

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE
OPEN SESSION

Friday, April 15, 2011

1:52 p.m.

The Westin Hotel - Richmond
6631 West Broad Street
Richmond, Virginia 23238

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairman
Robert J. Grey, Jr.
Harry J.F. Korrell, III
Laurie I. Mikva

OTHER BOARD MEMBERS PRESENT:

Sharon L. Browne
Victor B. Maddox (by telephone)
Martha L. Minow
Julie A. Reiskin
Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT:

James J. Sandman, President
Kathleen Connors, Executive Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Katherine Ward, Executive Assistant, Office of
Legal Affairs
Mattie Cohan, Senior Assistant General Counsel, Office
of Legal Affairs (by telephone)
John A. Constance, Director, Office of Government
Relations and Public Affairs
Jeffrey E. Schanz, Inspector General
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel, Office of the Inspector General
Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General
David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the
Inspector General
Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General
Janet LaBella, Director, Office of Program Performance
Jeffrey J. Morningstar, Director, Office of Information
Technology
Bristow Hardin, Program Analyst III, Office of Program
Performance
Michael A. Genz, Program Counsel III, Office of Program
Performance
John E. Whitfield, Executive Director, Blue Ridge Legal
Services, Harrisonburg, Virginia

Don Saunders, National Legal Aid and Defenders
Association (NLADA)
Linda Perle, Center for Law & Social Policy (CLASP)

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

2 (1:52 p.m.)

3 CHAIRMAN KECKLER: Good afternoon. I'll now
4 call to order a noticed meeting of the Operations and
5 Regulations Committee, noting a quorum to exist, and
6 ask for a motion to approve the agenda.

7 M O T I O N

8 MR. GREY: Move.

9 MS. MIKVA: Second.

10 CHAIRMAN KECKLER: All in favor?

11 (A chorus of ayes.)

12 CHAIRMAN KECKLER: The motion is approved.

13 I will now entertain a motion to approve the
14 minutes from the committee's last meeting of January
15 28th.

16 M O T I O N

17 MS. MIKVA: So moved.

18 MR. GREY: Second.

19 CHAIRMAN KECKLER: All in favor?

20 (A chorus of ayes.)

21 CHAIRMAN KECKLER: The motion is adopted, and
22 we can now begin the substantive business of the

1 committee by considering the Draft Final Rule to 45 CFR
2 part 1609, which was published previously, and has now
3 received public comment and is moving towards adoption
4 as a Final Rule of our regulations.

5 Before acting on this, I will ask Ms. Mattie
6 Cohan, who is on the phone, to report on the results of
7 our rulemaking process up to this point. Mattie?

8 MS. COHAN: Yes. Thank you. For the record,
9 this is Mattie Cohan, Senior Assistant General Counsel
10 for LSC.

11 Charles basically just gave two-thirds of my
12 presentation, so that'll make it quick. On February
13 4th, the Corporation published a Notice of Proposed
14 Rulemaking proposing to amend LSC's regulation at 45
15 CFR Part 1609 on fee-generating cases to clarify that
16 the regulation applies only to a recipient -- to cases
17 that the recipient would take with its LSC funds or
18 private non-LSC funds, and does not apply to the
19 recipient's use of its available public funds.

20 As noted, we proposed that to make that
21 change. We received a grand total of three comments on
22 the proposed rule, all of which fully supported the

1 change and did not suggest any amendments or
2 alterations to what we proposed. So accordingly, we
3 have a Draft Final Rule for your consideration to amend
4 Part 1609 as proposed, without further change.

5 So we would be asking that the committee
6 recommend to the board the adoption and publication of
7 the Final Rule.

8 CHAIRMAN KECKLER: And to remind everyone on
9 the board and for the record, Mattie, could you recall
10 to us that the adoption of this change, it is my
11 understanding, would not change the operational nature
12 at LSC in terms of our oversight and accounting and so
13 on. Is that correct?

14 MS. COHAN: That's correct. The proposed
15 change is essentially in the nature of a technical one,
16 to clarify how we believe the regulation was always
17 intended and has in fact in practice been understood
18 and enforced. The regulation was amended in 1996 or
19 '97, and there was some language that changed.

20 But the preamble and everything else suggests
21 that no substantive change was intended to be created
22 by that previous language cleanup, and really all that

1 language cleanup did was unfortunately create a little
2 bit of an ambiguity. 1609 is a regulation that
3 implements a restriction that is in the LSC Act. It
4 does not come from the '96 Appropriations Act
5 restrictions.

6 And therefore it is a restriction on the use
7 of corporate and private non-LSC funds, and not a
8 restriction on the use of available public funds. And
9 the proposed change would just clarify that in the
10 regulation.

11 CHAIRMAN KECKLER: Who were the comments from
12 that were supportive of the change?

13 MS. COHAN: The National Legal Aid and
14 Defenders Association, the Legal Aid Action of
15 Wisconsin, and the Neighborhood Legal Services of Los
16 Angeles County.

