supported by programs.

10 The grant assurances on access to records and  
11 information we spent quite a bit of time on.

12 CHAIRMAN MEITES: Which nights are those?

13 MS. SARJEANT: I'm sorry, 10 through 19.

14 CHAIRMAN MEITES: Thank you.

15 MS. SARJEANT: We spent a lot of time on very  
16 careful drafting of the language in those because these  
17 seem to be the core of many issues. So those are what  
18 we present to you. And it is our understanding from  
19 review of the IG's memo that the grant assurances that  
20 they have comments on are Nos. 10 and 15.

21 We think we got them right in what we're  
22 presenting to you. So we'd be happy to answer any

1 questions.

2 CHAIRMAN MEITES: If you would, as I remember  
3 from the past two years, there's some kind of a time  
4 cycle that these are on. Is that right?

5 MS. SARJEANT: That's correct.

6 CHAIRMAN MEITES: Would you fill us in on the  
7 calendar?

8 MS. SARJEANT: Yes. We use these with the  
9 2008 grants. So this July -- no, I'm sorry. Probably  
10 in August, the grant assurances will go up on our  
11 electronic competitive grants process.

12 And as part of the application process, the  
13 applicants will pull these down and sign them and  
14 return them to us. So we need the committee to make a  
15 recommendation to the full board at this meeting on our  
16 use of the 2008 grant assurances.

17 CHAIRMAN MEITES: Okay. With that as kind of  
18 an overview, let me ask the inspector general's office  
19 for any comments it may have. And it has provided us  
20 with a memo, which is found on page -- unpagged, but it  
21 was distributed to you and you should have it. It's a  
22 three-page memo dated July 20, 2007.

1           MS. TARANTOWICZ: Thank you, Chairman Meites,  
2 members of the committee, and members of the board. As  
3 Karen mentioned, management did undertake a  
4 comprehensive review of the grant assurances, and  
5 overall we believe that they present a more streamlined  
6 and organized approach that will likely be to the  
7 benefit of both LSC and its grantees.

8           As Karen also mentioned, management provided  
9 the OIG with the opportunity to participate in the  
10 process and offer comments as they were going through  
11 their internal process. And we very much appreciated  
12 that opportunity.

13           We had some differences, some suggestions that  
14 management considered and did not accept. Some of  
15 those we felt were within management's discretion and  
16 we didn't bring forward, or we didn't feel strongly  
17 enough about to bring forward to the committee. But as  
18 to two grant assurances, we did provide you a memo  
19 recommending additional changes to the draft that  
20 management provided.

21           The first of those is grant assurance No. 10.  
22 And this governs both LSC and the Comptroller General

1 or GAO access to grantee information. And the  
2 recommended changes -- the changes that we have  
3 recommended are basically intended for clarification  
4 purposes and to ensure that the grant assurance is  
5 consistent with or recognizes applicable law.

6 And in the memo, we've provided a redlined  
7 version essentially -- for instance, the first  
8 sentence, we've recommended that the grant assurance be  
9 amended to recognize that other law may be applicable  
10 to access to information. For example, since this  
11 covers GAO access as well, the GAO has its own organic  
12 legislation. And that may provide them -- I know it  
13 provides them authority for access to records in the  
14 hands of federal grantees.

15 We also wish to clarify that although records  
16 are subject to the attorney-client privilege, the other  
17 stated protections, being ethical rules, may or may not  
18 be applicable to the request. For example, under the  
19 LSC Act, where it specifically mentions the GAO, it  
20 only talks about the attorney-client privilege as  
21 restricting access. And of course, as is recognized in  
22 grant assurance 11, LSC also has access under the

1 Appropriations Act, which is only restricted by the  
2 attorney-client privilege.

3           The grant assurance, as drafted, required that  
4 for records in which the grantees claim the  
5 attorney-client privilege, that the grantees state with  
6 specificity the documents withheld and the legal  
7 justification. And we think it would be helpful for  
8 the grantee to state that for all records withheld, not  
9 just those subject to attorney-client privilege.

10           And finally, we recommend inclusion of the  
11 final sentence, which states LSC's authority to require  
12 that grantees disclose information if LSC determines  
13 that the justification for withholding is inadequate  
14 and that LSC is entitled to the information.

15           This requirement or statement was in the prior  
16 year, 2007, grant assurances and in prior year grant  
17 assurances. And we believe it's appropriately  
18 retained.

19           CHAIRMAN MEITES: Laurie, I want to make sure  
20 I understood your last remark. The last sentence,  
21 which reads, "LSC may require the grantee to disclose  
22 the information if LSC determines that the

1 justification for withholding is inadequate or that LSC  
2 is entitled to the information" -- that sentence you  
3 would propose be added to grant assurance 10?

4 MS. TARANTOWICZ: That's correct.

5 CHAIRMAN MEITES: If I understood you  
6 correctly, this identical sentence was in prior grant  
7 assurances, but is not in the revised one. Is that  
8 correct?

9 MS. TARANTOWICZ: That's correct.

10 CHAIRMAN MEITES: Thank you.

11 MS. SARJEANT: May I --

12 CHAIRMAN MEITES: Let's go through all of them  
13 and we'll come back.

14 MS. SARJEANT: Okay.

15 CHAIRMAN MEITES: Go ahead. And you also had  
16 comments on 15. Is that right?

17 MS. TARANTOWICZ: Yes. On 15, we recommend  
18 the addition of one sentence: "This grant assurance  
19 governs notification to the OIG by grantees of possible  
20 thefts or other losses." And we recommend inclusion of  
21 a sentence that the grantee agrees that it shall not  
22 conduct its own investigation into the loss before



1 contacting the OIG.

2 This is recommended essentially to aid the OIG  
3 in conducting its work. Unfortunately, when losses  
4 occur, it's obviously an unfortunate situation. And we  
5 have found that when grantees conduct their own  
6 investigations, it can have regrettable consequences.

7 Grantees are not trained in criminal  
8 investigation, and they also may be close to the  
9 situation because the loss may occur because of  
10 activity by a long-time trusted employee. Grantee  
11 investigations can interfere with OIG and our law  
12 enforcement activities.

13 And even in circumstances where it's  
14 appropriate for the grantee to undertake some  
15 investigation on its own, we believe it's been helpful  
16 for the grantee to contact the OIG for consultation and  
17 to get advice on how to go about conducting the  
18 investigation, whether to make a police report and  
19 things of that nature.

20 The lack of this requirement has indeed had  
21 unfortunate consequences, and we've provided an example  
22 in the memo, where we had a grantee who failed to

1 inform the OIG of the facts prior to conducting its own  
2 investigation. It turned out to be a fairly  
3 significant embezzlement. We're actually still looking  
4 into the matter.

5           And we just this week were provided  
6 information that it's actually more significant than we  
7 had thought. And the grantee conducted this  
8 investigation, hired an outside accounting firm, which  
9 resulted in an unnecessary cost to the grantee. And  
10 obviously, the investigation was inadequate.

11           CHAIRMAN MEITES: All right. Before we open  
12 this to public comment, I think I'd like to hear the  
13 staff's response to the OIG comments.

14           But let's work backwards. First the sentence  
15 that the OIG recommends be added to paragraph 15. Do  
16 you have any problems with that?