17 CHAIRMAN KECKLER: Okay. Thank you.

18 I'll now open it up for discussion, I think,
19 if anyone has any comments on the Draft Final Rule.
20 Dean Minow?

21 DEAN MINOW: Charles, I'm not a member of the
22 committee, but I just wanted to clarify. This pertains

1 to tribal funds as well as public funds. Is that
2 correct?

3 MS. COHAN: Yes. Tribal funds basically
4 are -- a recipient is permitted to do whatever it can
5 do with those tribal funds.

6 DEAN MINOW: Tokyo.

7 CHAIRMAN KECKLER: Julie?

8 MS. REISKIN: I apologize. I'm not a member
9 of the committee, either, but I have two questions.

10 One, is it correct that public non-LSC funds
11 is just government money from some other source other
12 than LSC, like state or -- is that correct?

13 MS. COHAN: That's correct. It would be state
14 funds, IOLTA funds.

15 MS. REISKIN: Okay. And did I read it
16 correctly that these are not entity restrictions, but
17 it had been interpreted that way incorrectly, that
18 these were entity restrictions and that's changing?

19 MS. COHAN: It's never been interpreted and
20 enforced as an entity restriction. It was, rather,
21 what was intended as a cleanup of the language when the
22 regulation was amended in '97. The language ended up

1 implying it was an entity restriction rather than a
2 funds restriction.

3 But the restriction itself has its grounding
4 in the LSC Act, and LSC's regulation at 45 CFR Part
5 1610 lists it clearly -- and both Part 1609, the Act
6 restriction, and the regulatory restriction -- as a
7 funds restriction and not among the list of entity
8 restrictions.

9 So currently, the way the regulation reads is
10 at odds with Part 1610, and it's at odds with the clear
11 understanding and practice of the Corporation. And so
12 the amendment is really in more of a technical nature,
13 to make the regulation clearly reflect what it seems
14 intended to be.

15 MS. REISKIN: Which is a funds restriction?

16 MS. COHAN: A funds restriction. Correct.

17 MS. REISKIN: Okay. Thank you.

18 MS. COHAN: And the distinction between a
19 funds restriction and an entity restriction, as I'm
20 using those terms of art, is that the restrictions that
21 come out of the LSC Act, by their own terms, apply to
22 the use of LSC funds and the use of a recipient's

1 private non-LSC funds, and not to all of the funds,
2 including the public funds; as opposed to the entity
3 restriction, which applies to all of the funds except,
4 of course, as Dean Minow points out, the tribal funds.

5 MS. REISKIN: Thank you.

6 MS. MIKVA: Mattie, this is Laurie Mikva.

7 MS. COHAN: Did that answer your question?

8 MS. REISKIN: Yes. Thank you.

9 MS. MIKVA: And I'm on the committee, so I'm
10 awfully late in the game to be asking this. But can
11 you explain to me why LSC restrictions apply to private
12 funds? Did you hear me?

13 MS. COHAN: If somebody was speaking, I just
14 totally lost you.

15 MS. MIKVA: Sorry, Mattie. This is Laurie
16 Mikva. Can you explain to me why LSC restrictions
17 apply to other private funds?

18 MS. COHAN: Because the LSC Act provides that.

19 MS. MIKVA: Thank you.

20 CHAIRMAN KECKLER: All right.

21 MS. COHAN: If you hang on a second, I can
22 fish out the citation, if you can bear with me.

1 CHAIRMAN KECKLER: Well, while you're doing
2 that, Mattie --

3 MS. COHAN: Yes?

4 CHAIRMAN KECKLER: -- it's been brought to my
5 attention that there are a couple of typographical
6 errors in the Draft Final Notice. I don't know if
7 those were noted by any of the grantees. They're
8 non-substantive. Can we just send those to you without
9 any further sort of procedural difficulty?

10 MS. COHAN: Yes. Absolutely.

11 MS. PERLE: Do you need public comment on
12 this?

13 MS. COHAN: Hang on a second. You know, of
14 course when you want to find a citation, the minute you
15 want to find it, it disappears into the Act. I want to
16 read the --

17 CHAIRMAN KECKLER: That's fine. We can follow
18 up, I think, looking at everybody, on that since it's
19 in the Act, which is available to us.

20 MS. COHAN: Yes.

21 CHAIRMAN KECKLER: I think at this time,
22 before we move on to further consideration, I will open

1 it up for public comment on this rule change. Go ahead
2 and speak. Turn it on and say who you are.

3 MS. PERLE: Hi. This is Linda Perle from the
4 Center for Law and Social Policy and the National Legal
5 Aid and Defenders Association. Ours was one of the
6 comments that was submitted.

7 And I just wanted to say that we're totally in
8 support of this change. It reflects what was always
9 our understanding of the way the rule should be read
10 and what was required under the LSC Act. And it's
11 Section 1010(c) of the Act that requires the
12 application of the restriction to private funds.

13 MS. COHAN: Thank you. Yes, I had just pulled
14 that up. Thank you.

15 CHAIRMAN KECKLER: All right. Thank you very
16 much, and thank you for your comments on our
17 rulemaking.

18 If there are no other comments, I believe that
19 the proper procedure at this time would be to entertain
20 a motion to recommend adoption of the Final Rule to the
21 board. Is that correct?