17           MS. SARJEANT: Actually, we do. And the  
18 reason we did not have that sentence in there is we  
19 think it's appropriate for a grantee and a board to  
20 take some very limited preliminary steps to determine  
21 whether there's a reportable condition to the OIG.

22           And we believe that one of the things that the

1 Office of Inspector General could do, as opposed to  
2 putting this blanket term in here so that they aren't  
3 doing any investigation, is they could provide guidance  
4 on their website, as they do to grantees, about how far  
5 they should go in different types of situations like  
6 this.

7 We really do think that this is something that  
8 a program has to take some initial steps in order to  
9 determine if they have a reportable condition. And the  
10 IG would be in a position to say, in this guidance, in  
11 certain situations you should this far, or maybe you  
12 would go that far. But it shouldn't be in a grant  
13 condition. It should be their guidance.

14 CHAIRMAN MEITES: Questions from the  
15 committee?

16 MS. SINGLETON: Questions from the  
17 not-committee?

18 CHAIRMAN MEITES: From the board? Let's  
19 restrict it to 15 first, if that's okay.

20 MS. SINGLETON: Yes. That's what I was going  
21 to ask about.

22 If the sentence said after it determines it

1 has a reportable condition, it agrees it will not  
2 conduct, would you still have a problem with it?

3 MS. SARJEANT: Probably not. I think that  
4 allows them to take --

5 CHAIRMAN MEITES: Laurie, would that protect  
6 your interests that we acknowledge that you have to at  
7 least make an initial determination that there's a  
8 problem?

9 MS. TARANTOWICZ: Well, we thought that was  
10 acknowledged in the first sentence, which reads,  
11 "Discovery of any information that gives it reason to  
12 believe it has been the victim." So obviously there  
13 has to be some inquiry done to make that basic  
14 discovery of the loss.

15 CHAIRMAN MEITES: Well, along those lines, I  
16 would suggest that we use something -- not Sarah's  
17 language, but something like that, which acknowledges  
18 the point you've got to do some looking to decide  
19 there's something to call you up about, but preserve  
20 your point that at that point they should call you. So  
21 let me just suggest that you two work out some language  
22 that meets both those issues, along with what Sarah

1 said.

2 All right. Let's talk about 10, which is more  
3 substantive. We're going to have public comment at the  
4 end. Let's get -- go ahead.

5 MS. SARJEANT: On 10, we took out the -- I'm  
6 going to start with the last sentence. We took that  
7 out about, "LSC may require the grantee to disclose the  
8 information." Based on applying our statement of  
9 purpose and one which is to prevent disputes, we  
10 thought this sentence was unnecessarily  
11 confrontational, and so we took that out.

12 We also took a look back at the 2004  
13 transcript of this committee, when there was a fairly  
14 extensive discussion about the use of federal and state  
15 rules and professional responsibility in relation to  
16 the grant assurances.

17 And so the language that we propose in 10 is  
18 based on both our review of your transcript from 2004,  
19 in which there was a full discussion about the fact  
20 that there may be broader state rules of professional  
21 responsibility. And so we developed the language that  
22 we have before you.

1                   CHAIRMAN MEITES:  And what about the other  
2  changes in paragraph 10?

3                   MS. SARJEANT:  Well, one is that that is why,  
4  rather than saying this requirement may be subject to  
5  the applicable rules, we covered all of them.  We said  
6  that they all apply.  And then the use of the term  
7  "appropriately," which I understand is the other change  
8  in here, we had the language in for those records  
9  subject to.

10                  CHAIRMAN MEITES:  So before I open it for  
11  public comment, let me make sure I got it.  The last  
12  sentence, although it's been in previously, you felt  
13  that it was not in the spirit of our 2004 discussion on  
14  privilege.

15                  MS. SARJEANT:  Yes.

16                  CHAIRMAN MEITES:  The other changes, you  
17  believe, are that your language was all-inclusive  
18  and -- basically, it comes down to this.  You say that  
19  this requirement is not a part of any such material  
20  that may be properly withhold.  The change proposed by  
21  the IG is this requirement is subject to the  
22  attorney-client privilege and may be subject to

1 applicable rules.

2           You both are essentially addressing the same  
3 issue. One is a statement that the requirement does  
4 not apply, and the other is the requirement may or may  
5 not apply depending on the specifics of the situation.  
6 That strikes me as more or less two ways of stating the  
7 same thing, and lawyers do that a lot. I'm not saying  
8 that I prefer one to the other. I want public comment  
9 on this whole thing.

10           What about the first change, "other applicable  
11 law"? Does that cause the staff any problems?

12           MS. SARJEANT: On that one, we felt that  
13 because 10 is -- as I recall, 10 is in reference to  
14 1006(b)(3). And so we thought that by referencing the  
15 LSC Act, we had covered everything that was covered  
16 there.

17           CHAIRMAN MEITES: So what about Laurie's point  
18 that, for example, the GAO has its own access  
19 provisions? Do you believe that your statement, under  
20 the provisions of the LSC Act, since the LSC Act -- do  
21 you say that incorporates things like the GAO?

22           MS. SARJEANT: I think it does.

1           CHAIRMAN MEITES: Okay. Let me open this for  
2 public comment. Anybody who wants to speak, come  
3 forward.

4           MS. SINGLETON: I have one more question. Why  
5 is that -- in red sentence at the end, Laurie, why is  
6 that an "or"?

7           MS. TARANTOWICZ: You know, I had the same  
8 thought when I was reading it. And I think it's an  
9 "and."

10          CHAIRMAN MEITES: It should be?

11          MS. SINGLETON: It seems to me it ought to be  
12 an "and."

13          MS. TARANTOWICZ: Yes. I think it is.

14          CHAIRMAN MEITES: We will consider it an "and"  
15 subject to public discussion.

16          Okay. Public comment. Come forward and  
17 identify yourself.

18          MR. McBRIDE: I just have a brief question,  
19 which may lead to --

20          CHAIRMAN MEITES: Take as long -- wait. Take  
21 as long as you want. My committee is on schedule.  
22 There is no need to rush.



1           MR. McBRIDE: Thank you. I'm Neil McBride,  
2 general counsel for the Legal Aid Society of Middle  
3 Tennessee and the Cumberlands. And I just wanted to  
4 clarify whether this restriction in the grant assurance  
5 suggested by the OIG would interfere with the timing of  
6 our reporting of a loss to law enforcement.

7           It appears to me that the typical loss will be  
8 someone from the outside breaking in and damaging or  
9 stealing materials. And I just want to make sure that  
10 this will not in any way delay our ability to report  
11 such an event to local law enforcement.

12           CHAIRMAN MEITES: That's a good point. Sarah,  
13 does your magic language solve that problem?

14           MS. SINGLETON: I don't think this applies to  
15 reporting to law enforcement at all. I don't think it  
16 in any way impinges on that ability. This only talks  
17 about you yourself conducting an investigation, as I  
18 read this grant assurance.

19           MR. McBRIDE: That's just what I wanted to  
20 clarify. Good.

21           CHAIRMAN MEITES: All right. Do you have any  
22 comments on paragraph 10?

1           MR. McBRIDE: No, although I should alert the  
2 committee to the fact that I can tell you who  
3 Mr. Carmack is when you're ready to hear.

4           (Laughter.)

5           CHAIRMAN MEITES: All right. We'll defer  
6 that.

7           Ms. Perle, do you have any comments?

8           MR. McKAY: I think it's important we reserve  
9 time for that.

10          CHAIRMAN MEITES: I'm not sure which  
11 committee, however, so we'll hold off on that.

12          MS. PERLE: Again, I'm Linda Perle from Center  
13 for Law and Social Policy. I just wanted to say a  
14 couple things, that I did appreciate the opportunity to  
15 work with the staff on streamlining these grant  
16 assurances. I think that probably in future years we  
17 could probably get rid of a lot more.

18                 And there were a number of things -- well,  
19 first of all, there were a number of suggestions that I  
20 made that the staff did adopt, and I appreciate that.  
21 And there were a number of things, obviously, that I  
22 suggested that they didn't. And I'd like to continue

1 to work on those in the future.

2 But I have not seen the IG's suggestions until  
3 just now. I agree completely with what Karen said in  
4 terms of the addition of the two sentences in grant  
5 assurances 10 and 15. I have to admit that I haven't  
6 been able to parse through all the rest of it, but my  
7 sense is that I also agree with what Karen said with  
8 regard to the specific pieces of the language that the  
9 IG suggests adding.

10 I think generally that the staff's suggested  
11 grant assurances work and address the problem  
12 adequately, and there isn't any need for these changes.  
13 But as I said, I haven't really parsed them through in  
14 any detail.

15 Throughout the rest of the regulations, there  
16 are a number of places where, if I had my d'ruthers, I  
17 would make a few small changes. And they are  
18 relatively small. But as I said, we'll work on that  
19 next year.

20 CHAIRMAN MEITES: All right. I think we've  
21 worked through paragraph 15. Let me focus on  
22 paragraph 10. And I have a suggestion for solving the

1 disagreement on the second sentence.

2 I propose we simply avoid this debate entirely  
3 by ending -- using the original text -- well, using  
4 some of both texts. So the second sentence would read,  
5 "This requirement does not apply to any such materials  
6 that may be properly withheld due to applicable law,"  
7 and not debate which law is applicable, and not whether  
8 it's attorney-client, or so on, and let our respective  
9 counsel in another forum fight out that one.

10 So if that solves that problem --

11 MS. TARANTOWICZ: That's okay.

12 CHAIRMAN MEITES: Let's go -- yes, sir?

13 MR. GARTEN: I'm not a member of the  
14 committee.

15 CHAIRMAN MEITES: Please.

16 MR. GARTEN: But you've got to consider the  
17 rules of professional conduct.

18 CHAIRMAN MEITES: Well, I consider -- you  
19 don't consider that a law?

20 MR. GARTEN: No.

21 CHAIRMAN MEITES: How about "applicable law or  
22 rules"?

1 MS. TARANTOWICZ: Yes.

2 CHAIRMAN MEITES: Okay. Done.

3 MR. GARTEN: Is it clear what rules you're  
4 referring to?

5 CHAIRMAN MEITES: Herb, I clearly don't want  
6 it clear.

7 (Laughter.)

8 MS. SINGLETON: He clearly likes fuzzy today.

9 CHAIRMAN MEITES: "As for other applicable  
10 laws," which is the --

11 MS. SARJEANT: Can I just -- so have we done  
12 "law or rules"?

13 CHAIRMAN MEITES: Yes. As for the first  
14 sentence, "or other applicable law," I am not a fan of  
15 saying, look at appendix A because appendix A  
16 references appendix C through E. I prefer "or other  
17 applicable law" so someone doesn't have to search  
18 through the LSC Act to see if it's cross-referenced.  
19 So I prefer the more general formulation, "or other  
20 applicable law."

21 The one that I don't have views on and I'd  
22 like my committee's help on is the last sentence, which

1 is a change. It's not a drafting finagle. It's a real  
2 change from what we've done before. And when our  
3 committee is asked to recommend a change, I think the  
4 burden is on those urging us to change.

5 What do you all feel about that, my committee  
6 members, on that one? Do we understand what the  
7 difference would be if this last sentence is not  
8 included in the regulation?

9 MS. BeVIER: Maybe Karen could explain that  
10 because in a way, this sentence seems to me to be -- I  
11 mean, I understood you to say you thought it was unduly  
12 confrontational in the grant assurances. But what are  
13 the options for LSC if LSC determines that the  
14 justification for the withholding is inadequate and  
15 that we are entitled to it? I mean, what --

16 MS. SARJEANT: Then -- well, if we determine  
17 that, then we would proceed against the program anyway.  
18 And this is just restating the obvious. And it was in  
19 a couple of places and we took it out because it  
20 was -- in looking at our statement of purpose, we just  
21 didn't want to be kind of putting our thumb in the eye.

22 We have this already. If we determine that a

1 program should have given us something or they should  
2 have disclosed the information, we have a way to get at  
3 that, to say to them, you have to do it. It doesn't  
4 need to be here.

5 MS. BEVIER: Is that in the grant assurances?

6 MS. SARJEANT: No. That's just in our -- what  
7 the Act and the regulations give us. We don't need  
8 this. We can do it.

9 CHAIRMAN MEITES: Well, I read it somewhat  
10 differently. I thought this is an assertion that even  
11 if a grantee claims privilege, if the Corporation  
12 rejects that claim, the grantee has agreed that it will  
13 yield.

14 MS. PERLE: Right. And that -- excuse me.

15 CHAIRMAN MEITES: Is that what -- has that  
16 been the position till now, that if CRLA says, we have  
17 documents that are privileged, and you say they are  
18 not, CRLA has agreed in this grant assurance that it  
19 will then say, okay, you're right?

20 MS. SARJEANT: If this is in here?

21 CHAIRMAN MEITES: That has been what has  
22 happened until now, that all our grantees prospectively

1 that you will be the final arbiter of attorney-client  
2 and work product privilege and claims. I'm not  
3 doubting that. I'm just asking for information.

4 MS. SARJEANT: Right. And it seemed to us  
5 that this should not be in here.

6 CHAIRMAN MEITES: Well, I've got to tell you,  
7 if that is what your grantees are agreeing to, my, it  
8 is such an extraordinary concession that I think it  
9 should be in big letters.

10 MS. BEVIER: I think it ought to be big  
11 letters.

12 CHAIRMAN MEITES: That's right. We know you  
13 don't --

14 MS. SINGLETON: They might read big but not  
15 capitals.

16 CHAIRMAN MEITES: People don't read capitals.  
17 They should know that they are essentially acceding to  
18 your determinations.

19 Ms. Perle?

20 MS. PERLE: I was going to say that I think  
21 that it was my suggestion, or I suggested it, and maybe  
22 others in staff suggested, that we take that out for



1       that very reason because when I read this  
2       carefully -- and I admit that over the years you don't  
3       tend to read these things as carefully as you  
4       should -- when I read this carefully, I said, are they  
5       giving up the right to challenge the assertion by the  
6       LSC staff by contract? It struck me as totally  
7       outrageous.

8               CHAIRMAN MEITES: Well, let's not -- we're not  
9       talking about wording now. We're talking about the  
10      substance of whether, as a grant assurance, your  
11      grantees have historically agreed that if there's an  
12      attorney-client, work product, or other privilege  
13      dispute, they are prospectively agreeing that you will  
14      have the final decision.