22 MS. COHAN: Yes. That's correct.

1 CHAIRMAN KECKLER: Okay. I will entertain
2 such a motion at this time.

3 M O T I O N

4 MR. GREY: So move.

5 CHAIRMAN KECKLER: Is there a second?

6 MS. MIKVA: Second.

7 CHAIRMAN KECKLER: Hearing a motion properly
8 seconded, I will now ask, unless there is further
9 discussion, ask for those in favor.

10 (A chorus of ayes.)

11 CHAIRMAN KECKLER: Opposed?

12 (No response.)

13 CHAIRMAN KECKLER: Hearing no opposition, the
14 ayes have it and the motion carries, and we will
15 recommend the adoption of this Draft Final Rule to be
16 converted to a Final Rule with typographical errors
17 corrected.

18 MS. COHAN: Excellent.

19 CHAIRMAN KECKLER: We can now move on to the
20 next item on our agenda, which is more of a new topic
21 for us, at least in the board meetings -- we've heard a
22 little bit about it earlier -- regarding some issues

1 with the 2010 census and the very important issue of
2 the relationship between the census numbers and the
3 formula by which our funds are distributed to our
4 grantees.

5 MR. CONSTANCE: Thank you, Mr. Chairman. For
6 the record, I'm John Constance, director of government
7 relations and public affairs for the Corporation.

8 And directing your attention to page 74 of the
9 board book, where we have a memo from my colleague
10 here, Mr. Bristow Hardin, to bring you up to date as to
11 what has been done since the January board meeting when
12 we presented to the board the fact that there is a need
13 going forward for a statutory change.

14 Given the fact that the LSC Act currently
15 points to the decennial census as the means to provide
16 distribution of funding based on poverty population,
17 and given the fact that the 2010 decennial census
18 provides no estimates of the distribution of the
19 poverty population around the country, we're faced with
20 a need for a change in the appropriation.

21 I'm leading off only because we will
22 be -- GRPA will be working with the Hill on this, as

1 directed by management and your committee and this
2 board. And I just wanted to say a few words about the
3 timeline and where we are right now in that regard.

4 We have already initiated very, very
5 preliminary discussions with the Hill. The staff is
6 aware of the issue, appropriations and authorizing
7 committee staff. We have not conveyed any specifics
8 other than the fact that it is in fact an issue and
9 that we would be coming forward with recommendations in
10 the future.

11 While we are an independent 501(c)(3)
12 corporation and don't have to clear things through the
13 Administration in terms of legislative changes, the
14 nature of this particular legislative change is
15 something that probably informs a course where that
16 would be a good idea.

17 First of all, it involves a core function of
18 the Corporation and distribution of funding. Second of
19 all, we hope we would have Administration support going
20 forward in something like this, in particular given the
21 fact that an integral part of what we will be doing
22 will be a relationship with the Bureau of the Census

1 and the Department of Commerce, to the effect that we
2 are reaching out for their support. The
3 Administration's support would be helpful.

4 Also, as in any legislative changes, the
5 Administration will of course be asked for a statement
6 of their position. So working with them at the front
7 end on this makes very good sense.

8 What that does in making that recommendation
9 or that decision is that it impacts the first critical
10 part of this timeline. And that would be to have by
11 the 1st of September a recommendation to the
12 Administration that would go forward with our 2013
13 budget proposal, that being the traditional time and
14 conveyance that these kinds of legislative
15 recommendations go forward to the Administration.

16 That would be really our first substantive
17 deadline. So the work that Bristow has carried out,
18 and the hard work that he has done, I might add, that's
19 outlined in this memo, really is the beginning to that
20 process to get us to that point.

21 Once we make that recommendation, I don't know
22 that we're constrained. I certainly don't feel

1 constrained to stop there. We'll certainly continue
2 our dialogue with the Hill and do that in concert with
3 OMB. But in terms of getting the ball rolling, that's
4 clearly the first critical point where we would need to
5 kick off.

6 CHAIRMAN KECKLER: Let me pause right there in
7 the sense that I understand the idea. Who is really
8 our point of contact in the Administration for this
9 sort of thing? Is it the Office of Management and
10 Budget, or is that -- that's what we do?

11 MR. CONSTANCE: Yes. It would go through our
12 budget examiner. Typically, these kinds of legislative
13 changes follow the same track. And they would then go
14 to legislative affairs. We would typically be asked to
15 sit down with the legislative affairs portion of OMB
16 and discuss it with them, lay out the rationale.

17 And again, all expectations would be I think
18 we'd be joined by the Bureau of the Census in carrying
19 forward what that recommendation would be. I mean,
20 their expertise is obviously going to be key to this,
21 and I think it would be -- it's not going to change
22 their legislation, but their support to us and the

1 change of ours would be helpful.

2 CHAIRMAN KECKLER: Well, and the other obvious
3 implication of what you're saying is that a timeline
4 that involves board action -- I can probably suggest to
5 you that not extensive board action is going to be
6 taken today, as we're just engaging with this topic
7 seriously -- would involve the -- only the July meeting
8 is intervening between now and that September 1st date
9 that you've mentioned.