15             MS. PERLE: Well, you say "historically." I  
16      don't know how long this language has been in the grant  
17      assurances.

18             CHAIRMAN MEITES: Well, let's say the last two  
19      or three years.

20             MS. PERLE: Certainly in the last --

21             CHAIRMAN MEITES: Forget the "historically."

22             MS. PERLE: Yes.

1           CHAIRMAN MEITES: Karen, is that the view?

2           MS. SARJEANT: It was in there in 2007.

3           CHAIRMAN MEITES: And that's how you read it?

4           That's what you understood it to be?

5           Ms. Perle, is that something that your  
6           grantees are going to agree to?

7           MS. PERLE: No. No. And that's what I'm  
8           saying. I mean, I think that it probably -- you know,  
9           there's the story about these grant assurances that  
10          there's sort of more and more language accreted over  
11          the course of many years. And the programs didn't  
12          necessarily pay attention. And I didn't necessarily  
13          pay as much attention.

14          CHAIRMAN MEITES: Well, now is the time  
15          because you're about to have all of your grantees waive  
16          their attorney-client privilege claims.

17          MS. PERLE: No, no. I am totally supportive  
18          of the position of the staff with regard to this, and  
19          totally opposed to the position of the IG on this.

20          CHAIRMAN MEITES: Well, but the staff is not,  
21          in my view, entirely on your side. I think the staff  
22          says they're not going to tell you they can do it, but

1 they're going to do it.

2           So let's assume that the staff says, whether  
3 this language is in here or not, they can do it. Our  
4 view is that they should say it if they think they  
5 should do it. The question for you is: Do you think  
6 they should be able to do it?

7           MS. PERLE: I'm a little -- I mean, I think  
8 that they can take the position that --

9           CHAIRMAN MEITES: No, no. This is not a  
10 position. Your clients are signing away their right to  
11 raise attorney-client and other work product claims.

12           MS. PERLE: If this language is added.

13           MS. BeVIER: It's been there.

14           MS. PERLE: I'm sorry. If this language is  
15 not removed.

16           CHAIRMAN MEITES: Okay. So we're having a  
17 substantive discussion --

18           MS. SINGLETON: No. I'm not sure that's  
19 correct. I'm sorry. I'm not going to say that this  
20 statement necessarily waives a grantee's right to seek  
21 court review of a staff determination, that they waive  
22 privilege.

1           CHAIRMAN MEITES:  Oh, no.  That's what it  
2    says.

3           MS. SINGLETON:  It does not say that.

4           MS. PERLE:  I think -- I objected to the  
5    language because I felt it could certainly be read that  
6    way.  And Mr. Meites agrees with me.  And I suggested  
7    that the language ought to be removed.  I think a court  
8    could say, well, that's not what this says, and you  
9    haven't waived the right --

10          CHAIRMAN MEITES:  Not after this discussion  
11   they couldn't say it.

12          MS. PERLE:  Pardon me?

13          CHAIRMAN MEITES:  Not after this discussion  
14   they're not going to be able to say it.  So anyway, you  
15   do not believe your grantees should be required  
16   prospectively to agree that LSC should be the final  
17   decider of attorney-client work product claims.  Is  
18   that correct?

19          MS. PERLE:  Correct.

20          CHAIRMAN MEITES:  Okay.  That's what I thought  
21   you'd say.  And the staff believes that it should be.

22          MS. SARJEANT:  We took it out.  We took it

1 out.

2 CHAIRMAN MEITES: Oh, you don't want it. And  
3 the IG --

4 MS. SARJEANT: Wants it.

5 MS. TARANTOWICZ: Well, we obviously want it  
6 in there. I actually didn't give it the interpretation  
7 that you have, although I like it.

8 CHAIRMAN MEITES: It says -- it says --

9 MS. TARANTOWICZ: I know. I see your point.  
10 We didn't -- we sort of took Sarah's view that  
11 ultimately grantees could challenge. But we thought it  
12 was through -- it would be through a procedure for LSC  
13 claiming its authority, which we think is inherent in  
14 its authorities under the LSC Act, to make the final  
15 decision, and then take appropriate enforcement action.

16 And then a grantee would challenge this in the  
17 context of enforcement action being taken, and I didn't  
18 read this to prohibit grantees from challenging that  
19 enforcement action on that basis.

20 CHAIRMAN MEITES: Okay.

21 MS. PERLE: I don't have it in front of me,  
22 but I think that the protocol on access to records has

1 similar language to this, that basically says that LSC  
2 is the final determiner -- is the determiner from this  
3 perspective of what this means, and then presumes that  
4 the programs could challenge it later.

5 CHAIRMAN MEITES: Well, then, as written, it  
6 does not -- since my reading is a possible reading as  
7 written, it should be changed because that's not  
8 what -- anyone reads it as a prospective waiver.

9 I think that it should be rewritten, and I  
10 think it should be written to say what you all think it  
11 said. And I think it should be in because I, for one,  
12 misread it. And if something is subject to misreading  
13 by someone who has no stake in it, I think it should be  
14 clarified.

15 Fellow committee members?

16 MR. HALL: Well, if it's going to be put in, I  
17 think it has to be put in with some clarification about  
18 those steps.

19 CHAIRMAN MEITES: Absolutely.

20 MR. HALL: And I don't know how that addresses  
21 the confrontational issue. But it has to explain to  
22 the grantee that if they disagree with LSC, then they

1 can pursue legal remedies.

2 CHAIRMAN MEITES: Right.

3 MR. HALL: Because for us to impose something  
4 that would possibly require them to be disciplined by  
5 their bar association because they've given up  
6 something they shouldn't have --

7 CHAIRMAN MEITES: And face withholding of  
8 funds if they do. No, I agree with that.

9 Other committee members' comments?

10 MS. CHILES: I agree with Mr. Hall.

11 CHAIRMAN MEITES: Bernice? Mike?

12 MR. MCKAY: I agree.

13 MR. GARTEN: The first paragraph says that the  
14 grantee is going to comply with all the requirements of  
15 the law and regulations.

16 CHAIRMAN MEITES: Right.

17 MR. GARTEN: Which includes what they're  
18 referring to. So why incorporate that in a grant  
19 assurance specifically when there's a procedure  
20 obviously set up? I'm not familiar with it, but --

21 CHAIRMAN MEITES: Well, that's the question.  
22 There was a mention of a protocol which sets out how

1 people challenge things. Is that true? Karen?

2 MS. SARJEANT: The access protocol?

3 CHAIRMAN MEITES: No. If one of your grantees  
4 disagrees with your determination of whether you have  
5 access to documents. Is there something in writing  
6 that describes what happens next?

7 MS. SARJEANT: There is.

8 CHAIRMAN MEITES: What is that?

9 MS. SARJEANT: I cannot quote it.

10 CHAIRMAN MEITES: Well, you don't have to.  
11 Just tell me --

12 MS. SARJEANT: But it's the access to records  
13 protocol.

14 MS. SINGLETON: But it's not incorporated in  
15 the paragraph 1 or any --

16 MS. SARJEANT: Yes, it is.

17 MS. SINGLETON: Well, what is it called in  
18 real life?

19 MS. SARJEANT: Wait a minute. Let me  
20 just -- it's called -- I've got too many papers  
21 here -- the access to records. And the one I have is  
22 dated January '04.



1 CHAIRMAN MEITES: And how is it --

2 MS. BeVIER: And it's referenced in the grant  
3 assurances.

4 MS. SARJEANT: Because in our applicable  
5 law -- just a minute. I'm looking for my first page.

6 MS. SINGLETON: Oh, it's under "Any  
7 applicable" -- no, that's -- "Any other applicable law,  
8 rule, regulation, policy, guidelines, instructions" --

9

10 MS. SARJEANT: It's in No. 1.

11 MS. SINGLETON: That's it? Okay. I  
12 guess -- okay.

13 MS. SARJEANT: Now, what we didn't do, and we  
14 did have a discussion about that, is we did not list  
15 every --

16 CHAIRMAN MEITES: No. Understood.

17 MS. SINGLETON: Good.

18 MS. SARJEANT: -- thing in No. 1.

19 CHAIRMAN MEITES: All right. So you have an  
20 existing protocol which covers the issue that I've been  
21 chewing on. And I guess that gets back to your point:  
22 There's no need for the sentence because it's covered

1 elsewhere. Is that -- Laurie?

2 MS. TARANTOWICZ: I will just mention that the  
3 access to records protocol doesn't govern OIG access to  
4 records.

5 MS. PERLE: But this paragraph doesn't cover  
6 the OIG, either, which I --

7 CHAIRMAN MEITES: So you would apparently not  
8 be affected by whatever we do with this paragraph. All  
9 right. My committee believes it should be -- we don't  
10 need this sentence now because we found there's a  
11 protocol that already handles it?

12 MR. HALL: That's fine. My position was if  
13 you were going to include it, you need to elaborate on  
14 it so --

15 CHAIRMAN MEITES: But since there is a  
16 protocol and the protocol is already incorporated, we  
17 can do without the sentence entirely.

18 MS. CHILES: I'd like to ask a question. Have  
19 you examined that protocol recently? Are you happy  
20 with that protocol? Does it meet your needs?

21 MS. SARJEANT: It does.

22 MS. PHILLIPS: So you can access records

1 through that protocol if they don't follow those steps  
2 to get records?

3 MS. SARJEANT: This protocol is used by our  
4 Office of Compliance and Enforcement on almost all of  
5 the compliance visits that we do in terms of clarifying  
6 with programs how we're going to access their case  
7 files.

8 CHAIRMAN MEITES: Sarah?

9 MS. SINGLETON: I obviously am not familiar  
10 with that protocol. But why would you need a sentence  
11 as specific as the last one before the red sentence,  
12 which says for those records subject to, you have to  
13 identify them in writing and provide the legal  
14 justification. I mean, is that not covered in your  
15 protocol for document requests?

16 MS. SARJEANT: I think that language may very  
17 well be specifically in here, but I'm not sure. Let me  
18 see. I mean I do believe we require programs to  
19 identify why they're withholding. I'd be surprised if  
20 it wasn't in here, but I just can't flip through this  
21 right now.

22 CHAIRMAN MEITES: Well, Sarah's point is if

1 it's in the protocol, it's a level of specificity,  
2 according to your guidelines, that you would need for  
3 this rule.

4 MS. SARJEANT: Except we did make a decision,  
5 if you look at the statement of purpose, there are some  
6 things that we did restate even though we thought they  
7 were clear. And we have criteria for when we restate  
8 them.

9 CHAIRMAN MEITES: Okay. And just in your  
10 view, this was something worth repeating?

11 MS. SINGLETON: But you find that a fiberboard  
12 list -- that's what I call these things you're talking  
13 about -- is more critical than telling a person they  
14 have a right to challenge the LSC's determination?

15 MS. SARJEANT: I'm sorry?

16 MS. SINGLETON: Well, you said we're going to  
17 repeat stuff we think is critical even though it might  
18 exist somewhere else. And what you've said here is  
19 we're going to repeat the fact you have to give us a  
20 written list listing the documents you're withholding  
21 because we think that's more critical than telling you  
22 if you disagree with LSC's finding that you don't have

1 a privilege, you have a right to object to their  
2 enforcement action. I don't get the prioritization for  
3 what gets included.

4 MS. SARJEANT: Okay. Actually, prior to -- I  
5 have not looked at this right before coming in here. I  
6 think this is covered under that sentence. I'm not  
7 exactly sure whether it is or not.

8 So if it is covered, I think that -- I don't  
9 think there's a program that isn't clear about the fact  
10 that they can and will challenge if we are asking them  
11 to breach their rules of professional responsibility or  
12 the attorney-client privilege.

13 MS. SINGLETON: But if they're not clear, they  
14 have to give you a list.

15 MS. SARJEANT: That's right. They might not  
16 be clear that they have to give us a list indicating  
17 why they're withholding something.

18 CHAIRMAN MEITES: Laurie, did you have a  
19 comment?

20 MS. TARANTOWICZ: Well, just echoing what  
21 Karen said. We have found the language in the grant  
22 assurance helpful to point to when we have had access

1 issues to remind the grantee that they have an  
2 obligation to provide with specificity. They can't  
3 just make a blanket refusal, but provide with  
4 specificity: This is the record we're withholding and  
5 this is the justification for the withholding.

6 CHAIRMAN MEITES: Well, I have a compromise to  
7 suggest. Keep in the "For these records" sentence, but  
8 instead of the last sentence, which I think is  
9 ambiguous, you can put in something to the effect that  
10 grantees that disagree or seek to challenge LSC's  
11 position have the whatever rights or procedures set out  
12 somewhere, that Sarah believes that that's of equal  
13 importance to the thing.

14 But maybe that's not a good idea.

15 MR. GARTEN: It's contrary to your comments  
16 about being very specific.

17 CHAIRMAN MEITES: Right. Yes. You don't  
18 want --

19 MR. GARTEN: I think it's a mistake.

20 CHAIRMAN MEITES: All right. Well, what we're  
21 doing is we are repeating the problem we had with the  
22 personnel manual. We are getting ourselves in the

1 swamp of drafting.

2 MS. SINGLETON: It's fine with me, as long as  
3 there was a rationale for putting that sentence in  
4 about the list, that in fact the grantees are not as  
5 familiar with that requirement or that it's helpful to  
6 point that out to them when they try to assert a  
7 blanket privilege. I guess I've answered too many  
8 requests for document production.

9 MS. SARJEANT: It was a rational decision.

10 MS. SINGLETON: Yes. Right. Okay.

11 MS. PERLE: I just want to say, I mean, I  
12 understand your concern and I share it to a certain  
13 extent. But I don't have any major -- I don't think  
14 there's any major objection since programs who are  
15 familiar with the protocol know that they have to do  
16 this anyway. So if LSC staff thinks it's helpful to  
17 reassert it, I don't think that there's any major  
18 objection from the field.

19 CHAIRMAN MEITES: Well, are there views of the  
20 committee members as to the last sentence? Can we do  
21 without it to avoid the ambiguity?

22 MS. SINGLETON: That being the red lines

1 suggested addition?

2 CHAIRMAN MEITES: Yes. Just get rid of the  
3 last sentence.

4 MS. PHILLIPS: If it's covered in the --

5 CHAIRMAN MEITES: Right. The other document.  
6 The protocol.

7 MR. HALL: I agree.

8 CHAIRMAN MEITES: All right. Why don't we do  
9 that. Why don't we drop the last sentence, make the  
10 other drafting change we talked about, and does that  
11 complete our discussion of this? Good. Thank you very  
12 much.