10 MR. CONSTANCE: Right. The only scheduled
11 meeting.

12 CHAIRMAN KECKLER: That's the only scheduled
13 meeting. Yes. Well, all right.

14 (Laughter.)

15 MR. CONSTANCE: If John Levi were here, with
16 all due respect, I think he'd probably point that out.

17 CHAIRMAN KECKLER: Good amendment. All right.
18 Well, I'll let you carry forward with your
19 presentation.

20 MR. CONSTANCE: Thank you.

21 MR. HARDIN: Good afternoon. For the record,
22 my name is Bristow Hardin. I'm with the Office of

1 Program Performance. And I would just like to update
2 you -- following John, update you on what has happened,
3 what work management has done since the last board
4 meeting, since our last report. And as part of that,
5 I'd just like to highlight some of the components and
6 also add more details, and of course respond to your
7 questions about what's outlined in this April 6th memo.

8 Firstly, the essence of the recommendation
9 that ultimately we'll have to make will have to do in
10 two areas, one of them with respect to the particular
11 types of data sets and methodologies that were used,
12 the major data sets out there, which our meetings with
13 the Census Bureau staff have confirmed.

14 You've heard us talk about, on one hand, the
15 American Community Survey, and on the other hand, the
16 Small Area Income and Poverty Estimates, the so-called
17 SAIPE. What one provides is greater precision, which
18 is the American Community Survey, which is based on
19 five years of interviews, six years of data. What the
20 SAIPE provides, it will have higher margins of error,
21 but it's much more timely in terms of the information
22 it provides.

1 For example, for the first time, that
2 basically the SAIPE data are two years more recent or
3 two years more current than are the ACS data. Okay?
4 The second aspect of the recommendation, which was
5 entwined with the first, is the range and type of
6 discretion, if any, that would enable LSC to most
7 effectively, efficiently, and accurately accomplish the
8 goal of allocating funds as closely as possible to the
9 distribution of the poverty population within service
10 area.

11 And two areas of possible discretion would
12 be -- on one hand would be the actual selection and use
13 of databases, data sets; and secondly would be the
14 allocation, the frequency of the allocation. And as
15 you pointed out, Mr. Chair, that given the September
16 deadline, we'll need to have a recommendation to the
17 board by July or whatever meetings were referenced.

18 And in order to do this, we basically have to
19 complete the following sets of activities: an ongoing
20 analysis of the data sets and their implications at the
21 ground level, at the service area level; much more
22 analysis of the areas of discretion and what would and

1 would not be appropriate; and lastly, input from the
2 appropriate stakeholders and experts, such as the
3 Census Bureau, the ABA, grantees, et cetera, and the
4 public.

5 Now, one of the things, as John intimated, a
6 foundation for whatever we do will be the input of the
7 Census Bureau staff and what their recommendations are,
8 what their analyses are. As noticed here, we've
9 already had a preliminary meeting with them, with
10 management, the president and other staff. We've also
11 had ongoing contact with them for the last several
12 months. And that will continue, undoubtedly.

13 With respect to the LSC recommendations, the
14 role they could provide, it could range -- everything
15 that they could provide us -- from a formal
16 recommendation from the Secretary of Commerce saying,
17 we recommend X, that you do this, to less formal
18 analysis and recommendations that they've reported they
19 do for people, other agencies, on a regular basis.

20 And as we've also talked about, for some
21 services there are not published data from either the
22 American Community Survey or from the SAIPE for

1 certain areas, such as we have three counties in
2 California which are sub-county which are divided up
3 among service areas. ACS data are county-level, at
4 least in the published data sets.

5 Likewise, in Massachusetts some of the service
6 areas are divided up among townships, and so you would
7 have to go below the published data of the ACS to get
8 those data. But from our conversations with Census
9 Bureau staff, we could handle that at least with
10 respect to the ACS data.

11 Essentially, they could tell us how to run the
12 numbers, and we could do it quite easily because we've
13 done it in the past in similar ways because it's just
14 basically information from census block grouping level,
15 and we could do that.

16 With respect to discretion with the data sets,
17 what it appears at first glance is that some discretion
18 with respect to the selection and use of data sets
19 would enable us to do our jobs most effectively and
20 would best serve the grantees' interest-wide.

21 First of all is why we're even having this
22 conversation today. The time and the resources that

1 we're doing right now arise from the fact that the
2 prescriptions that are in current legislation, these
3 types of issues can change. For example, it's not
4 unlikely that perhaps the quality of available data
5 will change over the next several years -- no certainty
6 it will or not, but it's possible that it could.

7 One way or the other, LSC will need to use a
8 combination of data sets because uniform data sets are
9 only available for some of our service areas. So one
10 way or another, we're going to have to be using
11 combinations.

12 It may be beyond the fact that we will have to
13 use already -- since there are missing data sets,
14 consistent data sets, for all areas, we might also find
15 that it would be most accurate and effective to
16 integrate the use of different data sets in our
17 consultations with the Census Bureau.