13 MS. TARANTOWICZ: Thank you.

14 CHAIRMAN MEITES: And is that something that  
15 we recommend that the board approve?

16 MS. SARJEANT: Yes.

17 CHAIRMAN MEITES: So you'll have a revised  
18 version for the board meeting this afternoon? Can you  
19 do that? Just handwritten is good enough if you just  
20 write it --

21 MS. SINGLETON: Just read it.

22 CHAIRMAN MEITES: Just write it -- or read it



1 aloud, the change.

2 MS. SARJEANT: Later today?

3 CHAIRMAN MEITES: Yes. It will be this  
4 afternoon.

5 Okay. Back to the agenda. We're getting  
6 there. We're more or less on time. We're going to do  
7 some fancy stepping here. The next item is  
8 presentation by OIG on its oversight of grantees'  
9 independent public accountants. This likely to be a  
10 fairly substantial discussion and the inspector general  
11 office has offered to give us a written report of this,  
12 which I think would be helpful for our discussion.

13 So what I propose to our committee is we ask  
14 the IG between now and our next board meeting to give  
15 us a written report, and we'll this on as an agenda  
16 item for discussion of that report. Is that  
17 satisfactory? Good.

18 MS. BeVIER: I think that's a great idea. I  
19 hope that in the written report they will give some  
20 real background about --

21 CHAIRMAN MEITES: Yes.

22 MS. BeVIER: -- what the obligations are and

1 so forth because I feel quite uninformed about what it  
2 is that's going on.

3 CHAIRMAN MEITES: That's an excellent  
4 suggestion. To give us some perspective to understand  
5 what you're doing and why you're doing it.

6 Okay. Consider and act on locality pay  
7 issues.

8 MR. JEFFRESS: Mr. Chairman, Charles Jeffress,  
9 chief administrative officer. Since the board  
10 teleconference on June 25th on this subject, the Senate  
11 Appropriations Committee has adopted language approving  
12 the continuation of LSC's locality pay program.

13 The full Senate may not act on that  
14 appropriation bill, though, until September or October,  
15 and then there will need to be a conference with the  
16 House. Either way, we don't expect final action by the  
17 Congress and signing by the President until some time  
18 in the fall.

19 Based on the board's vote to defer the  
20 locality payment for anyone whose pay would go above  
21 the statutory cap, the July payment for locality pay  
22 for those individuals was deferred and we're awaiting

1 further developments in Congress before we make any  
2 recommendation to you on doing anything differently.

3           So it would be our anticipation that perhaps  
4 at the October meeting, but perhaps not even then, we  
5 might be ready to make a recommendation to you on how  
6 to proceed. And we ask that you put "consider and act"  
7 on your agenda in the event that Congress did something  
8 in time for action to be taken. There have not been  
9 any -- sufficient action in Congress to make a  
10 recommendation to you, so I don't believe there's  
11 anything for you to act on at this time.

12           I would note that at the last board meeting,  
13 Mr. Fuentes asked for some comparative salary  
14 information for your consideration as you consider this  
15 locality pay issue. And that has been provided to you,  
16 a comparison to some other agencies similar to ours.

17           CHAIRMAN MEITES: Thank you. When is the next  
18 disbursement of locality pay for the highly salaried  
19 employees?

20           MR. JEFFRESS: They are twice a year, in  
21 January and July. So there's not another one  
22 scheduled -- the July one has been deferred. That's --

1           CHAIRMAN MEITES:  So there is no reason for  
2   the board to act again this calendar year.  Is that  
3   correct?

4           MR. JEFFRESS:  Certainly those folks who  
5   expected something in July would urge the board to act  
6   some time this calendar year.

7           CHAIRMAN MEITES:  Well, understood.  If  
8   Congress acts, we can act.  But you don't have to do  
9   any freezes or any other actions?

10          MR. JEFFRESS:  No further action is required.

11          CHAIRMAN MEITES:  Any question?

12          MR. STRICKLAND:  One question.  Charles, the  
13   language you're talking about in the appropriations  
14   bill, would that operate prospectively only?  Or, in  
15   other words, will it resolve the July question or not?

16          MR. JEFFRESS:  The language was discussed very  
17   carefully and intentionally with the staff of the  
18   Appropriations Committee.  And the word "continue" the  
19   program was put in there specifically to suggest that  
20   it was appropriate to pay the July payment and then  
21   continue to go forward.

22          MR. STRICKLAND:  Thank you.

1           CHAIRMAN MEITES: Fine. Thank you, Charles.

2           All right. The next item is discussion of an  
3 LSC corporate compliance program. Charles?

4           MR. JEFFRESS: Thank you, Mr. Chairman. At  
5 the last meeting, Mr. McKay and Mr. Meites had a  
6 colloquy about the compliance program and the existence  
7 of compliance programs in other organizations. And  
8 perhaps it would be of value to LSC to have such a  
9 program. And you asked that this item be scheduled for  
10 discussion at this committee meeting this time.

11           In anticipation of the committee discussion,  
12 we put together a staff task force to think about what  
13 some of the issues might be that the board would want  
14 to be cognizant of in the course of this discussion.  
15 That task force has met, and I have some feedback to  
16 you from that task force.

17           The task force is looking for direction from  
18 this committee and from the board as to what direction  
19 you would like to see LSC go in terms of a compliance  
20 program. So the task force has said that they will  
21 read carefully the transcript of this committee meeting  
22 and your discussion to get some idea of what direction

1 you would like us to go in terms of developing a  
2 compliance program for LSC.

3           The task force identified the elements of  
4 compliance programs that exist in other organizations,  
5 in private sector and in public sector and in nonprofit  
6 organizations. And we offer the elements for your  
7 consideration as you think about what kind of  
8 compliance program makes sense for LSC.

9           The one thing that's common to all compliance  
10 programs is a code of conduct, a code of conduct that  
11 applies to employees and to members of the board of  
12 directors. Sometimes they're different codes, but  
13 there is a code of conduct, perhaps one common, perhaps  
14 one for directors and a different one for staff.

15           It typically contains a statement of the  
16 corporation's program with respect to compliance. It  
17 contains a provision barring conflicts of interest. It  
18 typically contains a pledge to comply with all  
19 applicable laws, rules, and regulations.

20           It typically states some method of  
21 accountability for the code, that is, if somebody  
22 violates the code, what the consequences are. It

1 typically requires some protection of the corporation's  
2 assets and pledge not to misuse the corporation's  
3 assets. And it typically contains some confidentiality  
4 provisions whereby people at the corporation who come  
5 into possession of confidential information pledge to  
6 keep it confidential.

7           Those are common to all the codes. There are  
8 various other things that are incorporated in some  
9 codes and not in others. For example, pledges of fair  
10 dealing; examples of how the code might be applied in  
11 different situations. Sometimes there are special  
12 provisions for senior executives in terms of ethical or  
13 conflict of interest applications, whistleblower  
14 protections.

15           Sometimes the codes contain specific  
16 provisions for boards or board committee conduct or  
17 oversight. Sometimes they are provisions with respect  
18 to retaining records, maintaining records, or  
19 provisions on anti-discrimination and anti-harassment.  
20 But the code of conduct is a common to all of them and  
21 central to most compliance programs in private industry  
22 and in the government and nonprofit world.

1           One of the very specific issues with respect  
2           to the codes of conduct that the task force very much  
3           would like to hear from board members on is whether the  
4           code of conduct is a pledge by employees to abide by  
5           all the rules and procedures, disclose any conflicts  
6           which they have, or whether this code of conduct would  
7           have a disclosure requirement in addition whereby  
8           employees would have to disclose all their investments,  
9           their family's investments, their relationships to  
10          other organizations, whether members of the board would  
11          have to make those kinds of disclosures.

12           Typically, in private industry, it is an honor  
13          code where the employees and directors pledge to  
14          disclose any such conflicts. As you know from your own  
15          submissions to the U.S. Senate, in the public sector  
16          there often are disclosure requirements where  
17          presidentially appointed folks disclose certain things.  
18          In the federal government, senior executives have  
19          disclosure requirements imposed upon them.

20           So one very significant issue, one very major  
21          issue for the Corporation, is, in terms of adopting a  
22          code of compliance, is there some kind of disclosure



1 requirement that we should require, or should we adopt  
2 the private sector model, which is the obligations on  
3 the employee to disclose those kinds of potential  
4 conflicts.

5           The other provisions of compliance programs  
6 that are typically is a code of ethics, a basic code  
7 for all staff. Usually there are additional ethical  
8 requirements for senior executives and for board  
9 members.

10           A third element of these compliance programs  
11 is whistleblower protection, a statement of policy, and  
12 procedures for reporting and a promise to follow up on  
13 complaints for reporting to authorities when  
14 appropriate.

15           A fourth element is the administration of the  
16 program. Typically, someone in the corporation is  
17 assigned responsibility as the compliance officer to  
18 make sure that all the employees sign the pledges, that  
19 we track those pledges, that training is provided for  
20 employees on what the code of conduct requires, that  
21 there are periodic audits of ourselves with respect to  
22 whether or not we have complied.

1           And then the final element is an element of  
2 board oversight. And this is another area where the  
3 task force particularly is looking for some feedback  
4 from this committee or from the board as to what role  
5 the board would play in an LSC compliance program.

6           Some of the examples of things that are found  
7 in other compliance programs which we have seen include  
8 a board statement of principles for a code of conduct  
9 and for a compliance program; a commitment to  
10 orientation training for board members; a statement of  
11 the duties and responsibilities for board members; an  
12 ethics code; a code of conduct for board members; some  
13 assessment of what committee structure there would be  
14 on the board to oversee the compliance program; some  
15 periodic assessment by the board of whether or not the  
16 corporation and the board itself is performing in  
17 compliance with the code; and then some policy  
18 statement, at least a commitment to open communications  
19 between the board and the officers and employees of the  
20 corporation in terms of transparency and freedom of  
21 flow of information.

22           But those are the elements of compliance

1 programs which we have found, the task force has found.  
2 The task force had representatives from the IG's  
3 office, from management, from four offices within -- on  
4 the management side. I think there are eight of us on  
5 the task force. We've met three times and are doing a  
6 fair amount of research.

7 But we offer these elements of a program to  
8 you for your discussion and your comments, your review,  
9 your direction to us.

10 CHAIRMAN MEITES: Just before we open for  
11 discussion, does the LSC presently have a code of  
12 conduct? Are any of these parts presently in place?

13 MR. JEFFRESS: There are elements of these in  
14 various places within our employee handbook. For  
15 instance, we have some whistleblower protections for  
16 reporting to the IG. There are certainly in our  
17 bylaws. There are ethical requirements for members of  
18 the board. Senior officers, for instance, can't hold  
19 other -- receive other compensation without the board  
20 approval.

21 So there are different pieces of this  
22 different places. But I can't say that it's all pulled

1 together in something that I could point to as a  
2 compliance program or a code of conduct.

3 CHAIRMAN MEITES: All right. Comments from  
4 the committee? Mike?

5 MR. MCKAY: This sounds like a wonderful  
6 start, and it sounds like you have a very good task  
7 force in place. The thought occurs to me, and perhaps  
8 you have discussed it, is that you might want to  
9 consider, if you haven't already, reaching out to  
10 governmental entities that have compliance programs in  
11 place or going to folks in the private sector.

12 Because I've seen some outstanding compliance  
13 programs, and having a telephone conference with some  
14 of those folks, perhaps looking at some of their  
15 programs and stealing some of their features that might  
16 work for us. And I encourage you to do that because  
17 there's no reason to be reinventing the wheel when it's  
18 been invented by other folks.

19 MR. JEFFRESS: We have collected copies of  
20 programs and codes of conduct from probably hundreds of  
21 different places to look at. We have not had any  
22 conversations, unless some individuals on the task

1 force may have reached out to some other individuals.

2 For instance, I've gone to my counterpart at  
3 the Corporation for Public Broadcasting and asked what  
4 you do. So there are some conversations that have  
5 started, but we will do more of that.

6 MR. MCKAY: Great. And again, all the things  
7 that you've listed I think are wonderful. One thing I  
8 didn't hear you mention, but I encourage you to  
9 consider, is create a vehicle that would facilitate  
10 submissions of concerns from people confidentially.  
11 That is, someone, even though there is a solid  
12 whistleblower protection and so forth, they're afraid  
13 that something might could happen to them.

14 To encourage people to submit a complaint or  
15 an observation about illegal activity or activity in  
16 violation of our regulations confidentially, and that's  
17 done with a confidential box placed somewhere and/or a  
18 confidential hotline that would come in, and I'd  
19 encourage you to consider that as well.

20 I think it would reduce the likelihood of some  
21 of the confidential communications that happened years  
22 ago, or anonymous letters that went outside of the

1 Corporation complaining about alleged irregularities  
2 inside the Corporation. We could encourage folks to  
3 let us know internally even though they don't want to  
4 identify themselves. We want to be hearing from them  
5 first rather than hearing from Congress or --

6 MR. JEFFRESS: Somebody else.

7 MR. MCKAY: Yes. That's right.

8 CHAIRMAN MEITES: Jonann?

9 MS. CHILES: Yes. Based upon what you just  
10 laid out for all of us, I'll just say that I like the  
11 idea of a code of conduct in the form of a pledge with  
12 some training, some form of training. I don't know  
13 that the disclosure element is necessarily required.

14 And I would worry about stepping on the  
15 policies that are already laid out in the bylaws and  
16 the employee handbook. So I would be in favor of  
17 something a little more general as opposed to specific  
18 or as opposed to a code of conduct.

19 But I think it's a great idea, and you've  
20 obviously done a lot of work.

21 CHAIRMAN MEITES: Mike?

22 MR. MCKAY: And Jonann's comment reminds me of

1 one comment I wanted to make dealing with that  
2 particular point, that is, additional disclosures.  
3 What I have seen in those annual reports where every  
4 employee and member of the board of directors signs it  
5 saying, I've read the code of conduct. I promise to  
6 adhere to it in the forthcoming year.

7 But there's also a provision in there that  
8 says, and here are my disclosures of potential  
9 conflicts -- my spouse works for this corporation or  
10 something. Instead of requiring a list of all your  
11 financial interests and ownerships, you just simply  
12 say, here are potential or actual conflicts with the  
13 code, and I'm listing it.