18 Also, other agencies, as you noted in the
19 April 6th memo, other agencies have a level of
20 discretion to make these decisions in order to best
21 allocate the funds and to assure it's most effectively
22 allocated.

1 And finally, if we had specific parameters, it
2 would guarantee, or at least provide great assurance,
3 that this discretion would be exercised in the fashion
4 that would be most appropriate and effective. And by
5 that, I mean the parameters, of course, would be the
6 current statutory requirement.

7 And going forward, we assume it would stay the
8 same, that funds were allocated in proportion to the
9 distribution of the poverty population; secondly, that
10 said distribution would be based on the best available
11 data sets; and thirdly, that the selection and use of
12 those data sets would be based on the recommendations
13 and guidance of the U.S. Bureau of the Census.

14 Those types of parameters would certainly
15 provide a great assurance that this would be the most
16 effective outcome in terms of efficiency of
17 administration and for the allocation of funds among
18 grantees.

19 With respect to the other area of potential
20 discretion, which would relate to the allocation
21 frequency, currently, you think about that the
22 reallocation cycle basically should have two goals. On

1 one hand is to ensure that the funds are distributed as
2 accurately as possible with respect to the distribution
3 of the poverty population; but on the other hand, to
4 ensure that grantees have appropriate stability and
5 ability to plan so they can have an effective
6 operation.

7 Now, the decennial census, of course,
8 prevented there to be any type of redistributions any
9 more frequently than every ten years. With data sets
10 now -- the ACS and the SAIPE data sets are updated on
11 an annual basis, so this provides the opportunity to
12 make changes, reallocations, much more frequently and
13 will ensure that the changes are more responsive to
14 shifts in the poverty population.

15 Now, the reasonable time frame for that: Our
16 conversations with folks, various folks, indicate that
17 three to five years might be appropriate. That's
18 something that requires further research to think what
19 would be most appropriate, again, to balance out
20 ensuring it's consistent with shifts in the poverty
21 population, and also providing appropriate stability.

22 One interesting piece of this, however, is

1 with respect to the range of uncertainties and
2 complexities that I talked about with respect to the
3 data sets, there are no similar types of uncertainties
4 with respect to the allocation.

5 By that I mean it's either going to be that
6 there are not going to be changes -- the changes in
7 data sets will not affect how frequently you should
8 reallocate, for example. The question of reallocation
9 is, what can best ensure stability and also the
10 distribution of funds. That's not going to be affected
11 by the range of complicated factors that affect the
12 distribution -- I mean, the use of data sets.

13 Also, there wouldn't be the same clear
14 parameters in judging and guiding LSC in terms of what
15 discretion to use. But these are both areas that
16 require our further consideration.

17 Now, one quick thing here. We've done some
18 preliminary analysis of the changes in the distribution
19 of the poverty population from the 2000 census, which
20 was based on basically 1999 data, to using the data
21 from the 2009 American Community Survey annual data set
22 and the 2009 SAIPE, which have data for 2008 and 2009,

1 those two-year periods.

2 And what they've shown is that -- of course,
3 no surprise -- there are very significant shifts in the
4 distribution of the poverty population. Both the SAIPE
5 and the ACS have similar results. Just for what it's
6 worth, the SAIPE is not recommended for state level, so
7 I should tell you that up front, But it still gives you
8 an idea of the types of changes that they both predict.

9 From 2007 -- I mean, the 2000 census, excuse
10 me -- to 2009 data sets, the SAIPE showed that for 26
11 states, their share of the relative poverty population,
12 their relative share of the national population, fell,
13 where 25 states saw their share increase. With the
14 ACS, those data showed that 25 states showed a decline
15 and 26 states showed an increase. Just one state was
16 different.

17 Now, for the range of changes, the SAIPE
18 ranges, one state it ranged up to as high as a loss of
19 29 percent in terms of their share of the poverty
20 population, to increases of 27 percent; whereas with
21 the ACS, it was as far as a 30 percent drop -- again,
22 this is relative to the overall population -- compared

1 to a 29 percent increase. So you can see there are
2 very large shifts that are happening.

3 Also, again, I should emphasize that these are
4 2008 and 2009 data, but a lot of the trends are clearly
5 there, especially since most of the shifts -- there'll
6 probably be more shifts, but so much of it from the
7 recent economic downturn was being reflected in the
8 2009 data.

9 Now, in terms of our next steps, in order to
10 meet the deadline we've talked about, our next step is,
11 imminently, we're going to send a notice to the
12 community -- by that, the broader community of
13 grantees, ABA, stakeholders, other legal services
14 funders, the general public -- that basically outlines,
15 from the LSC perspective, and identifies for folks that
16 there is a need for change, and what the change is; the
17 general process that is going to be conducted in order
18 to make the change; and our current status and our
19 current plans because as yet, there has been no formal
20 notification from LSC to the field or others about
21 what's happening.

22 We also will, of course, continue our ongoing

1 consultations with the Senate -- I mean, with the
2 Census Bureau, who have been very helpful in all of
3 this. We'll be maintaining consultations with the
4 grantees and stakeholders.

5 As I noted in the memo, OPP staff had been
6 having conversations, participated in calls with
7 members, two different calls with members of NLADA's
8 Civil Policy Group Resources Committee, which is the
9 grantees' committee or the representative of grantees
10 that are handling this issue.

11 And what was a good first step is we did
12 confirm that we're essentially on the same page in
13 terms of being able to work with the same data sets,
14 seeing that the numbers show the same thing, et cetera.

15 We of course hoped that would happen, but it was good
16 for us to confirm that we're on the same page.

17 So that's also our continuing analysis of the
18 discretion issues. And that essentially, I hope,
19 provides enough of a framework for you now.

20 CHAIRMAN KECKLER: Thank you for your
21 presentation. I notice the issue of -- I mean, there's
22 issues of discretion in terms of -- I'll just point out

1 before I open it up more broadly, there's at least two
2 levels of discretion in the sense that, how much
3 discretion should we seek, ultimately, in our
4 legislative change?

5 And how much discretion do we collectively as
6 an organization and board and management have with
7 regard to the LSC Act and the other ideas within that
8 that go beyond the specific outdated change that tied
9 us to the decennial census? What is our discretion
10 regarding other legislation that we have to work
11 within? And I think that that's something that I
12 personally would like to understand better before we
13 consider the different policy ideas in terms of funding
14 allocations.

15 With that, I will open it up for the rest of
16 the committee and the board. Dean Minow?

17 DEAN MINOW: Martha Minow again. Sorry, I'm
18 not a member of the committee.

19 It's a very compelling memo. We have to fix
20 the hole that the erroneous statutory reference makes.

21 But I would like to raise the question whether the use
22 of the word "discretion" is the most advisable word.

1 We certainly don't want to create a lobbying
2 opportunity or an appearance of any kind of politicking
3 around this. The word "discretion" seems to imply
4 that.

5 As I understand from the memo, Bristow, the
6 great work you've done so far is that the Bureau staff
7 indicate that census data do exist to meet between 90
8 and 95 percent of the needs, and so what we're talking
9 about is filling in, through the combination of data
10 sets, those areas that are not covered by what the
11 Census Bureau can provide.

12 I understand that that's not by reference to
13 the decennial census, but it is the data set -- or it
14 is the data sets that they have. And so I don't right
15 now have the most felicitous use of words, but I wonder
16 if there's a reference to a formula or a deference
17 again to the Census Bureau rather than implying that
18 LSC will be making a discretionary judgment about the
19 allocation formula.

20 As to the timing question, the second set of
21 discretion questions, I don't have a view.

22 CHAIRMAN KECKLER: Julie, please.

1 MS. REISKIN: Thank you. I'm not on the
2 committee, either. Julie Reiskin from the board.

3 My question is -- the thought of the
4 possibility of a 30 percent change for grantees has got
5 to be just mind-boggling for them. But my question is,
6 this has got to be affecting a lot of different -- I
7 know a lot of these decisions are based on the census,
8 and they made -- there was a big change in how it was
9 done.

10 This has got to be affecting a lot of other
11 similarly situated organizations. Has there been any
12 coming together or talking or forums for discussion to
13 find out what other people are doing? That's one.

14 And then the other question is, are there
15 other things that can be balanced -- and again, I don't
16 really see it as like discretionary -- but there are
17 areas where -- for example, it's more expensive to
18 provide services in a rural area than it is -- and then
19 there's parts of the country where it's more expensive.

20 So is it only poverty, people in poverty? Is
21 that the only factor? So that's just one question.

22 And then the other is, is there any collaboration

1 around this with other groups?

2 MR. HARDIN: By collaboration, I'm not sure
3 exactly who mean by that. I'm sorry.

4 MS. REISKIN: Well, this has got to be
5 affecting other organizations and other entities that
6 have to make funding distributions or other
7 distributions based on these numbers that now no longer
8 exist in the way that we used to have them.

9 So I guess it's about not reinventing the
10 wheel. Maybe some other group has figured out a good
11 way to do this. And is there any forum or organization
12 or -- I don't know what the right word is, but anything
13 where people who are affected by this are coming
14 together and talking about this?

15 MR. HARDIN: I think the short answer would be
16 no, and that is because many people -- many programs
17 are not necessarily -- are not, as we talked about
18 before, not required to use, as LSC is -- the degree to
19 which LSC is tied to just decennial census data, very
20 few others are tied to that.

21 And also, they have been -- others have been
22 preparing for this in a different way, other major

1 agencies, because as noted in this memo, I was
2 surprised to find that the biggest funding pots for
3 assistance for -- of assistance programs, already they
4 have significant discretion and they're not tied to the
5 decennial census or something per se, so that it's not
6 as profound a consequence for them as it is for us.

7 CHAIRMAN KECKLER: Just as a followup to
8 Julie's question, one of the things I noticed in some
9 of your earlier discussions, which is, I'm sure
10 well-known to everybody here, is that the regular
11 formula operates at 100 percent of poverty level in
12 terms of counting for all the states except for Alaska
13 and Hawaii.