14 And where I've seen it happen, my wife works  
15 for so-and-so, I have thus recused myself from all  
16 discussions where we've encountered dealings with that  
17 particular entity.

18 CHAIRMAN MEITES: Well, from the two comments  
19 I've heard, I think that there is some sense that this  
20 task force should go on to the next step. And given  
21 the wealth of materials you have to crib from, that you  
22 put something together in writing.

1           Is that the next step that we take? Lillian?

2           MS. BeVIER: I think I would -- I think I  
3 might be saying what Jonann said in a slightly  
4 different way, and that is to be sure that -- there's a  
5 lot of stuff we already have. And if that's just put  
6 into this compliance program as kind of an  
7 organizational matter, then rather than sort of saying  
8 a compliance program plus the bylaws, the this, the  
9 that, and so forth, we want to have it -- it's just  
10 gathering that all together, maybe by cross-referencing  
11 or whatever.

12           I just don't want to -- let's not just  
13 reinvent the wheel. There seems no point in having  
14 redundant or additional things specified in the code of  
15 conduct.

16           And as to the -- I'm not sure what your  
17 question was about what role the board would play.

18           MR. JEFFRESS: I think the task force is  
19 reluctant to tell the board which committee should have  
20 oversight, and how the committee should exercise its  
21 oversight, and whether the board wants to do periodic  
22 reviews and audits, or whether the board wants its own



1 codes.

2 MS. BeVIER: I would suggest you would --

3 CHAIRMAN MEITES: Why don't you address that  
4 by in whatever you're going to draft for us, just raise  
5 those questions for us so we know what we should be  
6 thinking about. Does that make sense to -- Mike?

7 MR. MCKAY: Yes. I would suggest that you  
8 raise it as an issue and give us options. I would  
9 encourage -- my argument to the board would be, just to  
10 give you a hint at least where I'm coming from, is that  
11 the board should have -- I'm confident has a very  
12 strong interest in the subject of compliance, and that  
13 will be reflected in the structure that's proposed,  
14 whether it be either a compliance committee or one of  
15 the committees would be given the responsibility.

16 And the chair of that committee or the  
17 chairman of the board would be the point person to  
18 communicate to the entire organization how important  
19 compliance is because folks at the highest level of the  
20 Corporation have indicated that importance. And that  
21 should be reflected in the structure that we ultimately  
22 have got.

1           CHAIRMAN MEITES: Does that help, Charles, in  
2 where we'd like you to go for the next step?

3           MR. JEFFRESS: That certainly does help. I  
4 think that was some of the feedback that the group was  
5 interested in. The next step we would anticipate is,  
6 obviously, continue to work. You'll probably have some  
7 kind of status report, maybe some working papers, in  
8 October in anticipation -- perhaps we could get a full  
9 recommendation to you -- after further discussion in  
10 October, a full recommendation to you in the January  
11 meeting of the board.

12           CHAIRMAN MEITES: I think that schedule is  
13 acceptable. Why don't we proceed on that basis.

14           The last action item is staff report on  
15 dormant class actions. We have four minutes. Can we  
16 do it in four minutes?

17           MR. FORTUNO: We certainly can. You have  
18 a memo addressing that very subject. It's dated  
19 July 12th. It appears at page 180 of your board book.  
20 I'm happy to answer questions about that.

21           But basically what it says is that there are  
22 four grantees of our 137 or so that have some of these

1 dormant class actions. One of the four grantees has  
2 secured counsel on a backup basis. So if the case ever  
3 becomes active, there's counsel already in place to  
4 take it over.

5 The other three grantees simply report that  
6 they continue to seek substitute counsel, some with a  
7 little greater success than others. But in any event,  
8 that's the total number of programs, other than the one  
9 with the backup counsel, that have dormant class  
10 actions and are working on getting out of them. Nobody  
11 has said that they're unwilling. They've simply said  
12 that they're working on getting substitute counsel,  
13 which has proven to be difficult.

14 CHAIRMAN MEITES: And --

15 MR. FORTUNO: Was that under four minutes?

16 CHAIRMAN MEITES: There's time for questions.

17 And these cases, of course, all date -- are pre-1996  
18 cases, as we know.

19 MR. FORTUNO: Yes.

20 CHAIRMAN MEITES: All right. And from your  
21 report, since you are a point person on this, it sounds  
22 to me as if you're satisfied that they understand the

1 importance of this.

2 MR. FORTUNO: Yes.

3 CHAIRMAN MEITES: And they understand our  
4 position on all this?

5 MR. FORTUNO: They certainly seem to be. And  
6 they've been very responsive to our requests for  
7 updates.

8 CHAIRMAN MEITES: Questions? Comments?

9 (No response.)

10 CHAIRMAN MEITES: Good. Thank you very much.

11 MR. FORTUNO: Thank you very much.

12 CHAIRMAN MEITES: All right. Any other  
13 business to come before our committee?

14 (No response.)

15 CHAIRMAN MEITES: More public comment? I'd  
16 like to invite the gentleman who has remarks on  
17 Mr. Carmack to take a seat. He has more than a minute.

18 MR. McBRIDE: To be very brief, Mr. Chairman,  
19 I should first give credit where credit is due. I  
20 called our former director, Ashley Wiltshire, who,  
21 despite his 40 years of residence in Nashville and an  
22 interest in Nashville history, couldn't tell me.

1           But he called the eminent Southern historian,  
2 John Edgerton, who is, as some of you may know, the  
3 author of several books on the civil rights movement  
4 and the history of the South generally.

5           And Mr. Carmack is a lawyer admitted to the  
6 bar in 1879, elected to Congress in 1901, where he was  
7 known for his fiery attacks on American imperialism and  
8 on monopolies, railroads, and liquor. For any one of  
9 those reasons, he was defeated in 1906.

10           (Laughter.)

11           MR. McBRIDE: And after some time became  
12 editor of the Nashville Tennessean newspaper, where he  
13 continued his attacks on these issues in editorials,  
14 and particularly attacked a good friend of the  
15 then-governor, Duncan Cooper, who shot him on the  
16 streets of Nashville on November 9, 1908.

17           CHAIRMAN MEITES: Fatal shooting?

18           MR. McBRIDE: Pardon?

19           CHAIRMAN MEITES: That was a fatal shooting?

20           MR. McBRIDE: Yes.

21           MS. SINGLETON: Is that why the statue?

22           CHAIRMAN MEITES: Please, Herb.

1           MR. GARTEN: I still don't understand why he  
2 has such a preeminent position in front of the  
3 statehouse, and two ex-presidents of the United States  
4 are in side yards.

5           MR. McBRIDE: Well, Ashley didn't ask that.  
6 I'm sure there's another story there, which may have to  
7 wait until your next meeting.

8           CHAIRMAN MEITES: Thank you very much. Our  
9 committee will accept a motion to adjourn?

10                                           M O T I O N

11           MR. McKAY: So moved.

12           CHAIRMAN MEITES: Second?

13           MS. SINGLETON: Second.

14           CHAIRMAN MEITES: We're in adjournment. Thank  
15 you very much.

16                                           (Whereupon, at 11:29 a.m., the committee was  
17 adjourned.)

18                                           \* \* \* \* \*

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