14 I think I know why that is, but could you go
15 ahead and explain it?

16 MR. HARDIN: Well, at one point they wanted to
17 allow for additional income levels for those places,
18 and also for all sorts of other places, other states as
19 well -- I mean, other identified areas. And
20 ultimately, LSC did use some of the census data for
21 those areas that were mentioned in the data.

22 What ended up happening -- or the

1 Appropriations Act. What ended up happening is Alaska
2 is determined based on 125 percent of poverty, and
3 Hawaii is at 115 percent of poverty. But there are no
4 census data for 115, so that was calculated
5 historically in-house as just an arithmetic difference
6 between the 125 figure and the 100 figure.

7 CHAIRMAN KECKLER: So as an example, and
8 without any preference on it, one of the issues would
9 be -- that I meant by our flexibility or our
10 nonflexibility in this area is, are we required to do
11 that, to continue that practice or not? That would be
12 an example of a question that might come up in this
13 context, and that's what I meant by flexibility and
14 discretion.

15 Laurie?

16 MS. MIKVA: I don't know if you're aware that
17 in the past, Department of the Interior has collected
18 its own separate data on tribes and their members
19 because there's a whole set of treaty entitlements and
20 other determinations by Department of the Interior that
21 require that data.

22 And additionally, right now, given the gap

1 that occurred in the way the 2010 census was conducted,
2 a number of Indian country organizations, including
3 tribes who may be trying to, for instance, get VAWA
4 grants, DOJ grants, trying to substantiate the number
5 of poor people on or near the reservation and other
6 types of categories, they're reaching to what it is
7 hopefully Department of the Interior will have for them
8 that fills in some of the gaps created by the last
9 census.

10 And I don't know yet just what it is Interior
11 has at this time, but I think it might be worth your
12 inquiry --

13 MR. HARDIN: Okay. Thank you.

14 MS. MIKVA: -- not because our Native American
15 money is based on a demographic formula, but the data
16 that the Interior in the past has collected includes
17 how many people in the family, is it a single-parent
18 family, et cetera, indicia that could be valuable.

19 MR. HARDIN: Okay.

20 CHAIRMAN KECKLER: Well, unless there are
21 further questions by the board, I think we'll -- this
22 is a very important topic to which we will return,

1 either in July or before, I'm sure.

2 I was going to have -- I'll take public
3 comment on it now. That's a good suggestion, Laurie.
4 I was going to reserve it for after the next session.
5 But if there is any public comment on this, I'd
6 certainly welcome it now while it's all fresh in our
7 minds.

8 MR. SAUNDERS: Thank you. Thank you, Mr.
9 Chairman. I'll be very brief. Don Saunders from the
10 National Legal Aid and Defenders Association.

11 I just want to reiterate what Bristow said
12 with regard to our processes. In the past, the
13 decennial redistribution really has created significant
14 disruptions in the field. So we see this as an
15 opportunity to do a much more measured change to deal
16 with some of the issues you've addressed.

17 There are a lot of other issues involved in
18 this that go beyond the per capita distribution that
19 Ms. Mikva mentions, things about urban/rural delivery,
20 other sources of funds, whether or not -- as you know,
21 in the Deep South, your funds are almost all that's
22 there, whether or not there should be a factor there.

1 Over time, I think the community has come to
2 grips with the fact that a per capita distribution is
3 the one that is best, for reasons that we will certain
4 share with you as you go forward in your deliberations.

5 But we very much appreciate Bristow and John's
6 leadership in terms of working with our committee. We
7 are committed to -- you don't really get a consensus
8 with regard to the census because of the extremes you
9 heard. But we want to administer a very effective
10 conversation in the field and share that information
11 with you on a positive basis.

12 Going into it, I lean toward a certain amount
13 of discretion here because, as Dean Minow pointed out,
14 this is not something you want lobbied in the Congress.

15 That has certainly happened in the past. If a
16 particularly well-placed member of Congress is in a
17 state that lost 30 percent, you might see legislative
18 riders in that regard.

19 So to the extent it can be a conversation
20 before this board, in consultation with the various
21 stakeholders, we would very much support that. So we
22 look forward to continuing to work with your staff and

1 with your committee, sir. So thank you very much.

2 CHAIRMAN KECKLER: Thank you. And just as a
3 comment, this is obviously a sensitive and important
4 matter for the grantees going forward. It's central to
5 our -- so this is going to be something that I'm sure
6 we're going to be soliciting comments for the ultimate
7 recipients from.

8 MR. SAUNDERS: Thank you very much.

9 CHAIRMAN KECKLER: All right. Well, I think
10 the next topic I think we can be relatively brief about
11 at this point -- we'll see -- which is, it's listed as,
12 consider and act on strategic planning; not to say that
13 we're not going to be spending a lot of time on
14 strategic planning, as we've already started to do this
15 session, but that I'm not sure precisely what we're
16 going to do here except discuss the current status of
17 our strategic planning effort.

18 And I'll turn that back to Ms. Mattie Cohan.
19 Mattie, are you still on the line?

20 MS. COHAN: I am still on the line. I am
21 right here.

22 CHAIRMAN KECKLER: Could you tell us -- I know

1 that I had hoped that you'd talk about the result of
2 our Federal Register notice that we were beginning
3 strategic planning and comments that we have received
4 from various stakeholders.

5 But could you also talk very briefly and
6 generally about our strategic planning effort yesterday
7 and the beginning of it?

8 MS. COHAN: Sure. In fact, perhaps I'll start
9 with that. The Corporation issued a request for
10 proposals for a strategic planning consultant. We
11 received 44 proposals, there were four firms
12 interviewed, and the firm contracted with is VShift out
13 of New York City.

14 And yesterday Will Carlin of VShift came down
15 and facilitated a kickoff training session for the
16 board. Didn't get into the nuts and bolts of LSC's
17 actual strategic planning, but there was a lot of good
18 background information and a lot of stage-setting to
19 make sure everybody had got a chance to share a little
20 of their experience with strategic planning, what
21 worked, what didn't work, and to lay out the road map
22 for the strategic planning process that will be going

1 forward over the next several months.

2 So that's the summary, and anybody who was
3 there can add more to that of what happened yesterday.

4 We touched briefly yesterday on the fact that there
5 was a Strategic Directions document from 2006 to 2010,
6 and that LSC back in December published a notice in the
7 Federal Register announcing the strategic planning
8 process moving forward and inviting folks to read the
9 prior document and submit comments.

10 We received eight comments in response to the
11 notice. The comments are summarized in materials that
12 were in your board books. And I will only summarize
13 the summary there, unless anyone has questions. I
14 think a number of the comments that --

15 CHAIRMAN KECKLER: That's okay.

16 MS. COHAN: -- requested that -- oh, I'm
17 sorry.

18 CHAIRMAN KECKLER: That's okay, Mattie, in the
19 sense that the comments are all posted on our website.

20 Is that correct?

21 MS. COHAN: Yes, they are.

22 CHAIRMAN KECKLER: Okay. And I think that

1 then we won't need to summarize and talk about one
2 comment or the other. They're all available.

3 MS. COHAN: That's right.

4 CHAIRMAN KECKLER: And I want to publicly
5 thank the people that have commented at this early
6 stage. Thank you for your help. This is a constant
7 iterative process in which we receive information from
8 stakeholders, and process it, and think about things,
9 and go to the next step and do that.

10 We're now moving towards that next step. One
11 of the results of our session yesterday was a strong
12 discussion about how to engage with stakeholders and
13 how to gather information that will be useful for us as
14 we move forward in the rest of the year.

15 And I'll just open it up for anybody's
16 comments or thoughts on the strategic planning process
17 at this time, if anybody else wants to comment on it.

18 (No response.)

19 CHAIRMAN KECKLER: All right. Seeing no
20 further comments, I don't think that at this time that
21 there's any recommendations that are required for
22 strategic planning. We've developed a general process

1 as a board to do so, and we have incorporated in the
2 comments to our Federal Register notice and our early
3 work with our consultant.

4 So at this time I'll move to general public
5 comment. General public comment. Thank you. Mr.
6 Saunders?

7 MR. SAUNDERS: Thank you again, and I will be
8 even briefer at this point. I'm not going to go over
9 any of our comments, but there has been one change
10 since we submitted them that I just wanted to point out
11 both to this committee and to Mr. Grey's committee
12 because I'm unfortunately unable to be here for that.
13 So I'm sort of using your --

14 CHAIRMAN KECKLER: Oh, yes. Go ahead. Yes,
15 go ahead. Double duty.

16 MR. SAUNDERS: But we have talked to you and
17 to the strategic planning comments with regard to what
18 you heard from the Virginia colleagues today, the
19 importance of loan repayment programs and student debt,
20 the student debt issues that face the community and the
21 role that the Corporation plays with regard to its
22 LRAP, and particularly as you move forward to 2013.

1 I just wanted to point out it's my
2 understanding that H.R. 1473, the appropriations bill,
3 does eliminate the Harkin Civil Legal Assistance LRAP
4 program, which was not unexpected in terms of what was
5 going on.

6 But one of the reasons we've been somewhat
7 equivocal with regard to being specific and clear with
8 regard to LSC's role vis-a-vis DOE's is to see how that
9 settled out and how that program took hold.

10 So in the absence of any other federal
11 program, I think it's very important that we have those
12 focused conversations now about, both in the strategic
13 planning process and in the budgetary process, the
14 impact of that change.

15 CHAIRMAN KECKLER: Thank you.

16 Seeing no other public comment, I will now ask
17 if there is any other business which this committee
18 should consider at this time.

19 (No response.)

20 CHAIRMAN KECKLER: Seeing no indication of
21 that, I will now entertain a motion for the adjournment
22 of the meeting.

1 M O T I O N

2 MS. MIKVA: So moved.

3 MR. GREY: Second.

4 CHAIRMAN KECKLER: All in favor?

5 (A chorus of ayes.)

6 CHAIRMAN KECKLER: The motion carries and the
7 committee is adjourned.

8 (Whereupon, at 2:44 p.m., the committee was
9 adjourned.)

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